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**PUBLIC MATTER**

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**STATE BAR COURT OF CALIFORNIA**

**STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES**

**HEARING DEPARTMENT - LOS ANGELES**

**18-V-18092**

In the Matter of,

) Case No.: 15-C-14561  
) (Supreme Court No. S236198)

DAVID ROBERT COHN

) **VERIFIED PETITION OF  
) DAVID R. COHN FOR RELIEF  
) FROM ACTUAL SUSPENSION**

Member No. 180071

) [Rules of Procedure 1.2(c)(1)]  
) [Rule 5.400 et seq]

A Member of the State Bar.

TO THIS HONORABLE COURT:

PLEASE TAKE NOTICE THAT Petitioner David R. Cohn ("Petitioner") hereby respectfully petitions this Honorable Court for Relief from the Two (2) Year Actual Suspension imposed as of February 4, 2016, by Supreme Court order #S236198 dated October 5, 2016, and pursuant to Rules of Procedure of State Bar, Title IV, Standards For Attorney Sanctions for Professional Misconduct, Standard 1.2(c)(1) (*all further references to standards are to this source*), and Rule 5.400 et seq in that Petitioner will herein demonstrate, by a preponderance of evidence, his strict compliance with all of the terms and conditions of his State Bar probation, his rehabilitation, his present fitness to practice law, and his present learning and ability in the

1 general law. This Petition is based upon this Notice, the attached Exhibits, the Supreme Court  
2 order, the State Bar Stipulation, the underlying criminal matter, the following points and  
3 authorities, all documents on file herein and with the State Bar Probation Department, and any  
4 and all other documentary evidence presented to and considered by this Honorable Court.  
5

## 6 INTRODUCTION

7  
8 Petitioner was admitted to the practice of law in California on December 7, 1995, and has  
9 been a member of the State Bar of California at all times since that date with no prior record of  
10 misconduct/discipline for approximately 18 years until the current misconduct/discipline in this  
11 matter. Petitioner acknowledged and took immediate responsibility for his misconduct in the  
12 underlying misdemeanor criminal matter and in the State Bar disciplinary matter, cooperating  
13 with the Orange County District Attorney's Office and the State Bar Office of Trial Counsel from  
14 the outset. Petitioner was placed on Interim Suspension as of February 4, 2016, has not been  
15 practicing law since that date, and was subsequently suspended from the practice of law in  
16 California for three (3) years, execution of that period of suspension stayed, and placed on three  
17 (3) years' probation with a two (2) year Actual Suspension, retroactive to February 4, 2016, by  
18 Supreme Court order #S236198 dated October 5, 2016, and effective November 4, 2016.  
19  
20

## 21 ISSUE

22  
23 The issue presented in this matter is whether Petitioner has established, by a  
24 preponderance of the evidence, his rehabilitation, present fitness to practice law, and present  
25 learning and ability in the general law so that he may be relieved from the actual suspension  
26 imposed on him by the Supreme Court Rules of Procedure Standard 1.2(c)(1) *In the Matter of*  
27 *Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289, 293-294.)  
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## PROCEDURAL HISTORY

This matter arose in connection with Petitioner's November 9, 2015, misdemeanor guilty plea and conviction on one (1) count of violation Business & Professions Code section 6128(a) (*deceit or collusion by an attorney*). Immediately thereafter, Petitioner reported the conviction to the State Bar. A certified copy of Petitioner's conviction was subsequently filed in the Review Department of the State Bar Court (*case #15-C-14561*). Thereafter, because the conviction was a misdemeanor crime that inherently involves moral turpitude, the State Bar Review Department placed Petitioner on Interim Suspension as of February 4, 2016, pending the final disposition of case #15-C-14561.

Subsequently, on May 25, 2016, Petitioner entered into a Stipulation Re Facts, Conclusions of Law and Disposition and Order Approving in State Bar case #15-C-14561 (*"Stipulation"*). This Stipulation was subsequently approved and filed by the State Bar Court, and by Supreme Court order #S236198 dated October 5, 2016, and effective November 4, 2016, Petitioner was placed on three (3) years' stayed suspension and three (3) years' probation on conditions, including a two (2) year Actual Suspension retroactive to February 4, 2016.

Petitioner is now filing and serving this Verified Petition for Relief from Actual Suspension, seeking the termination of his Actual Suspension based upon his satisfaction of the requirements of Standard 1.2(c)(1).

## BACKGROUND OF MISCONDUCT

Petitioner has a single record of discipline which resulted from a misdemeanor conviction for a single violation of Business & Professions Code section 6128(a) (*deceit or collusion by an attorney*) between December 12, 2012, and February 28, 2014.

1 In June 2012, Petitioner was hired by defendant Flores in a criminal case with charges of  
2 lewd acts upon 3 different girls under the age of 14. Petitioner thereafter privately retained a  
3 licensed sexual psychologist, Dr. Veronica Thomas, Ph.D., to do a psychosexual evaluation for  
4 his client Flores. Because Mr. Flores was in custody, Petitioner requested and received a  
5 visitation order from the court for Dr. Thomas to be admitted to the county jail for purposes of  
6 conducting the psychosexual evaluation. Dr. Thomas met with client Flores approximately 6  
7 times between July and October 2012.  
8

9  
10 On October 11, 2012, Dr. Thomas authored a psychosexual evaluation report containing  
11 7358 words. On December 13, 2012, Dr. Thomas emailed the report to Petitioner in Microsoft  
12 WORD format. Without reviewing the report with Dr. Thomas, Petitioner changed the date on  
13 the report to December 13, 2012.  
14

15 On December, 14, 2012, Petitioner met with the assigned Deputy District Attorney Jess  
16 Rodriguez (DDA) and personally handed him a printed 13-page report from Dr. Thomas dated  
17 December 13, 2012, for settlement purposes. The case did not settle and continued to trial.  
18

19 On November 6, 2013, Petitioner and the DDA announced ready for trial and the parties  
20 were ordered to appear for pretrial motions in the trial courtroom on November 12, 2013.  
21

22 On Monday November 11, 2013, while preparing for trial, Petitioner re-reviewed Dr.  
23 Thomas' report in anticipation of emailing a courtesy copy of the report to the DDA for  
24 discovery and cross-examination purposes if and when Dr. Thomas testified. While reviewing  
25 the report, and without Dr. Thomas' authorization, Petitioner again changed the date of the report  
26 to November 8, 2013, to make the report more current and made numerous changes to the report  
27 in an effort to cast a more positive light on Mr. Flores by taking uncomplimentary parts out of  
28

1 the report. According to Dr. Thomas, the changes were “sophomoric” and Petitioner did not add  
2 anything to the report or change her findings.

3  
4 On the evening of Monday November 11, 2013, Petitioner emailed the DDA, and  
5 included the Clerk of the Court Dorothy, a copy of the defense witness list, defense pretrial  
6 motions and a 13-page report authored by Dr. Thomas that was dated November 8, 2013,  
7 containing 6443 words.

8  
9 The next morning, November 12, 2013, Petitioner was advised by the Clerk of the Court  
10 Dorothy that she had marked all three documents as exhibits and filed them with the court. After  
11 explaining that the report was not intended to be filed or marked as an exhibit for the court and  
12 was only provided to the assigned DDA for discovery and cross-examination purposes if and  
13 when Dr. Thomas testified, the Clerk of the Court Dorothy advised Petitioner that she would seal  
14 the report as confidential and note the record nun pro tunc that the report was mistakenly filed  
15 with the court by defense counsel and was not intended as an exhibit or court document.

16  
17  
18 In preparation for Dr. Thomas’ cross-examination, the DDA noted the different date on  
19 the emailed report, compared it to the previously-provided December 13, 2012, report, and found  
20 discrepancies, omissions and/or modifications in the November 8, 2013, report.

21  
22 On November 21, 2013, Petitioner called Dr. Thomas to testify as an expert witness in  
23 the trial. Earlier that morning, Petitioner met with Dr. Thomas to discuss her testimony and the  
24 report and advised Dr. Thomas that he had changed the date on the report.

25  
26 The DDA subsequently cross-examined Dr. Thomas about the differences in the two  
27 reports provided to him by Petitioner. Although confused by the DDA’s questions regarding  
28 differences in the reports, Dr. Thomas testified that she wrote two reports and that the

1 information removed from the report was “superfluous” and did not change her ultimate  
2 conclusions or findings.

3  
4 On November 26, 2013, Mr. Flores was convicted by the jury and sentenced to 30 years  
5 to life. Mr. Flores appealed his conviction.

6  
7 Between December 2013 and May 2014, Dr. Thomas discussed the “two-reports” matter  
8 with the DDA, clearly stating that she authored only one report, that she did not author two  
9 reports and that when confronted with two reports at trial she only testified to writing both  
10 reports because in her confusion she thought she may have authored another report and forgotten  
11 about it. As such, the Orange County District Attorney’s office (“OCDA”) opened an  
12 investigation into the matter.  
13

14  
15 On June 20, 2014, Dr. Thomas discussed the matter with Petitioner at Petitioner’s office,  
16 and Petitioner apologized to Dr. Thomas for what he had done and how it had affected her  
17 working relationship with the OCDA’s office.

18  
19 On or about July 24, 2014, Petitioner had a telephone conversation with one of the  
20 Deputy DA’s handling the OCDA’s investigation and indicated his willingness to cooperate.

21  
22 On July 31, 2014, the OCDA’s office executed a search warrant at Petitioner’s home and  
23 office, and Petitioner fully cooperated by providing the OCDA’s investigators with locations of  
24 all of his computers/laptops and correlating passwords for each computer/laptop. Petitioner  
25 subsequently hired an attorney who had constant contact with the assigned DDA in an effort to  
26 negotiate an immediate resolution to the matter.  
27

28 ///

1 The matter was resolved with a negotiated signed plea agreement in mid-2015 and a plea  
2 of guilty was entered at the arraignment/pretrial stage on or about November 9, 2015. Petitioner  
3 was placed on 3 years' informal summary probation as of November 9, 2015, with terms  
4 requiring 90 days of jail served via home confinement, payment of \$10,000 to the Victim  
5 Witness Emergency Fund, payment of fines of \$1,000 plus Penalty Assessment, payment of  
6 various fees, and compliance with the State Bar.  
7

### 8 **BACKGROUND OF DISCIPLINARY MATTER**

#### 9 **Discipline Record – (State Bar Court case No 15-C-14561)**

10  
11  
12 On May 25, 2016, Petitioner stipulated to an ethical violation in one matter. Petitioner  
13 stipulated that he violated Business & Professions Code section 6128(a) (*deceit or collusion by*  
14 *an attorney*) between December 12, 2012, and February 28, 2014.  
15

16 Based on his misconduct, Petitioner stipulated to the following: (1) stayed suspension of  
17 three years; (2) three years' probation; (3) two years of actual suspension; (4) quarterly reports to  
18 the Office of Probation; (5) attendance of the State Bar Ethics School and passage of the exit  
19 exam; (6) compliance with California Rules of Court, Rule 9.20, specifically subdivisions (a) and  
20 (c) of that rule within 30 and 40 calendar days; (7) taking and passing of the Multistate  
21 Professional Responsibility Examination ("MPRE"); (8) paying of costs awarded to the State Bar  
22 in the amount of \$2,567.00; (9) compliance with the provisions of the State Bar Act and Rules of  
23 Professional Conduct; (10) compliance with all conditions of probation; and (11) compliance  
24 with all conditions of probation imposed in the underlying criminal matter.  
25  
26

27 By Stipulation, Petitioner's misconduct was aggravated by harm to his client, the public,  
28 and the administration of justice.

-/-

1 By Stipulation, Petitioner's misconduct was mitigated by no prior record of discipline  
2 over an 18-year period of time, extraordinarily good character, and a full pre-trial Stipulation  
3 with the State Bar.  
4

5 As a result, on October 5, 2016, the Supreme Court filed an order effective November 4,  
6 2016, approving the terms of the Stipulation and suspending Petitioner from the practice of law  
7 for three (3) years, stayed, and placing Petitioner on three (3) years' probation with an actual  
8 suspension of two (2) years with retroactive credit from February 4, 2016, and until Petitioner  
9 could provide proof of his rehabilitation, present fitness to practice law, and present learning and  
10 ability in the general law pursuant to Standard 1.2(c)(1). Petitioner was also required to file an  
11 affidavit under California Rules of Court, Rule 9.20, take and pass the State Bar Ethics School,  
12 take and pass the MPRE, pay discipline fees of \$2,567.00, submit quarterly reports to the office  
13 of probation, comply with any other probation conditions and abide by the requirements of the  
14 underlying criminal matter.  
15  
16

## 17 DISCUSSION

18  
19 Petitioner has the burden of proving, by a preponderance of the evidence, his  
20 rehabilitation, present fitness to practice law, and present learning and ability in the general law  
21 pursuant to Standard 1.2(c)(1). The court will look to the nature of the underlying misconduct to  
22 determine the point from which to measure a petitioner's rehabilitation and present fitness to  
23 practice. (*In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 571, 578.)  
24 "[I]t is appropriate to consider the nature of the misconduct, as well as the aggravating and  
25 mitigating circumstances surrounding that misconduct . . . in determining the amount and nature  
26 of rehabilitation that may be required to comply with standard [1.2(c)(1)]." (*Ibid.*)  
27  
28

1 **A. REHABILITATION AND PRESENT FITNESS TO PRACTICE LAW**

2  
3 In determining whether Petitioner's evidence sufficiently establishes his rehabilitation,  
4 the court shall first consider the prior misconduct, and then examine the Petitioner's actions since  
5 the imposition of discipline to determine whether his actions, in light of the prior misconduct,  
6 sufficiently demonstrate rehabilitation by a preponderance of the evidence. (*In the Matter of*  
7 *Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 581.) At a minimum, Petitioner must show that:  
8 (1) he has strictly complied with the terms of probation imposed on him under the Supreme  
9 Court's disciplinary order; (2) he has engaged in exemplary conduct since being  
10 disciplined/suspended; and (3) the conduct evidencing rehabilitation is such that the court may  
11 make a determination that the misconduct leading to the discipline is not likely to recur or be  
12 repeated. (*Ibid.*)  
13  
14

15 **STRICT COMPLIANCE WITH STATE BAR PROBATION CONDITIONS**

16  
17 I, Petitioner, have strictly complied with all of the conditions of my disciplinary  
18 probation as of the date of this Verified Petition. I have served almost 2 years, 10 months of  
19 Actual Suspension; timely submitted all required Quarterly Probation Reports to the Office of  
20 Probation; timely attended and completed the State Bar Ethics School on April 4, 2017, and  
21 passed the exit exam; timely complied with his California Rules of Court, Rule 9.20, obligations;  
22 timely attended and passed the MPRE on November 4, 2017, with a scaled score of 103; timely  
23 paid all costs awarded to the State Bar in the amount of \$2,567.00; timely complied with the  
24 provisions of the State Bar Act and Rules of Professional Conduct; timely complied with all  
25 conditions of probation; and timely complied with all conditions of probation imposed in the  
26 underlying court matter.  
27  
28



1 I, Petitioner, have also engaged in community service endeavors since being disciplined,  
2 volunteering on a weekly basis through United Way of Orange County and TutorMate as a grade  
3 school English tutor for the Santa Ana Unified School District, and ask this Honorable Court to  
4 consider these charitable and community activities as evidence of my rehabilitation and present  
5 good moral character. (Cf. *Calvert v State Bar* (1991) 54 Cal.3d 765,785, quoting *Schnedier v.*  
6 *State Bar* (1987) 43 Cal.3d 784, 799.)  
7

8  
9 On a personal level, I, Petitioner, have renewed my Christian faith, and currently attend  
10 Saddleback Church in Lafe Forest on a regular basis with my wife. In addition, on the  
11 weekends, I, Petitioner, have learned many construction trades (*carpentry, electrical, plumbing,*  
12 *etc.*) and have personally renovated the entire interior/exterior of our residence, as well as  
13 assisted many of my neighbors and loved ones with various home improvement projects.  
14

15 PETITIONER'S ACCEPTANCE OF RESPONSIBILITY FOR HIS MISCONDUCT  
16

17 I, Petitioner, have taken full responsibility for the underlying misconduct that led to my  
18 discipline and have acknowledged that my failure to fulfill my ethical obligations as an attorney  
19 and officer of the court greatly harmed the court and others, especially my client, my expert  
20 witness Dr. Veronica Thomas, and the prosecuting attorney in the underlying matter.  
21

22 I, Petitioner, accepted my responsibility with the underlying court matter at an early stage  
23 by complying with the OCDA's investigation and working out a plea agreement prior to the  
24 actual filing of any criminal charge, and accepted my responsibility with the State Bar by  
25 immediately reporting my misdemeanor plea/conviction, cooperating with the OCTA, and  
26 agreeing to a Stipulation at the pre-trial stage.  
27  
28

1 I, Petitioner, have learned from this past experience of misconduct, have gained a greater  
2 knowledge and respect for the Rules of Professional Conduct and know that I can never be  
3 dismissive or contemptuous about matters regarding the court, clients, evidence, witnesses, and  
4 the overall administration of justice.  
5

6 I, Petitioner, have always been willing to take whatever steps are necessary to prove to  
7 the State Bar and the State Bar Court that my conduct in this matter was aberrant, that I am not a  
8 danger to the public, the courts or the legal profession, that I can maintain the highest  
9 professional standards, and that I can preserve public confidence in the legal profession.  
10

11 PETITIONER'S REMORSE FOR HIS MISCONDUCT  
12

13 I, Petitioner, have always been extremely remorseful for and deeply ashamed by my  
14 actions and misconduct in this matter - *words can truly not fully express my genuine remorse for*  
15 *my exceptionally poor judgment.*  
16

17 I, Petitioner, am wholeheartedly apologetic to the court, my client and all others affected  
18 by my misconduct, especially the pain/harm/embarrassment to Dr. Veronica Thomas – I harmed  
19 her working relationship with the OCDA as well as ruined our professional working relationship.  
20

21 I, Petitioner, took prompt objective steps in 2014 and 2015 to demonstrate my remorse  
22 and recognition of my wrongdoing and timely atonement, which included personally apologizing  
23 to Dr. Thomas for my behavior on more than one occasion in 2014 (*face-to-face and via text*)  
24 and seeking out a plea agreement prior to the filing of a criminal charge in 2015.  
25  
26

27 I, Petitioner, also wanted to apologize to my client Mr. Flores but, on advice of counsel,  
28 was advised not to do so.

1 I, Petitioner, also immediately discussed my misconduct with my wife, my 5 children  
2 (*ages 16-25 at the time*), my parents, my siblings, my extended family and friends, and  
3 apologized to each and every one of them for letting them down. Aside from my wife and  
4 children, the most emotionally difficult conversation about my misconduct was with my father  
5 who passed away in 2016 – my father always engrained a very strict moral compass in all of us  
6 children and the fact that I let him down was gut-wrenching.  
7

8  
9 I, Petitioner, also let myself down and am deeply saddened by and shameful of my  
10 misconduct - there is not a day that goes by that I don't think about my misconduct in this matter  
11 and my extreme disappointment in myself eats at me. I had always prided myself on living  
12 within the lines and by the rules until my misconduct in this matter.  
13

14 I, Petitioner, fully appreciate the seriousness of my misconduct, am sincerely remorseful  
15 for my wrongdoing and will not commit any future transgressions of any kind, and ask this  
16 Honorable Court to consider this as strong evidence that I will conform my conduct to the  
17 strictures of the profession and will not again engage in misconduct. (*Cf. Toll v State Bar* (1974)  
18 12 Cal.3d 824,832.)  
19

20  
21 CHARACTER EVIDENCE

22 While character testimony is never conclusive or controlling on issues of rehabilitation  
23 and present fitness, character witnesses should be entitled to great weight because of their in-  
24 depth knowledge of a person.  
25

26 I, Petitioner, have submitted ten (10) favorable character witness letters from close  
27 friends, relatives and attorney(s) in support of this Petition. Each witness has a full awareness of  
28 the circumstances of my suspension, conviction and underlying misconduct. The witnesses have

1 observed my daily living, can attest to my integrity, good character and honesty, and stated the  
2 following about me:

- 3
- 4 • “high degree of integrity” / “utmost integrity” / “great character and integrity”
- 5
- 6 • “honorable and trustworthy man who is deserving of a second chance”
- 7
- 8 • “a rare individual – a true asset to his family and the community at large”
- 9
- 10 • “altruistic and reliable person”
- 11
- 12 • “strength of character and compassion for others”
- 13
- 14 • “looks out for the best interest of others before himself”
- 15
- 16 • “always counted on to do what is moral, kind and right”
- 17
- 18 • “extremely sincere, dependable, trustworthy”
- 19
- 20 • “highly trusted” / “an inspiration” / “a role model”
- 21
- 22 • “constant source of advice, wisdom, and love and support”
- 23
- 24 • “hardworking, trustworthy, humble man”
- 25
- 26 • “principled professional”

24 The witnesses also indicate that I, Petitioner, have taken full responsibility for my  
25 actions, expressed remorse, and am determined to fulfill my ethical responsibilities in the future:

- 27 • “immediate remorse” / “extremely remorseful”
- 28
- “most resolute contrition and remorse for what occurred and how”

1           Lastly, one witness described the misconduct as “very uncharacteristic” while another  
2 provided that I, Petitioner, “has used this as the chance to improve as a person” and “holds  
3 nothing but gratitude for the lessons this has taught him.”  
4

5           The character witness letters show that I, Petitioner, have a full understanding of and  
6 remorse for the misconduct that led to my actual suspension, have spoken openly with others  
7 about my mistakes of the past, and have taken full responsibility for my misconduct. As such, I,  
8 Petitioner, ask this Honorable Court to give this favorable character evidence considerable  
9 weight (*Feinstein v. State Bar* (1952) 39 Cal.2d 541,547) and significant value in support of my  
10 rehabilitation and present fitness.  
11

#### 12 **B. PRESENT LEARNING AND ABILITY IN THE LAW**

13  
14           I, Petitioner, completed the State Bar Ethics School probation requirements on April 4,  
15 2017, took and passed the MPRE on November 4, 2017, completed 56.5 hours in various  
16 participatory MCLE courses on a variety of topics (*16.0 of those hours in Legal Ethics*) from  
17 2015 thru 2018, have been doing weekly reading of the State Bar Daily Journal periodicals and  
18 similar materials, and have been diligent in keeping abreast of trending legal issues.  
19  
20

#### 21 **CONCLUSION**

22  
23           Petitioner has shown that he has strictly complied with the terms of his probation in the  
24 underlying disciplinary matter and criminal matter, has exhibited exemplary conduct from the  
25 time of his discipline, and has established that the conduct leading to his discipline will not be  
26 repeated. In addition, Petitioner has demonstrated by a preponderance of the evidence that he is  
27 rehabilitated and has present fitness to practice law.  
28

