PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **JEANNETTE TORREL MAGINNIS,** **Member No. 113476,** A Member of the State Bar.	Case No.: **15-V-15755 YDR** **DECISION DENYING PETITION FOR RELIEF FROM ACTUAL SUSPENSION**

I. INTRODUCTION

The issue in this matter is whether petitioner **Jeannette Torrel Maginnis** ("Petitioner") has established, by a preponderance of the evidence, her rehabilitation, fitness to practice, and present learning and ability in the general law so that she may be relieved from the actual suspension previously imposed on her by the California Supreme Court. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1); *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289, 293-294.)

Petitioner was represented in the present proceeding by Edward Lear of Century Law Group LLP. Deputy Trial Counsel Timothy G. Byer appeared for the Office of the Chief Trial Counsel of the State Bar of California ("State Bar").

For the reasons set forth below, the court finds that Petitioner has not shown by a preponderance of evidence that she meets all of the requirements of standard 1.2(c)(1). Therefore, the court must deny her petition for relief from actual suspension.

II. PROCEDURAL HISTORY

On December 7, 2015, Petitioner filed her original verified petition for relief from actual suspension, and her declaration in support thereof. On January 29, 2016, Petitioner filed an amended declaration in support of her original verified petition (""Petition" or Amended Declaration").

On February 12, 2016, the parties were given notice that any hearing on the Petition would be held on April 5 and April 6, 2016. The State Bar filed an opposition to the Petition on March 14, 2016, stating various grounds in opposition, requesting a hearing of the matter, and requesting that the court deny the Petition. Subsequently, Petitioner moved to continue the hearing. The State Bar opposed the continuance, and this court denied Petitioner's motion to continue the hearing, by order filed March 30, 2016.

The hearing in this matter was held on April 13, 2016, during which Petitioner testified on her own behalf. At the conclusion of the hearing, the court took the Petition and Amended Declaration under submission.

On April 27, 2016, Petitioner filed a motion to reopen the record pursuant to rule 5.113 of the Rules of Procedure of the State Bar of California.[1] By her motion, Respondent sought to augment the record with an email string dated July 16, 2015 through January 24, 2016, a Democratic Women's Council meetup webpage, and an invoice and letter from her psychotherapist, Richard Girod. The State Bar filed its opposition on April 29, 2016. This court denied Petitioner's motion to reopen the record as Petitioner failed to satisfy the criteria set forth in rule 5.113.

[1] Unless otherwise indicated, all further references to rules are references to the Rules of Procedure of the State Bar of California.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction

Petitioner was admitted to the practice of law in California on June 13, 1984, and has been a member of the State Bar since that time.

B. Petitioner's Record of Prior Discipline

Petitioner has one prior discipline record. By Supreme Court Order S108775, filed September 20, 2002, Petitioner was suspended from the practice of law for four years, with execution of period of suspension stayed. She was also placed on probation for four years with conditions, indicating that she be actually suspended for two years and until she provided satisfactory proof of her rehabilitation, fitness to practice and present learning and ability in the general law. Although Petitioner stipulated to culpability for her misappropriation of about $535,000 of entrusted client funds, she was not ordered to pay restitution to her former clients.[2] The facts and conclusions of law establishing Petitioner's misconduct, as well as the recommended disposition of the disciplinary matter, were set forth in a stipulation signed by Petitioner on June 3, 2002, and approved by this court on June 6, 2002 ("the Stipulation"). According to the Stipulation, Petitioner and her husband were partners in the law firm of Maginnis and Maginnis ("Maginnis and Maginnis" or "the law firm") and Petitioner was a signer on the law firm's client trust account ("CTA"). Petitioner's prior discipline arose in connection with misconduct in two separate client matters.

With regard to the first client matter (case number 97-O-10740), Julius Toth hired Maginnis and Maginnis to represent him in a personal injury matter in which the law firm was to

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[2] Supreme Court Order S108775 refers to two consolidated disciplinary matters: Hearing Department case numbers 97-O-10740 and 00-O-11829. Each of the two notices of disciplinary charges filed in connection with these cases names as respondents Jeanette Torrel Maginnis and her husband, John Patrick Maginnis. With these charges pending, John Patrick Maginnis voluntarily withdrew as a member of the California Bar, effective April 17, 2002.

be paid a contingency fee of 40% of any recovery by Toth. The civil lawsuit Maginnis and Maginnis filed on Toth's behalf settled on or about August 19, 1999. Maginnis and Maginnis received $2,160,000 in settlement funds for Toth, and after subtracting the firm's contingency fee of $864,000, the expert fee payments and expenses and payments to Toth, Maginnis and Maginnis was required to maintain $415,000 in its CTA on behalf of Toth. Petitioner stipulated that she willfully failed to maintain the $415,000 in trust for Toth, in violation of rule 4-100(A).

In the second client matter for which Petitioner was disciplined (case number 00-O-11829), Linda Tanklage hired Maginnis and Maginnis in December 1993, to represent her in a legal malpractice claim. The retainer agreement provided that Tanklage would pay the law office a $25,000 initial retainer and hourly fees; however, if a settlement was obtained, the hourly fee arrangement would be converted into a 40% contingency fee arrangement with payments made by Tanklage to be credited against fees Tanklage owed to Maginnis and Maginnis,

In December 1998, Maginnis and Maginnis settled the Tanklage matter and deposited the $200,000 in settlement funds into the law firm's CTA at City National Bank. After subtracting the law firm's contingency fee from the settlement funds, Maginnis and Maginnis was required to maintain approximately $120,000 in trust for Tanklage. Petitioner stipulated that by failing to maintain at least $120,000 in the City National trust account on behalf of Tanklage, Petitioner willfully violated rule 4-100(A) of the Rules of Professional Conduct. Petitioner further stipulated that she dishonestly or with gross negligence, misappropriated Tanklage's settlement funds, in violation of Business and Professions Code section 6106.

C. Rehabilitation

To determine whether a petitioner has established her rehabilitation and present fitness to practice law, the court first looks to the nature of the misconduct underlying the actual

suspension, as well as the aggravating and mitigating circumstances surrounding that misconduct to determine the amount of evidence required to provide proof of rehabilitation and present fitness to practice. (*In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 571, 578.) The amount of evidence required to justify the termination of an attorney's actual suspension varies according to the seriousness of the misconduct underlying the suspension. (*Ibid.*)

Next, the court examines the petitioner's actions since the prior discipline to determine whether the person's 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.) As expressly stated by this court in the *Murphy* decision, the petitioner must show at a minimum: (1) that she has strictly complied with the terms of probation imposed on her under the Supreme Court's disciplinary order; (2) that she has engaged in exemplary conduct since being suspended; and (3) that the misconduct by the petitioner is not likely to recur. (*Ibid.*)

Failure to Comply with Conditions of Probation

Here, Petitioner cannot argue that her rehabilitation and present fitness to practice law is demonstrated by her strict compliance with the conditions of her probation. Instead, it is undisputed that while Petitioner may have come "close," she did not strictly comply with the conditions of her probation since she was tardy in submitting her Rule 955 Compliance Declaration and proof of attendance at State Bar Ethics School and the State Bar Client Trust Accounting School.[3]

[3] Pursuant to the Stipulation signed by Petitioner, approved by this court, and incorporated by reference into the Supreme Court's order, Petitioner was to submit quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 during the period of her probation. Petitioner timely submitted all quarterly reports except the quarterly report due July 10, 2004. Petitioner did timely comply with her obligation to timely take and

Strict compliance with the conditions of a suspended attorney's probation is required to show exemplary conduct. Well-established case law makes clear that "near compliance" and "substantial compliance" are viewed as non-compliance. (See, e.g., *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 652; *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 150; *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536-537.)

It is well-established that an attorney's failure to comply with the conditions of probation imposed on him or her by the Supreme Court also "demonstrates a lapse of character and a disrespect for the legal system that directly relate to an attorney's fitness to practice law and serve as an officer of the court." (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 530.) Thus, at a minimum, Petitioner's probation violations adversely reflect on her fitness to practice law and her ability to serve as an officer of the court.

Petitioner's Character References

Petitioner submitted five character reference declarations in support of her Petition. Her witnesses have all met and/or known her since her suspension. They represent a range of professions: a hypnotist; former co-worker; former employee, who is now an attorney, an attorney, who is now a newspaper editor,; and a professor. Petitioner's character witnesses praised her work ethic and attested to her integrity and good character. Each character witness demonstrated a general understanding of Petitioner's underlying misconduct, based on the witness' review of the Stipulation and/or Notice of Disciplinary Charges that Petitioner provided. This court affords considerable weight to the good character testimony of these witnesses but notes that "character testimony, however laudatory, does not alone establish the requisite

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pass the Multistate Professional Responsibility Exam. In addition, Petitioner states she paid the State Bar Disciplinary Costs of $3,408.

rehabilitation [citations.]" *In Re Menna* (1995) 11 Cal.4th 975, 988. [over 25 letters from attorneys, friends and fellow employees who were knowledgeable about applicant's prior misconduct, attested to applicant's good character and who urged his reinstatement, was not evidence of requisite rehabilitation.]

Petitioner's Other Conduct Since Last Discipline

Since her suspension in 2002, Petitioner has been involved in various community organizations. She has served as fundraising chair with the Democratic Women's Council of Conejo Valley and president and vice president of the Riviera Homeowners Association (2007-2010).[4] Petitioner avers that she assisted the Westchester Secondary Charter School with their fundraising efforts. In addition, she touts the assistance she provided her mother by improving her mother's residence for sale and by handling her mother's finances prior to her death.

This court affords Petitioner limited rehabilitation credit for these activities. Service with the Democratic Women's Council of Conejo Valley and the Riviera Homeowners Association is commendable. However, as to the other activities, the principal of the charter school considered Petitioner's involvement as highly limited (about 20 hours altogether) and not particularly helpful, and taking care of one's ill parent is not a community activity or indication of rehabilitation.

As stated above, to demonstrate rehabilitation and present fitness to practice, Petitioner must also show "at a minimum" that she has engaged in "exemplary conduct" since being suspended. This she has failed to do. While it is laudable that Petitioner has engaged in service to some community organizations, her community service is not enough, given the substantial nature and extent of her misconduct.

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[4] Petitioner also declared that she worked with the Malibu Keep Christ in Christmas Project from 1997-2001 and the Malibu Bar Association from 1992-2002. The court gives no weight to Petitioner's involvement in these community activities for the purpose of demonstrating rehabilitation as each of these activities pre-dates Petitioner's actual suspension.

D. Present Fitness To Practice and Possibility of Recurrence of Misconduct

In assessing whether Petitioner has demonstrated her rehabilitation and present fitness to practice, this court notes at the outset that Petitioner's prior misconduct did not result from alcohol or substance abuse, situations where a subsequent showing of sustained sobriety would greatly aid this court in finding rehabilitation. Instead, Petitioner attributes her misappropriation of over $535,000 in entrusted client funds and other misconduct to her co-dependency on her controlling and demeaning husband and her inattention to the management of the law firm CTA.[5]

Petitioner now states that if reinstated, she does not intend to practice law with her husband, and, although she is still married to her husband (who has never undergone therapy and who still tries to bully her), she has now "found her voice" and is no longer co-dependent on him. Petitioner credits her years of hypnotherapy and her involvement in community organizations as aiding her to "take control of her life" and end her co-dependence. Petitioner's assertion is not only not persuasive, it simply doesn't make sense when one considers that before and even during her misconduct, Petitioner "had a voice." She was involved in and held leadership positions in several community groups, e.g. the Malibu Bar Association and the Malibu Keep Christ in Christmas; yet, her involvement in these community activities did not stop her from engaging in misappropriation of substantial sums of client entrusted funds. Given the magnitude of Petitioner's misconduct and the ill-defined nature of its cause, hypnotherapy, a few community activities and a handful of psychotherapy sessions simply are not enough to establish rehabilitation or a present fitness to practice law.

What is probably most telling is that Petitioner testified she did not believe that her emotional health was a legitimate issue at trial. Petitioner seemed to have perfunctorily attended

[5] Without explanation, Petitioner also credits her misconduct to a "conflict" between her, her husband and the State Bar.

a limited number of psychotherapy counseling sessions with a licensed psychotherapist[6] merely because she viewed it as "one more hurdle to overcome to regain her license." As noted by psychiatrist Dr. Davin Agustines, what is required to achieve rehabilitation here is "extensive psychotherapy by both Ms. Maginnis and Mr. Maginnis to address and mitigate future recurrences" that underlie Petitioner's misconduct.

Petitioner simply has not established by a preponderance of the evidence that she has taken sufficient measures to bolster herself psychologically in order to end her longstanding co-dependence on her husband or to address the psychological factors that led to her misconduct. As such, Petitioner has not established that the misappropriation and other misconduct with which she was charged, would not recur.

Due to doubts and significant concerns regarding Petitioner's rehabilitation and present fitness to practice law,[7] this court concludes that Petitioner has not established by a preponderance of the evidence that she has been rehabilitated and is again fit to practice law.

Petitioner's Present Learning and Ability in the General Law

For several reasons, the court concludes that Petitioner has failed to provide sufficient evidence that she now has the requisite present learning and ability in the general law.

Petitioner has not practiced law since August 2002. She stated that in an effort to gain familiarity with current legal events and issues, she visits the State Bar website, reads the

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[6] At the time of trial, Petitioner had only attended three psychotherapy sessions with Richard Girod, Psy.D.

[7] Those concerns are not eliminated by the character letters submitted in support of Petitioner's petition as most of the character letters do not address Petitioner's co-dependency issues. The exception was the letter from hypnotherapist, Judy Friend. Petitioner failed to establish that hypnotherapy is a licensed, medically recognized science that could effectively treat Petitioner's psychological problems that allegedly resulted in her misconduct. For that reason, this court gave Ms. Friend's letter no weight with regard to hypnotherapy as a treatment for Petitioner's psychological issues.

California Bar Journal, and reviews unidentified legal periodicals. Petitioner did not state the frequency with which she performs these activities. Petitioner did state, however, that during her four year suspension (which ended in 2007), she complied with her MCLE requirements. Yet, there is no evidence in the record that Petitioner has taken any legal education courses since termination of her suspension in 2007. The court notes that had Petitioner sought and been granted reinstatement after the termination of her period of stayed suspension, at a minimum, she would have been required to attend at least 50 hours in continuing legal education courses to establish compliance with the California State Bar MCLE requirements.

While Petitioner is not being held to the MCLE standards required of an active attorney, she has offered neither adequate testimony sufficient nor other evidence regarding her efforts to establish that over the fourteen years that she has not practiced law, she has remained current on the law or that she presently has the requisite legal learning and ability in the general law. (See, e.g., *In the Matter of Henschel* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 867, 881-882 [where petitioner's dealings with the California Bar demonstrated incompetent evaluation of the facts and law, 100 hours of CLE did not establish proof of present learning and ability]; *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219, 225, 228 [50 hours of CLE did not constitute proof of requisite general knowledge in reinstatement case]; c.f. *In the Matter of Murphy, supra,* 3 Cal. State Bar Ct. Rptr. at 577 [attorney established legal learning and ability by completing 52 hours in MCLE courses and working as a paralegal while on actual suspension]; *In the Matter of Terrones, supra,* 4 Cal. State Bar Ct. Rptr. at p. 301 [100 hours of educational programs and 200 hours studying estate planning, taxation, and other business related laws was adequate education regarding general law].)

IV. CONCLUSION

While there is reason to believe that petitioner **Jeannette Torrel Maginnis** may now have decided that she genuinely wants to practice law in California, for the above-stated reasons, she has failed to provide sufficient proof of her satisfaction of the criteria set forth in standard 1.2(c)(1). Accordingly, her current petition for relief from actual suspension is **DENIED**.

Dated: May 12, 2016

YVETTE D. ROLAND
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 practice, in the City and County of Los Angeles, I served a true copy of the following document(s):

DECISION DENYING 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:

EDWARD O. LEAR
CENTURY LAW GROUP LLP
5200 W CENTURY BLVD #345
LOS ANGELES, CA 90045

☒ 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:

TIMOTHY BYER
STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL
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LOS ANGELES, CA 90017-2515

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 12, 2016.

Johnnie Lee Smith
Case Administrator
State Bar Court