PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

FILED
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STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

In the Matter of **DRAGO CHARLES BARIC,** **A Member of the State Bar, No. 105383.**	Case No.: **17-V-02674-DFM** **DECISION DENYING PETITION FOR RELIEF FROM ACTUAL SUSPENSION**

INTRODUCTION

The issue in this matter is whether petitioner **Drago Charles Baric** (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 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 May 8, 2017, Petitioner filed the instant verified petition for relief from actual suspension.

On June 22, 2017, the State Bar filed an opposition to the petition, stating various grounds in opposition.

On July 12, 2017, Petitioner filed a motion to supplement his petition with eight additional documents related to continuing legal education classes. On July 14, 2017, the State Bar filed an opposition to the motion. In that opposition, the State Bar argued that five of the eight documents were already contained in Petitioner's original petition; that two of the remaining eight documents were for educational programs that will not take place until after the hearing of Petitioner's petition and, hence, are not relevant to showing his present knowledge and skill in the general law at the time of the hearing; and that the remaining document shows only that Petitioner enrolled in an educational program to be given on July 10, 2017, but does not show whether Petitioner actually participated in that program.

On July 17, 2017, the court issued an order both denying and conditionally granting portions of Petitioner's motion to supplement. Having compared the documents proffered by Petitioner with those contained in his original petition, this court found that five of the eight documents were already included in the petition. Accordingly, the court denied Petitioner's request that those documents be added to the petition. Having then examined the remaining three documents, this court agreed with the State Bar that two of the remaining documents were for programs that will not have been completed at the time of the hearing of the petition. Accordingly, Petitioner's motion to supplement his petition with those two documents was also denied. The remaining document was a confirmation that Petitioner had enrolled in a Practicing Law Institute (PLI) program entitled "Emergency Legal Challenges to Immigrant Removals, etc.," scheduled to have taken place on July 10, 2017. Because Petitioner's participation in that program would be relevant to assessing his present knowledge and ability in the general law, leave was given for Petitioner to present documentary evidence during the hearing of this matter of his attendance at that program. However, the court's order indicated that such documentary evidence should be the certificate of completion issued by PLI to Petitioner for completing that

program. In the absence of such proof of Petitioner's completion of that program, his request merely to supplement the record with the evidence that he had enrolled in the July 10, 2017, program was denied.[1]

The hearing of the petition was held on July 20, 2017, during which Petitioner testified on his own behalf. In addition, Petitioner called as a rebuttal witness his sister. Petitioner acted as counsel for himself. Senior Trial Counsel Drew Massey 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 3, 1982, and has been a member of the State Bar since that time.

Petitioner's Record of Prior Discipline

First Discipline

In Supreme Court order No. S190894 (State Bar Court case Nos. 07-O-13120, et al.), effective July 15, 2011, Petitioner was suspended for two years, the execution of which was stayed, and he was placed on probation for three years subject to conditions of probation including that he be actually suspended for the first year of probation. Petitioner was found culpable in that matter of willfully violating rule 3-700(D)(2) of the Rules of Professional Conduct[2] [failure to return unearned fees] (two counts); rule 3-110(A) [failure to act with competence] (two counts); rule 4-100(A) [commingling]; rule 4-100(B)(1) [failure to notify client of receipt of client funds]; rule 4-100(B)(3) [failure to provide accounting]; Business and

[1] At trial, Petitioner offered no evidence that he had taken the course identified in the proffered document.

[2] Unless otherwise indicated, all reference to rule(s) are to this source.

Professions Code[3] section 6068, subdivision (m) [failure to communicate with client] (three counts); and section 6068, subdivision (i) [failure to cooperate in State Bar investigation] (five counts).

Second Discipline

In Supreme Court order No. S196655 (State Bar Court case Nos. 08-O-14008, et al.), effective December 30, 2011, Petitioner was suspended for three years, the execution of which was stayed, and he was placed on probation for three years, with conditions including that he be actually suspended for a minimum of 18 months and until he makes restitution and the State Bar Court grants a motion to terminate his suspension. (Former Rules Proc. of State Bar, rule 205.) The order further provided that, if Petitioner's actual suspension continued for two years or longer, it would continue until he presents proof sufficient to this court of his rehabilitation, fitness to practice, and present learning and ability in the general law under then-standard 1.4(c)(ii). Petitioner was found culpable in that proceeding of willfully violating rule 3-700(D)(2) [failure to return unearned fees] (two counts); rule 4-100(A) [commingling]; and rule 4-100(B)(3) [failure to provide accounting].

As a result of the above two disciplines, Petitioner has remained actually suspended for disciplinary reasons at all times since July 15, 2011.

Third Discipline

Discipline in this third matter is not yet final and is instead currently pending with the California Supreme Court. Because that discipline arises out of matters that were the subject of Petitioner's successful participation in the Alternative Discipline Program, his misconduct in the matters is the subject of a stipulation of the parties and the recommended discipline is the subject of a contractual agreement by Petitioner with this court.

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[3] Unless otherwise noted, all references to section(s) are to this source.

In case No. 11-O-11689, Petitioner stipulated to willfully violating: (1) rule 3-700(A)(2) by failing to take reasonable steps to avoid foreseeable prejudice to his client upon termination of employment; (2) section 6068, subdivision (m), by failing to respond promptly to reasonable client status inquiries in a matter in which Petitioner had agreed to provide legal services to the client; (3) rule 3-700(D)(1) by failing to promptly release to his client all the client's papers and property after termination of Petitioner's employment and upon request by the client for the case file; (4) rule 3-700(D)(2) by not refunding any part of the unearned advanced fee he had received from his client; and (5) section 6068, subdivision (i), by failing to cooperate in a disciplinary investigation.

In case No. 12-N-11897, Petitioner stipulated to willfully violating rule 9.20 of the California Rules of Court by failing to timely file with the State Bar Court a declaration of compliance with rule 9.20.

This court's decision recommending discipline, authored by the undersigned, was filed on June 6, 2017, and recommends that Petitioner be suspended from the practice of law for three years; that execution of that suspension be stayed; and that Petitioner be placed on probation for four years, with the conditions of probation including actual suspension for a minimum of the first two years of probation (with credit given for the period of inactive enrollment, which commenced in that case with an order of inactive enrollment issued by this court pursuant to section 6233 on September 9, 2014) and until he provides proof to the State Bar Court of his rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

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 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.*)

Petitioner's Evidence of Rehabilitation and Present Fitness

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 declaration; (2) a declaration of Dr. James A. Schmidt, M.D., his primary care physician; (3) a declaration from Dr. Robert A. Winston, M.D., his treating psychiatrist; (4) a declaration of Francisco J. Morales, Executive Director of the Get Together Adult Day Health Care Center, regarding Petitioner's extensive community services; (5) a declaration from Damira Bacic, his sister; (6) an email from Dawn Beigel, Board Member of the Depression and Bipolar Support Alliance, South Bay Chapter, regarding Petitioner's participation and leadership role in that organization; and (7) documents related to Petitioner's community and rehabilitative efforts. During the hearing of

this matter, Petitioner testified on his own behalf and also called his sister, Damira Bacic, as a rebuttal witness.

Petitioner testified that he has suffered from depression since much earlier than his first discipline in 2011. That testimony was corroborated by Petitioner's sister, who recounted that Petitioner's depression first became visible to family members and others approximately ten years ago, causing him to withdraw from others and become difficult to contact. As his depression persevered, family members began urging him to get help.

In December 2009, a decision was rendered by the Hearing Department of this court, finding Petitioner culpable in the first disciplinary matter and recommending actual suspension. Petitioner then appealed that decision to the Review Department, which affirmed the decision in January 2011. Although Petitioner sought a hearing before the Supreme Court, that request was denied and an order of discipline, including a one-year period of actual suspension, was issued by the Supreme Court on June 15, 2011, effective July 15, 2011.

Petitioner's depression became significantly worse after things went badly for him in the first disciplinary matter. At the same time, the second disciplinary case had been initiated by the State Bar. Although Petitioner initially participated in the second case, he eventually physically and mentally withdrew from the case, causing him not to participate in the eventual trial of it. This depression continued to get worse, resulting in the third discipline for his failure to comply with the Supreme Court's rule 9.20 order in the second matter.

In early 2013, Petitioner sought professional help in dealing with his depression. He began participating in regularly scheduled therapy sessions, initially with Licensed Clinical Therapist Mara Wolfsen, beginning on January 9, 2013, and, after Ms. Wolfsen left the practice, with Marriage & Family Therapist Robert Gastelum. In addition, on February 5, 2014, Petitioner entered into a Lawyers Assistance Program (LAP) Evaluation Plan and began fully participating

in LAP. Then, since March 4, 2014, Petitioner has been under the care of psychiatrist Robert Winston, M.D., who has prescribed and monitored Petitioner's treatment with anti-depressant medication.

On July 29, 2014, Petitioner entered into a LAP Participation Plan. Petitioner then proceeded to regularly participate in weekly LAP meetings as required by the LAP Evaluation and Participation Plans. In addition, he regularly participated in bi-monthly Saturday meetings of the Depression and Bipolar Support Alliance (DBSA) South Bay support group. Since December of 2015, he has also regularly participated in Thursday meetings of the DBSA South Bay support group, all in excess of what was required by his LAP Evaluation and Participation Plans. In February 2017, Petitioner had satisfactorily completed his Participation Plan and was graduated from LAP.

In the relatively brief declaration filed by Dr. Schmidt, Petitioner's primary care physician, the doctor reported that he had diagnosed Petitioner in October 2013 as suffering from major depression; had then prescribed anti-depressant medication; and has continued to monitor Petitioner's mental health recovery. The doctor reported reaching the opinion in September 2016 that Petitioner had recovered sufficiently that he was both "mentally and physically able to return to the practice of law."

In the declaration prepared by Dr. Robert Winston, Petitioner's psychiatrist, the doctor reported treating Petitioner since March 2014 and monitoring his condition since that time. "Mr. Baric has made steady progress over the last three years since he has been under my care and has made significant progress in dealing with his depression." Dr. Winston then concluded, "As of this time [April 25, 2017] there is no reason Mr. Baric cannot return to his profession and handle his duties as a lawyer."

Since being actually suspended in 2011 and after seeking professional assistance for his depression, Petitioner has also been actively involved in his community, as detailed in his own declaration and corroborated in the declaration of Francisco J. Morales, Executive Director of the Get Together Adult Day Health Care Center.

In 2015, Petitioner received DBSA training in group facilitation and now regularly acts as a group facilitator at both Thursday and Saturday meetings of the DBSA South Bay support group. In May of 2016, he participated in two local Los Angeles County Department of Mental Health public mental health outreach fairs on behalf of DBSA South Bay, and he sponsored and organized a DBSA South Bay team to participate in the primary annual fundraising event for the National Alliance on Mental Illness [NAMI] "NAMI Walk" on October 1, 2016. Further, Petitioner began actively participating in 2016 in the Los Angeles County Department of Mental Health Service Area Advisory Committee meetings on behalf of DBSA South Bay. He is currently in the planning stages with the President of NAMI South Bay to offer peer-to-peer counseling and support group services in English and Spanish to the under-served communities of San Pedro and Wilmington.

In other areas, Petitioner contributed his time and effort to the Toberman Neighborhood Center of San Pedro in the Los Angeles County Gang Reduction and Community Engagement Program by assisting the Director of Development in fund-raising efforts with local businesses; assisted in the organization and operation of the Harbor Gateway Community Fair by participating in staff meetings, canvassing the local area in search of program office space, and assisting in the development of employment programs for local youth; contributed his time and effort to the Harbor Gateway South Neighborhood Council, both by participating in Neighborhood Council meetings, and, most notably, by assisting in the site acquisition, planning, development, and funding of the Harbor Gateway pocket park that opened in November of 2013;

contributed his time and effort to the Boys and Girls Club of the South and to the Roy W. Roberts II Watts/Willowbrook Boys and Girls Club by assisting them in applying for funding grants; contributed his time and effort to the Richstone Family Center by assisting in a major fundraising event in June 2013; assisted in fundraising efforts on behalf of the Wounded Warrior Project in 2014 and 2015; and, finally, spent significant time during 2015 and 2016 assisting the founder of Family Assistance Center, a start-up charitable organization in the Wilmington area.

Petitioner's commitment to his community is ongoing. In his sister's declaration, she noted that in March 2017 Petitioner had assisted in a fundraising activity sponsored by Los Angeles Kings Care for the benefit of the Redondo Beach schools and police department.

State Bar's Rebuttal Evidence

The State Bar challenges Petitioner's showing of rehabilitation and present fitness. Its opposition, in the first instance, is based on its criticisms of the strengths of Petitioner's showing of rehabilitation. It also seeks to rebut Petitioner's showing with evidence indicating the lack of sustained exemplary conduct by him over the last five years, including: (1) Petitioner's lack of diligence in making restitution to a former client; (2) extensive evidence regarding questionable transactions and protracted litigation involving Deutsche Bank, the bank holding the mortgage to his home; (3) representations made by Petitioner to the bankruptcy court during the pendency of that litigation; and (4) certain other representations made by Petitioner which the State Bar alleges are inaccurate and/or misleading.

Court's Conclusions

There is much evidence to suggest that Petitioner's prior misconduct resulted, at least in part, from his past problems with depression. The evidence presented by Petitioner in conjunction with the pending petition is persuasive that the treatment and counseling he has received since 2013 has resulted in that depression being well under control.

Unfortunately, the assessment of Petitioner's rehabilitation and present fitness to practice is not resolved solely by this court's receipt of a medical opinion favorable to Petitioner. As made clear by the many precedents governing this court's assessment of those issues, such as the *Murphy* case, quoted above, this court must also look at Petitioner's conduct during his suspension to evaluate whether his conduct provides corroborating evidence of rehabilitation and present fitness. Here, the evidence of Petitioner's activities over the last six years falls well short of meeting that mark.

In the first instance, Petitioner was far less than diligent in paying the restitution ordered by the Supreme Court in 2011. In fact, that restitution was not paid by Petitioner until September 26, 2016, the day before Petitioner's first petition to be reinstated to the practice was filed with this court.[4] His demonstrated lack of concern about remedying the harm caused by his prior misconduct detracts significantly from his claims of rehabilitation. (See discussion in *In the Matter of Rudnick* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 27, 36-37, and cases cited therein.)

Further, Petitioner has been involved in a series of questionable transactions and legal filings since September 2004, arising out of his troubled ownership of a home in San Pedro.

Petitioner purchased the home, together with his parents, in 1986, while he was a single man. In 1999, his parents transferred to him their interest in the property. After Petitioner married, he and his wife sought to remodel the home. Apparently unable to obtain sufficient financing to complete the remodeling, Petitioner transferred ownership of the house to his mother-in-law, Phyllis Anderson (Mother-In-Law Anderson), who then proceeded to use the home as security for a $650,000 loan, increased to $800,000 in 2005. The loan documents received by this court indicate that the loan was secured on the representation that the home was

[4] That petition was withdrawn by Petitioner just prior to the hearing of it commencing.

Mother-In-Law Anderson's residence, which it was not. Instead, the home continued to be the residence of Petitioner and his wife Susan (Susan). When Petitioner first filed for personal bankruptcy in October 2005, approximately a year after Petitioner had conveyed it to his mother-in-law, the house was not subject to his creditors, since it was not in his name and had not recently been transferred by him to a third-party. Petitioner was discharged in that bankruptcy in August 2006.

While Petitioner and Susan continued to live in the house after it had been refinanced, the monthly mortgage payments fell into arrears. In January 2010, the total debt owing had increased to $903,193. At that time, Mother-In-Law Anderson and the mortgage company entered into a loan modification agreement in a purported effort to address those arrears. (Ex. 5, p. 108.) Notwithstanding that agreement, on December 16, 2010, Mother-In-Law Anderson filed for bankruptcy. According to Petitioner's testimony during the instant hearing, she made no claim in her bankruptcy petition to having any ownership interest in the house. Nonetheless, on May 13, 2011, the bank succeeded in securing relief from the automatic stay preventing it from acting on its secured interest and filed a Notice of Default on the note. In response, in an obvious step to delay or avoid foreclosure, Mother-In-Law Anderson executed and filed a quitclaim deed on July 8, 2011, transferring her interest in the house as a "gift" to Susan, her daughter and Petitioner's wife, as Susan's separate property. (Ex. 5, p. 82.) Mother-In-Law Anderson then allowed her bankruptcy to be terminated without any discharge on December 8, 2011. In turn, Susan filed her own petition for bankruptcy less than two weeks later, on December 21, 2011.

The bank then acted to seek relief from the automatic stay that resulted from Susan's bankruptcy. On October 11, 2013, the bankruptcy court granted the bank relief from the automatic stay. Susan then filed a motion for reconsideration of that order, which was denied.

On November 20, 2013, a foreclosure sale was scheduled to take place on December 16, 2013. (Ex. 10, pp. 8-9.) The stated indebtedness had then grown to $1,018,714. (Ex. 5, p. 35.)

On December 5, 2013, shortly before the scheduled foreclosure sale, Susan executed and filed a grant deed, conveying a community property interest in the home to Petitioner. On the very next day, December 6, 2013, Petitioner filed his own petition for bankruptcy, thereby invoking another automatic stay.

On February 12, 2014, the bankruptcy court indicated its intent to dismiss Petitioner's bankruptcy action based on Petitioner's failure to comply with court orders. The dismissal order was not filed until March 3, 2014. Prior to the dismissal order being filed, the bank filed a motion for relief from the automatic stay on February 18, 2014. The hearing on that motion was scheduled for March 25, 2014.

After the dismissal order was filed by the bankruptcy court in the action filed by Petitioner in 2013, Petitioner filed a new bankruptcy petition on March 14, 2014, again triggering an automatic stay.

Although the court had issued an order dismissing the 2013 bankruptcy action, the hearing on the motion for relief from stay was held on March 25, 2014. On the following day, March 26, 2014, the court issued an order pursuant to 11 U.S. 362(d)(1) and (d)(4) – a so-called "in rem" order. These portions of Section 362 provide:

> (d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay…
>
> (1) for cause, including the lack of adequate protection of an interest in property of such party in interest;
>
> …
>
> (4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either--

> (A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or
> (B) multiple bankruptcy filings affecting such real property.
> If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.

In this order, the bankruptcy court found that Petitioner's filing of the 2013 bankruptcy petition "was part of a scheme to delay, hinder, and defraud creditors" that involved both the "transfer of all or part ownership of, or other interest in, the property without the consent of the secured creditor or court approval" and "multiple bankruptcy filings affecting the Property." (Ex. 5, p. 25.) This court concurs with those findings.

On March 27, 2014, in Petitioner's newly-filed 2014 bankruptcy action, the bank filed a motion for relief from any automatic stay. On April 14, 2014, Petitioner filed an opposition to that motion. On April 25, 2014, the court granted the bank's motion, noting that it again ordered under 11 U.S. 362(d)(1) and (d)(4). (Ex. 6, p. 21.)

On May 9, 2014, Petitioner filed a motion for relief from the "in rem" order and judgment. (Ex. 10.) In the bank's opposition to Petitioner's motion, it provided the following history of the many efforts Petitioner and his family had made to avoid having the bank exercise its rights to foreclose on the house:

> On or about July 8, 2011, Borrower executed an unauthorized Quitclaim Deed ("Quitclaim Deed") whereby she purported to transfer her interest in the Property to Mrs. Baric as a "gift," for no consideration. (See the Fourth Motion for Relief, Exhibit 4).
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> Mrs. Baric's Prior Bankruptcy Filing and Motion to Reconsider

On or about December 21,2011, Mrs. Baric, Debtor's [Petitioner's] wife, filed a voluntary petition under Chapter 13 of the Bankruptcy Code, in the U.S. Bankruptcy Court for the Central District of California - Los Angeles Division, and was assigned case number 2:11-bk-61727-SK.

On April 19, 2012, Deutsche Bank filed a Motion for Relief from the Automatic Stay (the "First Motion for Relief") with respect to the Property, which was set for hearing on May 15, 2012. (See Docket No. 28 in Case No. 2:11-bk-61727-SK). On April 27, 2012, Mrs. Baric filed an opposition to the First Motion for Relief wherein she alleged that this case was not filed in bad faith and that Deutsche Bank lacked standing to prosecute the motion. (See Opposition to Motion for Relief from the Automatic Stay [Docket No. 31] filed in Case No. 2:11-bk-61727-SK). Mrs. Baric also noted that the declaration in support of the First Motion for Relief identified Teresa Swayze, the declarant, as both the Assistant Vice President of Deutsche Bank and also the Assistant Vice President of Central Mortgage Company ("CMC") (See *id.*)

On May 3, 2012, Deutsche Bank filed a Notice of Errata Re Motion for Relief from the Automatic Stay ("Notice of Errata") explaining that, through an act of mistake and inadvertence, Deutsche Bank's counsel had erroneously checked a box in section 1 of the First Motion, thereby incorrectly identifying Ms. Swayze as Assistant Vice President of Deutsche Bank. (See Notice of Errata Re Motion for Relief from the Automatic Stay [See Docket No. 33], in Case No. 2:11-bk- 61727-SK). The Notice of Errata further clarified that Teresa Swayze was employed as Vice President of CMC, the authorized servicing agent for Deutsche Bank, and was not a Vice President for Deutsche Bank as was incorrectly implied from the First Motion. (See *id.*)

On May 6, 2012, Deutsche Bank filed a reply to the Opposition wherein it argued that it had standing to prosecute the First Motion for Relief by virtue of its authority to commence foreclosure proceedings against the Property, and that it was entitled to relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(4). (See Reply to Debtor's Opposition to Deutsche Bank National Trust Company's Motion for Relief from the Automatic Stay [Docket No. 40], pp. 3-8, filed in Case No. 2:11-bk-61727-SK). On September 5, 2012, Deutsche Bank filed a Supplemental Declaration in support of the First Motion for Relief (the "Supplemental Declaration") wherein it explained that the 2006 Assignment and First 2011 Assignment had been prepared and recorded through inadvertence, error or overnight, and that the 2005 Assignment and Second 2011 Assignments reflect the proper chain of title from the original lender to Deutsche Bank. (See Supplemental Declaration, [Docket No. 94], ¶¶ 7-10, in Case No. 2:11-bk-61727-SK). On September 14, 2012, Deutsche Bank withdrew the First Motion for Relief without prejudice. (See Docket No. 95 in Case No. 2:11-bk-61727-SK).

On September 10, 2013, Deutsche Bank filed a second Motion for Relief from the Automatic Stay (the "Second Motion for Relief) in the aforementioned case based on the failure to tender twenty (20) post petition payments totaling $99,992.52. [See Docket Nos. 129]. Subsequently, on September 24, 2013, Mrs. Baric filed a Declaration in Response to Deutsche Bank's Second Motion for Relief from Stay Dated September 10, 2013 (the "Opposition Declaration") wherein she asserts, without any supporting evidence, that the 2006 Assignment was "robo-signed" and, therefore, is invalid. (See Docket No. 131, pp. 2-4, in Case No. 2:11-bk-61727-SK). Thereafter, on October 2, 2013, Deutsche Bank filed a reply (the "Reply") to the Opposition Declaration wherein it explained that: (a) it had standing to prosecute the Second Motion based on the Assignments attached to the motion and its status as the holder of the Note; and (b) Mrs. Baric should be estopped from challenging Deutsche Bank's standing due to her inconsistent statements in her sworn bankruptcy schedules and confirmed Plan. (See Docket No. 132, pp. 7-11, in Case No. 2:11-bk-61727-SK). Furthermore, Deutsche Bank argued in its Reply that a stay relief proceeding is not the appropriate forum to raise non-substantive issues like robo-signing and fraud regarding assignments, especially when those assignments were not even included as exhibits to the Second Motion for Relief. (*See id.* at pp. 5-7).

At the October 9, 2013 hearing on the Second Motion for Relief, the Court overruled Mrs. Baric's opposition and granted the Second Motion for Relief. Two days later, on October 11, 2013, the Court entered the Relief Order. (See Docket No. 136 in Case No. 2:11-bk-61727-SK).

On October 16, 2013, Mrs. Baric filed a Motion for Reconsideration of Granting Relief from Automatic Stay to Movant Deutsche Bank (the "Motion to Reconsider") wherein Mrs. Baric reiterated the same arguments raised in her opposition to the Second Motion for Relief regarding fraud and robo-signing in connection with the assignments of Deutsche Bank's Deed of Trust (See Docket No. 138 in Case No. 2:11-bk-61727-SK). The Court denied the Motion to Reconsider and Mrs. Baric's bankruptcy case was subsequently closed on April 7, 2014. [See Docket Nos. 153 and 170 in Case No. 2:11-bk-61727-SK).

Debtor's [Petitioner's] Prior Bankruptcy Filing

On or about December 6, 2013, Debtor [Petitioner] filed a prior voluntary petition under Chapter 13 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Central District of California, Los Angeles Division, and was assigned case number 2:13-bk-38855-WB.

On February 18, 2014, Deutsche Bank filed its third Motion for Relief from the Automatic Stay (the "Third Motion for Relief') wherein it requested relief pursuant to 11 U.S.C. Section 362(d)(1) for cause based on Debtor's failure to tender post petition payments and also pursuant to

11 U.S.C. Section 362(d)(4) based on the unauthorized transfer and successive bankruptcy filings affecting the Property which evidenced a bad faith scheme to delay, hinder and/or defraud creditors. (See Docket No. 22 in Case No. 2:13-bk-38855-WB). The Court granted the Third Motion for Relief and on March 28, 2014, the Court entered the Order Granting Motion for Relief from the Automatic Stay (the "In Rem Order"), which included In Rem Relief pursuant to 11 U.S.C. Section 362(d)(4). (See Docket No. 31 in Case No. 2:13-bk-38855-WB). Debtor's case was dismissed and subsequently closed. (See Docket Nos. 36 & 33 in Case No. 2:13-bk-38855-WB).

Debtor's Current Bankruptcy Filing and Motion for Relief from Judgment

On March 14, 2014, prior to the entry and recordation of the In Rem Order from Debtor's first bankruptcy case, Debtor filed a second voluntary petition under Chapter 13 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Central District of California, Los Angeles Division, and was assigned case number 2:14-bk-14935. Shortly thereafter, on March 28, 2014, Debtor filed a Chapter 13 Plan of Reorganization which lists Deutsche Bank's claim as disputed and estimates $150,000.00 in pre-petition arrears.

On March 27, 2014, Deutsche Bank filed its fourth Motion for Relief from the Automatic Stay (the "Fourth Motion for Relief") wherein it sought relief from the automatic stay pursuant to 11 U.S.C. Section 362(d)(4) on the grounds that Debtor's bankruptcy filing was part of a bad faith scheme to delay, hinder and/or defraud creditors as evidenced by the unauthorized transfer and prior filings affecting the Property. [Docket No. 10]. In an effort to avoid subjecting itself to further unsubstantiated accusations of fraud based on Debtor's misguided understanding of the principles of standing, Deutsche Bank did not reference any assignments as exhibits in support of its Fourth Motion for Relief, instead relying on its status as the note holder to substantiate its standing to prosecute the motion. *See id.* Notwithstanding the foregoing, Debtor filed an Opposition to the Fourth Motion for Relief wherein he again alleged fraud and robo-signing in connection with the chain of assignments filed in support of the First Motion for Relief. (See Docket No. 15). Not only did Deutsche Bank previously provide an explanation regarding the duplicative assignments in its Second Motion for Relief and the Supplemental Declaration in support thereof, which was accepted by the Court in that case, but Debtor's Opposition completely ignores the fact that Deutsche Bank in no way referenced or relied on any of the assignments which are the target of Debtor's accusations of fraud, in support of its Fourth Motion for Relief. The Court granted the Fourth Motion for Relief over Debtor's Opposition and entered the Relief Order on April 25, 2014. [See Docket No. 18].

> On April 18, 2014, Deutsche Bank filed an Objection to Debtor's Plan on the grounds that Debtor's Plan was not proposed in good faith, that Debtor's bankruptcy petition was being used solely as an attempt to delay, hinder and/or defraud creditors and that due to the significant pre-petition arrears consisting of forty (40) months worth of payments totaling $192,989.42, in conjunction with Debtor's monthly net income of $820.00, Debtor lacked sufficient disposable income to fund his Plan.
>
> Following the entry of the Relief Order, Debtor filed the Motion for Relief from Judgment on May 9, 2014, wherein Debtor re-states the exact same arguments which were previously raised- and notably rejected by the Court- in his Opposition to Deutsche Bank's Fourth Motion for Relief, as well as Mrs. Baric's oppositions to the First and Second Motions for Relief, and Mrs. Baric's First Motion to Reconsider. Thus, Debtor's Motion for Relief from Judgment impermissibly requests that the Court re-litigate issues it has already decided on numerous prior occasions. Even assuming arguendo Debtor was requesting relief from a judgment on an issue that had not already been decided by the Court, which is not the case, Debtor fails to provide a basis to vacate the Relief Order under either Rule 59(e) or 60(b) of the Federal Rules of Civil Procedure for the reasons outlined in greater detail below.

(Ex. 6, pp. 29-33.)

On June 11, 2014, the court effectively denied Petitioner's motion by issuing an order dismissing his petition and prohibiting him from filing any new bankruptcy petition for 365 days after the entry of that order. (Ex. 6, p. 40.)

On June 4, 2014, while his motion for relief from the in rem order was still pending, Petitioner filed a civil action against the bank in the Los Angeles County Superior Court, alleging fraud and seeking to quiet title. On the same day, Susan, filed a new bankruptcy petition. (Ex. 9, p. 34.) That petition was dismissed on September 25, 2014.

On July 8, 2014, the bank succeeded in foreclosing on the property. (Ex. 9, pp. 36-37.) The stated amount of the arrearage on the mortgage note at that time was $1,061,252.58.

The fact that the bank now owned the house did not mean that Petitioner and his wife would agree to move out.

On August 4, 2014, the bank caused a notice to quit to be served on Petitioner and his wife. Petitioner responded by amending his civil complaint to include a cause of action for wrongful foreclosure. In turn, the bank filed a complaint for unlawful detainer on December 18, 2014. (Ex. 9, pp. 39-48.)

In July 2015, trial was conducted in the unlawful detainer action, resulting in a judgment of possession for the bank being entered on July 15, 2015, and filed on July 21, 2015. (Ex. 9, p. 50.) Rather than move out, Petitioner, who was then just beyond the 365-day prohibition of the order issued on June 11, 2014, filed a new bankruptcy petition on July 15, 2015. He also sought to challenge the unlawful detainer judgment in his quiet title action and to file an appeal of the unlawful detention judgment itself.

In early August 2015, the Los Angeles County Sheriff's Department began posting Notices to Vacate on the property. In response, on August 18, 2015, Petitioner filed a motion in his new bankruptcy action, again seeking to be relieved from the in rem order – and thereby have the protection of an automatic stay. On the following day, August 19, 2015, his motion was denied. (Ex. 8, pp. 19-27.) On October 26, 2015, Petitioner's bankruptcy action was dismissed without discharge because of Petitioner's failure to file the required certificate of financial management instruction. (Ex 8, p. 30.)

On December 10, 2015, the bank's demurrer to Petitioner's Third Amended Complaint in the civil action was sustained without leave to amend and on January 6, 2016, judgment was entered against Petitioner and in favor of the bank in that action. (Ex. 9, pp. 53-54.)

On May 18, 2016, Petitioner, still in possession of the house, filed a new bankruptcy petition. Because the two-year in rem order issued on March 26, 2014, had now expired, the bank, seeking to be able to continue its efforts to obtain possession of the house, filed a motion for relief from the automatic stay. Although the motion was opposed by Petitioner, the court

granted the requested relief and specifically authorized the bank "to regain possession of Movant's property pursuant to the ruling in In re Smith 105 B.R. 50 (Bankr. C.D. Cal. 1989) despite the filing of this or any other bankruptcy petition." (Ex. 9, pp. 57-59.)

On October 4, 2016, after Petitioner failed to appear at the initial meeting of creditors, the bankruptcy action was dismissed without discharge. Petitioner testified that he could have sought to have the action reinstated but chose not to do so.

On July 16, 2017, days before the hearing of the instant petition, Petitioner filed again for bankruptcy.

The history of Petitioner's dealings with the bank contrasts sharply with Petitioner's claims of rehabilitation and present fitness to practice law. By craftily using his knowledge of bankruptcy and legal procedures in what the bankruptcy court has twice concluded "was part of a scheme to delay, hinder, and defraud creditors," Petitioner has managed to live in a home for years without paying rent or any monthly mortgage. During his testimony in this matter, Petitioner was defiant in seeking to justify his use of serial bankruptcy petitions to forestall and avoid foreclosure, notwithstanding the many times that the bankruptcy courts have issued orders indicating - and sometimes expressly concluding - to the contrary. Both Petitioner's conduct and his ongoing attitude about his prior actions militate against any conclusion at this time that he is rehabilitated and has the present fitness to practice law.

This conclusion is buttressed by the several past representations by Petitioner challenged by the State Bar in this proceeding.

One of those representations was contained in Petitioner's May 9, 2014 motion to be relieved from the in rem order and judgment. In that motion, Petitioner was seeking to set aside an order that had been based on another court's finding that Petitioner had participated in a fraudulent scheme that involved "transfer of all or part ownership of, or other interest in, the

Property without the consent of the secured creditor or court approval." In seeking to avoid that order, Petitioner provided the court with a sworn declaration in which he provided the following history of the ownership of that property:

> Debtor originally purchased the home at issue herein, 3713 S. Barbara Street, in 1986, when Debtor was still single, and has lived there continuously, except for a rebuilding period, since 1986. [¶] Since the date of the original loan from Downey Savings, October 5, 2005, Debtor has not received any formal notification of any transfer in interest on the loan. See original loan attached as Exhibit 1 to the Motion for Relief filed herein.

(Ex. 10, p. 3.)

In this declaration, Petitioner failed to disclose that title to the property had been transferred by him to Mother-in-Law Anderson in 2004; that he was not a party to the loan that was in arrears; and that he had no entitlement to receive any "formal notification of any transfer in interest on the loan." Petitioner was well aware of all of those undisclosed facts were highly relevant to the court's assessment of whether the requested relief should be granted. Petitioner's failure to disclose them can only be characterized as concealment under the circumstances – a highly unacceptable act. (*DiSabatino v. State Bar* (1980) 27 Cal.3d 159, 163 [discipline imposed for attorney's failure to disclose to court prior unsuccessful requests for bail reduction].)

In addition, the State Bar presented evidence of a statement made by Petitioner on April 5, 2012, to the bankruptcy court handling Susan's bankruptcy, in which he represented:

> "For about two years I was unemployed and unable to find work, so I started a consulting firm called Beach City Partners, Inc. in February 2011, of which I own 100%."

(Ex. 12, p. 2.)

This statement is significantly inconsistent with a subsequent statement provided by Petitioner to the State Bar in March 2014, in which he denied owning Beach City Partners, Inc.:

> At the time [March 8, 2012], I was involved with Beach City Partners, Inc., which was neither my corporation nor was it providing legal services

> at all. The founder of the corporation was Paul Holborn. Beach City Partners was a Mutual Benefit Nonprofit set up to promote the organic growing of medical marijuana with a system design which, when completed, was to be registered and trademarked.
>
> Mr. Sutton [the complainant] was interested in the process of growing medical marijuana and wanted to start a collective and possible [sic] a storefront in Long Beach, stating at the time he was in a small cooperative situation, and Beach City was hired to do exactly that."

(Ex. 14, p. 2.)

Petitioner's testimony during the hearing of this matter, seeking to justify and reconcile these two statements, ends up indicating that both statements were inaccurate and misleading. Petitioner explained that he and his sister had been involved in early 2011 with Paul Holborn in seeking to set up a mutual benefit non-profit corporation with the name "Beach City Partners Inc." to market marijuana. Petitioner had been asked to handle the legal work in creating the new corporation, and he filed articles of incorporation for Beach City Partners, Inc. on March 4, 2011. Petitioner and his sister were to be members of the board of directors of the corporation. However, when Holborn failed to sign a necessary agreement, nothing further was done to go forward with any of the plans to grow or distribute medical marijuana.

Petitioner was suspended from the practice of the law in mid-2011. He then began a consulting business and began to use the name "Beach City Partners" and "Beach City Partners, Inc." as a "dba" in providing those consulting services. He eventually was persuaded by his sister to discontinue using the name out of concern that Holborn might have some contractual right to it.[5]

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[5] Petitioner's use of a fictitious name to transact business required him to file a fictitious name statement pursuant to section 17910 within 40 days of commencing to transact such business. There is no indication that he did. Moreover, to the extent that he did consulting work using the name "Beach City Partners, Inc." that action violated the prohibition of section 17910.5, which provides, in pertinent part, that "No person shall adopt any fictitious business name which includes ... 'Inc.' unless that person is a corporation[.]"

With regard to Petitioner's 2012 statement to the bankruptcy court, Petitioner's testimony makes clear that he did not start "a consulting firm called Beach City Partners, Inc. in February 2011, of which I [Petitioner] own 100%." He never was the owner of Beach City Partners, Inc., that corporation was never a consulting business, and his own consulting business only started to use that name much later.

For very different reasons, Petitioner's representation to the State Bar in 2014 was also inaccurate and misleading. By March 8, 2012, when Petitioner was being accused of practicing law while suspended, his prior plans to operate Beach City Partners, Inc. to distribute marijuana were long defunct. Petitioner was clearly not involved with the Holborn corporation at that time and the corporation had not been hired by Sutton to help him start a collective, as Petitioner had indicated to the State Bar. Instead, while it was true that Sutton had hired "Beach City" to help him, this was the "dba" being used by Petitioner at the time – a critical fact concealed by Petitioner in his disclosure to the State Bar.

Finally, the State Bar points to inconsistent statements made by Petitioner to the bankruptcy courts at various times regarding his income. With his statement to Susan's bankruptcy court in 2012, Petitioner presented purported financial records indicating income in 2012 averaging more than $7,000 per month. At other times, Petitioner indicated having substantially less income.

At trial, Petitioner agreed that he could not explain his various and inconsistent income statements to the court. With regard to the "Income Ledger" he attached to his declaration to the bankruptcy court in April 2012, Petitioner testified that the "income" figures given on that page do not reflect actual income, because he is sure that some of the named clients never paid him. Hence, it was clearly a misleading document. Also of interest to this court, and buttressing this court's conclusion that Petitioner's representation to the State Bar regarding the Sutton complaint

was highly misleading, is the fact that this April 2012 income ledger for Petitioner's consulting business bears the heading "Beach City Partners, Inc." – and includes a notation that Petitioner's business received $5,000 on March 8, 2012 from "Claude Sutton."

For all of the above reasons, this court concludes that the evidence fails to demonstrate that Petitioner has been rehabilitated and has the present fitness to be restored to active status as an attorney.

Petitioner's Present Learning and Ability in the General Law

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.)

Petitioner's Evidence of Present Learning and Ability

In support of his contention that he possesses the requisite present learning and ability in the general law, Petitioner presented the following evidence.

Petitioner took and passed the Professional Responsibility Exam on November 3, 2012; attended and passed the State Bar Ethics School on August 23, 2012; attended and passed the State Bar Client Trust Accounting School on August 24, 2012; and attended a six-hour Notary Class Seminar and completed and passed the California Notary Public Examination on November 10, 2015.

Petitioner also presented certificates of completion showing that he had participated in the following continuing legal education:

Practicing Law Institute

Seeking Safety in America: The Nuts and Bolts of Representing Domestic Violence Victims as Respondents in International Child Abduction Cases 2015 (January 8, 2017 – 3 hours)

Representing Unaccompanied Children in California - Special Immigrant Juvenile Status, T Visas, and Confidentiality (January 10, 2017 – 6.5 hours)

Representing Tenants in Unlawful Detainer Actions in San Francisco 2017 (January 27, 2017 – 3 hours)

Challenging Immigration Detention with Habeas Petitions - A Basic Overview (February 2, 2017 – 1 hour)

Immigration Executive Orders: What You and Your Clients Need to Know 2017 February 17, 2017 – 1 hour)

In addition, he included in his declaration a listing of the following additional classes, but without any specification as to when the programs were taken or the length of each program:

Practicing Law Institute

Approaching Veterans Issues: A Legal Overview Including an Update of California Penal Code Section 1170.9

California Eviction Defense: Protecting Low-Income Tenants 2014

California Eviction Defense 2.0: Beyond the Basics of Protecting Low- Income Tenants 2015

California Family Law Basics: Pro Bono Representation in Low-Income Family Law Cases 2015;

End-Of-Life Planning for the Low Income Client 2015

Ethical Issues in California Pro Bono Representation 2014

New Developments in Residential Loan Servicing: State, Federal and Programmatic Laws, Regulations and Standards 2013 Representing California Homeowners and Tenants in Foreclosure 2014

Representing the Pro Bono Client: Advocacy Skills for Administrative Hearings 2014

Representing Unaccompanied Children in California-Best Practices & Key Avenues for Relief from Deportation: Special Immigrant Juvenile Status and Asylum

Tax, Credit and Other Financial Consequences of Foreclosures, Short Sales and Mortgage Loan Principal Forgiveness 2016

LexVid Continuing Professional Education

Prevention of Substance Abuse for Attorneys

The Elimination of Bias in the Practice of Law

Why the Legal System Brings Unhappiness to Lawyers & What to Do About It

Finally, Petitioner included in his declaration the following self-study activities:

Self-study Articles

Mindful Lawyering, by Sara Tollefson

Miranda at 40: Applications in a Post-Enron, Post-9/11 World, by Daniel Cochan

Stress and Impairment of Attorneys, by Richard Carleton

Substance Abuse Prevention: Dealing with the Street of Lawyering, by Mary J. Frank

The Anti-Slapp Law: Powerful Dispositive Motion and Trap for the Unwary, by Mark Mosley

The Role of Chronic Stress, by Harvey Hyman

The Sobering Truth - Facing Substance Abuse in the Practice of Law, by Carol Langford & Robert Wells

In addition, Petitioner pointed to the extensive litigation, discussed above, in which he has represented himself against the bank during the time that he has been suspended.

State Bar's Rebuttal Evidence

Other than offering the court documents, discussed above, regarding Petitioner's activities in seeking to avoid the bank's foreclosure activities, the State Bar's opposition to Petitioner's showing consists in attacking the sufficiency and persuasiveness of it. Chief among these attacks is the fact that there is very little documentation to support Petitioner's claims that he attended all of the listed programs. Nor is there any evidence regarding when these programs were conducted, their length or complexity, and whether they were a "participatory activity" (as defined in rule 2.51(F) of the Rules of the State Bar).

Court's Conclusions

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].) While it is entirely possible that Petitioner has the present knowledge and requisite skill regarding the general law, the deficiencies in his proof prevent this court from so finding.

CONCLUSION

For all of the above reasons, this petition for relief from actual suspension is DENIED.

Dated: August 3, 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:

DRAGO CHARLES BARIC
1140 HIGHLAND AVE # 102
MANHATTAN BEACH, CA 90266

☒ 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:

DREW D. MASSEY
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 August 3, 2017.

Mazie Yip
Case Administrator
State Bar Court