

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

FILED

JUN 29 2016

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

In the Matter of

BRIAN RENE LINNEKENS,

Member No. 206144

A Member of the State Bar.

) Case No.: 16-V-13063-WKM
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DECISION GRANTING PETITION FOR
TERMINATION OF INACTIVE STATUS
AND FOR RETURN TO ACTIVE STATUS

Introduction¹

The issue in this case is whether petitioner Brian Rene Linnekens (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. (Std. 1.4(c)(ii).)²

For the reasons set forth in this decision, the court finds that petitioner has shown, by a preponderance of evidence, that he has satisfied the requirements of standard 1.4(c)(ii).

Therefore, the petition is **GRANTED**.

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

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), the former Rules of Procedure are applicable to this proceeding.

Significant Procedural History

On May 9, 2016, petitioner, by and through attorney David C. Carr, filed a verified petition for relief from actual suspension in State Bar Court case no. 16-V-13063. On June 20, 2016, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed a statement of non-opposition, stating that the State Bar reviewed the petition, conducted an independent investigation, and did not oppose the petition. The court took the petition under submission that same day.

Findings of Fact

Petitioner was admitted to the practice of law in California on December 8, 1999. He has continuously been a member of the State Bar since that time.

Petitioner's Underlying Disciplinary Background

On September 19, 2013, the California Supreme Court issued an order in petitioner's underlying matter, case No. S211920 (State Bar Court case Nos. 12-O-13466 (12-O-13947; 12-O-14331; 12-O-15872)). In its order, the Supreme Court directed that petitioner be suspended from the practice of law for three years, execution of that period of suspension was stayed, and he was placed on probation for three years, including a two-year minimum period of actual suspension. It was further ordered that petitioner would remain suspended until he demonstrated his rehabilitation, present fitness to practice, and present learning and ability in the general law pursuant to standard 1.4(c)(ii).

This discipline involved misconduct in four matters.³ In the first matter, petitioner performed legal services related to loan modification for at least 46 Washington State residents for properties located in the State of Washington. Consequently, petitioner was found to have violated rule 1-300(B) [unauthorized practice of law in an outside jurisdiction].

³ The court takes judicial notice of its own records.

In the second matter, petitioner was retained by Benson and Barbara Hurst to obtain a loan modification for their residence in Indiana. Petitioner's representation of the Hursts constituted a second violation rule 1-300(B).

In the third matter, petitioner was retained by Mary Rodriguez to obtain a loan modification. Ms. Rodriguez paid petitioner an advanced fee of \$2,995. By collecting an advanced fee for loan modification services in violation of Civil Code section 2944.7, petitioner was found to have violated section 6106.3.

In the fourth matter, petitioner was retained by Karen Webb to obtain a loan modification. Ms. Webb paid petitioner an advanced fee of \$3,000. By collecting an advanced fee for loan modification services in violation of Civil Code section 2944.7, petitioner was found to have violated section 6106.3.

In mitigation, petitioner cooperated with the State Bar investigation and entered into a disciplinary stipulation fully resolving the matters. He also demonstrated good character, had no prior record of discipline, and made full restitution to 47 clients. In aggravation, petitioner caused significant harm to his clients and committed multiple acts of misconduct.

Rehabilitation and Present Fitness to Practice Law

Petitioner has complied with the conditions attached to his State Bar disciplinary probation, including payment of all outstanding restitution. He has shown insight into his misconduct and is remorseful. He has participated in charitable activities during his period of suspension, including working with the Santa Monica Rotary Club and YMCA. And he presented six declarations from a wide range of references in the legal and general community attesting to his honesty, strong work ethic, and reliability.

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Present Learning and Ability in the General Law

Petitioner has completed all 25 hours of his Minimum Continuing Legal Education (MCLE) requirements for his compliance period that ended on January 31, 2016.

Discussion

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 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. 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.)

Petitioner must also show strict compliance with the terms of probation in the underlying disciplinary matter; exemplary conduct from the time of 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." (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 581.)

The conduct underlying this standard 1.4(c)(ii) proceeding involves petitioner's loan modification practice, which he closed down in April 2011. Petitioner's loan modification

practice was multijurisdictional, resulting in his unauthorized practice of law in Indiana and Washington State. Petitioner also improperly collected advanced fees in two California loan modification matters. In aggravation, petitioner caused significant harm to his clients and committed multiple acts of misconduct. In mitigation, he cooperated with the State Bar, demonstrated good character, had no prior record of discipline, and made restitution.

Petitioner acknowledges that in the course of his suspension and probation, he has gained insight regarding his prior misconduct. He recognizes that the practice of law is more than just a business, and that it requires that he put his clients' interest ahead of his own. Petitioner understands that he must have a clear and complete understanding of the rules regarding legal ethics, including the rules relating to multijurisdictional practice.

During his suspension period, petitioner volunteered his time with the Santa Monica Rotary Club and the YMCA. He also demonstrated strict compliance with the terms of the underlying probation.

As noted above, the State Bar, after reviewing the petition and conducting an independent investigation, does not oppose the petition. No indication exists in the record that petitioner's conduct since the time of the imposition of his prior discipline has been anything short of exemplary.

Conclusion

Based on the evidence set forth above, the court finds that the misconduct which led to this standard 1.4(c)(ii) proceeding is not likely to recur. Accordingly, the court finds that petitioner **BRIAN RENE LINNEKENS** has satisfied the requirements of standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct by demonstrating, by a preponderance of the evidence and to the satisfaction of this court, that he is rehabilitated, presently fit to practice law, and has present learning and ability in the general law.

Accordingly, the petition for relief from actual suspension from the practice of law is hereby **GRANTED**.

Petitioner will be entitled to resume the practice of law in this state when all of the following conditions have been satisfied:

1. This order has become final, which includes the expiration of the time for seeking reconsideration and review (Rules Proc. of State Bar, rules 5.115, 5.150, 5.409 and cf. 5.410);
2. Petitioner has paid all applicable State Bar fees and previously assessed costs (Bus. & Prof. Code, §§ 6086.10 and 6140.7); and
3. Petitioner has fully complied with any other requirements for his return to active membership status and is otherwise entitled to practice law.

Dated: June 28, 2016


W. KEARSE MCGILL
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 TERMINATION OF INACTIVE STATUS
AND FOR RETURN TO ACTIVE STATUS**

as follows:

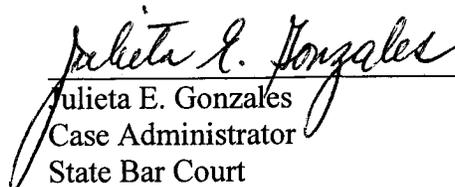
- By OVERNIGHT MAIL by enclosing the documents in a sealed envelope or package designated by an overnight delivery carrier and placing the envelope or package for collection and delivery with delivery fees paid or provided for, addressed as follows:

DAVID C CARR
KLINEDINST PC
501 W BROADWAY
STE 600
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:

MURRAY B GREENBERG
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 June 29, 2016.



Julieta E. Gonzales
Case Administrator
State Bar Court