PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of	)	**02-R-10799**
	)	
BRUCE FICHT,	)	
	)	**OPINION ON REVIEW**
Petitioner for Reinstatement.	)	

We independently review the record, as we must (Cal. Rules of Court, rule 951.5; Rules Proc. of State Bar, rule 305(a); *In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459, 462), and find that petitioner, Bruce Ficht, has met the heavy burden of establishing by clear and convincing evidence his rehabilitation and present moral qualifications for readmission. We therefore adopt the hearing judge's findings for the reasons discussed *post* and recommend that petitioner be reinstated to the practice of law.

I. STATEMENT OF THE CASE

A. Petitioner's Misconduct Leading to Conviction and Resignation

Petitioner was admitted to practice law in California on December 22, 1976. Following admission, petitioner worked in private practice, focusing on criminal defense work until he joined the Alternate Defense Counsel on or about May 1985.

Petitioner's wife, Robin, later introduced petitioner to Marc Kent ("Kent"), an insurance attorney who employed Robin as a legal secretary. Kent offered petitioner case referrals and

assistance setting up a civil practice concentrating on Cumis-type insurance litigation cases although petitioner had no previous experience with that type of practice.[1] Petitioner's wife urged petitioner to accept the offer in order to increase their income. Since petitioner also desired to substantially increase his income, on or about December 30, 1986, petitioner left the Alternate Defense Counsel and went into private civil practice accepting case referrals and office assistance from Kent and others associated with Kent in exchange for referral fees.

Initially unknown to petitioner, he was being implicated in or folded into a scheme of approximately fifteen attorneys perpetrating a fraud on insurance companies. This group of attorneys, referred to as "the Alliance" and orchestrated by attorney Lynn Stites, had some members represent the insurance company and other members represent the clients for whom the insurance companies had a duty to provide independent counsel. By so doing, the Alliance falsely created the appearance that the clients were independently represented by Cumis counsel, thereby conducting more discovery and litigation than the cases required, and charging the insurance companies excessive amounts for unnecessary services. Pursuant to stipulated facts, petitioner played a minor role in the Alliance. Nevertheless, 80-90 percent of petitioner's practice consisted of matters referred by Kent and, in one instance, petitioner received $25,000 for work that subsequently went unperformed. For additional background on the Alliance, see *In the Matter of Bodell, supra*, 4 Cal. State Bar Ct. Rptr. at page 463.

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[1]Cumis-type insurance litigation cases arise when conflicts of interests between the insurance company and the insured client require that the insurance company, as a part of its duty to defend, provide the client with independent counsel, referred to as Cumis counsel. (*San Diego Fed. Credit Union v. Cumis Ins. Society, Inc.* (1984) 162 Cal.App.3d 358, superseded by Civ. Code, § 2860.)

Petitioner became gradually aware that something was amiss and after a request that he make kickbacks to a client, petitioner eventually confronted Kent about the suspicious activities. To his credit, petitioner refused to give a kickback to a client when asked to do so by Kent, although he subsequently lost this client as a result. Following his suspicions, petitioner developed a firm belief on or about February 1988 that the Alliance attorneys were controlling both sides of the litigation. Petitioner then began to extricate himself from the Alliance scheme and was fully extricated in August or September 1988, one year and eight months after his initial involvement. Petitioner returned to criminal defense work and, once he learned that the aggrieved insurance companies and the United States Attorney's Office were investigating the Alliance attorneys, he contacted them and assisted in their investigations.

B. Criminal Conviction and Resignation with Charges Pending

On February 16, 1990, petitioner pleaded guilty to aiding and abetting mail fraud (18 U.S.C. §§ 1341 and 2) for causing the mailing of a substitution of attorney form in one of the cases entangled in the fraudulent scheme. In October 1991, in return for petitioner's cooperation and an agreement not to prosecute his ex-wife,[2] the U.S. Attorney's Office sentenced petitioner to five years probation, a $10,000 fine and 250 hours of community service.

Petitioner's felony conviction was referred to the State Bar (Case No. 90-C-11032) and, as a result, effective March 28, 1990, petitioner was placed on interim suspension. Petitioner

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[2]In October 1989, petitioner and Robin, who was his wife during the Alliance misconduct, divorced.

tendered his resignation with charges pending from the State Bar which the Supreme Court accepted effective September 14, 1990. (Supreme Ct. case no. S016873.)

C. Petitioner's Dealings with Insurance Companies, the State Bar and Government

On October 11, 1990, petitioner settled a civil lawsuit brought against him by Allstate and Fireman's Fund insurance companies. Petitioner agreed to make restitution payments on condition that his income reach a certain level for the calendar years of 1990 through 2000. The agreement also provided that if petitioner's income did not reach the requisite level for that calendar year, he would not be obligated to pay and, after 10 years, petitioner's obligation would be discharged. Accordingly, since petitioner's income did not reach the requisite level in the corresponding years, his repayment to the companies never came due and his obligation was discharged in 2000.

Petitioner cooperated with the State Bar and assisted in the investigation of other Alliance attorneys by providing valuable information without any promises regarding his disciplinary matter. Therafter, Janice Oehrle, a Senior Trial Counsel of the State Bar at the time, wrote a letter to the sentencing judge on behalf of petitioner, apprizing the court of petitioner's efforts to assist the State Bar's investigation of the Alliance.

Petitioner also assisted the U.S. Attorney's Office in the investigations and prosecutions of the Alliance attorneys. In 1991 and 1993 petitioner testified against nine Alliance attorneys, including Lynn Stites, the mastermind of the Alliance scheme.

D. Reinstatement Proceeding

On February 13, 2002, approximately 12 years after his criminal conviction, petitioner filed a petition for reinstatement to the practice of law. Petitioner presented seven character witnesses, four of whom are or were attorneys. The witnesses knew petitioner a sufficient amount of time and were reasonably familiar with his serious misconduct, although it had been nine to thirteen years since petitioner disclosed his misconduct. The character witnesses collectively believed petitioner was rehabilitated and approved his reinstatement to the practice of law.

The character witnesses noticed a change or transformation in petitioner's values and testified to his humility. For example, attorney Craig Thigpen, an employer and friend of petitioner, stated, "[petitioner] became very humble and I had seen the transformation and the evolution of that as time went on." Mr. Thigpen also stated that petitioner was "a great lawyer" and believed that petitioner would be a better lawyer now, given what petitioner has been through. Also, Steve Summers, one of petitioner's previous employers stated that, "I think [petitioner] has mellowed from then to now. He is not driven by materialistic things as maybe he once was." Ralph Smith, petitioner's brother-in-law and employer at one point, knew petitioner for over 17 years and testified that petitioner "has become a much more humble person than he was prior to [his conviction]" and that petitioner is "a different person than he was just a few years back. He's still exceptionally intelligent, but his persona is different."

On July 11, 2003, the hearing judge recommended petitioner's reinstatement, finding that petitioner had demonstrated by clear and convincing evidence his rehabilitation from the conduct

that had led to his resignation, his present learning and ability in the general law and his present moral qualifications for reinstatement to the practice of law. The State Bar now seeks review of the hearing judge's decision, arguing that petitioner failed to prove his rehabilitation and moral fitness by clear and convincing evidence.

II. DISCUSSION

A. Requirements for Reinstatement

In order to be reinstated to the practice of law after disbarment or resignation with charges pending, a petitioner must establish, by clear and convincing evidence, 1) passage of a professional responsibility examination, 2) learning and ability in the general law, and 3) rehabilitation and possession of present moral qualifications for readmission. (Cal. Rules of Court, rule 951(f); Rules Proc. of State Bar, rule 665(a), (b); *In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894, 898.) Although petitioner resigned with charges pending and was not disbarred, the same reinstatement standards apply. (Rules Proc. State Bar, rules 660, 665; *In the Matter of Bodell, supra*, 4 Cal. State Bar Ct. Rptr. at p. 462 (citing *Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1092, fn. 4; *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423, 428, fn. 1.)

1. Professional Responsibility Examination

Petitioner passed the Multistate Professional Responsibility Examination on March 9, 2001, thereby satisfying that requirement.

2. Learning and Ability in the General Law

For nine years, petitioner worked as a paralegal or legal assistant for several attorneys conducting legal research and drafting motions, as well as general secretarial duties. Petitioner has also attended various continuing legal education courses and has read the Los Angeles Daily Journal and other legal publications on a regular basis. Overall, petitioner has demonstrated his current legal learning and ability and several of his witnesses attested to his inquisitiveness in legal matters. Before us, the State Bar does not dispute the hearing judge's findings on learning and ability in the general law and on our independent review, we adopt those findings that petitioner made the requisite showing of learning and ability in the general law.

3. Rehabilitation and Present Moral Qualifications

Evidence of rehabilitation is examined in light of the misconduct which led to the petitioner's resignation. (*Hippard v. State Bar, supra*, 49 Cal.3d at p. 1092; *In the Matter of Salant* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 1, 3; In *the Matter of Bodell, supra*, 4 Cal. State Bar Ct. Rptr. at pp. 462-463.) The more serious the misconduct, the stronger a showing of rehabilitation required for reinstatement. (*Ibid.*) Petitioner's prior misconduct in this instance was serious; he contributed to an unscrupulous scheme to defraud insurance companies and the public and was convicted of aiding and abetting mail fraud. However, as the parties stipulated and as the evidence reveals, petitioner played a relatively minor role in the scheme. Therefore, we examine petitioner's evidence of rehabilitation in light of his minor participation in a serious fraudulent scheme and turn to the areas where the State Bar argues petitioner lacks rehabilitation.

a. Exemplary Conduct for a Sustained Period of Time

In order to prove rehabilitation, a petitioner must show exemplary conduct for a sustained period of time. (*In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25, 37.) The State Bar relies on a definition in Miriam Webster's Collegiate Dictionary for the meaning of "exemplary conduct" as that which is "commendable or deserving of imitation." While insightful, it is established that the question of whether petitioner has met his heavy burden of proof depends on a comparison of the facts in the current proceeding with the facts in other reported proceedings. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 320; *In the Matter of Miller, supra*, 2 Cal. State Bar Ct. Rptr. at p. 437.)

In a reinstatement proceeding, we focus on petitioner's conduct subsequent to his resignation with charges pending to determine if petitioner established clear and convincing proof of rehabilitation. (*In the Matter of Bodell, supra*, 4 Cal. State Bar Ct. Rptr. at p. 468.) Overwhelming proof of reform is necessary to confidently justify installing petitioner once again in the profession. (*In re Menna* (1995) 11 Cal.4th 975, 989.) The State Bar argues that petitioner should not be given credit for extricating himself from the illegal scheme or for cooperating with the authorities. As this court has previously held, withdrawing from a criminal enterprise is taken into consideration when deciding whether or not petitioner has met his burden of rehabilitation. (*In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546, 556.) The record in this case demonstrates that petitioner acknowledged his misconduct soon after it occurred and began to extricate himself from the Alliance scheme. Additionally, petitioner contacted the U.S. Attorney's Office and cooperated with the investigation before any

charges were filed against him. Petitioner also assisted the insurance companies targeted by the scheme and the State Bar in their investigations. Furthermore, petitioner testified that he felt a moral obligation to cooperate. Petitioner's rehabilitation began almost immediately after the misconduct occurred and continued for fourteen years before he filed his petition for reinstatement.

Testimony from an employer confirming petitioner's sensitivity and concern for proper ethical behavior merits significant weight. (*In the Matter of Brown*, *supra*, 2 Cal. State Bar Ct. Rptr. at pp. 318-319). Petitioner was confronted with ethical dilemmas and helped resolve them successfully. For instance, Mr. Thigpen sought petitioner's advice on an ethical dilemma, and testified that petitioner focused on doing the right thing and that, ". . . [petitioner] was no longer desirous to get the client off. He wanted me to do the right thing . . . . it was an ethical dilemma, but it was one that with [petitioner's] help came out very well."

A petitioner who acknowledges consistently the seriousness of his wrongdoing, expresses remorse, and undergoes a fundamental change in values likely to prevent future misconduct, demonstrates a significant factor in favor of rehabilitation. (*In the Matter of Brown*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 317.) The record indicates that petitioner overcame the weaknesses that led to his misconduct. During his participation in the Alliance scheme, petitioner was driven by material things, a weakness that clouded his judgment then, but according to witnesses, a weakness he has since overcome. Petitioner claimed that his drive to increase his income

partially stemmed from his desire to please his wife. Petitioner and his former wife have divorced and petitioner remarried a person who shares his current non-materialistic values.[3]

Petitioner's character witnesses testified that petitioner expressed remorse over his involvement in the fraudulent scheme and they doubt any recurrence of petitioner's misconduct. For instance, attorney Stephan Schwartz, who has been a member of the bar for 38 years, testified that petitioner "felt very shameful and very bad, very bad about [what he had done] . . . I think he's prepared to take responsibility for his actions today, and I don't believe that this could ever happen again . . . he certainly admitted what he'd gotten involved in was wrong . . . I think it was difficult for him to recover from what occurred. He did everything he could to put himself in a position to face the reality of what happened. That included standing up in court and going forward and cooperating. And I felt that he appreciated and understood the gravity of what occurred. And he was willing to take responsibility for it. And that - - he learned at a tremendous cost, he learned a very important lesson."

The State Bar argues that petitioner did not make a sufficient showing of acts to rectify past wrongs or charitable work to warrant reinstatement. Nevertheless, community or volunteer service is not dispositive in a showing of rehabilitation nor is it a requirement. (*In the Matter of Ainsworth*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 899.) Petitioner admittedly did little charitable work during his resignation period, but he did make an effort to contribute to the community, although not all attempts were successful. Petitioner read books on tape for the dyslexic and the blind during an unemployed period and he currently volunteers at the Big Brothers Big Sisters

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[3]Petitioner married Lan Hoang in September 1994 and currently remains married to her.

organization as a big brother to a young boy. Petitioner also attempted to volunteer at witness assistance programs of the District Attorney's Office and the Los Angeles City Attorney's Office but was not given a position.

While community service is commendable and assists in making a determination of rehabilitation (*In the Matter of Brown, supra*, 2 Cal. State Bar Ct. Rptr. at p. 317; *In the Matter of Miller, supra*, 2 Cal. State Bar Ct. Rptr. at p. 430), it should emanate from the individual and not from expediency. Absence of community service does not by itself demonstrate lack of rehabilitation. (*In the Matter of Rudman, supra*, 2 Cal. State Bar Ct. Rptr. at p. 554.) Petitioner's limited charitable work will be given limited weight, but standing alone is not a sufficient basis to deny reinstatement in this case.

The State Bar is correct in stating that prior examples of proof of exemplary conduct are relevant to a determination in this case, but the State Bar cites to *In the Matter of Salant, supra*, 4 Cal. State Bar Ct. Rptr. 1 (*Salant*) and *In the Matter of Bodell, supra*, 4 Cal. State Bar Ct. Rptr. 459 (*Bodell*) as a threshold for a showing of exemplary conduct. However, there is no formula for establishing the requisite showing of rehabilitation. While there are witnesses and testimony that are given greater weight than others, each case that comes before us is unique and reviewed independently on its own merits, and placed in comparison to reported cases. Granted, the showings made in *Salant* and *Bodell* were more impressive than that in the record currently before us, but the misconduct in *Salant* and *Bodell* was also much more serious. In *Salant*, the disbarred petitioner deceitfully applied and sat for the California Bar Exam in place of her then husband. (*In re Lamb* (1989) 49 Cal.3d 239; *In the Matter of Salant, supra*, 4 Cal. State Bar Ct.

Rptr. at p. 3.) Salant was reinstated upon a showing of rehabilitation which included impressive character testimony from her government employer witnesses. In *Bodell*, as we noted *ante*, the petitioner was also involved in the Alliance scheme, but was a principal in the scheme and attempted to thwart investigations of the Alliance. Bodell was reinstated upon a showing of rehabilitation which included the testimony of eleven witnesses, of which eight were attorneys.

In the present case, the petitioner was not a principal, but rather played a relatively minor role, and he assisted in the investigations. As previously noted, rehabilitation is viewed in light of the petitioner's misconduct. We do not agree with the State Bar that petitioner's rehabilitative acts were insufficient.

b. Evidence of Cooperation with State Bar

The State Bar contends that there is very little evidence of petitioner's cooperation with the State Bar. The State Bar relies on the fact that Oehrle, who authored the letter to the sentencing judge on petitioner's behalf, did not remember having spoken with the petitioner regarding his cooperation. Nonetheless, a lack of current memory does not undercut the value of a letter written contemporaneously with the cooperation.[4] Therefore, appropriate weight should be given to a laudatory letter written by a Senior Trial Counsel of the State Bar, even if, eleven years later, she does not recall her interactions with the petitioner or the details of his assistance.

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[4]Oehrle's testimony authenticated that the letter was in fact written by her and approved by her State Bar superiors.

c. Character Witnesses' Knowledge of Petitioner's Misconduct

The State Bar further argues that petitioner's character witnesses had only a vague idea of petitioner's misconduct. Character witnesses must have critical knowledge of petitioner and be reasonably aware of the key issues regarding the petitioner's conduct. (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 513.) Testimony from character witnesses who do not know the full extent of the petitioner's wrongdoing is given less weight. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 939.) However, the hearing judge found that petitioner's character witnesses had known petitioner a sufficient amount of time and were reasonably familiar with his serious misconduct in connection with the Alliance.

The witnesses in the present matter testified that they were informed of petitioner's misconduct candidly and openly during the relevant period. Although the witnesses could not recall in specific detail the conversations which took place between nine and thirteen years ago, the witnesses were nevertheless reasonably informed of the key issues regarding petitioner's misconduct. For example, attorney John Klopfenstein, who hired petitioner as an employee, testified that petitioner was forthcoming from the very beginning regarding his misconduct and conviction. This conversation exceeded 30 minutes, although Mr. Klopfenstein testified generally, stating, "Well, [petitioner] introduced himself to me, and he disclosed the fact that he had withdrawn from the bar. He indicated to me that - - something about the [A]lliance and something about mail fraud. And that he was on federal probation . . ." Also, Steve Summers, an employer and friend of petitioner testified that petitioner told him he had pled to aiding and abetting to mail fraud and, ". . . the actual specifics I couldn't recite at this point, but that he'd

become involved in some type of litigation with his wife working at another firm, and that [there] was basically some type of fraudulent acts and that he really wasn't aware of it, and when he became aware of it that he tried to go to the people, make them aware of what was going on, and it didn't happen and things were going south and that he decided to try to fight it out and protected his wife, and when he did so, he swallowed his own medicine."

Character witnesses need not be provided lengthy details of the events that transpired as long as most of them are informed of the petitioner's conviction and loss of license and that there is no concealment of the misconduct. (*In the Matter of Rudman*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 554.) Although petitioner need not provide lengthy details of the misconduct, the record indicates that character witnesses, for the most part, were provided sufficient detail. The lack of specificity in their testimony was due to the passage of time and the failure of memory, and was not an indication of petitioner's intent to conceal his misconduct.

d. Effect of Incorrect Loan Documents

The State Bar argues that petitioner misrepresented his child support obligation on two applications for refinancing of home loans and both his income and child support obligation on a car loan application. While the loan documents were incorrect, they do not amount to a willful or negligent misrepresentation by petitioner. Additionally, while a petitioner for reinstatement must demonstrate sustained exemplary conduct over an extended period of time, neither perfection nor total freedom from true mistake is required. (*In the Matter of Giddens, supra*, 1 Cal. State Bar Ct. Rptr. at p. 37; *In the Matter of Brown*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 315.)

At the time of the refinancing applications, petitioner had an agreement with his former wife to pay for his daughter's private schooling instead of the court-ordered child support. One home loan application was completed by loan officer Darryl Preedge, who testified about this matter. During the loan application process, Mr. Preedge asked petitioner if he had child support obligations and petitioner answered that he paid for his child's schooling. Without further questioning, Mr. Preedge understood that answer as "No" and so indicated on the loan document. This loan document was presented to and signed by petitioner. A few years later, Mr. Preedge contacted petitioner by phone with another opportunity to refinance petitioner's home. The previous loan document was reused for the second loan. Mr. Preedge asked petitioner if there were any changes and petitioner said no. This document was then sent to and signed by petitioner. Although technically incorrect, petitioner signed the loan documents in both instances not knowing or not understanding they were incorrect. Mr. Preedge testified that the inaccuracy on the loan was a mistake on his part and not a misrepresentation from petitioner.

For petitioner's car loan application, the State Bar argues that petitioner misrepresented his income and his child support obligation. Petitioner testified that he initially planned on financing his car purchase through his credit union. The credit union provided petitioner with an estimated income calculation based on information petitioner provided about himself and his current wife. Petitioner later found the car he was interested in and, since the dealership had to order the car, they required that petitioner fill out a finance form. Petitioner testified that this form was not for the purposes of financing the car and that the salesperson marked which portions of the form petitioner was to fill out. Petitioner used the income calculation given to

him by the credit union, although it was his and his wife's combined income. Petitioner also left blank the portions of the form he was not asked to fill out, such as his obligations and liabilities. The dealership later used this form to offer petitioner a loan for the vehicle and petitioner accepted. These circumstances do not point, in our view, to a deliberate misrepresentation by petitioner, inconsistent with rehabilitation. These proceedings have sensitized petitioner to the importance of needed scrutiny in personal financial documents, and we have no doubt that he will demonstrate the required care in this area.

The Supreme Court in *Calaway v. State Bar* (1986) 41 Cal.3d 743, refused to deny a petition for reinstatement where it found that the petitioner did not intentionally mislead or conceal information. Calaway was convicted of participating in the financing of an illegal gambling business and was subsequently disbarred from the practice of law. (*Id.* at p. 745.) On his second attempt at reinstatement, petitioner disclosed a lawsuit initiated against him by Yale University which was removed as a beneficiary of an estate for which Calaway was a conservator. Calaway failed to mention a third party action he filed against his malpractice insurance carrier for representation in the Yale lawsuit. Coverage was denied because Calaway omitted on the insurance application alleged misappropriation of funds, his involvement in financing the gambling operation, his federal conviction or the disbarment recommendation from the State Bar. The court found that there was no intent to mislead the State Bar or conceal derogatory information and ordered that Calaway be reinstated. (*Id.* at 748-749.)

Similarly, in *In the Matter of Miller*, *supra*, 2 Cal. State Bar Ct. Rptr. 423, we recommended reinstatement of a petitioner who misappropriated $86,250 after resigning with

charges pending, even though his post-resignation conduct was not without blemish. Miller told former clients he was "retiring" rather than resigning and he continued to work as a paralegal for his son in a firm titled "Miller and Miller" which was potentially misleading. Despite these weaknesses, we found Miller had met his burden and recommended reinstatement. The law favors the regeneration of erring attorneys, and unnecessary burdens should not be placed on their seeking reinstatement. (*Tardiff v. State Bar* (1980) 27 Cal.3d 395, 404; *Resner v. State Bar* (1967) 67 Cal.2d 799, 811; *In the Matter of Brown*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 315; *In the Matter of Miller*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 436.)

The State Bar further argues that the hearing judge erred in requiring adverse evidence be proved by a clear and convincing standard. The State Bar correctly states that adverse evidence need only be sufficient to lower the persuasiveness of a petitioner's evidence so that petitioner does not meet his clear and convincing burden. (*In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630, 636; *In the Matter of Ainsworth*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 899.) In the final analysis, as noted *ante*, we must decide whether petitioner showed his eligibility for reinstatement by clear and convincing evidence. On our own independent review of the record, we conclude that he has.

III. RECOMMENDATION

For the foregoing reasons, we recommend that Bruce Ficht's petition for reinstatement be granted and that he be reinstated as an active member of the State Bar of California upon his paying the required fees (Bus. & Prof. Code, § 6063) and upon his taking the oath of attorney at law.

STOVITZ, P. J.

We concur:

WATAI, J.
EPSTEIN, J.

Case No. 02-R-10799

In the Matter of Bruce Ficht

Hearing Judge

Hon. Robert M. Talcott

Counsel for the Parties

For the State Bar of California:	Anthony J. Garcia Office of Chief Trial Counsel 1149 S. Hill St. Los Angeles, CA 90015
For Petitioner:	Erica Tabachnick 900 Wilshire Blvd. #1000 Los Angeles, CA 90017

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on February 8, 2005, I deposited a true copy of the following document(s):

OPINION ON REVIEW, FILED FEBRUARY 8, 2005.

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

[X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

Erica Tabachnick
900 Wilshire Blvd., #1000
Los Angeles, CA 90017

[X] by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Anthony J. Garcia, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **February 8, 2005**.

Shemainee Carranza

Shemainee Carranza
Case Administrator
State Bar Court