

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No.: 11-V-15976 - RAH
)	
IVAN WARREN HALPERIN,)	DECISION
)	
Member No. 52450,)	
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

The issue in this matter is whether petitioner Ivan Warren Halperin (petitioner) has demonstrated, to the satisfaction of this court, his rehabilitation, present fitness to practice, and present learning and ability in the general law so that he may be relieved from his actual suspension from the practice of law. (Std. 1.4(c)(ii).)

For the reasons set forth in this decision, the court finds that petitioner has shown, by a preponderance of evidence, that he has satisfied the requirements of standard 1.4(c)(ii). Therefore, the petition is **GRANTED**.

Significant Procedural History

The petition underlying this proceeding was filed on August 31, 2011. The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed its response, opposing the petition, on October 18, 2011.

¹ All further references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Petitioner was represented in this matter by attorney David A. Clare. The State Bar was represented by Deputy Trial Counsel Jessica A. Lienau.

On November 16, 2011, the parties filed a Stipulation as to Facts. A hearing in this matter was conducted on that same day.

Findings of Fact²

Petitioner was admitted to the practice of law in California on June 2, 1972 and has been a member of the State Bar of California at all times since that date.

Underlying Disciplinary Proceedings

On November 6, 1997, the State Bar filed a notice of disciplinary charges (NDC) in State Bar Court case nos. 96-O-00393 and 96-O-04076, charging petitioner with two counts of misconduct. On April 14, 1998, the State Bar filed an NDC in State Bar Court case no. 97-O-16366, charging two counts of misconduct. On May 26, 1998, petitioner and the State Bar entered into a stipulation re facts, conclusions of law, and disposition in State Bar Court case nos. 96-O-00393; 96-O-04076; 97-O-16327; and 97-O-16366.

Thereafter, the Supreme Court adopted and imposed the recommended discipline in an order filed on November 18, 1998, in *In re Ivan Warren Halperin on Discipline*, case no. S073080. The Supreme Court of California ordered that petitioner be suspended from the practice of law for two years, stayed, with nine months of actual suspension, and until petitioner pays restitution to Peter A. Bardwick, M.D., in the amount of \$1,403; Elizabeth Berman and/or any medical providers of Elizabeth Berman who had a valid lien on the settlement, in the aggregate amount of \$16,816; and Barbara Larzelere-Riley in the amount of \$1,750.

² Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

Petitioner was also ordered to comply with standard 1.4(c)(ii), and to comply with rule 955 of the California Rules of Court.³ Petitioner's period of actual suspension began on December 18, 1998. On January 26, 1999, petitioner signed and timely filed with the clerk of the State Bar Court, a rule 955 compliance declaration.

Nature of Underlying Misconduct

Case No. 97-O-16366 – The Larzelere-Riley Matter

On April 2, 1997, Barbara Larzelere-Riley employed petitioner to represent her in a marital dissolution matter and paid him \$1,750 in advanced attorney's fees. Petitioner failed to perform any legal services on her behalf. Ms. Larzelere-Riley terminated petitioner's services and requested a refund of the \$1,750. When he signed the stipulation on May 26, 1998, petitioner had yet to refund any portion of the funds to Ms. Larzelere-Riley.

Case No. 96-O-00393 – The Bello Matter

On July 5, 1995, Frank Bello employed petitioner and paid him \$2,000 in advanced attorney's fees. Bello became dissatisfied with petitioner's services and they agreed to terminate the services. Petitioner agreed to refund the advanced attorney's fees. Petitioner requested that his mother send Bello a refund check on his behalf, but when Bello attempted to cash the check, the account did not have sufficient funds. When he signed the stipulation on May 26, 1998, petitioner had yet to refund any portion of the funds to Mr. Bello.

Case No. 96-O-04076 – The Fogel Matter

In December 1995, Ellen Fogel employed petitioner and paid him \$8,500 in advanced attorney's fees. After petitioner performed various legal services on her behalf, Fogel terminated his services. At the time of termination, there remained \$1,220 in unearned attorney's fees. Petitioner issued a check to Fogel in the amount of \$1,220 from the account of M.J.C.

³ California Rules of Court, rule 955, has since been renumbered rule 9.20.

Corporation, a company operated by petitioner's mother. When Fogel attempted to cash the check there were insufficient funds in that account. When he signed the stipulation on May 26, 1998, petitioner had yet to refund any portion of the funds to Ms. Fogel.

Case No. 97-O-16327– The Berman Matter

On March 2, 1993, Elizabeth A. Berman employed petitioner to represent her in a personal injury matter. Since Ms. Berman was a personal friend of petitioner, petitioner agreed to take the case at a reduced contingency fee of 25% if the case was settled before a trial date was set. Petitioner settled the matter in the amount of \$25,000 and received the settlement draft and deposited it into his client trust account (CTA).

Petitioner continued to pursue the possibility of other recovery, waiting to determine the total amount of recovery before making any payments to Berman's medical providers. While waiting for the resolution of the claim, petitioner misattributed Berman's settlement proceeds as belonging to the account of M.J.C. Corporation, a company owned by petitioner's mother and exhausted the funds that should have been kept in the CTA. When he signed the stipulation on May 26, 1998, petitioner had yet to pay any funds to Berman or to any medical providers on her behalf from the settlement funds.

Stipulation and Resolution

On May 26, 1998, petitioner stipulated to violations in the four aforementioned client matters. Petitioner was found culpable of willfully violating rule 3-110(A) (failure to act competently); rule 3-700(D)(2) (failure to return unearned fees); rule 4-100(A) (failure to maintain client funds in trust account); rule 4-100(B)(4) (promptly pay/deliver client funds); and section 6106 (moral turpitude).

In aggravation, petitioner had one prior record of discipline that resulted in a public reproof in State Bar Court case no. 84-O-11516, for violation of former rules 5-101 and 6-101

and section 6103. (Std. 1.2(b)(i).) He also committed multiple acts of misconduct. (Std. 1.2(b)(ii).) In mitigation, petitioner displayed candor and cooperation to the State Bar during disciplinary investigation and proceedings. (Std. 1.2(e)(v).) In addition, petitioner suffered extreme emotional difficulties, including depression as a result of the death of his brother. (Std. 1.2(e)(iv).)

Pursuant to the Supreme Court's November 18, 1998 order, petitioner was required to comply with rule 955 of the California Rules of Court. On January 26, 1999, petitioner filed the rule 955 declaration with the State Bar Court. In the response to the petition for relief from actual suspension, the State Bar contends that petitioner filed a rule 955 declaration that likely contained a material misrepresentation of fact because there is no indication that petitioner ever substituted out of a civil action titled *John Francis Carroll, et al v. Sam Argyrupoulus et al*, which was filed in the United States District Court, Central District of California, on March 26, 1998, as case no. 2:09-cv-02192. The State Bar also contends that there is no indication that petitioner ever filed with the district court a copy of his notice of suspension to the adverse parties.

Rehabilitation and Present Fitness to Practice Law

In 1975, after working as an attorney for Bank of America and then as an attorney for Caesars World Inc., petitioner opened up his own law firm. The firm represented large clients like Caesars World Inc., but it expanded and thrived when petitioner's younger brother, Kenneth, joined him as a partner of Halperin & Halperin. The firm grew to a 30-person staff with six associates and two partners, petitioner and his brother. At that time, petitioner was also involved with pro bono work for Dog Savers, an animal protection group, and Temple N'er Tamid in Long Beach. His principal pro bono activity was with his college fraternity, Alpha Epsilon Pi (AEPi). He was the advisor to AEPi's 100-member chapter and he operated the fraternity's

housing corporations at the University of Southern California and the University of California Los Angeles. Petitioner's pro bono services were averaging about 200 hours per year.

In or around 1986, his brother was diagnosed with AIDS. After being hospitalized in May 1986, his brother committed suicide on May 15, 1986. The death of his brother and legal partner had a serious personal and professional impact on petitioner.

With the absence of his brother, who was the voice of their firm and who was very active politically, the firm stopped growing and petitioner's finances plummeted. Petitioner was forced to downsize the firm, slowly going from a 30-member staff to a solo practice, operated out of his home. Petitioner became the caretaker of his parents and his brother's wife and two children, ages four and nine at the time of their father's passing.

Petitioner became very depressed and sought counseling from Robert A. Mann, a Licensed Clinical Social Worker, and sought treatment by a psychiatrist, Dr. Scott Sweet, who prescribed antidepressant medications. Petitioner was also actively involved in seeking psychological treatment for his brother's two children. The children looked to him as their father figure, spending a lot of time with petitioner.

Petitioner has continued counseling and treatments to the present day, and testified that the medication and counseling have been effective and he is no longer impaired by his depression. Dr. Scott Sweet stated in his declaration that he believes the depression responsible for petitioner's behavior is not likely to be repeated and that "Mr. Halperin has well-developed coping mechanisms for dealing with any future depression." (Exhibit L.)

Since the suspension, petitioner's parents have supported him financially. He has kept himself occupied by doing volunteer work for AEPI, and essentially managing their \$5.5 million business. He has remained active in Jewish communal affairs, including the Temple Sinai

Synagogue, the Jewish Alumni Association at USC, and the Hillel foundation at the University of Washington and USC, and his responsibilities have included programming and outreach.

In the declarations of seven witnesses, including three attorneys and petitioner's psychiatrist, with whom petitioner has openly discussed his professional misconduct, the declarants express their confidence that petitioner is rehabilitated, is of good moral character, and has demonstrated his present fitness to practice law. The declarants expressed high regard for petitioner's work ethic and integrity. Many also attested to his remorse and level of understanding regarding the misconduct that led to his removal. Petitioner has also openly discussed his professional misconduct with members of AEPi and he made the May 26, 1998 stipulation available for all members to read.

Petitioner has acknowledged his misconduct and has shown remorse for it. He has made full restitution in the total amount of \$33,683.49. He has also fully complied with all the terms of his probation, including signing and timely filing with the clerk of the State Bar Court, a credible rule 955 compliance declaration.

Petitioner has also acknowledged that several liens have been recorded against him before, during, and after his suspension. Petitioner filed all of his state and federal tax returns, but failed to pay all the taxes due for the tax years 1987 through 2011. The State of California Employment Development Department has recorded several state tax liens against petitioner totaling \$75,831.59, the Tax Collector for the County of Los Angeles has recorded several tax liens against petitioner totaling \$3,529.46, the Internal Revenue Service has recorded federal tax liens against petitioner totaling \$602,323.71, and the State of California Franchise Tax Board has recorded several liens against petitioner for unpaid state taxes. In addition to the liens, petitioner entered stipulated judgments resulting from civil actions. Petitioner, though, never made

payments towards any of those judgments. The other parties never sought payment and those judgments are no longer legally enforceable.

Petitioner was always aware of his tax debt obligation and by filing his tax returns never sought to hide his tax obligation. Petitioner has also made some of the payments to the Franchise Tax Board, but made a joint decision with his accountant to stop making payments until they could come to a payment plan resolution. Petitioner attributes his inability to timely pay the taxes and judgments on his financial difficulties and lack of earned income since his suspension.

Petitioner's Present Learning and Ability in the General Law

Petitioner has timely taken and passed the Multistate Professional Responsibility Exam (MPRE), and furnished proof thereof to the State Bar's Office of Probation. He has also participated in a total of 112.5 credit hours of Minimum Continuing Legal Education approved courses since his suspension began, including being current on the 2011/2012 requirements of 25 hours of continuing education.

In addition, petitioner has maintained current membership with the Los Angeles County Bar Association. He reviews daily appellate reports, continues to do legal research, and views daily electronic newsletters dealing with real estate and business law.

The State Bar offered no evidence to contradict any of the evidence offered by petitioner on this issue.

Discussion

In this proceeding, petitioner has the burden of proving by a preponderance of the evidence that he has satisfied the conditions of standard 1.4(c)(ii). The court looks to the nature of the underlying misconduct as well as the aggravating and mitigating circumstances surrounding it to determine the point from which to measure petitioner's rehabilitation, present learning and ability in the general law, and present fitness to practice before being relieved from

his actual suspension. (*In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 571, 578.)

To establish rehabilitation, the court must first consider petitioner's prior misconduct. The amount of evidence of rehabilitation varies according to the seriousness of the misconduct at issue. Second, the court must examine petitioner's actions since the imposition of his discipline to determine whether his actions, in light of the prior misconduct, sufficiently demonstrate rehabilitation by a preponderance of the evidence. (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 581.)

Petitioner must show strict compliance with the terms of probation in the underlying disciplinary matter; exemplary conduct from the time of the imposition of the prior discipline; and "that the conduct evidencing rehabilitation is such that the court may make a determination that the conduct leading to the discipline ... is not likely to be repeated." (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 581.)

In this case, the conduct that prompted the court to initially take action was serious. Failing to properly maintain funds and failing to promptly return unearned fees or pay funds to clients are ethical lapses that cannot be taken lightly. Petitioner, though, has made substantial gains in his rehabilitation process. He has recognized his misconduct and taken steps to prevent such misconduct from recurring. Several years have passed since his misconduct and due to the counseling and treatments, he is no longer debilitated from his depression.

The State Bar characterizes petitioner's failure to retire the tax liens and the judgments as fiscal irresponsibility. The State Bar contends that petitioner's unresolved tax debt shows a lack of requisite rehabilitation. The court does not agree. The court finds that, in and of itself, petitioner's failure to eliminate his tax debt is not enough to deny petitioner's petition for relief from actual suspension. (See *In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct.

Rptr. 459, 468.) Petitioner has had to prioritize his financial obligations and has completed the restitution related to the victims of his underlying misconduct.

With respect to petitioner's present learning and ability in the general law, the court finds that petitioner has proven by a preponderance of the evidence that he currently possesses present learning and ability in the general law.

Conclusion

The court finds that petitioner has satisfied the requirements of standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct by demonstrating, by a preponderance of the evidence and to the satisfaction of the court, that he is rehabilitated, presently fit to practice law, and has present learning and ability in the general law.

Accordingly, the petition for relief from actual suspension from the practice of law is hereby GRANTED.

Petitioner will be entitled to resume the practice of law in this state when all of the following conditions have been satisfied:

1. The actual suspension imposed by the California Supreme Court in its Order filed on November 18, 1998, in Supreme Court case no. S073080, has expired;
2. This order has become final, which includes the expiration of the time for seeking reconsideration and review (Rules Proc. of State Bar, rule 5.115, 5.150, 5.409, and 5.410);
3. Petitioner has paid all applicable State Bar fees and previously assessed costs (Bus. & Prof. Code, §§ 6086.10 and 6140.7); and
4. Petitioner has fully complied with any other requirements for his return to active membership status and is otherwise entitled to practice law.

Dated: December ____, 2011

RICHARD A. HONN
Judge of the State Bar Court