

Filed January 6, 2006

**REVIEW DEPARTMENT OF THE STATE BAR COURT**

In the Matter of )

**BRADFORD ERIC HENSCHEL** )

A Member of the State Bar. )

---

**04-V-12725**

**OPINION ON  
INTERLOCUTORY REVIEW**

BY THE COURT\*

The State Bar seeks review of a decision of a hearing judge granting petitioner Bradford E. Henschel's petition for relief from 18 months of actual suspension pursuant to Standards for Attorney Sanctions for Professional Misconduct, standard 1.4(c)(ii).<sup>1</sup> Petitioner was admitted to practice in November 1989. Beginning in 1993, petitioner committed serious misconduct in four client matters resulting in 1997 in a stipulated four-month actual suspension (*Henschel I*). While on probation, petitioner committed additional misconduct in 2003 in four client matters, resulting in a second stipulated discipline of 18 months' suspension (*Henschel II*). Both disciplinary proceedings involved, inter alia, the repeated failure to perform competently, failure to obey court orders, failure to cooperate with the State Bar and a demonstrated indifference to atoning for the consequences of his misconduct.

Our previous concerns with petitioner's competence and ability to handle serious legal matters in a reasoned and reasonable manner, as well as with his capacity to understand the duties owed to the courts, the public and his clients, remain of equal importance today. We are

---

\*Before Stovitz, P. J., Watai, J. and Epstein, J.

<sup>1</sup>The standards are found in title IV of the Rules of Procedure of the State Bar of California. All further references to standards are to this source.

particularly troubled by the hearing judge’s finding that “shortly after Petitioner filed his petition for relief from actual suspension, Petitioner consciously embarked on a course of action in which he repeatedly made meritless challenges to this Court’s jurisdiction and authority to adjudicate his petition. . . .” We also are concerned with petitioner’s relentless letter writing and e-mail campaign challenging the State Bar’s description of his status as “not entitled to practice” on its website and in his membership records, which the hearing judge found was “meritless, incorrect and misguided.” Perhaps most troubling is petitioner’s protracted campaign to disparage various trial counsel and other State Bar employees involved with his disciplinary proceedings, accusing them of criminal misconduct, conspiracy and other acts of moral turpitude, which the hearing judge found was based upon “meritless legal arguments and objectively unsupportable allegations. . . .”

These findings by the hearing judge, as well as additional evidence in the record, compel the conclusion that petitioner has not sustained his burden of proving his rehabilitation, present fitness to practice, and present learning and ability in the general law. Accordingly, we conclude the hearing judge abused his discretion when he granted the petition for relief from actual suspension, and we reverse his decision.

## **I. PROCEDURAL AND FACTUAL HISTORY**

### **A. Petitioner’s Prior Misconduct**

#### **1. *Henschel I***

Effective October 3, 1997, petitioner was placed on three years’ probation and suspended from the practice of law for 18 months, stayed upon conditions including a 120-day actual suspension for ethical misconduct involving four client matters.<sup>2</sup>

---

<sup>2</sup>In accordance with Evidence Code section 452, subdivision (e), we take judicial notice of petitioner’s prior record of discipline.

Petitioner stipulated that while representing a client in a family law matter in 1993, a trial court sanctioned petitioner for filing frivolous objections. Petitioner appealed, and the Court of Appeal not only affirmed the sanction award but also sanctioned petitioner for filing a frivolous appeal. Petitioner failed to pay any of the sanctions. Petitioner stipulated that he presented a claim not warranted under existing law in violation of rule 3-200(B) of the Rules of Professional Conduct,<sup>3</sup> failed to obey court orders in violation of Business and Professions Code section 6103,<sup>4</sup> and failed to cooperate with the State Bar's investigation in violation of section 6068, subdivision (i).

In another matter, petitioner failed to perform work for and communicate with a client who employed him with regard to a marital dissolution and income tax matter in 1995. Petitioner did not keep the client apprised of developments in the case and due to his neglect, default was entered against the client. Petitioner failed to return unearned fees to the client even after a fee arbitrator ruled against petitioner. Petitioner agreed that he failed to perform competently in violation of rule 3-110(A), failed to communicate significant information to the client in violation of section 6068, subdivision (m), failed to return client papers in violation of rule 3-700(D)(1), failed to refund unearned fees in violation of rule 3-700(D)(2), and failed to cooperate with the State Bar's investigation in violation of section 6068, subdivision (i).

In a third matter, petitioner neglected to file an amended petition resulting in dismissal of the client's bankruptcy matter that same year. In January 1996, a court ordered petitioner to pay sanctions to the client in the amount of \$300, which he did not pay, thereby failing to obey a court order in violation of section 6103.

---

<sup>3</sup>Unless otherwise noted, all further references to "rule" refer to the Rules of Professional Conduct.

<sup>4</sup>Unless otherwise noted, all further references to "section" refer to the Business and Professions Code.

Finally, while representing clients in a civil matter in 1995, petitioner failed to appear at a scheduled court hearing, failed to file a timely answer on behalf of his clients resulting in entry of default, and failed to inform his clients that default had been entered against them. Petitioner stipulated that he failed to perform competently in violation of rule 3-110(A).

Petitioner's misconduct was aggravated because he demonstrated indifference toward rectification of or atonement for the consequences of his misconduct, he displayed a lack of candor and cooperation, and his misconduct caused significant harm.

## **2. *Henschel II***

On February 26, 2002, petitioner stipulated to several acts of misconduct involving four clients. He agreed to five years' probation and an 18-month actual suspension that would continue until he showed satisfactory proof to the State Bar Court of his rehabilitation, fitness to practice, and present learning and ability in the general law pursuant to standard 1.4(c)(ii).

All but one of petitioner's acts of misconduct in *Henschel II* occurred while petitioner was either subject to disciplinary proceedings or on probation in *Henschel I*. In June 1997, petitioner filed a bankruptcy petition for Robbie Peron that was dismissed the following month due to failure to file required schedules. The dismissal order barred Peron from filing another bankruptcy petition until January 1998. Nevertheless, petitioner filed a second bankruptcy petition on Peron's behalf in October 1997. Petitioner stipulated that by doing so, he committed acts involving moral turpitude, dishonesty or corruption in violation of section 6106. Additionally, while petitioner was suspended from the practice of law in October 1997, he negotiated a claim with one of Peron's creditors without informing the creditor that he was suspended from the practice of law, thereby unlawfully holding himself out as practicing or entitled to practice law when he was not permitted to do so.

Between September 1996 and January 1997, petitioner violated rule 3-110(A) when he failed to appear at four separate bankruptcy hearings on behalf of Victor Merhaut. The

bankruptcy court ordered petitioner to disgorge the advanced fees Merhaut paid him, but he failed to comply with the order in violation of section 6103.

In September 1995, petitioner violated rule 3-110(A) when he failed to file a timely opposition to a summary judgment motion, failed to appear at the hearing of said motion, and failed to appear at a pretrial conference while representing Elias and Shahrzad Rohbani in a civil proceeding. In early 1996, the Rohbanis requested that petitioner return their client file but petitioner refused, claiming he was too busy. Almost two years later, petitioner's wife explained to the Rohbanis that petitioner could neither locate their file nor afford to return it. Petitioner stipulated he violated rule 3-700(D)(1) and section 6103 since he was required to comply with rule 955<sup>5</sup> of the California Rules of Court as a result of a California Supreme Court order suspending petitioner from the practice of law.

In October 1999, Blanca Echeverria employed petitioner to represent her and her son in a personal injury matter resulting from an automobile accident. In February 2000, petitioner misrepresented to a clinic providing treatment to Echeverria and her son that their injuries were not the result of the automobile accident. In March 2000, petitioner's paralegal informed Echeverria that petitioner withdrew from the case. Petitioner agreed that he improperly withdrew from representation in violation of rule 3-700(A)(2).

Petitioner further stipulated his misconduct was aggravated because he had a prior record of discipline (*Henschel I*), he demonstrated indifference toward rectification of or atonement for the consequences of his misconduct, he displayed a lack of candor and cooperation, he committed multiple acts of wrongdoing, and his misconduct caused significant harm and was surrounded by dishonesty. The parties did not stipulate to any mitigating circumstances but in a section designated "OTHER CIRCUMSTANCES" they noted that petitioner "suffered severe

---

<sup>5</sup>This rule required petitioner to, inter alia, deliver any papers or other property to all clients he represented in matters pending at the time of his suspension, or to notify the clients where the papers and property could be obtained.

depression” as a result of events occurring in 1996 and 1997 including a car accident, nose surgery, his wife’s job loss, and his reduced income due to his actual suspension in October 1997. The parties also acknowledged that petitioner implemented changes in his office practices by regularly meeting with clients, utilizing a new tickler system, and changing the type of cases he accepted from bankruptcy and personal injury to criminal defense.

## **B. Petitioner’s Post-Stipulation Actions**

### **1. Disavowal of Stipulation**

Almost immediately after petitioner signed the stipulation in *Henschel II*, he sought to set it aside, asserting that it was an illegal adhesion contract containing as many as 32 errors. The Supreme Court denied review and filed its order in case No. S108811 on November 13, 2002, imposing the stipulated discipline. Petitioner requested rehearing, asking the court to consider his charges of criminal conduct by the prosecuting attorneys during the proceedings in *Henschel II*. Rehearing was denied by the Supreme Court on January 15, 2003, and his actual suspension began on that date.

### **2. Claims of State Bar Misconduct**

#### **a. Charges of criminal conduct by deputy trial counsel**

Less than one month after the Supreme Court denied review of his petition, petitioner commenced a protracted crusade against the prosecutors and other State Bar employees who were involved in his disciplinary proceedings. Between December 2002 and January 2004, petitioner telephoned and wrote numerous letters and e-mails to various State Bar employees, department heads and the Office of Chief Trial Counsel asserting that trial counsel suborned the perjury of a witness and withheld evidence of the felony arrest and conviction of another witness during the proceedings in *Henschel II*. Petitioner further claimed that deputy trial counsel committed criminal acts of moral turpitude when they “coerced” him to enter into a stipulation.

In one letter to the State Bar Membership Billing Services, petitioner noted his annual dues were erroneously computed and then, as a completely unrelated subject matter, he repeated the above-described complaints, concluding: “Dishonesty by State Bar Prosecutors constitutes MORAL TURPITUDE. The State Bar is charged with keeping the public safe from acts of Moral Turpitude by lawyers. In this case the State Bar has used Moral Turpitude as a trial tactic to win a case they should have never filed.” Petitioner indicated that he was “preparing a bar complaint against [the State Bar prosecutors], and I am also preparing a criminal complaint against them for the crimes they committed against me during the State Bar Court hearing . . . .”<sup>6</sup>

After a member of the State Bar Intake Unit notified petitioner in writing on September 16, 2003 that there was no evidence to support his charges against the State Bar attorneys, petitioner wrote as follows: “I do not consider Jayne Kim’s using perjury, suborning perjury, concealing material evidence, or inducing [my attorney] to not prepare a rebuttal witness, or having Ms. Kim ‘instructing’ official State Bar letters to be sent to me, threatening probation violation enforcement . . . to be a vendetta against me. I simply consider her actions to be dishonest, criminal, unethical, and a clear violation of her duties as a prosecutor in State Bar Proceedings.”

In January of 2004, petitioner sent an e-mail to employees at the State Bar and the State Bar Court, asking to address the Regulation, Admissions and Discipline Oversight Committee (RAD) of the State Bar’s Board of Governors on a number of topics, including, “Whether or not the use of perjury and subordination of perjury in my 2001 discipline case, by State Bar Prosecutors Kimberly Anderson and Jayne Kim, is a recurrent circumstance, tactics used by the State Bar discipline system . . . .”

---

<sup>6</sup>Although unrelated to his allegations of prosecutorial misconduct, petitioner also repeatedly asserted in his correspondence to the State Bar that it violated federal postal laws and regulations with respect to its use of a mailing permit.

### **b. Charges of criminal conspiracy by deputy trial counsel**

Between August 30 and September 19, 2003, petitioner wrote at least six more letters of complaint to the State Bar regarding one of the same State Bar prosecutors, this time accusing her in her capacity as supervising attorney of the Office of Probation of “making a false threat of administrative enforcement and offering false evidence, preparing false evidence, or attempting to commit those crimes” because he maintained she intentionally directed a probation deputy to falsely notify petitioner that he was not in compliance with his probation conditions. The State Bar’s notice had erroneously advised petitioner that he had failed to timely file a *monthly*, as opposed to a *quarterly*, report confirming his monthly visits to a licensed psychiatrist, psychologist, or clinical social worker.<sup>7</sup> Petitioner also made numerous telephone calls to various State Bar personnel, including the Chief Trial Counsel and the State Bar president, John Van de Kamp, to discuss the “misconduct” of the State Bar prosecutor.

Even after the supervising attorney informed petitioner that he was in compliance with his probation conditions, petitioner continued to write numerous letters to various State Bar personnel, accusing the supervising attorney of behaving dishonestly and committing a crime by falsely threatening administrative action against him as part of a criminal conspiracy. Indeed,

---

<sup>7</sup>The stipulation petitioner executed in *Henschel II* required petitioner to “obtain psychiatric or psychological help/ treatment from a duly licensed psychiatrist, psychologist, or clinical social worker at [petitioner’s] own expense a minimum of 1 times [sic] per month and . . . furnish evidence to the Probation Unit that [petitioner] is so complying with each quarterly report.”

The probation deputy’s notice, dated August 27, 2003, advised petitioner that “the Office of Probation did not receive a mental health report which was due on August 1, 2003. Please submit the required documentation immediately. [¶] Further, under advisement of my supervisor, Ms. Jayne Kim, I have been instructed to inform you that you are required to continue submitting these reports until the court has made its ruling on your motion. . . . [¶] The Office of Probation does not have the authority to extend compliance dates or modify the terms and conditions of the discipline order. **Failure to timely submit reports or any other proof of compliance will result in a non-compliance referral to the Enforcement Unit, Office of the Chief Trial Counsel.**” (Emphasis in original.)

the supervising attorney's letter clarifying petitioner's probation status only served to exacerbate his ire.<sup>8</sup>

**c. Challenge to his membership status**

Petitioner took on a new challenge to the State Bar when he wrote 12 letters in rapid succession to the State Bar's Membership Records department on August 27, August 31, September 5, September 6, September 7, September 16, September 19, September 25, September 30, October 2, and October 4, 2003, claiming that his "membership record is incorrect and needs to be changed" because he was listed as "not entitled" when in fact he maintained he was an "inactive member." Typical of these is the letter of October 4th to the State Bar's executive director and Membership Records office asserting that "[t]here is no State Bar membership status, known as NOT ENTITLED TO PRACTICE." He continued: "Your online State Bar records for me state I am not entitled to practice as my status. . . . This is a false statement. I am an inactive member of the state bar and I should be listed that way in your records." He further complained that the Records department "appears to be prejudiced in the manner in which you display members records for the public to access" comparing his listing to that of James Heiting (currently president of the State Bar). He closed with a warning: "[I]f my State Bar records remain erroneous I will bring this matter before the State Bar Court Hearing Department to

---

<sup>8</sup>The supervising attorney wrote on August 28, 2003: "This letter confirms our telephone conversation this afternoon in which you advised me that you had submitted a mental health report to Probation Deputy Shuntinee Brinson for the month of August 2003. As I informed you this afternoon, I spoke to Ms. Brinson regarding your August 2003, mental health report, after receiving a message from you earlier today. Ms. Brinson advised me that upon further review of your file she did have a mental health report from Dr, [sic] Steven Schenkel, M.D. for the month of August 2003. As such, you are currently in compliance with the conditions of probation, including the mental health condition." Petitioner interpreted her letter as intending to mislead him "that I was required to report monthly, [which was] a false statement. . . ." He then wrote several more letters of complaint to the State Bar about the purportedly misleading statements made by the attorney in her August 28, 2003 letter.

obtain an order, requiring you to change my status to inactive. . . . Please take notice that State Bar Court orders are enforceable in the Superior Court of Los Angeles County.”

In October 2003, the Chief Assistant General Counsel for the State Bar wrote to petitioner, giving him a detailed explanation of the various membership status designations of the State Bar. He explained: “Whether a member is active or inactive, he or she may be ‘suspended from practice’ or ‘suspended from membership.’ A member who is suspended is not entitled to practice law. (See Bus. & Prof. Code sec. 6126(b).) Therefore, the term ‘Not entitled to Practice’ correctly identifies your status as a member who is not entitled to practice law in California. (See e.g., Bus. & Prof. Code sec. 6006 [Inactive members are not entitled to practice law].” In January 2004, the State Bar wrote to petitioner again advising him that describing himself as an inactive member of the State Bar was an inaccurate characterization of his membership status.

Notwithstanding this explanation, petitioner continued his quarrel with his status as “not entitled to practice.” In a letter dated July 26, 2004, to a deputy trial counsel notifying the Bar of a change in his address, he listed himself as “Not a member of the State Bar.” By way of explanation, he stated: “The law on State Bar membership clearly states that there are only two categories of State Bar membership, ACTIVE AND INACTIVE. Since I am not an active member of the State Bar Association due to my suspension from membership, and I am not an inactive member of the State Bar, I therefore am not a member of the State Bar of California.” He continued: “As for my suspension from membership in the State Bar, while there is no State Bar membership status, known as NOT ENTITLED TO PRACTICE the State Bar General Counsel told me that the State can [sic] is not limited in any way in categorizing people, even those you [sic] are not members of the State Bar where for the long term or the short term. Since everyone in the world, who are [sic] not active members of the State Bar are NOT ENTITLED TO PRACTICE LAW IN CALIFORNIA, this designation is not only false and misleading but is

so vague as to be meaningless. [Para.]. . . By withholding from the public, in my published profile, that I am not a member of the State Bar, the public is being misled and my profile appears to show that I AM A MEMBER of the State Bar when I am not during my suspension!!!!”

**d. Charges of violations of Rules of Confidentiality by State Bar**

In July 2004, petitioner wrote two letters to the State Bar’s Director of Membership Records demanding that all references to his disciplinary record be removed from the State Bar’s website, claiming that section 6002.1<sup>9</sup> forbids the State Bar from making his discipline records available to the general public unless required to do so by a condition of probation. Petitioner stated that “if my profile records are not changed . . . to eliminate all references to discipline which are now unlawfully available to the general public, I will seek a writ of mandate from the Supreme Court of California ordering those records be kept from the general public in compliance with the law.”

**e. Charges of deceit by deputy trial counsel**

As recently as February 14, 2005, in connection with the instant proceedings, petitioner wrote letters to State Bar President Van de Kamp and the Acting Chief Trial Counsel, accusing three named deputy trial counsel of “further acts of misconduct” involving criminal acts of deceit. Petitioner claimed that three State Bar prosecutors made “false and frivolous accusations” against him in this matter when they “falsely asserted that I violated B&P 6002.1 by maintaining a PO box as my current bar address.” According to petitioner, the trial counsel

---

<sup>9</sup>Section 6002.1 requires members of the State Bar to maintain, among other things, a current office address and telephone number with the membership records office of the State Bar. Subdivision (a)(5) of that section requires members to maintain on the official membership records “Such other information as may be required by agreement with or by conditions of probation imposed by the agency charged with attorney discipline,” but section 6002.1 subdivision (d) states that “The State Bar shall not make available to the general public the information specified in paragraph (5) of subdivision (a) unless required to be made so available by a condition of probation . . . .”

made this “direct accusation” while conducting his deposition.”<sup>10</sup> Petitioner further stated in his letters that he had a written opinion from the State Bar that he could use a PO box as his official address, thereby “making the false assertions [by deputy trial counsel] a deceit and crime under B&P 6128, because the deceit was made to a party, me. I request that you look into this unethical conduct by your subordinates.”

### **C. Commencement of Std. 1.4(c)(ii) Proceedings**

#### **1. Petitioner’s Jurisdictional Challenges and Efforts to Transfer Proceedings**

On June 24, 2004, petitioner filed his verified petition for relief from actual suspension in the State Bar Court pursuant to standard 1.4(c)(ii) and in accordance with Rules of Procedure of the State Bar, rules 630 and 631 (Petition). One month later, in July 2004, petitioner challenged this court’s jurisdiction to hear this matter in his Initial Status Conference Memorandum (Memorandum), even though he had earlier invoked the jurisdiction of the court when he initiated these proceedings.<sup>11</sup>

In support of his jurisdictional argument, petitioner asserted in his Memorandum, as he had repeatedly done in the past, that he was not a member of the State Bar due to his actual suspension. He maintained the proceedings were reinstatement proceedings and cited provisions

---

<sup>10</sup> The deposition questioning at issue is as follows: “Q Now, you said you had a home office at your house; correct? ¶ A Yes. I did say that. ¶ Q Why don’t you list this as your official bar membership? ¶ A Why don’t I? ¶ Q Yes. ¶ A I like my privacy. . . . ¶ . . . ¶ Q Okay. You’re familiar, though, with Business and Professions Code 6002.1(a)1? I see you have your rules book in front of you. So you can take a look at it. ¶ A If you’re asking me if I’m familiar with it, I have heard of it, and I couldn’t recite it to you. 600 – what was that? ¶ Q 6002.1, Section (a)1? ¶ A Yeah. ¶ Q So you have an office, but you’re not listing it on the records; is that correct? ¶ A That’s not correct. The office that I have in the back of my house is a room that I had built that I use to do some work. It’s not an official office. I call it an office. I could call it a den. . . . ¶ . . . ¶ Q Do you feel that that rule that we just cited, Rule 6002.1 does not apply to you? ¶ A I have been in compliance with this rule.”

<sup>11</sup>Petitioner attached several irrelevant exhibits to this pleading such as a newspaper article regarding a lawsuit against the State Bar by a former deputy trial counsel, petitioner’s deposition notice, and substitution and association of counsel notices filed in this proceeding.

governing reinstatement. He thus argued: “Since petitioner Henschel is NOT A MEMBER of the State Bar Rule [sic]1.4 sanctions don’t apply to him. . . .He won’t be a member until he is re-admitted and his actual suspension from membership ends. But when his suspension from membership ends Rule [sic]1.4(c)(ii) would have no practical or legal effect.” Petitioner further argued that State Bar Court judges were referees, not judges, and therefore could not hear his Petition without his consent.<sup>12</sup> He also asserted that standard 1.4 was “unintelligible”and “unconstitutionally vague, ambiguous to the point of absurdity.” He argued: “The Rule [standard 1.4(c)(ii)] doesn’t make sense, was written by the State Bar. . . and because it is nonsense shows the public that the bar does not have sufficient competence to write a non-ambiguous rule.”

Finally, petitioner argued that the State Bar had a long history of harm to the public and the legal profession, citing as examples a civil rights lawsuit (since dismissed by the federal court) by a former prosecutor, an “illegal lobbying contract giving a bonus to their lobbyist” and previous regulations governing attorney advertising (which were eliminated in 1977). He argued: “By enacting and enforcing these unconstitutional Rules against Attorneys to the detriment of legal consumers in California the Bar has shown a past History of not knowing what laws are proper and what laws are unconstitutional.” He added: “Since the State Bar is an arm of the Supreme Court, these dishonest and unlawful acts reflect badly on the State Supreme Court’s ability to supervise the State Bar of California from violating the political laws of the State.” He thus questioned: “How can the public have confidence in a Supreme Court which unconstitutionally abdicates its judicial authority and violates the rights of a party?”

---

<sup>12</sup>On July 26, 2004, petitioner filed a Notice of Non-Consent to have a hearing judge (i.e., “referee”) hear his case. In that pleading as well as in a “Notice of Discovery Objection” he filed with the State Bar Court on July 26, 2004, petitioner made additional references to himself as “not a member of the state bar” and to the hearing judge as a “referee.”

On September 3, 2004, petitioner filed with the California Supreme Court a “Motion to Transfer Readmission Petition from the State Bar Court to the California Supreme Court for Good Cause” (Motion to Transfer) raising the same arguments that he asserted in his Memorandum with respect to the unconstitutional vagueness of standard 1.4(c)(ii), lack of jurisdiction of the State Bar Court because he was not a member of the State Bar, and the absence of authority of State Bar “referees” (judges) to hear his case without his consent. He thus asserted: “[B]ecause of several and many improper actions by the State Bar, including but not limited to violating State Political Laws and forcing their Prosecutor to violate the Rules of Professional conduct. . . I do not consent to the use of general reference referees, commissioners or temporary judges, used in the State Bar Court. That leaves this court as the only forum remaining to hear a rule [sic]1.4(c)(ii) readmission petition.” The Supreme Court denied petitioner’s Motion to Transfer on November 10, 2004.

On November 30, 2004, less than three weeks after the Supreme Court denied his Motion to Transfer, petitioner filed in this court a second motion to transfer the case to the Supreme Court (Second Motion to Transfer). Although he referenced the Motion to Transfer filed in the Supreme Court, petitioner did not advise this court that the Supreme Court had denied his previous Motion to Transfer. He again asserted essentially the same grounds for transferring the case to the Supreme Court: “(1) The State Bar Court cannot act without the direct consent of all parties. . . , (2) [he was not a member of the State Bar and therefore] the Rule [sic]1.4 (c)(ii) proceedings are unconstitutional, and (3) The State Bar has committed acts, that if done by an attorney would be the basis of disbarment and that they refuse to concede that petitioner Henschel has complied with the order of this court and the State Bar probation unit.”

Petitioner concurrently filed a separate motion requesting judicial notice (Motion for Judicial Notice) seeking mandatory judicial notice of various facts outside the ambit of Evidence Code section 451 such as “Petitioner Henschel is neither an active nor inactive member of the

State Bar,” and “Petitioner Henschel is not an attorney and cannot hold himself out as an attorney under penalty of committing a felony.”<sup>13</sup>

On January 5, 2005, the hearing judge denied petitioner’s Second Motion to Transfer and his Motion for Judicial Notice.

At his deposition taken in this matter in January 2005, petitioner testified that with respect to *Henschel II*, he did not intend to stipulate to the truth of the facts and legal conclusions contained in the stipulation but merely agreed to end the proceedings as criminal defendants do under *People v. West* and that the hearing judge acknowledged this.<sup>14</sup> When asked whether he did anything wrong in the underlying disciplinary matter, petitioner replied that because he was sick, he did not believe he was acting willfully. Petitioner also contended that his rights were violated in *Henschel II* and that he was compelled to sign the stipulation because the State Bar withheld evidence and because the State Bar was “willing to put on somebody and allow them to perjure themselves.”

## **2. Petitioner’s Evidence of Rehabilitation, Present Fitness to Practice, and Present Learning and Ability in the General Law**

Petitioner submitted un rebutted evidence that he complied with the conditions of his probation, including satisfactory completion of the State Bar’s Ethics School and completion of continuing legal education (CLE) in the areas of law office management and client relations. In

---

<sup>13</sup>In virtually all of his pleadings filed in the Supreme Court and in this court petitioner denominated himself as a “former member of the State Bar.”

<sup>14</sup>*People v. West* (1970) 3 Cal.3d 595, 604, recognized that a plea of guilty or nolo contendere is not rendered involuntary merely because it is the product of a plea bargain. Petitioner’s reliance on this case is misplaced since attorney disciplinary proceedings are unique and not governed by the rules of criminal procedure. (*Walker v. State Bar* (1989) 49 Cal.3d 1107, 1115; *Brotsky v. State Bar* (1962) 57 Cal.2d 287, 300-302.) Contrary to petitioner’s assertion, we find no evidence that the State Bar Court judge who approved the stipulation in *Henschel II* acknowledged or referenced *People v. West*. Furthermore, petitioner did not enter a nolo contendere plea in *Henschel II*, which was obtainable if the parties had so agreed.

fact, petitioner completed more than 100 hours of CLE between March 2003 and June 2004. Petitioner also volunteered in mock trial competitions for middle and high school students and at two law schools. He donated computers to the Los Angeles Free Clinic, and gave presentations as a speaker for an environmental organization. Petitioner provided declarations from two psychiatrists who reported in May and August 2003 that petitioner did not at that time suffer from a significant mental disorder. (In 2003, petitioner obtained an order terminating a probation condition that required him to obtain psychiatric treatment.)

Petitioner also provided declarations from 28 individuals, including four attorneys, generally attesting to petitioner's good character, learning and ability in the law, and rehabilitation. Many declarants provided compelling descriptions of how petitioner's legal service was invaluable to them because it saved their business or home or kept them or a family member out of jail. Many also indicated that petitioner provided service free of charge or for a nominal fee. However, none of these declarations described the nature of petitioner's wrongdoing; rather, the vast majority of them contained the following formulaic language: "I am fully aware of Mr. Henschel's tumor operation in 1996-1997 that led to his discipline of 4 months and his recent discipline of 18 months. He informed me of these events." Virtually all of petitioner's misconduct in *Henschel I* occurred between 1993 and 1995 before his tumor operation, and some of the misconduct in *Henschel II* occurred between 1999 and 2000, which was well after his health problems.

Between March to December 2003, petitioner worked as an office manager and paralegal for attorney Harry Pike. From January 2004 to the present, petitioner has been working as a paralegal for the Law Office of Frank Williams, Jr.

### **3. The State Bar's Opposition to Rehabilitation and Fitness to Practice**

On February 22, 2005, the State Bar filed an opposition (Opposition) to petitioner's request to be relieved of actual suspension contending that petitioner failed to establish his

rehabilitation and failed to show that he possesses present learning and ability in the general law. In support of its Opposition, the State Bar included, among other things, pleadings petitioner filed in connection with this proceeding, correspondence and e-mail messages petitioner authored, a transcript of petitioner's deposition taken on January 27, 2005, and multiple declarations including that of Nicole Young, an attorney who averred that in November 2003 while petitioner was suspended from the practice of law, she discussed the possibility of settlement of a case with petitioner, who advised her about the legal aspects of the case.

#### **4. Hearing Judge's Determinations**

After the parties agreed to waive a hearing and submit the matter for decision based upon documentary evidence and written briefing, the hearing judge took the matter under submission on May 17, 2005. On June 2, 2005, the hearing judge filed his decision, granting petitioner's petition for relief from actual suspension, finding that petitioner demonstrated by a preponderance of the evidence his rehabilitation, present fitness to practice, and present learning and ability in the general law as required by standard 1.4(c)(ii).

On June 22, 2005, the State Bar filed a Petition for Review and Request for Oral Argument.

## **II. DISCUSSION**

In proceedings conducted pursuant to Rules of Procedure of the State Bar, rule 630 et seq., the standard of review is abuse of discretion. (*In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 571, 577.) Accordingly, we review the decision of the hearing judge “not with an intention of substituting the view of this court for that of the hearing judge, but rather with the intention of “employ[ing] the equivalent of the substantial evidence test by accepting the trial court's resolution of credibility and conflicting substantial evidence, and its choice of possible reasonable inferences [citations omitted].” (*In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 571, 577-578.)” (*In the Matter of Terrones* (Review

Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289, 293.)<sup>15</sup> We also review the record to determine if any errors of law have been committed. (Rules Proc. of State Bar, rule 300(k).)

Standard 1.4(c)(ii) requires that petitioner establish by a preponderance of the evidence his rehabilitation, present fitness to practice, and present learning and ability in the general law. Moreover, petitioner must show, at a minimum, strict compliance with the terms of probation, exemplary conduct from the time of the imposition of the prior discipline, and the unlikelihood that the conduct leading to the prior discipline would be repeated. (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 581.)

We agree with the hearing judge's finding that petitioner strictly complied with the conditions of his probation and satisfied the terms of his actual suspension. However, several of the hearing judge's other findings, discussed below, are at odds with his conclusion that petitioner has satisfied the additional requirements of standard 1.4(c)(ii).

#### **A. Rehabilitation**

We consider petitioner's actions since his last discipline "and determine whether they, in light of all of his prior misconduct, sufficiently demonstrate his rehabilitation by a preponderance of the evidence." (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 581.)

---

<sup>15</sup>In adopting the abuse of discretion standard of review, we reject the State Bar's assertion that the hearing judge abused his discretion when he did not find petitioner held himself out as entitled to practice and engaged in the unauthorized practice of law (UPL) while suspended. The hearing judge found petitioner's declaration to be credible and accepted his version of the facts about his involvement in the Garcia lawsuit even though the declaration conflicted with the declarations of the Garcias (whose statements he found not to be credible) and Nicole Young, who was opposing counsel in the Garcia matter. As noted above, in these proceedings, we may not reweigh the evidence, but rather we must accept the hearing judge's resolution of credibility and conflicting evidence. (*In the Matter of Terrones, supra*, 4 Cal. State Bar Ct. Rptr. at p. 293.) In the absence of reweighing this evidence, we simply do not find in the record that there is a preponderance of evidence establishing either UPL or that petitioner held himself out to the Garcias as entitled to practice.

## **1. Absence of Exemplary Conduct**

In finding exemplary conduct, the hearing judge focused on petitioner's community service and his excellent work record as an office manager and paralegal, but he ignored the totality of petitioner's actions since his last discipline. Indeed, in view of the hearing judge's own findings that petitioner engaged in an "objectively unsupportable" crusade to discredit State Bar employees, "consciously embarked" on a baseless campaign against this court's jurisdiction and asserted numerous other meritless challenges to the disciplinary process, we conclude it was an abuse of discretion to find that petitioner's conduct was exemplary. (See, e.g., *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25, 35-36 [petitioner who failed to show justification of lawsuit he filed for punitive damages failed to sustain burden of showing exemplary conduct].)

Petitioner must establish "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.) Petitioner's prior misconduct involved pursuing meritless claims and showing disrespect for the interests of his clients and the judicial system by filing frivolous objections and appeals and disregarding lawful court orders. His conduct since the imposition of his actual suspension in *Henschel II* replicates some of this previous misconduct. Thus, petitioner's actions since the imposition of discipline should have put the hearing judge "on notice that the conduct was not aberrational, and that the problems were deeply rooted." (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 583.)

The hearing judge also erred in his consideration of the numerous declarations attesting to petitioner's good character and exemplary conduct. These declarations from family, friends and colleagues are insufficient as a matter of law to establish rehabilitation. To be sure, many of

the declarations contained laudatory descriptions of petitioner’s capabilities and effectiveness in resolving difficult problems. But a close reading of these declarations shows that with few exceptions, the declarants were unaware of the specific nature of petitioner’s wrongdoing, and almost all were under the misapprehension that his tumor operation in 1996-1997 was the cause of his misconduct in *Henschel I* and *II*. As such, we find these declarations do not constitute substantial evidence to support the hearing judge’s finding of exemplary conduct. (Std. 1.2(e)(vi); *In re Ford* (1988) 44 Cal.3d 810, 818; see also *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 939.)

## **2. Lack of Remorse**

We also look for evidence that petitioner understands the nature of his misconduct. (*In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423, 431.)<sup>16</sup> Petitioner continues to reject the truth of the facts and legal conclusions contained in his stipulation in *Henschel II*, claiming that trial counsel illegally coerced him to sign it. Also, as recently as January 2005, during his deposition, petitioner testified that he was not culpable of his prior ethical misconduct because his illnesses precluded a finding that he had acted wilfully. The hearing judge excused petitioner’s lack of accountability because it was “based on an erroneous belief that [petitioner] is somehow not responsible for his conduct because of his various illnesses which affected his memory and judgment in 1996 and 1997. . . .” Petitioner’s belief that he is not culpable of misconduct is indeed “erroneous” since much of his wrongdoing either pre-dated or post-dated his health problems. In *In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894, 899, we held that the attorney had not shown rehabilitation because he continued to minimize and deny his serious wrongdoing.

---

<sup>16</sup>Although the standard of proof is higher in reinstatement proceedings, we consider to be instructive reinstatement cases which address the issue of rehabilitation.

Petitioner argues that his absence of remorse does not undermine his showing of rehabilitation but instead reinforces his showing of good character because he is unwilling to perform an artificial act of contrition, citing *Hall v. Committee of Bar Examiners* (1979) 25 Cal.3d 730. However, in *Hall*, the Supreme Court found that Hall had offered evidence of a good faith basis for his assertion of innocence. We find no such basis here for the assertion of a good faith belief. “The law does not require false penitence. [Citation.] But it does require that the [attorney] accept responsibility for his acts and come to grips with his culpability. [Citation.]’ [Citation.]” (*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 595.)

In view of petitioner’s unwillingness to accept responsibility for his prior misconduct, we conclude it was unreasonable for the hearing judge to find that petitioner is rehabilitated. Petitioner’s ongoing lack of accountability for his previous wrongdoing is particularly troubling to us since it mirrors the aggravating circumstances of indifference toward the consequences of his misconduct, which were present in both *Henschel I* and *Henschel II*.

#### **B. Petitioner’s Fitness to Practice Law**

Petitioner is further obligated to prove by a preponderance of the evidence his present fitness to practice law. (Std. 1.4(c)(ii); Rules Proc. of State Bar, rule 634.) Accordingly, petitioner must show that he possesses the requisite good moral character to practice law in this state. (*In re Gossage* (2000) 23 Cal.4th 1080, 1095.) Such a showing includes a demonstration that petitioner 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.)

We are unable to find on this record substantial evidence of petitioner’s respect for the rights of others or for the judicial process. On the contrary, petitioner mounted a relentless and meritless offensive against certain State Bar prosecutors and other personnel, accusing them of suborning perjury, coercion, criminal acts of moral turpitude, making “false and frivolous

accusations” against him, falsely threatening administrative action, falsely notifying him that he was not in compliance with his probation conditions, withholding evidence, and criminal acts of deceit. He indiscriminately made these baseless charges in letters, e-mails, facsimiles, in pleadings filed in the Supreme Court and in this court, and in a multitude of telephone calls to various individuals and departments of the State Bar, including the Office of the Chief Trial Counsel, the President of the Board of Governors, the Office of Probation, the Records Department and various staff attorneys. This was not merely an offhand comment by an attorney who was disgruntled with the outcome of his disciplinary proceeding. This was a protracted campaign between December 2002 and February 2005 that was tantamount to a vendetta. Such behavior rises to the level of harassment and is indicative of petitioner’s lack of respect for the employees of the State Bar and of the disciplinary process.

Petitioner’s censure of the State Bar extended beyond specific employees and to the judicial branch itself. For example, he asserted in pleadings filed in the Supreme Court that the State Bar was an organization that had a “history of not knowing what laws are proper and what laws are unconstitutional.” He added: “Since the State Bar is an arm of the Supreme Court, these dishonest and unlawful acts reflect badly on the State Supreme Court’s ability to supervise the State Bar of California from violating the political laws of the State.”

The record clearly demonstrates that petitioner is unable or unwilling to conduct himself in a manner consistent with the settled definition of good moral character. Therefore, we find that the hearing judge abused his discretion when he found that petitioner established by a preponderance of the evidence his present fitness to practice.

### **C. Petitioner’s Learning and Ability in the General Law**

Petitioner must also prove by a preponderance of the evidence that he possesses present learning and ability in the general law. (Std. 1.4(c)(ii); Rules Proc. of State Bar, rule 634.) The hearing judge concluded that petitioner’s repeated assertions of “meritless legal arguments and

objectively unsupportable allegations” did not adversely reflect on his legal abilities. We find this conclusion to be unreasonable.

Petitioner was given a specific explanation of and the legal authority for the State Bar’s membership status designations by the Bar’s Chief Assistant General Counsel, who wrote to petitioner in October 2003. Shortly thereafter, the State Bar again advised petitioner that describing himself as an inactive member of the State Bar was incorrect. Nonetheless, petitioner ignored that advice and persisted in identifying himself as “inactive” or as “not a member” or a “former member” of the State Bar in all correspondence and on all pleadings he filed in the proceedings below and in the Supreme Court. Petitioner also repeatedly challenged the constitutionality of standard 1.4(c)(ii) proceedings based on his faulty legal analysis of his own membership status.

The hearing judge characterized petitioner’s futile attempts to protest his membership status as “meritless, incorrect, and misguided” and further found that “any representation or suggestion that Petitioner is an inactive member of the State Bar is false.” But the hearing judge failed to take into account the length of time and the number of separate instances when petitioner continued to challenge his membership status.

Petitioner’s jurisdictional challenges also call into question his legal abilities. Within one month after the California Supreme Court denied petitioner’s request to assume jurisdiction, he sought the same relief from this court on the same grounds.<sup>17</sup>

Petitioner further manifested unsound legal judgment with his meritless attempts to remove his disciplinary record from the State Bar’s website, claiming that section 6002.1 prohibited the State Bar from disclosing his records to the public “unless required to be made so

---

<sup>17</sup>The Supreme Court and this court have rejected petitioner’s jurisdictional argument that we are not acting as judges but merely as referees who may not hear his case without his consent. Nevertheless, in September 2004, in connection with a class he presented entitled “Legal Ethics 101,” petitioner distributed an MCLE course outline stating “Bar Court Judges not Judges, general referees.”

available by a condition of probation.” In yet another letter-writing crusade, he repeatedly criticized the State Bar’s website description of a State Bar Governor’s disciplinary history, arguing that the Bar’s failure to specify the Governor’s criminal history was discriminatory because petitioner’s discipline was described in some detail.

We find a strong similarity with the misconduct in *In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112. As in *Lais*, petitioner sought a redetermination of issues previously decided by a binding court authority, and his support for his jurisdictional argument was untenable. Furthermore, as in *Lais*, petitioner imposed on the court’s time by “greatly delay[ing] the adjudication of Petitioner’s petition,” and burdened the court with pointless review of his voluminous pleadings, reflecting his lack of respect for the judicial process. Petitioner’s conduct also is suggestive of *In re Morse* (1995) 11 Cal.4th 184, 209, wherein the Supreme Court observed: “Morse, like any attorney accused of misconduct, had the right to defend himself vigorously. Morse’s conduct, however, reflects a seeming unwillingness even to consider the appropriateness of his statutory interpretation or to acknowledge that at some point his position was meritless or even wrong to any extent. Put simply, Morse went beyond tenacity to truculence.”

Despite the fact that petitioner completed more than 100 hours of CLE, we have previously held that an increased knowledge of the law is not sufficient to satisfy the requirement that an attorney possess present learning and ability in the general law. Petitioner must prove not only that he knows the law but also that he is able in it. (*In the Matter of Ainsworth, supra*, 3 Cal. State Bar Ct. Rptr. at p. 901.) Viewed in its entirety, petitioner’s behavior demonstrates an inability to evaluate facts and the law competently and to draw appropriate inferences and conclusions from them. Thus, the hearing judge abused his discretion when he found that petitioner possessed learning and ability in the general law.

#### **D. Legal Errors**

The parties stipulated in *Henschel II* to six aggravating circumstances, including dishonesty. The hearing judge deemed this aggravating factor to be duplicative of petitioner's substantive offenses and therefore gave it only "nominal weight." Furthermore, the hearing judge treated as mitigation certain health and other problems described in the portion of the stipulation designated as "other circumstances." In so doing, the hearing judge gave "some mitigating weight" to these problems, even though he found "no real nexus was drawn between Petitioner's problems and his misconduct."

The State Bar correctly argues that the hearing judge committed legal error when he discounted the aggravating factor of dishonesty as duplicative and when he added mitigation where there had been none. "[T]he discipline there ordered [in the prior proceedings] should not be reviewed or reconsidered . . . [G]reat care must be taken to ensure that no part of the determination of rehabilitation and present fitness to practice is based on either an actual or an implied reevaluation of the discipline imposed in the prior disciplinary proceedings." (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 578.) Nevertheless, we find these errors to be harmless. It was appropriate for the hearing judge to consider the aggravating factors in determining the amount and nature of the evidence required to justify terminating suspension. (*Id.* at p. 578.) In assessing the likelihood that misconduct could recur, it was also appropriate for the hearing judge to consider stipulated facts that may have shed light on the cause of petitioner's misconduct, even if identified as "other circumstances." (*Id.* at p. 580.)<sup>18</sup>

---

<sup>18</sup>We find without merit the State Bar's additional point of legal error that the organization of the hearing judge's decision necessarily indicates in what sequence the hearing judge reviewed the evidence and formed his conclusions. We deem as pure conjecture the State Bar's assertion that the form of the decision is indicative that the hearing judge failed to consider the totality of the evidence before reaching any legal conclusions. We also do not find merit to the State Bar's argument that a typographical error in the decision below as to the termination date of petitioner's actual suspension was a material error.

We also find the hearing judge committed legal error when he found “the attorney’s compliance with the terms of the suspension and the conditions of probation will *presumptively* effectuate the attorney’s rehabilitation . . . .” (Italics added.) The hearing judge thus incorrectly created a presumption of rehabilitation arising from petitioner’s compliance with his probation, when in fact “in *addition* to compliance with petitioner’s actual suspension and the terms of his probation, petitioner must *affirmatively* show, by a preponderance of the evidence . . . his ‘rehabilitation, present fitness to practice and present learning and ability in the general law before [he] shall be relieved of the actual suspension.’” (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 578 (italics added).) We do not further consider the implications of the erroneous introduction of a presumption in this case because we have already concluded there is not substantial evidence that petitioner has satisfied the requirements of standard 1.4(c)(ii).

### **III. CONCLUSION**

Since his prior discipline, petitioner has undertaken steps to improve his professional conduct. Regrettably, petitioner’s progress towards rehabilitation is undermined by a continuing course of conduct that is both unreasoned and unreasonable. We therefore conclude that the hearing judge abused his discretion in finding that petitioner satisfied the showing required by standard 1.4(c)(ii) because there is not substantial evidence in this record of petitioner’s rehabilitation, fitness to practice and present learning and ability in the law. Accordingly, the hearing judge’s decision granting the petition for relief from actual suspension is reversed.