

PUBLIC MATTER

FILED

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STATE BAR COURT
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LOS ANGELES

STATE BAR COURT OF CALIFORNIA HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No.: 17-V-07033-DFM
)	
BRADLEY H. SPEAR,)	DECISION AND ORDER GRANTING
)	PETITION FOR RELIEF FROM
A Member of the State Bar, No. 133371.)	ACTUAL SUSPENSION
)	
_____)	

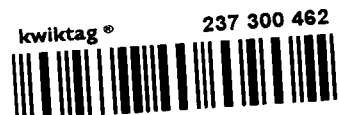
INTRODUCTION

The issue in this matter is whether Bradley H. Spear (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. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).

For the reasons set forth in this decision, the court finds that Petitioner has shown, by a preponderance of the evidence, that he has satisfied the requirements of standard 1.2(c)(1). Accordingly, the court grants Petitioner's petition for relief from his actual suspension.

SIGNIFICANT PROCEDURAL HISTORY

On November 27, 2017, Petitioner filed his verified petition for relief from the actual suspension imposed on him by the Supreme Court in its order No. S228842, filed on October 26, 2015. On November 28, 2017, an order was issued by this court, reserving a hearing date of February 7, 2018.



On January 11, 2018, the Office of Chief Trial Counsel, State Bar of California (State Bar), filed its response to the petition, opposing Petitioner's request to be restored to active status.

The scheduled hearing was conducted on February 7, 2018. Petitioner acted as counsel for himself. The State Bar was represented by Deputy Trial Counsel Caitlin Elen. The court then submitted the matter for decision, effective February 7, 2018.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Jurisdiction

Petitioner was admitted to the practice of law in California on April 8, 1988, and has been a member of the State Bar of California at all times since that date.

Background and Underlying Discipline

In this proceeding, Petitioner has the burden of proving, by a preponderance of the evidence, that he is rehabilitated, is fit to practice law, and has the requisite present learning and ability in the general law pursuant to standard 1.2(c)(1). The court looks to the nature of the underlying misconduct to determine the point from which to measure a petitioner's rehabilitation and present fitness to practice. (*In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 571, 578.) "[I]t is appropriate to consider the nature of the misconduct, as well as the aggravating and mitigating circumstances surrounding that misconduct . . . in determining the amount and nature of rehabilitation that may be required to comply with [former] standard 1.4(c)(ii) [now renumbered 1.2(c)(1)]." (*Ibid.*) The amount of evidence of rehabilitation required to justify the termination of an attorney's actual suspension varies according to the seriousness of the misconduct underlying the suspension.

Petitioner's extensive disciplinary history involves neither the practice of law nor any complaint by a client. Instead, it resulted from Petitioner's prior problems with alcoholism. That

problem resulted in his being disciplined five times in the past for misdemeanor criminal convictions resulting from his alcoholism.

In its opposition to the petition, the State Bar presented a concise and accurate summary of Petitioner's prior convictions, the circumstances surrounding each conviction, and the discipline that resulted. That summary, adopted by the court and incorporated herein by reference, is as follows:

Petitioner's Prior Record of Discipline

Petitioner has been disciplined in five prior misdemeanor conviction referral proceedings.

A. State Bar Case No. 91-C-03027 (*Spear I*)

Effective February 25, 1992, Petitioner was privately reprovved with conditions, including that he attend State Bar Ethics School and take and pass the California Professional Responsibility Examination within one (1) year from the effective date of discipline and participate in the State Bar's alcohol program.

Petitioner stipulated to the following facts and circumstances surrounding his conviction. On January 1, 1991, Petitioner's vehicle was observed swerving and jerking sharply travelling eastbound on SR-134. Upon exiting the freeway, Petitioner's vehicle traveled two to three feet onto the left shoulder of the off ramp and then ran a red light. Petitioner's vehicle then accelerated to approximately 55 miles-per-hour, which exceeded the speed limit.

Petitioner was stopped and administered field sobriety tests, which he failed to perform as demonstrated.

On May 2, 1991, Petitioner was convicted of violating California Vehicle Code section 23152(b) [driving with a blood alcohol content of .08% or higher] and was placed on three years' probation, ordered to enroll in an alcohol abuse program, sentenced to two days in jail, and required to pay a fine plus a penalty assessment, totaling \$1,175.

Prior to these events, on July 23, 1985¹, Petitioner was arrested for violating California Vehicle Code section 23152(b). On October 7, 1985,

¹ This conviction was prior to Petitioner's April 1988 admission to the State Bar.

Petitioner pled guilty to violating Vehicle Code section 23103.5 [reckless driving]. Petitioner was placed on two years' probation.

B. State Bar Case No. 93-C-13841 (*Spear II*)

Effective May 11, 1994, Petitioner was publicly reprovved with alcohol abuse conditions.

Petitioner stipulated to the following facts and circumstances surrounding his conviction. On October 3, 1992, Petitioner's vehicle was observed travelling 80 miles-per-hour. Petitioner was stopped and administered a breath test which yielded a result of .08% blood alcohol content.

On April 23, 1993, Petitioner was convicted of violating Vehicle Code section 23152(b) [driving with a blood alcohol content of .08% or higher].

C. State Bar Case No. 94-C-14481 (*Spear III*)

Effective December 22, 1994, Petitioner was privately reprovved with a two-year period of reprovval to run concurrent with *Spear II*. The conditions of reprovval included a requirement that Petitioner join the Law Practice Management Section of the State Bar for one year.

Petitioner stipulated to the following facts and circumstances surrounding his conviction. On April 28, 1994, Petitioner's vehicle was stopped for exceeding the speed limit. It was subsequently determined that Petitioner had a suspended driver's license.

On June 17, 1994, Petitioner was convicted for violation of Vehicle Code section 14601.1(a) [driving with a suspended license].

D. State Bar Case No. 02-C-11201 (*Spear IV*)

Effective July 11, 2006, Petitioner was again privately reprovved with conditions, including a three-year period of reprovval with conditions including requirements that Petitioner participate in the Lawyers Assistance Program, attend State Bar Ethics School within one (1) year of the effective date of discipline, and take and pass the Multistate Professional Responsibility Examination within one (1) year of the effective date of discipline.

Petitioner stipulated to the following facts and circumstances surrounding his conviction. On September 6, 2001, Petitioner's vehicle was observed straddling traffic lanes at estimated speed in excess of the speed limit. The vehicle subsequently ran a red light. Petitioner's vehicle was stopped and Petitioner displayed objective signs of intoxication. Petitioner submitted to a Preliminary Alcohol Screening test which indicated a .09% blood alcohol content.

On January 8, 2002, Petitioner pled no contest to Vehicle Code section 23152(b) [driving with a blood alcohol content of .08% or higher]. The court suspended imposition of sentence and placed Petitioner on three years' probation with terms and conditions, including that he complete a three-month first-offender alcohol education program; that his driving privilege be restricted for 90 days; and that he not drive without a valid license.

On March 20, 2002, Petitioner was observed driving at an estimated speed in excess of the speed limit. Petitioner's vehicle was stopped and it was determined that he was driving on a suspended or revoked license.

On June 14, 2002, Petitioner pled no contest to Vehicle Code section 14601.2 [willfully driving on a suspended or revoked license]. Petitioner's probation was revoked and reinstated with the added condition that he serve 20 days in jail.

**E. State Bar Case Nos. 13-C-13741, 14-C-03999, 14-C-04000
(*Spear V*)**

Spear V is the actual suspension from which Petitioner is seeking relief in this proceeding.

Effective November 25, 2015, the Supreme Court imposed discipline on Petitioner consisting of three years' probation with conditions, including an actual suspension of two years and until Petitioner presents proof to this court that he meets the requirements of standard 1.2(c)(1). Also included as conditions of Petitioner's probation were substance abuse conditions, including mandatory attendance at AA (or similar) meetings and random alcohol and drug testing. Petitioner was disciplined in three separate matters:

13-C-13741: On June 19, 2013, Petitioner and his girlfriend, Jill Bromberg, were drinking when they got into an argument in their front yard. During the argument, Petitioner pushed Ms. Bromberg in the torso with both hands, knocking her to the ground. On August 9, 2013, Petitioner pled no contest to violating Penal Code section 415(1) [fighting in public], and was sentenced to a 24-month summary probation and was ordered to enroll and successfully complete a 52-week batter's treatment program, attend 52 AA meetings, and obey any protective orders issued related to his conviction.

14-C-03999: On December 22, 2005, Petitioner approached an undercover officer during a "sting" operation and agreed to pay the officer for sex. On May 4, 2006, Petitioner pled no contest to violating Penal Code section 647(b) [solicitation of prostitution] and was sentenced to ten days in county jail and placed on probation for 24 months.

14-C-04000: On May 28, 2010, Petitioner was pulled over for going 45 miles-per-hour in a 35 miles-per-hour zone. Petitioner failed a sobriety test and was later found to have a blood alcohol content of .125%. On July 8, 2013, Petitioner pled no contest to a "wet" reckless in violation of Vehicle Code section 23103.5 and was placed on three years' conditional probation and ordered to pay fines and complete a wet reckless driving course in addition to the standard DUI terms and conditions of probation.

Petitioner's Rehabilitation and Present Fitness to Practice Law

In determining whether a petitioner's evidence sufficiently establishes his rehabilitation, the court first considers the prior misconduct, and then examines the petitioner's actions since the imposition of discipline to determine whether his actions, in light of the prior misconduct, sufficiently demonstrate rehabilitation. (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 581.) At a minimum, the petitioner must show that (1) he has strictly complied with the terms of probation imposed on him under the Supreme Court's disciplinary order; (2) he has engaged in exemplary conduct since being disciplined; and (3) "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." (*Ibid.*)

Petitioner's Compliance with Probation Conditions

Petitioner's three-year probation began in November 2015. He has now been on probation for more than two years. His conditions of probation have included providing quarterly reports, sobriety, drug-testing, and attendance and passage of the State Bar's Ethics School. He has been in complete compliance with all of his probation obligations. In addition, he successfully complied with the obligations to take and pass the Multistate Professional Responsibility Examination and to comply with subdivisions (a) and (c) of Rule 9.20 of the California Rules of Court.

Petitioner's Conduct Since Being Disciplined

Petitioner has taken full responsibility for the misconduct leading to his discipline. His disciplinary matters were all caused by his alcoholism. Petitioner deeply regrets and is ashamed of his actions and understands that his descent into alcoholism caused him to engage in behavior causing great damage to himself and others.

Petitioner has committed himself to a life of sobriety and service to others. He is actively involved in various alcohol cessation support activities, including Alcoholics Anonymous, whose meetings he attends at least twice weekly. Petitioner's longstanding and fervent commitment to a lifetime of sobriety is attested to in this proceeding by sworn statements from a broad cross-section of individuals, including his brother (an attorney with whom Petitioner works as a paralegal); his former wife; his girlfriend (who was the subject of his prior act of domestic violence); and numerous other individuals familiar with his rehabilitation, sobriety, and extensive service on behalf of others.

The declaration of the brother is particularly significant because of the fact that the two brothers have worked together for many years. Their work together began when the brother worked in Petitioner's law firm, and it continued after Petitioner's suspension - when Petitioner began working as a paralegal and law clerk in the brother's law firm. In his declaration, the brother provided a description of Petitioner's former drinking pattern and problems. Consistent with the fact that Petitioner practiced from 1988 until November 2015 with no indication of any client problems, the brother recounted that Petitioner was a good attorney, cared for his clients, and "was never intoxicated during work hours and he never let it [his drinking] directly affect his clients." The brother further stated that "Brad didn't drink every day and was not constantly drunk, but when he did consume alcohol bad things happened." Like the other declarants, the brother confirmed that Petitioner has not consumed alcohol for more than three years, has

expressed his regret for his past misconduct and lifestyle, and is highly committed to a life of sobriety.

The only objections by the State Bar to Petitioner being restored to active practice are (1) its contention that Petitioner's period of sobriety is too short to allow him to be restored to active status; and (2) that he has not lived a completely exemplary life because of his delay in paying a disgorgement order issued by the bankruptcy court after his suspension began. As discussed more fully below, this court does not find these limited objections to override Petitioner's otherwise clear and convincing proof of rehabilitation and present fitness to practice.

The State Bar argument that Petitioner's period of sobriety is not sufficiently lengthy to allow him to be restored to active status is predicated on its belief that his period of complete sobriety has lasted for 26 months. However, the evidence presented to this court is uncontroverted that Petitioner has completely refrained from the consumption of any alcohol for 40 months, more than three years. His commitment to sobriety began after his last conviction and before the most recent disciplinary action began. The State Bar's mistaken belief is based on Petitioner's having indicated that his period of complete "sobriety" has lasted for 26 months because he used (but did not abuse) a prescribed anti-depressant medication 26 months ago. There is no evidence that Petitioner has ever had a problem with opioids or any other drug other than alcohol; and his period of being completely "on the wagon" for 40 months is legally sufficient and, together with the overwhelming evidence of Petitioner's commitment to remaining alcohol-free, factually persuasive to this court.

The State Bar's other objection, that Petitioner was untimely in paying an order of disgorgement, is of greater merit, but not sufficient to cause this court to believe that restoring Petitioner to the practice of law will present any danger to the courts, the public, or the profession. That order of disgorgement came after, and as a result of, Petitioner's current

suspension. Before his suspension began, Petitioner had represented a client in pursuing recovery of a significant amount of money. Shortly before that recovery was effected, Petitioner's suspension began and he was compelled to turn the matter over to another law firm. That new firm then quickly settled the case for a significant recovery by the client, resulting in a large fee for the firm. Even though that favorable result had been achieved largely because of the work done by Petitioner, the bankruptcy court overseeing the matter ordered Petitioner to disgorge all of the legal fees that Petitioner had previously been paid for his work on the file. Those fees totaled slightly more than \$23,000. Because Petitioner was no longer practicing law, he lacked the financial ability to disgorge the fees that had previously been received. He also strongly disagreed with the correctness or reasonableness of the bankruptcy court's decision, and sought unsuccessfully to have the order vacated or reversed. Ultimately, Petitioner's girlfriend loaned him the money necessary to satisfy the order, and Petitioner did so shortly before filing the instant petition. No adverse action was ever taken against him by the bankruptcy court as a result of his delay in disgorging the funds.

While this court clearly does not condone Petitioner's delay in complying with the bankruptcy court's order, both the circumstances causing that delay and Petitioner's many prior years of discipline-free practice persuade this court that the situation does not indicate any lack of present fitness by Petitioner to practice law or indicate any risk of future misconduct if he is restored to active status.

Petitioner's Present Learning and Ability in the Law

In addition to the above, this court finds that Petitioner has demonstrated his present learning and ability in the general law, and the State Bar makes no contention to the contrary. As previously noted, Petitioner has passed the State Bar Ethics School and the Multistate Professional Responsibility Examination. In addition, Petitioner has worked as a paralegal and

law clerk in his brother's law firm throughout the time since his suspension began. In addition, he has completed many hours of continuing legal education and actively follows the "listserve" of the Consumer Attorneys Association of Los Angeles (CAALA).

CONCLUSION AND ORDER

The court finds that Petitioner has demonstrated, to the satisfaction of this court, his rehabilitation, present fitness to practice, and present learning and ability in the general law. Accordingly, the petition for relief from actual suspension from the practice of law pursuant to standard 1.2(c)(1) is hereby **GRANTED**. Respondent will be entitled to resume the practice of law in this state when all 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 5.410);

(2.) Petitioner has paid all applicable State Bar fees and 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.

IT IS SO ORDERED.

Dated: February 20, 2018


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 AND ORDER GRANTING PETITION FOR RELIEF FROM ACTUAL
SUSPENSION

as follows:

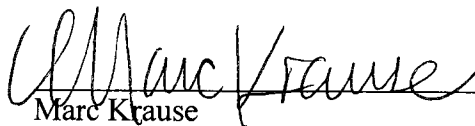
- ☒ By OVERNIGHT MAIL by enclosing the documents in a sealed envelope or package designated by an overnight delivery carrier and placing the envelope or package for collection and delivery with delivery fees paid or provided for, addressed as follows:

BRADLEY H. SPEAR
LAW OFFICES OF PAUL D. SPEAR
20943 DEVONSHIRE ST
STE 206
CHATSWORTH, CA 91311 - 2378

- ☒ 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:

CAITLIN MARIE ELEN
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 February 20, 2018.



Marc Krause
Case Administrator
State Bar Court