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STATE BAR COURT
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LOS ANGELES

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PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No.: 14-V-02127-DFM
)	
MICHAEL MARC YELLIN,)	DECISION AND ORDER GRANTING
)	PETITION FOR RELIEF FROM
Member No. 255050,)	ACTUAL SUSPENSION
)	
<u>A Member of the State Bar.</u>)	

INTRODUCTION

The issue in this matter is whether Michael Marc Yellin (Petitioner) has demonstrated, to the satisfaction of this court, his rehabilitation, present fitness to practice, and present 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. 1.4(c)(ii).)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 1.4(c)(ii). Accordingly, the court grants Petitioner's petition for relief from his actual suspension pursuant to standard 1.4(c)(ii).

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¹Effective, January 1, 2014, standard 1.4(c)(ii) was renumbered as standard 1.2(c)(1), without substantive modification.

SIGNIFICANT PROCEDURAL HISTORY

On April 9, 2014, Petitioner, through his counsel,² filed his Verified Petition for Relief from Actual Suspension (petition), which suspension was imposed on him by the Supreme Court in its order S200327, filed on May 23, 2012. The matter at that time was assigned to Judge Richard Honn of the Hearing Department. On May 9, 2014, the matter was reassigned to the undersigned for adjudication.

On May 19, 2014, an order was issued by the court scheduling the hearing on the petition for June 23, 2014.

On May 23, 2014, the Office of the Chief Trial Counsel, State Bar of California (State Bar)³ filed its Response to Petition for Relief from Actual Suspension (response) and informed the court that it was submitting the matter to the court on the pleadings. The response did not oppose the Petitioner's request to be restored to active status. Additionally, the parties jointly requested that the hearing set for June 23, 2014 be vacated.

On June 19, 2014, Petitioner filed an additional declaration in support of his petition for relief from actual suspension.⁴ No hearing was held in the matter; and, on June 19, 2014, the court submitted the matter for decision.

However, in reviewing the court records pertaining to Petitioner's prior disciplinary record, the court took note that a second disciplinary Stipulation Re Facts, Conclusions of Law and Disposition and Order Approving, regarding Petitioner's misconduct, had been filed on December 9, 2013, in State Bar Court case Nos. 10-O-02446 (12-O-11782; 12-O-14889); and, that on April 23, 2014, the Supreme Court issued an order, S216457, in that second disciplinary

² Petitioner was represented in this proceeding by Paul J. Virgo of the Century Law Group, LLP.

³ The State Bar was represented by Deputy Trial Counsel Kim Kasrelievich (the DTC).

⁴ The State Bar did not oppose the filing of this additional declaration, and the court found good cause existed for the submission of this additional evidence.

matter. This court further noted that the December 2013 Stipulation had not been included as an exhibit to the petition in the instant matter; nor was it discussed in Petitioner's declaration, which had been filed with the April 9, 2014 petition or in his June 19, 2014 declaration, submitted in support of his petition. Moreover, the State Bar also did not discuss or mention the second disciplinary matter in its response to the April 9, 2014 petition.

Thus, after discovering the April 2014 issuance of new discipline by the Supreme Court, this court vacated the June 19, 2014 submission of this matter for decision and scheduled a status conference for July 14, 2014, concerning the instant matter, i.e., 14-V-02127, in light of the December 2013 Stipulation and April 23, 2014 Supreme Court order.⁵

At the July 14, 2014 status conference, the parties informed the court that neither party regarded the second disciplinary matter as having any effect on Petitioner's request to be reinstated. Specifically, the parties asserted that the three matters at issue in Petitioner's second disciplinary matter, as described in the December 2013 Stipulation, were based on misconduct involving loan modification services, just as did the matters at issue in Petitioner's first disciplinary matter. As set forth in the December 2013 Stipulation, the misconduct at issue in Petitioner's second disciplinary matter was "virtually identical" to the misconduct at issue in his first disciplinary matter and occurred within the same time period as the misconduct in the first disciplinary matter. As stipulated by the parties at page 14 of the December 2013 Stipulation and as found by the State Bar Court, if the three cases at issue in that second disciplinary matter had been brought together with the prior 23 cases at issue in Petitioner's first disciplinary matter,

⁵ Pursuant to Evidence Code section 452(d), the court takes judicial notice of the Supreme Court order S216457, which was filed on April 23, 2014, and the State Bar Court's December 9, 2013 Stipulation re Facts, Conclusions of Law and Disposition and Order Approving (State Bar Court case Nos. 10-O-02446 (12-O-11782; 12-O-14889)).

“there would not have been any incremental change to the two-year actual suspension outcome.”⁶ (See *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.)

At the July 14, 2014 status conference, the State Bar reaffirmed that it was not opposing Petitioner’s reinstatement. The parties then agreed that the matter should be resubmitted for decision; and the court so ordered on July 14, 2014.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Jurisdiction

Petitioner was admitted to the practice of law in California on January 24, 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 1.4(c)(ii). (Rules Proc. of State Bar, former 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 1.4(c)(ii).” (*Ibid.*) The amount of evidence of rehabilitation required to justify the termination of an attorney’s actual suspension varies according to the

⁶ When asked by the court if the existence of a still unsatisfied restitution order in the second disciplinary matter should have any impact on Petitioner’s request for reinstatement, the State Bar said that it should not. Petitioner has been making good faith efforts to pay restitution to his former clients.

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

Petitioner stipulated to misconduct in 23 loan modification matters in the disciplinary matter that gives rise to this standard 1.4(c)(ii) proceeding. Shortly after being admitted to practice law in California, Petitioner began doing loan modification work. In January 2009, Petitioner began working with five different loan modification processing centers as either general counsel or by contracting with the centers to process his files. Petitioner handled properties in California, as well as outside of California, although he was not licensed to practice law in any jurisdiction other than California.

As found by the State Bar Court, in the January 2012 stipulation (State Bar Court No. 09-O-14195 et al.), Petitioner, a young practitioner, became overwhelmed by the rapid expansion of his loan modification practice. He overestimated his ability to handle the amount of clients that retained him for loan modification services. When Petitioner realized that he could no longer competently manage his loan modification practice based on the volume of the work, he chose to close his practice within one to two months.

With regard to the misconduct underlying the prior discipline, Petitioner failed to release client papers and property after requested by the client in willful violation of rule 3-700(D)(1) of the State Bar Rules of Professional Conduct;⁷ failed to refund client fees in willful violation of rule 3-700(D)(2); failed to perform competently agreed-upon loan modifications in willful violation of rule 3-110(A); terminated services without taking reasonable steps to avoid prejudicing his clients' rights in willful violation of rule 3-700(A)(2); failed to communicate with his clients in willful violation of Business and Professions Code section 6068, subdivision (m);

⁷ Unless otherwise indicated, all further references to rule(s) are to this source.

practiced law in jurisdictions in which he was not licensed to practice law, in willful violation of rule 1-300(B); and collected illegal fees by entering into legal agreements for work in jurisdictions where he was not licensed to practice law in willful violation of rule 4-200(A).

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

In mitigation, Petitioner suffered from severe financial stress, which resulted from circumstances that were not reasonably foreseeable or were beyond his control and which were directly responsible for his misconduct; Petitioner's good character was attested to by a wide range of members of the legal and general communities; and Petitioner was candid and cooperative during all investigative stages.

On May 23, 2012, the Supreme Court issued order S200327 (State Bar Court Nos. 09-O-14195 et al.), suspending Petitioner from the practice of law for four years, staying execution of that suspension, and placing him on probation for four years subject to conditions including that he be suspended for a minimum of the first two years of probation and until he provides proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law.

Second Disciplinary Matter

As discussed, *ante*, the Supreme Court, in a second disciplinary matter, S216457 (State Bar Court case Nos. 10-O-02446 (12-O-11782; 12-O-14889)), effective May 23, 2014, imposed on Petitioner a one-year suspension, stayed the execution of that suspension, and placed him on probation for one year with conditions. Petitioner had failed to perform competently agreed upon loan modifications in willful violation of rule 3-110(A); failed to refund the client fee upon request in willful violation of rule 3-700(D)(2); failed to render an appropriate account of client funds in willful violation of rule 4-100(B)(3); failed to communicate in willful violation of

Business and Professions Code section 6068, subdivision (m); engaged in the unauthorized practice of law in other jurisdictions in willful violation of rule 1-300(B); and collected illegal fees by entering into legal agreements for work in jurisdictions where he was not licensed to practice law in willful violation of rule 4-200(A). All of Petitioner's misconduct in his second disciplinary matter occurred during the same time period as that charged in the first disciplinary matter.

In aggravation the parties stipulated that Petitioner engaged in multiple acts of misconduct and caused serious harm to his clients by failing to return unearned or illegal fees, and failing to make restitution. In mitigation the parties stipulated that Petitioner agreed to enter a pre-filing stipulation without the necessity of a trial, thereby saving the State Bar time and resources.

Petitioner's Rehabilitation and Present 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 being disciplined; 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

Although Petitioner's probation will not terminate until June 2016, he has complied with all conditions of his probation and all other conditions, except that he has not yet completed the full amount of restitution payments to all clients.⁸

After complying with rule 9.20, on June 25, 2012, Petitioner filed his Rule 9.20 Compliance Declaration with the State Bar, well in advance of the August 1, 2012.

Petitioner has timely submitted all required probation reports to the Office of Probation.

Petitioner completed six hours of Continuing Legal Education (CLE) in law office management, attorney-client relations, and/or general legal ethics.

On March 21, 2013, Petitioner attended State Bar Ethics School and shortly thereafter received notice that he had successfully completed the Ethics School course. Petitioner submitted proof of satisfactory completion of Ethics School to the Office of Probation with his April 2013 Probation Report.

On May 17, 2013, Petitioner successfully completed the State Bar Client Trust Accounting School and on May 30, 2013, he caused proof of satisfactory completion of Client Trust Accounting School to be mailed to the Office of Probation.

On November 11, 2013, Petitioner took the Multistate Professional Responsibility Exam (MPRE). On or about December 3, 2013, Petitioner received notice that he had passed the MPRE with a scaled score of 93.

In terms of restitution to clients and/or the Client Security Fund (CSF), on or about April 13, 2013, Petitioner began sending payments to the CSF. From April 13, 2013, until on or about April 8, 2014, petitioner had repaid a total of \$13,000 to the Client Security Fund.

⁸ Petitioner must pay restitution and provide proof of payment to the Office of Probation prior to the termination of his four year stayed suspension.

Petitioner stated in his April 8, 2014 declaration, made under penalty of perjury, that he had been struggling to make payments while he remain suspended, but had been making payments to the best of his ability. Moreover, Petitioner averred that he had been able to secure a loan to cover the entire outstanding balance due to the Client Security Fund, as well as the cost of the investigation and discipline owed to the State Bar. It was his expectation to receive the funds from this loan within two weeks from the date of his declaration.

Petitioner's Conduct Since Being Disciplined

Petitioner has taken full responsibility for the misconduct leading to his discipline. As discussed, *ante*, since being actually suspended from the practice of law, Petitioner has been compliant with the obligations imposed as part of his discipline.

In November 2012, just a few months after his discipline became effective, Petitioner, in response to a help wanted advertisement, sent his resume to the Peter Law Group (PLG). That resume clearly indicated that Petitioner was suspended from the practice of law, effective June 22, 2012. During the interview process, Petitioner was upfront and truthful. He advised the persons interviewing him that he was suspended and explained, in significant detail, his "transgressions." He also provided a copy of the May 23, 2012 Stipulation and Order to the interviewers.

After being hired by PLG as a paralegal, Petitioner caused changes to be made in the engagement agreements relating to the cases on which he would be working. Specifically the changes involved providing notice, pursuant to rule 1-311(D), to any PLG client on whose case Petitioner would be working, informing the client that Petitioner was currently suspended from the practice of law. The notice also informed clients of what work Petitioner would and would not be allowed to perform, as set forth in rule 1-311(D).

On or about April 24, 2013, after learning that a rule 1-311(D) notice had not previously been provided to the State Bar, Petitioner reminded the PLG office manager that a notice needed to be filed with the State Bar. As a result, on or about April 24, 2013, a Rule 1-311(D) notice was submitted to the State Bar.

Petitioner states that he has taken time to contemplate and learn from his misconduct. He has never offered excuses for his misconduct and appreciates the impact of his misconduct on the integrity of the legal profession. Petitioner also understands and acknowledges the gravity of his wrongdoing and has felt the consequences of his actions. As a result, he has endeavored to discuss his misconduct and punishment with the interns and legal students that work at the PLG in an attempt to educate them on the importance of complying with the rules of professional conduct and avoiding engaging in any misconduct. Moreover, Petitioner has also continued to educate himself in order to become a productive participant in the legal community.

As set forth in his declaration, Arnold Peter (Peter), an attorney and the founder of PLG, states that since the time of Petitioner's interview, Petitioner has been candid about the reasons and details underlying his suspension. According to Peter, Petitioner has been exacting about the scope of his duties and closely guards against engaging in any activities, which might be viewed as the unauthorized practice of law. PLG relies on Petitioner to research various areas concerning attorney rules of ethics, including those relating to advertising, engagement agreements, and accounting of client funds. Peter asserts that, rather than merely display a rote understanding, Petitioner appreciates the reasoning underlying ethical rules and guidelines. Peter states that he regularly consults with Petitioner on other aspects of law office management, including the proper structure of conflict checks, joint representation of clients, and fee disputes. Petitioner uses his current position to both learn and provide information to others regarding the ethical issues involved in the practice of law.

Peter also states in his declaration that Petitioner is remorseful about the ethical lapses that led to his suspension. Peter has personally observed Petitioner utilize his suspension as a teaching tool for other employees at the PLG. The junior attorneys and interns at the PLG view Petitioner as someone who has learned from his mistakes and can help them to avoid making similar mistakes.

Petitioner is also diligent in keeping abreast of trending legal issues and case law. Petitioner has advised Peter on court rulings in the field of employment law, which is the field in which Petitioner is currently working. On several occasions, Petitioner has approached Peter regarding attending continuing legal education classes and seminars. Peter is aware of at least two such continuing legal education classes that Petitioner has attended – one related to the Private Attorney General Act and another concerning ethical issues in attorney advertising and the use of the internet.

Peter finds that Petitioner has a strong work ethic and is cognizant of his duties to clients. When the death of a family member resulted in Petitioner being out of the office for a period of mourning, he was diligent about his work assignments and projects and made sure that no client's case suffered as a result of his absence from the office.

Finally, Peter considers Petitioner, who is knowledgeable, capable and extremely dependable, to be an integral part of PLG and strongly supports his return to active status as a lawyer. Peter also states that he would be pleased to have Petitioner join PLG as an attorney employee if he is reinstated to active membership in the State Bar.

Another attorney at PLG, Marcus Lee (Lee), submitted a declaration in support of Petitioner's application for reinstatement to the California State Bar. He states that for the past year and a half, Petitioner has demonstrated remarkable candor concerning his misconduct and is always forthright in admitting his mistakes and his intent to never again violate any State Bar

rules. Lee notes that when projects arise that could violate the restrictions placed on Petitioner, he remains resolute and reminds others of those restrictions and his need to act within the confines of the restrictions.

Lee opines that Petitioner has demonstrated present learning and ability to practice law based on his endeavors to keep abreast of current legal trends. Lee finds Petitioner's work ethic to be "impeccable." He calls Petitioner "the ad hoc individual to turn to at our firm for. . . legal research on the latest case law in employment litigation." Lee has attended continuing legal education classes with Petitioner; and, on several occasions, Petitioner has discussed new case law with Lee. Lee is confident that Petitioner's deference to ethic rules, his conduct toward others, his work ethic, and his candor regarding his status as a suspended attorney show Petitioner's commitment to his rehabilitation.

Bryan Swaim, a lawyer at the PLG was admitted to the California Bar in 2013. Swaim writes in his declaration about Petitioner's "zealous efforts to assist and engage [Swaim] in becoming the best lawyer [he can] be." Swaim adds that Petitioner has been available to inform and guide him regarding the various ethical issues that come up in the practice of law. Petitioner has worked to educate and warn Swaim about engaging in activities that may involve the unauthorized practice of law. Swaim considers Petitioner as a role model for young attorneys and interns. He looks forward to a time when he will be able to work with Petitioner as an attorney.

Petitioner's conduct, subsequent to his discipline, shows that he is remorseful and has insight into his wrongdoing, which in itself is a sign of rehabilitation. He knows that he is responsible for his suspension and wishes to conduct himself in a way that will not result in harm to clients, his firm or himself. He is firm in his commitment to avoid any pitfalls that could lead him to again violate the rules of professional conduct. He has used his misconduct and its

repercussions to teach himself and others about how to avoid violating the rules of professional conduct. The evidence indicates that Petitioner has learned from his past experience and that the misconduct which led to his discipline is not likely to recur.

Petitioner's Present Learning and Ability in the Law

Respondent has worked for most of the period of his suspension in a law firm. In addition, as set forth, *ante*, petitioner completed six hours of Continuing Legal Education (CLE) in law office management, attorney-client relations and general legal ethics. He has attended and passed the course given through the State Bar Ethics School. He also completed the State Bar Client Trust Accounting School. Petitioner took the Multistate Professional Responsibility Examination, which he passed with a scaled score of 93.

In 2013, Petitioner attended a CLE seminar on Private Attorney General Act lawsuits in the area of employment law and completed a CLE course presentation on Social Media Ethics for attorneys. During 2013, petitioner completed his required 25 hours of Mandatory Continuing Legal Education. In March 2014, Petitioner completed additional hours of continuing legal education in the areas of ethics, client interaction, and office management, as well as in the general law, which included courses dealing with effective *voire dire* and depositions.

Petitioner stated in his declaration, made under penalty of perjury, that he regularly reads the California Bar Journal in order to become familiar with current legal events and issues. Petitioner also reviews all notices of discipline with the hope of learning from the mistakes of others. And, he remains current by regularly reading the various legal periodicals delivered to the offices of the PLG. At the end of each year, Petitioner locates a list of new and changed laws in California that are set to become effective during the upcoming year.

CONCLUSION

Petitioner has shown that he has complied with the terms of his probation in the underlying disciplinary matter, has exhibited exemplary conduct from the time of his previous discipline, and has established that the conduct leading to his discipline is not likely to be repeated. Accordingly, the court finds that Petitioner has demonstrated by a preponderance of the evidence that he is rehabilitated and has present fitness to practice law.


ORDER

As the court finds that Petitioner has demonstrated, by a preponderance of the evidence, his rehabilitation, present fitness to practice, and present learning and ability in the general law, the petition for relief from actual suspension from the practice of law pursuant to standard 1.4(c)(ii) is hereby **GRANTED**. Respondent 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
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: July 25, 2014


DONALD F. MILES
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

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. Pursuant to standard court practice, in the City and County of Los Angeles, on July 29, 2014, I deposited a true copy of the following document(s):

DECISION AND ORDER GRANTING PETITION FOR RELIEF FROM ACTUAL
SUSPENSION

in a sealed envelope for collection and mailing on that date as follows:

by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at _____, California, addressed as follows:

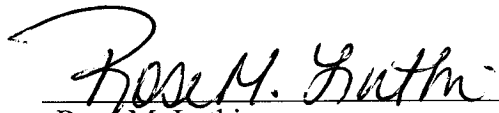
by overnight mail at Los Angeles, California, addressed as follows:

PAUL JEAN VIRGO
9909 TOPANGA BLVD # 282
CHATSWORTH, CA 91311

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:

KIMBERLY KASRELIOVICH
OFFICE OF TRIAL COUNSEL
845 S. FIGUEROA STREET
LOS ANGELES CA 90017

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 29, 2014.



Rose M. Luthi
Case Administrator
State Bar Court