

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case No.: 13-V-12147-LMA
	)	
<b>NATHANIEL DALE EZEKIEL</b>	)	
<b>STERLING,</b>	)	
<b>(aka Nathaniel Dale Potratz)</b>	)	<b>DECISION</b>
	)	
<b>Member No. 215734,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

**I. INTRODUCTION**

The issue in this case is whether petitioner Nathaniel Dale Ezekiel Sterling, aka Nathaniel Dale Potratz, has established 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. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)<sup>1</sup>

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) and, therefore, finds that his actual suspension should be terminated. Accordingly, the court **GRANTS** the petition for relief from actual suspension from the practice of law.

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<sup>1</sup> Future references to standard or std. are to this source.

## **II. SIGNIFICANT PROCEDURAL HISTORY**

On April 22, 2013, petitioner filed a verified petition for relief from actual suspension.

On June 27, 2013, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed a response to the petition, opposing petitioner's request for relief from actual suspension.

Petitioner was represented by Jonathan I. Arons and Alexis E. Gough. Sherrie B. McLetchie and Catherine Taylor appeared for the State Bar.

The court took the petition under submission after the hearing held on August 5, 2013.

## **III. FINDINGS OF FACT**

The following findings of fact are based on the testimony and other evidence admitted during this proceeding.

Petitioner was admitted to the practice of law in California on November 30, 2001, and has been a member of the State Bar since that time.

### **A. Petitioner's Underlying Disciplinary Background**

Petitioner has a prior record of discipline. By order filed on January 28, 2011 in order no. S188299 (State Bar Court case nos. 07-O-12713 (07-O-13734; 07-O-14355; 08-O-11680; 08-O-11933; 08-O-12534; 08-O-12920; 09-O-19140)), the Supreme Court imposed discipline on respondent consisting of four years' stayed suspension; five years' probation on conditions, including actual suspension for two years and until respondent complied with standard 1.4(c)(ii). In eight client matters, respondent and the State Bar stipulated to violations of Rules of Professional Conduct, rules 4-100 and 4-200 (five counts each) and 3-700(A)(1) (one count) and Business and Professions Code sections 6068, subdivision (m) (six counts), 6090.5 (three counts), 6103 (one count) and 6106 (five counts). Aggravating factors were overreaching, client harm and multiple acts. Remorse was the mitigating factor.

## **B. Petitioner's Rehabilitation and Present Fitness to Practice Law**

The court finds by a preponderance of the evidence that petitioner has demonstrated the rehabilitation and present fitness to practice law, and so meets the requirements of this portion of standard 1.4(c)(ii).

### **1. Petitioner's Compliance with Probation Conditions**

Since the imposition of discipline, petitioner has complied with conditions and requirements of probation, including submitting quarterly reports and statements attesting that he has complied with the State Bar Act, the Rules of Professional Conduct and all conditions of probation; being available to answer any inquiries of the Office of Probation regarding his compliance with the terms of his probation; and maintaining his contact information as required.

In addition, petitioner successfully completed the State Bar's Ethics School on June 23, 2011, and provided the Office of Probation with satisfactory proof of completion and passage of the test given at the conclusion of the session within one year of the effective date of the disciplinary order as required. He also took and passed the Multistate Professional Responsibility Examination (MPRE) in August 2011 and Client Trust Accounting School (CTA School) on June 24, 2011, and filed his declaration of compliance with California Rules of Court, rule 9.20 on April 4, 2011.<sup>2</sup>

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<sup>2</sup> The State Bar avers that respondent did not fully comply with the requirements of California Rules of Court, rule 9.20 because he did not send opposing counsel a certified letter regarding his suspension and that he did not obtain an order granting a motion to withdraw in that litigation until February 24, 2011, shortly before the effective date of the Supreme Court's disciplinary order. (State Bar's opposition, 5:21-26.) However, opposing counsel knew about respondent's expected suspension prior to the Supreme Court's issuing its disciplinary order as he was copied on court correspondence in January 2011 relating to respondent's motion to withdraw as counsel in that litigated matter. Moreover, the Supreme Court's disciplinary order, by its own terms, did not require compliance with rule 9.20(a) until 30 days *after* the February 27, 2011, effective date of the Supreme Court's disciplinary order. Accordingly, respondent had until March 29, 2011 to comply with the rule 9.20(a) requirement, well after the filing of the withdrawal order in February. Since respondent had properly withdrawn from representation with court approval and with the knowledge of opposing counsel prior to the effective date of the

## **2. Petitioner's Community Work and Reformation**

Petitioner has made contributions to the community through his public service work. The time on suspension and his volunteer work have fostered in petitioner a new outlook about the meaning of success. He has taken steps to understand his frame of mind at the time of the misconduct, where the misconduct stemmed from and how to avoid it in the future. He regrets his poor decisions and how he handled himself in the matters for which he was disciplined. He was focused on himself and acted at the expense of his clients. He did not fully realize the trust that clients place on their attorneys. He lost sight of his role as an attorney and replaced concern for his clients with concern for his financial well-being. He understands that this was wrong and unethical. His strong drive to succeed overwhelmed his moral compass and drove him to make bad decisions which benefitted him but did not take account his clients' well-being. He is remorseful for his conduct.

While respondent is still diligent and has a strong drive to succeed, he now understands that success is measured in a myriad of ways, only one of which is financial gain. Of more importance to him now is his reputation in the legal and business community and his relationships with clients. He wants to foster trust and respect from those whom he represents and those with whom he works.

Petitioner is very active in the Fair Oaks Presbyterian Church. He attends services regularly and is a deacon there. In 2009, he volunteered to serve a three-year term as a deacon and, in 2013, volunteered for another three-year term. As a deacon, he spent a significant amount of time serving the church and his local community. He gives rides to elderly and disabled members to church and, for the last four years, volunteered as a referee with the church's children's basketball league. He will become the head referee and referee coordinator

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Supreme Court's disciplinary order, there was no need to notify them of his suspension in relation to a case in which he was no longer representing anyone.

in the league next season. Since 2009, petitioner has been the chair of the Prayer Committee and serves on the Deacon's Benevolent Fund Committee. In the latter committee, he evaluates applicants for financial assistance with their rent and utilities when they have fallen on hard times. He served as a missionary in Burma for two weeks, visiting and helping orphans and teaching on various topics at a meeting of pastors, elders and deacons.

Since his suspension, petitioner has doubled his volunteer work with his church and is very active in many facets of that community. He was also employed during his suspension as the manager of several rental properties, including an office building, house and condominium.

Petitioner's experiences while on suspension have reminded him that it is important to live his life in a way that positively impacts his community and others, not just in his church volunteer activities, but in all aspects of his life. He strives to incorporate this principle into his work and will do so in the future in his legal career. He suffered in many ways, including financially, as a result of his ethical lapses. His name and reputation have been tarnished. He lost his small business and professional career. He experienced anxiety, mental anguish and humiliation. He knows that he caused this situation and will conduct himself in a way that does not result in these repercussions again. He has learned from his past experiences and will be mindful of the ethical rules and the impact he has on others, especially clients.

### **3. Petitioner's Character References**

Petitioner submitted 10 favorable reference letters from a wide variety of members of the community, including attorneys, a pastor, friends, including a former client, and family, all of whom believed in his fitness and moral character. Favorable reference letters from attorneys are entitled to considerable weight. (*Feinstein v. State Bar* (1952) 39 Cal.2d 541, 547.) The letters introduced in support of the petition show that petitioner has been open and forthright in providing those who submitted character references on his behalf with a full understanding of the

nature and scope of his prior misconduct. All of those who submitted letters of reference strongly support petitioner's request for relief from suspension. Those who wrote the reference letters believe that petitioner expresses sincere remorse for his misconduct. They believe that petitioner is committed to avoiding any misconduct in the future.

The State Bar did not rebut any of the evidence submitted.

Accordingly, in this proceeding, petitioner has shown that his favorable character references letters are entitled to considerable weight. The court finds the favorable character evidence to be of sufficient value to support petitioner's rehabilitation and present fitness to practice.

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

As mentioned above, in August, 2011 petitioner took and passed the Multistate Professional Responsibility Examination. Petitioner also successfully completed the State Bar Ethics School and CTA School on June 23 and 24, 2011. Petitioner has also completed 189.75 hours of continuing legal education in a variety of topics, including legal ethics, improving client relationships, substance abuse prevention, real estate, personal injury, litigation, taxation, among other things.

Petitioner has also applied to a two-year graduate program at California State University, Dominguez Hills, to obtain a master's degree in Negotiation, Conflict Resolution and Peacebuilding, which he hopes will be beneficial to his future law practice.

Based upon the record as a whole, the court finds that petitioner has demonstrated by a preponderance of the evidence that he possesses present learning and ability in the general law, and so meets the requirement of this prong of standard 1.4(c)(ii).

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#### **D. State Bar's Concerns**

The State Bar contends that petitioner is not rehabilitated because he had a website, voicemail and a sign in the parking lot of an office building in which he was identified as an attorney after the effective date of his suspension and that he, therefore, incorrectly noted in his quarterly reports for April and July 2011 that he was in compliance with the provisions of the State Bar Act. The court finds that these matters occurred close to the effective date of petitioner's discipline and have not been an issue since. The website was taken down and the voicemail was changed, The sign had already been painted over to white out petitioner's name. It was further painted over after the State Bar's opposition to the petition was filed.

#### **IV. Discussion**

In order to be relieved of his actual suspension, petitioner has the burden of proving in this proceeding, by a preponderance of the evidence, that he is rehabilitated, has present fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, rule 5.404; *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 571, 578.)

To establish rehabilitation, the court must first consider the prior misconduct from which petitioner seeks to show rehabilitation. The amount of rehabilitation evidence 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: (1) strict compliance with the terms of probation in the underlying disciplinary matter; (2) exemplary conduct from the time of the imposition of the prior discipline; and (3) "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 weighing such a determination, the court should look to the nature of the underlying offense, or offenses; any aggravation, other misconduct or mitigation that may have been considered; and any evidence adduced that bears on whether the cause or causes of such misconduct have been eliminated.” (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 581.)

**A. Petitioner’s Rehabilitation and Present Fitness to Practice Law**

As to whether petitioner has sufficiently demonstrated, by a preponderance of the evidence, his rehabilitation and present fitness to practice law, the court must first consider petitioner’s prior misconduct, the aggravating and mitigating circumstances surrounding said misconduct and any other circumstances of misconduct.

As previously noted, petitioner’s prior misconduct was very serious. The remaining issue is whether he has shown rehabilitation and whether the conduct leading to his discipline is “not likely to be repeated.”

Petitioner complied with the terms of his probation. There have been no further incidents of misconduct. To the contrary, he has used his time to double his volunteer work with his church. Moreover, the evidence demonstrates that petitioner has evaluated his past behavior and has sincerely reconsidered his values such that it is not likely that there will be a reoccurrence. He is remorseful for his misconduct. He has garnered insight into the causes of his misconduct and into the transformation necessary to practice law in an ethical manner, maintaining his clients’ welfare as the primary focus.

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As previously discussed, petitioner presented strong evidence of good character through the favorable reference letters from a variety of witnesses, all of whom strongly recommended petitioner's reinstatement to the practice of law

Consistent with his introspection and deepened self-awareness, petitioner has worked to serve his community. He has also applied the positive insights he has gained during the suspension and his service to his life as a whole and intends to do so in his law practice also. Petitioner's "[p]ost misconduct pro bono work and community service are factors evidencing rehabilitation and present moral qualifications." (See *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423, 430.)

After carefully reviewing and weighing all the evidence, the court finds that petitioner has shown by a preponderance of the evidence that he is rehabilitated and has the fitness to practice law.

In particular, petitioner has demonstrated an understanding and insight into the nature and scope of his past misconduct. He has accepted responsibility for all prior acts of misconduct and has expressed remorse for his behavior. Additionally, petitioner has talked openly with others about the mistakes of the past. He has established a strong support system through his church and his community activities. The fact that petitioner understands his professional responsibilities and has a proper attitude towards his prior misconduct is evidence of rehabilitation. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 317.)

Accordingly, the court finds, by a preponderance of the evidence, that petitioner is rehabilitated such that the misconduct in the underlying matter is unlikely to recur. Based on the foregoing, the court concludes that petitioner has shown: (1) strict compliance with his probation conditions; (2) exemplary conduct; and (3) that the conduct leading to the prior discipline is not likely to be repeated.

**B. Petitioner's Present Learning and Ability in the Law**

Besides taking the MPRE, CTA School and Ethics School, as discussed previously, petitioner has taken over 180 hours of continuing legal education in a wide variety of subjects, including legal ethics and client relations.

Therefore, based upon evidence presented in this proceeding and upon the findings of fact set forth above, this court concludes, by a preponderance of the evidence, that petitioner has present learning and ability in the general law.

**V. Conclusion**

The court finds that petitioner Nathaniel Dale Ezekiel Sterling, aka Nathaniel Dale Potratz, has satisfied the requirements of standard 1.4(c)(ii) and that he has demonstrated, by a preponderance of the evidence and to the satisfaction of this court, that he is rehabilitated, that he is presently fit to practice law, and that he has 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**.

Dated: August \_\_\_\_\_, 2013

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LUCY ARMENDARIZ  
Judge of the State Bar Court