

PUBLIC MATTER

FILED

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STATE BAR COURT
CLERKS OFFICE
LOS ANGELES

THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of

CLIFFORD RALPH WEBER,

Petitioner for Reinstatement.

Case No. 03-R-01422-RMT

DECISION ON PETITION FOR
REINSTATEMENT

INTRODUCTION

This matter came before the Court for hearing on March 8-10, 2004. The State Bar of California was represented at trial in this matter by Deputy Trial Counsel Janet Hunt and Eric Hsu of the Office of the Chief Trial Counsel of the State Bar of California ("State Bar"). Petitioner Clifford R. Weber ("Petitioner") was represented in this matter by attorney Michael G. Gerner. This matter was submitted for decision on May 19, 2004.

PERTINENT PROCEDURAL HISTORY

Petitioner initiated this proceeding on April 4, 2003, by filing a petition for reinstatement with the State Bar Court.

On April 14, 2003, Petitioner filed and served proof of his passage of the Multistate Professional Responsibility Examination.

The hearing on this matter was held on March 8-10, 2004.

On March 23, 2004, the parties filed a Stipulation as to Facts.

On March 25, 2004, Petitioner filed his Closing Brief. The State Bar filed its Closing Brief on May 5, 2004. On May 18, 2004, Petitioner filed his Reply Brief, and the matter was submitted for decision on May 19, 2004.

FINDINGS OF FACT

Background

1. Childhood

Petitioner had a difficult childhood. His father died when he was only a few months old. His mother remarried when he was seven years old. His stepfather was an alcoholic who was physically abusive towards Petitioner's mother. Petitioner's mother suffered recurring bouts of episodic depression. In his early childhood, Petitioner witnessed many violent attacks on his mother which resulted in serious injury to her. Petitioner's mother was also physically abusive to Petitioner.

When Petitioner was eight years of age, his family moved to California. Because Petitioner's stepfather could never maintain employment, neglect and money were always issues. Food was a problem. Petitioner began working at the age of 10 and gave his mother whatever money he could.

Although Petitioner's mother and stepfather divorced after several years of marriage, from time to time they continued to see each other which caused recurring stress in Petitioner's life.

When Petitioner was in his first year of high school, his mother abandoned him, leaving him alone in California while she and his two younger siblings left for Florida to be with Petitioner's stepfather for a year. He was left with some money to live on, but no one checked on him to be sure he was alright. "During this time he was alone, [Petitioner] recalls being afraid that the money would not last until their return, and that he would be homeless and on the streets."¹ His family was gone for many months. No one at school knew of his situation.

At 17 years of age, he moved out of the house after graduating from high school and lived in a series of cars that he also used to deliver pizzas. He then moved in with some roommates and worked to support himself.

¹Petitioner's Exhibit I.

1 **2. College/Law School**

2 In 1965, Petitioner began attending Valley Junior College. It took him five years to
3 complete junior college, as his attendance was interrupted by his enlistment in the U.S. Air Force
4 in the late 1960's. After the Air Force, he returned to Valley Junior College and completed his
5 associate degree. He thereafter transferred to UCLA where he majored in English, receiving a
6 bachelor of arts degree in 1971. In 1972, he enrolled in the University of San Fernando School
7 of Law from which he graduated. Petitioner was admitted to the State Bar of California on
8 December 18, 1975.

9 **3. Marriage/Family**

10 In the mid-1970's, he married his present wife, Karen Weber. Petitioner has six children
11 ranging from 8 to 25 years of age.

12 **4. Early Career**

13 In 1975 or 1976, he obtained a job as an associate in a Beverly Hills law firm earning \$75
14 per week. Petitioner then worked for four years doing insurance defense work.

15 During his employment with the insurance defense firm, Petitioner met attorney Donald
16 Benjamin ("Benjamin") who was the opposing counsel in a matter that Petitioner handled. As a
17 result of this meeting, Benjamin invited Petitioner to join his firm. In 1981, Petitioner began
18 working with Mr. Benjamin, who was older and more experienced than Petitioner. Petitioner
19 began as an associate. He then became a junior partner and finally rose to the level of being a
20 full partner with Benjamin. Petitioner primarily practiced in the area of plaintiff's personal
21 injury law. Petitioner's association with Benjamin was successful, and their business grew
22 significantly.

23 As his income increased, Petitioner moved from the San Fernando Valley to Pacific
24 Palisades. Between 1983 and 1991, his average income was a half million dollars per year.
25 Some years, he even made over a million dollars.

26 However, in 1990-1991, Petitioner became greedy. Petitioner believed that he was doing
27 all the work and that Benjamin was not working hard enough. Petitioner thought "the more
28

1 money, the better”² and asked Benjamin to work harder. When Benjamin did not do so,
2 Petitioner thought he could be more successful in his own practice and dissolved his partnership
3 with Benjamin. Thereafter, following a transitional period, Petitioner opened up his own office
4 in Westwood. However, prior to opening his own office, the climate surrounding personal injury
5 litigation began changing. Insurance companies were much more reluctant to resolve cases, and
6 many more cases were going to trial. As a result, Petitioner’s income was decreasing. Petitioner
7 had regrets about the dissolution of his partnership with Benjamin. He had fears about his ability
8 to “go it alone”³ and was worried, stressed out and upset. In order to ensure continued financial
9 success, Petitioner became involved in “breast implant”⁴ litigation and had over three hundred
10 cases. All of Petitioner’s insecurities resurfaced during this period of time. He was
11 overwhelmed and felt isolated and alone. He was using marijuana several times a day. He again
12 realized how inappropriate it was for him to have left his partnership with Benjamin. He also
13 began to question his legal abilities, which further increased his stress and anxiety. It was about
14 this time that Petitioner learned that he could receive fees for making legitimate referrals to
15 doctors.

16 **5. Circumstances Leading to Petitioner’s Conviction and Summary Disbarment**

17 Petitioner had a secretary who was fluent in Spanish who told him that she had a friend
18 who worked for doctors. The secretary introduced the friend to Petitioner. The friend advised
19 Petitioner that certain doctors were prepared to kickback a percentage of their fee if Petitioner
20 would send clients or patients to these doctors. In 1993, Petitioner entered into a rebate or
21 kickback relationship with certain doctors. Thereafter, in 1993 and 1994, Petitioner accepted
22 rebates or “kickbacks” totaling \$5,800 for the referral of client accident victims and concealed
23 that income from the clients and insurers. All of the healthcare services provided, however,
24 were necessary and were properly provided to Petitioner’s clients. There were no false or

25
26 ²Petitioner’s Exhibit I.

27 ³Testimony of Petitioner.

28 ⁴Testimony of Petitioner.

1 fraudulent cases or medical bills. In no instance did any healthcare provider falsely "pad" or
2 inflate their bills as a result of the "rebate" arrangement with Petitioner. In no instance was a
3 client harmed or their case compromised by Petitioner's "rebate" arrangement. Petitioner
4 competently handled every matter and settled them at fair valuations. The only fraud aspect was
5 Petitioner's failure to disclose the "rebate" arrangement to his clients and the insurance carriers.
6 However, Petitioner also omitted reporting the "rebated" payments on his income tax returns as
7 follows: \$1,600 in 1993 and \$4,200 in 1994. Failing to properly report the "rebate" payments on
8 his income tax returns resulted in the following underpayments: \$520 in 1993 and \$1,802 in
9 1994.

10 On December 20, 1996, Petitioner received a visit from two FBI agents who advised him
11 that he was the target of an investigation related to accepting the referral fees.

12 Effective January 1, 1997, Petitioner voluntarily transferred to inactive status with the
13 State Bar of California.⁵

14 On January 8, 1997, Petitioner signed a plea agreement, and an information was filed on
15 January 14, 1997. Petitioner did not contest his guilt. On January 29, 1997, Petitioner entered
16 his plea of guilty in the U.S. District Court. Petitioner was convicted of felony violations of 18
17 U.S.C. § 1341 (mail fraud), a crime involving moral turpitude,⁶ and 26 U.S.C. § 7206(2) (aiding
18 and assisting the filing of a false tax return), a felony which may or may not involve moral
19 turpitude.

20 On May 12, 1997, Judge Robert M. Takasugi of the U.S. District Court, Central District
21 of California, placed Petitioner on three years of probation and imposed a fine totaling \$4,000
22 based on his violations of 18 U.S.C. § 1341 and 26 U.S.C. § 7206(2). No incarceration was
23 ordered.

24
25 ⁵Pursuant to Evidence Code section 452(h), the Court takes judicial notice of State Bar
membership records pertaining to Petitioner.

26
27 ⁶The mail fraud violation was the result of Petitioner submitting the healthcare provider's
28 bills to the insurance company and failing to disclose to the carriers the "rebate" arrangement he
had with the healthcare providers.

1 Effective April 29, 1998, Petitioner was placed on interim suspension and ordered to
2 comply with rule 955 of the California Rules of Court.

3 On June 19, 1998, Judge Takasugi wrote a letter to the Review Department of the State
4 Bar Court urging the Review Department not to summarily disbar Petitioner. Judge Takasugi
5 noted that his decision to sentence Petitioner to probation was based "on the fact that there was
6 no indication that the physicians involved updated their medical bills or that [Petitioner] failed to
7 settle his client's cases in good faith. There was no net loss to the victim-client. [Par.] The facts
8 presented in the [Petitioner's] case did not present the usual egregious [sic] facts found in
9 federal felony convictions. At best, this was a case of a failure to disclose a rebate relationship
10 between the medical provider and attorney."⁷ Judge Takasugi concluded by stating, "I sincerely
11 believe that Summary Disbarment of [Petitioner] would be tragic and excessive under the
12 circumstances of his case before me."⁸

13 Nevertheless, on May 12, 1999, the Supreme Court entered an order, effective June 11,
14 1999, summarily disbaring Petitioner from the practice of law.⁹ Prior to his misconduct which
15 began in 1993, Petitioner had practiced law for over 17 years and had no record of discipline.

16 **Passage of the Multistate Professional Responsibility Examination**

17 On March 18, 2003, Petitioner took and passed the Multistate Professional Responsibility
18 Examination.

19 **Present Learning and Ability in the General Law**

20 Petitioner has completed 80 hours of MCLE credit by attending or listening to Rutter Group
21 programs. These programs were in areas such as employment law, civil procedure, trial
22 techniques, legal ethics, discovery, legal malpractice, computers, mediation, arbitration, estates and
23 trusts, and computerized legal research. He has studied practice guides such as Jefferson on
24

25 ⁷Petitioner's Exhibit F.

26 ⁸Petitioner's Exhibit F.

27 ⁹Pursuant to Evidence Code section 452(d), the Court takes judicial notice of State Bar
28 Court records.

1 Evidence and books on immigration and bankruptcy. He has also continued to read the Daily
2 Journal and the National Law Journal. He also prepared a compilation of recent cases which he
3 disseminated to other lawyers. This compilation included cases in the following areas: personal
4 injury, employment law, constitutional law, criminal law, criminal procedure, family law, civil
5 rights, torts, class actions, immigration law, civil procedure and worker's compensation.

6 **Rehabilitation and Present Moral Qualifications for Reinstatement**

7 **1. Criminal Probation**

8 Petitioner successfully performed all terms and conditions of his criminal probation. As a
9 result of his performance on probation, Petitioner's probation was terminated early.

10 **2. Employment**

11 From 1996-1998, Petitioner had a home business which sold golf equipment. However, the
12 business lost money, and in 1997, he worked for Weber Generators selling generators until
13 business became slow.

14 Thereafter, Petitioner purchased a home which was then torn down and a new house was
15 built for sale. However, no profit was realized in this endeavor which lasted from 1998-1999.

16 From October 2001 to November 2001, Petitioner worked for Charles Christopher, Inc. as a
17 parking valet at the Beverly Hills Hotel.

18 In 2002, Petitioner began working for Time Warner Cable as a direct sales representative.
19 In 2002 and 2003, Petitioner received commendations for his work for Time Warner Cable.

20 **3. Psychosocial Evaluation/Family Background**

21 At the time of the hearing in this matter, Petitioner had been meeting and treating for 17
22 months with the Rev. John J. Coleman, O.Carm., a licensed clinical social worker and Roman
23 Catholic priest. He began seeing Rev. Coleman on September 11, 2002. Petitioner saw Rev.
24 Coleman approximately every two weeks.

25 During the period that Petitioner has been in therapy, there have been no indicators of
26 chemical use, abuse or dependency. Following Petitioner's conviction, as part of his criminal
27 sentence, Petitioner was randomly tested for marijuana for approximately one year. All of
28 Petitioner's tests were negative, and Petitioner's drug testing was terminated early because he

1 consistently tested "'clear.'"¹⁰

2 As noted in Rev. Coleman's psychosocial evaluation dated February 12, 2004, (Petitioner's
3 Exhibit I) with respect to Petitioner's early life:

4 Poverty was a constant reality in [Petitioner's] life. His
5 mother . . . would go through periods of agoraphobia and would not
6 work to support the family. Much of his stepfather's money would
7 go to support his alcoholism. Deprivation and fear of deprivation are
8 ongoing themes in [Petitioner's] life, and much of what he has done
9 has been done to allay that fear. From a very early age he has had a
10 "me against the world" attitude, which is understandable given his
11 background of deprivation and neglect. In [Petitioner's] world, if he
12 was going to succeed or survive or overcome his past, he would have
13 to do it by himself. There was no one upon whom he could depend
14 to help him. He admits that this emotional and relationship isolation
15 did not serve him well. He states, "No one ever sat me down when I
16 was young and imparted decent values. I got my values from the
17 street, and the primary value I learned was 'beat the system'. Years
18 later, I learned that that was wrong. I'd thought it was cool that I
19 didn't have to study hard or work hard-that I could get by and beat
20 the system. I didn't realize that I was only hurting myself. All I
21 wanted to do was beat the system and get rich quick. I figured that
22 the more money I had, the less likelihood there was that I would find
23 myself in the same situation in which I had been raised. I never
24 wanted to be afraid again of my money's running out. . . of my
25 money's being gone. That, to me, was a nightmare-it was hell. I felt
26 that as long as I had money, no one or nothing could hurt me. I
27 didn't realize that I was setting myself up for failure-and for
28 returning to the same poverty that I had vowed I was going to escape.
All I wanted to do was get rich quick and beat the system. In the
end, however, I ended up a failure, and poor and worse off than I had
ever been, because now it wasn't just me-it was also my wife and
children who were poor. In the end, the system beat me, and my
entire world crumbled."

19 In his evaluation, Rev. Coleman noted that during the years of his partnership, Petitioner
20 enjoyed great success as an attorney. Petitioner stated, "I was helping people-and making money.
21 I had everything. I was making a million dollars a year for several years. My family was thriving.
22 I was thriving. We had a house in Pacific Palisades. All the poverty and deprivation that had been
23 such a part of my youth were gone. . . . I was a good son, a good husband, and a good father-all
24 because I had money.'" (Petitioner's Exhibit I.)

25 However, after he dissolved his partnership, the fears and worries that beset him as a child
26 began returning. He became anxious, tense, fearful and worried that he would end up in poverty.
27

28 ¹⁰Petitioner's Exhibit I.

1 He therefore began to do things seemingly to help people but which were primarily for the money.
2 All of his same worries returned. "... 'How do I make money? How can I make more money?
3 What if I can't earn the money? What if I can't find the clients? What if I can't support myself
4 and my family? What if we lose our house?'"¹¹

5 Throughout his life, Petitioner was always trying to seek his mother's "'blessing.'"¹² He
6 tried to obtain her love through money. Petitioner believed he could purchase his mother's
7 approval, affection and support with money. He therefore constantly provided money to her, but it
8 was never enough. In 1993, when he began to accept the kickbacks, Petitioner's mother wanted
9 him to purchase the mortgage on her home to prevent its foreclosure. Petitioner, however, could
10 not manage his own law practice, care for his family, support two separate homes and meet the
11 ever-increasing needs of his mother.

12 Petitioner also believed that the stress of his relationship with his mother and his family
13 obligations justified his steady use of marijuana during this time. Petitioner was smoking
14 marijuana six to seven times each day.

15 Petitioner also began to doubt his legal abilities which was his means to make money. This
16 increased his stress and anxiety. Petitioner stated:

17 "I was on my own, and I began to be immediately afraid that I
18 wouldn't be able to make it on my own. I took on 300 breast implant
19 cases. They were big cases, and I began to doubt my abilities as a
20 lawyer. I was afraid I would mess them up. I invested a lot of
21 money in those cases. I had to hire more people to handle all the
22 paperwork. There was money going out. At the same time, however,
23 there were no settlements, so there was no money coming in. Some
24 of these women were dying because of the implants, and they needed
25 the cases settled before they died. I was under constant pressure.
26 They were calling and calling and calling and asking what I was
27 doing to help them win their cases. I just was overwhelmed. ..."

28 (Petitioner's Exhibit I.)

It was about this time that Petitioner entered into the rebate or kickback relationship with
the doctors. With respect to his receiving fees for making legitimate referral to doctors, Petitioner

¹¹Petitioner's Exhibit I.

¹²Petitioner's Exhibit J.

1 acknowledged that such conduct was “stupid-the stupidest thing I’ve ever done in my whole
2 life.”¹³ As Rev. Coleman stated in his report:

3 However, at the time the possibility of these fees was presented to
4 him, [Petitioner] was not thinking of the legality or morality of
5 taking such monies. What seems to have occurred is the triggering
6 of all the old fears, anxieties, and insecurities about his falling into
7 the depths of poverty again, and his no longer being the good
8 provider, the good son, the good husband, the good father. The
9 memories of those periods of deprivation became real once again for
10 [Petitioner], and with the belief that his private practice could
11 conceivably fail in spite of his hard work, he agreed to accept the
12 fees being offered him for making referrals.

13 (Petitioner’s Exhibit I.)

14 After his criminal conduct came to light, Petitioner was in deep despair and spiraled into a
15 deep depression. He was not able to eat, and he believes he suffered a nervous breakdown.
16 Petitioner lost his home, his savings and his retirement funds. Petitioner’s son has also suffered
17 from mental health issues and has had legal and substance abuse problems. Petitioner found
18 himself going from being a successful and respected attorney to being a parking valet. Petitioner
19 was diagnosed with depression which is now controlled by medication.

20 According to Rev. Coleman, Petitioner suffers from chronic posttraumatic stress disorder
21 which dates from his early years. As stated by Rev. Coleman:

22 When the autonomic nervous system encounters a person, object, or
23 situation that it interprets as a threat, the “fight or flight” response is
24 triggered. Acting on the “fight” response, then, [Petitioner]
25 effectively shut down any possibility of responding logically and
26 rationally, and reacted on pure instinct. Since he had survived a
27 traumatic childhood intact-or so he thought-he went on “automatic
28 pilot,” as it were, and regressed to “street” or instinctive behaviors
29 that had served him in the past.

30 (Petitioner’s Exhibit I.) Other diagnostic impressions by Rev. Coleman include generalized
31 anxiety disorder (which includes overanxious disorder of childhood) and dysthymic disorder.

32 According to Rev. Coleman:

33 Had the earlier traumatic experiences not been triggered by the
34 dissolution of his law partnership, and had his fears of poverty and

35 ¹³Petitioner’s Exhibit I.

1 failure not surfaced as a result of the dissolution of his law
2 partnership, it is likely that [Petitioner] could have continued to be a
3 credit to his profession and been the voice for the voiceless and
4 powerless that he had intended to be.

4. Remorse/Recognition of Wrongdoing

5 When the FBI agents advised Petitioner that he was the target of an investigation, Petitioner
6 knew that the end had come. He called his wife and advised her of the visit from the FBI agents.
7 He then left the office, returned home and told his wife of the folly that he had gotten himself into.
8 He also told his children about the problem. Petitioner has taken full responsibility for his actions.
9 He has never denied that he was the responsible person and has never attempted to shift the blame
10 to someone else. He also transferred to inactive status and notified all of his clients.

11 Petitioner has spent the last seven years trying to understand why he entered into the rebate
12 or kickback arrangement. Petitioner acknowledged that the money he gained from the arrangement
13 was so small it hardly made an impact. However, Petitioner believed at the time that it would
14 make an impact.

15 As a result of his criminal matter and therapy, Petitioner has realized that during the time of
16 his misconduct certain factors in his life all seemed to coalesce. These include his almost constant
17 use of marijuana, his continued financial support of his mother, and his inability to realize what he
18 had accomplished and what aspects of his life were important. He now realizes that by simple
19 greed he jeopardized the success he had struggled his entire life to achieve.

20 Petitioner realizes that a contributing element to his lack of judgment was his heavy use of
21 marijuana. Petitioner did not realize that he was very fortunate. He was blessed with a loving
22 family and had everything he ever wanted. Petitioner came to this realization during his
23 participation in recovery during his probation.¹⁴

24 According to Rev. Coleman, Petitioner has honestly acknowledged the wrongfulness of
25 taking referral fees. Petitioner stated:

26
27
28 ¹⁴As a condition of probation, Petitioner was required to participate in outpatient
substance abuse treatment and to submit to alcohol and drug testing.

1 "I put myself in a terrible place. I was directly placing in jeopardy
2 everything I had worked for my entire life. But at that moment, I
3 wasn't thinking clearly. I was back into my survival mode, believing
4 that I had to do whatever I could to provide for my family and
survive. I didn't consider the consequences of my actions. It was
never my intention to consciously and willfully break the law or do
anything immoral. I did what I did to survive."

5 (Petitioner's Exhibit I.) Rev. Coleman further states in his evaluation report, "[Petitioner] is a man
6 who truly loves the legal profession and feels a profound shame for the disgrace he has brought to
7 the profession as well as to himself and his family. His desire to return to the law is sincere, and
8 from the very first therapy session, he has expressed extreme remorse for his actions." (*Ibid.*)

9 Petitioner has established principals for himself; namely, (1) raising and supporting his
10 family; (2) being an example to his family and children; and (3) honestly taking responsibilities.
11 Petitioner believes he has learned his lesson and understands why the events occurred the way they
12 did. Petitioner realizes his actions with respect to the referral fees was wrong, and that it involved
13 deception. He now realizes that just because he believed "'everyone was doing it'"¹⁵ does not
14 condone or excuse his actions. He is now a much more humble person. Petitioner believes that his
15 ordeal has strengthened and transformed his integrity and character, and it has caused him to
16 recommit himself to fundamental and basic values, beginning with his family. Petitioner never
17 again wants to cause his family shame or embarrassment as a result of his conduct. Petitioner
18 would now be much more careful with whom he associates.

19 **5. Public Service**

20 Petitioner volunteers at an assisted living facility called Brighton Gardens.

21 **6. Character Evidence**

22 **A. Joseph Argenta**

23 Attorney Joseph Argenta ("Mr. Argenta"), who began playing golf regularly with Petitioner
24 approximately 15 years ago, is aware of Petitioner's criminal conviction and summary disbarment.
25 Nevertheless, Mr. Argenta believes that Petitioner is of good moral character. Petitioner never
26 tried to shift the blame for his wrongdoing to anybody else; he took full responsibility for his
27

28 ¹⁵Petitioner's Exhibit J.

1 actions and was also exceedingly remorseful. In Mr. Argenta's opinion, Petitioner is truthful and
2 possesses the character trait of integrity as well as trustworthiness. Mr. Argenta has no
3 reservations about Petitioner being reinstated and would refer clients to Petitioner if he was
4 reinstated. Mr. Argenta believes that Petitioner is not a danger to the public or the administration
5 of justice. He also does not believe that Petitioner's readmission would undermine the integrity of
6 the legal profession.

7 **B. Dean Hallo¹⁶**

8 Dean Hallo ("Mr. Hallo") is a general contractor who has known Petitioner for
9 approximately 13 years. Petitioner told Mr. Hallo of his felony conviction and summary
10 disbarment. Nevertheless, in Mr. Hallo's opinion, Petitioner is a completely honest person and is a
11 person of high integrity.

12 Mr. Hallo builds and remodels homes. Mr. Hallo observed that Petitioner was very, very
13 depressed and had demonstrated a change in his personality. To help Petitioner during this
14 difficult time, Mr. Hallo became involved in a business transaction with Petitioner. Mr. Hallo
15 offered Petitioner an opportunity to buy and work on a remodel of a home in the City of Santa
16 Monica. Petitioner's contribution to the project was both financial and "sweat equity." Petitioner
17 did everything on the project, including manual labor, and stayed at the building site all day and
18 supervised the other workers. The project commenced in 1999 or 2000 and lasted about one year.
19 There was no written contract between Mr. Hallo and Petitioner - only a hand shake. Petitioner
20 handled money during this relationship with Mr. Hallo. Petitioner figured out the payroll.
21 Petitioner also got along very well with all of the workers.

22 Petitioner never tried to shift the blame for his wrongdoing to anybody else; he took full
23 responsibility for his actions and was also exceedingly remorseful. Mr. Hallo has no reservations
24 in recommending that Petitioner be reinstated and, if reinstated, he would use Petitioner's services
25 as a lawyer and would refer other individuals to Petitioner for legal services.

26
27 ¹⁶Mr. Hallo testified as a very effective witness. The Court found Mr. Hallo to be an
28 exceedingly credible witness whose testimony was effective in demonstrating the good character
and work ethic of Petitioner.

1 According to Mr. Hallo, the April 2000 Uniform Residential Loan Application was for a
2 commercial loan to refinance the remodel project and was not for personal use as indicated on the
3 application form which was signed by Petitioner. However, there is no evidence that Petitioner
4 actually filled out that application.

5 **C. Donald Benjamin**

6 Attorney Donald Benjamin ("Mr Benjamin") has known Petitioner since 1980. Mr.
7 Benjamin met Petitioner when they were opposing one another in a piece of litigation. During that
8 litigation, Mr. Benjamin became very impressed with Petitioner's legal work. As a result of that
9 encounter, Petitioner was invited to join Mr. Benjamin in the practice of law. Petitioner joined Mr.
10 Benjamin's practice first as an associate, then as a junior partner, and finally as a full partner.
11 During Mr. Benjamin's approximately ten year association with Petitioner, the legal practice
12 flourished. Petitioner developed into an extremely competent attorney, and Mr. Benjamin had the
13 highest regard for Petitioner. However, in the early 1990s their partnership dissolved.¹⁷

14 Mr. Benjamin learned through legal newspapers and periodicals of Petitioner's conviction
15 and disbarment. Mr. Benjamin has worked very closely with Petitioner and believes Petitioner's
16 conduct was totally out of character. Petitioner never tried to shift the blame for his wrongdoing to
17 anybody else; he took full responsibility for his actions and was also exceedingly remorseful. Mr.
18 Benjamin believes Petitioner is honest and of good moral character. Mr. Benjamin has absolutely
19 no reservation about Petitioner being readmitted as a member of the State Bar, and he does not
20 believe that Petitioner is a danger to the public or to the administration of justice. He also does not
21 believe that Petitioner would undermine or demean the profession if he were readmitted.

22 Mr. Benjamin never socialized with Petitioner; however, in the last four years he has seen
23 Petitioner one or two times a year and has talked on the telephone with him four or five times a
24 year.

25
26 ¹⁷On cross-examination, there was a discussion as to who and why the partnership
27 between Petitioner and Mr. Benjamin dissolved. Each testified to a slightly different take on how
28 it happened. Nevertheless, it is clear that the partnership did dissolve. The Court does not find
the differences in the testimony regarding how the partnership dissolved material to the outcome
of this reinstatement proceeding.

1 **D. E. Belmont Herring**

2 Attorney E. Belmont Herring ("Mr. Herring") has known Petitioner for approximately 15
3 years. Petitioner never tried to shift the blame for his wrongdoing to anybody else; he took full
4 responsibility for his actions and was also exceedingly remorseful. Mr. Herring believes that
5 Petitioner is a very honest and trustworthy man, and he feels that Petitioner has a deep sense of
6 integrity. If Petitioner is reinstated, Mr. Herring would refer clients to him if the situation were
7 appropriate. Mr. Herring also has no hesitation in urging Petitioner's reinstatement.

8 **E. Dennis Wheeler**

9 Attorney Dennis Wheeler ("Mr. Wheeler") has known Petitioner for 40 years. Mr. Wheeler
10 was aware of Petitioner's conviction and disbarment.

11 Mr. Wheeler characterized Petitioner as "a very capable lawyer" who "always looked out
12 for the best interests of his clients."

13 Petitioner never blamed anyone else for his wrongdoing; he also took full responsibility for
14 his actions and was very remorseful. Mr. Wheeler would have no reservations at all with respect to
15 Petitioner's reinstatement, and he would refer clients to Petitioner.

16 Over a period of time, Mr. Wheeler received digests of cases that Petitioner prepared.

17 **F. John De Los Santos**

18 John De Los Santos ("Mr. De Los Santos") is the sales manager for Time Warner Cable
19 and is Petitioner's current supervisor. Mr. De Los Santos was aware of Petitioner's conviction.
20 Petitioner never blamed anyone else for his wrongdoing, and Petitioner took full responsibility for
21 his actions and is very remorseful.

22 Petitioner is one of Mr. De Los Santos's top sales representatives. Mr. De Los Santos
23 described Petitioner as exceedingly honest and trustworthy. According to Mr. De Los Santos,
24 Petitioner has exhibited good attention to detail. There have been no performance problems, and
25 Petitioner has received awards for his work. Petitioner has not appeared to be depressed.

26 **G. Karen Weber**

27 Karen Weber ("Mrs. Weber") is Petitioner's wife. She and Petitioner were married in
28 1976.

1 According to Mrs. Weber, all during this travail, Petitioner never denied he was responsible
2 for his wrongdoing. Petitioner took the charges very, very seriously. Petitioner became very
3 depressed and withdrawn, and he would experience anxiety attacks. Mrs. Weber stated that
4 Petitioner was the "shell of the person I married. I felt I had lost him."¹⁸

5 When Petitioner was asked by Mr. Hallo to assist him in the remodeling of the house in
6 Santa Monica, Petitioner's spirits were lifted for a short term as he felt productive and worthwhile.
7 However, in the end, he made no money on this project. Petitioner became very depressed, quiet,
8 and withdrawn. Finally, all of their savings and other assets had been depleted. At this time,
9 Petitioner sought out a job at the parking lot and then sought and obtained a job at Time Warner
10 Cable.

11 In pursuing reinstatement, Petitioner watched a video at home. Mrs. Weber has also
12 observed and heard Petitioner listening to cassettes about the law while traveling in his car.

13 **H. Steven D. Lansford**

14 Attorney Steven D. Lansford ("Mr. Lansford") has known Petitioner for 18 years. Mr.
15 Lansford and Petitioner shared office suites for over 10 years and were law partners for more than
16 five years. Mr. Lansford was aware of Petitioner's criminal matter and subsequent disbarment.
17 Since Petitioner's disbarment, Petitioner and Lansford have met one or two times in person and
18 have spoken on the telephone one or two times.

19 Mr. Lansford believes Petitioner's conduct was aberrational, and that Petitioner was under
20 much financial and other pressures at the time of and prior to his acts of misconduct.

21 Petitioner suffered from severe depression with respect to his criminal matter. Petitioner
22 has repeatedly expressed to Mr. Lansford regret and remorse for his conduct which he has
23 characterized as wrong and thoughtless.

24 Mr. Lansford believes that Petitioner "has learned his lesson and would strictly adhere to
25 the highest standards of ethics were he allowed to regain the privilege to practice law."¹⁹ If
26

27 ¹⁸Testimony of Karen Weber.

28 ¹⁹Petitioner's Exhibit K.

1 Petitioner were reinstated, Mr. Lansford would refer clients to him and would consider associating
2 with Petitioner in the practice of law.

3 **I. William S. Leonard, Esq.**

4 Attorney William S. Leonard ("Mr. Leonard") has known Petitioner for 12 years. Their
5 relationship has primarily been a social one. Mr. Leonard is familiar with the charges which led to
6 Petitioner's criminal conviction and summary disbarment. However, they have had minimal
7 contact since Petitioner's conviction and disbarment.

8 Mr. Leonard has found Petitioner's misconduct aberrational and atypical of the man he
9 knew and respected. It is Mr. Leonard's belief that Petitioner's behavior was a serious lapse in
10 judgment which resulted more from stress than any character defect.

11 Mr. Leonard has no reservations about recommending Petitioner's reinstatement. Mr.
12 Leonard noted Petitioner's remorse and contrition. If Petitioner were reinstated, Mr. Leonard
13 would have no hesitation referring clients to him. Mr. Leonard believes that if Petitioner were to
14 be reinstated to the practice of law he would not present a danger to the public or the
15 administration of justice. Furthermore, Mr. Leonard does not believe that Petitioner would again
16 undermine the integrity of the profession.

17 **J. Conrad Kohrs, Esq.**

18 Attorney Conrad Kohrs ("Mr. Kohrs") has known Petitioner both personally and
19 professionally for 15 years. However, since Petitioner's disbarment, Petitioner and Kohrs have had
20 no in person contact and have spoken on the telephone one or two times. Mr. Kohrs is familiar
21 with the charges alleged against Petitioner in his State Bar matter.

22 Mr. Kohrs believes Petitioner is an ethical, moral and skilled member of the Bar, and he
23 looks forward to again working and consulting with Petitioner in the near future.

24 **K. Eric Hershler, Esq.**

25 Attorney Eric Hershler ("Mr. Hershler") has known Petitioner for approximately 12 years.
26 Since Petitioner's disbarment, Petitioner and Hershler have had no professional relationship;
27 however, they have had lunch two times and have spoken on the telephone five or six times. Mr.
28 Hershler was aware of the substance of the allegations against Petitioner in his State Bar matter.

1 Mr. Hershler believes that the charges against Petitioner and the surrounding circumstances
2 have humbled Petitioner, and Petitioner has shown great remorse.

3 Mr. Hershler is aware of Petitioner's reinstatement application and is convinced that
4 Petitioner will again prove to be an asset to the legal community. Mr. Hershler would have no
5 hesitation referring matters to Petitioner for professional representation or working with Petitioner
6 in a professional capacity.

7 **L. Jeffrey L. Smith**

8 Jeffrey L. Smith ("Mr. Smith") has known Petitioner for over 30 years. Mr. Smith is
9 Petitioner's brother-in-law, as Petitioner is married to Mr. Smith's sister. Mr. Smith is close to
10 Petitioner's family. Mr. Smith is aware that Petitioner was involved in a criminal matter. Mr.
11 Smith views Petitioner like a friend and a brother, rather than a brother-in-law.

12 Mr. Smith described Petitioner as a kind and compassionate person. He believes that if
13 Petitioner is reinstated, he will be a good lawyer, and his errors will not be repeated.

14 **M. Jeffrey A. Brown, M.D., Esq.**

15 Jeffrey A. Brown ("Dr. Brown") is an attorney licensed to practice law in New Jersey, New
16 York and Connecticut. He is also a physician licensed to practice medicine in California and New
17 York. Dr. Brown was formerly married to Petitioner's cousin. Dr. Brown has regularly kept in
18 touch with Petitioner.

19 Dr. Brown notes the extraordinary work ethic, sense of responsibility and energy that
20 Petitioner has devoted to trying to put his life together in a responsible fashion. According to Dr.
21 Brown, Petitioner sincerely regrets his past errors in judgment and sincerely plans to devote
22 himself to law in a completely ethical and responsible fashion if he is reinstated.

23 Dr. Brown also noted that Petitioner has continuously managed to keep up with his legal
24 knowledge and e-mailed him and others digests of decisions and articles.

25 Dr. Brown would not hesitate to work professionally with Petitioner in the future. He has
26 total faith in Petitioner's present and future honesty and integrity and recommends and endorses
27 Petitioner's reinstatement.

1 **N. Hon. Richard H. Kirschner**

2 Hon. Richard H. Kirschner ("Judge Kirschner") has known Petitioner for well over 15 years
3 and represented Petitioner prior to his appointment in October 2001 to the Los Angeles Superior
4 Court. He is therefore familiar with the facts surrounding Petitioner's criminal matter. However,
5 Kirschner has not seen Petitioner since his disbarment, and Kirschner never socialized with
6 Petitioner.

7 Judge Kirschner described Petitioner as even tempered, respectful to others, and
8 conscientious; however, due to the exercise of bad judgment, Petitioner got himself into serious
9 trouble. Judge Kirschner noted that Petitioner has been mortified and humiliated by his actions
10 and their consequences. While noting that Petitioner's conduct was unjustified and inexcusable,
11 Judge Kirschner also noted that referral fees were endemic for years in the personal injury field and
12 were part of the practice culture for many personal injury attorneys. In Judge Kirschner's opinion,
13 Petitioner has been stigmatized, humiliated, learned his lesson and presents no danger to the public
14 if allowed to practice law.

15 **O. Ronni Schuman Brown, Ed.D.**

16 Ronni Schuman Brown ("Ms. Brown") is Petitioner's cousin and speaks with Petitioner on
17 the telephone two or three times a year.

18 Ms. Brown is confident that Petitioner understands the mistakes he made. According to
19 Ms. Brown, Petitioner has also addressed what had been a character flaw: wanting so much to give
20 his family a better life than he had by doing some things that showed poor judgment. Ms. Brown
21 believes that Petitioner has been fully rehabilitated. She gives Petitioner her unqualified and total
22 endorsement as being ready to return to the legal profession.

23 **P. Nancy B. Crater, Esq.**

24 Attorney Nancy B. Crater ("Ms. Crater") has known Petitioner both personally and
25 professionally for 30 years. She is aware of Petitioner's conviction and disbarment. Since
26 Petitioner's disbarment, Petitioner and Crater have met two times in person and have spoken a
27 couple of times on the telephone.

28 Ms. Crater believes that the wrongdoing that Petitioner has admitted is aberrant. If

1 Petitioner is reinstated, Ms. Crater would call upon Petitioner to represent her in the future in a
2 personal injury matter. She unequivocally believes that Petitioner would reflect well upon the
3 profession if he is reinstated. She has no reservations about recommending Petitioner's
4 reinstatement. Ms. Crater believes that Petitioner has been contrite and remorseful about his
5 misconduct.

6 **Q. Steven Singer, Esq.**

7 Attorney Steven Singer ("Mr. Singer") has known Petitioner since 1960 and has had both a
8 social and professional relationship with Petitioner. Petitioner and Singer have spoken four times a
9 year. Mr. Singer is familiar with the charges which led to Petitioner's conviction and summary
10 disbarment. Petitioner discussed with Mr. Singer the criminal charges and his conviction. Mr.
11 Singer found Petitioner's conduct to be aberrant and out of character. Mr. Singer believes
12 Petitioner's behavior was a serious lapse in judgment. Mr. Singer's opinion of Petitioner's
13 characteristics for honesty, trustworthiness and integrity remained strong after he discussed the
14 matter with Petitioner. Mr. Singer believes that Petitioner has learned from his mistakes.
15 Petitioner has expressed contrition and remorse for his conduct. Mr. Singer has no reservations in
16 recommending Petitioner's reinstatement. Mr. Singer believes Petitioner has worked hard to
17 rehabilitate himself. If Petitioner were reinstated, Mr. Singer would have no hesitation in referring
18 clients to him. Mr. Singer does not believe that if Petitioner were reinstated that he would be a
19 danger to the public, the administration of justice, nor would he again undermine the integrity of
20 the profession.

21 **R. Olivia Weber**

22 Olivia Weber is Petitioner's oldest daughter. Fear and sadness dominated the time
23 immediately following Petitioner's disbarment. However, Petitioner realized that rather than dwell
24 on his regrets, it would be more productive for him to concentrate on moving forward. Petitioner
25 began therapy with Rev. Coleman. As a result of his sessions with Rev. Coleman, Petitioner was
26 able to come to terms with certain decisions he made and the consequences of those decisions.

27 **S. Marisa Weber**

28 Marisa Weber is another of Petitioner's daughters. She noted that Petitioner was really

1 depressed, lost and pessimistic after his disbarment. For years, the family had to rely mostly on
2 savings to just get by. However, after a few years, Petitioner was able to regain his inner strength,
3 courage and sense of humor. What stands out to her about Petitioner is his character. He has
4 always put his family first and has come through for his family during difficult times. Petitioner
5 has always conducted himself with dignity, kindness, humility and generosity.

6 **7. Residential Loan Applications**

7 Petitioner made a series of inaccurate representations on residential loan applications
8 submitted by him and his wife in 1998, 1999, 2000 and 2002.²⁰ Each of the residential loan
9 applications have numerous misstatements as to various facts contained in the loan applications.

10 When asked about the numerous misstatements in the loan applications, Petitioner noted
11 that all during this period of time, he was exceedingly depressed and demoralized. Petitioner
12 experienced an extreme personality change. He went from being an energetic, outgoing individual
13 to a person who would spend long hours in bed exhausted, nauseous and sleepless. He had gone
14 from being a very successful attorney to a convicted felon, was disbarred from the practice of law,
15 was unable to earn a living in any venture close to what he earned in his 22 years as a lawyer, and
16 was in jeopardy of losing his home.²¹ He saw several money-making enterprises fail which
17 resulted in the loss of his savings. His entire family was affected. His son was diagnosed with
18 acute depression. His mother died. They had to move out of the family home. Finally, he sunk to
19 his lowest position when he took a job as a parking lot attendant at a local hotel.

20 Petitioner never read the loan applications. Petitioner signed waivers for the mortgage
21 lenders to obtain information concerning his financial abilities, and when he and his wife were
22 presented with the various loan applications for their signature, they had already been filled out.
23 The applications were presented with lots of other documents which he, along with his wife,
24 merely signed and returned. He did not provide the information to the loan officers, and he did not

25
26 ²⁰See State Bar Exhibits 1, 3, 4 and 5.

27
28 ²¹Petitioner ultimately was unable to afford to maintain or keep his home and was
required to sell it.

1 submit these various loan applications directly to the lending institutions. Petitioner did not
2 knowingly or intentionally seek to mislead the lending institutions.

3 Petitioner was extremely depressed and "out of it"²² on October 8, 1998, the date Petitioner
4 and his wife signed the October 1998 Uniform Residential Loan Application. Petitioner did not
5 review the October 1998 Uniform Residential Loan Application. Neither Petitioner nor his wife
6 provided the information to fill out the 1998 Uniform Residential Loan Application.

7 At the time Petitioner executed the December 1999 Uniform Residential Loan Application,
8 Petitioner "was in a devastated state."²³ Petitioner and his wife had just moved from their home in
9 the Pacific Palisades into a very, very small living situation that could hardly accommodate
10 Petitioner, his wife and the six children. Neither Petitioner nor his wife provided the information
11 on the December 1999 Uniform Residential Loan Application.

12 At the time Petitioner executed the April 2000 Uniform Residential Loan Application, he
13 was "desperate; he was very depressed; he was as distracted as he was at earlier times,"²⁴ as with
14 the October 1998 and December 1999 loan applications.

15 At the time Petitioner executed the February 2002 Uniform Residential Loan Application,
16 Petitioner was "very depressed."²⁵ Petitioner had gone into several business ventures that were
17 unsuccessful, and that he was feeling very, very down. Petitioner did not read the February 2002
18 loan application. Neither Petitioner nor his wife provided the information on the loan application
19 to the loan company.

20 All of the payments that were required under any and all of these loan agreements were
21 met. None of the loans ever went into default, and all of the loans have been paid. Lenders never
22 lost any funds as a result of these inaccuracies in the loan applications.

23 Thus, although the lender uses income or assets as a factor in determining whether or not a
24

25 ²²Testimony of Karen Weber.

26 ²³Testimony of Karen Weber.

27 ²⁴Testimony of Karen Weber.

28 ²⁵Testimony of Karen Weber.

1 loan is granted, the Court finds that Petitioner did not intentionally or knowingly submit incorrect
2 and false information on the residential loan applications in order to obtain refinancing.

3 DISCUSSION/CONCLUSIONS

4 Petitioner has the heavy burden of establishing by clear and convincing evidence that he has
5 passed a professional responsibility examination, has present ability and learning in the general
6 law, has been rehabilitated, and has present moral qualifications for readmission. (*In the Matter of*
7 *Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25, 30; Cal. Rules of Court, rule 951(f);
8 Rules Proc. of State Bar, rule 665.)

9 Based on the evidence presented, and the findings of fact set forth above, the Court
10 concludes that Petitioner has demonstrated by clear and convincing evidence that he took and
11 passed the Multistate Professional Responsibility Examination and that he has present learning and
12 ability in the general law.

13 The focus of this Court's attention, therefore, turns to the issue of whether Petitioner has
14 demonstrated by clear and convincing evidence his rehabilitation and present moral qualifications
15 for readmission. In reinstatement proceedings, a petitioner bears the heavy burden of proving
16 rehabilitation and "must show by the most clear and convincing evidence that efforts made towards
17 rehabilitation have been successful." (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1091-1092.) A
18 petitioner for reinstatement must demonstrate proof of "sustained exemplary conduct over an
19 extended period of time." (*In re Giddens* (1981) 30 Cal.3d 110, 116.) "[O]verwhelming proof of
20 reform' is necessary. (*Feinstein v. State Bar*, [(1952)], 39 Cal.2d at p. 547, and cases cited
21 therein.)" (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 315.) In
22 addition, the evidence of rehabilitation is to be considered in light of Petitioner's prior moral
23 shortcomings. (*Id.* at p. 316.) Nevertheless, Petitioner need not show perfection in order to be
24 reinstated to the practice of law. (*In the Matter of Giddens, supra*, 1 Cal. State Bar Ct. Rptr. at p.
25 37.) "The law looks with favor upon the regeneration of erring attorneys and should not place
26 unnecessary burdens upon them." (*Resner v. State Bar* (1967) 67 Cal.2d 799, 811.)

27 In order to determine whether Petitioner has met his burden of proof with respect to the
28 issues of rehabilitation and present moral qualifications for readmission, the Court finds it

1 necessary to review what led to and brought about Petitioner's wrongdoing. Petitioner had an
2 extremely difficult childhood. He witnessed his mother, who suffered from episodic bouts of
3 depression, being physically abused by his alcoholic stepfather. His stepfather could not maintain
4 employment, so food and money were always issues in the household. While in high school, he
5 was abandoned by his family for many months and lived in fear that the money his family had left
6 him to live on would not last and he would be homeless. He left home at age 17 and lived in a
7 series of cars that he also used to deliver pizza.

8 Despite his difficult childhood, however, Petitioner started junior college, enlisted in the
9 U.S. Air Force, returned to junior college after his Air Force service, obtained his associate degree,
10 received a bachelor of arts degree from UCLA, attended law school and was admitted to the State
11 Bar of California. He also met and married his wife with whom he now has six children.

12 Petitioner became a partner in a successful law practice and became a very successful
13 personal injury attorney. His average income was a half million dollars per year, and some years
14 he earned over a million dollars. He and his family lived in Pacific Palisades. Because he had
15 money, he believed he was a good son, a good father and a good husband. Unfortunately,
16 Petitioner became greedy and began to believe, "'the more money, the better.'"²⁶ He became
17 unhappy with his partnership and thought he could be more successful in his own practice. He
18 therefore dissolved his partnership and opened his own practice.

19 However, after opening his own practice, Petitioner's troubles really began. The nature of
20 personal injury litigation began to change, causing Petitioner's income to decrease. He began to
21 regret the dissolution of his partnership. He had fears about his ability to make it on his own and
22 became stressed and worried. He was overwhelmed, alone and isolated. Due to money concerns,
23 he took on a great number of litigation matters, but began to question his legal abilities which
24 caused further stress and anxiety. He was also abusing marijuana, smoking it six to seven times a
25 day. He was also being pressured by his mother, to whom he constantly provided money, to
26 purchase the mortgage on her home to prevent its foreclosure.

27
28 ²⁶Petitioner's Exhibit I.

1 It was within this context that Petitioner made a huge error in judgment and acted in an
2 aberrant manner and entered into an agreement with certain doctors to receive rebates or
3 "kickbacks" for the referral of client accident victims. Petitioner concealed this income from
4 clients and insurers and failed to report the rebates or "kickbacks" on his income tax returns.
5 Petitioner's misconduct occurred over a two year time period in 1993 and 1994. Petitioner
6 received \$5,800 as a result of this arrangement and underpaid \$2,322 in taxes. However, there
7 were no fraudulent cases or medical bills, and none of the healthcare providers "padded" or
8 inflated their bills due to the arrangement with Petitioner. Furthermore, no client was harmed by
9 Petitioner's actions. Then why did Petitioner, a successful attorney, engage in such wrongdoing?
10 The answer lies in Petitioner's past. Petitioner engaged in such misconduct because at the time of
11 his wrongful acts, the old anxieties, fears and insecurities about becoming impoverished again and
12 therefore no longer being a good son, a good husband and a good father were triggered. The
13 memories of past periods of deprivation became real again to Petitioner, and he acted on instinctive
14 behaviors that had helped him survive in the past, rather than on logic and reason.

15 However, as soon as Petitioner realized he was being investigated for this conduct,
16 Petitioner took full responsibility for his wrongful acts. He has never denied that he was the
17 responsible person and has never attempted to shift the blame to someone else. He immediately
18 informed his wife and children of his actions, and within less than six weeks after being visited by
19 FBI agents, he had transferred to inactive status and pled guilty to a felony count of mail fraud and
20 a felony count of aiding and assisting the filing of a false tax return. Petitioner was placed on
21 criminal probation and fined. He was thereafter placed on interim suspension and ultimately
22 summarily disbarred based upon his criminal conviction.

23 Thereafter, however, Petitioner fell into a deep depression. He suffered severe financial set
24 backs. He lost his home, his savings and his retirement money. His son began to have legal,
25 mental health and substance abuse problems. He went from being a successful attorney before his
26 conviction to being a parking valet.

27 Nevertheless, despite his depression, Petitioner successfully complied with the terms of his
28 criminal probation and, as a result, his probation was terminated early. There have been no

1 indications of marijuana use since his criminal conviction. He was randomly tested for marijuana
2 for approximately one year. All tests were negative, and testing was terminated early.

3 Petitioner began attending regular therapy with a licensed clinical social worker in
4 September 2001. He was diagnosed with depression which is now controlled by medication and
5 with posttraumatic stress disorder dating from his childhood.

6 It has now been approximately 10 years since Petitioner engaged in the acts which led to his
7 summary disbarment. Petitioner has acknowledged his wrongdoing and is genuinely and deeply
8 remorseful and contrite. Through therapy and his criminal matter, he has learned that during the
9 time of his misconduct, certain factors coalesced. These include his almost constant use of
10 marijuana, his continued financial support of his mother, and his inability to realize what he had
11 accomplished and what aspects of his life were important. He now realizes that greed led him to
12 jeopardize the success he had struggled years to achieve. He has established principals for himself.
13 He has learned his lessons and now understands why events occurred the way they did. Petitioner
14 is more humble and his integrity and character have been transformed and strengthened by his
15 ordeal. He has recommitted himself to fundamental and basic values, beginning with his family.
16 He never again wants to cause his family shame or embarrassment, and he understands that he
17 must be careful with whom he associates.

18 Petitioner volunteers at an assisted living facility and has been employed after his summary
19 disbarment in positions of trust, including one involving fiduciary responsibility.

20 Several character witnesses and letter writers, who fully support Petitioner's reinstatement,
21 attested to his good moral character. Ten of the character witnesses were attorneys and one was a
22 Superior Court judge. Many of the character witnesses acknowledged the aberrant nature of
23 Petitioner's misconduct and his remorse and recognition of wrongdoing. Though some of the
24 character witnesses and letter writers did not have recent close contact with Petitioner, it is not
25 necessary that they do so. "A variety of persons with different relationships to petitioner can
26 reflect on his present moral qualifications." (*In the Matter of Miller* (Review Dept. 1993) 2 Cal.
27 State Bar Ct. Rptr. 423, 432.)

28 Nevertheless, despite this evidence of rehabilitation and present good moral character, the

1 State Bar contends that Petitioner's application for reinstatement should be denied because his
2 post-criminal probation conduct has not been blemish-free. To support its contention, the State
3 Bar points to the inaccurate representations on home loan applications submitted by Petitioner and
4 his wife between 1998 and 2002.

5 However, the Court, after having listened and observed Petitioner, finds Petitioner credible,
6 believable, and his explanations regarding the loan application issue supported by the evidence.
7 Petitioner was in a deep depression at the time he signed the loan applications, and he did not
8 review them before signing them. In addition, neither Petitioner nor his wife provided the
9 information on the loan applications. Petitioner signed waivers for the mortgage lenders to obtain
10 information concerning his financial abilities, and when he and his wife were presented with the
11 various loan applications for their signature, they had already been filled out. All of the payments
12 that were required under any and all of these loan agreements were met. None of the loans ever
13 went into default, and all of the loans have been paid. Furthermore, although the lender uses
14 income or assets as a factor in determining whether or not a loan is granted, the Court finds that
15 Petitioner did not intentionally or knowingly submit incorrect and false information on the
16 residential loan applications in order to obtain refinancing.²⁷ Rather, Petitioner never really looked
17 at the loan applications.

18 The Court also notes that although there were four loan applications, only one witness, Mr.
19 Rick Wahlgren of Chase Manhattan Mortgage Corporation, was called to testify regarding the
20 preparation of the Uniform Residential Loan Applications. Mr. Wahlgren was called with respect
21 to the October 1998 Uniform Residential Loan Application. However, Mr. Wahlgren had no
22 recollection of this particular transaction and could not testify as to the source of the information
23 contained in the application.

24 Therefore, after considering the nature of the wrongdoing which led to Petitioner's
25 summary disbarment, the length of time which has transpired since Petitioner's acts of
26

27 ²⁷The Court found Petitioner to be a credible witness regarding the misstatements on the
28 residential loan applications.

1 wrongdoing, conviction, and summary disbarment, and Petitioner's evidence of rehabilitation and
2 present moral qualifications for readmission, the Court finds by clear and convincing evidence that
3 Petitioner is rehabilitated and has present moral qualifications for readmission. The Court finds
4 that Petitioner's misconduct was aberrational and a result of the triggering of earlier traumatic
5 experiences and the surfacing of his fears of failure and poverty. Petitioner fully understands his
6 wrongdoing, is contrite and remorseful, and has undergone extensive therapy to understand why he
7 engaged in misconduct. The Court is confident that Petitioner will not again engage in the criminal
8 conduct which led to his summary disbarment. Furthermore, while Petitioner's loan applications
9 did contain inaccuracies, the Court finds that this adverse evidence was not sufficient to lower the
10 persuasiveness of Petitioner's evidence of rehabilitation and present moral qualifications for
11 readmission. (*In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894,
12 899.)

13 Thus, based on all the evidence and the findings of fact set forth above, the Court concludes
14 that Petitioner has established by clear and convincing evidence that he has passed a professional
15 responsibility examination, has present learning and ability in the general law, has been
16 rehabilitated, and has present moral qualifications for readmission.

17 **RECOMMENDATION**

18 The Court therefore recommends to the California Supreme Court that Petitioner be
19 reinstated to the practice of law upon payment of all appropriate fees and the taking of the oath
20 required by law.

21
22
23 Dated: August 19, 2004


ROBERT M. TALCOTT
Judge of the State Bar Court

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 August 20, 2004, I deposited a true copy of the following document(s):

DECISION ON PETITION FOR REINSTATEMENT, filed August 20, 2004

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

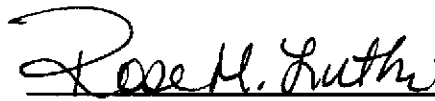
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

MICHAEL GERNER, ESQ.
10100 SANTA MONICA BLVD #800
LOS ANGELES CA 90067

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

JANET HUNT & ERIC HSU, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 20, 2004.



Rose M. Luthi
Case Administrator
State Bar Court