PUBLIC MATTER

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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of **DAVID PAUL RITZINGER,** **Member No. 80589,** A Member of the State Bar.	Case No.: **07-V-14710-PEM** **DECISION & ORDER GRANTING PETITION FOR RELIEF FROM ACTUAL SUSPENSION**

I. INTRODUCTION

The issue in this case is whether petitioner David Paul Ritzinger has established his rehabilitation, present fitness to practice, and present learning and ability in the general law so that he may be relieved from the actual suspension imposed on him in the Supreme Court's June 2, 2000 order in case number S086858 (State Bar Court case number 95-O-10826, et al.) (hereafter *Ritzinger* I). (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)[1]

The court finds that petitioner has shown by a preponderance of the evidence that he has satisfied the requirements of standard 1.4(c)(ii) and, therefore, finds that he should be granted relief from his actual suspension. Accordingly, the court will **GRANT** the petition.

II. KEY PROCEDURAL HISTORY

Petitioner filed his verified petition for relief from actual suspension on November 29, 2007. On January 14, 2008, the Office of the Chief Trial Counsel of the State Bar of California

[1] All further references to standards are to this source.

(State Bar) filed a response in which it opposes the petition on the grounds that petitioner has not shown his present rehabilitation and present fitness to practice law.

Deputy Trial Counsel Tammy M. Albertsen-Murray appeared for the State Bar. Petitioner represented himself.

Trial was held on February 15, 2008, and the court took the petition under submission for decision on February 19, 2008.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on petitioner's November 29, 2007 verified petition and its supporting declarations;[2] the State Bar Court February 10, 2000 decision in *Ritzinger* I; and petitioner's hearing brief filed on February 15, 2008, which was admitted into evidence without objection as exhibit A.[3]

Petitioner was admitted to the practice of law in California on June 23, 1978, and has been a member of the State Bar since that time.

A. Petitioner's Prior Disciplinary Proceedings

Petitioner has one prior record of discipline, which is the Supreme Court's June 2, 2000 order in *Ritzinger* I. In that order, the Supreme Court placed petitioner on three years' stayed suspension, three years' probation, and two years' actual suspension that will continue until petitioner has shown proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law pursuant to standard 1.4(c)(ii) and until he has made restitution to: (1) Yolanda Ramos (or, if appropriate, the Client Security Fund

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[2] The court finds that the statements in these supporting declarations are very credible. (See, generally, *Warner Bros. Records, Inc. v. Golden West Music Sales* (1974) 36 Cal.App.3d 1012, 1017, fn. 7.)

[3] Because petitioner's hearing brief was admitted without objection or limitation, the court may properly consider the hearsay statements in it for the truth of the matters asserted. (*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 523, fn. 32, and cases there cited.) In that regard, the court finds that the statements in petitioner's brief are very credible.

[hereafter CSF]) in the amount of $2,037.50 plus 10 percent interest per annum from July 11, 1995; (2) Manuel Hymes (or CSF if appropriate) in the amount of $510 plus 10 percent interest of per annum from January 1, 1996; (3) Lania and James Williams, Jr. (or CSF if appropriate) in the amount of $2,069.25 plus 10 percent interest per annum from March 29, 1996; and (4) Francisco J. Cerrillo (or CSF if appropriate) in the amount of $3,000 plus 10 percent interest per annum from April 30, 1996; and until he provides the State Bar's Office of Probation with satisfactory evidence thereof.

The Supreme Court's June 2, 2000 order in *Ritzinger* I and petitioner's actual suspension under that order became effective on July 2, 2000. And petitioner has been on actual suspension under that order since that time.

Petitioner's misconduct in *Ritzinger* I involved eight client matters and included failing to account for advance fees, intentionally deceiving the public with false legal advertising, misrepresenting fee arrangements, filing false declarations with the court, allowing nonattorneys in his employ to give legal advise, and charging unconscionable fees. Respondent committed that misconduct from 1994 to 1996.

From late 1994 through early 1995, petitioner aired a series of 30-second commercials dealing with legal consultation and the hiring of lawyers on local television stations. The court in *Ritzinger* I found that those ads were intentionally deceptive in violation of rule 1-400(D)(2) of the Rules of Professional Conduct of the State Bar.[4] The court further found petitioner's intentional deception involved moral turpitude in violation of Business and Professions Code section 6106.[5]

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[4] Unless otherwise noted, all further references to rules are to these Rules of Professional Conduct.

[5] Unless otherwise noted, all further statutory references are to the Business and Professions Code.

In the **Ramos** client matter, petitioner failed to return unearned fees in violation of rule 3-700(D)(2) and failed to render an appropriate accounting in violation of rule 4-100(B)(3).

In the **O'Banion** matter, petitioner failed to send O'Banion a billing statement or to inform her that his fees for legal services had exceeded his retainer in violation of his duty to keep her reasonably informed of significant developments in matters with regard to which he had agreed to provide legal services. Respondent was also was found culpable of charging an unconscionable fee coupled with threats to withdraw and a motion to withdraw in violation of rule 4-200(A). Additionally, in the **O'Banion** matter, the court also found respondent's conduct involved moral turpitude.

In the **Reeves** matter, the court found that petitioner did not promptly communicate, to his client, the fact that he rapidly ran-up fees in excess of a claimed retainer in violation of section 6068, subdivision (m). As to the **Reeves** matter the court also found that respondent charged an unconscionable fee in violation of rule 4-200(A).

In the **Mixon** matter, the court found that petitioner was grossly negligent in the supervising of his staff such that it lead to a filing of a materially false declaration in violation of section 6068, subdivisions (c) and (d) and of section 6106. Moreover, in the **Mixon** matter, the court found petitioner's conduct in charging Mixon in excess of the flat fee that was originally agreed upon was overreaching that therefore amounted to an unconscionable fee in violation of rule 4-200(A).

In the **Baron/Ferreira** matter, the court found that respondent allowed a nonattorney employee to give his client's legal advice in violation of rule 1-300. In addition, the conduct of allowing his nonattorney employee to practice law was so grossly negligent as to amount to moral turpitude. Furthermore, the court found that petitioner failed to inform his clients of

significant developments pertaining to legal representation as it related to his billing practices in violation of section 6068, subdivision (m).

In the **Hymes** matter, the court found that petitioner failed to return unearned fees in violation of rule 3-700(D)(2).

In the **Lania and James Williams** matter, the court again found that petitioner failed to return unearned fees in violation of rule 3-700(D)(2).

In the **Cerrillo** matter, the court found that petitioner allowed nonattorney employees to give legal advice and thus aided in the unauthorized practice of law in violation of rule 1-300. Again, in the this matter, the court found that petitioner also failed to return unearned fees in violation of rule 3-700(D)(2) and charged an unconscionable fee given that the client received no benefit for the $3,000 advanced fee that he paid petitioner. Moreover, the court found that by putting nonattorneys in a position to give legal advice and then charging an unconscionable fee and then refusing to return the unearned fee petitioner again engaged in conduct involving moral turpitude in violation of section 6106.

B. Petitioner's Legal Learning

Between February 2006 and November 2007, petitioner completed 78.5 hours of continuing legal education. He completed 56.5 of those hours during the calendar year 2007. In addition, in February and March 2007, petitioner performed 10 to 15 hours of self study to complete his law office management plan. And, since November 2007, petitioner has completed an additional 17 participatory hours of continuing legal education.

On November 12, 2004, petitioner took and passed the Multistate Professional Responsibility Examination (hereafter MPRE). On November 9, 2001, petitioner attended and completed the State Bar's Ethics School. On February 22, 2003, petitioner completed the State Bar's Ethics School Client Trust Account Recording Keeping Course. Moreover, petitioner has

devoted a significant amount of time to self-study in connection with passing the MPRE, ethics school, and client trust account record keeping course. Petitioner also engaged in a ongoing program of self-study in order to maintain his awareness of California Workers' Compensation.

Finally, petitioner litigated his own bankruptcy and was successful in an adversarial proceeding brought by a creditor trying to exempt its debt from discharge.

C. Petitioner's Rehabilitation and Present Fitness to Practice Law

***1. Petitioner's Compliance With the Supreme Court's Order in Ritzinger* I**

Petitioner has been on actual suspension for more than seven and one-half years under the Supreme Court's June 2, 2000 order in *Ritzinger* I. He has fulfilled all his MCLE requirements since that time. In addition, he has filed all his quarterly reports requested by the Office of Probation although most of the reports were not filed in a timely manner.[6]

Moreover, petitioner complied with former rule 955 of the California Rules of Court (now renumbered rule 9.20) in accordance with the Supreme Court's June 2, 2000 order in *Ritzinger* I. He also successfully completed ethics school, client trust account record keeping school, passed the MPRE, completed payment of restitution to his former clients and CSF, and paid all disciplinary costs.

2. Good Character References

Petitioner submitted good character declarations from five individuals: one businessman, who is petitioner's supervisor at his present job; one attorney; and three medical doctors. Each of these individuals is aware of petitioner's prior misconduct, has known petitioner for at least seven years, and has had recent and substantial contact with petitioner. As noted in more detail *post*, these five individuals presented credible declaration testimony praising petitioner's good conduct and character.

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[6] As the date of this decision, all of petitioner's quarterly probation reports have been filed.

Such favorable testimony from acquaintances, associates, and employers as to their personal observations of petitioner's daily conduct and mode of living is highly probative on the issue of rehabilitation. (*In re Andreani* (1939) 14 Cal.2d 736, 749-750; see also *Feinstein v. State Bar* (1952) 39 Cal.2d 541, 547.) Moreover, character testimonials from attorneys are given great weight because attorneys "possess a keen sense of responsibility for the integrity of the legal profession." (*Warbasse v. State Bar* (1933) 219 Cal. 566, 571.)

Carl D. Erwin, M.D., is owner of Erwin Medical Group, Inc., a California professional medical corporation. Erwin Medical Group was established in 2000 and provides the legal, business and insurance communities direct access to physicians specializing in independent medical examinations (often in worker's compensation cases) and peer review. Dr. Erwin has known petitioner for several years through petitioner's employment with Southwest Medical Examination Services, LLC., a California limited liability company. Southwest Medical Examination Services provides administrative services (e.g., management, billing, facilities, and training) exclusively to Erwin Medical Group. Serving as its administrator, petitioner has been in charge of running Southwest Medical Examination Services since May 2000.

In his declaration, Dr. Erwin strongly supports petitioner's request for relief from suspension. Based on his work with and observations of petitioner, Dr. Erwin does not believe that petitioner would ever engage in any of the conduct that led to his suspension and has no question as to petitioner's high integrity.

Attorney Matthew J. Gilbert has been licensed to practice in California since 1996. He is the president and owner of Law-Pro-9, P.C., a California professional corporation. He is fully aware of the circumstances leading to petitioner's suspension from law because he represented petitioner in his defense of the underlying case and was an employee of petitioner at the time of his prior problems with the State Bar.

Since petitioner's suspension, Attorney Gilbert has continued to have a close relationship with petitioner. In fact, Gilbert has repeatedly provided legal services to Southwest Medical Examination Services since 2000. Over his years of knowing petitioner, Gilbert has found petitioner to be a person of high moral standards. He believes that the errors that petitioner committed, which led to his actual suspension, are completely out of character with the person he knows. Gilbert believes that petitioner has the basic knowledge to practice law and has demonstrated rehabilitation through his actions in his personal and business communities.

Thomas B. Anderson is the president and CEO of Southwest Medical Examination Services, Inc., a Texas corporation, which corporation owns Southwest Medical Examinations Services, LLC. He is petitioner's direct supervisor. Petitioner has worked under Anderson's supervision full time since 2000. Petitioner's job description includes working closely with attorneys (including Attorney Gilbert) on legal matters affecting the operation of Southwest Medical Examination Services such as preparing contracts and interpreting lease provisions, vendor contracts, and employment contracts. Anderson is of the opinion that petitioner exhibits the knowledge and integrity required of an attorney. He has no hesitation in recommending that petitioner be granted relief from his actual suspension.

Jerome Kaufman, M.D., a California physician who is associated with Erwin Medical Group. He first became acquainted with petitioner in 2000 after petitioner became the administrator of Southwest Medical Examination Services. Dr. Kaufman is fully aware of petitioner's prior misconduct. Through his work with petitioner, Dr. Kaufman is of the opinion that petitioner has accepted full responsibility for and understands the extent and nature of his prior misconduct. Dr. Kaufman, therefore, has no concern that petitioner would fail to meet the high professional standards required of the legal profession.

Keith Robert Swanson, M.D., is licensed to practice medicine in four states (including California) and is a board certified orthopedic surgeon. Dr. Swanson is also affiliated with Erwin Medical Group where he provides independent medical examinations in worker's compensation cases. Not only does he know petitioner professionally, he considers respondent to be a friend and confidant and praises petitioner's integrity and views petitioner as an asset to the community in general. Moreover, he would not hesitate to retain petitioner to represent him in any matter in which petitioner believed himself to be competent.

3. Community Service Work

Petitioner has a history of engaging in community service activities. He has volunteered as basketball coach for the middle school program of his local parks and recreations department. For the past two years, he has been an active volunteer with the Marin School of Arts, which is a regional public high school that provides college-level art programs. In fact, he now serves on the Board of Directors of the Marin School. Respondent spends about 20 hours a month on volunteer activities at Marin School.

Respondent's charitable activities are strong evidence of his good character. (See *In the Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668, 675.)

IV. CONCLUSIONS OF LAW AND DISCUSSION

In order to be relieved of his actual suspension, petitioner has the burden of proving in this proceeding, by a preponderance of the evidence, that he is rehabilitated, presently fit to practice law, and presently possesses adequate learning and ability in the general law. (Std. 1.4(c)(ii); Rules Proc. of State Bar, rule 634; *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 571, 578.)

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

The court finds, by a preponderance of the evidence, that petitioner presently possesses the requisite learning and ability in the general law. As set forth *ante*, respondent has completed well over 100 hours of continuing legal education courses since February 2006 and has worked in the worker's compensation area since 2000. (E.g., *In the Matter of Murphy, supra* , 3 Cal. State Bar Ct. Rptr. at p. 577 [where State Bar did not challenge hearing judge's finding of requisite legal learning and ability based on attorney completing 52 hours in continuing legal education courses and working as a paralegal].) In addition, respondent successfully represented himself in his own bankruptcy proceeding.

B. Petitioner's Rehabilitation and Present Fitness to Practice Law

In terms of rehabilitation and present fitness to practice law the State Bar's concerns centered around petitioner's late filing of his quarterly probation reports and the issue of whether he gave legal advice to the Erwin Medical Group while he was on actual suspension under the Supreme Court's June 2, 2000 order in *Ritzinger* I. "Reformation may only be brought about by the individual. It may be manifested *solely* by a 'state of mind' which may not be disclosed by any certain or unmistakable outward sign. Its existence may be difficult to establish affirmatively, but its nonexistence may be 'proved' by a single act." (*In re Andreani, supra*, 14 Cal.2d at p. 749, italics added.)

To establish rehabilitation, the court must first consider the prior misconduct from which petitioner seeks to show rehabilitation. The amount of rehabilitation evidence varies according to the seriousness of the misconduct at issue. Second, the court must examine petitioner's actions since the imposition of his 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.) Ordinarily, a petitioner must

show strict compliance with the terms of his or her probation in the underlying disciplinary matter, exemplary conduct from the time of the imposition of the prior discipline, and "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.*)

"In weighing such a determination, the court should look to the nature of the underlying offense, or offenses; any aggravation, other misconduct or mitigation that may have been considered; and any evidence adduced that bears on whether the cause or causes of such misconduct have been eliminated." (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 581.)

In addition to establishing rehabilitation, an attorney seeking relief from actual suspension must establish his or her present fitness to practice. In other words, the petitioner must establish that he or she possesses the requisite good moral character to practice law in this state. (Std. 1.4(c)(ii); §§ 6060, subd. (b), 6062, subds. (a) & (b); *In re Gossage* (2000) 23 Cal.4th 1080, 1095.) This is done by showing an "absence of conduct imbued with elements of 'moral turpitude.' [Citations.]" (*In re Menna* (1995) 11 Cal.4th 975, 983.) And by showing acts demonstrating that he or she possesses the traits 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." (Rules Regulating Admission to Practice Law, rule X, ' 1; cf. *In re Gossage, supra*, 23 Cal.4th at p. 1095; *In re Menna, supra*, 11 Cal.4th at p. 983.)

As set forth *ante*, petitioner's misconduct in *Ritzinger* I involved repeated failure to return unearned fees, charging unconscionable fees, failure to communicate with clients, failure to supervise nonattorney employees, airing deceptive television ads, and multiple acts involving moral turpitude. A somewhat mitigating factor at the time of his misconduct was that petitioner

had practiced law for approximately 8 years before he committed his first act of misconduct (see hearing department decision in *Ritzinger* I at page 36). Another mitigating factor was that when a monitor was appointed in connection with an earlier section 6007, subdivision (c) proceeding petitioner fully cooperated with the court-appointed monitor by giving the monitor multiple reports and full access to his offices. The aggravating circumstances surrounding his misconduct included multiple acts of misconduct, significant client harm, and lack of remorse for his misconduct.

As the State Bar aptly notes, respondent filed most of his quarterly probation reports late. However, petitioner's probation ended almost five years ago -- on July 2, 2003 – which clearly diminishes the adverse probative value of his late filed reports. What is more, petitioner has demonstrated that, except for his late filed probation reports, he has engaged in exemplary conduct since June 2000; that he now appreciates the seriousness of his prior misconduct; that he is remorseful for his prior wrongdoing; and that he is determined to avoid future transgressions. (Cf. *Toll v. State Bar* (1974) 12 Cal.3d 824, 832.) Moreover, as noted *ante*, petitioner's last act of misconduct occurred in 1996 – more than 11 years ago. And since that time, petitioner's conduct has been exemplary as attested to by his credible good character witnesses. Moreover, the confidence that Attorney Gilbert places in petitioner is evidence of his rehabilitation and "indicates [Gilbert's] appraisal that [petitioner's] misconduct will not again occur. [Citation.]" (*Bradpiece v. State Bar* (1974) 10 Cal.3d 742, 747; *In re Aquino* (1989) 49 Cal.3d 1122, 1131.)

The court is satisfied and finds that petitioner has not engaged in the unauthorized practice of law in his capacity as administrator of the Southwest Medical Examination Services.

In sum, the court finds that petitioner has demonstrated, by a preponderance of the evidence, his rehabilitation and present fitness to practice law.

V. ORDER

Petitioner DAVID PAUL RITZINGER'S November 29, 2007, petition for relief from actual suspension is hereby **GRANTED**. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).) Accordingly, upon the finality of this decision and order (Rules Proc. of State Bars, rules 640, 224, 639; *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 571, 584), Ritzinger will be relieved from the two-year actual suspension imposed on him in the Supreme Court's June 2, 2000, order in case number S086858 (State Bar Court case number 95-O-10826, et al.). Thereafter, Ritzinger will be entitled to return to the practice of law in the State of California upon: (1) his payment of all required sums, fees, and assessed costs (e.g., Bus. & Prof. Code, §§ 6140.5, subd. (c), 6140.7); and (2) upon his compliance with any other prerequisite to his return to State Bar active membership status and to the practice of law.

Dated: March 3, 2008.

Pat McElroy

PAT McELROY
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rule 630(b), Rules Proc. of State Bar; 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 San Francisco, I served a true copy of the following document(s):

DECISION & ORDER GRANTING PETITION FOR RELIEF FROM ACTUAL SUSPENSION

as follows:

[X] 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 PAUL RITZINGER
2215 LAGUNA VISTA DR
NOVATO, CA 94945

[X] By PERSONAL SERVICE 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:

TAMMY ALBERTSEN-MURRAY
STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL
180 HOWARD STREET
SAN FRANCISCO, CA 94105

I hereby certify that the foregoing is true and correct. Executed at San Francisco, California, on **March 3, 2008**.

George Hue
Case Administrator
State Bar Court