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STATE BAR COURT
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LOS ANGELES

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 15-V-10586-YDR
)	
YOUNG SIK CHO)	
)	DECISION GRANTING PETITION FOR
Member No. 239773)	RELIEF FROM ACTUAL SUSPENSION
)	
A Member of the State Bar.)	
_____)	

Introduction¹

The issue presented in this matter is whether YOUNG SIK CHO (“Petitioner”) has established, by a preponderance of the evidence, his rehabilitation, present fitness to practice law, and present learning and ability in the general law so that he may be relieved from the actual suspension imposed on him by the Supreme Court. (Standard 1.4(c)(ii);² *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289, 293-294.)

As Petitioner and the State Bar stipulated to waive hearing, this matter has been decided on Petitioner’s verified petition for relief from actual suspension, Petitioner’s supplements to his

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct, and all statutory references are to the Business and Professions Code. Furthermore, all references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

² Effective, January 1, 2014, the former Rules of Procedure of the State Bar of California (Rules of Procedure) were revised and standard 1.4(c)(ii) was renumbered as standard 1.2(c)(1). Because Petitioner was ordered to comply with standard 1.4(c)(ii), we apply the former Rules of Procedure to this proceeding.

verified petition for relief from actual suspension, and the State Bar's response and amended response, as well as all attached exhibits.

For the reasons set forth below, this Court finds Petitioner has shown by a preponderance of evidence that he has satisfied the requirements of Standard 1.4(c)(ii). Therefore, Petitioner's request for relief from actual suspension is **GRANTED**.

Significant Procedural History

This matter arose in connection with Petitioner's February 22, 2013, misdemeanor conviction on one count of violating Penal Code section 148.5(a) (False Report of a Criminal Offense). The conviction proceeding commenced May 23, 2013 when the Review Department of the State Bar Court issued an order suspending Respondent from the practice of law effective June 24, 2013. Petitioner was suspended pursuant to Business and Professions Code section 6102 since Petitioner's misdemeanor conviction involved moral turpitude. Matter 12-C-17848 was then referred to the State Bar Court Hearing Department for a hearing and decision recommending discipline.

Subsequently, on September 26, 2013, Petitioner entered into a Stipulation Re Facts, Conclusions of Law and Disposition And Order Approving in State Bar Case No. 12-C-17848 RAH ("Stipulation"). This Stipulation was approved and filed by the State Bar Court on October 24, 2013. By Supreme Court of California order S215197, filed February 24, 2014 and effective March 24, 2014, Petitioner was actually suspended from the practice of law for two years, retroactive to June 24, 2013.

Petitioner filed and served his verified petition for reinstatement from actual suspension on February 5, 2015. Petitioner filed a supplement to the verified petition on March 23, 2015. Petitioner filed a second supplement to the verified petition for reinstatement from actual suspension on April 6, 2015. The State Bar filed responses March 23, 2015 and April 2, 2015.

The State Bar did not oppose either Petitioner's petition for relief or Petitioner's request for submission on the pleadings.

This matter was submitted April 9, 2015.

Findings of Fact

Petitioner was admitted to the practice of law in California on December 6, 2005, and has been a member of the State Bar at all times since that time. He was placed on inactive status effective June 24, 2013.

Background of Misconduct and Disciplinary Matter

Disciplinary Matter (Case No. 12-C-17848 RAH) (S215197)

Petitioner has a single record of discipline which resulted from his arrest and conviction for violation of Penal Code section 148.5(a), the false reporting of a criminal offense. On or about April 4, 2012, Petitioner reported to the Los Angeles Police Department that two homeless men had attempted to rob him at an ATM. Based on Petitioner's description and identification of the alleged perpetrators, the police arrested two men for attempted robbery.

At the attempted robbery preliminary hearing, Petitioner testified, as he reported to the police, that one of the men tried to take his deposit envelope while the other man acted as a lookout. However, during cross-examination, Petitioner was asked about the bank surveillance film which revealed that Petitioner had not been accosted by either of the two men.

The charges against both men were dismissed and subsequently, on or about November 15, 2012, the Los Angeles County District Attorney filed a criminal complaint charging Petitioner with one count of violating Penal Code section 118 (a) (Perjury Under Oath), a felony, and one count of violating Penal Code section 148.5 (False Report of a Criminal Offense), a misdemeanor.

Petitioner entered a plea of no contest and was found guilty with respect to Penal Code section 148.5. Petitioner was placed on summary probation, with terms requiring him to enroll in and attend psychological or psychiatric counseling once a week for a year and to attend The Other Bar meetings twice weekly for two years. Petitioner has complied with the terms of his probation.

At some point, it was revealed that at the time of the alleged attempted robbery, Petitioner was being treated for depression with Adderall, a prescription amphetamine known to cause paranoia as a potential side effect. In addition to taking Adderall, Petitioner would often consume substantial amounts of alcohol in an effort to escape his marital turmoil, anxiety and depression. The evening of the alleged attempted robbery, Petitioner had consumed alcohol and Adderall, which increased the potential for side effects.

Petitioner stipulated to discipline in a Stipulation approved by the State Bar Court Hearing Judge on October 24, 2013. In mitigation, Petitioner had no prior record of discipline since being admitted to practice law on December 6, 2005. Petitioner also entitled to mitigation credit for entering into a full stipulation with the State Bar prior to trial. No aggravating factors were involved.

Petitioner stipulated to a three year stayed suspension and an actual suspension for two years, effective June 24, 2013.

Rehabilitation

The misconduct underlying Petitioner's conviction was attributed to his abuse of alcohol and medication prescribed to him by his physician during the course of treatment for ADHD. The conditions of Petitioner's criminal probation included psychiatric counseling, abstinence from alcohol and drugs and participation in various treatment programs. Petitioner has complied with all conditions of his criminal probation.

Petitioner has maintained his sobriety since December 2012, by attending and participating in treatment programs such as the 12 Step Program, the Other Bar and other AA programs. For almost two years, Petitioner has engaged in cognitive therapy with psychotherapist Ms. Cindy Stansberry. Additionally, he has participated in psychiatric counseling sessions with psychiatrist Dr. Carol Kiriakos for almost 18 months.

Petitioner has also complied with all terms of his State Bar disciplinary probation.

Discussion

Petitioner's Rehabilitation and Present Fitness to Practice

In this proceeding, Petitioner has the burden of proving by a preponderance of the evidence that he has satisfied the conditions of standard 1.4(c)(ii). The court first looks to the nature of the underlying misconduct as well as the aggravating and mitigating circumstances surrounding it to determine the point from which to measure Petitioner's rehabilitation, present learning and ability in the general law and, present fitness to practice before being relieved from his actual suspension. (*In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr 571, 578.)

To establish rehabilitation, the court must first consider Petitioner's prior misconduct. The amount of evidence of rehabilitation varies according to the seriousness of the misconduct at issue. Next, the court must examine Petitioner's actions since imposition of Petitioner's 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.) Petitioner must also show strict compliance with the terms of probation in the underlying disciplinary matter, exemplary conduct from the imposition of the prior discipline, and "that 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." (*Id.*)

Petitioner's rehabilitation is evidenced by the fact that Petitioner no longer abuses or is dependent on the alcohol and Adderall that in large measure caused his underlying misconduct. His substantial progress in that regard is discussed in the declaration of his treating psychiatrist, Dr. Carol Kiriakos. Dr. Kiriakos commented that Petitioner has not only been compliant with all aspects of his care but, "[h]e has been compliant with all of his probation terms as well--- attending 12-step Alcoholic Anonymous meetings per probation terms, filling out required forms for accountability, and attending weekly therapy sessions with his individual therapist." (Declaration of Dr. Kiriakos, p.4). Dr. Kiriakos further reports that Petitioner feels his "anxiety and depression are under good control." (*Id.*) All and all, Petitioner appears to be in remission and has been clean and sober for about 2 years.

Licensed psychotherapist, Cindy Stanberry, also gave Petitioner a positive prognosis based on his increased commitment to better management of the stressors in his life that led to the underlying misconduct. Specifically, Petitioner has gained increased insight into his behaviors and the adjustments necessary for a higher level of functioning, he has worked through his marital issues and, Petitioner has increased expression of his needs and feelings in a way that allow appropriate responses to psychosocial stressors.

Petitioner has accepted responsibility for his misconduct. He has shown an understanding of, and remorse for the misconduct that led to his actual suspension. Petitioner argues that he has been rehabilitated and possesses the requisite present fitness to once again practice law. This Court agrees, and by its non-opposition, the State Bar concedes Petitioner's successful rehabilitation and fitness to practice law as well.

Petitioner's Character References

Petitioner submitted nine (9) favorable character witness declarations in support of his petition which attest to his integrity, good character, and remorse for his misconduct.

Petitioner's character witnesses include four attorneys (Timothy Ray, Susan Shanley, Christin Cho, and Yohan Lee); psychiatrist Dr. Carol Kiriakos; psychotherapist Cindy Stanberry; Dr. Erik Won; friend and family member Professor Samuel Hires, Ph.D. and acquaintance Joshua Tucker.

Each of Petitioner's character witnesses expressed at least a general awareness of Petitioner's conviction and the drug and alcohol abuse that led to the underlying misconduct. Each observed that Petitioner had made a great deal of progress through therapy, counseling and/or his strong desire to develop the skills necessary to combat the challenges and stressors in his life. Most commented on how his sobriety has transformed him into a more stable and responsible individual in many respects, including in his role as custodial parent of his young daughter.

Showing of Present Learning and Ability in the Law

Petitioner provided certificates of attendance for the 25 MCLE courses he has taken since December 2014. The continuing education courses are varied and include legal education programs regarding substance abuse, avoiding bias, immigration law, contract drafting, health law, fraud, the First Amendment and privacy issues and tax law. In addition, Petitioner has continued with self-study courses in immigration and criminal defense, his primary areas of practice at various times during his legal career.

Furthermore, as conditions of his probation, Petitioner was ordered to complete the State Bar Ethics School and to take and pass the Multistate Professional Responsibility Examination ("MPRE"). Petitioner attested that he has completed Ethics School and passed the MPRE.

On this record, this Court finds that Petitioner has demonstrated by a preponderance of the evidence that he possesses present learning and ability in the general law.

Conclusion

The court finds that Petitioner Young Sik Cho has demonstrated, by a preponderance of evidence, his rehabilitation, present fitness to practice, and present learning and ability in the general law. Accordingly, Petitioner is **GRANTED** relief from actual suspension from the practice of law pursuant to Standard 1.4(c)(ii). Petitioner will be entitled to resume the practice of law in this state when all of the following conditions have been satisfied:

1. This decision has become final, which includes the expiration of time for seeking reconsideration and review pursuant to Rules of Procedure of State Bar, rules 5.115, 5.150, 5.409, and 5.410;
2. Petitioner has paid all applicable State Bar fees and costs pursuant to Business & Professions Code sections 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: April 24, 2015



YVETTE D. ROLAND
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Following standard court 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:

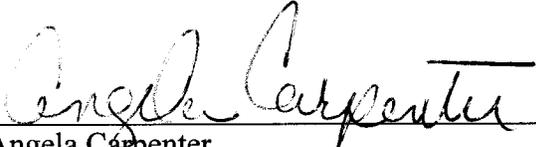
- By OVERNIGHT MAIL by enclosing the documents in a sealed envelope or package designated by an overnight delivery carrier and placing the envelope or package for collection and delivery with delivery fees paid or provided for, addressed as follows:

DAVID C CARR
LAW OFC OF DAVID C CARR PLC
525 B ST STE 1500
SAN DIEGO, CA 92101

- 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:

SUE HONG
STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL
845 S. FIGUEROA STREET
LOS ANGELES, CA 90017-2515

I hereby certify that the foregoing is true and correct. Executed at Los Angeles, California, on April 24, 2015.



Angela Carpenter
Case Administrator
State Bar Court