

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of)	Case No.: 11-V-16724 - LMA
)	
KURT KEVIN ROBINSON,)	DECISION
)	
Member No. 108095,)	
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

The issue in this matter is whether petitioner Kurt Kevin Robinson (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 September 30, 2011.² Petitioner filed supplemental declarations on October 17 and 19, 2011. The Office of the Chief Trial

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.

² An earlier petition was filed on September 19, 2011. This petition, however, was not properly verified and served. Consequently, its filing was rescinded on September 28, 2011.

Counsel of the State Bar of California (State Bar) filed its response, opposing the petition, on November 17, 2011.

On December 8 and 9, 2011, a hearing was conducted in this matter. The State Bar was represented by Deputy Trial Counsel Robin Brune. Petitioner represented himself in pro per.

Findings of Fact³

Petitioner was admitted to the practice of law in California on June 3, 1983, and has been a member of the State Bar of California at all times since that date.

Petitioner's Underlying Disciplinary Background

On April 24, 2009, the Review Department of the State Bar Court issued a decision in petitioner's underlying matter, case no. 06-O-11510. This decision involved misconduct in two client matters.

In the first matter, petitioner was hired by Victor Velasquez (Velasquez) and his sister Veronica to prepare a petition for conservatorship over their sister Rebecca. In this matter, petitioner charged Velasquez \$5,000, but failed to provide periodic or monthly statements, as provided in the retainer agreement. Petitioner also failed to provide Velasquez with a timely final accounting. Consequently, petitioner was found to have violated rule 4-100(B)(3) [failure to account].

In the second matter, petitioner defended Raul Vasquez (Vasquez) in a commercial unlawful detainer matter. When the unlawful detainer matter went to trial, petitioner was present in the courthouse, but remained outside the court room during the trial. By intentionally failing

³ 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.

to appear at trial, petitioner willfully violated rule 3-110(A) [failure to perform legal services with competence].

In mitigation, the Review Department awarded great weight to the physical difficulties petitioner experienced as a result of his long-standing kidney disease. Between 1999 and until he received a kidney transplant in 2005, petitioner underwent dialysis up to several hours a day. And after the transplant surgery, petitioner had to make many adjustments to his anti-rejection prescriptions, and these fluctuations affected petitioner's emotional state.

Petitioner received additional mitigation for his impressive moral character evidence and extensive community service.

In aggravation, petitioner had two prior records of discipline involving similar misconduct. In addition, petitioner committed multiple acts of wrongdoing, caused significant harm to his clients, and lacked recognition of the seriousness of his misconduct.

The Review Department recommended, among other things, that petitioner be suspended from the practice of law for four years, that execution of that suspension be stayed, and that he be placed on probation for four years on condition that he be actually suspended from the practice of law for the first two years of probation and until: (1) petitioner made restitution, in the amount of \$2,500 plus interest, to Raul Vasquez; and (2) demonstrated his rehabilitation, present fitness to practice, and present learning and ability in the general law pursuant to standard 1.4(c)(ii).

On February 3, 2010, the Supreme Court issued an order, in case no. S176245, affirming the Review Department's decision. Petitioner's period of actual suspension began on March 5, 2010.

On June 30, 2010, an order extending petitioner's time to pay the costs associated with case no. S176245 was issued. This order required that petitioner pay one quarter of his costs with his membership fees for the years 2011, 2012, 2013, and 2014.

Rehabilitation and Present Fitness to Practice Law

As illustrated below, petitioner asserts that he has been rehabilitated and possesses the requisite present fitness to practice law. The State Bar opposed this assertion.

1. Petitioner's Acceptance of Responsibility and Remorse

Petitioner has demonstrated an understanding and insight into the nature and scope of his misconduct. Petitioner expressed remorse for the harm he caused his former clients. Petitioner acknowledged that he received a fair trial in his prior matter and received the discipline he deserved. Describing the underlying discipline as the best thing that ever happened to him, petitioner explained that his suspension gave him the opportunity to look back and learn about himself. Petitioner found the overall experience to be humbling.

2. Petitioner's Community Work

Petitioner has made contributions to the community through his public service work. He has served as a board member of the Center for Entrepreneurial Development and the Silicon Valley Black Chamber of Commerce. Petitioner is also involved in the early start-up phase of a non-profit organization called the Neighborhood Law Project. The Neighborhood Law Project is intended to help bridge the gap between police departments and inner city youth.

In its opposition, the State Bar asserts that the petition demonstrates a lack of accuracy and/or candor in regard to petitioner's community work. The most notable example is petitioner's assertion that he teaches yoga for transplant recipients at Stanford Hospital. In his deposition and at trial, petitioner clarified that although he anticipated teaching yoga and extended the offer to teach the class, the class keeps getting canceled due to insufficient demand.

The court finds that although petitioner's statement in the petition was ambiguous, it did not amount to an intentional misrepresentation. And when petitioner was asked to clarify the extent of his yoga instruction, he provided an honest and credible explanation.

Overall, the court found petitioner's testimony on this subject of his community service to be credible and forthcoming.

3. Petitioner's Character References

In support of his petition, petitioner submitted favorable character testimony from Richard Robinson; Glenn Jones; Michael Pierson, Esq.; Steven Gruel, Esq.; Milton Wright; Michael Steele; and the Honorable Jerome Brock.

Petitioner's character witnesses strongly recommend his reinstatement to the practice of law based on his character, integrity, and work ethic. Petitioner's character witnesses came from wide ranging and diverse professions, including, among other things, two attorneys, an accountant, a judge, and a rapper. The court finds petitioner's character testimony is entitled to considerable weight.

4. Petitioner's Payment of Restitution

As noted above, the Supreme Court's order in case no. S176245 required, among other things, that petitioner make restitution to Vasquez in the amount of \$2,500 plus 10% interest per year from December 27, 2005. In his petition, petitioner affirmatively declared that he had made restitution in compliance with the terms of his payment plan. In its opposition, the State Bar pointed out that petitioner, in truth, had yet to pay restitution to Vasquez, and asserted that petitioner's statement to the contrary was a misrepresentation to the court.

At the hearing on this matter, petitioner credibly explained that he thought Vasquez' restitution was included in the disciplinary costs he was paying to the State Bar. It was not until

the State Bar pointed out his mistake, that petitioner realized Vasquez' restitution was a separate payment. Petitioner rectified his mistake; and Vasquez' restitution has now been paid in full.

5. Petitioner's Compliance with Probation Conditions

Other terms and conditions of petitioner's aforementioned probation required, among other things, that he file quarterly reports, successfully complete the State Bar's Ethics School, and take and pass the Multistate Professional Responsibility Examination. The court finds that petitioner is in compliance with the terms of his probation.

In its opposition, the State Bar raised some minor flaws in petitioner's probation compliance, including, among other things, filing a quarterly report two days late. The State Bar, however, acknowledged that petitioner mailed the offending quarterly report two days before its due date. The record is unclear as to why it took four days to receive and file the report.

Based on the evidence before the court, petitioner has demonstrated strict, albeit not perfect, compliance with the terms and conditions of his disciplinary probation.

Present Learning and Ability in the General Law

Petitioner recently completed the State Bar's Ethics School and took and passed the Multistate Professional Responsibility Examination. Petitioner has attended 25 hours of continuing legal education (MCLE) credits, including, but not limited to, courses in the areas of law office management, conflicts of interest, and fee agreements. In addition, petitioner reads the San Francisco Daily Journal weekly to stay abreast of the latest new case law.

The State Bar argues that various oversights and mistakes made by petitioner in the present proceeding demonstrate an inability or unwillingness to follow basic rules of practice and procedure. The court disagrees. The court acknowledges that petitioner was not well versed in the interworking of the State Bar Court. The court, however, considers petitioner's faux pas to be a product of his lack of experience before this court, rather than a reflection on his overall

ability to practice law. During the hearing on this matter, petitioner demonstrated that he had proficient trial skills, as was also attested to by several of his character witnesses.

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 due to petitioner's prior record of discipline and the harm suffered by Vasquez. Over the past couple years, petitioner has made substantial gains in his rehabilitation process. He has recognized his misconduct, demonstrated remorse, and overcome much of the health problems that contributed to the underlying misconduct. Rather than harboring ill will or resentment, petitioner has learned from this experience and eagerly looks forward to the day he can resume the practice of law.

No evidence has been presented indicating less than exemplary conduct from the time of the imposition of the prior discipline; and it appears to the court that the conduct leading to the discipline is not likely to be repeated. Therefore, based on the above, the court finds that petitioner has demonstrated, by a preponderance of evidence, that he is rehabilitated, has present fitness to practice law, and has 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 February 3, 2010, in Supreme Court case no. S176245, 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: January ____, 2012

LUCY ARMENDARIZ
Judge of the State Bar Court