

PUBLIC MATTER

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

FILED

P.S.

FEB - 8 2019

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

In the Matter of)	Case No. 18-V-14972-CV
)	
VADIM SCHAR,)	DECISION AND ORDER
)	
A Member of the State Bar, No. 224699.)	
_____)	

INTRODUCTION

In this relief-from-actual-suspension proceeding, petitioner Vadim Schar (Petitioner) seeks relief from the actual suspension the Supreme Court imposed on him in its May 23, 2012, order in *In re Vadim Schar on Discipline*, case number S200324, State Bar Court case No. 10-C-02870. To be relieved of his actual suspension, Petitioner must establish, by a preponderance of the evidence, his rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1) (standard 1.2(c)(1)); Rules Proc. of State Bar, rule 5.400 et seq.)

This is Petitioner's second petition for relief from actual suspension. For the reasons set forth *post*, the court finds that he has established, by a preponderance of the evidence (Rules Proc. of State Bar, rule 5.404), that he is entitled to be relieved from his actual suspension. Therefore, the court GRANTS the present petition.

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PROCEDURAL HISTORY

Petitioner filed the present petition for relief from actual suspension on July 26, 2018. The Office of Chief Trial Counsel of the State Bar of California (OCTC) filed a response opposing the petition on September 10, 2018. The court granted Petitioner's request to submit a reply brief, which Petitioner filed on January 8, 2019. At the hearing on January 9, 2019, only Petitioner testified. The court allowed both parties to submit additional documentary evidence. Both parties filed closing briefs on January 11, 2019, and the court took the petition under submission for decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Jurisdiction

Petitioner was admitted to the practice of law in California on May 3, 2003, and has been licensed by the State Bar of California since that time.

Rehabilitation & Present Fitness to Practice – Legal Standard

To determine whether the petitioner in a relief-from-actual-suspension proceeding under standard 1.2(c)(1) is rehabilitated from the misconduct underlying the actual suspension, the court must view the evidence of the petitioner's present moral character in light of the moral shortcomings that resulted in the petitioner's actual suspension. (*In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 571, 581-582.) "This is because the amount of evidence of rehabilitation required to justify termination of actual suspension varies according to the seriousness of the misconduct at issue." (*Id.* at p. 581, citing *Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1086 (dis. opn. of Lucas, C. J.)) Thus, the more egregious the misconduct underlying the actual suspension, the more evidence of rehabilitation and present good moral character is needed to justify relief from the suspension.

At a minimum, the suspended attorney must show that he or she has strictly complied with the conditions of his or her disciplinary probation and any applicable criminal probation, and that he or she has led a life of exemplary conduct since the imposition of the actual suspension. (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 581.) In addition, the suspended attorney must present sufficient evidence upon which the trier of fact can find that the cause or causes of the prior misconduct have been eliminated and that there is a reasonable basis to believe that the suspended attorney will not again engage in misconduct. (*Id.* at p. 582.) “Such evidence might well consist of testimony or declarations showing change of character of the petitioner from one of greed, rapaciousness or recklessness to one of charity, care and compassion; from a depressed and nonfunctional individual to one of proper adjustment and ability to deal with stress; or from a substance abuser to a person who has overcome those habits.” (*Id.* at pp. 581-582.)

To establish his present fitness to practice law, Petitioner must establish not only that he has been rehabilitated from the misconduct underlying his actual suspension, but he must also show that he presently possesses good moral character. (Cf. *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630, 634.) “The term ‘good moral character’ has traditionally been defined in terms of the absence of proven acts that have been historically considered manifestations of moral turpitude. [Citation.] Nevertheless, at least in this state, it also includes ‘qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the laws of the state and the nation and respect for the rights of others and for the judicial process.’ [Citations.] Thus, any act or conduct bearing on any of these qualities is relevant in [this] proceeding.” (*Id.* at pp. 634-635.)

“Because [OCTC] does not have the burden of proof in a [relief-from-actual-suspension] proceeding, it need not rebut a petitioner’s showing of rehabilitation, [fitness to practice, or

learning and ability in the general law] to prevail. Instead, [OCTC] need only proffer sufficient adverse evidence to lower the persuasiveness of the petitioner's evidence so that he does not meet his burden to prove his case [Citation.] Of course, [OCTC] may elect not to present any adverse evidence if it concludes that [the] petitioner's showing is insufficient to establish his case" (*In the Matter of Kirwan, supra*, 3 Cal. State Bar Ct. Rptr. at p. 636.)

Underlying Facts

In about 1997 or 1998, Petitioner's wife was diagnosed with cancer. However, because Petitioner and his wife wanted to have children, they delayed treatment.

As stated above, in 2003, Petitioner was admitted to the practice of law in the State of California.

In 2005, Petitioner's first child was born.

In about 2006, when Petitioner was a sole practitioner, he was approached by Alexander Guttman, an owner of A & A Body Shop, who proposed to refer auto accident cases to Petitioner in exchange for money. Petitioner received numerous cases pursuant to this agreement with Mr. Guttman, perhaps as many as thirty, until in or about September 2007, when Petitioner withdrew from the arrangement because he knew it was unlawful and unethical. The arrangement had caused Petitioner considerable stress, resulting in sleep loss, enormous weight gain, anxiety, hypertension, depression, and the abuse of alcohol and a prescription drug, Vicodin, which had been prescribed for Petitioner's wife. After terminating the arrangement with Mr. Guttman, Petitioner received death threats against himself and his family, and he also learned that Mr. Guttman had a similar, secret arrangement for referral of cases in exchange for money with Petitioner's office manager, in which the office manager would refer cases to other attorneys outside Petitioner's office. Petitioner terminated the employment of his office manager when he learned of this arrangement.

In 2007, Petitioner's second child was born.

Petitioner was arrested for his illegal "capping" arrangement with Mr. Guttman on March 15, 2008. During the arrest at his home, police conducted a search and found illegal drugs. Charges for the drugs were brought against Petitioner but later dropped.

In 2008, Petitioner's wife began a series of surgeries to treat her cancer. In all, she required 13 surgeries, ending in 2015.

On September 13, 2010, following a plea bargain, Petitioner was convicted of one felony count of violating Insurance Code section 750, subdivision (a) (offering or receiving consideration for referral of clients). Petitioner was sentenced to three years' probation, one year of home confinement, and restitution. Petitioner fully served his sentence and paid his restitution, and on January 13, 2014, his felony was reduced to a misdemeanor and expunged.

On December 29, 2011, Petitioner and OCTC entered into a stipulation re facts, conclusions of law, and disposition in the underlying disciplinary case. They stipulated that the facts and circumstances surrounding the violation did not involve moral turpitude, but did involve other misconduct warranting discipline. The parties agreed to, and the Supreme Court ultimately imposed, a two-year stayed suspension, a three-year probation, and a one-year actual suspension that was to continue until Petitioner provided proof of his rehabilitation, fitness to practice, and learning and ability in the general law. Other requirements of Petitioner's discipline to which he stipulated were, among other things, that he abstain from all alcohol and drugs (except his own prescription drugs), participate in LAP, complete the State Bar's Ethics School, complete the Multistate Professional Responsibility Examination (MPRE), provide quarterly and final reports to the State Bar's Office of Probation, and comply with the requirements of California Rules of Court, rule 9.20. Petitioner was also to be given credit

towards his actual suspension for the time Petitioner had spent on interim suspension beginning on February 22, 2011.

On April 22, 2011, Access Insurance Company filed a civil complaint against Petitioner and other attorneys, auto body shops, and other individuals to recover money lost from capping and other illegal and fraudulent schemes. As a legal tactic to preserve the marital home from a potential civil judgment against him in that case, Petitioner filed for legal separation from his wife on April 27, 2012. Subsequently, on July 6, 2012, his wife filed, in the same action, a request for dissolution of marriage.

On May 23, 2012, the Supreme Court filed its order imposing discipline on Petitioner as a result of the State Bar proceedings.

On June 19, 2012, Petitioner obtained a prescription for medical marijuana. In March 2013, he received a modified or augmented prescription for a synthetic cannabinoid. During the pendency of his first petition for relief from actual suspension, Petitioner proffered a report from his psychologist dated February 6, 2014, opining that without the synthetic cannabinoid, Petitioner's anxiety would have been uncontrolled at that time.

As of August 20, 2012, Petitioner had timely complied with California Rules of Court, rule 9.20 with one late exception; however, his attorney took responsibility for the one untimely compliance. On December 13, 2012, Petitioner completed his State Bar Ethics School requirement, and in March 2013, he completed his MPRE requirement.

On April 11, 2013, Petitioner was dismissed as a defendant in the civil suit brought by Access Insurance Company after Petitioner paid Access a settlement amount of \$50,000. Thereafter, Petitioner instructed his attorney in the legal separation case to have that case dismissed. However, his attorney took no action to dismiss that case, and Petitioner never verified whether or not the case had been dismissed.

On June 14, 2013 and January 28, 2014, Petitioner paid his costs in the disciplinary case. Petitioner has also made restitution to the victim restitution fund in the amount of \$13,975.71.

On January 9, 2014, Petitioner admitted to having used alcohol in violation of one of his State Bar probation conditions. In a quarterly report, Petitioner stated that “[o]n December 27, 2013, I tested positive for alcohol. My wife and I had come very close to getting a divorce and following my oral surgery, I was in extreme pain and distress. I apologize for my misconduct and accept full responsibility for my actions.”

On June 24, 2014, Petitioner’s first petition for reinstatement was denied. In that case, the court determined that Petitioner failed to strictly comply with his probation conditions in that he first missed a drug test on July 22, 2013, then admitted he drank vodka in December 2013 and failed to report the violation. The court concluded that Petitioner was not candid about his drug issues because he remained in denial of his addiction, that he was not credible about having his emotional issues under control, and that he had lied to the court about why he went to Dr. Aldridge (i.e., to get marijuana and cannabinoid prescriptions.) The court further concluded that Petitioner had failed to prove adequate learning and ability in the law and that Petitioner’s character evidence and volunteer work did not overcome all of the negative evidence against him.

Current Petition - Petitioner’s Evidence of Rehabilitation and Present Fitness to Practice

Employment

During his actual suspension from the practice of law, Petitioner has been employed full-time as an accounts receivable manager at Arkady Tsibel, Inc., a business which manages dental practices. Petitioner has also helped his father’s art business with marketing and sales. However, the family has relied primarily on his wife’s income during Petitioner’s actual suspension.

Community Service

As of May 2018, Petitioner had been volunteering at his synagogue, Chabad of Pasadena, for approximately six years. Among other things, Petitioner served kosher meals to the less fortunate, assisted with facilities management, assisted with cleaning and gardening, and helped with clerical work for various activities.

From October 2013 to the summer of 2014, Petitioner volunteered his time at a Domestic Violence Self Help Clinic (DASH) at Neighborhood Legal Services of Los Angeles County at the Van Nuys courthouse. There, Petitioner assisted low-income individuals prepare restraining orders in domestic violence matters. In addition, Petitioner has volunteered at the Family Justice Center at the same courthouse, assisting members of the public in completing family law forms.

Until May 2016, Petitioner also assisted at his children's school, Lanai Road Elementary School, giving educational presentations, assisting with pick-up and drop-off lines, and providing other help in the classroom.

This evidence shows that, since the time of his suspension from the practice of law, Petitioner has been actively volunteering his services to others in his community in various ways, and the court gives Petitioner credit for community service.

Good Character Evidence

In support of his contention that he has been rehabilitated and now has the present fitness to practice law, Petitioner attached to his petition declarations from family members, friends, and associates, all of whom are familiar with Petitioner's misconduct, but are nevertheless of the opinion that Petitioner is remorseful, is in recovery from his substance abuse, and is ready to practice law ethically. These people are generally of the opinion that Petitioner is not the same person now that he was when the underlying misconduct occurred and that Petitioner would not now engage in similar misconduct. The declarations, taken together with Petitioner's

declaration, establish that, although recovery from substance abuse is an ongoing process, Petitioner has made solid progress, and has the will and tools necessary to remain sober despite life stressors. The declarations also establish Petitioner's remorse for the harm caused by his misconduct.

Compliance with Disciplinary Probation, No Further Criminal Activity, Sobriety

Petitioner is currently in compliance with most of the probation conditions attached to the underlying discipline, and is in full compliance since the time of the last decision denying his petition for reinstatement.

As Petitioner and his Alcoholics Anonymous (AA) sponsor have both stated in their declarations, Petitioner has been sober since January 2015. Also since that time, Petitioner has continued to submit to drug and alcohol tests on a voluntary basis through the Gooden Center, and Petitioner has continued his participation in AA, notwithstanding that his disciplinary probation ended on June 22, 2015. Petitioner has also continued his LAP participation on a voluntary basis.

Moreover, Petitioner's wife's cancer is under control, and their marital situation is greatly improved. In general, Petitioner's stressors are reduced. Importantly, Petitioner has established a support network, including his AA community, his Gooden Center sessions, his LAP community, Dr. Rubin, and his synagogue community.

On May 24, 2018, Petitioner's therapist, Dr. Rubin, submitted a report for Petitioner. In that report, Dr. Rubin stated that Petitioner's marital difficulties have been largely resolved, that his addiction issues are under control, that his personality issues have improved, and that Petitioner continues to manage potential issues through ongoing psychotherapy. Dr. Rubin's opinion is that Petitioner is ready to practice law ethically.

Cause of Misconduct – Likelihood of Recurrence; OCTC's Arguments

Petitioner is no longer in denial. He admits to being an addict, freely lists his personality disorders, and understands how he has hurt others and the legal profession. In addition, according to his therapist, his AA sponsor, several letters of support, and his own declaration, Petitioner is a changed person.

In opposing Petitioner's request for reinstatement to the practice of law, OCTC focused on Petitioner's filing for legal separation. OCTC argues that Petitioner was not candid in his deposition when he initially denied never having filed for dissolution of marriage, and that Petitioner subsequently was forced to admit that he, in fact, had at one time filed for legal separation from his wife. OCTC further argues that filing for legal separation to protect the marital home from a potential civil judgment exhibits lack of good moral character, particularly in view of Petitioner's failure to pursue the action for a number of years until the court was finally required to dismiss the action due to lack of prosecution.

This court finds no lack of candor. The court notes the importance of the timing of the legal separation action: Petitioner filed that action on April 27, 2012. Thus, any defect in moral character exhibited by the filing of the legal separation as a legal tactic is evidence of his lack of exemplary character in 2012. That evidence is consistent with the denial of his first petition in 2014. Moreover, the action was filed well before the date of Petitioner's sobriety in January 2015. Thus, he was addicted to alcohol and drugs, and was dealing with untreated personality disorders at the time that he filed for legal separation.

Moreover, after being reminded of the legal separation case, Petitioner freely admitted at his deposition on August 28, 2018, that it was merely a legal tactic to protect the marital home from a potential civil judgment against him. Given the harm he caused his wife as a result of his drug and alcohol abuse, conviction, and suspension, Petitioner could have credibly asserted that a

legal separation was intended until reconciliation was reached. The court concludes that Petitioner demonstrated no lack of candor and that there was no intent to misrepresent or mislead OCTC about the circumstances surrounding the legal separation filing. While it could be argued that Petitioner may have misled the court in which he filed the legal separation in 2012, he took that action before the first petition and before his subsequent rehabilitation.

To the extent that OCTC relies on Petitioner's allowing the legal separation case to be dismissed for failure to prosecute in April 2016, the court notes that at his deposition, Petitioner stated he was unaware that the case had been pending for all that time. Rather, Petitioner had simply never checked to verify that his counsel had dismissed the matter pursuant to his instructions after he had settled the Access Insurance Company civil lawsuit. The court also views this testimony as credible.

Conclusion Regarding Petitioner's Rehabilitation & Present Fitness to Practice

Petitioner has demonstrated solid and successful dedication to recovery from substance abuse and to managing his mental health issues. Moreover, while his criminal misconduct and the surrounding circumstances were serious, the court notes that Petitioner has been suspended since February 22, 2011 -- almost eight years -- for a felony not involving moral turpitude which has now been expunged. Given his recovery/sobriety, his management of his mental health issues, and his strong support network, Petitioner is now properly positioned and prepared to practice law in an ethical manner. Indeed, Petitioner has gone "from a substance abuser to a person who has overcome those habits." (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at pp. 581-582.)

Accordingly, after thorough consideration, this court concludes that Petitioner has established his rehabilitation and present fitness to practice law.

Learning and Ability in Law Since June 24, 2014

Beginning in Summer 2014, Petitioner volunteered in the law office of Bimal Sambhi. Petitioner initially performed only clerical work and received apprentice-type mentorship from Mr. Sambhi. However, beginning in May 2017, after Mr. Sambhi complied with former Rules of Professional Conduct, rule 1-311, Petitioner began to assist with trial preparation as well. Petitioner also reads the Los Angeles Daily Journal, and meets with former attorney colleagues to discuss legal issues.

In addition, since the time of his actual suspension, Petitioner has completed 75.5 hours of MCLE, with 51 of those hours being completed following the denial of the first petition. Six and a half of these 51 hours were in legal ethics, while three were in substance abuse and the elimination of bias in the legal profession. The court concludes that, since the denial of his first petition, Petitioner has completed a sufficient number of MCLE hours in general law in conjunction with his legal work for Mr. Sambhi and his other legal activities, to allow him to have established sufficient legal ability and learning in the general law. (Cf. *In the Matter of Bellicini* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 883, 890 [in proceeding for reinstatement after resignation with charges pending, attorney presented sufficient evidence of ability and learning in general law by passing Professional Responsibility Examination, recently completing 24 hours of general legal education, and subscribing to a legal newspaper].)

In view of the foregoing, the court concludes that Petitioner has presented sufficient evidence of his learning and ability in the law at this time.

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ORDER

Based on the evidence set forth above, the court finds that the misconduct which led to this standard 1.2(c)(1) proceeding is not likely to recur and that Petitioner has presented sufficient evidence of learning and ability in the general law. Accordingly, the court finds that petitioner Vadim Schar 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.

Therefore, 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: February 8, 2019


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 on January 8, 2019, a true copy of the following document(s):

DECISION AND ORDER

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:

**DAVID AIGBOBOH
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 January 8, 2019.



Paul Songco
Court Specialist
State Bar Court