

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT –SAN FRANCISCO

In the Matter of) Case No.: **06-R-14648-LMA**
)
CHANCE XCALIBER OBERSTEIN) **DECISION**
)
Petitioner for Reinstatement.)
_____)

I. INTRODUCTION

Petitioner **CHANCE XCALIBER OBERSTEIN** filed a petition for reinstatement to the practice of law on October 10, 2006. He was represented by Michael G. Gerner. The State Bar was represented by Deputy Trial Counsel Geri VonFreymann and Jean Cha. Trial was held on January 14-17, 2008, and the matter was taken under submission on February 21, 2008.

Petitioner has demonstrated, by clear and convincing evidence, that he is rehabilitated from the conduct that led to his resignation in 2001; that he has present learning and ability in the general law; and that he possesses the present moral qualifications for reinstatement to the practice of law. (Rules Proc. of State Bar, rule 665.) Therefore, this court recommends that he be reinstated to the practice of law in California upon payment of all applicable fees and costs.

II. FINDINGS OF FACT

The following findings of fact are based on the parties' stipulations of undisputed facts,

the petition, and the evidence and testimony introduced at this proceeding.

A. State Bar Membership

Petitioner was admitted to the practice of law in California on June 6, 1991, and was a member of the State Bar until his resignation with disciplinary charges pending was accepted by the Supreme Court in order no. S097058 (State Bar Court case no. 01-Q-01016) filed on May 4, 2001 and effective June 3, 2001.

B. Petitioner's Background and Conduct Leading to Resignation

While employed as a deputy public defender in Los Angeles County, Petitioner engaged in a sexual relationship with a 16-year-old minor who was a client of the Public Defender's office, although not his client. Petitioner believed she was about 19 years old. The last sexual contact between these parties was in June 1996. Petitioner was arrested on August 27, 1997. This conduct led to a conviction by a jury on July 16, 1998, of five counts of felony conduct including three counts of unlawful sexual intercourse, one count of sodomy and one count of copulation in violation of Penal Code, sections 261.5, subdivision (c), 286, subdivision (b)(1) and 288a, subdivision (b)(1). (Los Angeles Superior Court case no. BA1554485.)

On January 22, 1999, Petitioner was sentenced as follows: imposition of sentence suspended; formal probation for a period of three years subject to terms and conditions including, among other things, 365 days to be served in county jail, subject to credit for time served, restitution, and 250 hours of community service. Petitioner was also ordered to register as a sex offender pursuant to Penal Code, section 290.

As a result of the conviction, the Review Department of the State Bar Court placed Petitioner on interim suspension by order filed on August 10, 1999, which was effective on September 9, 1999. He was also ordered to comply with then-rule 955 of the California Rules of

Court,¹ with which he timely complied.

On July 26, 2000, Petitioner's appeal was denied and the conviction was affirmed. (*People v. Oberstein*, B129389.) On October 18, 2000, his petition for a writ of review by the Supreme Court was denied and the conviction was affirmed. (Supreme Court order no. SO91325.)

On June 26, 2001, the superior court granted the Probation Department's motion for early termination because he had complied with all of the terms and conditions of probation. On September 9, 2003, the court ordered all counts in his conviction reduced from felonies to misdemeanors. On January 7, 2004, without objection from the prosecution, the court set aside Petitioner's verdict of guilty and dismissed the proceeding.

Petitioner has paid the costs assessed in connection with State Bar Court case no. 01-Q-01016. He did not and does not owe reimbursement to the Client Security Fund. He paid the \$2,682 in superior court-ordered restitution on November 13, 2002.

Petitioner had no prior record of discipline preceding his resignation. He had no prior or subsequent criminal conduct.

C. Petitioner's Rehabilitation and Moral Character

Every psychiatric and psychological report written at the time of Petitioner's criminal prosecution cited Petitioner's accountability for his actions and his deep remorse. They also stated that he was not a danger to society and that he was unlikely to reoffend. Some noted that Petitioner's conduct was aberrational. They all commented favorably on his progress during therapy in gaining insight into his behavior.

Following his conviction, Petitioner began court-ordered group therapy and was discharged early upon the recommendation of the group facilitator because of his exemplary comportment.

¹ This rule was since renumbered as rule 9.20.

Petitioner then began individual therapy and counseling with Reverend John Coleman, O. Carm., MSW, and, later, began treating with him again in 2007. Fr. Coleman noted at the time that Petitioner was a good, honest man whose capacity for insight and self-reflection grew. At the hearing, he reiterated that opinion as well as that Petitioner is not a danger to the public or to the administration of justice. He noted that Petitioner became more connected to the social supports in his life. He developed genuine religious beliefs and humility. He is truly remorseful and has a deepened empathy and sense of identification with the minor, understanding what she had gone through because of his actions. He has become reconciled within himself. Fr. Coleman believed that enough time has passed since the misconduct to demonstrate that Petitioner is rehabilitated. The fact that more time passes does not necessarily mean fuller rehabilitation.

Petitioner provided credible testimony regarding his recognition of his wrongdoing, his remorse and contrition for his conduct and the harm he caused the minor. He embraced the goals and areas to focus on set forth in the therapists' reports. He has worked on interpersonal relationships and developed a support system. He understands avoiding situations that might be detrimental. He has found religious beliefs that sustain him. Through psychotherapeutic counseling, religion and the support of family and community, Petitioner has changed his life.

D. Character Witnesses

Petitioner's character witnesses were aware of his resignation and the misconduct that led to it. They know Petitioner well and have had regular dealings with him, both personally and professionally. They testified favorably regarding Petitioner's remorse for his conduct, honesty, integrity, trustworthiness, and legal knowledge and skills. The witnesses also included a judge and attorneys who employed Petitioner, who, as lawyers, are acutely aware of the ethical standards imposed upon the profession. Such evidence is entitled to considerable weight.

(*Feinstein v. State Bar* (1952) 39 Cal.2d 541, 547). The court found all of Petitioner's witnesses

to be very credible.

1. William S. Harris, Esq.

William S. Harris, Esq., has been admitted to the State Bar since 1979 and is a sole practitioner in South Pasadena. His work is primarily in business litigation and federal criminal trials. Mr. Harris employed Petitioner as a paralegal in 2004 in the federal death penalty case of *USA v. Barry Byron Mills, et al.*, in which Mr. Harris represented T.D. Bingham. Mr. Harris was aware that Petitioner was an attorney that resigned with charges pending because of his conviction of having sex with a minor. He also knew that Petitioner was required to register as a sex offender. Petitioner has told Mr. Harris about the facts of his case and has been candid about his in-custody experiences.

Mr. Harris was a direct supervisor of Petitioner's work. He noted that Petitioner keeps careful track of his time, bills honestly and conservatively. Petitioner helped Mr. Harris put together a CaseMap program for the Bingham defense and was meticulous in controlling the thousands of papers involved in the case for quick reference. Mr. Harris believes Petitioner is honest, has integrity, an excellent work ethic and is a model colleague. Mr. Harris credits Petitioner in large part with saving T.D. Bingham's life and recently asked Petitioner to be a pall-bearer at his mother's funeral.

2. Michael V. White, Esq.

Michael V. White, Esq., has been a criminal defense attorney since 1973 and is currently a sole practitioner in Santa Monica. Mr. White became aware of Petitioner's conviction and resignation from the State Bar when Michael Adelson, Petitioner's criminal defense attorney, asked Mr. White to consider Petitioner for a paralegal position in the *Mills* case.

Mr. White, too, believes that Petitioner was indispensable to the defense of Mr. Bingham. Petitioner read all of the nearly 150,000 pages of discovery and analyzed, organized and integrated them into a computer program. He also believes that Petitioner's close relationship

with Mr. Bingham was very important to the case.

Mr. White attested to Petitioner's great legal mind. He would refer his friends and loved ones to Petitioner if reinstated because he finds Petitioner to be honest, responsible, hard working and trustworthy.

3. Stanley Perlo, Esq.

Stanley Perlo, Esq., was admitted to the State Bar in 1974, and is a sole practitioner in Long Beach. He has known Petitioner for 15 years since Petitioner first joined the Public Defender's Office but only recently became reacquainted with him when Mr. Perlo was appointed to represent Robert Teflinger in the *Mills* case. When Petitioner's work in the Bingham matter came to a close, Mr. Perlo hired Petitioner as a paralegal in the Teflinger matter because Petitioner had gained a reputation for excellent knowledge of the legal issues and a great ability to organize the case material that exceeded 135,000 pages of discovery.

Mr. Perlo testified to Petitioner's high work ethic, honesty, high level of integrity and great legal knowledge.

4. Mark F. Fleming, Esq.

Mark F. Fleming, Esq., was admitted to the State Bar in 1993, and is a sole practitioner in San Diego.

Mr. Fleming met Petitioner around February, 2005 when Mr. Fleming was appointed to represent Mr. Mills in the *Mills* case and Petitioner was the paralegal for Mr. Bingham's counsel. Mr. Fleming observed Petitioner while the entire defense team stayed in the same hotel from February, 2006 through August, 2006 for the *Mills* RICO trial. He found Petitioner to be honest, forthright, trustworthy and ethical. Mr. Fleming was impressed with Petitioner's work ethic and devotion to his client, so much so, that he was in the process of petitioning the court to appoint Petitioner as a paralegal to assist him in another death penalty case.

Mr. Fleming was aware of Petitioner's conviction, resignation from the State Bar and the

requirement that he register as a sex offender. He found Petitioner to be candid about his past, genuine and remorseful. He never observed Petitioner being bitter about his past and was impressed with his positive attitude.

5. Judge Carlos E. Velarde

Retired Superior Court Judge and former State Bar Court Supervising Judge Carlos E. Velarde has known Petitioner since he was a young boy because Judge Velarde was a lifelong friend of Petitioner's father.

Although contact with Petitioner into adulthood was limited to social events, Judge Velarde was aware of Petitioner's arrest and testified at Petitioner's bail hearing. He was aware of Petitioner's conviction and resignation from the State Bar. He kept in touch with Petitioner after his conviction.

Judge Velarde testified that he discussed the law with Petitioner and was impressed with his knowledge and ability in the law.

Judge Velarde believes Petitioner is rehabilitated and has no reservations about supporting his petition for reinstatement. He believes that Petitioner is always honest, frank, candid and straightforward. He also believes that Petitioner's ethics and morality are of the highest caliber.

6. Reverend Tim Anderson

Reverend Tim Anderson is the Senior Pastor at Calvary Chapel Church in Burbank. He met Petitioner about two and one-half years ago and knows about his conviction, resignation from the State Bar and the requirement that he register as a sex offender. Petitioner has never been evasive, defensive or bitter about his conviction.

Petitioner is a regular participant in Sunday morning services and other church activities. He also contributed to the renovation of a new church building by helping to tear out windows, among other things. Reverend Anderson believes that Petitioner's faith is genuine, that he is

rehabilitated, honest and humble.

Petitioner also presented 13 additional letters as character evidence, including three additional attorneys, three relatives, three investigators, two friends, a co-worker and the client, Mr. Bingham. These letters were consistent with the testimony of the six witnesses as set forth above. They describe his high degree of commitment, integrity, and honesty. All were extremely supportive of Petitioner. They attested to Petitioner's moral character, rehabilitation and present learning and ability in the general law.

Almost all of the witnesses mentioned that they were aware of the underlying conviction and resignation even though they didn't mention the actual facts of the underlying conviction. They expressed confidence in Petitioner's rehabilitation and urged his reinstatement, stating that Petitioner is committed and remorseful. The witnesses praise Petitioner's integrity, dedication and honesty.

The State Bar did not rebut any of the evidence submitted.

E. Present Learning in the Law

At the time of Petitioner's arrest and conviction, he was employed by the Los Angeles Public Defender's Office as a deputy public defender. Petitioner was employed from June 1991 July 30, 1998.²

After his resignation from the State Bar, Petitioner worked as a paralegal for several attorneys from 2004 to the present in the defense of federal death penalty cases. In his work as a paralegal, the federal district court has ordered that Petitioner be paid at a rate higher than normal paralegals, based upon his background and experience. For example, in the *Mills* case, his duties included reading, analyzing and organizing over 150,000 pages of discovery and integrating the

² On September 14, 1997, Petitioner was placed on administrative leave after his arrest. He tendered his resignation on July 30, 1998.

information into a computer system.³ He also researched and drafted pleadings and supervised members of the paralegal team.

Petitioner has also submitted certificates of completion for 95 hours of on-line Rutter Group MCLE courses, including credits for classes in legal ethics, elimination of bias, substance abuse awareness and law office management. Several character witnesses also credibly testified that Petitioner keeps up with developments in the law by reading the daily appellate case law summaries.

F. Professional Responsibility Examination

In August, 2007, Petitioner took and passed the Multistate Professional Responsibility Examination as required by rule 951(f) of the California Rules of Court.

III. CONCLUSIONS OF LAW AND DISCUSSION

A. California Rules of Court, Rule 951(f); Rules of Procedure of the State Bar, Rule 665

To be reinstated to the practice of law, an attorney who resigned with charges pending must establish by clear and convincing evidence that he has passed a professional responsibility examination, has been rehabilitated, has the present moral qualifications for reinstatement as well as the present ability and learning in the general law. (Cal. Rules of Court, rule 951(f); Rules of Proc. of State Bar, rule 665.)

Petitioner bears the heavy burden of proving by clear and convincing evidence that he meets all of the requirements for readmission to the practice of law. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1091-1092; *Calaway v. State Bar* (1986) 41 Cal.3d 743, 745; *Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403.) Although he need not demonstrate perfection, “overwhelming proof of reform” is necessary. (*Feinstein v. State Bar, supra*, 39 Cal.2d at

³ He did similar work in two other cases after being appointed as a paralegal to the defense teams. (*United States v. Terflinger*, part of the *Mills* case, and *United States v. Rubin Castro, et al*, case no. CR-06-599-CAS.)

p. 546; *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 315.)

The showing of rehabilitation needed is commensurate with the nature and seriousness of the underlying misconduct. (*In re Menna* (1995) 11 Cal.4th 975, 986; *Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1068-1069.) However, as the Supreme Court stated in *Resner v. State Bar* (1967) 67 Cal.2d 799, 811, “[t]he law looks with favor upon the regeneration of erring attorneys. . . .” (See also, *In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546, 553.)

B. Rehabilitation

The misconduct that led to Petitioner’s resignation was serious. An applicant for reinstatement must show, by clear and convincing evidence, that he or she is successfully rehabilitated. Proof of that rehabilitation must include a lengthy period of unblemished and exemplary conduct. (*In re Menna, supra*, 11 Cal.4th 989.)

This court concludes Petitioner has clearly and convincingly demonstrated his rehabilitation from the circumstances that were once present in Petitioner’s life at the time of his misconduct. Petitioner’s presentation of favorable character evidence, and evidence of remorse and acceptance of the responsibility for misconduct leading to his resignation are adequate to show sustained exemplary conduct and demonstrate moral reform. (See, *In the Matter of Kirwan* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 692.)

The passage of an appreciable amount of time since the misconduct is also a factor in determining rehabilitation. (*Hippard v. State Bar, supra*, 49 Cal.3d at p. 1095.) However, “our concern . . . is not just in counting the correct number of years for measuring Petitioner’s rehabilitation, but more importantly, to assess the quality of Petitioner’s showing in light of his very serious misconduct.” (*In the Matter of Bodell* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr.459, 464 [showing of rehabilitation sufficient during four years of unsupervised good conduct].)

Petitioner has demonstrated by clear and convincing evidence that he has turned his life around. He is no longer the person he was at the time of the misconduct. His treating therapist, Fr. Coleman, recognized that, as did the mental health professionals who examined him in connection with his sentencing and thereafter as did the superior court in terminating his probation early. Moreover, the last criminal act occurred in June 1996, over 10 years before the reinstatement petition was filed and five and one-half years after Petitioner's probation was terminated on June 26, 2001. Unlike in *Menna*, there is no evidence of prior or subsequent misconduct.⁴ The criminal acts, repugnant though they were, were an aberration. He has conducted himself in an exemplary manner without court or State Bar supervision for five and one-half years at the time the petition was filed. The State Bar did not present evidence sufficient to undercut the evidence presented in support of reinstatement. The court agrees with Fr. Coleman, Petitioner's therapist, who observed that enough time has passed since the misconduct to demonstrate that he is rehabilitated. Under these circumstances, the fact that more time passes does not necessarily mean fuller rehabilitation.

The evidence shows that Petitioner has taken responsibility for his life and past misconduct, and he has resurrected himself into an honest, trustworthy and productive member of the community. (See, *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423.) He has been forthright and honest in his description of his misconduct and has expressed sincere remorse for it. (See, *In the Matter of Rudman, supra*, 2 Cal. State Bar Ct. Rptr. at p. 554.) Petitioner has demonstrated an acceptable appreciation for his professional responsibilities and a proper attitude towards his misconduct. (*In the Matter of Miller, supra*, 2 Cal. State Bar Ct. Rptr. at p. 431.) Petitioner's rehabilitation is most compelling and impressive.

⁴In *Menna*, five and one-half years of unsupervised good conduct were insufficient to demonstrate rehabilitation where the applicant for admission was engaged in a continuous course of personal and professional misconduct for five years culminating in his arrest, and made an insufficient showing of efforts to make amends to those he harmed by making restitution commensurate with his ability to pay.

C. Moral Qualifications

As to moral qualifications, the question before the court is "whether Petitioner is a fit and proper person to practice law at this time." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1051.) Petitioner has proven by clear and convincing evidence the requisite good moral character for reinstatement to the practice of law. He has demonstrated that he is fit to practice law in California.

"Letters of recommendation and the favorable testimony, especially that of employers and attorneys, are entitled to considerable weight. [Citations.]" (*Feinstein v. State Bar, supra*, 39 Cal.2d at p. 547.) Petitioner presented very credible evidence from a number of attorneys, including his employers, as well as a former judge of this court, all of whom urged his reinstatement based on their assessment of his character and legal knowledge and skills.

Here, Petitioner presented many credible character witnesses who attested to his high moral character. The character testimony and reference letters have been given strong consideration as factors supporting Petitioner's reinstatement. Their opinion and knowledge of Petitioner are that he is of good moral character and this court agrees.

D. Petitioner's Present Learning and Ability in the General Law

The un rebutted evidence supports a finding that the Petitioner has made a sufficient showing of present ability and learning in the general law required for reinstatement. (Rules Proc. of State Bar, rules 665(c) and (d).) His duties and responsibilities as a paralegal demonstrate that Petitioner possesses the required present learning and ability in the general law. In addition, his employers and other attorneys attest to his legal knowledge and ability in the general law. He has also kept himself well informed through legal publications, educational materials and online courses.

E. Multistate Professional Responsibility Examination

Petitioner has successfully completed the Multistate Professional Responsibility

Examination.

After careful consideration of the facts and the law, the court concludes that Petitioner's reinstatement to the practice of law at this time is fully warranted. He has clearly provided a compelling demonstration of moral rehabilitation, comprising "overwhelming, proof of reform . . . which we could with confidence lay before the world in justification of a judgment again installing him in the profession." (*In re Menna, supra*, 11 Cal.4th 975, 989.)

IV. CONCLUSION AND RECOMMENDATION

Petitioner has sustained his burden by clear and convincing evidence to demonstrate that he is rehabilitated and thus possesses the present moral qualifications and has met the other requirements for reinstatement to the practice of law in California. Accordingly, IT IS RECOMMENDED that the petition for reinstatement be **GRANTED** and that Petitioner **CHANCE XCALIBER OBERSTEIN** be reinstated to the practice of law in California upon payment of all applicable fees and costs.

Dated: June _____, 2008

LUCY ARMENDARIZ
Judge of the State Bar Court