

FILED MARCH 6, 2006

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of

SAMUEL C. BELLICINI,

Petitioner for Reinstatement.

)
)
)
)

03-R-03728

OPINION ON REVIEW

The State Bar asks us to review the decision of a hearing judge recommending the reinstatement of petitioner Samuel C. Bellicini, who resigned with charges pending effective January 6, 1994, as a result of misconduct that occurred while he was addicted to alcohol. The State Bar contends that petitioner has neither demonstrated a meaningful recovery from alcoholism and gambling addiction nor established his rehabilitation in light of his past misconduct. Furthermore, the State Bar asserts that petitioner has not made timely restitution and that petitioner's failure to comply with California Rules of Court, rule 955, should preclude his reinstatement.

We commend petitioner's efforts since 2001 in making amends for his prior misconduct as well as his continued participation in Alcoholics Anonymous, the Other Bar, and other group therapy which has allowed him to remain in full remission from his alcohol addiction and gambling problem. Our independent review of the record (*In re Morse* (1995) 11 Cal.4th 184, 207) establishes that although petitioner is in recovery from the addictions that caused his ethical violations, petitioner's period of sustained exemplary conduct is insufficient to demonstrate his overall rehabilitation from his past misconduct. Therefore, we reverse the decision of the hearing judge recommending petitioner be reinstated to the practice of law in California.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Petitioner's Background and History of Substance Abuse

Petitioner was admitted to the practice of law on May 7, 1991. For a brief period, he worked as an associate for a law firm until his alcoholism caused him to be dismissed. Petitioner then established his own practice as a solo practitioner. Due to his unabated heavy drinking, he abandoned his law practice by October 1992. Thereafter, petitioner processed unlawful detainer matters as an independent contractor until he was dismissed again as a result of his alcoholism. By the time petitioner tendered his resignation with charges pending on September 28, 1993, his alcoholism had caused him to suffer unemployment, eviction, and homelessness.

Petitioner was not always disabled by alcoholism. During high school, petitioner excelled scholastically, winning numerous scholarships and public speaking awards. He also balanced school with work, initially as an assistant manager of a restaurant and thereafter as a file clerk with a small law firm in Oakland. But by the age of nineteen, petitioner began drinking.

While attending college, he would drink socially on a regular basis and noticed that he was able to drink substantially more liquor than his friends before getting drunk. Although petitioner's drinking resulted in hangovers, missed classes and missed days at work, it did not prevent him from obtaining a degree from the University of California at Berkeley and gaining admission to University of San Francisco School of Law.

While attending law school, petitioner developed friendships with individuals who drank as heavily as he did, further exacerbating his problem with alcohol. Although he performed well on his exams despite his hangovers and failure to attend classes, it was during law school that petitioner first began to suffer negative consequences due to his inability to control his drinking. These consequences included petitioner's increased belligerence with others, his increased financial recklessness to support a lifestyle that revolved around drinking, and his dismissal from

law review because his drinking caused him to miss deadlines. The negative consequences of petitioner's alcoholism accelerated after he graduated from law school.

Petitioner practiced law for only a brief period before his alcoholism caused him to commit multiple ethical violations, which ultimately led him to resign with disciplinary charges pending. We discuss in greater detail, *post*, petitioner's specific ethical misconduct. According to petitioner: "The State Bar had continued to seek me out to have me answer to the charges that my former clients and other professionals had filed against me. I had ignored these requests until, I believe, I received a notice in September 1993, stating something to the effect that I was either to appear and speak to the State Bar investigator, or the charges leveled against me would become the subject of a formal disciplinary proceeding. On Tuesday, September 28, 1993, I met with the State Bar investigator, and at that meeting I became convinced to resign from the State Bar. I signed the resignation he gave me that day."

Despite experiencing an event as significant as his resignation, petitioner still could not escape the grip of his alcoholism and continued to convince himself that he was not an alcoholic. He obtained temporary employment with a law firm as a calendar clerk, but his drinking led to absenteeism, and he was let go. Although he obtained other temporary employment as a calendar clerk, petitioner had begun gambling and was "entrenched in the ritual of getting drunk and losing what money [he] earned at the card tables, instead of paying rent." By the end of 1994, petitioner was penniless and living on the street.

Petitioner's parents allowed him to move in with them but only if he agreed to attend Gamblers Anonymous. Although petitioner attended Gamblers Anonymous meetings, they provided little benefit because petitioner continued to drink. Petitioner then moved out of his parents' home and began renting a room in a house. By March 1996, petitioner obtained permanent employment as a calendar clerk for a small law firm in San Francisco, but he quit that job by the end of the year for a higher-paying job as a paralegal. Petitioner also realized he did

not have much time left with the law firm because, according to petitioner, “my attendance was increasingly poor as a direct result of my alcohol abuse, and I lied to the office manager when confronted about my past as an attorney, a fact I did not disclose in applying for that job, but which was later discovered by an associate of the firm.”

In February 1997, shortly after beginning work as a paralegal, petitioner married his girlfriend, who was pregnant with his child. Petitioner continued to drink and gamble and also began drinking during lunch. Petitioner’s daily drinking adversely affected his job performance and he was dismissed in January 1998. During this year, petitioner filed for bankruptcy, but he did not include as dischargeable debts money he owed to former clients and lien holders because he intended at some point in the future to compensate them.

Petitioner took temporary jobs for over two years before a recruiter successfully placed him as executive assistant to the legal department of an internet company in September 2000. At this time, petitioner’s alcoholism reached a new plateau and he required at least one pint of hard liquor in order to get drunk. He became insubordinate on the job and his attendance and work performance deteriorated. By March 2001, general counsel for the company fired petitioner.

Rather than use this period of unemployment as an opportunity to address his alcoholism, petitioner began drinking in the mornings and throughout the day. During this time, petitioner drank between a pint and a quart of hard liquor daily. Since his wife remained employed, petitioner did not face the typical repercussions his alcoholism often caused, such as hunger, eviction or homelessness. Petitioner continued to ignore his drinking problem until his wife threatened to leave him and take their son.

To avoid abandoning his wife and child as he had abandoned his legal career, petitioner finally decided to seek counseling to combat his alcoholism. He took his last drink on May 14, 2001, and after many years of succumbing to his alcoholism, petitioner finally experienced his first full day of sobriety on May 15, 2001.

B. Petitioner's Misconduct

We must examine petitioner's evidence of rehabilitation in light of the misconduct which led to his resignation. (*Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403.) Petitioner is an admitted, though recovering, alcoholic, who, within a few years of becoming a licensed attorney, repeatedly failed to perform competently for his clients, misled his clients and others, ignored court orders and misappropriated entrusted funds. Due to petitioner's resignation, he was never formally charged or found culpable of ethical wrongdoing. The parties executed a "First Stipulation of Facts" which provided many of the details of the matters under investigation at the time petitioner resigned. The hearing judge made several factual findings and conclusions regarding petitioner's underlying misconduct, and we adopt, with modification, those findings and conclusions.

1. Client matters

In one matter, after petitioner retained \$2,962.20 in client funds for payment to a client's doctor, petitioner failed to make that payment and instead used the funds to gamble and purchase alcohol. Thereafter, in order to postpone a lawsuit, he repeatedly misrepresented to the client's doctor that he intended to provide payment. In another case, petitioner failed to perform any work, resulting in the entry of default against his client. Petitioner also failed to refund \$200 in advanced attorney fees and misrepresented to the client that he would seek to set aside the default and pay any associated costs. In a third matter, petitioner again failed to perform competently, resulting in entry of default against another of his clients. In a fourth matter, petitioner improperly withdrew from employment when he abandoned a client. In a fifth matter, petitioner failed to promptly pay \$358 to a client's doctor and converted the funds for his own personal use. Thereafter, petitioner misrepresented to the client's doctor that he had mailed the funds. In a sixth matter, petitioner failed to perform competently, resulting in a small claims judgment against his client. Petitioner then lied to the client about pursuing an appeal of the judgment and

thereafter abandoned the client. Petitioner also failed to cooperate with the State Bar when he did not respond to several letters the Client Security Fund sent him asking for a response to the client's claim. Finally, in a seventh matter, petitioner failed to comply with court orders requiring him to pay sanctions.

2. Noncompliance with Rule 955

On December 7, 1993, the Supreme Court filed an order¹ accepting petitioner's resignation and ordered him to comply with California Rules of Court, rule 955.² Petitioner did not file a rule 955 affidavit by the required date. He described this point in his life as having "bottomed out" due to his alcoholism. Petitioner expressed regret for not having filed a rule 955 affidavit. He explained that because he had been evicted from his home and had relinquished the legal career he had worked several years to obtain, he found himself in a state of hopelessness and despair. According to petitioner, his only desire at this point in his life was to forget the past. At the time, petitioner neither had any clients nor possessed any client property. At oral argument, petitioner contended that his failure to file a rule 955 affidavit is not fatal to his petition for reinstatement. Nevertheless, it is troubling that petitioner still has not filed the 955 affidavit in compliance with the Supreme Court order.

C. Petitioner's Rehabilitation

Petitioner accepted full responsibility for the ethical misconduct he committed prior to his resignation and expressed remorse for the harm he caused his former clients as a result of his inability to represent them properly. When petitioner committed the misconduct that led to his

¹In accordance with Evidence Code section 452, subdivision (d), we take judicial notice of the Supreme Court's order.

²Unless otherwise noted, all further references to "rule 955" are to California Rules of Court, rule 955. Subdivision (c) of this rule provides "the member shall file with the Clerk of the State Bar Court an affidavit showing that he or she has fully complied with those provisions of the order entered pursuant to this rule."

resignation, he was suffering from the effects of his active alcoholism. As previously noted, petitioner stopped drinking alcohol and experienced his first day of sobriety on May 15, 2001, almost eight years after he tendered his resignation and after his wife threatened to leave with their son. Three days later, petitioner enrolled in a two-year Chemical Dependency Recovery Program (CDRP) offered through Kaiser Permanente. While participating in CDRP, petitioner received intensive education on the physiological and emotional bases of alcoholism and attended almost daily group therapy sessions and weekly individual visits with a psychologist in order to refrain from drinking.

Two months into treatment, petitioner's wife and son were away on vacation and the stress of being alone made petitioner want to begin drinking again. He attended his scheduled session with his therapist that day and confided that he felt helpless to stop himself from binge drinking. That day, petitioner's therapist referred him to Alcoholics Anonymous (AA), a fellowship of men and women who assist one another to stay sober. Petitioner attended AA, and through the support of group members found the strength to avoid taking a drink that day.

During the summer of 2001, petitioner regularly attended AA meetings seven to fourteen times per week in addition to his CDRP sessions. By fall 2001, petitioner fully acknowledged he was an alcoholic and began reaching out to members of his AA home group. For approximately one year thereafter, petitioner was unemployed but continued to attend CDRP and AA meetings regularly. Petitioner also served as a secretary and treasurer for his AA home group, which required him to account for cash contributed during meetings and to distribute those funds to pay for expenses such as refreshments and rent for the group's meeting room. In May 2002, petitioner also began attending weekly meetings of the Other Bar, an organization of recovering lawyers and judges providing support to members of the legal profession with substance abuse problems.

By fall of 2002, petitioner's wife separated from him. Despite this stressful event, petitioner did not relapse and drink alcohol. Instead, petitioner successfully lived on his own, remained gainfully employed, paid his bills, and provided child support. Petitioner testified that this was a turning point for him because he realized he could maintain responsibilities to others, he was less concerned of what others thought about him and he began developing friendships based on enjoying someone's company rather than for the purpose of drinking.

Petitioner has had two jobs since he and his wife reconciled in April 2003. The first was as an executive assistant to general counsel with DHL. The company relocated out of state and petitioner chose not to follow. Currently petitioner works with the law department at the U.S. Postal Service and shortly before trial in this matter, he was promoted to paralegal. Petitioner describes his relationship with his wife as stable, as evidenced by the fact that they purchased their first home together and opened their first joint checking account. Petitioner has also made amends with his parents. According to petitioner, his parents enjoy having him around now because he no longer causes them pain or worry. Also, his parents gave him the money he needed to pay restitution.

Presently, petitioner continues weekly therapy in an alumni group for graduates of CDRP. He also volunteers monthly to discuss with newly-sober patients in CDRP how he successfully maintains sobriety. Petitioner also attends weekly meetings of the Other Bar and AA. Additionally, petitioner is sponsoring someone in his AA home group and volunteers monthly with AA teleservice, an answering service that provides limited consultation and information regarding AA.

In July 2003, with money given to him by his parents, petitioner paid restitution to the doctors who remained unpaid for services provided to petitioner's clients, refunded advanced fees, paid sanctions imposed due to his misconduct, and reimbursed CSF. Petitioner's efforts to locate one of his former clients in order to refund unearned fees have to date been unsuccessful.

D. Reinstatement Proceedings

Petitioner filed his petition for reinstatement on September 17, 2003. A multi-day hearing commenced on August 24, 2004. Petitioner and eight witnesses, including his treating physician and three attorneys, testified on his behalf.

Dr. Kate Riley is a clinical psychologist and petitioner's treating medical professional. She has worked with petitioner since May 2001 as an addiction counselor through CDRP. She testified that when petitioner initially met with her, he was arrogant and defensive because he was convinced he did not have an alcohol problem and therefore was not receptive to help. She observed that when petitioner initially came in for treatment, he had a fantasy about being a sophisticated, debonair person who drank and smoked. However, his actual image of himself did not fit his fantasy, causing conflict in his work and personal life. Petitioner made a breakthrough when, shortly after beginning treatment, he acknowledged he was an alcoholic and began seeking treatment for "everything." Dr. Riley observed that through the course of two years of treatment, petitioner became less reliant on external sources of self-esteem, replacing them with internal or interpersonal sources. This allowed petitioner to develop an image of himself more congruent with who he actually is. After completion of the two-year program, she observed a major character shift in petitioner, noting that he is honest, willing to apply self-scrutiny, willing to ask for help, and willing to take suggestions and advice from others.

Dr. Riley explained that individuals who are in recovery for under two years are in partial remission. She further explained that after two years, if CDRP participants have experienced significant changes in their interpersonal and occupational function as well as their leisure activities and family relationships, they are in full sustained remission. She observed that petitioner is capable of having fun and relaxing now, which indicates he has replaced chemical pleasures with clean and sober life pleasures. According to Dr. Riley, petitioner is a model patient who experienced no relapses and is in full sustained remission. She stated that he is not

disabled by alcohol dependency, pathological gambling, or lower-grade depression (dysthymia). She stated petitioner has a good prognosis for continued sobriety even if he experiences significant stressors because he is more stable and has taken an active role in his recovery by participating in AA and the Other Bar and by developing close friendships with other recovering individuals.

In rebuttal, the State Bar presented Dr. James R. Westphal, an expert in addiction psychiatry, who in the last four to five years has been working with patients exhibiting psychiatric problems combined with substance abuse. He examined petitioner to evaluate any psychiatric and substance use disorders in relation to petitioner's ability to practice law. According to his report, petitioner's pathological gambling and alcohol dependency are in sustained full remission and petitioner's dysthymia is in remission. He further reported that petitioner is not currently disabled by his alcohol dependency, pathological gambling or dysthymia.

Dr. Westphal testified that for individuals who are alcohol dependent, studies have shown that five years of sobriety is the point where recovery is considered solid because if a person achieves sobriety for that length of time, he is more likely to remain sober than not. He testified that in a case where there are multi-impulsive disorders, such as petitioner's gambling and alcohol addiction, he believes there is a greater risk of relapse but he could not quantify that risk. For this reason, he recommended that petitioner "will need sobriety support and monitoring for relapse of his alcohol dependency and pathological gambling for several more years."

Despite this recommendation, Dr. Westphal testified that petitioner has done a good job in his recovery and has accomplished what is necessary in terms of recovery. Furthermore, he acknowledged several factors existing in petitioner's case that would reduce his risk of relapse, such as active participation in AA, participation in the Other Bar, decreased resistance to treatment, increased level of self-esteem, and termination of friendships with drinkers. He also

acknowledged that petitioner's handling of other people's money and his continued sobriety despite his marital separation are indicators of petitioner's decreased risk of relapse.

The hearing judge filed her decision on December 21, 2004, concluding that petitioner had demonstrated by clear and convincing evidence that he was rehabilitated, that he had the requisite ability and learning in the general law and that he possessed the moral qualifications for reinstatement to the practice of law, which the judge recommended. The State Bar here seeks review of that decision and recommendation.

II. DISCUSSION

A. Requirements for Reinstatement

Although petitioner resigned with disciplinary charges pending, he must meet the same requirements for readmission as if he were disbarred. (*In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546, 552.) In order to be reinstated, petitioner must pass a professional responsibility examination, demonstrate rehabilitation and present moral qualifications and establish present ability and learning in the general law. (Cal. Rules of Court, rule 951(f).) Furthermore, to prove rehabilitation, "a petitioner needs to show a recognition of his or her wrongdoing" (*In the Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668, 674.) Ultimately, our decision must turn on whether petitioner has shown proof of "sustained exemplary conduct over an extended period of time." (*In re Petty* (1981) 29 Cal.3d 356, 362) Although petitioner resigned in 1993, he continued to drink alcohol until he enrolled in a recovery program in 2001. As discussed in greater detail, *post*, we measure petitioner's rehabilitation from this point.

B. Present Ability and Learning in the General Law

The hearing judge found that petitioner had demonstrated by clear and convincing evidence that he possesses the requisite ability and learning in the general law. Petitioner passed the Professional Responsibility Examination in August 2003, he recently completed

approximately 24 hours of continuing legal education covering a wide variety of topics such as business law, employment law, jury instructions, and client trust accounting, and he subscribed to a legal newspaper. The State Bar does not contest petitioner's present ability and learning in the general law, and upon our independent review of the record, we find no reason to question his legal abilities.

C. Petitioner's Burden of Proof Regarding Rehabilitation

Petitioner bears a heavy burden of proving his rehabilitation. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1091.) Moreover, petitioner's evidence of present good character must be considered in the light of his prior misconduct, which in this case was very serious. (*In the Matter of Rudman, supra*, 2 Cal. State Bar Ct. Rptr. at p. 553.) However, the law favors rehabilitation, and even egregious past misconduct does not preclude reinstatement. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 316.)

D. Petitioner's Evidence

1. Good character witnesses

The hearing judge found "Petitioner's character witnesses also help demonstrate Petitioner's rehabilitation and good moral character." We agree. "[C]haracter testimony, however laudatory, does not alone establish the requisite good character." (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 939.) We have nevertheless observed that "in determining whether an erring attorney has proved rehabilitation and present moral qualifications, the California Supreme Court has heavily weighed 'the favorable testimony of acquaintances, neighbors, friends, associates, and employers with reference to their observation of the daily conduct and mode of living' of such an attorney. [Citations.]" (*In the Matter of Brown, supra*, 2 Cal. State Bar Ct. Rptr. at pp. 317-318.)

Seven character witnesses testified on petitioner's behalf, including three attorneys. Most were aware of the serious nature of petitioner's misconduct, by virtue of reading the pretrial

statements of the parties and the “First Stipulation of Facts.” All of these witnesses have known petitioner only since he entered recovery and are acquainted with him through AA, the Other Bar or CDRP. They uniformly attested to petitioner’s good character and honesty. Most of these witnesses “gave specific, convincing reasons for holding favorable opinions of petitioner’s rehabilitation or present moral fitness.” (*In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459, 465.) For instance, Gilbert Kirwin, an attorney who has been practicing law for 38 years and who has been involved with the Other Bar for 27 years, has met many alcoholics in various stages of recovery and believes petitioner is fit to resume the practice of law primarily because of the humility petitioner displays. Edwin T. Caldwell, an attorney for almost 40 years who is on the state oversight committee for the Lawyers Assistance Program, has been observing alcoholic lawyers for 26 years and considers petitioner to be one of the great examples of a person who has reversed his life in all aspects and has a character that is above reproach. And Robert Resner is an attorney and independent consultant for the Other Bar who has observed several thousand alcoholics in recovery. He believes petitioner truly wants recovery because he is open and honest about what he has done in his past, expressed regret about it, and is doing what he can to make amends for it in order to lead a better life. He has also observed that petitioner’s relationship with his family has improved substantially.

Favorable testimony from members of the bar and members of the public of high repute is entitled to considerable weight. (*In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423, 431.) Accordingly, we give significant weight to the testimony of judges and officers of the court because “These witnesses have a strong interest in maintaining the honest administration of justice.” (*In the Matter of Brown, supra*, 2 Cal. State Bar Ct. Rptr. at p. 319.)

The State Bar argues that petitioner’s character evidence should be discounted since his witnesses do not constitute a wide range of references necessary to establish rehabilitation, none knew petitioner before he entered recovery from his alcoholism, and they were not familiar with

the extent of petitioner's misconduct. We reject the State Bar's last contention as unsupported by the record. We see no shortcoming in using the parties' pretrial statements and stipulation to apprise the character witnesses of petitioner's acts that led to his resignation, particularly when no formal charges were ever filed against petitioner.

"It is the cumulative effect of a cross-section of witnesses with varying relationships to the petitioner that paints a picture of his present character." (*In the Matter of Brown, supra*, 2 Cal. State Bar Ct. Rptr. at p. 319.) We do not agree with the State Bar that such evidence should be discounted. The absence of character testimony or reference letters from petitioner's family members or employers is unfortunate, but it does not reduce the importance of the attorneys who testified on his behalf and whose character testimony is significant in reinstatement proceedings and entitled to considerable weight. (*Id.* at p. 318.) We also see no reason to discount the weight given to petitioner's remaining character witnesses since they all had recent, close contact with petitioner which qualifies them to reflect on his present moral qualifications. (See *In the Matter of Miller, supra*, 2 Cal. State Bar Ct. Rptr. at pp. 431-432.)

The State Bar did not present rebuttal evidence to the favorable character references. But even this quality and quantity of favorable character evidence are not determinative of petitioner's rehabilitation. (*In the Matter of Salant* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 1, 5.) We accordingly look to other factors as indicia of petitioner's rehabilitation and present moral character.

2. Community service

We agree with the hearing judge's finding that petitioner's charitable work is a factor supporting his reinstatement. Although the hearing judge only noted that petitioner volunteers monthly to discuss with newly-sober patients in recovery how to maintain sobriety, we find that petitioner's work through AA in sponsoring a recovering alcoholic and volunteering monthly with AA teleservice also aid his rehabilitative showing.

3. Restitution

Unquestionably, we consider evidence of restitution for “its probative value as an indicator of rehabilitation” (*Hippard v. State Bar, supra*, 49 Cal.3d 1084, 1093.) The State Bar takes issue with the fact that petitioner waited almost ten years after he resigned before he made restitution and that he made no restitution during the first two years he was in recovery. We do not find that such facts detract from petitioner’s showing of rehabilitation, since petitioner continued to suffer from alcoholism for more than eight years after he resigned and was unemployed for approximately one year after he entered recovery.

The State Bar argues that petitioner merely provided restitution in anticipation of reinstatement contending that he “has been *able* to make restitution for a long time.” Although it is clear that petitioner immediately embarked on his restitution efforts once his parents provided him the funds to do so, there is no evidence in the record that petitioner actually had the means to provide restitution any sooner than July 2003. We note that the Supreme Court has given favorable consideration to restitution even in circumstances involving external pressures to pay such as court orders and agreements with victims. (*In the Matter of Miller, supra*, 2 Cal. State Bar Ct. Rptr. at pp. 429-30, and cases cited therein.) Moreover, reinstatement has been granted in cases where there has not been full and complete restitution, provided a petitioner has demonstrated an attitude of earnestness and sincerity. (*Resner v. State Bar* (1967) 67 Cal.2d 799.)

“[R]estitution is neither mandatory, nor in and of itself determinative of rehabilitation. [Citation.] Applicants for reinstatement are to be judged not solely on the ability to make restitution, but by their attitude toward payment to the victim. [Citations.]” (*In the Matter of Distefano, supra*, 1 Cal. State Bar Ct. Rptr. at p. 674.) Although we cannot determine from this record whether petitioner truly had the financial means to pay restitution much earlier, the record is far more clear and convincing with respect to petitioner’s attitude toward the importance of

restitution. When petitioner declared bankruptcy, he voluntarily chose not to discharge debts owed to creditors who were former clients or lienholders in client matters. This, coupled with petitioner's full reimbursement to all but one of his victims, who cannot be presently located, adequately demonstrates a proper attitude and sincerity toward restitution. (*In re Andreani* (1939) 14 Cal.2d 736, 750.) Therefore, we do not find that the timing of petitioner's restitution detracts from his rehabilitative showing.

4. Recovery from alcohol and gambling addictions

Because petitioner has been drinking since age nineteen and has multiple addictions which led to serious misconduct, the State Bar contends that petitioner must show a lengthy recovery period greater than the 39 months of sobriety he has maintained from May 15, 2001, to the time of trial on August 24, 2004. The State Bar therefore argues petitioner has not demonstrated a meaningful and sustained recovery from his alcoholism and gambling. As the Supreme Court held in *Gary v. State Bar* (1988) 44 Cal.3d 820, 828, in establishing rehabilitation from his addictions, petitioner must give us strong "assurance that his longstanding addiction[s] [are] permanently under control" Furthermore, we recognize that where alcohol abuse was addictive in nature and causally contributed to professional misconduct, "the requisite length of time to show 'meaningful and sustained' rehabilitation will vary from case to case." (*In re Billings* (1990) 50 Cal.3d 358, 368.)

As previously noted, the State Bar's expert testified that for individuals dependent on alcohol alone, the risk of relapse becomes relatively minimal at five years, but for individuals with alcohol dependency and pathological gambling, he believed there is a greater risk of relapse which he could not quantify. Beyond referring to its expert's testimony, the State Bar provides no authority as to what period of sobriety would be sufficient for petitioner to establish rehabilitation from his alcoholism and gambling problem. Our review of case authority reveals but one case, *In the Matter of Kirwan* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 692

(*Kirwan*), which addressed the issue of rehabilitation from alcohol abuse within the context of a reinstatement proceeding. (Cf. *In the Matter of Salyer* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 816 [Reinstatement granted where petitioner, who resigned with charges pending after felony embezzlement conviction attributable to methamphetamine addiction, established 17-year abstinence from methamphetamine use].) We did not address whether *Kirwan* had been sober for a sufficiently long period. Instead, the issue in *Kirwan* was whether we could be confident that his seven years of sobriety would continue absent any ongoing participation in a recovery program or psychological counseling. Here, in contrast, petitioner presented evidence of his ongoing, extensive involvement with and participation in AA, the Other Bar, and the CDRP alumni group, all of which provide additional outside support to assist petitioner with his efforts to maintain sobriety. Thus, the question in the present matter is one not addressed in *Kirwan* – whether the length of time of petitioner’s sobriety is sufficient for us to be very confident that his sobriety will continue.

In considering this issue, we observe that petitioner has completed a structured recovery program and has led a stable and productive life evidenced by his consistent employment since entering sobriety as well as the successful purchase of his first home and reconciliation with his wife and parents. Several other factors – such as petitioner’s increased level of self-esteem, his termination of friendships with others who drink, his failure to relapse despite a marital separation, and his honest handling of money – also militate in favor of petitioner’s continued sobriety. Even more compelling is the fact that both experts testified that petitioner’s addictions are in sustained full remission with one expert further opining that petitioner has a good prognosis for continued sobriety even if he experiences significant stressors in the future. For these reasons, there is substantial likelihood that petitioner’s sobriety will continue.

5. Petitioner's overall rehabilitation

The State Bar contends that in light of petitioner's past wrongdoing, he failed to demonstrate exemplary conduct over an extended period of time. We agree. Although we find that petitioner is in recovery from alcoholism and gambling, on this record we do not find that petitioner "demonstrated his overall rehabilitation by clear and convincing evidence." (See *In re Menna* (1995) 11 Cal.4th 975, 988 [when weighed against the enormity of past misconduct, recovery from gambling addiction did not necessarily justify admission].) In seven client matters over approximately a two-year period, petitioner repeatedly failed to perform competently, abandoned clients, failed to distribute client funds promptly, made misrepresentations to clients or lienholders, and misappropriated \$3,320.20 in entrusted funds in order to gamble and purchase alcohol. Furthermore, he failed to refund unearned fees, disobeyed court orders, and failed to cooperate with CSF. After resigning, he failed to comply with the Supreme Court's order to file a 955 affidavit. Approximately three years after resigning, petitioner admittedly lied to a former employer about his past as an attorney. Not until mid-May 2001, almost eight years after he tendered his resignation, did petitioner begin to seriously address his addictions so that he could take responsibility for his misconduct and hold himself accountable to those he had harmed.

The hearing judge found that petitioner's misconduct occurred more than ten years ago and concluded that petitioner was rehabilitated from his past wrongdoing based on the passage of an appreciable period of time. We do not adopt this finding since it fails to account for petitioner's continued alcohol and gambling-related misbehavior that continued until at least May 2001. Since petitioner's continued misconduct related to his abuse of alcohol and his gambling negatively reflected on his moral character, we find, instead, that petitioner's first day of sobriety is the point when petitioner began his rehabilitation in earnest insofar as the practice of law is concerned. It is from this point that we measure his overall rehabilitation in light of his past wrongdoing. Thus, the question before us is not whether the passage of time since petitioner

failed to file a rule 955 affidavit should be considered in establishing his rehabilitation but whether petitioner's 39-month period of sustained exemplary conduct from mid-May 2001 to the date of trial in this matter is sufficient to demonstrate his overall rehabilitation given the seriousness of his past misconduct. For the reasons described below, we conclude it is not.

As we previously noted, to establish rehabilitation, petitioner must show by clear and convincing evidence "sustained exemplary conduct over an *extended period of time.*" (*In re Petty, supra*, 29 Cal.3d at p. 362, italics added.) Petitioner erroneously relies on the fact that his "misconduct is over 10 years old" to support the assertion that his demonstrated period of sustained exemplary conduct sufficiently establishes rehabilitation from his prior wrongdoing. Petitioner cites no authority in which reinstatement was granted to a petitioner who demonstrated only approximately three years of exemplary conduct but argues that reported cases which require longer periods of rehabilitation involved misconduct far more serious than his own.

Our holding in *In the Matter of Miller, supra*, 2 Cal. State Bar Ct. Rptr. 423 (*Miller*) contradicts petitioner's contention. Miller resigned after he misappropriated more than \$86,000 from an estate over a six-year period. After resigning, Miller completed some pro bono and volunteer work and occupied positions of fiduciary trust as an estate administrator and trustee, all without impropriety. He also provided complete restitution prior to filing his petition. We concluded that the evidence in *Miller* suggested that his misconduct was aberrational because Miller practiced law without misconduct for at least 37 years, and it was undisputed that he provided extensive pro bono work during his legal career. Evidence of rehabilitation also included four letters of reference and the testimony of five favorable character witnesses consisting of three attorneys, a municipal court judge, and a state appellate justice. We recommended Miller's reinstatement after concluding that his five and one-half years of sustained exemplary conduct between the time the Supreme Court accepted his resignation and the time he filed his petition for reinstatement was sufficient to establish his rehabilitation.

As in *Miller*, petitioner has paid or attempted to pay restitution, has completed some volunteer work and has successfully occupied a position of trust without incident. He has also presented favorable character witnesses as evidence of his rehabilitation. Similarly, petitioner's misconduct involves the misappropriation of entrusted funds. Although petitioner's misappropriations do not approach the magnitude of that in *Miller*, we consider petitioner's misconduct just as serious, if not more so, due to the extent of his ethical breaches, his multiple acts of deceit which continued post-resignation, his repeated disregard for court orders, including one from our Supreme Court, and the number of clients he harmed through incompetent performance or outright abandonment.

Even though Miller's misconduct was not the result of an addiction, Miller's 37-year legal career without prior misconduct and his extensive pro bono work were strong evidence that his misconduct was aberrational. Because petitioner practiced law for only 28 months before resigning and because he suffered multiple addictions during his entire legal career, we cannot conclude, as we did in *Miller*, that petitioner's misconduct is aberrational. Given the facts that petitioner's misconduct is as serious as that in *Miller* and that we cannot conclude that his misconduct was aberrational, we believe that petitioner's period of sustained exemplary conduct should, at a minimum, match that in *Miller*.

Because of the paucity of reinstatement cases addressing the issue at hand, we also consider published reinstatement decisions from other jurisdictions involving misconduct related to alcohol abuse. All of these cases support our conclusion that petitioner has not shown sustained exemplary conduct over an extended period of time sufficient to establish his rehabilitation. One such case is *In re Moynihan* (1989) 113 Wash.2d 219 [778 P.2d 521] which involved an attorney who was disbarred for neglect of client matters, misappropriation of client funds totaling approximately \$5,100 and failure to cooperate with the disciplinary investigation. Moynihan's misconduct was attributed to his excessive alcohol use which began at age 14 and

continued throughout college, law school and his practice. Moynihan completed in-patient treatment for his alcoholism, and attended weekly AA meetings as well as weekly meetings with recovering alcoholic attorneys and judges. When Moynihan petitioned for reinstatement, he had been disbarred for approximately seven years and had abstained from alcohol for almost eight years. The Washington Supreme Court concluded that Moynihan clearly and convincingly demonstrated his rehabilitation worthy of reinstatement.

In re Chantry (1974) 84 Wash.2d 153 [524 P.2d 909] involved an attorney who was disbarred for misappropriating approximately \$1100 in client funds and abandoning another client. Restitution was made shortly after disbarment. The attorney was deeply involved in marital and alcohol problems in the years prior to and during his disbarment. Like petitioner, Chantry did not immediately enter sobriety after losing his right to practice law. At the time the Washington Supreme Court granted Chantry's petition for reinstatement, almost nine years had elapsed since his disbarment, and he had been sober for over six years.

In *In re McDonnell* (1980) 82 Ill.2d 481 [413 N.E.2d 375], McDonnell agreed to have his name stricken from the roll of attorneys following his convictions for conspiracy to transport stolen securities and failure to file income tax returns. When the criminal offenses occurred, McDonnell had a serious drinking problem and gambled. Approximately three years after his name was removed from the roll of attorneys, McDonnell filed a motion for reinstatement which was denied. Nine years following removal of his name from the roll of attorneys, McDonnell again petitioned for reinstatement. This time, based on petitioner's regular attendance at AA meetings and the testimony of his treating physician, the Illinois Supreme Court determined that McDonnell had provided clear and convincing evidence of his rehabilitation and fitness to practice law.

In *In Matter of Reinstatement of Pierce* (1996) 1996 OK 65 [919 P.2d 422], an attorney who resigned with charges pending after pleading guilty to eleven drug-related felony charges

petitioned for reinstatement six years later. Despite having been sober from drugs and alcohol for over six years, the Oklahoma Supreme court found that the petitioner failed to present clear and convincing evidence of rehabilitation in light of the seriousness of the underlying misconduct, and denied the petition.

In *In Matter of the Reinstatement of Hanlon* (1993) 1993 OK 159 [865 P.2d 1228], an attorney who was disbarred due to a drug conviction applied for reinstatement ten years later. The attorney asserted that his problems stemmed from alcohol abuse, but despite four years of sobriety, his petition was denied due to inadequate evidence showing rehabilitation. (See also *Petition of Trygstad* (S.D. 1989) 435 N.W.2d 723 [where attorney led exemplary life and abstained from use of alcohol and drugs for a period of five years since release from prison after being disbarred for conviction of conspiracy to distribute cocaine, and where misconduct was related to substance abuse, reinstatement denied because rehabilitative effort was insufficient to re-establish good moral character in light of gravity of misconduct]; *In re Batali* (1983) 98 Wash.2d 610 [657 P.2d 775] [petition for reinstatement granted approximately eight years after disbarment for significant client misappropriations stemming from petitioner's abuse of alcohol]; *Application of Gavin* (1979) 415 N.Y.S.2d 1020 [petition for reinstatement granted seven years after petitioner was disbarred for misconduct committed while petitioner was suffering from acute alcoholism.]; *In re Johnson* (1979) 92 Wash.2d 349 [597 P.2d 113] [petition for reinstatement granted eleven years after disbarment for conviction of grand larceny arising out of mishandling of a guardianship estate which was primarily caused by petitioner's alcoholism that was successfully controlled for approximately five years at time of reinstatement].) As these cases reveal, when serious ethical misconduct is attributable to alcoholism, the period of exemplary conduct necessary to sufficiently establish rehabilitation exceeds the 39-month period petitioner has maintained. Given the extent of his prior wrongdoing and addictions, we find that petitioner's period of exemplary conduct is insufficient to establish his overall rehabilitation.

6. Compliance with Rule 955

The State Bar also argues that petitioner should be denied reinstatement because of his ongoing failure to comply with rule 955. Without diminishing the importance of compliance with rule 955 (See, e.g. *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219, 227), because we have decided not to recommend petitioner's reinstatement based on an insufficient period of sustained exemplary conduct, we need not reach the rule 955 issue.

III. CONCLUSION

We commend petitioner's efforts in overcoming his addictions that caused him to commit serious ethical violations early in his legal career and which plagued him for many years thereafter. Having viewed the evidence in its totality, we conclude that petitioner's rehabilitative showing is insufficient at this time to establish his overall rehabilitation from his past misconduct over an extended period of time. Nevertheless, we find petitioner's significant efforts to rehabilitate himself constitute good cause within the meaning of Rules of Procedure of the State Bar of California, rule 662(d) and accordingly order that a subsequent petition may be filed one year after the effective date of this opinion. The hearing judge's decision recommending that petitioner be reinstated to the practice of law in the State of California is hereby reversed, and the petition for reinstatement is denied.

WATAI, J.

We concur:

STOVITZ, P.J.

EPSTEIN, J.

Case No. 03-R-03728

In the Matter of Samuel C. Bellicini

Hearing Judge

Hon. Patrice E. McElroy

Counsel for the Parties

For State Bar of California:

**Donald R. Steedman
Office of the Chief Trial Counsel
The State Bar of California
180 Howard Street
San Francisco, CA 94105-1639**

For Respondent:

**Jerome Fishkin
369 Pine St., Suite 627
San Francisco, CA 94104**