

PUBLIC MATTER

FILED

AUG 25 2016

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 16-V-14569-YDR
)	
BENJAMIN N. STERNBERG,)	DECISION GRANTING PETITION FOR
)	TERMINATION OF INACTIVE STATUS
Member No. 217300)	AND FOR RETURN TO ACTIVE STATUS
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

The issue in this case is whether Benjamin N. Sternberg (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 his actual suspension from the practice of law. (Std. 1.2(c)(1).)

For the reasons set forth in this decision, 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). Therefore, the petition is **GRANTED**.

Significant Procedural History

On July 7, 2016, Petitioner, by and through attorney James I. Ham, filed a verified petition for relief from actual suspension in State Bar Court case No. 16-V-14569. On August 8, 2016, the Office of Chief Trial Counsel of the State Bar of California (State Bar) filed a

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct, and all statutory references are to the Business and Professions Code. Furthermore, all references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

non-opposition, stating that the State Bar does not oppose the petition. The court took the petition under submission on August 19, 2016.

Findings of Fact

Petitioner was admitted to the practice of law in California on December 3, 2001, and has been a member of the State Bar at all times since that date.

Petitioner's Underlying Disciplinary Background

On September 11, 2015, the California Supreme Court issued an order in Petitioner's underlying matter, case No. S226332 (State Bar Court case No. 13-O-14433).² In its order, the Supreme Court directed that Petitioner be suspended from the practice of law for two years, execution of that period of suspension was stayed, and he was placed on probation for two years, including a one-year minimum period of actual suspension. It was further ordered that Petitioner would remain suspended until he demonstrated his rehabilitation, present fitness to practice, and present learning and ability in the general law pursuant to standard 1.2(c)(1).

This matter involved two counts of moral turpitude arising from a family trust dispute, wherein Petitioner represented one of the co-trustees. Petitioner stipulated that his failure to maintain funds as agreed by the co-trustees constituted misappropriation and a breach of his fiduciary duties. In mitigation, Petitioner cooperated with the State Bar by entering into a disciplinary stipulation fully resolving the matters. He also presented evidence of good character, had no prior record of discipline, and demonstrated substantial pro bono work and community service. No aggravating factors were involved.

Rehabilitation and Present Fitness to Practice Law

Petitioner has complied with the conditions attached to his State Bar disciplinary probation. He has shown insight into his misconduct and is remorseful. He has participated in a

² The court takes judicial notice of its own records.

wide range of charitable activities during his period of suspension, including volunteering with the "Reading to Kids" organization at White Elementary School and as an assistant basketball coach for the St. Thomas More Catholic School. He has also held volunteer positions such as serving on the board of directors of his synagogue and acting as a chairman of the board of Angela's Angels.³ Petitioner also presented six declarations from a wide range of references in the legal and general community attesting to his integrity, generosity, and strong work ethic.

Present Learning and Ability in the General Law

Petitioner has completed 25 hours of his Minimum Continuing Legal Education (MCLE) requirements well in advance of his reporting deadline. He has also stayed abreast of current legal developments by reading books, bar journals, and legal periodicals.

Discussion

In this proceeding, Petitioner has the burden of proving by a preponderance of the evidence that he has satisfied the conditions of standard 1.2(c)(1). The court looks to the nature of the underlying misconduct as well as the aggravating and mitigating 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. 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

³ Angela's Angels is a non-profit Petitioner helped create to enrich the lives of infirmed children by providing electronic tools for education, entertainment, and medical necessities.

rehabilitation by a preponderance of the evidence. (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 581.)

Petitioner must also show strict compliance with the terms of probation in the underlying disciplinary matter, exemplary conduct from the time of 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.” (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 581.)

The conduct underlying this standard 1.2(c)(1) proceeding involves Petitioner’s failure to maintain funds as agreed by the co-trustees. Petitioner stipulated that by breaching his fiduciary duty and misappropriating funds he committed two counts of moral turpitude in violation of section 6106. In mitigation, he cooperated with the State Bar, demonstrated good character, had no prior record of discipline, and provided extensive pro bono service to the community.

Petitioner reflected upon the mistakes he made in the underlying matter. He acknowledges and has gained insight into his prior misconduct. After attending the State Bar Ethics School, Petitioner fully understands his obligation to satisfy third party claims regarding funds held in trust. Should such a claim arise, as was the situation in the underlying matter, Petitioner now realizes the need to interplead the funds.

Petitioner has used his suspension period to focus on “what is most important in life; family, faith, and support.” (Petitioner’s Declaration, p. 1.) Once given the opportunity to resume the practice of law, Petitioner intends to continue this focus by implementing a healthy work-life balance.

During his suspension period, Petitioner volunteered his time with Reading to Kids, Angela’s Angels, and his synagogue, among other things. He also demonstrated strict compliance with the terms of the underlying probation.

As noted above, the State Bar does not oppose the petition. There is no indication in the record that Petitioner's conduct since the time of the imposition of his prior discipline has been anything short of exemplary.

Conclusion

Based on the evidence set forth above, the court finds that the misconduct which led to this standard 1.2(c)(1) proceeding is not likely to recur. Accordingly, the court finds that petitioner Benjamin N. Sternberg has satisfied the requirements of standard 1.2(c)(1) of the Standards for Attorney Sanctions for Professional Misconduct by demonstrating, by a preponderance of the evidence and to the satisfaction of the court, that he is rehabilitated, presently fit to practice law, and has present learning and ability in the general law.

Therefore, the petition for relief from actual suspension from the practice of law is hereby **GRANTED.**

Petitioner will be entitled to resume the practice of law in this state when all of the following conditions have been satisfied:

1. The actual suspension imposed by the California Supreme Court in its Order filed on September 11, 2015, in Supreme Court case No. S226332, has expired;
2. This order has become final, which includes the expiration of the time for seeking reconsideration and review (Rules Proc. of State Bar, rules 5.115, 5.150, 5.409 and cf. 5.410);
3. Petitioner has paid all applicable State Bar fees and previously assessed costs (Bus. & Prof. Code, §§ 6086.10 and 6140.7); and
4. Petitioner has fully complied with any other requirements for his return to active membership status and is otherwise entitled to practice law.

Dated: August 25, 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 GRANTING PETITION FOR TERMINATION OF INACTIVE
STATUS AND FOR RETURN TO ACTIVE STATUS**

as follows:

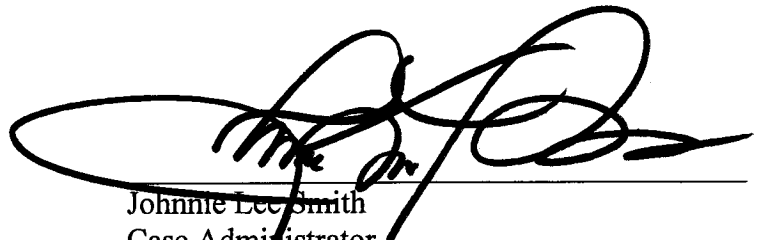
- by OVERNIGHT MAIL by enclosing the documents in a sealed envelope or package designated by an overnight delivery carrier and placing the envelope or package for collection and delivery with delivery fees paid or provided for, addressed as follows:

**JAMES IRWIN HAM
PANSKY MARKLE HAM LLP
1010 SYCAMORE AVE UNIT 308
SOUTH PASADENA, CA 91030**

- 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:

**KIMBERLY G. KASRELIOVICH
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 August 25, 2016.



Johnnie Lee Smith
Case Administrator
State Bar Court