

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 12-V-17971-RAH
)	
LAURA A. THOMPSON,)	DECISION GRANTING PETITION FOR
)	RELIEF FROM ACTUAL SUSPENSION
Member No. 219999,)	
)	
<u>A Member of the State Bar.</u>)	

Introduction

The issue in this matter is whether Laura A. Thompson (petitioner) has demonstrated, to the satisfaction of this court, her rehabilitation, present fitness to practice, and present learning and ability in the general law, so that she may be relieved from her actual suspension from the practice of law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)¹

For the reasons set forth in this decision, the court finds that petitioner has shown, by a preponderance of the evidence, that she has satisfied the requirements of standard 1.4(c)(ii). Accordingly, the court grants petitioner’s petition for relief from her actual suspension pursuant to standard 1.4(c)(ii).

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¹ All further references to standard(s) or std. are to this source.

Pertinent Procedural History

Petitioner filed her Petition for Relief from Actual Suspension Pursuant to Rules of Procedure of State Bar, Title IV, Standards for Attorney Sanctions for Professional Misconduct, Standard 1.4(c)(ii) (petition) in this matter on December 6, 2012.²

On January 28, 2013, the Office of the Chief Trial Counsel, State Bar of California (State Bar) filed an amended response to the petition stating that it “has found no good cause to oppose the [p]etitioner’s request for relief in this matter.”³ At a pretrial conference on February 5, 2013, the parties stipulated to have the matter decided without a hearing; the court vacated the February 13, 2013 trial date; and this matter was submitted for decision.

On February 19, 2013, the court filed its decision denying petitioner’s petition for relief from actual suspension. The court’s denial of the petition was based on the court’s finding that petitioner had failed to demonstrate, by a preponderance of the evidence, her present learning and ability in the general law.

Thereafter, on March 11, 2013, petitioner filed a motion for reconsideration of the denial of her petition for relief from actual suspension. Attached to the motion for reconsideration were petitioner’s declarations and six exhibits in support of the motion.

The State Bar filed an opposition to petitioner’s motion for reconsideration on March 19, 2013.

After reviewing and considering respondent’s motion and the State Bar’s opposition thereto, the court filed an Order to Show Cause (OSC) on March 27, 2013, ordering the parties,

² When originally filed, the petition was not verified as required by rule 5.401(A) of the Rules of Procedure of the State Bar. Nevertheless, the State Bar did not object to, or oppose, the petition. Furthermore, along with her March 11, 2013 motion for reconsideration, petitioner submitted a declaration and verification in support of her petition for relief from her actual suspension.

³ State Bar’s amended response to petition, page 1, lines 21-22.

within five days of service of the OSC, to show cause as to why petitioner's motion for reconsideration should not be considered a motion to reopen the record under rule 5.113 of the Rules of Procedure of the State Bar, so that the court could consider the evidence attached to petitioner's motion in determining whether petitioner has established her present learning and ability in the general law by a preponderance of the evidence.

The State Bar filed its response to the OSC on March 28, 2013, opposing the court reopening the record and admitting into evidence the documents attached to petitioner's motion for reconsideration.⁴

Respondent did not file a response to the OSC. Rather, on April 2, 2013, the court received from respondent a letter, a copy of which was sent to the deputy trial counsel assigned to this matter, asking the court to consider the letter as her formal confirmation that she had no objection to the court considering the motion for reconsideration as a motion to reopen the record.

Thereafter, on April 25, 2013, the court filed an order that petitioner's motion for reconsideration would be considered as a motion to reopen the record under rule 5.113 of the Rules of Procedure of the State Bar. Accordingly, the court (1) granted petitioner's motion; (2) vacated the court's February 19, 2013 Decision Denying Petition for Relief from Actual Suspension; (3) admitted into evidence petitioner's declarations and Exhibits 1 through 6 attached to petitioner's motion for reconsideration; and (4) submitted this matter for decision as of April 25, 2013.

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⁴ The State Bar also contends that the documents are not sufficient to establish petitioner's present learning and ability in the general law, and that by not complying with procedural rules, petitioner has failed to demonstrate her present learning and ability in the general law.

Findings of Fact and Conclusions of Law

Petitioner was admitted to the practice of law in California on June 5, 2002, and has been a member of the State Bar of California at all times mentioned herein.

Background of Misconduct and Disciplinary Matter

Petitioner opened her own law practice in November 2004. She worked hard and tried to make her solo practice successful. However, she began to desperately need clerical and other support assistance in her practice. It was during this time that petitioner became acquainted with law school graduate Mary L. Hardy (Hardy). In 2006, petitioner hired Hardy to work in her firm as a clerk. Unfortunately, petitioner's involvement with Hardy marked the beginning of a series of poor personal and business decisions that ultimately led to her discipline by the State Bar.

In 2007, Hardy, who was studying to take the California Bar Examination, began discussions with petitioner about forming a law partnership once Hardy passed the bar examination. As a result of the demands and pressure of operating a solo practice, petitioner became unfocused and formed a law partnership with Hardy, even though Hardy was not an attorney. In addition, she permitted her law firm's name to include the name of a non-attorney and lent her name to be used as an attorney by someone who was not an attorney. She also permitted advertising and other communications to be disseminated that held Hardy out to be an associate when, in fact, she was not licensed to practice law. Petitioner also permitted her practice to be generally operated by Hardy which led to improper accounting procedures, commingled trust account funds wherein both business and personal expenses were paid, and claims of legal experience by both Hardy and petitioner that they did not possess. Petitioner also made untrue statements to the State Bar.

Petitioner believed in Hardy's intelligence, her abilities and her performance as an employee. She was hopeful that Hardy would pass the bar examination and that she and Hardy would be able to operate an effective, successful and legitimate law firm.

The State Bar received a complaint regarding petitioner's activities in May 2007. Petitioner and the State Bar thereafter entered into a Stipulation Re Facts, Conclusions of Law and Disposition which was approved by the State Bar Court in January 2009. Petitioner stipulated that she held or assisted Hardy in holding herself out as an attorney and entitled to practice law in willful violation of rules 3-100(A) and 1-310 of the State Bar Rules of Professional Conduct and section 6105 of the Business and Professions Code. She also stipulated that she willfully violated rule 1-400(D) of the Rules of Professional Conduct and section 6106 of the Business and Professions Code by making or causing communications that contained untrue statements or contained matters that were arranged or presented in a format or manner that was deceptive, false or which tended to deceive, confuse or mislead the public. She also stipulated that she willfully violated rule 4-100(A) of the Rules of Professional Misconduct by commingling client funds with her business or personal funds and improperly using her client trust account to pay for business and personal expenses. Finally, petitioner stipulated that she violated section 6106 of the Business and Professions Code by committing an act or acts of moral turpitude, dishonesty or corruption by making or causing to be made communications that contained statements that were untrue, by making misrepresentations to the State Bar, and by commingling and misusing her client trust account.

In aggravation, the parties stipulated that petitioner engaged in multiple acts of wrongdoing. Petitioner's misconduct also caused harm, as petitioner's misuse of her trust account placed client funds at risk.

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In mitigation, petitioner took steps demonstrating remorse and recognition of her wrongdoing. Once petitioner understood her misconduct, she took steps to rectify it. In addition, petitioner's good character was attested to by a number of her clients. Additional factors included that she had no prior record of discipline in six years of practice; no clients were harmed or taken advantage of by petitioner's misconduct; and her lack of knowledge of the rules relating to managing a law office and her trust account contributed to her misconduct.

On August 26, 2009, the Supreme Court issued order S174146 (State Bar Court No. 07-O-13875) suspending petitioner from the practice of law for three years, staying execution of that suspension, and placing petitioner on probation for five years subject to conditions including that she be suspended for a minimum of the first 90 days of probation and until she complies with the law office management condition and provides satisfactory proof of compliance to the State Bar's Office of Probation. The order also provided that if petitioner remained suspended for two years or more as a result of not satisfying the above conditions, petitioner must provide proof to the State Bar Court of her rehabilitation, fitness to practice and learning and ability in the general law before her suspension will be terminated.⁵

Petitioner's Rehabilitation and Present Fitness to Practice Law

In December 2008, petitioner ceased working with Hardy. She no longer employed Hardy, no longer had any business dealings with her, and no longer engaged in any professional relationship with her. In fact, petitioner is no longer in physical proximity to Hardy, as petitioner relocated to San Diego, California in May 2012.

Beginning in January 2009, petitioner began disengaging clients. By July 2009, all of petitioner's active clients had been disengaged, and petitioner closed her law firm and no longer engaged in the practice of law. As of July 2009, petitioner had cease practicing law altogether

⁵ Pursuant to Evidence Code section 452(d), the court takes judicial notice of the Supreme Court order imposing this discipline on petitioner which was filed on August 26, 2009.

and has remained out of the practice up to and including the present time. Petitioner stepped away from practicing as an attorney in order to come to terms with the errors she had made and to restructure her personal and professional life in a way that would prevent such errors from recurring.

Petitioner has taken full responsibility for her poor decisions and the misconduct she engaged in which led to her disciplinary suspension. For the last three years, petitioner has been reflecting on her errors and the misconduct for which she was disciplined. Petitioner recognizes that when she began her solo practice, she was a relatively new attorney and she was ill equipped to conduct her practice in a proper manner. Petitioner also recognizes that she did not oversee and supervise her law practice in such a manner that she would be in compliance with the Rules of Professional Conduct and the Business and Professions Code.

Petitioner's values today are not the same as they were when she was disciplined. Petitioner recognized the nature of her misconduct, as well as the potential harm that could have occurred as a result of it. In the past three years, she has embarked on a course to align and meet with new people, to develop professional relationships with others who not only have a great amount of life experience, but who also have a significant amount of professional experience, and to revitalize and reform her plans for the future as they relate to both her professional pursuits, as well as her potential to again practice law. With regard to this, petitioner satisfied all the course requirements and passed the California Real Estate Exam given by the California Department of Real Estate in an effort to obtain a California Real Estate License. Petitioner has also completed the course work to become a National Academy of Sports Medicine (NASM) Certified Personal Trainer and is presently studying to take the NASM Certified Personal Trainer Certification Exam. In 2010, she volunteered to speak to middle-school students regarding

preparing for legal education and legal careers. She also volunteered and worked in the the classroom with the students.

According to petitioner, her focus is now clear. She has complied with all of her probation conditions to the satisfaction of the Office of Probation, including quarterly reporting, law office management conditions, and attending State Bar Ethics School and Client Trust Accounting School and taking and passing the test at the end of each session. Petitioner also timely complied with California Rules of Court, rule 9.20. Respondent has paid all fees, costs and penalties. Furthermore, petitioner “is prepared to conduct herself in accordance with the principles and values that guide attorneys in the State of California.”⁶

Petitioner’s Showing of Present Learning and Ability in the Law

Petitioner completed State Bar Ethics School and State Bar Client Trust Accounting School on May 6 and 7, 2010, respectively, and passed the test given at the end of each course.

Petitioner took and passed the March 2010 Multistate Professional Responsibility Examination (MPRE) given by the National Conference of Bar Examiners and provided proof of passage to the Office of Probation with her April 2010 quarterly report.

As required by her conditions of probation, petitioner joined the State Bar’s Law Practice Management section and remained a member for the first two years of her probation from 2010-2012 and submitted proof of such beginning January 7, 2010, to the Office of Probation. She also retained a law office management consultant to evaluate her office practices and to recommend procedures and policies to follow to ensure that ““best practices””⁷ are followed for operation of a law office. The law office management consultant submitted her final report to the Office of Probation and supervising trial counsel Allen Blumenthal which was approved on

⁶ Petition, page 6, lines 27-28.

⁷ Declaration of Laura A. Thompson, page 4, line 13.

October 9, 2012. Petitioner's work with a law office management consultant required an analysis and an in-depth examination of petitioner's former practice, procedure and safeguards, and covered a range of issues in the law and general practice.

Since 2010, petitioner has participated in 51 hours of continuing legal education programs in areas including, but not limited to, insurance, business law, real estate, legal ethics/malpractice, the credit industry, mortgage modifications/bankruptcy, patent law, tax law, family law, health law, government law, substance abuse, client relations, legal holds, voir dire, elimination of bias, entertainment law, evidence, legal practice, legal writing, personal injury, and first amendment issues. Petitioner also conducted the research and analysis required to prepare the legal documents in support of her petition for relief from actual suspension, thereby expanding her understanding and ability regarding law and motion work. Her preparation for the California Real Estate Examination included several hours of study in the areas of real estate law, ethics and other legal issues.

During her suspension, petitioner periodically volunteered to review and supported the preparation of transactional agreements and documents in a non-advisory role. She has also read articles to keep current in fields related to her former practice area and experience. She receives daily and weekly newsletter opinion summaries from *justia.com* covering the United States and California Supreme Court, and the areas of business law, intellectual property, internet law, contracts, trademark law, legal ethics and malpractice. Petitioner has also followed several high profile cases, by streaming video or live broadcast, or by pulling the complaint and following news coverage, published transcripts and disseminated evidence. With regard to these high profile cases, she has also researched and read related materials regarding the underlying issues, proffered evidence, crime scene analysis, courtroom procedure and strategies and has discussed these cases with others.

Discussion

Standard 1.4(c)(ii) provides, in relevant part, that normally actual suspension imposed for two years or more shall require proof satisfactory to the State Bar Court of the attorney's rehabilitation, present fitness to practice and present learning and ability in the general law before he or she will be relieved of the actual suspension.

In this proceeding, petitioner has the burden of proving, by a preponderance of the evidence, that she has satisfied the requirements of standard 1.4(c)(ii). The court looks to the nature of the underlying misconduct 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 her actual suspension. (*In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 571, 578.)

Regarding the issue of rehabilitation, “[i]t is appropriate to consider the nature of the misconduct, as well as the aggravating and mitigating circumstances surrounding that misconduct . . . in determining the amount and nature of rehabilitation that may be required to comply with standard 1.4(c)(ii).” (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 578.)

Furthermore, in determining whether petitioner’s evidence sufficiently establishes her rehabilitation, the hearing department must first consider the prior misconduct from which petitioner seeks to show rehabilitation. 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 her discipline to determine whether her 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 must demonstrate "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.)

The conduct that resulted in petitioner's discipline was serious. She (1) held or assisted Hardy, a non-attorney, in holding herself out as an attorney and entitled to practice law; (2) made or caused communications that contained untrue statements or contained matters that were arranged or presented in a format or manner that was deceptive, false or which tended to deceive, confuse or mislead the public; (3) commingled client funds with her business or personal funds and improperly used her client trust account to pay for business and personal expenses; and (4) committed an act or acts of moral turpitude, dishonesty or corruption by making or causing to be made communications that contained statements that were untrue, by making misrepresentations to the State Bar, and commingling and misusing her client trust account. In aggravation, petitioner engaged in multiple acts of wrongdoing and her misconduct caused harm by placing trust account funds at risk. In mitigation, she took steps demonstrating remorse and recognition of her wrongdoing, and she demonstrated good character. In addition, she had no prior record of discipline; no clients were harmed or taken advantage of by petitioner's misconduct; and her lack of knowledge of the rules relating to managing a law office and her trust account contributed to her misconduct.

Petitioner ceased working with Hardy in December 2008, and has not had any professional relationship or business dealings with her since that time. As of July 2009, petitioner closed her firm and ceased practicing law. Petitioner stepped away from the legal profession in order to come to terms with the errors she had made and to restructure her personal

and professional life so that her misconduct would not recur. She has reflected on her errors and her misconduct during this time. Petitioner has demonstrated remorse, recognition of her wrongdoing, and has taken responsibility for her misconduct.

Petitioner's misconduct occurred several years ago. Petitioner is now more mature, and her values are also not the same as when she was disciplined. In the past three years, she has been on a path to develop professional relationships with others who have both a great amount of life and professional experience. She has also reformed and revitalized her future plans relating to her professional endeavors and her potential to practice law again.

She has complied with all her probation conditions and other disciplinary requirements to the satisfaction of the Office of Probation. She has taken steps to learn techniques, strategies and systems to prevent recurrence of her misconduct. Petitioner has paid all fees, costs and penalties.

Based on petitioner's insight into her misconduct, her remorse and recognition of wrongdoing, her lengthy reflection on her errors and misconduct, the steps she has taken to learn ways to prevent the recurrence of misconduct, her changed values, the revitalized and reformed plans she has for her future, her exemplary conduct since being disciplined, and her alignment with people who have both life and professional experience, the court finds that the misconduct which led to petitioner's discipline is not likely to recur. Accordingly, the court finds that petitioner has demonstrated, by a preponderance of the evidence, that she is rehabilitated and presently fit to practice law.

Furthermore, the court finds that petitioner has established her present learning and ability in the general law by a preponderance of the evidence. Standard 1.4(c)(ii) requires proof of an attorney's present learning and ability in the general law before an attorney can be relieved of an actual suspension. Petitioner complied with her law office management probation

conditions and took and passed State Bar Ethics School, Client Trust Accounting School, and the MPRE.

Since 2010, petitioner has participated in 51 hours of continuing legal education involving many different areas of the law. Petitioner's work with a law office management consultant also covered a range of issues in the law and general practice. Petitioner also conducted the research and analysis required to prepare the legal documents in support of her petition in this matter. Her preparation for the California Real Estate Examination also included several hours of study in the areas of real estate law, ethics and other legal issues.

During her suspension, petitioner also periodically reviewed and supported the preparation of transactional agreements and documents. She has also read articles to keep current in fields related to her former practice area and experience. She receives daily and weekly newsletter opinion summaries covering the United States and California Supreme Court and several practice areas, as well as legal ethics and malpractice. Petitioner has also followed several high profile cases in depth, including researching and reading related materials regarding the underlying issues, evidence, courtroom procedure and strategies in these cases and has discussed these cases with others. Accordingly, the court finds that petitioner has demonstrated, by a preponderance of the evidence, that she has present learning and ability in the general law.

Conclusion

The court finds that petitioner has demonstrated, by a preponderance of the evidence, her rehabilitation, present fitness to practice, and present learning and ability in the general law. Accordingly, petitioner's petition for relief from actual suspension from the practice of law pursuant to standard 1.4(c)(ii) is hereby **GRANTED**. Respondent will be entitled to resume the practice of law in this state when all the following conditions have been satisfied:

1. The actual suspension imposed by the California Supreme Court is S174146, filed August 26, 2009, 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, rules 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 her return to active membership status and is otherwise entitled to practice law.

Dated: May _____, 2013

RICHARD A. HONN
Judge of the State Bar Court