



PUBLIC MATTER

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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. 18-V-14272-CV
)	
ANDREW MICHAEL VOGELBACH,)	DECISION AND ORDER GRANTING
)	PETITION FOR RELIEF FROM
A Member of the State Bar, No. 258259.)	ACTUAL SUSPENSION
_____)	

INTRODUCTION

The issue in this matter is whether petitioner Andrew Michael Vogelbach (Petitioner) has demonstrated, to the satisfaction of this court, his rehabilitation, fitness to practice, and 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 pursuant to standard 1.2(c)(1).

SIGNIFICANT PROCEDURAL HISTORY

On July 2, 2018, Petitioner, through his counsel, filed his Verified Petition for Relief from Actual Suspension (petition), which suspension was imposed on him by the Supreme Court in its order S228503, filed on October 19, 2015.

On August 20, 2018, the Office of Chief Trial Counsel of the State Bar of California (OCTC) filed its response to the petition, setting forth that OCTC did not possess sufficient facts at that time to determine whether or not it opposes the petition.

The court set the hearing in this matter for September 20, 2018.

On September 18, 2018, OCTC filed a notice of non-opposition to the petition, setting forth that OCTC does not oppose the petition and withdrawing its request for a hearing in this matter.

The court held a status conference with the parties on September 19, 2018. Following the status conference, the court filed an order reflecting that both parties withdrew their request for a hearing on the petition; that the September 20, 2018 hearing was taken off-calendar; and the matter was submitted for decision as of September 18, 2018.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Jurisdiction

Petitioner was admitted to the practice of law in California on December 1, 2008, 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 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.)

First Disciplinary Matter

In his first disciplinary matter, Petitioner stipulated that he was retained in July 2011 to pursue a loan modification on behalf of a client. Between July 27 and September 27, 2011, the client paid Petitioner \$3,000 in advanced attorney fees related to the loan modification services. Petitioner stipulated that in February 2013, he “created and/or caused to be created, a making home affordable program request for mortgage assistance. As part of this request[,] [Petitioner] signed or caused to be signed under penalty of perjury, simulating [the client’s] signature, a hardship letter, financial worksheet and request for transcript of tax return. These documents contained inaccurate information and had not been reviewed or signed by the client.”¹ These documents were submitted by Petitioner to the client’s lender. Thereafter, after learning of the inaccuracy of the documentation submitted by Petitioner, and that Petitioner had signed the submitted paperwork without the client’s consent or approval, the client terminated Petitioner. In March 2013, the client requested an accounting from Petitioner regarding the advanced fees paid earlier. Petitioner, however, failed to render an appropriate accounting to the client. On April 17, 2014, however, Petitioner refunded \$3,531.04 to the client.

With regard to his conduct, Petitioner stipulated that he willfully violated Business and Professions Code section² 6106.3 by (1) arranging, negotiating, or offering to perform a home mortgage loan modification or mortgage loan forbearance for a fee paid by a client and borrower

¹ Petitioner’s Exhibit E, page 8, numbered paragraph 4.

² Unless otherwise indicated, all further references to sections refer to provisions of the Business and Professions Code.

in advance of any service and thereafter entering into a fee agreement with a client without, prior to entering into that agreement, providing the client with the separate written statement as required by Civil Code section 2944.6; and (2) arranging, negotiating, or offering to perform a home mortgage loan modification or mortgage loan forbearance for a fee paid by a borrower, and charging, demanding, collecting and receiving fees from a client prior to fully performing each and every service he contracted to perform or represented he would perform in violation of Civil Code section 2944.7(a)(1); willfully violated section 6106 by committing an act involving moral turpitude, dishonesty or corruption by misrepresenting to the client's lender that the submitted documents were authorized and accurate documents when he knew or was grossly negligent in not knowing the submitted documents had not been signed or reviewed by the client and contained inaccurate information; willfully violated rule 4-100(B)(3) of the State Bar Rules of Professional Conduct³ by failing to render an appropriate accounting to the client after the client's demand for an accounting; and willfully violated rule 3-700(D)(2) by failing to refund promptly any part of the client's fee paid in advance that had not been earned.

In aggravation, the parties stipulated that Petitioner engaged in multiple acts of misconduct and that he caused significant harm to his client.

In mitigation, "slight mitigation of little weight"⁴ was given to Petitioner's five years of discipline-free practice. Mitigation was also given for the fact that Petitioner stipulated to misconduct, thereby demonstrating his cooperation with OCTC and saving court resources and time.

On September 4, 2014, the Supreme Court issued order S219533 (State Bar Court case No. 13-O-11226), suspending Petitioner from the practice of law for one year, staying execution

³ All further references to rules refer to the State Bar Rules of Professional Conduct.

⁴ Petitioner's Exhibit E, page 10, paragraph regarding "No Prior Discipline."

of that suspension, and placing him on probation for two years subject to conditions, including that he be suspended for the first 60 days of probation.

Second Disciplinary Matter

Petitioner's second disciplinary matter resulted from Petitioner's conviction of violating Health and Safety Code section 11350(a), possession of a controlled substance (cocaine), a felony. Respondent stipulated that on June 26, 2012, a brick-like, saran-wrapped package of a controlled substance was placed by someone in the truck of his car with his knowledge and while he was present. As part of a sting operation, undercover law enforcement officers were observing Petitioner and his passenger. Petitioner thereafter transported the brick-like, saran-wrapped package containing a controlled substance. About 45 minutes after the package was placed in Petitioner's car, Petitioner was stopped by law enforcement officers as a result of a turn signal traffic violation. Petitioner refused to consent to a search of his vehicle by law enforcement but permitted an officer to walk his canine around Petitioner's car. The canine, which was certified in the detection of certain odors, including cocaine, scratched at the passenger and driver door handles and, when the canine was placed in the trunk of Petitioner's vehicle, alerted to a gym bag in the trunk of Petitioner's car. When asked, Respondent informed a law enforcement officer that it was his gym bag. The law enforcement officer searched the bag and wrapped in a black jacket was a brick-like package of cocaine which was heavily saran-wrapped. Petitioner was arrested. It was determined that the package contained one kilogram of cocaine.

Based on Petitioner's nolo contendere plea, Petitioner was convicted of violating Health and Safety Code section 11350(a), possession of a controlled substance (cocaine), a felony, on August 29, 2014. Petitioner was sentenced to one year and four months in county prison.

The Review Department of the State Bar Court filed an order on December 18, 2014, placing Petitioner on interim suspension effective January 7, 2015.

On December 19, 2014, in light of Proposition 47 and Penal Code section 1170.18, Petitioner's conviction was reduced to a misdemeanor, and he was released from custody with credit for 180 days of custody.

The parties stipulated that the facts and circumstances surrounding the violation of which Petitioner was convicted did not involve moral turpitude but did involve other misconduct warranting discipline.

In aggravation, Petitioner, as noted above, had a prior record of discipline. In mitigation, Petitioner cooperated with the State Bar by voluntarily submitting to a deposition and entered into a stipulation as to facts, conclusions of law and disposition.

On October 19, 2015, the Supreme Court issued order S228503 (State Bar Court case No. 13-C-15091), suspending Petitioner from the practice of law for three years, staying execution of that suspension, and placing him on probation for three years, subject to conditions including that he be suspended for a minimum of the first two years of his probation (with credit given for the period of interim suspension which commenced on January 7, 2015) and until he provides proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law.

Petitioner's Rehabilitation and 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 examine the petitioner's actions since the imposition of discipline to determine whether his 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.) At a minimum, a 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 discipline was last imposed; 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 – Case No. 13-O-11226

Petitioner completed his probation in State Bar Court case No. 13-O-11226 in October 2016. He made full restitution to his client and attended State Bar Ethics School on May 7, 2015. Although Petitioner did not timely comply with the probation condition requiring him to contact his probation deputy by November 3, 2014, he was in the custody of the San Bernardino Sheriff's Department in the San Bernardino County Jail system at that time. Petitioner did not have access to a computer, e-mail, or personal mail at that time, and the telephone system at the State Bar does not accept collect calls. Petitioner instructed his father to contact his then-attorney who was to inform the probation deputy that Petitioner was in custody and represent him in these matters. Petitioner's father also spoke directly with the probation deputy and informed her of the same during that time period after receiving mail from the State Bar.

For the same reason, Petitioner was unable to develop a law office management plan and obtain approval of that plan by the Office of Probation by the December 3, 2014 deadline.

When Petitioner was released from custody at the end of December 2014, he contacted his probation deputy. He was unable to contact his attorney and his attorney did not return Petitioner's attempts at communicating with him, so it took Petitioner a few days to complete the quarterly report and law office management plan. Petitioner submitted the law office management plan two or three times before it was approved by the Office of Probation. The plan addressed the mistakes that Petitioner had previously made in the management of his law office.

Petitioner also erroneously signed his July 2015 quarterly report two days early. Petitioner's probation deputy notified Petitioner's then-attorney regarding the mistake and also informed Petitioner's then-attorney that Petitioner had not included a copy of his MPRE test score report.

When Petitioner was advised of the error, he sent an email to his probation deputy on July 14, 2015, noting that he had just received the forwarded email from his then-counsel regarding the signature date on the July quarterly report, and that he would hand-deliver the report as he would be in California in a few days. Petitioner also noted that he had requested that the MPRE send his passing score to California, and he thought that they would send it directly to the Office of Probation. Petitioner stated he would provide the score and apologized for the misunderstanding. Petitioner thereafter provided to the State Bar his MPRE score report and another quarterly report signed on July 17, 2015, seven days after it was originally due.

Petitioner also filed his final quarterly probation report two days late in case No. 13-O-11226. Petitioner filed his final quarterly report on October 6, 2016, with his October 2016 quarterly report in case No. 13-C-15091.

Petitioner's Compliance with Probation Conditions – Case No. 13-C-15091

Petitioner has complied with the terms of his probation in State Bar Court case No. 13-C-15091. He has timely submitted quarterly reports and attended State Bar Ethics School on February 4, 2016. Although not a probation condition, Petitioner complied with California Rules of Court, rule 9.20, as ordered by the Supreme Court.

Remorse/Recognition of Wrongdoing

The past few years have given Petitioner the opportunity to evaluate what has transpired recently in his life both personally and professionally.

With regard to the loan modification matter, Petitioner realizes that his actions of simulating his client's signature and submitting the financial package was a poor decision and an unacceptable choice on his client's behalf. Regarding Petitioner's failure to provide an appropriate accounting, Petitioner acknowledges that he did not have proper office management experience, processes, or procedures to make sure that everything was accurately documented. However, the State Bar Ethics School and the law office management plan he developed have helped Petitioner understand his mistakes and how to avoid similar problems in the future.

Petitioner also acknowledges that he made a bad choice in not researching the appropriate billing method for a loan modification case or contacting the State Bar about ethical issues. He is now aware of the State Bar Ethics Hotline as a resource for dealing with uncertain ethical questions. He also now understands the importance of precisely following rules.

Regarding the incident that resulted in Petitioner's criminal conviction, Petitioner realizes he did not make the right decision when he was suspicious of his client's actions. Petitioner realizes he should have stopped his client and asked him what exactly he was placing in his car and denied his client access to the vehicle if there was any possibility of criminal conduct.

Petitioner acknowledges that his mistakes and poor judgment have resulted in immeasurable pain for his family and himself. He was guilt-ridden and deeply ashamed. While incarcerated, Petitioner really started to appreciate those friends who supported him when he was down and out. He understands and accepts the responsibility and obligation to everyone who supported him to not make the type of mistakes that got him into this situation. Petitioner understands the consequences of his actions, not just for himself but for those around him. He has learned that he has to be extremely careful about with whom he associates and has promised himself in the future to not be put in compromising situations. He is trying to exercise due diligence in creating relationships and socializing with the right types of friends.

Petitioner has spoken at length with retired Los Angeles County Superior Court Judge Coleman Swart. They analyzed Petitioner's problems and discussed making smart and right choices in deciding who to be with and where to go. Judge Swart gave Petitioner helpful insights into what he needs to do to turn around his current situation.

As part of his petition, Petitioner submitted letters from seven individuals, including an attorney and a retired superior court judge, who have known Petitioner for many years and who support his return to the practice of law. All letter-writers were aware of Petitioner's criminal matter and five had reviewed the stipulation as to facts, conclusions of law and disposition in both of Petitioner's prior disciplinary matters. Letter-writers noted that (1) Petitioner realizes he made some bad decisions but he has reflected on his past mistakes; (2) Petitioner has been open and frank about the pain his decisions have caused to himself, his family, and friends; (3) Petitioner's association with an individual of very poor character was an aberration and is not consistent with Petitioner's good character; (4) Petitioner is a good person; (5) Petitioner has engaged in charitable/volunteer activities; (6) Petitioner has made past mistakes but has learned his lessons; (7) Petitioner is helpful, honest, generous, hardworking, considerate of others and treats everyone fairly; (8) Petitioner is an outstanding individual; (9) Petitioner is respected and trusted; (10) Petitioner realizes he made some bad decisions and will be much more careful with whom he associates in the future; (11) Petitioner has expressed his disappointment in his behavior and how he feels that he let down his family and close friends; and (12) Petitioner is a good man and has been a trustworthy and reliable friend. Most notably, friend Christopher Yeats wrote, "He knows that he has made mistakes but he has shown by his behavior and actions that he realizes his errors"⁵ And Coleman A. Swart, Judge of the California Superior Court

⁵ Exhibit V.

(retired), noted that he is convinced that Petitioner now understands his responsibility to uphold the high standards required of State Bar members.

Education & Employment

To gain experience in office management and accounting, Petitioner volunteered at Cardiovascular Consultants of San Gabriel Valley in 2015. In 2016, Petitioner was hired full-time and continues to work at Cardiovascular Consultants of San Gabriel Valley.

From December 2015 to March 2016, Petitioner completed a real estate course at ADHI Schools LLC, which included a course entitled Legal Aspects of Real Estate. On May 26, 2016, Petitioner passed the California real estate salesperson examination.

In 2016, Petitioner began the Master of Business Administration (M.B.A.) graduate degree program at Loyola Marymount University located in Los Angeles. His cumulative grade point average is 3.60. He has taken courses in management, accounting, finance, ethics and ethical decisions.

Community Service

Petitioner joined the Catholic Big Brothers Big Sisters program as a mentor for at-risk youth in 2016. He participated in the organization's 2016 Annenberg House Beach Day participating with an at-risk youth in athletic and other activities.

Between August 1, 2017 and October 17, 2017, he volunteered for 42 hours at L.A. Kitchen, a charity organization in East Los Angeles, at the Kitchen Food Prep program. Petitioner worked alongside L.A. Kitchen staff and students prepping food and meals for local organizations that care for the homeless, the mentally disabled, and the elderly.

Petitioner volunteered for a Habitat for Humanity Philanthropy Event on November 18, 2017, repainting homes at the Plaza Del Amo community in Torrance.

On February 3, 2018, he volunteered at Help Restore the LAX Dunes for the Bar Foundation, clearing non-native species of plants and protecting indigenous species on the dunes bordering the west end of LAX airport.

Other

Subsequent to the effective date of his suspension, Petitioner has not been arrested, charged with a crime or convicted of any criminal charge.

Petitioner's criminal conviction has been expunged. Petitioner's plea of nolo contendere was set aside and vacated, and a plea of not guilty was entered on January 28, 2016. The court ordered the complaint dismissed.

Present Learning and Ability in the General Law

Petitioner took and passed the Multistate Professional Responsibility Examination (MPRE) administered on March 28, 2015, in State Bar Court case No. 13-O-11226, and took and passed the MPRE administered on March 19, 2016, in State Bar Court case No. 13-C-15091.

Between November 21, 2016 and November 9, 2017, Petitioner completed over 595 hours of continuing legal education in general participatory education, ethics, elimination of bias, substance abuse, and competence.

Petitioner has kept himself informed about recent legal decisions and changes by reading legal periodicals and attending courses. Petitioner receives and reads the Los Angeles Lawyer magazine on a monthly basis. On a quarterly basis, he also receives and reads the Criminal Law Journal, the California Real Property Journal, and the California Trust and Estates Quarterly journal. Petitioner is currently a member of the Los Angeles County Bar Association and is a member of various sections, including the real property, criminal justice, and trust and estates sections. He receives and reads a daily email from the Los Angeles County Bar Association and, until August 28, 2015, received and read the ABA Journal Weekly Newsletter.

CONCLUSION

Petitioner has shown that he has strictly complied with the terms of his most recent probation,⁶ has exhibited exemplary conduct since the imposition of his last discipline, and has established that the conduct leading to his discipline is not likely to be repeated. In addition, Petitioner has demonstrated to the satisfaction of this court his present learning and ability in the general law. Accordingly, the court finds that Petitioner has demonstrated, by a preponderance of the evidence, his rehabilitation, fitness to practice law, and present learning and ability in the general law.

ORDER

As the court finds that Petitioner has demonstrated, by a preponderance of the evidence, his rehabilitation, fitness to practice law, and present learning and ability in the general law, the petition for relief from actual suspension from the practice of law pursuant to standard 1.2(c)(1) is hereby **GRANTED**. Petitioner will be entitled to resume the practice of law in this state when all the following conditions have been satisfied:

1. The actual suspension imposed by the California Supreme Court has expired;
2. 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);
3. Petitioner has paid all applicable State Bar fees and costs (Bus. & Prof. Code, §§ 6086.10 and 6140.7); and

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⁶ Although Petitioner failed to strictly comply with his probation conditions in his first disciplinary matter, the court finds that such failure does not undermine Petitioner's showing of rehabilitation and fitness to practice law.

4. 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: October 1, 2018



CYNTHIA VALENZUELA
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 AND ORDER GRANTING PETITION FOR RELIEF FROM ACTUAL
SUSPENSION

as follows:

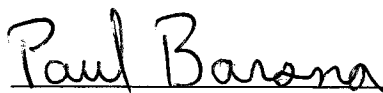
- By OVERNIGHT MAIL by enclosing the documents in a sealed envelope or package designated by an overnight delivery carrier and placing the envelope or package for collection and delivery with delivery fees paid or provided for, addressed as follows:

ARTHUR LEWIS 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:

PATRICE N. VALLIER-GLASS
STATE BAR OF CALIFORNIA
OFFICE OF CHIEF TRIAL COUNSEL
845 S. FIGUEROA STREET
LOS ANGELES, CA 90017-2515

I hereby certify that the foregoing is true and correct. Executed at Los Angeles, California, on October 1, 2018.



Paul Barona
Court Specialist
State Bar Court