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STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of	)	Case No.: 15-V-12838-PEM
	)	
<b>PATRICK JOHN DONNELLY,</b>	)	<b>DECISION GRANTING PETITION FOR</b>
	)	<b>RELIEF FROM ACTUAL SUSPENSION</b>
<b>Member No. 133926,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

**Introduction<sup>1</sup>**

The issue presented in this matter is whether petitioner Patrick John Donnelly (petitioner) has established, by a preponderance of the evidence, his rehabilitation, present fitness to practice law, and present learning and ability in the general law so that he may be relieved from the actual suspension imposed on him by the Supreme Court. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)<sup>2</sup>

Based on petitioner's verified petition for relief from actual suspension, supplements to his petition, the State Bar's response, and the testimonial and documentary evidence at trial, the court finds that petitioner has shown, by a preponderance of the evidence, that he has satisfied the requirements of standard 1.2(c)(1) and, therefore, that his actual suspension should be terminated. Accordingly, the court **GRANTS** petitioner's petition for relief from actual suspension from the practice of law.

<sup>1</sup> Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

<sup>2</sup> All further references to standards are to this source.

### **Significant Procedural History**

On June 11, 2015, petitioner filed and served a verified petition for relief from actual suspension, seeking the termination of his actual suspension and claiming he has satisfied the requirements of standard 1.2(c)(1).

On July 27, 2015, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed its response opposing petitioner's petition.

On October 30, 2015, petitioner submitted a supplement to his petition; however, most of the character letters were not in the form of declarations. The court ordered petitioner to resubmit the character letters in the form of a declaration. On November 9, 2015, the petitioner filed two additional supplements to his petition. Furthermore, on February 8, 2016, petitioner submitted another supplement to his petition.<sup>3</sup>

On November 10, 2015, the parties stipulated that petitioner was in substantial compliance with the terms of his probation, that petitioner passed the Multistate Professional Responsibility Exam (MPRE), that petitioner had made restitution as ordered in his underlying discipline, and that petitioner was current with his MCLE requirements.

On November 19, 2015, the matter was continued so that petitioner could more fully comply with the requirement of filing declarations under penalty of perjury.

On April 12, 2016, a hearing was held. Petitioner appeared in pro per and Senior Trial Counsel Manuel Jimenez represented the State Bar. This matter was submitted for decision on April 12, 2016.

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<sup>3</sup> Petitioner mistakenly filed the February 8 supplement with the Office of Probation instead of with the court. Since the State Bar received it, the court filed it on April 12, 2016, and submitted into evidence.

## **Findings of Fact**

Petitioner was admitted to the practice of law in California on June 16, 1988, and has been a member of the State Bar of California at all times since that date.

### **Background of Misconduct and Underlying Disciplinary Matter**

In December 2008, in the underlying matter, petitioner stipulated to violating 20 counts of professional misconduct involving six client matters, including failure to perform services competently, failure to return unearned fees, failure to return client file, failure to provide an accounting, failure to communicate, failure to cooperate with the State Bar, and requiring client to withdraw a disciplinary complaint. (Supreme Court case No. S172633, filed June 30, 2009; State Bar Court case Nos. 06-O-12850 et al.)

As a result, petitioner was suspended for five years, stayed, and placed on five years of probation with an actual suspension of three years, commencing July 30, 2009, and until he made restitution to three clients and until petitioner could provide proof of his rehabilitation, fitness to practice law, and learning and ability in the general law under standard 1.2(c)(1). Petitioner was also required to file an affidavit under California Rules of Court, rule 9.20, and take and pass the MPRE during his actual suspension.

Specifically, petitioner stipulated to the following:

#### *1. Boone Matter*

Petitioner was hired to represent John Boone in a civil matter and agreed to file a cross complaint. He failed to perform services competently by failing to file the cross complaint (rule 3-110(A)); failed to inform his client of significant developments by failing to inform his client that he made a "judgment call" not to file the cross complaint (section 6068, subdivision (m)); and failed to cooperate with the State Bar (section 6068, subdivision (i)).

## *2. Arbaugh Matter*

Debbie Arbaugh who was representing herself in a divorce proceeding hired petitioner, but he never substituted in. The client gave him an order that required her to file disclosure documents and the notice of a hearing. He failed to perform services competently by failing to file the documents or appear at the hearing (rule 3-110(A)). As a result of his inaction, the dissolution judgment ordered the client to indemnify her ex-husband for legal costs. Petitioner also failed to return unearned fees (rule 3-700(D)(2)); improperly withdrew from employment (rule 3-700(A)(2)); failed to inform his client of his constructive termination of his services (section 6068, subdivision (m)); and failed to cooperate with the State Bar (section 6068, subdivision (i)).

## *3. Debold Matter*

Jennifer Debold who was seeking a divorce wanted to file in California, rather than Virginia, where her husband lived, because of a shorter waiting period. Nonetheless, petitioner twice granted the husband's lawyer open-ended time extensions, allowing the husband to pursue the divorce in Virginia. Petitioner did not return the client's phone calls or respond to a letter. Petitioner violated rule 3-110(A) for failing to perform services competently and section 6068, subdivision (m), for failing to respond to status inquiries. He also failed to cooperate with the State Bar (section 6068, subdivision (i)).

## *4. Fairbanks Matter*

Hyle Fairbanks hired petitioner to represent him in a marital dissolution matter. Petitioner did not file a response to a dissolution petition or respond to an order to show cause. Although he did appear at the hearing, petitioner was unprepared, had not substituted into the matter, failed to calculate support payments, had not filed any response on his client's behalf, and did not have the paperwork the client sent him. Petitioner violated rule 3-110(A) for failing

to perform services competently. Because he did not provide the file to the client's new lawyer, refund any unearned fees, or account for funds, he violated rule 3-700(D)(1),<sup>4</sup> rule 3-700(D)(2) , and rule 4-100(B)(3).

*5. Hernandez Matter*

Edward Hernandez twice asked petitioner to pursue a divorce on his behalf and twice asked him to halt the proceedings because he and his wife reconciled. He asked for a refund of his fee in order to pay his property taxes. Petitioner did not respond but agreed to meet his client, who asked him to dismiss the dissolution and return the unearned fees. Petitioner advised the client not to drop the divorce and to seek help from his mortgage lender to pay his property taxes. When the client declined and asked for his money, petitioner said the check would be mailed. However, petitioner never refunded any money. That client won a small claims court judgment against petitioner and then filed a complaint about him with the State Bar. The client continued to ask for \$500, and when petitioner agreed, he said, "If I pay you, you will call [a State Bar investigator] and get her off my back? If I send you the \$500 then I want [the State Bar] off my ass."

When the client said he could not control the bar's decision whether to go forward with the disciplinary matter, petitioner never refunded any money. Consequently, petitioner violated rule 3-700(D)(2) for failing to promptly return unearned fees and section 6090.5, subdivision (a)(2), for seeking the client to agree to withdraw a disciplinary complaint.

*6. Ellis Matter*

In the final matter, Kimberly Ellis who was seeking a divorce had a restraining order against her husband who had a history of domestic abuse. Petitioner appeared at a hearing on

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<sup>4</sup> The December 11, 2008 stipulation incorrectly cited "3-700(D)(2)" for petitioner's failure to return client file.

child custody, support and visitation issues, but it was continued to allow him time to file some documents. He never did so. He was late for another hearing that was continued so he could file the same documents. Again, he did not do so. Petitioner did not return his client's phone calls, and she told him she wanted a refund of her fee in order to hire a new lawyer. His secretary informed the client that petitioner had not completed the work on her case and she would not receive anything until he finished. He later filed the court-ordered documents. However, he never accounted for the client's fee or refunded any money. Throughout the case, petitioner knew his client was concerned about her and her daughter's safety. His delay jeopardized the daughter's safety because the documents were to be presented to Child Services and established the anger management class requirements for her ex-husband. Petitioner violated rule 3-110(A) for failing to perform services competently, rule 3-700(D)(2) for failing to return unearned fees, and rule 4-100(B)(3) for failing to render an accounting.

### **Rehabilitation and Fitness to Practice Law**

The State Bar argues that petitioner has not been rehabilitated and does not have present fitness to practice law. The court disagrees. 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 1.2(c)(1).

#### ***1. Compliance With the Supreme Court Order***

Pursuant to Supreme Court case No. S172633, in July 2009, petitioner was suspended for five years, execution stayed, and placed on probation for five years on conditions, including that he be actually suspended for three years and until he satisfies standard 1.2(c)(1) and until he makes restitution. Petitioner's five years' probation conditions included quarterly reports and State Bar Ethics School. Furthermore, petitioner was required to make restitution to Kimberly Ellis in the amount of \$1,445 plus 10% interest per year from May 1, 2007, Debbie Arbaugh in

the amount of \$1,500 plus 10% interest per year from November 11, 2004, and Jennifer Debold in the \$1,600 plus 10% interest per year from May 23, 2006.

On May 6, 2010, petitioner completed the State Bar Ethics School requirement. In August 2011, petitioner took and passed the MPRE. Petitioner also made contact with the Office of Probation in a timely manner and met with the probation deputy as scheduled. Petitioner timely filed the rule 9.20 affidavit. Petitioner paid in full all fees and costs owed to the State Bar in the amount of \$11,195.79 on December 31, 2014. Petitioner paid in full all the principal and interests owed to each of the claimants by December 31, 2014. The only condition of probation petitioner did not fully comply with is submitting all his quarterly reports in a timely manner. Four of his 25 quarterly reports were a few days late. The court finds such tardiness inexcusable but at the same time, insignificant. Moreover, the State Bar stipulated that petitioner substantially complied with his conditions of probation. Accordingly, the court finds that petitioner has complied with his probation conditions and the Supreme Court order.

## ***2. Character References***

Petitioner submitted nine favorable character witness declarations and two letters in support of his petition. Petitioner's character witnesses include a judge, two commissioners, two lawyers, a retired stockbroker, a former employee, two small business owners, and friends. Many of whom have known petitioner for more than 25 years. Each character witness praised his legal skills, honesty, dedication to clients, passion for helping needy individuals, and remorse for his misconduct. These witnesses also demonstrated an understanding of petitioner's misconduct and the measures he has taken to achieve rehabilitation. One declared that he is a "caring man with a great heart." He is "hard-working ... and goes the extra mile for people." He has "learned his lesson."

All urged that petitioner be returned to as an active member of the State Bar.

Petitioner has shown an understanding of and remorse for the misconduct that led to his actual suspension. He has taken full responsibility for his misconduct. The State Bar did not rebut any of the evidence submitted.

Accordingly, in this proceeding, petitioner has shown that his favorable character reference letters from attorneys and his friends are entitled to considerable weight. (*Feinstein v. State Bar* (1952) 39 Cal.2d 541, 547.) The court finds the favorable character evidence to be of sufficient value to support petitioner's rehabilitation and present fitness.

### ***3. Community Service Work***

Petitioner has participated in the Annual Thanksgiving Basket Brigade (which has helped over 35,000 people in the Chico area), delivering full turkey dinners to 200 needy families. He also sponsors an annual Orphan's Thanksgiving dinner at his residence for his community.

### **Present Learning and Ability in the Law**

As noted, petitioner completed the State Bar Ethics School requirement and took and passed the MPRE. Since his suspension petitioner has kept current with the law. He is also current on all his MCLE requirements. He has taken courses in areas including, but not limited to, legal ethics, immigration, intellectual property, business transactions, substance abuse, elimination of bias, personal injury, real estate, tax, conflict of interest, cyber security, discovery, and bankruptcy. 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 1.2(c)(1). Moreover, the parties stipulated that petitioner has present learning and ability in the law.

### **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. (*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.)

#### **Rehabilitation and Present Fitness to Practice Law**

As noted, the court concludes that petitioner has demonstrated remorse for his misconduct, as evidenced by his initial stipulation to the misconduct and his subsequent commitment to comply with all of his probation requirements. The remaining issue is whether he has shown rehabilitation and whether the conduct leading to his discipline is "not likely to be repeated."

The court finds petitioner to be credible and finds his position well-substantiated. He has presented strong evidence of good character through the favorable reference letters from attorneys and friends. All of whom believed in his fitness and moral character and strongly support petitioner's request for relief from suspension. The letters show that petitioner has been open and forthright with his character references by providing them with a full understanding of the nature and scope of his prior misconduct. They believe that petitioner is committed to avoiding any misconduct in the future.

After carefully reviewing and weighing all the evidence and taking into account petitioner's demeanor at the hearing in this proceeding, the court finds that petitioner has addressed the issues that led to his suspension. 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. He has vowed to avoid similar misconduct in the future. 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.

#### **Present Learning and Ability in the Law**

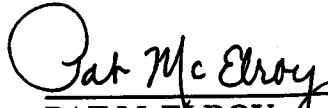
In the instant proceeding, the parties stipulated that petitioner has present learning and ability in the law. Therefore, based upon evidence presented in this proceeding and upon the findings of fact set forth above, this court concludes, by a preponderance of the evidence, that petitioner has present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

### Conclusion

The court finds that petitioner **Patrick John Donnelly** has satisfied the requirements of standard 1.2(c)(1) 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 1.2(c)(1) is hereby **GRANTED**. It is further ordered that petitioner's actual suspension from the practice of law in California is hereby terminated and he is entitled to resume the practice of law in this state upon the payment of all applicable State Bar fees and costs.

Dated: April 21, 2016

  
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**PAT McELROY**  
Judge of the State Bar Court

**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 practices, in the City and County of San Francisco, I served a true copy of the following document(s):

DECISION 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:

PATRICK J. DONNELLY  
222 W 2ND ST  
CHICO, CA 95928

- 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:

MANUEL JIMENEZ  
STATE BAR OF CALIFORNIA  
OFFICE OF THE CHIEF TRIAL COUNSEL  
180 HOWARD STREET  
SAN FRANCISCO, CA 94105-1639

I hereby certify that the foregoing is true and correct. Executed at San Francisco, California, on April 21, 2016.



George Hue  
Case Administrator  
State Bar Court