

Scott B. Whitenack  
3388 Orcutt Rd.  
Santa Maria, CA 93455  
(805) 310-0971  
scottwhitenack@outlook.com

In Pro Per

**FILED**  
**JUN 20 2016**  
STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT  
LOS ANGELES

In The Matter of	)	Case No.: <u>16-V-14163</u>
	)	(S222909) [13-C-16128 et al]
SCOTT BRYAN WHITENACK	)	VERIFIED PETITION OF
	)	SCOTT B. WHITENACK
A Member of the State Bar	)	FOR RELIEF FROM ACTUAL
No. 102950	)	SUSPENSION .
	)	[RULES OF PROCEDURE 1.2(c)(1)]
	)	[ RULE 5.400 ET SEQ]

**COMES NOW**, the Petitioner Scott B. Whitenack (“**Petitioner**”) and hereby respectfully Petitions for Relief From Actual Suspension pursuant to Rules of Procedure 1.2(c)(1) and Rule 5.4500 et esq.<sup>1</sup> in that “Petitioner” has established, by a preponderance of the evidence, his compliance with all of the terms and conditions of his probation, 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 2 year suspension imposed on him by the Supreme Court in its January 29, 2015, order In Re Scott Bryan Whitenack on Discipline, case number (S222909) (State Bar Court case numbers 13-C-16128 DFM; 13-C-12698 DFM; 13-0-13095 INV; 13-0-14683 INV and 14-

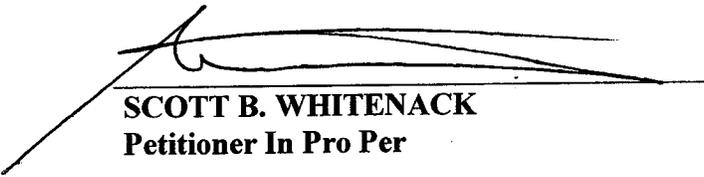
<sup>1</sup> In the Matter of Murphy (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571, 578.

0-02945 INV [All cases consolidated per stipulation on April 23, 2014] (Whitenack I). A true and correct copy of the Supreme Court Order is attached hereto as Exhibit "A" and by reference thereto is made a part hereof.

This Petition is further based on the attached declarations of Scott B. Whitenack, Dr. Peter Garcia, M.D.; Luis Castillo; Dr. Joseph C. Pon, D.C., Josie Cory and Dorothy K. Steele. The attached memorandum of points and authorities, all documents on file herein and any and all oral and documentary evidence presented at time of hearing.

DATED: June 16, 2016

Respectfully submitted,



SCOTT B. WHITENACK  
Petitioner In Pro Per

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT  
OF PETITION FOR RELIEF FROM ACTUAL SUSPENSION**

**I**  
**Jurisdiction**

In this matter, Petitioner was admitted to the practice of law in the State of California on June 10, 1982, and was at all time mentioned herein a member of the State Bar of California, and was placed on Interim Suspension on February 3, 2014. Petitioner had no prior record of discipline for over more than 31 years of practice before the misconduct occurred and acknowledged and took responsibility for his conduct and cooperated with the State Bar almost from the very beginning.

**II**  
**Procedural History**

Pursuant to the Supreme Court Order of January 29, 2015 (Whitenack I), Petitioner was suspended from the practice of law for three years, and placed on probation for three years with actual suspension for a minimum of the first two years of probation (with credit given for the period of interim suspension which commenced on February 3, 2014) and he will

remain suspended until he provides proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law. He was also ordered to comply with California Rules of Court, rule 9.20, to take, pass, and provide proof of passage of the Multistate Professional Responsibility Examination (MPRE); attend and pass the test for the Ethics School and Client Trust Accounting School; comply with the Substance Abuse Conditions and Financial Conditions as set forth in the September 19, 2014 State Bar Court Order Approving Stipulation ("Stipulated Order"). Pursuant to the terms of the Stipulated Order" Petitioner will remain on probation and comply with the balance of the terms until January 29, 2018. A true and correct copy of the Stipulated State Bar Order dated September 19, 2014 is attached hereto as Exhibit "B" and by reference thereto is made a part hereof.

On June 1, 2016, the Office of Probation issued a report confirming that Petitioner's strict compliance with all of the terms of his probation, including but not limited to filing of all of the Quarterly Reports, Urine Tests, AA Cards, Ethics School, CTA Course, and passage of the MPRE on March 19, 2016 (Score 113)<sup>2</sup>. A true and correct copy of the June 1, 2016 Probation Report is attached hereto as Exhibit "C" and by reference thereto is made a part hereof.

The "Stipulated Order" at page 18- 20 addresses the eight acts of professional misconduct that Petitioner was charged with and in pertinent part states: "In aggravation that Petitioner's statements to After Dark that he would thwart its ability to collect the debt undermined the public's confidence in and perception of the legal profession and shows a lack of insight into his misconduct. The bail bondsman was required to file suit in small claims court to secure his rights as additional cost and expense. Concurrently, the misconduct associated with the abuse of his client Trust Account to satisfy his personal obligations constitutes commingling. The theft of the necklace from a charity event, coupled with Petitioner's conduct just prior to the petty theft conviction, coupled with his other conviction, requires that substantial actual suspension be imposed to protect the public and the profession from future repetition by Petitioner." "Petitioner's compliance problems most recently experienced

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<sup>2</sup> Full compliance of the terms, except for a minor delay of 2-7 days in the retaking and receipt of the 1<sup>st</sup> observed urine test taken on March 12, 2015 and report received on March 17, 2015. Because the 1<sup>st</sup> test taken on March 3, 2015 and test results received on March 10, 2015, were not approved by the Probation Dept. the test was immediately retaken by Petitioner (see comments on report.)

with respect to the Review Department order of January 2, 2014, entering his involuntary inactive status effective February 3, 2014, are further indicia of a challenged practitioner who poses a risk to his clients.”

“Respondent has a long standing diagnosis of bipolar I disorder as well as alcohol dependence and marijuana dependence which Petitioner had brought under control with the assistance of therapy and prescription medication resulting in two and a half year prior of symptom free behavior prior to January 2013. Unfortunately, Respondent relapsed, precipitating this rash of misconduct.”

“Taking the above into account, a level of discipline which includes a two year actual suspension is appropriate to protect the public. It is also with the Standards and satisfies the aspirations of Morse, supra”

“Again, considering the factors enumerated in Standard 1.7 and giving Respondent the appropriate mitigation merited by his extensive period of discipline free practice, tempered by the aggravation associated with these multiple acts of misconduct, this matter warrants a two year actual suspension, three year stayed suspension, three years of probation and the imposition of Standard 1.2(c)(1). This level of discipline is necessary to protect the public, to maintain respect for the profession and to not allow public confidence in the profession to be undermined.”

“The stipulation also establishes in mitigation that Petitioner has no prior record of discipline over more than 31 years of practice before the misconduct occurred is entitled to mitigation. In the Matter of Blecker (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113, 127 [an attorney with 30 years of practice and no prior discipline was entitled to significant mitigation].<sup>3</sup>”

### III

**PETITIONER’S REHABILITATION & PRESENT FITNESS**  
**TO PRACTICE LAW HAS BEEN ESTABLISHED**  
**BY PREPONDERANCE OF THE EVIDENCE**

In determining whether Petitioner has established his rehabilitation by a preponderance of the evidence, the court first looks to the nature of the underlying misconduct as well as the aggravating and mitigating

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<sup>3</sup> See Stipulation page 17.

circumstances surrounding it to determine the point from which to measure Petitioner's rehabilitation, present learning and ability in the general law and, present fitness to practice before being relieved from his actual suspension. (*In the Matter of Murphy (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571, 578.*)

To establish rehabilitation, the court must first consider Petitioner's prior misconduct. The amount of evidence of rehabilitation varies according to the seriousness of the misconduct at issue. Next, the court must examine Petitioner's actions since imposition of Petitioner's discipline to determine whether his actions since imposition of Petitioner's discipline to determine whether his action, in light of the prior misconduct, sufficiently demonstrate rehabilitation by preponderance of the evidence. (*In the Matter of Murphy, supra, 3 Cal. State Bar Ct. Rptr. at 581.*) Petitioner must also show strict compliance with the terms of probation in the underlying disciplinary matter, exemplary conduct from the imposition of the prior discipline, and "that 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." (id.)

This is because, in this case (Whitenack I), the Supreme Court determined that those terms and conditions were rehabilitative sanctions appropriate for Petitioner. (*Id. At p.580.*) **Thus, "presumptively, 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 (Whitenack I) is not likely to be repeated. (Ibid.)

The evidence establishes that Petitioner has strictly complied with all of the conditions of the three-year disciplinary probation to date imposed on him in the Supreme Court's January 29, 2015 order in (Whitenack I) with the final completion date on January 29, 2018 (See Exhibit "C" Probation Report June 1, 2016) also showing he has 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 MPRE.

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" is 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.)

Petitioner's rehabilitation is also evidenced by the fact that Petitioner no longer is using medical marijuana or drinking alcohol that in a large measure contributed to his underlying rash of misconduct after relapsing at the end of January 2013. His substantial progress in that regard is discussed in the declaration of his treating psychiatrist, Dr. Garcia, M.D. states that "it is his professional opinion that Petitioner's mood disorder and past abuse of alcohol and medical marijuana are being adequately treated and therefore Petitioner is physically and mentally able to continue practicing law without danger to the public, the court and the profession, and therefore has been rehabilitated and has the present fitness to practice law." (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 595, citing *In re Billings* (1990) 50 Cal.3d 358, 367-368) [*"An attorney's rehabilitation from alcoholism or other substance abuse is entitled to significant weight in mitigation if the attorney estabes these elements: (1) the abuse was addictive in nature, (2) the abuse causally contributed to the misconduct, and (3) the attorney has undergone a meaningful and sustained period of rehabilitation."*]

Nothing in the record suggests that Petitioner has engaged in any conduct criminally or civilly charged with elements of moral turpitude after the Supreme Court filed its disciplinary order in (Whitenack I). More important, the record establishes that after January 29, 2015, Petitioner has engaged in exemplary conduct. Not only did Petitioner stop the use of medical marijuana and drinking alcohol in October 2013 as well as start going to AA meetings, he also obtain the needed medical treatment for Bipolar (Manic) behavior and undergo the necessary counseling and therapy almost a year before the Supreme Court order (Started on March 3, 2014). Petitioner also renewed his Christian faith and as also engaged in volunteer activities for his local community with "Goodwill" and local Food Bank distribution in Santa Maria. 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 has addressed all the issues that led to his suspension, and 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 is sincerely remorseful for his prior wrongdoing, and is determined and has vowed not to commit any future violations or transgressions. 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 Brow (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 317. And Cf. Toll v. State Bar (1974) 12 Cal.3d 824, 832.*)

Petitioner firmly believes that he has been rehabilitated and is confident that he has the present fitness to practice law. He has changed his life style to maintain his sobriety and has a strong support system in place with his psychiatric counseling; with his family; with his Christian faith and fellowship and he is committed to continue with the Strict Compliance of all the terms of his Probation with the State Bar Stipulated Order, which includes: 2 AA meetings and fellowship twice a month; ongoing psychiatric counseling every 2 months; monthly urine tests and filing the Quarterly Reports. Even when probation is completed on January 29, 2018, because of the change of my life style, he will still have this strong support system in place to assure that this conduct will not be repeated. He loves the practice of law and he is excited that he can continue to help people with their legal needs as he has done for over 31 years without discipline.

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

### **PETITIONER'S CHARACTER REFERENCES**

In addition to his own support declaration, Petitioner has submitted 5 supporting declarations of Dr. Peter Garcia, M.D (Treating Psychiatrist); Luis Castillo (Testing Lab); Dr. Joseph C. Pon, D.C. (Treating Chiropractor), Josie Cory (Step mother) and Dorothy K. Steele (mother). All declarations know Petitioner well and are aware of his prior misconduct. All attest to Petitioner's good character, integrity, and honesty and his remorse for his wrongful conduct. Dr. Peter Garcia, M.D. states that "Petition has been very

professional and has complied with all of my treatment plans and he appears to me to be very honest and trustworthy. I have also recently reviewed his State Bar Probation Report dated June 1, 2016 and this also confirms his strict compliance with all of the terms of his probation and demonstrates to me his commitment, honesty and trustworthiness.” Dr. Garcia, M.D., Josie Cory and Dorothy K. Steele also believe that Petitioner has learned from all of his mistakes and will most likely never repeat this conduct again and he has been rehabilitated.

**Petitioner’s Showing of Present Learning and  
Ability in the General Law**

Petitioner took and passed the MPRE in March 2016 with a high score of 113 and furnished proof thereof to the State Bar’s Office of Probation in accordance with the Supreme Court’s order in (Whitenack I). Petitioner spent over 200 hours over 3 months in reviewing ethics and preparing for the test.

Petitioner has kept current with the law and maintained his self study of civil and criminal law by reading and studying published opinions on civil procedure, ethics, real estate, personal injury, estate planning, business law, discovery and criminal law, including but not limited to, dui, constitutional, reviewed daily legal news articles, watch and listen to audio and videos as well as keeping abreast of legal issues since his suspension began. He also continued training of his office skills on the computer and office procedures and programs. In addition to studying the law, he continued his studies of health and wellness, psychology, politics, religion and other current topics, (approximately 20- 30 hours per week since February 2014.)

Petitioner also participated in 25 credit hours of MCLE approved courses including, but not limited to, legal ethics, reduction of bias, discovery, cyber security, health and medical privacy, malpractice, social media law, conflicts of interest, patent law, prevention and detection and treatment of mental or physical issues.

Petitioner has also represented himself in pro per throughout these State Bar Proceedings, including the legal research and preparation of the motions, and this petition. I have expended over 200 + hours over the course of these proceedings. *In the Matter of Terrones (Review Dept. 2001) , 4 Cal. State Bar Ct. Rptr. 289 at p. 301 [100 hours of education programs and 200*

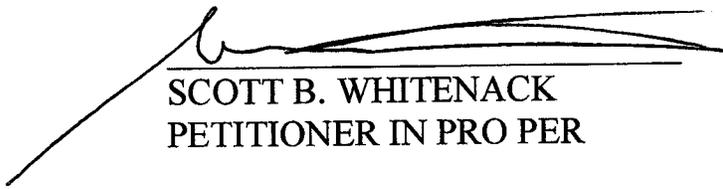
*hours studying estate planning, taxation, and other business related laws was adequate education regarding general law].)*

Petitioner continues to possess the requisite present learning and ability in the general law.

**WHEREFORE**, based on the foregoing, Petitioner has established by a preponderance of the evidence the requirements of (Rules Proc. Of State Bars, rules 5.410, 5.115, 5.409 Stds. For Attorney Sanctions for Professional Misconduct Standard 1.2(c)(1), that hat Petitioner is rehabilitated, presently fit to practice laws, and possesses the requisite present learning and ability in the general law and his Petition for Relief From Actual Suspension should be granted.

**VERIFICATION**

I, Scott B. Whitenack, Petitioner, declare under penalty of perjury that the foregoing, including all attachments and or addenda, is true and correct and that this declaration is executed at Santa Maria, California on June 16, 2016.

  
SCOTT B. WHITENACK  
PETITIONER IN PRO PER

PROOF OF SERVICE

I, Priscilla Stubblefield state:

That I am and at all times herein mention as a citizen of the United States and a resident of the County of Santa Barbara, over the age of 18 years and not a party to the within entitled action, and the facts set forth herein are known to me personally and if called as a witness I could and would competently testify thereto. That my business address is 3388 Orcutt Rd., Santa Maria, Ca. 93455 and I served a true copy of the following documents(s):

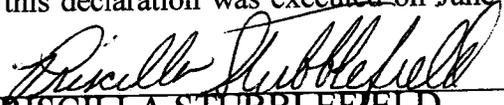
**VERIFIED PETITION OF SCOTT B. WHITENACK FOR RELIEF FROM ACTUAL SUSPENSION [RULES OF PROCEDURE 1.2(C)(1) AND RULE 5.400 ET SEQ] AND DECLARATIONS AND MEMORANDUM OF POINTS AND AUTHORITES IN SUPPORT THEREOF.**

X 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:

THE STATE BAR OF CALIFORNIA  
OFFICE OF THE CHIEF TRIAL COUNSEL  
HUGH G. RADIGAN, ESQ. DEPUTY TRIAL COUNSEL  
845 S. Figueroa St.  
L.A., CA 90017-2515

THE STATE BAR OF CALIFORNIA  
OFFICE OF PROBATION.  
IVY CHEUNG ESQ. PROBATION DEPUTY  
845 S. Figueroa St. L.A., CA 90017-2515

I declare, under penalty of perjury pursuant to the laws of the State of California, that the foregoing is true and correct and that this declaration was executed on June 16, 2016, at Santa Maria, California.

  
PRISCILLA STUBBLEFIELD