

PUBLIC MATTER

FILED

MAY 19 2017

STATE BAR COURT OF CALIFORNIA

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of)	Case No. 16-V-17150-LMA
)	
MITCHELL CHYETTE,)	DECISION AND ORDER GRANTING
)	PETITION FOR RELIEF FROM
A Member of the State Bar, No. 113087.)	ACTUAL SUSPENSION
_____)	

Introduction¹

The issue in this case is whether petitioner Mitchell Chyette (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. 1.4(c)(ii).)²

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 1.4(c)(ii). Therefore, the petition is **GRANTED**.

Significant Procedural History

On October 28, 2016, Petitioner filed a verified petition for relief from actual suspension in State Bar Court case No. 16-V-17150.³ On November 28, 2016, the court held a status

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.

² Effective January 1, 2014, standard 1.4(c)(ii) was renumbered as standard 1.2(c)(1), without substantive modification.

³ Petitioner filed an earlier petition for relief from actual suspension in July 2014. Petitioner withdrew that petition in September 2014.



conference where Petitioner waived his right to an expedited proceeding. On December 12, 2016, the Office of Chief Trial Counsel of the State Bar of California (State Bar) filed an opposition to the petition. On December 20, 2016, the court held a status conference where Petitioner reiterated his waiver of his right to an expedited proceeding.

The State Bar was represented by Supervising Senior Trial Counsel Robert Henderson. Charles Bourdon and Ruth Edelstein represented Petitioner. A hearing was held on April 25, 2017. Following the filing of closing briefs, this matter was taken under submission for decision on May 10, 2017.

Findings of Fact

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

Petitioner's Underlying Disciplinary Background

On March 18, 2011, the California Supreme Court issued an order in Petitioner's underlying matter, case No. S189526 (State Bar Court case No. 08-O-11331). In its order, the Supreme Court directed that Petitioner be suspended from the practice of law for three years, execution of that period of suspension was stayed, and he was placed on probation for four years, including a two-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 1.4(c)(ii).

In this underlying discipline, Petitioner stipulated to extremely serious misconduct involving at least 14 clients. Said misconduct included: (1) failing to maintain client funds in trust; (2) misappropriating \$71,518.52 in client funds; (3) commingling personal funds in trust; (4) committing moral turpitude by issuing checks from a trust account with insufficient funds;

(5) aiding the unauthorized practice of law;⁴ (6) misusing his trust account and permitting it to be used by his resigned attorney employee to hide payments; (7) committing moral turpitude by, among other things, authorizing a resigned attorney to write checks from and make deposits into Petitioner's trust account, and permitting him to use the trust account for his own personal purposes; (8) employing a resigned attorney to engage in activities constituting the practice of law; (9) failing to notify the State Bar that he had employed a resigned member; and (10) committing moral turpitude by making misrepresentations to the State Bar during its investigation.

In mitigation, Petitioner: (1) suffered from significant emotional and/or mental health problems;⁵ (2) cooperated with the State Bar by entering into a stipulation as to facts and conclusions of law; (3) paid restitution in full to all of the related clients; and (4) had no prior record of discipline.

In aggravation, Petitioner's misconduct involved trust account violations and was surrounded by bad faith and dishonesty. In addition, Petitioner committed multiple acts of wrongdoing and failed to cooperate with the State Bar by making misrepresentations.

Rehabilitation and Present Fitness to Practice Law

After thorough consideration of the evidence, the court makes the following findings regarding Petitioner's rehabilitation and present fitness to practice law.

⁴ For a two-year period, Petitioner permitted a resigned attorney and his non-attorney wife to hold themselves out as attorneys and provide legal advice to clients, negotiate settlements with insurance companies, and discuss settlements with clients – all with little to no supervision by Petitioner.

⁵ Petitioner did not receive significant mitigation for his emotional and/or mental health problems because they were still ongoing at the time he signed the stipulation.

Petitioner's Acceptance of Responsibility and Understanding

Petitioner has demonstrated an understanding and insight into the nature of his misconduct. He has fully accepted responsibility for his actions and makes no excuses. He recognizes the way depression impacted him and derailed his ability to serve his clients.

Petitioner has now learned to recognize when his depression may be an issue, and he has the experience and skills to deal with it. Petitioner has also shared his knowledge on this subject in an effort to help fellow practitioners avoid these same pitfalls. In or about 2015, Petitioner wrote and posted an article giving practical tips and advice to attorneys suffering from depression. This article was entitled, *From One Lawyer to Another: Simple Steps Lawyers Can Take to Deal with Depression*. (Exh. 1066.)

Petitioner's Probation, Therapy, and Counseling

Petitioner is currently in compliance with all of the probation conditions attached to the underlying discipline. He has completed Ethics School and taken and passed the Multistate Professional Responsibility Examination (MPRE).⁶

Petitioner reports that he is currently not depressed, and has not been for a substantial period of time. He continues to take medications to treat his depression. Dr. Steven Sturges and licensed therapist Robert Gorden have been treating Petitioner for his clinical depression since 2010.

Mr. Gorden testified in these proceedings.⁷ He described how Petitioner was fully engaged in treatment and now has the tools to manage his depression.⁸ Mr. Gorden noted Petitioner's remorse and pointed out that Petitioner has taken full responsibility for his actions.

⁶ Petitioner was not required to attend the State Bar's Client Trust Accounting School, as he had already completed it in May 2010.

⁷ Petitioner also submitted a declaration from Mr. Gorden. (Exh. 1070.)

⁸ The last time Mr. Gorden saw Petitioner was about six months ago. Mr. Gorden no longer sees Petitioner on a regular basis but is available to see Petitioner whenever needed.

He describes Petitioner's dedication and willingness over the last several years to overcome his depression. While Mr. Gorden acknowledged that individuals who have suffered deep depression are 50% more likely to experience it again, he believes that Petitioner now knows how to deal with things differently. And when asked whether he believes Petitioner to be rehabilitated from his depression, Mr. Gorden responded, "Absolutely."

Petitioner's Character References

In support of his petition, Petitioner submitted eleven declarations from favorable character witnesses, many of whom were California attorneys.⁹ These witnesses demonstrated an understanding of Petitioner's issues with depression, his underlying misconduct, and the steps he has taken to achieve rehabilitation. They praised Petitioner's honesty, trustworthiness, and high moral character, as well as his legal knowledge and skills. His character witnesses did not sugarcoat the severity of the underlying misconduct, but they believe that Petitioner's diligent work toward rehabilitation now warrants relief from actual suspension.

Petitioner's Community Service

During his suspension, Petitioner actively volunteered in his community. He coached the American High School Mock Trial Team and contributed hundreds of hours to the Tides Foundation – a nonprofit program that assists people with personal bankruptcy issues. His other volunteer activities included assisting with the Temple Sinai library, and helping with the annual convention of the Education Revolution Program to benefit children with learning differences, sponsored by the Parents Education Network. Petitioner also performs additional volunteer work through his synagogue.

⁹ One of these declarants, William McGrane, Esq., also testified in this proceeding.

Petitioner's 9.20 Compliance

In its opposition to the petition, the State Bar argued that Petitioner failed to properly comply with rule 9.20, as ordered by the Supreme Court in 2011. The State Bar investigated this issue back in 2011 but chose to issue a warning letter instead of seeking discipline. At that time, the State Bar concluded that Petitioner submitted a timely 9.20 declaration that was found to be defective by the Office of Probation and rejected. When Petitioner was notified of the defect, he “acted in a reasonably prompt matter [sic] to file the compliance declaration....” (Exh. 1055.)

The State Bar also argued that information contained within Petitioner's rule 9.20 declaration was false. These allegations, however, were not supported by the limited evidence before this court. Further, the State Bar has had ample opportunity to bring a disciplinary case against Petitioner for allegedly filing a false rule 9.20 declaration, but has not done so.

The evidence before this court indicates that any perceived shortcomings in Petitioner's rule 9.20 declaration were the result of confusion and misunderstanding. Petitioner made a good faith effort to satisfactorily file his rule 9.20 declaration and did not neglect or thumb his nose at this requirement.

Present Learning and Ability in the General Law

Petitioner has completed the State Bar's Ethics and Client Trust Accounting Schools. He also took and passed the MPRE – receiving a high passing score of 122. In addition, Petitioner has obtained 42.5 hours of continuing legal education credits.

Although Petitioner has not practiced law in six years, he has remained immersed in the legal profession during most of that time period. For the past five years, Petitioner has worked as a paralegal for attorney William McGrane. As a paralegal, Petitioner has done extensive legal research and writing. Petitioner has also assisted Mr. McGrane in drafting several law-related articles.

Further, Petitioner has written a draft chapter for an ABA arbitration book, as well as a draft article on free speech and solicitation. On a daily basis, Petitioner stays abreast of changes in the law by reading the advance sheets in the Recorder and the Daily Journal.

The State Bar asserts that Petitioner should be required to take and pass the Attorneys' Examination administered by the Committee of Bar Examiners (Bar Examination) since it has been over five years since his suspension. The State Bar, however, did not cite any authority for ordering passage of the Bar Examination as a condition for relief from actual suspension in a standard 1.4(c)(ii) proceeding. And even if the court were to assume, *arguendo*, that it has the authority to order Petitioner to take the Bar Examination, such a requirement does not seem necessary or appropriate in the present matter.

Discussion

In this proceeding, Petitioner has the burden of proving by a preponderance of the evidence that he has satisfied the conditions of standard 1.4(c)(ii). 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 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.)

In this case, Petitioner’s prior misconduct was extremely serious. In fact, the misconduct was so severe that it would have been difficult for Petitioner to sufficiently demonstrate rehabilitation if only two years had elapsed since the effective date of the underlying discipline. Here, however, Petitioner demonstrated good insight and judgment by not seeking relief from his actual suspension at the earliest possible opportunity, and, instead, choosing to focus on his own personal rehabilitation process.

Over the past six years, Petitioner concentrated his attention on understanding the factors that led to the underlying misconduct and learning how to properly medicate and deal with his depression. As a result, he has now stabilized the depression problems that contributed to the underlying misconduct. Equally important, he has also developed the skills and understanding necessary to avoid similar misconduct in the future.

Petitioner has also acknowledged and taken full responsibility for his misconduct. He has demonstrated remorse, noting that he is ashamed of what happened but recognizing that it will always be a part of his life that he has to deal with and accept. Rather than harboring ill will or resentment, Petitioner has learned from this experience and looks forward to the day he can resume the practice of law.

Based on the record as a whole, the court finds that Petitioner has demonstrated by a preponderance of the evidence that he is rehabilitated and presently fit to practice law.

With respect to Petitioner's present learning and ability in the general law, the court finds that Petitioner has proven by a preponderance of the evidence that he currently possesses present learning and ability in the general law.

Therefore, based on the above, the court finds that Petitioner has demonstrated, by a preponderance of evidence, that he is rehabilitated, has present fitness to practice law, and has present learning and ability in the general law.

Conclusion


The court finds that petitioner Mitchell Chyette has satisfied the requirements of standard 1.4(c)(ii) 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.

Accordingly, 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. 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);
2. Petitioner has paid all applicable State Bar fees and previously assessed costs (Bus. & Prof. Code, §§ 6086.10 and 6140.7); and
3. Petitioner has fully complied with any other requirements for his return to active membership status and is otherwise entitled to practice law.

Dated: May 19, 2017



LUCY ARMENDARIZ
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 San Francisco, on May 19, 2017, I deposited a true copy of the following document(s):

DECISION AND ORDER GRANTING PETITION FOR RELIEF FROM ACTUAL
SUSPENSION

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

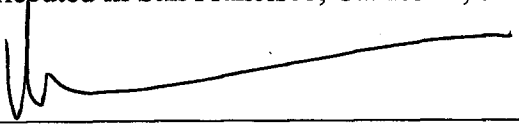
☒ by overnight mail at San Francisco, California, addressed as follows:

RUTH MARIAN EDELSTEIN
LAW OFFICES OF CHARLES F. BOURDON
1555 LAKESIDE DR
APT 121
OAKLAND, CA 94612 - 4548

☒ By personal service 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:

ROBERT HENDERSON
OFFICE OF THE CHIEF TRIAL COUNSEL
STATE BAR OF CALIFORNIA
180 HOWARD STREET
SAN FRANCISCO, CA 94105

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on May 19, 2017.



Vincent Au
Case Administrator
State Bar Court