

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 13-V-12045-RAH
)	
DANIEL EDOUARD TUAU-FU CHIEN,)	DECISION GRANTING PETITION FOR
)	RELIEF FROM ACTUAL SUSPENSION¹
Member No. 190061,)	
)	
<u>A Member of the State Bar.</u>)	

Introduction

The issue in this matter is whether Daniel Edouard Tuau-Fu Chien (petitioner) has demonstrated, to the satisfaction of this court, his rehabilitation, fitness to practice, and learning and ability in the general law, so that he may be relieved from his 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).)²

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

¹ Although captioned as a Verified Petition for Determination of Rehabilitation, Present Fitness to Practice and Learning and Ability in the General Law Pursuant to Standard 1.4(c)(ii), petitioner is actually seeking to be relieved of his actual suspension as a result of a determination by the court that he has established his rehabilitation, fitness to practice, and learning and ability in the general law.

² All further references to standard(s) or std. are to this source.

Accordingly, the court grants petitioner's petition for relief from his actual suspension pursuant to standard 1.4(c)(ii).

Pertinent Procedural History

Petitioner filed his Verified Petition for Determination of Rehabilitation, Present Fitness to Practice and Learning and Ability in the General Law Pursuant to Standard 1.4(c)(ii) (petition) in this matter on April 16, 2013. In the petition, petitioner seeks relief from the actual suspension imposed by the Supreme Court in its order filed on March 18, 2011, in matter S189527 (State Bar Court Nos. 08-C-11120; 08-O-10732 (08-O-11543) Cons.)

On May 30, 2013, petitioner filed a Verified Modification and Addition to Petition Brought Pursuant to Standard 1.4(c)(ii) in which petitioner noted that a standard 1.4(c)(ii) requirement was also imposed by the Supreme Court in its order in matter S141903 (State Bar Court Case No. 02-O-10638, etc.) filed on May 30, 2006, but was erroneously omitted from the petition. Thus, the petition is brought pursuant to both the May 30, 2006, and March 18, 2011, Supreme Court disciplinary orders which require petitioner to show proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii) before he can be relieved of his actual suspension.

On May 31, 2013, the Office of the Chief Trial Counsel, State Bar of California (State Bar) filed its response to the petition and supporting exhibits. The State Bar opposes the petition.

On June 20, 2013, petitioner timely filed a request to submit additional documentary evidence, specifically three declarations designated as exhibit U.

///

///

///

///

The hearing in this matter was held on July 1, 2013. On that same date, the parties filed a Partial Stipulation as to Facts and Admission of Documents.³ This matter was submitted for decision on July 1, 2013.

Findings of Fact and Conclusions of Law

Petitioner was admitted to the practice of law in California on November 25, 1997, and has been a member of the State Bar of California at all times mentioned herein.

Background of Misconduct and Disciplinary Matters

First Disciplinary Matter

In February 2003, petitioner entered into a Stipulation Re Facts, Conclusions of Law and Disposition (stipulation) in State Bar Court case No. 02-O-10358. The stipulation was approved and filed by the State Bar Court on February 25, 2003. Petitioner stipulated that he failed to maintain client funds in trust in willful violation of rule 4-100(A) of the Rules of Professional Conduct and committed an act of moral turpitude in willful violation of Business and Professions Code section 6106 by misappropriating, with gross negligence, client settlement funds.⁴ In mitigation, there was no client harm, and petitioner displayed spontaneous cooperation and candor to the victims of his misconduct and to the State Bar during disciplinary investigation and proceedings.⁵ There were no aggravating circumstances.

On July 18, 2003, the California Supreme Court filed an order in Supreme Court case No. S115360 (State Bar Court case No. 02-O-10358) imposing discipline on petitioner which became

³ The parties stipulated that State Bar exhibits 1, 2, 3 (pages 1-15), 4 (pages 1-34), and 5 (pages 1-18) and petitioner's exhibits A-U be admitted into evidence.

⁴ Unless otherwise indicated, all references to rule(s) are to the State Bar Rules of Professional Conduct and all references to section(s) are to the Business and Professions Code.

⁵ Other factors that were considered were that petitioner was a solo practitioner; he was a relatively new member of the State Bar; and during the period in which his misconduct occurred, he delegated the responsibility of the administration of his trust account to an employee and did not adequately supervise the employee.

effective on August 17, 2003. Petitioner received a one-year suspension, stayed; one-year probation; and 30 days' actual suspension (2003 discipline).

Petitioner was suspended from practicing law as a result of his 2003 discipline between August 17, 2003, and September 16, 2003.

Second Disciplinary Matter

On January 11, 2006, petitioner entered into a Stipulation Re Facts, Conclusions of Law and Disposition in State Bar Court case Nos. 02-O-10638; 02-O-14520; 03-O-00493; 04-O-10155; 04-O-10405; 05-O-00014. The stipulation was approved and filed by the State Bar Court on January 24, 2006.

On May 30, 2006, the California Supreme Court filed an order in Supreme Court case No. S141903 (State Bar Court case Nos. 02-O-10638; 02-O-14520; 03-O-00493; 04-O-10155; 04-O-10405; 05-O-00014) imposing discipline on petitioner which became effective on June 29, 2006. Petitioner received a three-year suspension, stayed; four years' probation; and two years' actual suspension and until petitioner makes and provides proof of specified restitution and demonstrates his rehabilitation, fitness to practice and learning and ability in the law pursuant to standard 1.4(c)(ii) (2006 discipline). Petitioner stipulated that he filed articles of incorporation for a law corporation; that a non-attorney was listed as the agent for service of process for the law corporation; that this law corporation was opened as a satellite law office; petitioner was not often present at this office; the non-attorney opened another office without petitioner's knowledge or authority; unknown to petitioner, the non-attorney prepared bankruptcy petitions falsely purporting that they were prepared in connection with the law corporation and listing petitioner as the attorney of record and mailed solicitations purporting to be under the law corporation's name for bankruptcy services to persons whose homes were in foreclosure proceedings; and for seven months in 2002, the non-attorney made rent payments from the law

corporation's general account for the satellite office. Petitioner stipulated that (1) by not taking sufficient steps to diminish the non-attorney's ability to fraudulently use his identity in his client's bankruptcy matter, petitioner failed to perform legal services with competence in willful violation of rule 3-110(A) (four counts); (2) he failed to perform legal services with competence in willful violation of rule 3-110(A) by failing to supervise his employees handling his client's property damage claim; (3) he committed an act involving dishonesty in willful violation of section 6106 by issuing an insufficient funds check and suggesting to his client that she could cash the check at a check cashing facility despite insufficient funds in the account; (4) he failed to promptly notify his client(s) of his receipt of client settlement funds in willful violation of rule 4-100(B)(1) (two counts); (5) he failed to promptly distribute settlement funds to his client in willful violation of rule 4-100(B)(4); (6) he willfully violated rule 4-100(A) through his gross neglect by allowing the balance in his client trust account to fall below the amount he should have maintained in the account for his client; (7) he failed to cooperate and participate in a disciplinary investigation in willful violation of section 6068, subdivision (i); (8) he aided persons in the unauthorized practice of law in willful violation of rule 1-300(A); (9) he accepted representation of more than one client in a matter in which the interests of the clients potentially conflicted, without the informed written consent of each client, in willful violation of rule 3-310(C)(1); (10) he failed to perform legal services with competence in willful violation of rule 3-110(A) by not supervising his non-attorney staff's handling of his clients' property damage claim and endorsement of the settlement releases; (11) he failed to respond promptly to reasonable status inquiries of his clients in willful violation of section 6068, subdivision (m); (12) he committed acts involving moral turpitude in willful violation of section 6106 by acting with gross negligence in not taking steps to diminish his non-attorneys' ability to fraudulently use his identity and by failing to adequately supervise his staff in those cases about which he was

aware; and (13) he committed an act of moral turpitude in willful violation of section 6106 by misappropriating client funds through gross neglect of the client trust account. In mitigation, petitioner acknowledged poor office management skills; engaged in extensive community and public service; reported the non-attorney's illegal activities to the police, the U. S. Trustee, and the State Bar; contacted the victims of the non-attorney's wrongdoing; recognized that he has not handled his practice properly and accepted that a suspension period would be beneficial; and agreed to pay restitution to the victims for the funds improperly taken by the non-attorney. In aggravation, petitioner had a prior record of discipline; his misconduct evidences multiple acts; and his misconduct in this matter was similar to his misconduct in his prior disciplinary matter.

Petitioner was suspended as a result of his 2006 discipline beginning on June 29, 2006, and he has remained suspended to the present date.

The Client Security Fund (CSF) paid out \$3,555.67 to Gloria Lopez; \$4,777.24 to Ester Rizo; and \$3,049 to Humberto Hernandez Cruz based on petitioner's misconduct in his 2006 discipline.

Conviction Matter

On June 30, 2009, petitioner was convicted in a matter entitled *The People of the State of California v. Daniel Chien, et al.*, Los Angeles Superior Court case No. BA336892, for a violation of Insurance Code section 750(a) [unlawful offer or receipt of consideration for referral of clients], one count misdemeanor. Petitioner was sentenced to three years' summary probation, six days in custody, 300 hours of community service and restitution in the amount of \$10,000. Petitioner failed to supervise a rouge employee who engaged in unlawful behavior by paying for the referral to the firm of a personal injury matter. Due to petitioner's negligent failure to closely supervise the employee from September 2002 through November 2003, he did not detect the employee's unlawful behavior.

Third Disciplinary Matter

On November 4, 2010, petitioner entered into a Stipulation Re Facts, Conclusions of Law and Disposition in State Bar Court case No. 08-C-11120; 08-O-10732; 08-O-11543(Cons.). The stipulation was approved and filed by the State Bar Court on November 29, 2010.

On March 18, 2011, the California Supreme Court filed an order in Supreme Court case No. S189527 (State Bar Court case Nos. 08-C-11120; 08-O-10732; 08-O-11543 Cons.) imposing discipline on petitioner, which became effective on April 17, 2011. Petitioner received a three-year suspension, stayed; three years' probation; and an actual suspension for a period of two years' and until petitioner demonstrates his rehabilitation, fitness to practice and learning ability in the law pursuant to standard 1.4(c)(ii) (2010 discipline). The misconduct involved in this matter commenced in 2004 and 2005. Petitioner stipulated that he violated rule 4-100(A) by failing to maintain in his client trust account the balance of funds received for the benefit of a client (two counts), and further stipulated that his conduct and level of participation in regard to the facts and circumstances surrounding his criminal conviction, *ante*, did not involve moral turpitude per se but did involve other misconduct warranting discipline. In mitigation, petitioner displayed spontaneous cooperation and candor by agreeing to discipline without requiring a hearing; his good character was attested to by a cross-section of members in the legal and general community; and he had engaged in significant community service. In aggravation, petitioner had two prior records of discipline.

Petitioner was suspended from practicing law as a result of his 2010 discipline from April 17, 2011, to the present. Petitioner has not been entitled to practice law in California since June 29, 2006, and has remained suspended to the present date.

///

///

Petitioner's Rehabilitation and Present Fitness to Practice Law

When he was younger, petitioner was extremely ambitious and wanted economic success. This contributed to his poor judgment regarding his practice and was a major contributing factor for his downfall. Petitioner was selfish and focused on himself. He did not care about his clients as much as he needed to. Three things changed him (1) his life with his partner and caring for her when she was ill was a growing and learning experience for him; (2) his State Bar discipline served as a mirror to allow him to see what he had become and was a humbling experience; and (3) his time in jail where he saw people who had it worse than him and the individuals he encountered who helped him and showed his kindness.

Prior to becoming an attorney and opening his own law office, petitioner had no experience in running a law practice. He discovered just how lacking his skills and knowledge were in the hardest possible way. He learned only as errors and mistakes occurred. He now recognizes that he should have done more to anticipate and recognize potential problems, rather than merely addressing them as they surfaced.

In 2003, petitioner stipulated to discipline arising from a trust account violation. Petitioner thought he had addressed the issue by implementing a new law office plan to eliminate errors. He did not realize that he needed to be more involved in supervising his employees and closely monitor the daily activities within the office. It did not occur to petitioner that some of his staff would engage in activities without his permission or knowledge.

At the root of petitioner's 2006 and 2010 disciplinary matters was his failure to supervise and to take sufficient steps to diminish others' ability to fraudulently use his identity. At the time of the misconduct, petitioner delegated a great deal of work and had entrusted members of his staff to perform their duties. Petitioner never thought that they would not only intentionally disobey his instructions but would engage in wrongful acts on behalf of the office. Petitioner

was shocked that some of his staff had fraudulently used his identity outside of the office setting. He now understands that he is responsible for all of the wrongdoings which occurred inside and outside his office, and he understands that he did not do enough to stop these wrongful acts earlier.

A few months prior to completing the two-year suspension imposed in the 2006 discipline matter, petitioner was taken into custody by the police in connection with the criminal matter, *ante*. Again, the alleged wrongful acts took place in 2004 and 2005. Four days in custody solidly strengthened his will to avoid prison at all costs.

Petitioner did not anticipate that his two-year suspension in 2006 would become a seven-year suspension. As he stated in his petition, "I also failed to anticipate the perception that is held of a perpetually suspended attorney. It is as if on the day my suspension began on June 30th, 2006, all of my education, work experience, and knowledge within the legal profession disappeared, no longer available for me to utilize in earning a living."⁶

That same perception also caused his decades of philanthropy to essentially be erased. Even his philanthropy during his first years of suspension did not seem to count. He continued his philanthropy past his original suspension date of 2006 and through 2010. In 2006 and 2007, he helped rebuild homes destroyed by Hurricane Katrina. Every year through 2010, he also made food baskets at Easter, Thanksgiving, and Christmas and distributed them to the homeless and hungry. He became extremely involved in the Women's Cancer Research Foundation and secured donations for their annual auction. He has worked with Boys' Hope/Girls' Hope. He also served on the scholarship panel for the California Alumni Association in the spring of 2012.

Petitioner never thought his wrongful acts would be interpreted as criminal. Petitioner acknowledged his wrongful acts and pleaded *nolo contendere*. Petitioner wanted to pay his debt

⁶ Petition, exhibit B, page 2, line 28 and page 3, lines 1-3.

to society as quickly as possible. He also wanted to demonstrate to the judge through his actions the seriousness with which he took his plea. He completed his 300 hours of community service and paid his \$10,000 in financial restitution to the Los Angeles County District Attorney's Office in full on December 14, 2009, within six months of his plea. It was enlightening to petitioner to perform manual labor and interact with fellow workers at the religious thrift shop where he performed his community service. He loaded and unloaded trucks in over 100 degree heat. He mopped, cleaned, and removed human feces from a bathroom. The experience gave petitioner "an opportunity to see how difficult life can be and for that moment what [he] had become."⁷ On November 9, 2012, petitioner's 2009 misdemeanor conviction for violation of Insurance Code section 750(a) was expunged.

Petitioner tried to find non-attorney law-related work after he was suspended. However, when employers found out he was on suspension, positions were filled with other candidates. He also looked for non-law-related work but was not successful at finding a job. Soon, however, he was unable to take on a regular, full-time job, as his partner of 11 years was diagnosed with stage III ovarian cancer in January 2007. At that time, petitioner became his partner's caregiver and did a lot of research on cancer and its treatment. From December 2009 to July 2, 2011, petitioner was his partner's live-in caretaker for as her medical condition required petitioner's assistance 24-hours a day. Throughout her illness, petitioner had a lot of time to reflect and think on the consequences of his actions. As petitioner stated, "It's been a humbling experience unlike anything I've read or imagined."⁸ Petitioner's partner died on July 2, 2011. As a result of his wrongful acts, he was not able to better care for her financially and otherwise during her last days, and he will live with this knowledge for the rest of his life.

⁷ Petition, exhibit B, page 4, lines 3-4.

⁸ Petition, exhibit B, page 4, lines 10-11.

On April 25, 2011, petitioner incorporated Accismus, Inc. This was formed originally to allow his cousins in Taiwan to develop a product line for marketing in the United States. This did not work out, so petitioner began using it for another business that would assist businesses to apply to regional offices for vouchers for individual employees in connection with obtaining enterprise zone credit. Petitioner has an employee that he supervises. However, the business has not been very successful, and due to recent legislation, there is not much of a possibility for enterprise zones to be successful.

Since his partner's death, petitioner has also served as the executor of her estate. He identified the outstanding debt and dealt with creditors, he had bequeathed items appraised, and dealt with the beneficiaries. He has acted competently, diligently and efficiently in that capacity. Two beneficiaries of the estate believe petitioner to be a person of good moral character. Regarding petitioner's work as executor, the probate attorney for the estate stated, "[He] has handled his responsibilities diligently, discharged his fiduciary duties excellently, and his behavior has been consistent with that of a person having good character."⁹ Petitioner waived his executor fee.

Since Spring 2012, petitioner has also helped his father with his grandmother's estate.

In the last seven years, petitioner has encountered countless episodes of humiliation, ridicule, shame, and general unpleasantness. These moments have demonstrated to petitioner the grave consequences of his wrongful acts. They have also instilled in petitioner the desire to be a better person, both in the eyes of society and himself. Petitioner has grown as a person. It has taken petitioner a long time to see that there is still value in him and that he can still contribute to humanity.

Petitioner complied with all the terms and conditions of his 2003 discipline.

⁹ Exhibit U, declaration of Glenn A. Williams, attached to Petitioner's Request to Submit Additional Documents.

Regarding his 2006 discipline, petitioner complied with all the terms and conditions of his discipline. On July 26, 2006, petitioner submitted his California Rules of Court, rule 955 affidavit to the State Bar Court and served a copy on the State Bar's Office of Probation. On April 2, 2008, the State Bar acknowledged that petitioner made full satisfaction on the CSF applications paid as a result of the 2006 discipline. On July 13, 2010, petitioner's probation in his 2006 discipline was closed because there were no further conditions which required monitoring.

Prior to the imposition of the 2010 discipline, petitioner paid (1) \$2,460 owed in medical liens to AMS collection agency as restitution; (2) \$3,666 in restitution to Carlos Ayala; and (3) \$1,500 in restitution to Chris Sawyer relating to the 2010 discipline.

Petitioner has complied with all the terms and conditions of his 2010 discipline. On May 12, 2011, petitioner filed his California Rules of Court, rule 9.20 affidavit with the State Bar Court.

On January 30, 2012, petitioner paid all disciplinary costs.

Several attorneys and non-attorneys, who have known petitioner from 16 to 30 years and who are aware of his disciplinary matters and his criminal conviction, attested to his good character and support his return to the practice of law. Witnesses lauded petitioner for his community and philanthropic activities. He was described as being, among other things, trustworthy, honest, hardworking, thoughtful, dependable, kind, generous, charitable, responsible, having good moral character, having fully acknowledged his wrongdoing and as having demonstrated great remorse.

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

On February 5 and 17, 2004, petitioner completed State Bar Ethics School and State Bar Client Trust Account School, respectively, as conditions of his probation resulting from the 2003

discipline. Petitioner again completed State Bar Ethics School and State Bar Client Trust Accounting School on October 20 and 21, 2011, respectively, as conditions of his probation resulting from the 2010 discipline.

Petitioner took and passed the Multistate Professional Responsibility Examination (MPRE) given by the National Conference of Bar Examiners on November 7, 2003, and November 5, 2011.

From March 2008 through April 2013, petitioner has participated in 87 hours of continuing legal education programs in areas including, but not limited to, legal ethics, client relations, negotiations, jury selection, first amendment, tax planning/wills, bankruptcy, employment, medical malpractice, immigration, trusts, corporations and trademarks, intellectual property, arbitration, business transactions, buy-sell agreements, appellate practice and legal writing, substance abuse, elimination of bias, evidence, criminal law, law practice management, human rights, entertainment, contracts, personal injury, civil law, real estate, litigation, liens, license agreements and discovery.

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 he 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 his 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 his 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 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 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 and commenced from 2000-2005. The specific violations found in each disciplinary matter have been discussed, *ante*. However, at the root of all of petitioner’s misconduct, is his failure to adequately supervise his non-attorney staff which ultimately led to, among other things, a non-attorney fraudulently using his identity and petitioner’s aiding in the unauthorized practice of law. Even petitioner’s

criminal matter was due to his negligent failure to closely supervise an employee who engaged in unlawful behavior.

In his 2006 discipline, in mitigation, petitioner acknowledged poor office management skills; engaged in extensive community and public service; reported the non-attorney's illegal activities to the police, the U. S. Trustee, and the State Bar; contacted the victims of the non-attorney's wrongdoing; recognized that he had not handled his practice properly and accepted that a suspension period would be beneficial; and agreed to pay restitution to the victims for the funds improperly taken by the non-attorney. In aggravation, petitioner had a prior record of discipline; his misconduct evidenced multiple acts; and his misconduct in this matter was similar to his misconduct in his first disciplinary matter.

Regarding petitioner's 2010 discipline, in mitigation, petitioner displayed spontaneous cooperation and candor by agreeing to discipline without requiring a hearing; his good character was attested to by a cross-section of members in the legal and general community; and he has engaged in significant community service. In aggravation, petitioner had two prior records of discipline.

Since his misconduct, petitioner has grown as a person. When he was younger, petitioner was selfish, focused on himself, extremely ambitious and desired economic success. Three things changed him (1) his life with his partner and caring for her when she was ill; (2) his State Bar discipline; and (3) his time in jail.

Petitioner was also rather naïve when he opened his own law office. Even after being disciplined in 2003 for misconduct which occurred because he failed to adequately supervise an employee to whom he had delegated the responsibility of the administration of his trust account, petitioner did not realize, because he had implemented a new law office plan to eliminate errors, that he needed to be more involved in supervising his employees and closely monitoring the

daily activities within the office. Petitioner has now recognized his wrongdoing and has demonstrated remorse. He now realizes that he should have done more to anticipate and recognize potential problems, rather than merely addressing them as they surfaced. He also now understands that he is responsible for all of the wrongdoings which occurred inside and outside his office, and he understands that he did not do enough to stop those wrongful acts earlier. Through the episodes of humiliation, ridicule, shame and other general unpleasantness he has experienced in the last seven years, petitioner now understands the grave consequences of his wrongful acts. Petitioner desires to be a better person, both in the eyes of society and himself.

Petitioner's criminal matter solidly strengthened his will to avoid prison at all costs. Petitioner acknowledged his wrongful acts and pleaded nolo contendere. Petitioner wanted to pay his debt to society quickly and to demonstrate to the judge how seriously he took his plea. He therefore completed his 300 hours of community service and paid his \$10,000 in financial restitution within six months of his plea. His experience in the thrift shop was also insightful and allowed petitioner to see what he had become. In 2012, petitioner's conviction was expunged.

Though petitioner's suspension and his care-giving duties affected his philanthropic activities, he has still continued his long history of public service. He has helped rebuild homes destroyed by Hurricane Katrina and has made food baskets at holidays and distributed them to the homeless and hungry. He became extremely involved in the Women's Cancer Research Foundation and secured donations for their annual auction. He has also worked with Boys' Hope/Girls' Hope and served on the scholarship panel for the California Alumni Association.

Though he was unsuccessful in finding employment, from January 2007 to July 2, 2011, he was a devoted live-in caretaker for his partner who had ovarian cancer. Since his partner's death, petitioner has also served as the executor of her estate. He has acted competently,

diligently and efficiently in that capacity and has excellently discharged his fiduciary duties. He took no executor fee.

On April 25, 2011, petitioner incorporated Accismus, Inc.¹⁰ Although originally formed for one purpose, it later became used for another business. Petitioner has an employee that he supervises. However, the business has not been very successful.

Petitioner complied with all the terms and conditions of his 2003 and 2006 disciplinary matters, including making full satisfaction on the CSF applications paid as a result of the 2006 discipline. He has also complied with all the terms and conditions of his 2010 discipline and has paid all restitution owed. Petitioner has also paid all disciplinary costs.

Several attorneys and non-attorneys, who have known petitioner from 16 to 30 years and who are aware of his disciplinary matters and his criminal conviction, attested to his good character and support his return to the practice of law.

The State Bar contends that respondent has not demonstrated his rehabilitation and fitness to practice, because he has not demonstrated exemplary conduct and has failed to demonstrate that the cause(s) of his misconduct have been eliminated and are not likely to be repeated. However, the court does not concur. Despite the serious nature of his misconduct, based on the fact that petitioner has grown as a person, his desire to be a better person, his remorse and recognition of wrongdoing, his understanding that his selfish nature and desire for economic success led to his misconduct, his philanthropic activities, his devotion to caretaking for his

¹⁰ In its response to the petition, the State Bar contends that aspects of this business, specifically petitioner's delegation of work to an employee, support of finding that petitioner has not established his rehabilitation. The court does not agree. There was no evidence of any improper delegation of work to the employee, or that petitioner failed to properly supervise the employee. Further, this is a business entity, not a law practice. As such, he may properly delegate work to an employee. The duty to supervise is not the same in a business venture as that of an attorney who delegates work to support staff. The mere fact that petitioner delegated work to an employee in this business does not establish that petitioner would improperly delegate work or improperly supervise employees in a law practice if he were able to return to active status.

cancer-stricken partner, his good work as the executor of his partner's estate, the evidence of his good character, his compliance with the probation conditions imposed in his 2003, 2006, and 2010 disciplinary matters, the court finds that petitioner has engaged in exemplary conduct since being disciplined and 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 he is rehabilitated and presently fit to practice law.

Furthermore, the court finds that petitioner has established his 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 completed State Bar Ethics School and Client Trust Accounting School in 2004 and 2011. He took and passed the MPRE in 2003 and 2011. Petitioner complied with the law office management probation conditions imposed in his 2003 and 2006 discipline matters. Since March 2008, he has also participated in 87 hours of continuing legal education programs in a wide-range of practice areas. Accordingly, the court finds that petitioner has demonstrated, by a preponderance of the evidence, that he has present learning and ability in the general law.

Conclusion

The court finds that petitioner has demonstrated, by a preponderance of the evidence, his 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 in S189527, filed March 18, 2011, 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 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: July _____, 2013

RICHARD A. HONN
Judge of the State Bar Court