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STATE BAR COURT
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**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of)	Case No.: 17-V-00904-DFM
)	
VICTOR DIAZ MIRELES,)	DECISION AND ORDER GRANTING
)	PETITION FOR RELIEF FROM
A Member of the State Bar, No. 249298)	ACTUAL SUSPENSION
)	
_____)	

INTRODUCTION

The issue in this matter is whether Victor Diaz Mireles (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, standard 1.2(c)(1) [formerly std. 1.4(c)(ii)].)¹

On February 15, 2017, Petitioner filed a petition seeking to provide such proof and asking to be relieved from his current suspension. On April 3, 2017, the State Bar filed a statement of non-opposition to Petitioner being restored to active status.

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.

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Jurisdiction

Petitioner was admitted to the practice of law in California on June 1, 2007, 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. (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 1.4(c)(ii)." (*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. (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 581.)

Petitioner has two prior records of discipline. His current and ongoing actual suspension, resulting in his need to file the instant petition, results from the disciplines imposed in both of those proceedings. The history of these two prior disciplines is as follows.

First Disciplinary Matter

Case Nos. 09-O-16936, 09-O-16272, and 11-O-10128

On July 11, 2011, Petitioner stipulated to culpability in case No. 09-O-16936, etc., involving three separate client matters.

In one of the matters, Petitioner was retained in September 2008 to represent a client in a marital dissolution action and was paid an advance fee of \$1,500. Petitioner then failed to file an answer in the matter on behalf of his client, and he then allowed adverse orders, including a default judgment, to be entered against the client. In the resulting disciplinary action, Petitioner stipulated both that he had failed to perform legal services with competence, in violation of rule 3-110(A) of the Rules of Professional Conduct,² and that his failure to refund the unearned portion of the \$1,500 retainer violated rule 3-700(D)(2).

In the second of the three underlying client matters, Petitioner was retained in January 2009 to represent a client in a contract dispute. When Petitioner settled the dispute and received several settlement payments on behalf of his client, he deposited the payments into his business checking account, rather than into a protected client trust account. In the disciplinary action, he stipulated that his actions violated the provisions of rule 4-100(A).

In the third client matter, Petitioner provided legal services under the umbrella of the Opportunities Group. In July 2009, Fredy Mejia met with Petitioner at Opportunities Group and retained Opportunities Group/Petitioner to file a Chapter 13 bankruptcy petition on his behalf. After this meeting and before any petition was filed on Mejia's behalf, Petitioner ended his working relationship with Opportunity Group and discontinued any further work on Mejia's behalf. Unfortunately, he neither notified Mejia that he was no longer working on the matter nor arranged for any other attorney to handle Mejia's case and preserve Mejia's legal rights. In the disciplinary case, Petitioner stipulated that his failure to file the initial bankruptcy petition for Mejia represented a failure by him to perform legal services with competence, in violation of rule 3-110(A). In mitigation, the parties stipulated that Petitioner had a good faith belief that he was not retained as counsel of record in the Mejia matter.

² Unless otherwise stated, all references to rules in this decision are to this source.

In a Stipulation Re Facts, Conclusions of Law and Disposition, Petitioner and the State Bar stipulated that the aggravating factors in the disciplinary case were significant financial harm to the three clients and multiple acts of misconduct. Mitigating factors, in addition to that mentioned above, included candor and cooperation, remorse, Petitioner's family problems arising from his then being in the process of a divorce, good character, and – significantly - Petitioner's bipolar condition for which he was then being treated.

In that stipulation, Petitioner and the State Bar also agreed to discipline consisting of two years' suspension, stayed, and two years of probation, with probation conditions including actual suspension for a minimum of fifteen (15) months and until Petitioner both pays restitution totaling \$3,800, plus interest, to the three clients and provides proof to this court of his rehabilitation, fitness to practice, and his learning and ability in the general law pursuant to then standard 1.4(c)(ii).

In an order effective on December 2, 2011, the Supreme Court of California suspended Petitioner as set forth above. It also placed Petitioner on probation for two years and ordered him to comply with the probation conditions described more fully below.

Second Disciplinary Matter

Case No. 12-O-17976

In the order filed by the Supreme Court in Petitioner's first disciplinary matter, Petitioner was ordered to satisfy the conditions of probation set forth in the above Stipulation Re Facts, Conclusions of Law and Disposition, agreed to by Petitioner and approved by this court on July 8, 2011. Those conditions included requirements that Petitioner: (1) submit to the State Bar's Office of Probation a quarterly report not later than ten days following the end of each calendar quarter during the probationary period, i.e., by each January 10, April 10, July 10, and October 10 of the probationary period; (2) provide to the Office of Probation within one year of the

effective date of the discipline, satisfactory proof of his attendance at both a session of the State Bar's Ethics School and a session of the State Bar's Client Trust Accounting School and of his passage of the tests given at the end of those sessions; (3) comply with all provisions and conditions of Petitioner's Participation Agreement with the Lawyer Assistance Program (LAP), including requesting LAP to provide quarterly reports to the Office of Probation; and (4) obtain psychiatric or psychological treatment from a duly licensed psychiatrist, psychologist, or clinical social worker not less than two times per month for two years and furnish proof of compliance with each of Petitioner's quarterly reports.

Petitioner did not fully comply with the above conditions of probation. Instead, in the second disciplinary case filed against him, he stipulated that:

- He submitted his first quarterly probation report on May 14, 2012, over one month late; submitted his second quarterly report on July 12, 2012, two days late; and submitted his third quarterly report on October 12, 2012, two days late.
- He did not provide to the Office of Probation, within one year of the effective date of the discipline, satisfactory proof of attendance at either a session of the State Bar's Ethics School or a session of the State Bar's Client Trust Accounting School. While he eventually did attend both schools, he did so three months after the deadline for him to do so.
- LAP reported to the Office of Probation that Petitioner did not comply with all provisions and conditions of his Participation Agreement.
- Petitioner was required to request LAP to submit quarterly reports to the Office of Probation. Because Petitioner was late in requesting several of those reports, LAP was late in providing those reports.
- Petitioner obtained psychiatric or psychological treatment from a duly licensed psychiatrist, psychologist, or clinical social worker two times per month, but did not furnish the required proof of that treatment with any quarterly probation report that he submitted.

In a Stipulation Re Facts, Conclusions of Law and Disposition entered into by Petitioner and the State Bar in this second disciplinary matter, the parties stipulated that the aggravating factors were Petitioner's prior record of discipline and his multiple acts of misconduct. The only agreed mitigating factor was Petitioner's pre-filing stipulation to culpability and discipline.

In that same stipulation, the parties agreed that the discipline resulting from Petitioner's probation violations would include three years' suspension, stayed, and three years of probation, with conditions including actual suspension for a minimum of two years and until Petitioner provides proof to this court of his rehabilitation, fitness to practice, and his learning and ability in the general law pursuant to standard 1.2(c)(1). That discipline recommendation was accepted and ordered by the Supreme Court, effective December 13, 2013.

While the minimum periods of actual suspension resulting from the above two disciplinary matters have now run and Petitioner has satisfied the restitution obligation set forth in the first disciplinary order, he remains actually suspended due to his need to present proof to this court of his satisfaction of the requirements of what is now standard 1.2(c)(1). The court has now assessed whether the instant petition provides that proof and concludes that it does.

Petitioner's Rehabilitation and Present Fitness to Practice Law

In determining whether a petitioner's evidence sufficiently establishes his rehabilitation, the court must not only consider the prior misconduct, but must also examine the petitioner's actions since the imposition of discipline to determine whether his subsequent actions, in light of the prior misconduct, sufficiently demonstrate the petitioner's rehabilitation by a preponderance of the evidence. (*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.*)

Compliance with Terms of Probation

The court finds that Petitioner has fully complied with the terms of his probation since he was last disciplined by the Supreme Court in December 2013. Both the three-year period of probation imposed in that order and the two-year probation of the first order have now run.

Petitioner’s Rehabilitation and Conduct Since Being Disciplined

Although Petitioner had been diagnosed at the time of his first discipline as suffering from a bipolar disorder, after his subsequent misconduct and second discipline his medical providers determined that this diagnosis was mistaken. Petitioner's therapists also concluded that the medication Petitioner had received in the past for the supposed condition had been a cause of his prior misconduct, rather than defense against it.

Since the prior misdiagnosis was determined, Petitioner has undergone a successful course of therapy and medical attention. His petition attaches persuasive medical evidence and opinions that his prior mental health problems have now been overcome and present no significant risk of any future misconduct. Instead, Petitioner now maintains a healthy lifestyle and has the support of his friends, family and new spouse. Friends and family corroborated the change in Petitioner’s mood and behavior; described his overall stability; and provided persuasive evidence regarding his present fitness to resume the practice of law.

Petitioner’s conduct shows that he is remorseful and has insight into his wrongdoing, also signs of rehabilitation. Among other things, in both of his two prior disciplines Petitioner acknowledged his misconduct and accepted the discipline resulting from it.

Petitioner's conduct since his last discipline has also been exemplary. After being taken off the debilitating medicines resulting from the bipolar misdiagnosis, Petitioner has thrived. He has secured gainful employment, paid off his State Bar and restitution obligations, and assumed an intern position in a legal office. Perhaps more significantly, he has gone from being single and living with his parents to developing a solid relationship with Kimberly Quick, a Staff Sergeant in the United States Marine Corps, such that the two of them got married in October 2016. He is now both a husband and a stepfather for her young son, and the character declarations attached to his petition make clear that he is doing well in both roles. Finally, Petitioner has made efforts to contribute to his community, volunteering on a weekly basis to drive meals to persons with HIV and AIDS on behalf of Mama's Kitchen.

In sum, the court finds persuasive evidence that Petitioner is rehabilitated and now has the present fitness to practice law.

Petitioner's Present Learning and Ability in the General Law

The court also concludes that Petitioner now has the requisite present learning and ability in the general law.

Petitioner has worked for much of the period of his suspension in the Law Offices of Linda S. McAleer. In attorney McAleer's opinion, he has the requisite skill and knowledge to resume the practice of law, as well as the present fitness. Attorney Carree K. Nahama, who also works with Petitioner, agrees with that assessment. The court observes that these opinions regarding Petitioner's legal abilities are corroborated by the quality of the instant petition, prepared by Petitioner on his own behalf.

In addition, Petitioner completed all 25 hours of the Minimum Continuing Legal Education requirements for the compliance period ending on January 31, 2015; passed the Multistate Professional Responsibility Examination with a score of 124; completed an additional

13.75 of formal MCLE credits since December 2015; and regularly engages in self-study of legal issues and developments.

CONCLUSION

Petitioner has complied with the terms of his probation since his last discipline, has exhibited exemplary conduct from the time of that last discipline, and has established that the conduct leading to his prior disciplines is not likely to be repeated. In sum, the court finds that Petitioner has demonstrated by a preponderance of the evidence that he is rehabilitated and that he has both the present fitness and requisite knowledge and ability in the general law to practice law.

ORDER

As the court finds that petitioner **Victor Diaz Mireles**, State Bar No. 249298, has successfully demonstrated his rehabilitation, present fitness to practice, and present learning and ability in the general law, his petition for relief from actual suspension from the practice of law is **GRANTED**. Petitioner 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: April 10, 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 AND ORDER GRANTING PETITION FOR RELIEF FROM ACTUAL
SUSPENSION

as follows:

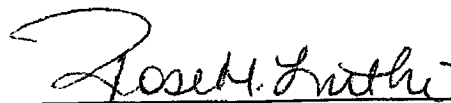
- By OVERNIGHT MAIL by enclosing the documents in a sealed envelope or package designated by an overnight delivery carrier and placing the envelope or package for collection and delivery with delivery fees paid or provided for, addressed as follows:

VICTOR D. MIRELES
4413 MISSION AVE. APT G109
OCEANSIDE CA 92057-6765

- 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:

SHANE MORRISON

I hereby certify that the foregoing is true and correct. Executed at Los Angeles, California, on April 10, 2017.



Rose M. Luthi
Case Administrator
State Bar Court