

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 12-V-12605-PEM
)	
CHESTERFIELD ADAMS SPAHR)	DECISION
)	
Member No. 190173)	
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

For the reasons set forth below, the court finds that petitioner Chesterfield Adams Spahr has demonstrated by a preponderance of the evidence 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).) Therefore, the petition is **GRANTED**.

Significant Procedural History

The petition was filed on April 6, 2012. On May 29, 2012, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed its response indicating no opposition thereto. At a status conference held on that same date, the request for a hearing was withdrawn since the State Bar did not oppose the petition.

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 Samuel C. Bellicini. The State Bar was represented by Deputy Trial Counsel Sherrie B. McLetchie and Erica L. M. Dennings.

Findings of Fact²

Petitioner was admitted to the practice of law in California on November 26, 1997 and has been a member of the State Bar of California at all times since that date.

Underlying Disciplinary Proceedings

Effective October 23, 2008, the Supreme Court, in matter S165359 (State Bar Court case no. 05-O-04590), imposed upon respondent a minimum 90-day actual suspension from the practice of law for violations of sections 6068, subdivisions (b) (two counts) and (i), and 6103.

Effective July 23, 2009, the Supreme Court, in matter S172493 (State Bar Court case no. 07-O-14109), imposed upon respondent a minimum one-year actual suspension from the practice of law for violations of sections 6068, subdivisions (i) and (m), and 6106, and rule 3-110(A) of the State Bar Rules of Professional Conduct.

In both of these disciplinary matters, respondent was to remain on actual suspension until he complied with rule 205, Rules Proc. of State Bar.³ If the actual suspension reached or exceeded two years, respondent was required to comply with standard 1.4(c)(ii) in order to resume active status.

In both disciplinary matters, petitioner was also ordered to comply with rule 9.20 of the California Rules of Court. Petitioner has been actually suspended continuously since October

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.

³ It does not appear that respondent has yet complied with rule 205, Rules Proc. of State Bar.

23, 2008. On March 16, 2009 and August 24, 2009, petitioner filed with the clerk of the State Bar Court, rule 9.20 compliance declarations in S165359 and S172493, respectively.

In Supreme Court order S196241 (State Bar Court case no. 08-O-11613), effective December 9, 2011, discipline was imposed consisting of three years' stayed suspension and three years' probation, on conditions including actual suspension for two years and until he provided proof of participation in the State Bar's Lawyer Assistance Program (LAP) since October 19, 2009. Credit toward the period of actual suspension was afforded for the period of inactive enrollment that commenced on October 19, 2009. (Section 6233.) Respondent stipulated to violating sections 6068, subdivision (a), and 6125. He also stipulated that he was grossly negligent by practicing law when he should have known that he was ineligible to practice. Moreover, he stipulated that he violated section 6103 by not timely complying with the Supreme Court's order requiring him to file a rule 9.20 compliance (three and one-half months late), and then only at the urging of the State Bar.

Rehabilitation and Present Fitness to Practice Law

Respondent is a recovering alcoholic. All of his misconduct stemmed from his alcoholism. Respondent acknowledges that, while he was drinking, his judgment became impaired and he made selfish choices, including choices to avoid his obligations to others. That changed post sobriety.

Respondent has been continuously clean and sober since March 30, 2009. He abstains from all legal or illegal substances, as he has a history of methamphetamine and marijuana abuse.

Respondent has participated in LAP since April 2009 and successfully completed the State Bar Court's ADP in June 2011. He has attended over 600 meetings of Alcoholics Anonymous (AA) and The Other Bar. He also attends Narcotics Anonymous (NA) meetings.

He has an AA sponsor with whom he has worked the Twelve Steps and has sponsored others as well. He also has AA commitments at various meetings as respondent continues to attend at least four AA meetings a week.

On March 20, 2006, respondent paid the court-ordered sanctions upon which the discipline imposed in S165359.

Respondent is in compliance with his disciplinary probation conditions.

Respondent's continued sobriety has enabled him to repair his marriage to his wife Teresa. They had their first child in November 2011.

Since May 2010, respondent has worked as a manager of deliveries for Giorgio's Pizzeria in San Francisco.

Respondent is deeply remorseful about his misconduct. He was an active alcoholic at the time of his misconduct and believes he would not have committed any of it had he been sober. He knows that he cannot be "cured" of alcoholism and cannot predict with certainty that he will never drink again during the rest of his life. However, through AA and The Other Bar, he has learned to stay sober one day at a time and has accumulated three years' worth of those days. He believes he is rehabilitated from alcoholism because he remains in recovery.

Others who are aware of the nature and extent of his misconduct and sobriety have attested to his rehabilitation and present fitness to practice, including lawyers, his two employers, his AA sponsor, the therapist who leads his LAP group, long-time friends and his mother, who is also a minister.

Petitioner's Present Learning and Ability in the General Law

Petitioner passed the Multistate Professional Responsibility Exam (MPRE) in March 2011. He has also completed 73 credit hours of Minimum Continuing Legal Education (MCLE) approved courses between April 28, 2011 and March 31, 2012, including State Bar Ethics

School, litigation, law office management, legal ethics, accounting, substance abuse and legal transactions.

The State Bar offered no evidence to contradict any of the evidence offered by petitioner as to any 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 ethical lapses that prompted the court to initially take action were serious. Petitioner, though, has made substantial gains in his rehabilitation process. He has recognized and is remorseful for his misconduct and taken steps to prevent a recurrence. Petitioner has been sober since March 30, 2009. He successfully completed LAP and continues his efforts in substance abuse recovery through AA and NA, such that lawyers, his employers, his AA sponsor and the therapist who leads his LAP group, as well as long-time friends and his mother, are supportive of his reinstatement to practice.

With respect to petitioner's present learning and ability in the general law, the court finds that he 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:

The actual suspensions imposed by the California Supreme Court in its Orders filed on September 23, 2008 and on June 23, 2009, in Supreme Court case nos. S165359 and S172493, respectively, have expired;

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.

Dated: June _____, 2012

PAT McELROY
Judge of the State Bar Court