

PUBLIC MATTER

FILED

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STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No. 17-V-02385-YDR
)	
BRANDON L. MORENO,)	DECISION GRANTING PETITION
)	FOR RELIEF FROM ACTUAL
A Member of the State Bar, No. 233750.)	SUSPENSION
)	

Introduction¹

The issue presented in this matter is whether petitioner Brandon L. Moreno (Petitioner) has established, by a preponderance of the evidence, his rehabilitation, present fitness to practice law, and present learning and ability in the general law so that he may be relieved from the actual suspension imposed on him by the Supreme Court. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)²

Based on Petitioner's verified petition for relief from actual suspension and the Office of Chief Trial Counsel's (OCTC) response, 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) and, therefore, that his actual suspension should be terminated. Accordingly, the court GRANTS Petitioner's petition for relief from actual suspension from the practice of law.

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

² All further references to standards are to this source.



Significant Procedural History

On April 26, 2017, Petitioner filed and served a verified petition for relief from actual suspension, seeking the termination of his actual suspension and claiming he has satisfied the requirements of standard 1.2(c)(1). On May 15, 2017, OCTC filed a response, stating it did not oppose Petitioner's request. This matter was submitted for decision on June 6, 2017.

Findings of Fact

Petitioner was admitted to the practice of law in California on December 7, 2004, 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). (Rules Proc. of State Bar, rule 5.404.) 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 standard [1.2(c)(1)]." (*Ibid.*) The amount of rehabilitation evidence required to justify the termination of an attorney's actual suspension varies according to the seriousness of the misconduct underlying the suspension. (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 581.)

Prior Discipline Record – (State Bar Court case Nos. 09-O-14024; 09-O-14474; 09-O-14565; 09-O-14669; 09-O-14689; 09-O-14715; 09-O-14741; 09-O-14851; 09-O-14911; 09-O-15068; 09-O-15449; 09-O-15727; 09-O-16466; 09-O-16532; 09-O-17498; 09-O-19318; 10-O-00926; 10-O-02344; 10-O-02449; 10-O-03570; 10-O-04408; 11-O-10133)

In January 2012, Petitioner stipulated to numerous ethical violations in 22 client matters.

Petitioner stipulated that in April 2009, he opened a loan modification company entitled Homeowners Legal Assistance (HOLA). HOLA was controlled by non-attorneys. HOLA also advertised its services on radio and television throughout various markets in the United States and advertised on the Internet. Twenty-two clients employed Petitioner to represent them in their efforts to obtain home mortgage loan modifications. The clients lived in 11 different states – California, Michigan, Connecticut, Washington, Virginia, Rhode Island, Massachusetts, South Dakota, Ohio, Utah and Minnesota. Petitioner was not, and had never been licensed to practice law in any state other than California.

The clients paid advance fees to HOLA that ranged from \$1,400 to \$4,300. Petitioner received \$250 from HOLA for each client. Petitioner failed to obtain loan modifications for his clients, and he failed to perform any other legal service of any value for those clients. Thus, Petitioner did not earn the advance fees that were collected from the clients.

In July 1999, the Federal Trade Commission (FTC) took control of HOLA pursuant to a temporary restraining order. Pursuant to a stipulated judgment with the FTC, Petitioner's clients made claims for attorney's fees through a court-appointed receiver. Seventeen of Petitioner's clients received payment from the receiver based on a settlement that Petitioner paid pursuant to the FTC action.

Based on his misconduct, Petitioner stipulated to the following: (1) willfully violating rule 3-110(A) by failing to obtain loan modifications or perform any other legal service of value in each California client matter; (2) failing to properly withdraw from employment in each

California client matter, in willful violation of rule 3-700(A)(2); (3) failing to promptly refund unearned advance fees, in willful violation of rule 3-700(D)(2); (4) willfully violating rule 1-300(B) by entering into contracts for legal services with clients in states where Petitioner was not entitled to practice; and (5) entering into agreements for, charging, and collecting illegal fees from clients in states other than California, where Petitioner was not entitled to practice law, in willful violation of rule 4-200(A). Petitioner's misconduct was aggravated by client harm but tempered by his cooperation with the FTC and OCTC. His voluntary payment of \$131,134 to the receiver as a part of the settlement with the FTC was also mitigating.

As a result, on July 11, 2012, the Supreme Court filed an order suspending Petitioner from the practice of law for four years, stayed, and placing him on four years of probation with an actual suspension of two years, commencing August 10, 2012, and until Petitioner could provide proof of his rehabilitation, fitness to practice law, and learning and ability in the general law under former standard 1.4(c)(ii).³ Petitioner was also required to file an affidavit under California Rules of Court, rule 9.20 (Rule 9.20), and take and pass the Multistate Professional Responsibility Examination during his actual suspension.

Rehabilitation and 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

³ Although Petitioner stipulated to paying restitution to the remaining five clients who did not receive payment from the receiver, the Supreme Court did not order restitution in its July 11, 2012 discipline order.

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.*) OCTC does not oppose Petitioner’s petition.

Compliance with Probation Conditions

Petitioner has complied with the conditions of his probation. He has timely submitted all required probation reports to the Office of Probation and has paid his installment of costs. On December 6, 2012, Petitioner attended and successfully completed State Bar Ethics School. On December 7, 2012, Petitioner attended and completed State Bar Client Trust Accounting School.

In addition to complying with the terms of his probation, Petitioner timely complied with his Rule 9.20 obligations, and he passed the November 2012 MPRE with a scaled score of 101.

Petitioner’s Conduct Since Being Disciplined

In January 2012, Petitioner began working for Jeff Pickett, a wealthy investor who owns various businesses. Petitioner worked at Leeyo Software from January 2012 through January 2013, where he worked for the Chief Financial Officer (CFO). Petitioner assisted with internal accounting, marketing, acted as a liaison with customers, and performed other tasks. In 2013, Petitioner began working for another Pickett business – the Connor Group, Inc., which is a global accounting firm dedicated to assisting pre-IPO companies. Petitioner’s duties include monitoring the Connor Group’s finances, assistance with securing loans, reviewing and analyzing various investments and signing business checks. Petitioner also has “signing authority” on most of Pickett’s personal and business accounts.

Petitioner has also been engaged in community service endeavors since he was disciplined. Petitioner has volunteered as a Sunday school teacher and taught a religion class from June 2013 through December 2014. In December 2014, he began serving as an assistant scoutmaster for a local troop of the Boy Scouts of America, a position he continued to hold at the

time of this proceeding. Petitioner also mentors a 10 year old boy as a part of the Big Brothers Big Sisters of America.

Restitution

Petitioner has paid restitution to the clients he harmed. In addition to the 17 clients who received restitution payments pursuant to Petitioner's settlement with the FTC, Petitioner paid restitution to the remaining five clients in the underlying matter. The Supreme Court did not order Petitioner to make such payments, but Petitioner agreed to do so in his stipulation in the underlying matter. Petitioner paid restitution to four of his clients in October 2012, which was less than two months after the effective date of his discipline. He attempted to pay the fifth and final client in 2012, but he was unable to locate him. Petitioner made his final restitution payment in March 2014 after he successfully located his client. "Restitution is fundamental to the goal of rehabilitation." (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1094.) Petitioner's attitude toward restitution reflects favorably on his rehabilitation.

Petitioner's Accepts Responsibility for his Misconduct

Petitioner has taken full responsibility for the misconduct that led to his discipline. He has acknowledged that his prior disciplinary matter was caused by his failure to review the Rules of Professional Conduct, his failure to monitor client files, and his lack of communication with his clients. Petitioner has indicated that he lacked the understanding that the rules "protect clients against careless . . . very serious mistakes," and has acknowledged that his failure to fulfill his ethical obligations greatly harmed his clients. Petitioner understands that he should have studied the ethical rules to prevent the harm he caused his clients. He has learned from his past experiences and will be mindful of his ethical obligations and the impact he has on others, especially his clients. He has also gained a greater knowledge and respect for the Rules of Professional Conduct and knows that he can no longer delegate important tasks to non-attorneys.

Character References

Petitioner submitted sixteen favorable character witness declarations in support of his petition. Petitioner's character witnesses included numerous coworkers, friends, and four attorneys. The witnesses described Petitioner as a "morally upstanding individual" who is trustworthy and possesses the "highest caliber of character and integrity." The witnesses also indicated that Petitioner was "extremely dedicated to his family and work." Petitioner's employer confirmed that he works in a position of trust for his company, and that Petitioner is reliable and honest. One of the attorneys described Petitioner's misconduct as "aberrational," while another attorney provided that the disciplinary proceedings have been a "humbling and a difficult experience for Brandon." Petitioner explained the circumstances of his suspension to each witness. They indicated that Petitioner has taken full responsibility for his actions, expressed remorse, and is determined to fulfill his ethical responsibilities in the future. The witnesses believe Petitioner deserves a second chance and urged that he be returned to an active member of the State Bar.

Petitioner has shown an understanding of and remorse for the misconduct that led to his actual suspension. He has spoken openly with others about the mistakes of the past and has taken full responsibility for his misconduct. Accordingly, Petitioner has shown that his favorable character reference letters from attorneys and his friends are entitled to considerable weight. (*Feinstein v. State Bar* (1952) 39 Cal.2d 541, 547.) The court finds that the favorable character evidence lends significant value in support of Petitioner's rehabilitation and present fitness.

Present Learning and Ability in the Law

As noted, Petitioner completed the State Bar Ethics School and State Bar Client Trust Accounting School probation requirements in December 2012. He took and passed the MPRE in November 2012. In 2013, 2015 and 2016, Petitioner completed 101.75 hours in various

participatory Minimum Continuing Legal Education courses. Those courses included a variety of topics such as legal ethics, legal editing, insider trading, substance abuse, records retention, discovery, effects of globalization on IP and immigration, trademark fundamentals, commercial litigation, among many others.

Conclusion

Petitioner has shown that he has complied with the terms of his probation in the underlying disciplinary matter, has exhibited exemplary conduct from the time of his previous discipline, and has established that the conduct leading to his discipline is not likely to be repeated. Accordingly, the court finds that Petitioner has demonstrated by a preponderance of the evidence that he is rehabilitated and has present fitness to practice law.

ORDER

The court finds that petitioner Brandon L. Moreno has satisfied the requirements of standard 1.2(c)(1) of the Standards for Attorney Sanctions for Professional Misconduct by demonstrating, by a preponderance of the evidence and to the satisfaction of the court, that he is rehabilitated, presently fit to practice law, and has present learning and ability in the general law.


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

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

1. This order has become final, which includes the expiration of the time for seeking reconsideration and review (Rules Proc. of State Bar, rules 5.115, 5.150, 5.409 and cf. 5.410);
2. Petitioner has paid all applicable State Bar fees and previously assessed costs (Bus. & Prof. Code, §§ 6086.10 and 6140.7); and

3. Petitioner has fully complied with any other requirements for his return to active membership status and is otherwise entitled to practice law.

Dated: June 12, 2017



YVETTE D. ROLAND
Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rules Proc. of State Bar, rule 5.400(B); Code Civ. Proc., §§ 1011, 1013]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Following standard court practice, in the City and County of Los Angeles, I served a true copy of the following document(s):

**DECISION GRANTING PETITION FOR 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:

**DAVID ALAN CLARE
DAVID A CLARE, ATTORNEY AT LAW
444 W OCEAN BLVD STE 800
LONG BEACH, CA 90802**

- ☒ 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
OFFICE OF THE CHIEF TRIAL COUNSEL
845 S. FIGUEROA STREET
LOS ANGELES, CA 90017-2515**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 13, 2017.



Johnnie Lee Smith
Case Administrator
State Bar Court