

FILED DECEMBER 20, 2011

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of ) Case No.: **11-V-16578-RAH**  
 )  
**DAVID JOSEPH SCHARF,** ) **DECISION**  
 )  
**Member No. 170083,** )  
 )  
A Member of the State Bar. )

**Introduction**<sup>1</sup>

The issue in this matter is whether petitioner David Joseph Scharf 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 September 20, 2011. The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed its response opposing the petition on November 4, 2011, and supplemented it on November 23, 2011.

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<sup>1</sup> 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 Lloyd L. Freeberg. The State Bar was represented by Deputy Trial Counsel Jean Cha.

On November 30, 2011, the parties filed a Stipulation as to Facts. The case was submitted without hearing on December 5, 2011, after the parties agreed to the admission of each other's exhibits.

### **Findings of Fact**<sup>2</sup>

Petitioner was admitted to the practice of law in California on May 2, 1994 and has been a member of the State Bar of California at all times since that date.

### **Underlying Disciplinary Proceedings**

On July 21, 2009, petitioner was convicted of violating Penal Code sections 646.9(a) (stalking),<sup>3</sup> 653m(a) (making harassing telephone calls) and 273.6(a) (violation of protective order), both misdemeanors. (Orange County Superior Court case no. 06ZF0130.)

After the conviction was transmitted to the State Bar Court, the Review Department placed petitioner on interim suspension effective June 23, 2008. (State Bar Court case no. 06-C-12596.) Petitioner was also ordered to comply with rule 9.20 of the California Rules of Court and did so. The matter was then referred to the Hearing Department for hearing and decision recommending the discipline to be imposed if the facts and circumstances involved moral turpitude or other misconduct warranting discipline.

On February 10, 2011, the court approved the parties' stipulation resolving this matter.

By order filed on June 8, 2011, the Supreme Court, in case no. S191886, imposed discipline consisting of two years' stayed suspension and two years' probation on conditions

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<sup>2</sup> 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.

<sup>3</sup> This felony conviction was reduced to a misdemeanor in October 2010.

including actual suspension for two years and until petitioner complied with standard 1.4(c)(ii). Credit toward the period of actual suspension was afforded for the period of interim suspension, June 23, 2008 to July 8, 2011. This order became effective on July 8, 2011.

Petitioner was also ordered to comply with rule 9.20 of the California Rules of Court. On August 1, 2011, petitioner timely filed with the clerk of the State Bar Court, a rule 9.20 compliance declaration.

### **Nature of Underlying Misconduct**

Petitioner and the victim met in March 2004 through an internet dating site. They dated for about four months. The victim ended the relationship by email on July 26, 2004.

On July 31, the victim received an email from petitioner accusing her of being involved in the adult film industry. On August 3, 2004, she responded to the email, telling petitioner that she was not comfortable seeing him in person as she did not feel safe because of the nature of his email.

Petitioner again contacted the victim by email prior to August 6, 2004. Although there were no direct threats of harm made against her, the tone of the email led her to construe the email as a credible threat of physical harm. She responded to the email and told petitioner not to contact her unless it related to picking up his belongings.

On September 2, 2004, petitioner emailed the victim again and asked her to meet him in a public place. She did not respond.

On September 17, 2004, petitioner sent the victim an email telling her that he was not going to let her walk away from his love. She did not respond.

On September 19, 2004, petitioner sent the victim another email which she construed as a credible threat of harm. She did not respond.

On September 20, 2004, petitioner sent the victim another email accusing her of secretly videotaping their intimate relations. In another email sent that same day, petitioner told her “be at my house at noon tomorrow if you want to do the right thing. There will be no second chance.” Although there were no direct threats, the tone of these collective emails caused the victim to construe the statements as a credible threat. She did not respond to the emails.

The victim left California on September 21, 2004. Her house remained vacant and all of her personal belongings were packed in boxes.

On September 23, 2004, petitioner sent the victim another email telling her that her “problem is therefore ‘meant to be’ prosecution for the deliberate victimization of [petitioner],” and that her ‘callous disregard of [petitioner] evidences a remorselessness which makes [her] a danger to others.” Petitioner attached a photograph of an adult man and a woman engaged in sex acts. She did not respond.

Petitioner sent the victim two additional emails on September 23, 2004, and in one, again professed his love for her. She did not respond.

On September 24, 2004, petitioner sent the victim another email. She did not respond.

On September 26, 2004, petitioner entered the victim’s vacant home through the garage using the access code she gave him while they were dating. He rifled through the boxes of her personal belongings. He left gifts for her sons on the kitchen counter as well as a photocopy from the California Penal Code covering the laws of arrest. He then contacted the victim by phone and left a voicemail indicating that he had accessed her home. Petitioner claimed that he had gone to the residence to retrieve some of his personal belongings.

On September 29, 2004, the victim obtained a temporary restraining order protecting her from petitioner. He was properly served with the order on September 30, 2004.

On October 20, 2004, petitioner violated the restraining order by attempting to contact the victim via an email to her mother.

Because petitioner was also a deputy public defender, the victim believed that he might use his knowledge to cause legal harm to her. This further disturbed her because she had not done anything wrong.

On June 15, 2006, a five-count indictment was filed against petitioner. On April 30, 2008, following a trial in which petitioner represented himself, a jury found him guilty of stalking, a felony, and making harassing phone calls and violation of a protective order, both misdemeanors. (Orange County Superior Court case no. 06ZF0130.)

On August 1, 2008, petitioner was sentenced to 95 days in jail with credit for time served; five years' formal probation; compliance with the protective order to remain in effect for ten years; completion of a batterer's treatment program and a 12-month residential treatment program; eight hours of community service; and payment of various fees, fines and restitution to the victim.

On October 22, 2010, following a defense motion pursuant to Penal Code section 17(b), the trial judge reduced the felony stalking conviction to a misdemeanor based, in part, on petitioner's participation in substance abuse counseling, successful domestic violence training and payment of all fines, fees and restitution.

### **Stipulation and Resolution**

On February 10, 2011, the parties stipulated that the facts and circumstances surrounding petitioner's conviction of violating Penal Code section 646.9(a) involved moral turpitude and that the violations of Penal Code sections 653(m)(a) and 273.6 constitute willful violations of sections 6068(a) and 6103.

In aggravation, petitioner's conduct resulted in significant emotional harm to the victim due to the sustained harassment that occurred over about two and one-half months.

In mitigation, petitioner had no prior discipline in over 10 years of practice; displayed candor and cooperation to the State Bar during disciplinary investigation and proceedings; had family problems and suffered extreme emotional difficulties, including depression as a result of the break-up of his 10-year marriage; abused alcohol and drugs (now resolved); successfully completed treatment programs, including a batterer's program, and participates in Alcoholics Anonymous and The Other Bar; and submitted over 30 reference letters.

### **Rehabilitation and Present Fitness to Practice Law**

Petitioner has been sober since June 6, 2008.

Petitioner began abusing alcohol at the age of 14, can recall blacking out sometimes and drinking to get drunk on weekends throughout high school and while employed in the California Conservation Corps.

Petitioner smoked marijuana through the 1970s.

While in law school in San Francisco, petitioner drank alcohol, smoked marijuana occasionally, used Ecstasy a few times, and may have used methamphetamine a few times.

After his daughter and father died, in 1992, petitioner began drinking daily.

In 1993, petitioner relocated from the Bay Area to Orange County. At this time, he was employed as a law clerk. In May of 1994, he was hired as an attorney and cut back on drinking. Petitioner has been practicing law since 1994 without any impositions of discipline other than the underlying matter.

From 1994 through 1999, petitioner dedicated himself to his work putting in 18-hour days with the Public Defender's office. His home life suffered as a result of this and his relationship with his wife deteriorated. Around 1999, he began drinking again.

From 1999 through 2001, petitioner used meth about 20 times, cocaine about five to ten times and marijuana occasionally. He stayed out late many times until midnight, and chose to hang out to drink and have a good time rather than go home to face marital problems. His wife became concerned and, at one point, she and his mother attempted an intervention which was unsuccessful.

In 2002, petitioner's wife left him and the separation eventually resulted in dissolution of the marriage. By the second half of 2002, petitioner was using meth daily.

After his wife left, petitioner took a three-month vacation and saw a psychiatrist. He was diagnosed with clinical depression and was prescribed Wellbutrin and Provigil medications. Petitioner returned to his prescribing doctor after he ran out of a six-month prescription within two months. The prescribing doctor refused to give him another prescription because petitioner abused the drugs.

In January 2003, petitioner obtained a regular supply of meth through his haircutter. Petitioner's use was habitual. Petitioner was high on meth while at work handling 50 cases a day, making appearances daily at trials. Petitioner was using meth every morning and after work at an expense of \$100 - \$150 per week.

By July 2003, petitioner was hospitalized for bacterial meningitis because his immune system had become weakened. Petitioner had been working 20-hour days and abused meth heavily to the point where he was either working or would pass out. Petitioner suffered from a cycle of waking up from being passed out, using meth, being high all day, until he would pass out again. Petitioner's doctor advised him that he must stop or he could die.

Petitioner abused drugs and alcohol to mask emotional pain. After the July 2003, hospitalization, petitioner quit abusing meth for about two months. As a result, he became lethargic, depressed and eventually returned to habitual use.

In 2004, petitioner self-medicated with meth and did not want anybody to know, so he hid the problem. He tried to give the impression that he was sober. However, despite his efforts, people were noticing that sometimes he looked weird, and even pointed out that there was powder on his face.

Petitioner created a system where he regulated the dosage of meth into daily packets. At times he would forget to sleep and was detached from reality. Petitioner recalls that, at first, he was super prepared for work and, toward the end of his drug use, he was not ready for work. He recalled that a motion that he could have done in two weeks took him nine months.

Petitioner has submitted to the State Bar copies of ten years of performance evaluations completed by his supervisors at the Orange County Public Defender (OCPD). He also submitted a statistical analysis and listing of his caseload during one nine-month period of 2002, during which he handled more than 200 felony cases. He contested 118 of those cases and achieved 70 victorious outcomes for his clients.

In about May 2004, the OCPD's office became concerned with petitioner's emotional problems. He was not showing up to work on time and was isolating himself. They were aware of his psychological breakdown at the end of 2002. His employer reduced his workload.

While using meth, petitioner created multi-layered versions of reality. Petitioner continued to abuse meth from May of 2004 through his criminal trial in which he represented himself.

It was not until December 2008, after petitioner had been sober for several months, that he began to comprehend the magnitude of what he had done. Prior to that he blamed the victim for many things and did not understand the harm he had caused his former spouse. The victim attests to her fear of petitioner prior to, during the pendency of and since the criminal trial. She continues to suffer emotionally because she believes he still has some of her personal

belongings, including writings, photographs and other things. She does not believe that he should be permitted to practice law again. She believes that potential clients would believe that he is someone who adheres to the law and can be trusted and that this false sense of security because of his status as a lawyer may endanger other women.

Petitioner reports that, at the time of the misconduct, he was suffering from extreme emotional distress as a result of the breakup of his marriage and that he was abusing methamphetamines and alcohol.

Dr. James Gruver, Ph.D, a forensic psychologist, evaluated him in July 2008. He noted that petitioner had not been in trouble with the law before and had a low propensity for antisocial behavior. Dr. Gruver further noted petitioner's motivation for treatment, his sincere remorse for what he had done and his sincere resolve that nothing else like that would ever happen again. He concluded that petitioner's substance abuse played a role in the conduct that formed the basis for the underlying conviction and that, as long as he remains clean and sober, he does not pose a threat of harm to anyone.

Petitioner is in compliance with all conditions of probation imposed in the underlying criminal matter which began on August 1, 2008. He has had no violations of probation of any kind. In October of 2010, the probation department was relieved of supervision. Petitioner has been on unsupervised probation since then. Probation ends on July 31, 2013.

Petitioner was admitted to the Joshua House Residential Treatment Program on December 11, 2008, and successfully completed the 236-day substance abuse treatment program on August 4, 2009. This residential program required random drug tests every 72 hours, daily alcohol testing, weekly group therapy, individual therapy, counseling sessions, and daily attendance in the Alcoholics Anonymous 12-Step program. During the pendency of the program, petitioner did not test positive for any controlled substance.

In the underlying matter, petitioner submitted to the State Bar more than 30 letters of reference from members of the Bar and general community, as well as a copy of a court transcript containing comments from the trial judge in post conviction proceedings, supporting his return to the practice of law as a valued member of the legal community.

Since June of 2008, petitioner has participated in more than 30 one-hour one-on-one psychological counseling sessions with a licensed therapist. He has also participated in more than 85 group counseling sessions provided by National Therapeutic services related to recovery from alcohol and substance abuse. Petitioner submitted proof to the State Bar of attending more than 400 12-Step recovery meetings since his sobriety date of June 6, 2008.

In May of 2010, Dr. David Welch evaluated petitioner's progress toward rehabilitation after completing 52 weeks of counseling in the Batterer's Treatment Program and concluded that he had achieved the highest possible marks for acceptance of responsibility; participation; attitude; skills development; motivation and use of learned skills. Dr. Welch further concluded in his comments that "David was an excellent group participant and was actively engaged in learning about himself and how to control his behavior. He frequently assisted other group members as well. I am very proud of him and the progress he made during the program."

Petitioner's progress in recovery and rehabilitation since June of 2008 was monitored by the Orange County Probation Department and by Orange County Superior Court Judge Daniel McNerney. Judge McNerney was the judge that heard the trial in the case underlying the order of discipline. On October 22, 2010, after reviewing the probation department's report on his progress toward rehabilitation, Judge McNerney found that petitioner had made "extraordinary progress" and "life changing" efforts in the years since the case was tried. Judge McNerney went on to state:

“Mr. Scharf stands here today, in this court’s view, frankly, a completely different person than he was back at the time this case went to trial. And he is a different person, in this court’s view, as a result of the extraordinary efforts that he has undertaken to adopt some life-changing tools that he has acquired that the – that he appears now to live by. ¶ He has undergone extensive substance abuse counseling, rehabilitation, treatment. He has, in addition, enrolled and successfully completed domestic violence training over a year’s period. He has paid all of his debts. He has paid all of his costs. He is working, and working hard to return to the profession that he so ably practiced for so many years. ¶ And it is this court’s sincere hope and expectation that the bar will look as favorably on his progress as this court does and will, once again, give him the opportunity to return to this court and practice law.” (...) Mr. Scharf is an extraordinary lawyer with incredible potential, and is the kind of person this court thinks we need more of and I welcome the day when he is once again licensed to practice law and look forward to having him appear before me.” (*People v. Scharf*, Orange County Superior Court case no. 06ZF0130, October 22, 2010, Reporter’s Transcript, 5:16 - 6:15.)

Judge McNerney proceeded to reduce the underlying criminal offense of stalking (Penal Code section 646.9) from a felony to a misdemeanor. Petitioner was placed on informal probation and has not been supervised on probation since then.

Petitioner has been candid and cooperated with the State Bar in the underlying matter. Petitioner made arrangements to obtain and promptly provided the State Bar with all requested information in order to evaluate the case for settlement (i.e. trial exhibits, probation reports, letters of progress from various treatment programs, a forensic psychological examination, and the Reporter’s Transcript from a hearing before the sentencing judge regarding the reduction of the felony stalking conviction to a misdemeanor). Petitioner’s willingness to enter into a stipulation is also evidence of cooperation with the State Bar.

Petitioner is in compliance with all the terms and conditions of probation imposed in the underlying disciplinary proceeding. Probation became effective on July 8, 2011 and ends on July 8, 2013.

Petitioner is in compliance with the State Bar Act and the Rules of Professional Conduct.

Petitioner has maintained with the Membership Records Office of the State Bar and the Office of Probation all current contact information.

Petitioner contacted the Office of Probation and discussed the terms and conditions of probation with a probation deputy within thirty days of the effective date of his discipline.

Petitioner has timely submitted one written quarterly report (October 2011) to the Office of Probation, to date. His second quarterly report is due in January 2012.

Petitioner has answered fully, promptly and truthfully any inquiries of the Office of Probation.

Petitioner has documented his voluntary attendance at the program meetings of "The Other Bar" approximately twice a week since August of 2010. More than 30 letters and 15 declarations dating from December 2010 to the time this petition was filed attest to his regular attendance at program meetings, note his active participation in each meeting and the fact that he is the group leader for the Thursday night meetings.

Fifteen current declarations, including declarations from other attorneys, from a psychologist whose sole practice is addiction recovery and from members of the recovery community, attest to his dedication and commitment to sobriety and the recovery community. These declarations also support that he has a sponsor that is an attorney and that he sponsors other attorneys through Alcoholics Anonymous and his continued regular attendance at 12-Step recovery meetings.

Petitioner's family circumstances have greatly changed since the misconduct that occurred seven years ago. He is now married to Ruba Qashu, who is also a member of the California Bar, and their baby boy was born on October 19, 2011.

Petitioner has not used or possessed any controlled substance or alcoholic beverage since his sobriety date of June 6, 2008.

Dr. Deena Manion, a psychologist and licensed clinical social worker, is an addiction specialist. Dr. Manion has worked in the field of chemical dependency and mental health since 1991. She is the clinical director of a California licensed alcohol and drug residential treatment program. She has worked with thousands of people who suffer with alcoholism and drug addiction.

Dr. Manion has known petitioner personally and professionally for 30 years. She has had frequent contact with him during the last ten years to the present and is familiar with his rehabilitation efforts, including in the treatment program, with his sponsors and in the 12-Step program. He has been very candid with her about his use of alcohol and controlled substances and that played a role in the acts that resulted in discipline and in the overall unmanageability of his life. He has admitted his guilt and tremendous shame because of his addictions which caused him to exercise poor judgment in his personal life in the past.

Petitioner frequently consulted with Dr. Manion during the last ten years. She noted that he was a highly-skilled attorney whose addiction was fueled when he self-medicated in response to a clinical depression resulting from the break-up of his marriage. During her frequent contacts, Dr. Manion has found petitioner to be receptive and eager to participate in a therapeutic program geared to facilitate pro-social behavior and return to a happier relationship with himself free of all addictive substances. In her opinion, he has made a significant decision and lifestyle change and has displayed courage in facing change and confronting the discomfort he has had about himself. She believes that the changes in him are quite miraculous. He has become less reliant on external sources of self-esteem, replacing them with internal or interpersonal sources. This allowed him to develop an image of himself more congruent with who he actually is.

Dr. Manion notes that petitioner has made significant changes in his personal life, including remarrying and expecting a child. It has been her experience that individuals who are in recovery more than two years are in remission. The fact that petitioner has been in recovery for nearly three years [as of July 2011] combined with the significant changes he has experienced in his interpersonal and leisure activities and family relationships indicates that he is now in full sustained remission. He is capable of relaxing and having fun now which indicates that he has replaced chemical pleasures with clean and sober life pleasures.

Based on Dr. Manion's discussions with petitioner and those who know him best, he has been a model 12-Step participant, has experienced no relapses since his sobriety date and is in full sustained remission. He is not disabled by alcohol dependency or substance abuse. He has a good prognosis for continued sobriety even if he experiences significant stressors because he is more stable and has taken an active role in his recovery by participating in AA and The Other Bar and by developing close relationships with other persons in recovery. He has done an outstanding job in his recovery and has accomplished what is necessary in terms of embracing the path of recovery.

Dr. Manion indicates that petitioner acknowledges the seriousness of his prior misconduct and exhibits significant and appropriate contrition. The ability to accept responsibility for his misconduct is one of the key indicators of a person committed to long-term sobriety and to a productive and useful life. Not having used drugs or alcohol in over three years is another important emblem of his successful commitment to change.

Dr. Manion strongly believes that petitioner has demonstrated for a significant period of time his commitment to helping himself and others, "cleaning his own house" working diligently and professionally. On the basis of the above facts and prognosis, she is fully convinced that petitioner demonstrates rehabilitation and fitness to practice law. He has made a dramatic change in his life which is ongoing and substantial. He is also of current great benefit to those in the process of rehabilitation and recovery, no matter their station in life.

These sentiments about petitioner's recovery and remorse for his past acts are shared by other declarants, most of them attorneys, some of whom have worked with him presently or in the past, who have known about petitioner's misconduct and have observed his behavior, including at AA and The Other Bar meetings, and recommend his reinstatement to the practice of law.

### **Petitioner's Present Learning and Ability in the General Law**

Petitioner has timely taken and passed the Multistate Professional Responsibility Exam (MPRE) and is awaiting the results. He has until July 8, 2012, to successfully complete the MPRE and submit proof of passage to the Office of Probation.

Petitioner completed a total of 43.75 hours of Mandatory Continuing Legal Education (MCLE) during the period of suspension. This includes 10.5 hours of training in substance abuse/mental health and the legal profession, 2.5 hours in elimination of bias, 10 hours in legal ethics and 21.25 hours in the general law.

Petitioner has provided to the Office of Probation satisfactory proof of attendance at the August 4, 2011 session of the Ethics School, and passage of the test given at the end of that session.

Petitioner is a member in good standing of the California Public Defender's Association (CPDA). As part of his membership, he receives weekly updates regarding recent developments in the criminal law. This includes both statutory and decisional law.

Declarations from many attorneys who have known petitioner and/or worked with him attest that he maintains a high degree of competency in the law and is considered a resource for information regarding the general law. His employer since January 2011, attorney Richard D. Runcie, who for 15 years prior to becoming an attorney in 1995 continuously worked in the field of alcohol and drug rehabilitation, attests that he has worked with petitioner on several civil and criminal motions, pleadings and hearings. He has found petitioner to be diligent, sound, compelling and professional. Petitioner both seeks and assumes responsibility, is punctual with legal deadlines and has a sharp mind for analyzing legal issues. Runcie would hire petitioner in his field of expertise, as needed, if he were reinstated to the practice of law. Finally, Judge

McNerney, who presided over petitioner's criminal trial would welcome him back to practice in his court.

### 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 petitioner's misconduct, although aberrational, was serious and based upon his drug addiction. Petitioner, though, has undergone a meaningful and sustained rehabilitation process. He has recognized the addiction that led to his misconduct and taken

steps to prevent it from reoccurring. Several years have passed since it occurred and, due to counseling and treatments, he is no longer debilitated from his depression and substance abuse. He is remorseful about his misconduct. Dr. Gruver noted that, as long as petitioner is sober, he is not a threat. Dr. Manion asserts that after three years of sobriety, petitioner is in full sustained remission.

Petitioner has taken great strides in his rehabilitation. It is evident that he has come very far. The evidence shows that his commitment to maintaining his sobriety is central to his life and it appears to be a life-long commitment. As Judge McNerney noted, petitioner is a different person as a result of the extraordinary efforts that he has undertaken to adopt some life-changing tools that he appears to live by. Petitioner has been sober since June 2008. Friends, former colleagues, a judge, others in the recovery community and experts in recovery from substance abuse all credibly attested to his sobriety, rehabilitation and remorse for his past misconduct. He has demonstrated his unswerving commitment to sobriety such that the court can recommend that he be permitted to undertake client matters and properly conduct himself within the judicial system.

Petitioner herein has presented laudatory character testimony. "Letters of recommendation and the favorable testimony, especially that of employers and attorneys, are entitled to considerable weight. [Citations.]" (*Feinstein v. State Bar* (1952) 39 Cal.2d 541, 547.) The court gave great weight to the testimony of attorneys because they have special interest in the requirements for reinstatement. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1095.) It also gave great credence to Drs. Manion and Gruver. "But such evidence, however laudatory or great in quantity, is not alone conclusive. [Citations.]" (*Feinstein v. State Bar, supra*, 39 Cal.2d at p. 547.) In the instant case, the strong and varied commendations regarding petitioner's rehabilitation from substance abuse are very credible. Petitioner has not been in trouble with the law before or since the unfortunate incidents in 2004. He is remorseful. He has taken steps to address the substance abuse that led to the incidents

and is committed to maintaining his sobriety. He has turned his life around. Accordingly, the court finds that petitioner has proven by a preponderance of the evidence his rehabilitation and present fitness to practice. (*In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289, 299, 300.)

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 David Joseph Scharf 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. 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);
2. Petitioner has paid all applicable State Bar fees and previously assessed costs (Bus. & Prof. Code, §§ 6086.10 and 6140.7); and
3. Petitioner has fully complied with any other requirements for his return to active membership status and is otherwise entitled to practice law.

Although petitioner may return to active status after these conditions have been satisfied,  
he remains on probation subject to conditions pursuant to Supreme Court case no. S191886.

Dated: January \_\_\_\_\_, 2012

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RICHARD A. HONN  
Judge of the State Bar Court