

FILED
JUN 28 2016 P.B.
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 16-R-12640-WKM
)	
JOSEPH L. SHALANT,)	ORDER GRANTING MOTION TO
)	DISMISS AND ORDER OF DISMISSAL
<u>A Petitioner for Reinstatement.</u>)	

This matter is before the court on the motion that the Office of the Chief Trial Counsel of the State Bar of California (OCTC) filed on May 11, 2016, seeking the dismissal of the petition for reinstatement after disbarment filed by **JOSEPH L. SHALANT** (petitioner) on April 25, 2016.¹ At the May 31, 2016, status conference in this matter, the court accepted, as petitioner's opposition to OCTC's motion to dismiss, the "Opposition to Defendant's Motion to Dismiss and Memorandum of Point and Authorities in Support of Plaintiff's Opposition" that petitioner recently filed in his federal court lawsuit against the State Bar (i.e., *Shalant v. State Bar of California*, et al., case number 2:16-CV-01069-VBF-PLA, in the United States District Court for the Southern District of California) (*Shalant v. State Bar*).

In its motion to dismiss, OCTC seeks the dismissal of the April 25, 2016, petition for reinstatement after disbarment because, as petitioner admits, he did not take and pass the

¹ OCTC inaptly titled its motion to dismiss as a "Motion to *Reject Filing*, and to Dismiss Petition for Reinstatement." (Emphasis added.) Rules of Procedure of the State Bar, rule 5.441(E) requires that any petition for reinstatement, which does not comply with the requirements of the aforementioned rule, to be dismissed, but not rejected.

Attorneys' Examination administered by the Committee of Bar Examiners (Attorneys' Examination) within three years prior to his filing of the petition as required under Rules of Procedure of the State Bar, rule 5.441(B)(3)(a) (State Bar rule 5.441(B)(3)(a)). In opposition, petitioner contends that State Bar rule 5.441(B)(3) is unenforceable as applied to him because it denies him equal protection as it treats attorneys who resigned *without* disciplinary charges pending against them more favorably than it treats attorneys who resigned *with* disciplinary charges pending or who were *disbarred*.² For the reasons set forth *post*, the court will grant the motion to dismiss and order the dismissal of the April 25, 2106, petition for reinstatement.

On December 2, 2015, petitioner filed, in State Bar Court case number 15-PF-15689-LMA, a petition requesting permission to apply for reinstatement without having taken and passed the Attorneys' Examination within three years before the filing of the petition, which OCTC opposed. Case number 15-PF-15689-LMA was assigned to State Bar Court Judge Lucy Armendariz for adjudication. In his December 2, 2015, petition requesting permission, petitioner sought relief from the reinstatement rules based on the same contention he asserts in opposition to OCTC's motion to dismiss his April 25, 2016, petition for reinstatement in the present proceeding (i.e., that the reinstatement rules deny him equal protection because they treat attorneys who resigned *without* disciplinary charges pending against them more favorably than those who resigned *with* disciplinary charges pending or who were *disbarred*).

On December 22, 2015, Judge Armendariz filed an order rejecting petitioner's equal protection claims and denying his petition requesting permission to apply for reinstatement without providing proof, at the time of filing the petition, that he has taken and passed the

² State Bar rule 5.441(B)(3) requires attorneys who resigned *without* disciplinary charges pending against them to show that they have taken and passed the Attorneys' Examination within *five years* prior to the filing of their petitions for reinstatement, but requires attorneys who resigned *with* disciplinary charges pending against them and attorneys who were *disbarred* to show that they have taken and passed the Attorneys' Examination within *three years* prior to the filing of their petitions for reinstatement.

Attorneys' Examination within three years prior to the filing of the petition as required under State Bar rule 5.441(B)(3)(a). Petitioner filed a motion for reconsideration of Judge Armendariz's December 22, 2015, order, which OCTC also opposed. Judge Armendariz denied petitioner's motion for reconsideration on January 15, 2016. Petitioner, however, did not thereafter seek review of Judge Armendariz's December 22, 2015, order, either in the review department or in the Supreme Court. Accordingly, Judge Armendariz's December 22, 2015, order became final and binding on petitioner no later than March 21, 2016.

Without question, Judge Armendariz's December 22, 2015, order is a final and binding adjudication on the merits that petitioner is not and has not been denied equal protection by the reinstatement rules, including State Bar rule 5.441(B)(3),³ that require him to show that he has taken and passed the Attorneys' Examination within three years prior to the filing of his petition for reinstatement. Indeed, petitioner filed his present petition for reinstatement on April 25, 2016, in complete disregard of Judge Armendariz's December 22, 2015, order. What is more, petitioner's opposition to OCTC's motion to dismiss is, in effect, an impermissible attempt to collaterally attack Judge Armendariz's December 22, 2015, order.

This court will give preclusive effect to Judge Armendariz's December 22, 2015, order by granting OCTC's motion to dismiss. To do otherwise would permit petitioner to collaterally attack a final and binding court order.

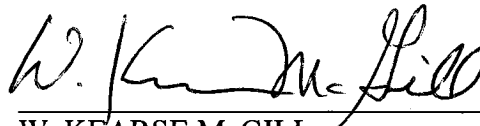
ORDER

The court orders that OCTC's May 11, 2016, motion to dismiss petitioner Joseph L. Shalant's April 25, 2016, petition for reinstatement is GRANTED. The court further orders that petitioner Joseph L. Shalant's April 25, 2016, petition for reinstatement is DISMISSED because he failed to provide proof, when he filed it, that he has taken and passed the Attorneys'

³ This court notes that State Bar rule 5.441(B)(3) was adopted in accordance with, and mirrors, California Rules of Court, rule 9.10(f)(3).

Examination within three years prior to April 25, 2016, as required under California Rules of Court, rule 9.10(f)(3) and State Bar rule 5.441(B)(3)(a). (Rules Proc. of State Bar, rule 5.441(E).)

Dated: June 28, 2016

A handwritten signature in dark ink, appearing to read "W. Kearse McGill", written over a horizontal line.

W. KEARSE MCGILL
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

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. Pursuant to standard court practice, in the City and County of Los Angeles, on June 28, 2016, I deposited a true copy of the following document(s):

ORDER GRANTING MOTION TO DISMISS AND ORDER OF DISMISSAL

in a sealed envelope for collection and mailing on that date as follows:


- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**JOSEPH L. SHALANT
14924 CAMAROSA DR.
PACIFIC PALISADES, CA 90272**

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

BROOKE A. SCHAFER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 28, 2016.



Paul Barona
Case Administrator
State Bar Court