



FILED

JUL 24 2015

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No.: 15-V-12380-YDR
)	
ROBERT DAVID LITTLE,)	DECISION & ORDER GRANTING
)	PETITION FOR RELIEF FROM
Member No. 178206,)	ACTUAL SUSPENSION
)	
<u>A Member of the State Bar.</u>)	

Introduction

This matter is before the court on ROBERT DAVID LITTLE (“Petitioner”)’s May 14, 2015, verified petition for relief from actual suspension. The issues in this proceeding are whether 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 the minimum two-year actual suspension that the Supreme Court imposed on him in its June 6, 2013, order in *In re Robert David Little on Discipline*, case number S209779 (State Bar Court case number 12-C-12448) (*Little I*). (Former std. 1.4(c)(ii), Rules Proc. of State Bar, tit. IV, Stds. For Atty. Sanctions for Prof. Misconduct;¹ Rules Proc. of State Bar, rule 5.400 et seq.)

///

¹ In its June 6, 2013, order, the Supreme Court ordered Petitioner to make his showing of rehabilitation, fitness, and learning in the law under former standard 1.4(c)(ii). Accordingly, that former standard (and not current standard 1.2(c)(1), its predecessor) is the applicable standard in this proceeding. Nonetheless, the court notes that nothing in the amendments to the standards effective January 1, 2014, or in the revisions to the standards effective July 1, 2015, would affect the present proceeding. Thus, regardless of whether the court applies former standard 1.4(c)(ii) or current standard 1.2(c)(1), the result would be the same.

As set forth below, the court finds that Petitioner has shown, by a preponderance of evidence, that he has satisfied the requirements of former standard 1.4(c)(ii). Therefore, the court will grant the petition for relief from actual suspension.

Significant Procedural History

In March 2012, after pleading nolo contendere, Petitioner was convicted in the San Bernardino County Superior Court on one misdemeanor count of violating Penal Code section 530.5, subdivision (a) (use of another's identity to obtain a service), a crime involving moral turpitude per se.²

On May 11, 2012, the Office of the Chief Trial Counsel of the State Bar of California ("State Bar") filed a certified copy of the record of Petitioner's conviction in the Review Department in State Bar Court case number 12-C-12448.

Thereafter, because Petitioner was convicted of a crime that inherently involves moral turpitude, the Review Department placed Petitioner on interim suspension pending the final disposition of case number 12-C-12448. (Bus. & Prof. Code, § 6102, subd. (a);³ Cal. Rules of Court, rule 9.10(a); Rules Proc. of State Bar, rule 5.161(A).) Petitioner's interim suspension began on September 15, 2012, and continued until July 7, 2013, which was the effective date of the Supreme Court's June 6, 2013, order in *Little I*.

///

²Penal Code section 530.5, subdivision (a) provides: "Every person who willfully obtains personal identifying information, as defined in subdivision (b) of Section 530.55, of another person, and uses that information for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, real property, or medical information without the consent of that person, is guilty of a public offense, and upon conviction therefor, shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment, or by imprisonment pursuant to subdivision (h) of Section 1170."

³ Unless otherwise indicated, all statutory references are to the Business and Professions Code.

Once Petitioner's conviction became final, the Review Department referred Petitioner's conviction to the Hearing Department for a trial and decision recommending the discipline to be imposed. (Cal. Rules of Court, rule 9.10(a); Rules Proc. of State Bar, rule 5.161(A).) In the Hearing Department, Petitioner and the State Bar entered into a stipulation regarding facts, conclusions of law, and disposition, which the State Bar Court approved in an order filed on February 19, 2013, in case number 12-C-12448.

Thereafter, the Supreme Court imposed the stipulated discipline on Petitioner in its June 6, 2013, order in *Little I*. Specifically, the Supreme Court placed Petitioner on three years' stayed suspension and three years' probation on conditions, including a two-year actual suspension that will continue until Petitioner establishes his rehabilitation, present fitness to practice, and present learning and ability in the general law in accordance with former standard 1.4(c)(ii).

The Supreme Court's June 6, 2013, order in *Little I* became effective on July 6, 2013. (Cal. Rules of Court, rule 9.18(a).) Accordingly, both Petitioner's three years' probation and Petitioner's minimum two-year actual suspension began on the July 6, 2013. It is this minimum two-year actual suspension that is the subject of the verified petition for relief from actual suspension that is now before the court.⁴

On July 8, 2015, the State Bar filed a statement of nonopposition to the petition. (Rules Proc. of State Bar, rule 5.403(B)(2).) Thereafter, the court took the matter under submission for decision on the pleadings without a trial on July 9, 2015. (Rules Proc. of State Bar, rule 5.403(D).)

///

⁴ The record does not indicate why the parties' stipulation in *Little I* did not provide that Petitioner was to be given credit for the period of his interim suspension towards the stipulated minimum two-year actual suspension.

The court admits into evidence without limitation the 12 supporting declarations that are attached to the petition, filed May 14, 2015. (Cf. Rules Proc. of State Bar, rule 5.406.) In that regard, the court finds each of the 12 declarants and each of the statements in their 12 declarations to be very credible. (See, generally, *Warner Bros. Records, Inc. v. Golden West Music Sales* (1974) 36 Cal.App.3d 1012, 1017, fn. 7.)

Petitioner is represented in this matter by Attorney David A. Clare. The State Bar is represented by Deputy Trial Counsel Sherell N. McFarlane.

Findings of Fact and Conclusions of Law

Petitioner was admitted to the practice of law in California on December 1, 1995, and has been a member of the State Bar of California since that time. He has one prior record of discipline (i.e., *Little I*).

Rehabilitation & Present Fitness to Practice

In determining whether Petitioner has established his rehabilitation by a preponderance of the evidence, the court must view the evidence of Petitioner's present character in light of the moral shortcomings that resulted in the imposition of actual suspension on Petitioner. (*In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546, 552-553), as “[t]he amount of evidence of rehabilitation required to justify [granting relief from actual suspension] varies according to the seriousness of the misconduct [underlying the actual suspension].” (*In re Menna* (1995) 11 Cal.4th 975, 987 quoting *Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1086 (dis. opn. of Lucas, C. J.); *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 571, 581.) Thus, the more egregious the underlying misconduct, the more evidence of rehabilitation and present good moral character is needed to justify granting relief from the actual suspension.

///

The Misconduct in *Little I*

Under section 6101, subdivisions (a) and (e), “an attorney's conviction of a crime pursuant to a plea of nolo contendere is ‘conclusive evidence of guilt of the crime’ for the purpose of disciplinary proceedings. [Citations.]” (*In re Gross* (1983) 33 Cal.3d 561, 567.) In other words, an attorney’s criminal conviction “is conclusive proof that the attorney committed all acts necessary to constitute the offense. [Citation.]” (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 110.) Thus, Petitioner’s conviction for violating Penal Code section 530.5, subdivision (a) conclusively establishes that Petitioner willfully obtained personal identifying information on Denise Y. and that Petitioner used that information for the unlawful purpose of obtaining Facebook.com and MySpace.com accounts in Denise Y.’s name. The following facts and circumstances surrounded Petitioner’s violation of Penal Code section 530.5, subdivision (a).

For about 11 months, from August 2007 through July 1, 2008, Petitioner was employed by the San Bernardino County District Attorney’s Office as a deputy district attorney. At the time, Petitioner was 40 years old and had more than 10 years experience in trying criminal cases before juries and in representing parties on appeals. A formal review of Petitioner's work in 2008 by a supervising deputy district attorney was extremely positive.

Notwithstanding Petitioner's good work, Petitioner was often harassed at work by Denise Y., who was also deputy district attorney. Denise Y. and her husband, who was a police sergeant in an adjacent town, sent Petitioner text messages that were, in Petitioner’s view, harassing and cruel. Petitioner complained to Denise Y. about her conduct, but her harassment continued unabated.

Petitioner finally complained about Denise Y.’s improper conduct to supervisors on June 30, 2008. The following day, July 1, 2008, the District Attorney’s Office terminated Petitioner's employment. Petitioner could not understand why he was fired. The abrupt termination of his

employment, which Petitioner believed was unjust, caused Petitioner to suffer a severe depressive episode, which lasted for some months. After he was fired, Petitioner remained unemployed for four months.

In May 2009, an area newspaper published a story about the San Bernardino County District Attorney and his office. According to the newspaper story, the District Attorney engaged in extramarital affairs and sexual relations with numerous women, including Denise Y. and other women who were employed by the District Attorney's Office. The paper also reported that women in the District Attorney's Office were being promoted in exchange for engaging in sexual interactions with the District Attorney.

On July 25, 2009, Petitioner illegally assumed the identity of Denise Y. for the purpose of opening accounts in her name on Facebook.com and MySpace.com. In the on-line profiles for those two accounts, Petitioner not only listed personally identifying information about Denise Y. (e.g., her age, location, education, and place of employment), but included links to the newspaper story on the District Attorney. Petitioner invited several of Denise Y.'s friends who had Facebook.com accounts to become "friends" on the Facebook.com account Petitioner opened in Denise Y.'s name so that they could access portions of the account and view Petitioner's posting on it. Even though four of Denise Y.'s friends accepted Petitioner's invitation, Denise Y. did not discover that Petitioner had opened accounts in her name on Facebook.com and MySpace.com until May 2010, almost a year later.

In April and May 2010, Petitioner posted comments on two internet blogs, under Denise Y's name. Thereafter, Petitioner was charged with two felony counts of identity theft in violation of Penal Code section 530.5, subdivision (a) on July 25, 2009, and July 26, 2009. Then, on March 28, 2012, in accordance with a plea agreement, Petitioner pleaded nolo contendere to count one, which count had been reduced to a misdemeanor and which charged

Petitioner with violating Penal Code section 530.5, subdivision (a) on July 25, 2009. Petitioner was thereafter sentenced to 36 months' summary probation with conditions, including not to violate any laws, to pay fees and fines totaling about \$334, attend a 16-week anger management course, and to stay away from Denise Y. In addition, in lieu of spending any time in jail, Petitioner was required to perform 100 hours of unpaid community service. Petitioner promptly complied with all the conditions of his criminal probation.

The parties' stipulation in *Little I*, establishes in aggravation that Petitioner's misconduct harmed the administration of justice because it tarnished the reputation of the legal profession to members of the public and that his misconduct demoralized Denise Y. and harmed her reputation.

The stipulation also establishes in mitigation that, at the time of the misconduct, Petitioner suffered from extreme emotional difficulties (i.e., clinical depression; major depressive disorder, single episode, moderate; and acute stress reaction and anxiety) that were directly responsible for the misconduct, and which were not the product of any illegal conduct. As a result of medication and significant psychotherapy, Petitioner no longer suffers from those difficulties. Petitioner's misconduct was also mitigated by his good character, pro bono activities, and more than 13 years of misconduct free practice of law.

Petitioner's Rehabilitation and Present Fitness

As summarized above, Petitioner's criminal conduct occurred primarily on July 25, 2009, with some additional acts in April and May 2010. Petitioner's criminal conduct was serious. He was convicted of a crime that inherently involves moral turpitude. Had Petitioner been convicted of a felony violation of Penal Code 530.5, subdivision (a) instead of a misdemeanor violation, he would have been summarily disbarred under section 6102, subdivision (c). Accordingly, the court concludes that, even though Petitioner's misconduct did not involve any clients or client matters, the theft of trust funds, or the breach of a fiduciary duty, Petitioner must still present substantial evidence of his rehabilitation and present fitness to practice.

Of course, “[r]eformation may only be brought about by the individual. It may be manifested *solely* by a 'state of mind' which may not be disclosed by any certain or unmistakable outward sign. Its existence may be difficult to establish affirmatively, but its nonexistence may be 'proved' by a single act.” (*In re Andreani* (1939) 14 Cal.2d 736, 749, italics added.)

To establish his rehabilitation and fitness to practice, Petitioner must first show that he has strictly complied with the terms and conditions of the three-year disciplinary probation imposed on him in the Supreme Court’s June 6, 2013, order in *Little I*. (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 581.) This is because, in *Little I*, the Supreme Court determined that those terms and conditions were the rehabilitative sanctions appropriate for Petitioner. (*Id.* at p. 580.) Thus, “[p]resumptively, Petitioner’s compliance with the terms of his suspension and with the terms of his probation ... has satisfied the discipline required to permit him to become a productive attorney” again. (*Id.* at p. 578.) Second, Petitioner must show, by a preponderance of the evidence, “exemplary conduct from the time of the imposition of the ... prior discipline.” (*Id.* at p. 581.) Finally, Petitioner is required to show, by a preponderance of the evidence, that the misconduct found in *Little I* is not likely to be repeated.⁵ (*Ibid.*)

The record establishes that Petitioner has strictly complied with all of the conditions of the three-year disciplinary probation imposed on him in the Supreme Court’s June 6, 2013, order in *Little I* and that he timely fulfilled the additional requirements imposed on him in that order to comply with California Rules of Court, rule 9.20 and to take and pass the Multistate Professional Responsibility Examination.

⁵ These requirements are in stark contrast to the requirements in a reinstatement proceeding (following disbarment) in which the Petitioner is required to “show by the most clear and convincing evidence that efforts towards rehabilitation have been successful” (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1092) and that he or she has re-attained the moral fitness to practice law through sustained exemplary conduct over an extended period of time (*In re Giddens* (1981) 30 Cal.3d 110, 116).

Nothing in the record suggests that Petitioner has engaged in any conduct imbued with elements of moral turpitude after the Supreme Court filed its disciplinary order in *Little I* on June 6, 2013. More important, the record establishes that after June 6, 2013, Petitioner has engaged in exemplary conduct. Not only did Petitioner obtain the needed medical treatment for his depression and anxiety and undergo the necessary counseling and therapy, but he also renewed his Catholic faith and voluntarily participates in the State Bar's Lawyers Assistance Program where he has supported and assisted fellow attorneys involved in the program.

Petitioner has also engaged in volunteer activities for his church and local community. Such charitable and community activities are evidence of Petitioner's rehabilitation and present good moral character. (Cf. *Calvert v. State Bar* (1991) 54 Cal.3d 765, 785, quoting *Schneider v. State Bar* (1987) 43 Cal.3d 784, 799.)

Petitioner now fully appreciates the seriousness of his prior misconduct, is sincerely remorseful for his prior wrongdoing, and is determined not to commit any future transgressions. (Cf. *Toll v. State Bar* (1974) 12 Cal.3d 824, 832.) This is strong evidence that Petitioner will conform his conduct to the strictures of the profession and will not again engage in misconduct.

In addition to his own supporting declaration, Petitioner presented supporting declarations from 11 individuals of either high or very high repute. One is the Legislative Director to a California Assembly Member; one is a private investigator and former police officer; one is a political consultant; one is a marriage and family therapist; one is a medical doctor; one is a San Bernardino County Supervisor who has known Petitioner since high school; and five are attorneys. All 11 declarants know Petitioner well and are fully aware of his prior misconduct. Many of Petitioner's character declarants have often observed Petitioner's mode of daily living and working. All 11 attest to Petitioner's good character, integrity, and honesty. They are confident that Petitioner is rehabilitated and fully recovered from the underlying cause

of his misconduct. Even though good character testimony is never conclusive or controlling on the issues of rehabilitation and present fitness, the 11 declarations are entitled to great weight because of the in depth knowledge they have of Petitioner.

Petitioner has established that his prior misconduct is not likely to be repeated. Moreover, Petitioner has established his rehabilitation and present fitness to practice law in this state.

Present Learning and Ability in the General Law

Petitioner took and passed the Multistate Professional Responsibility Examination and furnished proof thereof to the State Bar's Office of Probation in accordance with the Supreme Court's order in *Little I*. He has also participated in 11 credit hours of Minimum Continuing Legal Education approved courses since his suspension began. Petitioner has also maintained his study of criminal law by reading and studying published opinion in criminal cases. Petitioner continues to possess the requisite present learning and ability in the general law.

Conclusion & Order

In conclusion, the court finds that Petitioner ROBERT DAVID LITTLE has satisfied the requirements of former standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct by demonstrating, by a preponderance of the evidence, that he is rehabilitated, presently fit to practice law, and possesses the requisite present learning and ability in the general law.

Accordingly, the court orders that Petitioner ROBERT DAVID LITTLE'S May 14, 2015, petition for relief from actual suspension is GRANTED. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, former std. 1.4(c)(ii) [now std. 1.2(c)(1)].) Accordingly, upon the finality of this decision and order (Rules Proc. of State Bars, rules 5.410, 5.115, 5.409; *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 571, 584),

Little will be relieved from the minimum two-year actual suspension imposed on him in the Supreme Court's June 6, 2013, order in case number S209779 (State Bar Court case number 12-C-12448).⁶ Thereafter, Little will be entitled to return to the practice of law in the State of California upon: (1) his payment of all required sums, fees, and assessed costs (e.g., Bus. & Prof. Code, §§ 6140.5, subd. (c), 6140.7; see also Bus. & Prof. Code, § 6086.10, subd. (c)); (2) his compliance with any other prerequisite to his becoming an active member of the State Bar of California; and (3) he is otherwise entitled to practice law.

Dated: July 23, 2015.



YVETTE D. ROLAND
Judge of the State Bar Court

⁶ This order does not affect Petitioner's ineligibility to practice law that has resulted or that may hereafter result from any other cause.

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar, rule 5.400(B); Code Civ. Proc., §§ 1011, 1013]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Following standard court practice, in the City and County of Los Angeles, I served a true copy of the following document(s):

**DECISION & ORDER GRANTING PETITION FOR RELIEF FROM ACTUAL
SUSPENSION**

as follows:

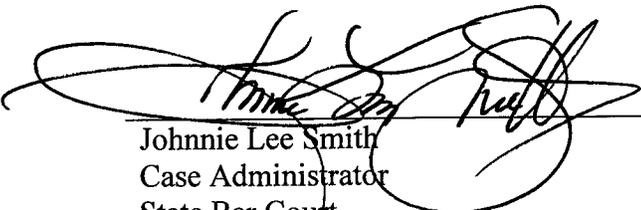
- by OVERNIGHT MAIL by enclosing the documents in a sealed envelope or package designated by an overnight delivery carrier and placing the envelope or package for collection and delivery with delivery fees paid or provided for, addressed as follows:

**DAVID ALAN CLARE
DAVID A CLARE, ATTORNEY AT
LAW
444 W OCEAN BLVD STE 800
LONG BEACH, CA 90802**

- By PERSONAL MAIL by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

**SHERELL MCFARLANE
STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL
845 S. FIGUEROA STREET
LOS ANGELES, CA 90017-2515**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 24, 2015.



Johnnie Lee Smith
Case Administrator
State Bar Court