PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **G. PAUL HOWES,** **A Member of the State Bar, No. 187772.**	Case No.: **18-V-12197-DFM** **DECISION GRANTING PETITION FOR RELIEF FROM ACTUAL SUSPENSION**

INTRODUCTION

The issue in this matter is whether petitioner **G. Paul Howes** (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. 1.2(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 shown by a preponderance of evidence that he meets the requirements of standard 1.2(c)(1). Therefore, the court grants his petition for relief from actual suspension, subject to the conditions set forth below.

PROCEDURAL HISTORY

On March 20, 2018, Petitioner filed the instant verified petition for relief from actual suspension.

On May 3, 2018, the State Bar filed an opposition to the petition, stating various grounds in opposition and requesting a hearing. The date of June 6, 2018 had previously been reserved

by the court for such a hearing, with notice of that reserved date being provided to the parties on March 22, 2018.

On May 16, 2018, Petitioner filed a motion to supplement his petition with an additional declaration from Petitioner and with additional documents. That motion was granted on March 21, 2018.

On May 23, 2018, a status conference was held in the matter. At that status conference, the parties stipulated that each side could submit an additional brief in the case. On the same day, Petitioner filed a "partial response" to the State Bar's opposition. On May 30, 2018, the State Bar filed a supplemental brief in opposition to the petition.

Prior to the June 6 hearing, the parties notified this court that they were waiving having any hearing and were submitting the matter on the existing pleadings and supporting evidence.

Petitioner was represented in this matter by Arthur and Susan Margolis of Margolis & Margolis LLP. Senior Trial Counsel Eric Aufdengarten and Deputy Trial Counsel Jaymin Vaghashia appeared for the State Bar.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Jurisdiction

Petitioner was admitted to the practice of law in California on April 9, 1997, and has been a member of the State Bar at all relevant times.

Petitioner's Record of Prior Discipline

In Supreme Court order No. S222108 (State Bar Court case Nos. 09-J-14696, and 13-J-15307), effective January 7, 2015, Petitioner was suspended for five years, the execution of which was stayed, and he was placed on probation for five years subject to conditions of probation including that he be actually suspended for a minimum of the first three years of his probation and until he presents proof sufficient to this court of his rehabilitation, fitness to

practice, and present learning and ability in the general law under standard 1.2(c)(1). This discipline was based on disciplinary decisions made in two different jurisdictions regarding professional misconduct committed by Respondent while he was a criminal prosecutor in Washington, D.C. The earlier of these two determinations was made by the New Mexico Supreme Court in May 1997, over the objection of the United States Justice Department, and resulted in a public reproval of Petitioner at that time. The second determination was made by the Court of Appeals of the District of Columbia in 2012 and resulted in a nunc pro tunc decision disbarring Respondent from practicing law in the District of Columbia, effective September 30, 2010. None of the misconduct addressed in those two disciplinary proceedings occurred in California, and all of it took place prior to Respondent being admitted to practice in this state in 1997. After leaving the U.S. Attorney's office in 1995, Petitioner became a prominent trial attorney, who has built a nation-wide reputation as a top securities class action lawyer. There is no evidence of any misconduct by him after 1995.

On June 1, 2017, the Court of Appeals of the District of Columbia issued an order reinstating Petitioner to the practice of law in that jurisdiction, based on the report of Disciplinary Counsel that Petitioner had "demonstrated that he is fit to resume the practice of law." Petitioner now asks that this court restore him to the practice of law in California.

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.)

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 provided this court with the following evidence: (1) his own initial and supplemental declarations; (2) a summary prepared by the Office of Probation of Petitioner's compliance and non-compliance with the conditions of his probation; (3) the many letters and character declarations from individuals submitted to this court during the course of the prior disciplinary proceeding; (4) three additional character letters, written since the prior discipline; and (5) miscellaneous documents related to his compliance with the conditions of his probation.

State Bar's Rebuttal Evidence

The State Bar challenges Petitioner's showing of rehabilitation and present fitness. Relying on language in the *Murphy* decision, that "strict compliance" with the prior conditions of probation is a requirement of a suspended attorney being restored to eligible status, it argues that Petitioner failed to comply with his obligation to provide timely and compliant quarterly reports on several occasions. In addition, it argues that Petitioner's showing of rehabilitation and present fitness to practice is insufficient, since much of the evidence relates to his fitness to practice prior to the imposition of discipline in this jurisdiction in 2015.

Court's Conclusions

As noted above, the first step in assessing the success of a petitioner's effort to be restored to active status is to review the circumstances resulting in the petitioner's ongoing suspension. The more the petitioner was previously viewed as being a risk of future misconduct, the greater the showing of rehabilitation and present fitness to practice must be to be persuasive.

Here, the prior California disciplinary proceeding against Petitioner was brought because of disciplinary decisions made in two other jurisdictions. While the misconduct resulting in those decisions was serious, all of it took place more than two decades ago in locations other than California and none of it occurred while Petitioner was admitted to practice law in California. Further, the evidence was extensive and uncontradicted that Petitioner had lived an exemplary life, both personally and professionally, at all times since 1995. While this court recommended significant discipline as a result of the earlier misconduct, the severity of the discipline was explicitly based on the need to make clear to others that such conduct by government prosecutors would not be tolerated. At the same time, in that decision, authored by the undersigned and set out below, this court sought to make clear that Petitioner was not then viewed by this court as presenting any risk of future misconduct:

> **No Prior Discipline**
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> Respondent has practiced in this state since April 1997, with no prior discipline. Further, all of the misconduct resulting in his discipline in the two other jurisdictions occurred while he was an Assistant United States Attorney in Washington D.C., prior to his admission to practice in this state. This history of no discipline and no misconduct since Respondent was admitted to practice in this state more than 17 years ago is a significant mitigating factor.
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> **Cooperation**
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> Respondent entered into an extensive stipulation of facts in both this matter and in the underlying Washington D.C. proceeding, and freely admitted culpability, for which conduct Respondent is entitled to mitigation credit. (Std. 1.6(e); see also *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443; *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [where

appropriate, more extensive weight in mitigation is accorded those who admit to culpability as well as facts].)

Community Service/Charitable Activities

Respondent has an extensive history of significant community service and charitable activities. He has donated significant funds to numerous charitable organizations. These groups have included organizations devoted to (1) aiding the poor, the sick, and the homeless (such as San Diego Food Bank, San Diego State University Global Medical Brigade, San Diego Rady Children's Hospital, and Elder Help); (2) providing aid to current and former members of the armed forces (such as the USO, AmVets Foundation, Soldiers Angels, Green Beret Foundation, Veterans of Foreign Wars, and Disabled American Veterans); (3) working to cure and prevent specific medical conditions (such as the American Cancer Society, Muscular Dystrophy Association, Alzheimer's Association, United Cerebral Palsy, Susan G. Komen Three Day Walk for the Cure, and Leukemia & Lymphoma Society); (4) rescuing and providing other services for animals (such as the San Diego Humane Society and Society for the Prevention of Cruelty to Animals); (5) providing musical education and other opportunities for youth (such as the Albuquerque Youth Symphony, Tucson Boys Chorus, Dale Kempter Foundation, Opera Works, Dallas Patriots, Inc., and Special Olympics); and (6) educational and entertainment benefits to the general public (KPBS, Reporters Committee for Freedom of the Press). In addition, he has provided financial assistance to many needy individuals (including paying for medical expenses and college costs for various unrelated individuals). Finally, he had devoted significant time in the past guest lecturing at USC Law School and mentoring numerous young attorneys.

This voluntary and extensive commitment by Respondent to his community and others is a mitigating factor that is entitled to "considerable weight." (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785; *Rose v. State Bar* (1989) 49 Cal.3d 646, 665.)

Pro Bono Efforts

Respondent has provided significant assistance on a pro bono basis in helping mesothelioma victims and their families secure benefits available to them through various trusts established for the victims of asbestos exposure. This is also a mitigating factor. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785 [pro bono and community service as mitigating factor]; *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297, 305; *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139, 158.)

Character Evidence

Respondent presented extensive good character testimony from numerous individuals, representing a wide range of references in the legal and general communities and who are aware of the full extent of the member's misconduct. These individuals included two retired U.S. District Court judges, prominent attorneys from California and from

numerous other jurisdictions throughout the country, former clients (including from the Chief Campus Counsel for the University of California – Berkeley), opposing counsel in the *Enron* litigation, the Dean of the College of Journalism at the University of Maryland, and various members of the business community. Virtually all of these individuals had read the D.C. Court of Appeals' disciplinary decision. Nonetheless, they consistently commented favorably on Respondent's strong sense of ethics, his professionalism, his compassion for others, his talents as an attorney, and his incredible work ethic.

A number of letters were received from attorneys from various states whom Respondent had mentored when they were young lawyers. In addition to the praise that they had for him as a talented and ethical attorney, they all commented on his significant commitment to helping young attorneys to learn their trade and instilling in them, both by word and deed, the values of civility and professionalism. They also commented on his fine qualities as a person and his compassion for others. Many of them mentioned that he continued to act as a mentor to them even after they had left for other firms.

A number of the letters received in evidence were from former members of the U.S. Attorney's Office in the District of Columbia, who had worked there at the same time as Respondent. In addition to uniformly expressing the highest of opinions regarding Respondent's integrity, work ethic, and talents as an attorney, many of them commented on the fact that Respondent's mishandling of the vouchers had not only resulted from good faith intentions on his part, but also reflected accepted practices and a general lack of knowledge in the office at that time of the controlling regulations. Illustrative of these letters was that of Wallace H. Kleindienst, now Senior Litigation Counsel to the United States Attorney for the District of Arizona. Among Mr. Kleindient's accomplishments is his recent successful prosecution of Jared Loughner, the individual who attempted to assassinate Congresswoman Gabrielle Giffords, murdered Chief U.S. District Court Judge John M. Roll and five other individuals, and wounded thirteen other people outside of a Tucson market in January 2011. Mr. Kleindienst provided the following recollection regarding the use of vouchers in the U.S. Attorney's Office in Washington, D.C., when he and Respondent practiced there:

> Paul's sanction by the District of Columbia Court of Appeals was predicated on his misuse of and failure to disclose witness voucher payments. During my six years as a prosecutor in the District of Columbia Office, I too, just like other AUSAs, routinely gave witness vouchers to individuals I asked to meet me at the U.S. Attorney's Office because they might have useful information about the crime I was investigating. Many of those individuals did not testify at trial for a variety reasons. For example, their testimony would be inadmissible hearsay or the information they provided led

me to better more relevant information useful at trial, making their original contribution, though quite valuable to the prosecution of the case, simply unnecessary for presentation at trial. In some cases, I initially intended to call them as rebuttal witnesses, but for whatever reason decided against doing so. In other circumstances, the crime they had information about was either never presented to the grand jury or the grand jury was never asked to return a true bill. These are but a few of the reasons that a witness who received a voucher might not be actually called as a witness. But even on the occasion when a person who had received a witness voucher testified for the government at trial, I never disclosed such payments to the defense. They were not considered a *Giglio* benefit to the witness. Rather, it was my understanding, and so far as I know, everyone else's understanding as well, that the law entitled them to be compensated for their time and inconvenience. Never at any time during my 31 years with the Department of Justice have I ever received any formal training on the use of witness vouchers. While there may very well have been reference to them in an AUSA manual I do not recall having ever received a manual when I joined the D.C. office. I learned how to - and when to - provide witness vouchers the same way everyone else did. I asked the first AUSA I ran into who had been there longer than I had. To the best of my knowledge, that "training method" remains in place today.

(Ex. 1020, pp. 2-3.)

This lack of any guidance within that office regarding the restrictions on the use of vouchers was corroborated by David Schertler, Esq. Mr. Schertler is now a prominent attorney in private practice in Washington, D.C., a member of the prestigious College of Trial Lawyers, and is routinely listed as one of the "Best Lawyers in America." Significantly, he became Chief of the Homicide Section of the U.S. Attorney's Office in Washington, D.C. in 1992, making his recollections, quoted below, even more significant:

Third, I believe that any misconduct Paul is alleged to have committed was not the result of any intentional or knowing effort to violate the ethical rules. As I testified at the Bar proceeding, the U.S. Attorney's Office provided no training to prosecutors regarding the proper procedures or rules on the issuance of witness vouchers. If there was a manual providing guidance on the procedure, I was never made aware of it during my time with the U.S. Attorney's Office. As homicide prosecutors during an exceedingly violent era in Washington, we witnessed the horrible effects that crack cocaine had upon entire communities of people. It was not at all unusual for entire families to be affected by and have important knowledge of the drug trade and of the individuals - often their neighbors, friends, and relatives - who were involved in drug-related violence. In my

> own experience, many brothers, cousins, girlfriends - even grandmothers - of offenders were witnesses to the surge of violent crime that affected the District for so many years. Identifying those witnesses and securing their cooperation was essential to our prosecutions and was the only hope for bringing extremely violent offenders to justice. I believe that Paul's investigations were motivated by a genuine effort to seek justice under these very difficult circumstances. If he used poor judgment in those efforts, I believe that it was with good intentions. I believe that Paul is a person and an attorney of fundamental integrity and honesty, and I maintain that belief notwithstanding the findings made by the District of Columbia Court of Appeals.
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> As Chief of the Homicide Section, I was for a time Paul's supervisor and was responsible for performing his work evaluations. I consistently rated Paul's work as excellent or outstanding in all areas.

(Ex. 1003, p. 2.)

Finally, this court received in evidence the following letter, addressed to the State Bar in February 2013, from the Hon. Thomas Penfield Jackson, a retired U.S. District Court judge for the District of Columbia. Judge Jackson, during his career on the bench, presided over many significant matters, including the Microsoft antitrust case; the drug trial of former D.C. mayor Marion Barry; the public censure over former Senator Packwood's diaries; the case involving the constitutionality of the presidential line-item veto; and, most significantly here, the Newton Street Crew criminal trials prosecuted by Respondent.

> I was the federal trial judge who presided over the entire panoply of cases collectively known as the *Newton Street Crew* case - one of which was the subject of the D.C. Bar's investigation into the ethical behavior of then AUSA Paul Howes. I was appointed a U.S. District Judge on the U.S. District Court for the District of Columbia by President Ronald Reagan in 1982. I retired from the bench and returned to private practice as Counsel to Jackson & Campbell in August, 2004.
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> I became aware of the allegations against Mr. Howes through a report from the Office of Professional Responsibility while I was still on the bench. When the OPR report was made available to defense counsel, the inevitable motions for new trial were filed. At that point, I had to make a difficult decision. I believed then, as I do now, that these individuals had, notwithstanding the allegations against Mr. Howes, absolutely received a fair trial. Further, I had no doubt whatsoever of the guilt of any of the defendants. They were vicious, brutal people that the community was well rid of and in my opinion it would have been a public service to keep them in confinement. These opinions, though formed as a result of my personal involvement in trials that went on for many months at a time - one of which had to be held in a special bulletproof-glass

enclosed courtroom due to the extraordinarily dangerous nature of those involved - were simply incompatible with the neutral judicial approach that would be required of me while presiding over post conviction matters. I was also keenly aware of the significance of Paul Howes to the construction of all those cases. He was absolutely instrumental to those prosecutions. I knew very well that he handled the crucial-cooperating witnesses without which the federal cases could not have been made. And I knew that his unique ability to earn the trust of those cooperating witnesses would likely make reconstruction of the case without him impossible. Concerned that these facts could affect my ability to be impartial, I decided it was best that I recuse myself.

I do remember the disciplinary proceedings against Paul Howes in the District of Columbia but was never informed of the final disposition by the D.C. Court of Appeals until my recent review of the District of Columbia's Court of Appeals' opinion dated March 8, 2012 (No. 10-BG-938) which sets forth the sanctions against Howes, as well as the underlying facts. I was frankly shocked to discover that the Court had disbarred him. I have always regarded Howes' infractions as far less serious in the context of the entire case than the Court of Appeals obviously did. Once I learned from the OPR Report of Paul's disbursement of voucher funds my first - and lingering - impression was that they had been made in a good cause, although regrettably contrary to the precise letter of the law.

The case was one of the first prosecutions put together by a joint D.C. Police-FBI task force against a major drug conspiracy. All told, there were as I recall four or five separate trials. The investigation and trials took the better part of two years of my trial time, during which Paul Howes, as the lead prosecutor, was regularly before me. For the record, his courtroom deportment was meticulously proper. He is also a splendid trial lawyer, one of the best I have had before me in 22 years on the Bench.

The D.C. Court of Appeals found no mitigating circumstances to ameliorate Howes' conduct. I disagree. First, it should be noted that Howes profited not at all from the disbursements. They were all made to hold together an extremely fragile case, and while the aggregate amount of money involved may appear large, when viewed in relation to the size of the case they diminish in importance. Second, they were made for good purpose. The prosecution team lead by Howes managed to convict a score of murderous drug dealers with only one acquittal, all of whom served or are now serving long prison terms. Finally, whether or not the witness vouchers had been disclosed to the defense, my personal impression is that they would have been of little use; the favorable plea agreements the co-operators had been given in exchange for their testimony were far more useful for cross-examination purposes.

I certainly hope the California Bar does not impose reciprocal punishment on Howes. It would be a shame to lose a lawyer of his

> ability for what was a foolish but well-intentioned breach of the rules.

Against that backdrop, which forms a portion of Petitioner's showing, the evidence of Petitioner's ongoing activities, together with the absence of any new evidence of professional or personal misconduct by him, provides even more persuasive evidence that Petitioner is rehabilitated and has the present fitness to practice law in this state without any discernible risk of future misconduct.

The evidence offered by the State Bar of Petitioner's alleged non-compliance with certain conditions of his probation does not cause this court to reach a contrary conclusion. That evidence, however, does reflect the wisdom of the recent decision by this court to revise certain language of those conditions of probation.

The principal allegations made by the State Bar of a probation violation by Petitioner are: (1) that Petitioner's quarterly report due on January 10, 2016, was not received until March 25, 2016 (more than three months late) and only after Petitioner had been contacted by the Office of Probation regarding the need to file the report; (2) that his report due on October 10, 2017, was received on October 11, 2017, one day late; and (3) that three quarterly reports were returned timely but without a checkmark having been made to specifically affirm that Petitioner had not practiced law since being suspended.[1] Each of these contentions is discussed more fully below.

In the past the Office of Probation would not accept a quarterly report unless and until the original report, with an original date and signature, had been received in its office. This meant

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[1] The State Bar also challenges the sufficiency of Petitioner's showing of his ongoing community service and charitable activities, stating that his evidence is limited only to his own declaration. That contention, however, overlooks the declaration of 2018 declaration of Paul Knight, who referred to Petitioner's "work in the community and other acts of generosity and loyalty" as one of the reasons for his opinion that Petitioner is fit to be returned to the practice of law. Moreover, Petitioner's declaration contained sufficient information regarding specific examples of his recent charitable works that the State Bar could easily have determined whether his claims were bogus. No evidence is offered by the State Bar that any of Petitioner's claimed community or charitable activities were not valid.

that completed quarterly reports could not be faxed or emailed to the Office of Probation but instead needed to be either mailed or personally delivered. For attorneys not living in close proximity to the State Bar's office in Los Angeles, this meant that reports needed to be mailed, with all of the risks associated with late and lost mail. This task was made more treacherous by the fact that the Office of Probation required the document to be received by it on or before the deadline, even if the postmark on the document indicated that it had been placed in the mail well before that deadline.

Petitioner timely submitted the first three quarterly reports that became due in 2015 after his suspension became effective. With regard to his January 2016 quarterly report, he stated in his declaration that he completed the quarterly report on January 1, 2016, a Friday, and promptly deposited it in the U.S. mail on January 2, 2016, expecting that it would be received well before the January 10, 2016 deadline. For the next three months, he believed that it had been so received, since there was no indication from the Office of Probation of anything to the contrary. Then, on March 24, 2016, he received an email message from the Office of Probation, indicating that it had not received the report due by January 10, 2016, and asking that it be sent immediately. Petitioner responded by email that same day, stating that the January report had been completed on January 1, 2016 and had been mailed on January 2, 2016, but indicating that he would immediately send a copy of the report to the State Bar. A copy of that January 1, 2016 report was sent by Petitioner by overnight UPS to the Office of Probation the same day and was received by the Office of Probation on the very next day.

Petitioner concluded from this January 2016 experience that having documents to make clear his timely compliance with his quarterly report obligation was worth the cost of using some sort of tracked mail, such as certified mail, UPS, or Federal Express. The wisdom of this decision is now made clear by the State Bar's complaint that his October 2017 report was one

day late. In his supplemental evidence, Petitioner provided this court with a copy of the receipt he received (and retained) from UPS when he shipped his October 2017 quarterly report to the Office of Probation. It shows that he delivered the report to the UPS Store on Monday, October 9, 2017, at 10:30 a.m.; paid $40.17 for "UPS Next Day Air" to have the report delivered to the "State Bar of California Probation Office" in Los Angeles the following morning; and received a receipt stating that the expected delivery date was "Tuesday 10 Oct 2017 10:30 AM." According to the State Bar, it was not received until October 11.

These problems encountered by Petitioner in proving his compliance with his obligation to provide quarterly reports do not signify his lack of rehabilitation or any present unfitness to practice law. His receipt from UPS for the October 2017 quarterly report makes clear that he completed that report on a timely basis and mailed it at a time and in a manner such that the report should have resulted in it being timely received by the Office of Probation. Whether the Office of Probation's complaint, that it was not received until October 11, reflects some problem with UPS or, alternatively, with the mail receipt and distribution procedures at the State Bar, that complaint does not reflect any personality defect on the part of Petitioner. With regard to the January 2016 report, Petitioner's pattern of timely submission of his other reports, both before and after the January 2016 report, causes this court to find credible and persuasive Petitioner's testimony and earlier assertions that he timely completed and mailed that report to the Office of Probation. Once again, whether the Office of Probation's complaint, that it did not timely receive the January 2016 report, reflects some problem with United States postal service or, alternatively, with the mail receipt and distribution procedures at the State Bar, that complaint does not reflect any personality defect on the part of Petitioner.

What the above situations do reflect is the wisdom of recent changes by this court to the language of the probation condition requiring the submission of quarterly reports. The revised

language now provides that all reports "must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date). Merely sending the report by regular mail is no longer an approved manner of delivery. At the same time, when the report is being sent by certified mail or courier, the report is deemed timely if it is "postmarked" or delivered to the courier before the deadline has expired. Finally, in order for there to be a clear record of whether the probationer has complied with this obligation (the importance of which is reflected by the importance of Petitioner's receipt in this case), the probation condition now requires the probationer "to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of Respondent's actual suspension has ended, whichever is longer. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court."

In other areas, the state Bar also complains of Petitioner's failure to check the box in three Quarterly Report forms affirming that he had not practiced law since being suspended. While there is no contention or evidence that Petitioner ever practiced law while he was suspended, the argument is made that his repeated failure to check this box constituted a violation by him of his obligation to submit compliant quarterly reports.

The quarterly report form sent by the Office of Probation to Petitioner for completion consisted of three pages and numerous inquiries. On the first page of the form, Petitioner was asked to state whether or not he had complied with "all provisions of the State Bar Act, Rules of Professional Conduct, and all conditions of probation" during the preceding quarter. On each of

the three challenged forms, Petitioner checked the box attesting, under penalty of perjury, that he had. This would, of course, signify that he had not participated in any unauthorized practice of the law during that period. On the second page of the form, there was a provision for Petitioner to attest to the fact that he had not practiced law while he was suspended. This attestation Petitioner failed to check on three successive forms. In his supplemental declaration in this proceeding, Petitioner attributed his first failure to check this box to mere oversight on his part. His second and third failures to check this box he attributed to his use of the first form as a template for completing the forms – something that he believed he was safe in doing since he had received no complaint from the Office of Probation about the prior report he had submitted and was now using as the exemplar. The last of these three challenged reports was sent by Petitioner via FedEx to the Office of Probation on January 3, 2017. On January 9, 2017, Petitioner's probation deputy sent Petitioner an email, notifying Petitioner for the first time that the box for the attestation had not been checked on the three prior reports. This email stated, "You may wish to submit those reports now[.]" Petitioner immediately supplemented the prior reports (checking the attestation box on each) and shipped them via UPS to the Office of Probation. They were received by the Office of Probation on January 11, 2017.

While this court does not condone Petitioner's lack of adequate care in completing the report forms provided to him by the Office of Probation, it does not view his inadvertent conduct as the basis for finding that he is not rehabilitated from his prior misconduct or that he does not have the present fitness to practice law. The probation condition requiring Petitioner to provide quarterly reports merely provided that, in each report, Petitioner was to "state that it covers the preceding calendar quarter or applicable portion thereof and certify by affidavit or under penalty of perjury under the laws of the State of California as follows: (a) in the first report, whether Respondent [here Petitioner] has complied with all the provisions of the State Bar Act, the Rules

of Professional Conduct, and all other conditions of probation since the beginning of probation; and (b) in each subsequent report, whether Respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation during that period." The probation condition does not state that the probationer needs to use the quarterly report form devised by the Office of Probation to satisfy this requirement; nor does it require the probationer to provide any information other than an affirmation that the probationer had "complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation during that [reporting] period." As noted above, Petitioner complied with that obligation.[2] Although a different condition of probation required Petitioner to "fully, promptly, and truthfully answer any inquiries of the State Bar's Office of Probation that are directed to Respondent, whether orally or in writing, relating to whether Respondent is complying or has complied with the conditions of this probation," his response impliedly answered any such "inquiry" the Office of Probation was making about whether he had practiced law unlawfully during the prior period. Then, when the probation deputy notified Petitioner of his failure to check the attestation boxes in the three prior reports, Petitioner immediately responded to that inquiry by doing so.

To summarize this court's conclusions on the issue of Petitioner's proof of his rehabilitation and present fitness to practice law, the evidence is clear and compelling (1) that Petitioner's misconduct while he was an Assistant United States Attorney until 1995 resulted from his overzealous desire at the time to protect the public from a vicious crime ring in Washington D.C.; (2) that he has since learned that his prior conduct was inappropriate; (3) that

[2] Once again, the above situation reflects the wisdom of this court's recent decision to revise the language of the conditions of probation. The revised condition of probation now requires that all quarterly reports to be submitted on the form provided by the Office of Probation and that the form be filled out completely.

there has been no comparable or other misconduct by Petitioner since he left his position in the U.S. Attorney's office in Washington, D.C. in 1995; (4) that Petitioner's life for the last two decades has been exemplary, both personally and professionally; and (5) that Petitioner poses no discernible risk of any future misconduct. Applying the language of standard 1.2(c)(1), he has established, by far more than a preponderance of the evidence, convincing proof of both his rehabilitation and his present fitness to practice law.

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.)

In support of his contention that he possesses the requisite present learning and ability in the general law, Petitioner presented the many letters attesting to his extraordinary abilities as an attorney during the many years that he was allowed to practice law; testimony and supporting documentation that he has taken numerous continuing legal education classes since being ineligible to practice, including more than 200 hours of California-accredited MCLE programs; and testimony that, since his suspension, he has worked as a paralegal and consultant for various attorneys and law firms in the handling of significant cases. In addition, he took and passed the Multistate Professional Responsibility Exam on March 28, 2015, and attended and passed the State Bar Ethics School on February 19, 2015;

This court finds that Petitioner has provided satisfactory and persuasive proof of his present learning and ability in the general law. The State Bar makes no argument to the contrary.

CONCLUSION AND ORDER

Just as the Court of Appeals for the District of Columbia concluded in 2017 that Petitioner is fit to return to the practice of law, this court also now concludes that Petitioner

should be restored to active status as an attorney entitled to practice law in this state. More specifically, this court finds that Petitioner has demonstrated to the satisfaction of this court his rehabilitation, 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: June 14, 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 Court Specialist 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 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:

SUSAN LYNN MARGOLIS
MARGOLIS & MARGOLIS LLP
2000 RIVERSIDE DR
LOS ANGELES, CA 90039

☒ 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:

JAYMIN M. VAGHASHIA
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 June 14, 2018.

Marc Krause
Court Specialist
State Bar Court