PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

FILED

MAR - 1 2017

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

In the Matter of **ROBERT ANTHONY LOGAN,** **A Member of the State Bar, No. 211496**	Case No.: **16-V-17797-DFM** **DECISION DENYING PETITION FOR RELIEF FROM ACTUAL SUSPENSION**

INTRODUCTION

The issue in this matter is whether petitioner **Robert Anthony Logan** (Petitioner) has established, by a preponderance of the evidence, his rehabilitation, fitness to practice, and present learning and ability in the general law so that he may be relieved from the actual suspension previously imposed on him by the California Supreme Court. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii) [now std. 1.2(c)(1)]; *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289, 293-294.)

For the reasons set forth below, the court finds that Petitioner has not shown by a preponderance of evidence that he meets the all of the requirements of former 1.4(c)(ii), now standard 1.2(c)(1). Therefore, the court must deny his petition for relief from actual suspension.

PROCEDURAL HISTORY

On December 8, 2016, Petitioner filed the instant verified petition for relief from actual suspension.

On January 19, 2017, the State Bar filed an opposition to the petition, stating various grounds in opposition.

On January 30, 2017, Petitioner filed a Supplement to Petition. On February 3, 2017, the State Bar filed a request to submit additional evidence in opposition to Petitioner's petition. Each of the parties indicating that it/he had no objection to the other's request, the requests to supplement were granted during the scheduled hearing.

The hearing of the petition was held on February 14, 2017, during which Petitioner testified on his own behalf. Petitioner acted as counsel for himself. Deputy Trial Counsel Alex Hackert and Senior Trial Counsel William Todd appeared for the State Bar. At the conclusion of the hearing, the court took the petition under submission.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Jurisdiction

Petitioner was admitted to the practice of law in California on December 1, 2000, and has been a member of the State Bar since that time.

Petitioner's Record of Prior Discipline

Petitioner has a record of two prior disciplines.

Case Nos. 07-0-11229, 08-O-14645 (S185177)

Petitioner's first record of discipline resulted from his being enrolled administratively inactive on two separate occasions. The first inactive enrollment occurred on September 18, 2006, when the State Bar placed Petitioner on involuntary inactive status due to non-compliance with his Minimum continuing Legal Education (MCLE) requirements. After failing to timely submit his MCLE compliance documents, Petitioner failed to pay the $100 late fee for non-compliance and reinstatement. Despite his involuntary inactive status, Petitioner continued to practice law by appearing in court, filing pleadings, participating in discovery, and having contacts with opposing counsel.

The second involuntary inactive enrollment was on July 1, 2008, when the State Bar again administratively suspended Petitioner due to his failure to pay membership dues.[1] Again, despite his inactive status, Petitioner continued to practice and appear in court. Following complaints by a client and a superior court judge before whom Petitioner had appeared on December 2, 2008, the State Bar opened an investigation. Petitioner then ignored written inquiries from a State Bar investigator regarding those complaints.

On October 2, 2009, the State Bar filed its notice of disciplinary charges (NDC) in the above matters. When Petitioner then failed to respond to the NDC, his default was entered on January 12, 2010. Based on the allegations of the NDC, deemed admitted as a result of Petitioner's default, this court found him culpable of two counts of violating Business and Professions Code[2] section 6068, subdivision(a) [unauthorized practice of law]; two counts of violating section 6068, subdivision (d) [seeking to mislead a judicial officer]; two counts of violating section 6106 [moral turpitude]; one count of violating Rules of Professional Conduct, rule 3-700(D)(2) [failure to refund unearned fees]; and two counts of violating section 6068, subdivision (i) [failure to cooperate in State Bar investigation]. Aggravating factors included harm to the client, multiple acts of misconduct, and Petitioner's failure to participate in the disciplinary proceeding.[3] Discipline recommended by this court included a three-year stayed suspension with conditions of probation including that Petitioner be actually suspended for a minimum of two years and until (1) he makes restitution to his former client, Louise Jackson, in

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[1] At the time of this second involuntary enrollment, Petitioner still remained ineligible to practice as a result of his prior inactive enrollment.

[2] All further references to section(s) are to this code.

[3] Petitioner received no mitigation in the case. Even though Respondent then did not have a prior record of discipline, his lack of any prior discipline was not a significant mitigating circumstance because Respondent had lawfully practiced law only from his admission on December 1, 2000, until his MCLE inactive enrollment on September 18, 2006, a period of less than six years. (See *In the Matter of Lantz* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126, 135 [7 years of practice is entitled to "very limited weight"].)

the amount of $3,500, plus interest, and (2) he presents proof to this court of his rehabilitation, fitness to practice, and learning and ability in the general law, citing former Standard 1.4(c)(ii).

On October 13, 2010, the California Supreme Court issued an order (S185177), imposing discipline as recommended by this court and as set out above. Petitioner's resulting disciplinary suspension, which has continued to the present, began on November 12, 2010.

In the Supreme Court's order, Petitioner was also ordered to comply with California Rules of Court, rule 9.20 and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in that matter. As will be discussed below, Petitioner's failure to comply with this obligation promptly led to his second discipline.

Case No. 11-N-10030 (S195755)

Petitioner's second discipline, effective November 24, 2011, resulted from Petitioner's stipulated failure to timely file his rule 9.20 declaration as required by the Supreme Court order in the first disciplinary proceeding. Discipline consisted of a three-year stayed suspension, three years of probation, and a two-year actual suspension.[4] Petitioner's marital difficulties and remorse mitigated his misconduct, while Petitioner's prior discipline aggravated his misconduct.

Rehabilitation and Present Fitness to Practice

To determine whether a petitioner has established his rehabilitation and present fitness to practice law, the court first looks to the nature of the misconduct underlying the ongoing actual suspension, as well as the aggravating and mitigating circumstances surrounding that misconduct, to determine the amount of evidence required to provide persuasive evidence of that individual's rehabilitation and present fitness to practice. (*In the Matter of Murphy* (Review

[4] This discipline did not include the former Standard 1.4(c)(ii) requirement. As a result, the second disciplinary suspension has now been served, although Petitioner remains suspended until he pays the resulting disciplinary costs in full or obtains relief from such costs under rule 5.130 of the Rules of Procedure of the State Bar of California.

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 he has strictly complied with the terms of probation imposed on him under the Supreme Court's disciplinary order; (2) that he has engaged in exemplary conduct since being suspended; and (3) that misconduct by the petitioner is not likely to recur. (*Ibid.*)

In support of his contention that he is rehabilitated and has the present fitness to practice law, Petitioner attached to his petition the following evidence: (1) his own initial and supplemental declarations; (2) a psychological report of Dr. Michael Peck, Ph.D; (3) declarations of Philomena Morais (his wife), Christopher Tolbert, Jonathan Jennings, and Keith Crudupt; (4) communications regarding Petitioner's effort to obtain a grant for an educational project; (5) verification of Petitioner's restitution efforts; (6) verification of Petitioner's satisfaction of any prior indebtedness to the Client Security Fund; and (7) proof of Petitioner's partial payment of the disciplinary costs previously assessed against him. In addition, during the hearing of this matter, Petitioner testified on his own behalf.

Petitioner explains his prior misconduct as a result of his "crashing and burning" due to a midlife crisis and personal stresses related to his marriage and family. He was then unhappy and confused about who he was and what he was doing, causing him to lose focus and interest in both his personal and professional lives. The misconduct giving rise to his prior discipline and

current suspension resulted from his inattention to his professional obligations, including his obligation to read correspondence from the State Bar.

Petitioner testified that he has now reversed the downward spiral of his life by reaffirming his religious faith, participating weekly in several mens support groups in his church, and joining with his wife in seeking to reinvigorate their marriage. He also testified credibly to his remorse for his past malaise and resulting misconduct.

Petitioner also presented other evidence to support his testimony that he has been rehabilitated, including the psychological assessment of Dr. Peck, who reported that Petitioner's prior misconduct had resulted from his clinical depression at that time and that:

> At the present time Mr. Logan reports a positive marital relationship, and a clear understanding of how he "messed his life up" and a strong desire to get back on track. There is no current evidence of clinical depression, and he continues to attend his mens group to keep his life on track.

Also partially corroborating Petitioner's testimony were the declarations of his wife, Philomena Morais; Christopher Tolbert; Jonathan Jennings; and Keith Crudupt.

In her declaration, Petitioner's wife affirmed the marital problems that she and Petitioner had experienced in the past, confirmed his ongoing participation in his church's mens groups, and reported on the improvement in their relationship. With regard to Petitioner's past professional problems, she recalled that he "frequently spoke about his unhappiness with his job and his desire to work elsewhere."

Christopher Tolbert has known Petitioner since they attended UCLA together in 1992. There, they were both active in campus ministry activities. In his declaration, he also confirms that Petitioner was depressed in 2007. "It was then that I learned of his general unhappiness with his life. He was struggling with his marriage and being a father to his infant son. He was also unhappy with his work as a lawyer and was seeking other options to pursue." He then went on to describe Petitioner as still a "lost man" in 2011. Since that time, Tolbert has also joined the

mens group in which Petitioner participates and states that Petitioner "has once again become the man of integrity that I knew before." Tolbert also described Petitioner commitment to computer programming and described Petitioner's Endeavour project "in which he is attempting to teach coding to children of color":

> In discussing his career, we found that we both have a mutual interest in computer programming. We have since attended a number of coding centered Meetups and have considered writing an Applicant that would help poor and middle class people manage their debt and improve their financial condition.
>
> I know that he is still taking classes to deepen his programming abilities, and is driving Uber in order to support his family while he is working on his career.
>
> ...
>
> Robert has also created his own project in which he is attempting to teach coding to children of color. He believes very deeply that teaching children of color will equip them to get good paying jobs and directly improve their socio-economic status.
>
> He has discussed this program with me many times and I was proud of him when he was able to implement it. And while he could not continue the program for lack of funding, I know that he views this as his life's work and will one day bring this program to fruition.

Jonathan Jennings is a computer engineer who has known Petitioner only since April of 2015. They met "at a Blacks in Tech meetup" and worked together to implement Petitioner's effort to teach coding to children of color. This project was based on a computer program whereby the children learn computer coding by learning how to create their own videogames. In 2015, Petitioner arranged to use the computer facilities of a school in Santa Monica to use his program to teach coding to 13 children of color who were students there. By allowing the children to participate in the program without any cost, Petitioner was allowed to use the school's facilities without any cost. The program ran for three consecutive Saturdays in May of 2015, and was a success. However, rather than continue the program at that school during the next school year, Petitioner decided to seek to find a new host where there would be "children

from poorer neighborhoods." It was also decided to seek outside financial support for the project. In late 2015, Petitioner informed Tolbert that he was going to seek a grant from Google. Unfortunately, that grant request was rejected, and there has been no repetition of the program taught in 2015. At the conclusion of Tolbert's declaration, he expresses his opinion regarding Petitioner's good character:

> I can, without reservation, recommend that Robert's suspension be lifted. I did not know him at the time of his failings, but the man I know now is hard working, dedicated, filled with honesty and integrity and has the heart to serve the people of Los Angeles. Especially the children.

Keith Crudupt, at the time of his declaration, had known Petitioner for only 18 months. They are both UberEats drivers. In his declaration, he expressed his view regarding Petitioner's good character:

> He has always struck me as a hard working, honest and trustworthy person and I must admit that I am surprised that he has gotten into trouble with the Bar.
> ...
> We never got into specifics, but it was apparent to me that he had gone through some difficult times.
>
> It was also apparent to me that he was working hard to get his life back on track. After we finish our daily UberEats shift, he goes to study computer programming at the library or the local Starbucks. It is his pursuit of coding that interest me in discussing my business with him as a possible collaboration.
>
> I promote Reggae events and am interested in setting up a streaming app that could expand the scope of my operations around the world.
>
> We have, on multiple occasions discussed my business, his coding classes and the prospect that we may one day build my streaming app.

In addition to the above declarations, Petitioner submitted the correspondence he received from Google regarding his request for a grant for his coding project in late 2015.[5] This request was "not selected" for a grant by Google in March 2016. Although Google provided Petitioner

[5] Petitioner did not provide a copy of his grant request to this court. As a result, the nature, scope and reasonableness of the request for funding is unknown to this court.

with links to other possible sources of funding, there is no evidence that Petitioner pursued any of those possibilities. Nor is there any evidence that Petitioner sought funding from any other source, sought to continue his project at the Santa Monica school, or made any follow-up requests for funding to Google.

In opposition to Petitioner's claims of rehabilitation and present fitness to practice, the State Bar both challenged the sufficiency of Petitioner's showing and presented evidence suggesting a lack of rehabilitation and present fitness.

Having reviewed the evidence presented by both Petitioner and the State Bar, this court concludes that Petitioner has failed to present persuasive evidence that he meets the standards of standard 1.4(c)(ii) [now 1.2(c)(1)].

In the first instance, Petitioner failed in the past to strictly comply with the terms of his probation, in addition to failing to comply with his rule 9.20 obligations. He failed to timely file one quarterly report and also failed to comply with the provisions of the State Bar Act by not reporting to the State Bar the disciplinary suspension of his real estate license in 2012.

Further, Petitioner has been suspended from the practice of law since 2006. His original suspension resulted from his failure to pay the $100 late fee resulting from his late compliance with his MCLE obligation. Incredibly, at the time he filed this second petition he had still not paid that fee.

In declining to grant Petitioner's petition, this court emphasizes that the difficulty is generally the weakness of Petitioner's evidence.

Petitioner seeks to explain his delayed restitution efforts by suggesting that the delay resulted from financial hardship. He has not, however, made any effort to disclose his actual income during the many years since he was first suspended, during many of which he was working as a licensed real estate broker. Then, although his real estate license was suspended for

a period of time in 2012, he did not resume the business of selling real estate when that suspension had ended. Instead, although he had hired an attorney well-known to this court to prevent his license from being terminated in that proceeding, after prevailing on that issue, he then allowed his license to lapse. Given the many financial obligations that he continued to have at that time and Petitioner's implied claims that he was impoverished at the time, this vocational decision, possibly by default, raises many unanswered questions and concerns.

Petitioner's character declarations, taken as a whole, are also lacking. They are few in number; none are from an attorney; and two of the four declarants have only known Petitioner for less than two years. Further, while the declarations of Petitioner's wife and Tolbert are explicit in stating how unhappy Petitioner was with being an attorney in the past, there is nothing in any of the four declarations – or in Petitioner's declarations or testimony – showing that Petitioner has any renewed commitment to the practice of law.[6]

Along the same lines, the report of Dr. Peck does very little, if anything, to provide persuasive evidence that Petitioner now has been rehabilitated or now has the present fitness to withstand the stresses of practicing law. There is no indication that the doctor saw Petitioner on any more than one occasion; that he conducted any testing of Petitioner to assess his true past or present emotional conditions; that he actually observed Petitioner's response during any period of hardship; or that he provided Petitioner with any counseling or other tools to deal with any future potentially depressing events. Instead, Dr. Peck's report is quite clear in acknowledging that his reported findings are merely a recitation of what he was being told by Petitioner. As a result of the above deficiencies, the doctor's very limited final assessment – that there "is no current evidence of clinical depression" – is not particularly reassuring.

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[6] To the contrary, three of the declarations suggest that Petitioner's actual professional goals are in the area of computer coding.

In support of Petitioner's contention that he has lived an "exemplary life" since being disciplined, Petitioner offered evidence that he is "Program Director" and on the Board of Directors of Help for the Hurting, a non-profit organization providing sober living housing for recovering drug and alcohol addicts, and that he developed Endeavour Project "that provides free coding classes to children of color who have limited financial resources." (Pet. Decl., ¶¶ 9-10, p. 2.) Here again, the evidence supporting the exemplary nature of these activities is sparse and generally unpersuasive. Petitioner did not provide a declaration from anyone associated with Help for the Hurting regarding his work for that group and, during his deposition, the only personal activity he could describe was to say that the board meets once a year. With regard to the organization's actual operations, he was not able to even say during his deposition where the program's sober living facility is located – other than that it is in Los Angeles.

Similarly, with regard to the Endeavour Project, the only evidence offered by Petitioner, as noted above, was that the program had been conducted in Santa Monica for three Saturdays in 2015 and that a single grant request to Google had been rejected in early 2016. Given the descriptions by others of Petitioner's emotional commitment to this project, which is highly commendable, the lack of any evidence of diligence by him in actually pursuing the project with any particular vigor, and not at all since the beginning of 2016, detracts greatly from the weight of the evidence and again raises unanswered questions and concerns.

For all of the above reasons, this court concludes that Petitioner has failed to present persuasive evidence that he has been rehabilitated and has the present fitness to practice law.

Petitioner's Present Learning and Ability in the General Law

Petitioner has also failed to demonstrate that he has the requisite present learning and ability in the general law to warrant relief from his long-term suspension.

To establish that he possesses the requisite present learning and ability in the general law, Petitioner must prove both that he has the requisite present knowledge of the law and that he is able in it. (*In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894, 901.) While there is little authority on precisely what Petitioner must show to sustain his burden, the breadth and depth of the educational effort he had demonstrated in the instant proceeding is not sufficient.

Petitioner provided no evidence that he has worked in a law firm or in any law-related activity for any significant time since his disciplinary suspension began in 2010. He has not practiced legally since 2006. Hence, the only significant evidence supporting his contention that he has the requisite knowledge and ability in the general law is the evidence regarding his self-study efforts since he has been suspended.[7]

Petitioner's evidence regarding his self-study efforts consists of slightly less than 52 hours of MCLE programs he has taken since being suspended in 2010. This cumulative number of hours is not great, especially when measured against the length of Petitioner's absence from the practice of law. Moreover, the timing of his self-study efforts makes clear that they were only for the purpose of supporting his two petitions to be reinstated, a fact that detracts significantly from the weight to be given those efforts.[8]

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[7] There is also no persuasive evidence of any routine reading of the legal newspapers or advance sheets since Petitioner was suspended. Petitioner's declaration in that regard was uncorroborated by the declarations of any of his four declarants, who commented instead only on Petitioner's computer coding educational efforts, and was largely discredited by Petitioner's inability during his deposition to substantiate such efforts. Petitioner's passage of the MPRE and the State Bar's Ethics School also fail to provide any real evidence of his present knowledge and ability in the general law. The MPRE course material relate only to the ABA ethical standards. Those standards have not been adopted in California and certainly do not reflect this state's general law. While Petitioner's passage of the State Bar's Ethics School does represent knowledge of California laws, his passage of that school occurred in 2012, nearly five years ago.

[8] Petitioner first petitioned for reinstatement on September 1, 2016. Of Petitioner's current 51.5 hours of self-study, 20.5 hours of those study hours were within seven days of that

Case law makes clear that the cumulative number of self-study hours, standing alone, does not control whether a petitioner has provided proof of the requisite knowledge and ability. (See, e.g., *In the Matter of Henschel* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 867, 881-882 [100 hours of CLE was not sufficient]; cf. *In the Matter of Murphy, supra,* 3 Cal. State Bar Ct. Rptr. at p. 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].) Petitioner's strategy of taking a hodge-podge of different classes, concentrated in just a few days of effort associated with the filing of his petitions, fails to provide persuasive evidence that he has the requisite present knowledge and general ability in the general law.

This conclusion is buttressed by the deficiencies of the two petition and the supporting evidence prepared and submitted by him in support of those petitions. Such evidence may be considered by this court in evaluating petitioner's current fitness to practice. (*In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894, 900-901.)

CONCLUSION

While the court finds that Petitioner failed to present persuasive proof that he now meets all of the requirements of what is now standard 1.2(c)(1), the court would emphasize that this

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September 1 filing. Only 5.5 of the reported self-study hours were prior to that time. After the first petition was filed and then withdrawn, there was no evidence of any self-study from September 7, 2016, until December 2, 2016. Then, in the seven days before the second petition was filed on December 8, 2016, Petitioner suddenly did an additional 13.75 hours of self-study. The remaining portion of the 51.5 hours of self-study came only after the State Bar filed its opposition to his petition on January 19, 2017, in which it criticized the low number of reported self-study hours. After the filing of that pleading, Petitioner quickly did an additional 11.75 hours of self-study during the five days between January 22-26, 2017, raising his cumulative total to slightly less than 51.5 hours.

conclusion is based more on the absence of sufficient evidence showing that he does meet those requirements, rather than proof that he does not. The upward trends in Petitioner's life are significant and promising. While Petitioner is still not yet completely out of that hole that he previously dug for himself, he is clearly making progress in being so. He is congratulated by this court for that progress.

Nonetheless, while there is much reason to believe that Petitioner will be able in the future to provide proof of his meeting the standards now set forth in standard 1.2(c)(1), this court finds that he has not yet done so. Accordingly, this petition for relief from actual suspension is DENIED.

Dated: March 1, 2017

DONALD F. MILES
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 practices, 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:

ROBERT A. LOGAN
7858 FLIGHT AVE
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:

ALEX J. HACKERT
STATE BAR OF CALIFORNIA OCTC
845 S FIGUEROA ST
LOS ANGELES, CA 90017

I hereby certify that the foregoing is true and correct. Executed at Los Angeles, California, on March 1, 2017.

Mazie Yip
Case Administrator
State Bar Court