

1 **B. Petitioner's Misconduct Leading to Disbarment**

2 Petitioner has three prior disciplinary matters and one disciplinary matter that was
3 pending with the State Bar at the time of his disbarment.

4 **1. Misrepresentation to the court and failure to comply with court order**

5 In the first prior disciplinary matter, on June 22, 1993, in California Supreme Court case
6 no. S032294 (State Bar Court case nos. 91-O-07773 and 92-J-13990), the Supreme Court
7 suspended Petitioner for three years, execution stayed, on condition of three years probation,
8 including two years actual suspension and until he showed proof satisfactory to the State Bar
9 Court of his rehabilitation, fitness to practice and learning and ability in the law pursuant to
10 standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct. The
11 discipline imposed was a result of a default trial.

12 In case no. 91-O-07773, Petitioner was culpable of wilfully committing an act of
13 dishonesty within the meaning of section 6106 of the Business and Professions Code, and
14 violating rule 5-200(A) and (B) of the Rules of Professional Conduct, by intentionally
15 misrepresenting to a judge in the Los Angeles Superior Court in October 1991 that he was in trial
16 in the Riverside Superior Court, and therefore, needed a continuance in the Los Angeles case.
17 Respondent was not in trial in Riverside at the time he made the representation and he made the
18 misrepresentation in order to obtain a continuance in the Los Angeles case.

19 In case no. 92-J-13990, it was determined that Petitioner's discipline before the United
20 States Claims Court warranted the imposition of discipline in California. In particular, Petitioner
21 represented a plaintiff in a case that was dismissed by the Claims Court on the grounds of lack of
22 prosecution. Thereafter, the Claims Court issued an order directing Petitioner to pay the United
23 States (i.e., defendants in the case) \$83.50 in costs and \$3,752.42 in attorney fees. After
24 Petitioner failed to pay pursuant to the order, the Claims Court issued an order directing
25 Petitioner to show cause why he should not be disbarred from practice before that court.
26 Petitioner failed to respond to the OSC and was disbarred by the Claims Court on May 26, 1992.
27 Based on his misconduct before the Claims Court, Petitioner was found to have violated section
28 6103 of the Business and Professions Code based on his failure to comply with a court order.

1 **2. Failure to comply with conditions of probation**

2 In the second disciplinary matter, on June 10, 1994, in California Supreme Court case no.
3 S032294 (State Bar Court case no. 93-PM-18554), the Supreme Court revoked Petitioner's
4 probation, lifted the previously ordered stay of execution, and actually suspended Petitioner for
5 three years and until he showed proof satisfactory to the State Bar Court of his rehabilitation,
6 fitness to practice and learning and ability in the law pursuant to standard 1.4(c)(ii) of the
7 Standards for Attorney Sanctions for Professional Misconduct. The Supreme Court also ordered
8 that Petitioner be placed on five years probation. The discipline was imposed as a result of
9 Petitioner's failure to file written quarterly reports and his failure to update his membership
10 records address with the Probation Unit. Petitioner defaulted in the proceeding.

11 **3. Failure to comply with rule 955 and resulting disbarment**

12 In the third prior disciplinary matter, on September 7, 1994, in California Supreme Court
13 case no. S040669 (State Bar Court case no. 93-N-19302), the Supreme Court ordered that
14 Petitioner be disbarred from the practice of law based on his failure to comply with rule 955 of
15 the California Rules of Court as required pursuant to the Supreme Court's order in case no.
16 S032294 (State Bar Court case nos. 91-O-07773 and 92-J-13990). Once again, Petitioner was
17 ordered to comply with rule 955. Petitioner failed to participate in the proceeding.

18 **4. The Lundy matter**

19 At the time of his disbarment, State Bar Court case no. 93-O-13807 was pending, which
20 alleged that after filing a complaint on behalf of a client (Robert Lundy) in a personal injury
21 matter in July 1986, Petitioner failed to act competently, improperly withdrew from employment
22 and failed to keep his client reasonably informed of significant developments. While Petitioner
23 was still attorney of record, the personal injury matter was dismissed in February 1992 based on a
24 failure to prosecute. On September 21, 1994, the State Bar disciplinary matter was dismissed
25 without prejudice due to Petitioner's disbarment.

26 Petitioner did not know about the Lundy complaint to the State Bar until a few weeks
27 before his reinstatement hearing. He acknowledges that he failed to complete the services for
28 which he was hired. He recalls that he was having enormous difficulty with the client. Although

1 they prevailed at arbitration, Lundy was unhappy with the amount and Petitioner requested a trial
2 de novo. As the case approached trial, Petitioner recalls that he told Lundy he did not want to
3 take it to trial and that Lundy should get another attorney. Petitioner thought that Lundy had
4 found another attorney, but acknowledges that he did not take the appropriate steps to substitute
5 out or to protect the rights of his client. Petitioner believes that he would have told his client if
6 the matter was dismissed for failure to prosecute, but Petitioner does not recall learning at the
7 time that the case was dismissed.¹ These events occurred around late 1991 and early 1992 when
8 Petitioner was having significant personal problems.

9 **C. Petitioner's Battle with Depression and Anxiety**

10 Starting in the fall of 1990 to the beginning of 1992, Petitioner experienced several
11 significant events in his life that negatively impacted his mental state, including the death of five
12 people in his life and two car accidents. As a result of these events, Petitioner experienced
13 depression and anxiety that contributed to Petitioner's professional problems.

14 After the deaths of a cousin in the fall of 1990 and an uncle in the first part of 1991,
15 Petitioner started to struggle with the normal daily activities of life. Although he felt that he
16 should have been able to mourn the loss of his family members and move on, he found he was
17 having difficulty concentrating and remembering things.

18 Then, in about June 1991, Petitioner was in an automobile accident in which he sustained
19 injuries. Due to the pain in his neck and lower back, Petitioner's doctor prescribed pain
20 medication and muscle relaxants. Following the accident, Petitioner found it difficult to function
21 in the office for several months.

22 In August 1991, a very close friend of Petitioner's was shot and killed during an aborted
23 robbery. Petitioner was shocked and horrified by the murder, and his feelings of depression
24 deepened. About a month later, two more people in Petitioner's life died: a good friend with
25 whom Petitioner had previously practiced law and the father of one of Petitioner's close friends.

26
27 ¹The State Bar alleged that the case was dismissed on February 26, 1992. Petitioner testified that
28 he closed his law office in February 1992 and failed to update his address with the courts and the State
Bar.

1 Petitioner attended all five funerals in little over a year and was not prepared for the
2 emotional reaction he experienced. By late 1991, he felt like he was in a constant state of
3 depression. His actions were no longer clear and thoughtful.

4 Shortly after the last funeral, Petitioner was in another car accident where he was struck
5 by a hit and run driver who ran a red light. Petitioner was prescribed more pain medication and
6 muscle relaxants. The pain only added to Petitioner's feelings of depression.

7 During 1991, in addition to feeling depressed, Petitioner also started to experience high
8 levels of anxiety about appearing in court. Once inside a courtroom, Petitioner would not act in a
9 rational manner as he started to feel shortness of breath, drying in his mouth and an increased
10 heart rate. His goal was to get out of the courtroom as quickly as possible. Petitioner stated that
11 his need to flee the courtroom was increasing with each appearance.

12 However, despite the deaths and car accidents, Petitioner now believes that the greatest
13 challenge he faced during this time period involved a client. After successfully litigating a case
14 for his client, Petitioner later learned that the outcome was egregiously unfair. Although
15 Petitioner believes that he represented his client ethically, he was ashamed of having used his
16 legal skills to achieve what he subsequently learned was an unfair result. Again, Petitioner was
17 not prepared for the emotional impact this experience had on him.

18 Petitioner testified that the foregoing emotional and traumatic events were what lead up
19 to the day in November 1991 when he lied in court to Judge Milano of the Los Angeles Superior
20 Court. Petitioner admits that he lied to Judge Milano about having another court appearance in
21 order to get out of a trial. While Petitioner is not trying to justify or excuse his serious
22 misconduct, he believes that the depression and anxiety he was feeling at the time help explain
23 his behavior.

24 In January 1992, Petitioner sent a letter to the State Bar in response to its inquiry about
25 the misrepresentation to the judge. Petitioner lied in his letter to the State Bar in an attempt to
26 cover-up his misrepresentation to the court. Petitioner acknowledges that he lied to the State
27 Bar, stating that at the time he was nervous and scared. Petitioner was not in a good state of
28 mind at the time.

1 After lying to the court, Petitioner was embarrassed and humiliated. He decided to close
2 his law office because he knew he did not have the emotional stability to continue with the
3 practice. Petitioner did not seek medical help at the time because he did not consider his
4 condition to be a medical problem, instead focusing on his lying as a terrible wrong for which he
5 was ashamed. In late 1991, Petitioner started to tell his clients that he was closing his practice
6 and that they should seek other counsel. If clients insisted that he keep their cases, Petitioner did
7 not hesitate to tell them that he was suffering from depression and could not in good conscience
8 continue as their attorney.

9 By February 1992, Petitioner physically closed the doors of his law office and walked
10 away from the practice of law. Petitioner failed to update his official membership records
11 address with the State Bar, and therefore, never received actual notice of the three subsequent
12 formal notices of disciplinary charges filed against him.

13 **D. Misconduct After Disbarment - Unauthorized Practice of Law in 1997**

14 After his disbarment, from July 1997 to July 1998, Petitioner worked as a property
15 manager of a retail-industrial property center for Nor, Incorporated. He was not hired as a lawyer
16 or to provide legal advice. However, while disputing the terms of a business loan on behalf of
17 Nor, Petitioner signed two letters as "General Counsel" in May and June of 1997.

18 The owner of Nor, George Stofflis, was a good friend of Petitioner's and had helped
19 Petitioner during difficult times. Petitioner felt that Stofflis was being taken advantage of, and in
20 a fit of anger, he signed the letters as general counsel in order to make a strong impression.

21 Shortly after signing the letters as general counsel, Petitioner received a letter from the
22 State Bar of California. In August 1997, Petitioner responded to the State Bar inquiry, wherein
23 he acknowledged that he had inappropriately used the designation of counsel and expressed his
24 regret for his mistake in judgment.

25 Also while working for Nor, Petitioner accepted the assignment of two debts owed to the
26 company and then he sued in *pro per* to recover on the debts. (State Bar Exhibits 7 and 8.)
27 Petitioner testified, without contradiction, that he was assigned those claims in satisfaction of
28 pre-existing financial obligations owed to him by the company. At the time of the assignments,

1 Nor was having financial difficulty and Petitioner agreed to accept the assignments in place of a
2 portion of his salary. There is no evidence that Petitioner bought the debts from Nor, accepted
3 the assignment and sued in pro. per. to avoid his disbarment status, or to provide a collection
4 service for the assignor.

5 **E. Petitioner's Rehabilitation**

6 Petitioner was a candid and credible witness at the hearing. His demeanor and testimony
7 in the courtroom evidenced acceptance of responsibility for his prior misconduct and successful
8 efforts at addressing the problems that led to his disbarment.

9 **1. Petitioner's recovery from depression and anxiety**

10 Petitioner now understands the extent to which his depression and anxiety negatively
11 impacted his personal and professional life in the past. After much reflection, he now realizes
12 that he should have availed himself of the various professional support systems that exist for a
13 solo practitioner in order to mitigate the isolation. If Petitioner ever started to feel the depression
14 or anxiety he previously experienced, he also would immediately seek professional medical help.
15 He states that he went through a "personal hell" that he would never want to go through again.

16 Petitioner was evaluated by Michael Stulberg, M.D., on July 31, 2002 and again on
17 February 19, 2004. Dr. Stulberg specializes in psychiatry. In addition to his private practice, Dr.
18 Stulberg currently works as a consultant on the Diversion Evaluation Committee for the State
19 Bar's Lawyer Assistance Program. The purpose of the evaluation was to give an opinion about
20 any mental factors that may have been operating during the period of Petitioner's prior
21 misconduct and whether there are any ongoing concerns. Dr. Stulberg's opinion is that in 1991
22 Petitioner was experiencing a major depressive disorder, single episode. Dr. Stulberg believes
23 that Petitioner's condition was the result of the deaths, car accidents, a dishonest client and the
24 lack of balance in Petitioner's life in 1990 and 1991. He does not think that Petitioner's prior
25 misrepresentation to the court is evidence of a character disorder. According to Dr. Stulberg,
26 Petitioner's condition went away spontaneously and has not reappeared for many years. Dr.
27 Stulberg also believes that if the circumstances ever existed again, Petitioner would seek help to
28 avoid the negative consequences.

1 In addition to understanding and controlling his depression and anxiety, Petitioner has
2 made changes in his personal life. Prior to his disbarment, Petitioner's life was unbalanced and
3 he placed an unhealthy emphasis on his career. Petitioner would work six or seven days a week
4 and rarely took a vacation. Petitioner now focuses on having a more balanced life with his wife
5 and two sons.

6 **2. Petitioner's remorse and present state of mind**

7 After lying to the judge in November of 1991, Petitioner realized he did not have the
8 emotional stability to continue with the practice of law and he took steps to close his practice.
9 He was extremely ashamed, humiliated and embarrassed by his misconduct. At the time he made
10 the misrepresentations to the court and the State Bar, Petitioner states that he did not have a clear
11 understanding of what he was doing. Today he realizes it was terribly wrong and he cannot
12 understand how he even thought about doing it.

13 Petitioner's children are very important to him and he feels that as a result of his
14 disbarment he has lost some of his moral authority. He hopes to show his rehabilitation and be
15 reinstated, in part, to be a better father.

16 **3. Petitioner's community involvement**

17 Petitioner has been very active in both Cub and Boy Scouts. Petitioner's involvement
18 goes beyond merely helping his own son, but rather becoming a den leader. Petitioner helps train
19 all the boys in various skills, including cooking and safety. The other troop leaders and parents
20 have come to rely on Petitioner for his help and commitment to the program. Petitioner's
21 commitment includes weekly, two-hour meetings and at least one monthly outing. Petitioner
22 finds helping with scouting important because it brings balance to his life.

23 Petitioner also is involved in his synagogue, where his family has been members since
24 1957. Petitioner has a close relationship with his rabbi, who he considers a surrogate father. The
25 Boy Scouts is based at the temple.

26 Since 1998, Petitioner has been an independent contractor for the FEMA housing
27 inspection process for post disaster relief on at least four occasions. Petitioner has traveled to
28 Texas, Alabama and Louisiana to help following natural disasters. Although Petitioner gets paid

1 per inspection and for travel to the location, the money barely covers his living expenses.
2 However, Petitioner does it not for the money, but because he wants to help and finds the work
3 rewarding.

4 **4. Restitution**

5 On April 14, 2004, Petitioner paid the outstanding sanction of \$3,835, as ordered by the
6 United States Claims Court in 1991. Petitioner failed to update his address with the federal court
7 and did not receive actual notice of the order until he received a copy of his prior disciplinary
8 packet from the State Bar in 1999. When Petitioner finally learned of the order in 1999, his
9 income was inconsistent and insufficient. Petitioner had filed for bankruptcy in 1996, and in
10 1999, his individual income was only \$10,500. Petitioner thought it would be wrong to borrow
11 the money to pay the sanction order if he did not have sufficient income to repay the loan.
12 Petitioner also thought that the debt may have been discharged in his bankruptcy proceeding.

13 However, during closing arguments in this proceeding, Petitioner's attorney suggested
14 that if the court were concerned about the restitution, it could issue a conditional reinstatement
15 recommendation subject to Petitioner's payment of the debt. Declining to issue a
16 recommendation for a conditional reinstatement, the court issued an order reopening the record
17 and providing Petitioner with an opportunity to provide proof of restitution, if any, within
18 approximately 30 days. Thereafter, Petitioner paid the sanction order in full.

19 **5. Compliance with rule 955**

20 On December 10, 2003, Petitioner filed two Rule 955 Compliance Declarations to
21 comply with the Supreme Court's orders in case nos. S032294 (State Bar Court case nos. 91-O-
22 07773 and 92-J-13990) and S040669 (State Bar Court case no. 93-N-19302). Petitioner filed the
23 declarations even though they were approximately ten years late to show a "good faith" effort to
24 comply and to illustrate that he had no clients, files or money at the time he was ordered to
25 comply.

26 **F. Character Evidence**

27 Petitioner presented six character witnesses, including his current employer who is also
28 his brother-in-law, two former employers and three friends he has worked closely with in

1 Scouting. The witnesses have known Petitioner between 3 and 30 years, and are aware of the
2 extent of Petitioner's past misconduct and his disbarment. All are extremely supportive of
3 Petitioner and attest to his good moral character and honesty. The State Bar did not rebut any of
4 the evidence submitted.

5 **1. Alex Felkai**

6 Alex Felkai is Petitioner's brother-in-law and current employer. Felkai met Petitioner in
7 1974 and is married to Petitioner's sister. Felkai owns a kosher catering company that caters
8 events for the movie industry and contracts with local schools for their lunch programs.

9 Petitioner has been the office manager for Felkai's company since September of 2001.
10 Petitioner is the first person Felkai ever trusted to handle money in his company. On the job,
11 Petitioner is always a very precise, honest and reliable person. Felkai has never had reason to
12 doubt Petitioner's moral character or honesty. Even though Petitioner is his brother-in-law,
13 Felkai would not hire Petitioner if he doubted his honesty.

14 As for Petitioner's prior misconduct, Felkai was aware of Petitioner's depression and
15 difficulties in handling day-to-day matters in 1991. Felkai recalls that Petitioner was not himself
16 for quite awhile. Felkai does not think that Petitioner's problems were a result of a moral
17 problem. As for holding himself out as a lawyer, Felkai believes that it was bad judgment on
18 Petitioner's part and that we all make mistakes. Based on their conversations, Felkai believes
19 that Petitioner is very remorseful about his prior misconduct and that it will not happen again.

20 **2. Elliott Mafouda**

21 Elliott Mafouda owns a company that manufactures and supplies health care products to
22 hospitals. Mafouda met Petitioner around 1998 and he eventually asked Petitioner to come work
23 for him. Petitioner worked for Mafouda for about a year and a half, handling billing and
24 collections. Mafouda was happy with Petitioner's work performance. Petitioner was strict,
25 accurate and to the point. Mafouda felt like Petitioner was "watching his back." Although there
26 are opportunities in Mafouda's field of work to be dishonest, Mafouda found Petitioner always to
27 be honest.

28 Mafouda moved in 2000 and Petitioner stopped working for him then. Mafouda wishes

1 Petitioner was still working for him. After they stopped working together, Petitioner and
2 Mafouda have stayed in contact socially and through community activities. Petitioner influenced
3 Mafouda's decision to get involved with the Boy Scouts.

4 Petitioner's prior misconduct does not change Mafouda's opinion. Mafouda thinks
5 Petitioner is an honest man despite what happened and considers Petitioner's "word to be gold."

6 **3. Kurt Hysen**

7 Kurt Hysen owns Hysen Investments, a company that handles business plans, financial
8 planning and real estate investments. Hysen met Petitioner in 1978. Back then, Petitioner
9 represented Hysen's company as an attorney on many endeavors. They have maintained a
10 relationship over the years. After Petitioner's disbarment, Petitioner worked for Hysen from time
11 to time as a consultant on business and financial issues.

12 Over the years, Hysen has entrusted Petitioner with money and financial documents from
13 his company. Petitioner has never given Hysen any reason to doubt his trust. Hysen believes
14 that Petitioner has the highest integrity. If reinstated, Hysen would feel comfortable having
15 Petitioner represent him both personally and professionally.

16 **4. Kent Jacobsen**

17 Kent Jacobsen has worked in the retail seafood business for over 30 years and owns his
18 own company. Jacobsen met Petitioner about three years ago through Boy Scouts. Jacobsen is a
19 Scoutmaster, with about 35 kids in his group. Jacobsen takes the program very seriously and
20 feels a tremendous responsibility in being involved. Petitioner is a registered adult leader in
21 Jacobsen's group.

22 Jacobsen believes that the best Scouts are those with active parents. Petitioner is a loving
23 father that cares about his family and sons. Petitioner attends the weekly Scout meetings, helps
24 with the food, and accompanies the group on the camping trips. During these trips, Jacobsen and
25 Petitioner have had an opportunity to talk a fair amount. Jacobsen believes that Petitioner is of
26 high moral character. He thinks Petitioner is very honest and direct. He also states that
27 Petitioner would not be involved with his Scouts if he did not have high moral character. As for
28 his prior misconduct, Jacobsen does not think that it is reflective of the man he knows today. If

1 reinstated, Jacobsen would be comfortable having Petitioner as his attorney.

2 **5. Maurice Levin**

3 Maurice Levin owns his own business importing and selling plants. Levin met Petitioner
4 about five and a half years ago at Cub Scouts. Levin was involved with Scouts as a child and
5 thinks it is important to enforce positive values. Levin and Petitioner's kids are very good
6 friends. When Levin was asked to be the Cubmaster, he asked Petitioner to be the den leader
7 because he trusted Petitioner. Levin was impressed that Petitioner showed up at all the meetings
8 and worked hard with his son. Levin and Petitioner also socialize outside Cub Scouts. They
9 have gotten to know each other well and talk about a broad range of issues.

10 Levin believes that Petitioner is an ethical and moral person. The entire time Levin has
11 known Petitioner, if Petitioner said he was going to do something, he did it or explained why not.
12 Petitioner has never tried to "slide by" on things and Levin values that quality. Levin and
13 Petitioner have talked about Petitioner's prior misconduct. Petitioner has expressed his remorse
14 and Levin believes that Petitioner is a different person now. Levin supports Petitioner's
15 reinstatement and thinks that it would ultimately benefit others.

16 **6. Joseph Steinberg**

17 Joseph Steinberg is an assistant vice president and financial planner for Merrill Lynch.
18 Steinberg has known Petitioner for about eight years. They met through their sons and worked
19 together in Cub Scouts. When Petitioner was the den leader, Steinberg was the assistant leader.
20 They also interact frequently on a social basis.

21 As to Petitioner's honesty, he always has been straightforward and someone Steinberg
22 trusts. Steinberg has never known Petitioner to mislead someone or say something that was not
23 true. Steinberg supports Petitioner's reinstatement and would be comfortable having Petitioner
24 as his attorney.

25 **G. Present Learning and Ability in the Law**

26 Since May 1997, Petitioner has attended approximately 155 hours of CEB seminars,
27 including the following required MCLE areas: 18.75 hours on legal ethics; 6.5 hours on law
28 practice management; 1 hour on substance abuse; 4 hours on eliminating bias; and 1 hour on

1 emotional distress. The additional areas of study included a broad range of topics including real
2 property; estate planning; attorney fees and fee agreements; conflicts of interest; avoiding
3 malpractice; and discovery. Petitioner intends to renew his CEB Gold Card or apply for a CEB
4 Silver Card so that he may continue attending CEB Seminars and maintain a high level of
5 understanding and learning in the law.

6 **H. Multistate Professional Responsibility Examination**

7 Petitioner has taken and passed the Multistate Professional Responsibility Examination
8 twice since his disbarment. The first time was on August 14, 1998. The second time was on
9 November 7, 2003, after he filed his petition for reinstatement.

10 **III. CONCLUSIONS OF LAW**

11 **A. Petitioner's Burden of Proof**

12 To be reinstated to the practice of law, a petitioner who has been disbarred must establish
13 by clear and convincing evidence that he has passed a professional responsibility examination,
14 has rehabilitated, has present moral qualifications for reinstatement and has present ability and
15 learning in the general law. (Cal. Rules of Court, rule 951(f); Rules Proc. of State Bar, rule 665.)

16 A petitioner bears a heavy burden of proving his or her rehabilitation and "must show by
17 the most clear and convincing evidence that efforts made towards rehabilitation have been
18 successful." (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1091-1092.) In an application for
19 reinstatement, the petitioner "should be required to present stronger proof of his present honesty
20 and integrity than one seeking admission for the first time whose character has never been in
21 question." (*Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403.) However, "[t]he law looks with
22 favor upon the regeneration of erring attorneys and should not place unnecessary burdens upon
23 them." (*Resner v. State Bar* (1967) 67 Cal.2d 799, 811, citing *In re Gaffney* (1946) 28 Cal.2d
24 761, 764; *In re Andreani* (1939) 14 Cal.2d 736, 749.)

25 **B. Petitioner's Rehabilitation and Good Moral Character**

26 Petitioner's rehabilitation and good moral character have been established in several
27 areas. During his testimony and in his petition, Petitioner acknowledged unequivocally the
28 seriousness of his wrongdoing and expressed remorse. Petitioner testified about the shame and

1 embarrassment he felt after he realized the significance of his misconduct. In fact, Petitioner was
2 so devastated by his own misconduct that he decided he could no longer practice law. Such
3 testimony is a significant factor in favor of his reinstatement. "Reformation is a 'state of mind'
4 [citation] and 'the applicant must show a proper attitude of mind regarding his offense before he
5 can hope for reinstatement [citation].'" (*Feinstein v. State Bar* (1952) 39 Cal.2d 541, 547.)

6 Moreover, Petitioner's actions following his misconduct show concrete acts designed to
7 rectify past wrongdoing. (*In re Menna* (1995) 11 Cal.4th 975, 987-988.) Petitioner takes full
8 responsibility for the problems of his past and described changes in his attitude that he believes
9 would prevent future misconduct if he were reinstated. First, Petitioner better understands the
10 consequences of his prior depression and anxiety. If Petitioner were to experience similar
11 emotional problems in the future, rather than struggle alone, Petitioner avows that he would
12 immediately seek professional medical help. For Petitioner, that period of time was a "personal
13 hell" and he does not want to live through it again. Although Dr. Stulberg could not assure that
14 Petitioner will not have some emotional problems in the future, the law wisely recognizes that
15 such guarantees are not required. (*Resner v. State Bar, supra*, 67 Cal.2d at p. 811.) In addition,
16 Petitioner recognizes the negative effects of isolating himself in his professional life and placing
17 too great an emphasis on his career. Petitioner appreciates the importance of his family and has
18 developed a more balanced lifestyle.

19 Petitioner's contributions and community involvement with the Scouts, FEMA housing
20 and his temple are additional factors supporting his reinstatement. (*In the Matter of Distefano*
21 (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668, 675.) Petitioner has devoted considerable
22 time and energy to the Cub and Boy Scouts. Although Petitioner's son undoubtedly benefits
23 from his father's involvement, Petitioner's commitment to the organization extends beyond his
24 immediate family. He is regularly involved in weekly meetings, training sessions and outings
25 that benefit the group as a whole.

26 Petitioner's character witnesses also help demonstrate Petitioner's rehabilitation and good
27 moral character. Three of the witnesses at the hearing have been Petitioner's employers since his
28 disbarment. All testified that he was a trustworthy, honest person. Favorable character

1 testimony and reference letters from employers are entitled to considerable weight. (*Feinstein v.*
2 *State Bar, supra*, 39 Cal.2d at p. 547.) The other three witnesses all know Petitioner through his
3 involvement in Cub and Boys Scouts. They testified to Petitioner's commitment to helping the
4 boys, and his overall honesty and trustworthiness. The Petitioner's contributions to the Scouts,
5 and the trust others place in him with their children, is of significant probative value.

6 Another consideration is the passage of an appreciable period of time since Petitioner's
7 misconduct. (*Hippard v. State Bar, supra*, 49 Cal.3d at p. 1095.) "Where the evidence is
8 uncontradicted . . . and shows exemplary conduct extending over a period of from eight to ten
9 years without even the suggestion of wrongdoing, it would seem that rehabilitation has been
10 established." (*Werner v. State Bar* (1954) 42 Cal.2d 187, 198 (conc. opn. of Carter, J.)) The
11 serious misconduct that ultimately lead to Petitioner's disbarment occurred in 1991 - 13 years
12 ago. The last incident of misconduct by Petitioner occurred in 1997, when he held himself out as
13 an attorney while working at Nor. Since 1997, Petitioner has performed his work and private
14 affairs with integrity and responsibility.

15 The State Bar contends that Petitioner has failed to demonstrate rehabilitation and good
16 moral character because: (1) he has continued to be less than truthful from the time of his
17 misrepresentation to the court in 1991 to the present; and (2) he violated section 6130 of the
18 Business and Professions Code by accepting and collecting on assigned debts in 1997. The court
19 rejects the State Bar's arguments.

20 In an attempt to discredit Petitioner's rehabilitation, the State Bar contends that Petitioner
21 continues to be less than truthful, pointing to the fact that Petitioner held himself out as a lawyer
22 in 1997, and allegedly made misrepresentations to Dr. Stulberg in 2002. As for holding himself
23 out as an attorney, Petitioner readily conceded he was wrong *in 1997* when he responded to the
24 State Bar's inquiry and he continues to accept responsibility for his misconduct today.
25 Petitioner's acceptance of his wrongdoing, and the overwhelming proof of his efforts at reform
26 since that time, demonstrate his rehabilitation. (*Feinstein v. State Bar, supra*, 39 Cal.2d at p.
27 547.)

28 As for the allegation that Petitioner made misrepresentations to Dr. Stulberg, the court

1 finds no merit to the State Bar's argument. Dr. Stulberg was provided with a packet of
2 information, including a summary of Petitioner's prior disciplinary proceedings and his ultimate
3 disbarment. (Petitioner's Exhibit A.) The court does not find that Petitioner attempted to
4 mislead Dr. Stulberg, or any other witness, as to the circumstances surrounding his prior
5 misconduct or the disciplinary actions. As set forth above, the court finds Petitioner to be a
6 candid and credible witness, taking full responsibility for his past failures.

7 As for the allegation that Petitioner violated section 6130 of the Business and Professions
8 Code by accepting and collecting on assigned debts in 1997, the evidence does not support such a
9 finding. Petitioner credibly testified, without contradiction, that he was assigned those claims in
10 satisfaction of pre-existing financial obligations owed to him by the company. There is no
11 evidence that Petitioner bought the debts from Nor, accepted the assignment and sued in pro. per.
12 to avoid his disbarment status, or to provide a collection service for the assignor. Under the
13 circumstances, the court does not find a violation of section 6130 of the Business and Professions
14 Code. (*Wilde v. Superior Court* (1942) 53 Cal.App.2d 168.)

15 In making a determination that Petitioner has satisfied his burden in showing
16 rehabilitation and present moral fitness, the court looks to *In the Matter of Salant* (Review Dept.
17 1999) 4 Cal. State Bar Ct. Rptr. 1, wherein the petitioner was reinstated despite issues regarding
18 her credibility. The court finds that Petitioner's showing is as strong, if not stronger, than the
19 petitioner in that case.

20 The petitioner in *Salant* was disbarred after she pled nolo contendere to two felony counts
21 of false personation to obtain a benefit based upon her "deceitful acts . . . of exceptional gravity"
22 in 1985 in applying and sitting for the Bar Examination in place of her then husband. (*In the*
23 *Matter of Salant, supra*, 4 Cal. State Bar Ct. Rptr. at p. 3.) Salant's misconduct was not an
24 isolated act, but an elaborate scheme to defraud: Salant posed as her husband in a photograph
25 submitted as identification for the exam; she smeared her thumb print and forged her husband's
26 signature on the admission card to avoid detection; and she took the examination in her husband's
27 place, signing his name on the examination booklets. (*In re Lamb* (1989) 49 Cal.3d 239, 241.)
28 Salant was disbarred, despite the strong mitigating evidence of personal problems because there

1 was “no ‘clear and convincing’ indication of petitioner's *sustained and complete* rehabilitation
2 from chronic personal problems which led to her catastrophic misjudgment.” (*Id.* at p. 246.)
3 Salant had been admitted to practice for only two years at the time of her misconduct.

4 In *Salant*, the Review Department affirmed the hearing judge’s ultimate findings and
5 conclusions of rehabilitation and present moral fitness, despite the hearing judge’s findings that
6 the petitioner’s testimony had not been credible on certain points, that she failed to accept
7 responsibility for her acts and sought to blame others, and that she only told part of the truth as it
8 met her needs. (*In the Matter of Salant, supra*, 4 Cal. State Bar Ct. Rptr. at pp. 6-7.) As to a
9 restraining order the petitioner attempted to obtain, the hearing judge found her testimony “not to
10 be credible, concluding that she was, at best, negligent or at worst, intentionally misleading to
11 secure relief from the State Bar Court.” (*Id.* at p. 6.) While not explicitly addressing all the
12 various issues regarding Salant’s credibility problems at her reinstatement hearing, as to her
13 testimony regarding the restraining order, the Review Department stated that the hearing judge
14 did not conclude whether it was careless or intentional, and the Review Department found that
15 there was no basis for a finding of dishonesty. (*Ibid.*)

16 While both Salant and Petitioner’s underlying misconduct involved acts of dishonesty,
17 Salant’s misconduct was more egregious and resulted in her criminal convictions and
18 disbarment. Furthermore, Petitioner had been in practice for 15 years prior to his misconduct,
19 while Salant had been an attorney for only two years. As for evidence of rehabilitation, both
20 Petitioner and Salant offered impressive character witnesses; community involvement; and
21 evidence of rehabilitation from the underlying personal problems that contributed to their
22 misconduct. However, unlike Salant, the court finds Petitioner to be a candid and credible
23 witness, with no negative findings regarding his conduct or testimony in this proceeding. Thus,
24 when comparing the totality of both situations, the court finds that Petitioner has established his
25 rehabilitation.

26 Finally, in determining whether Petitioner has met his burden of proving rehabilitation by
27 clear and convincing evidence, the evidence of present character and rehabilitation must be
28 considered in light of the moral shortcomings which resulted in the imposition of discipline.

1 (*Hippard v. State Bar, supra*, 49 Cal.3d at p. 1092.) At the time the misconduct started in 1991,
2 Petitioner had an unblemished record in his 15 years of practice in California. The problems that
3 started Petitioner down the road to disbarment began when he lied to a superior court judge and
4 the State Bar. Although such misconduct is very serious, it is important to note that Petitioner
5 was not disbarred as a result of this misconduct. The disbarment occurred as a result of
6 Petitioner's decision to walk away from the practice of law and not properly address his
7 disciplinary matters. Thus, he was ultimately disbarred for failing to comply with a rule 955
8 requirement at a time he no longer had clients or cases.

9 Furthermore, Petitioner's misconduct was mitigated by his depression and anxiety that
10 contributed to his poor judgment. Petitioner has gained insight into the causes of his prior
11 misconduct and has taken appropriate steps to rectify the prior problems. Viewing the evidence
12 in its totality, this court finds that Petitioner has made a sufficient showing of his rehabilitation
13 and present moral fitness.

14 **C. Present Learning and Ability in the Law**

15 Since 1997, Petitioner has attended at least 155 hours of CEB seminars in substantive and
16 procedural areas of the law, which evidences Petitioner's commitment to staying current in the
17 law.

18 In addition, Petitioner has taken and passed the Multistate Professional Responsibility
19 Examination twice since his disbarment, on August 14, 1998 and again on November 7, 2003.
20 The court also finds by clear and convincing evidence that Petitioner has established the present
21 learning and ability in the law required for reinstatement.

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IV. RECOMMENDATION

For the foregoing reasons, the court concludes that Petitioner has sustained his burden by clear and convincing evidence by establishing: (1) that he is rehabilitated and does possess the present moral qualifications for reinstatement to the State Bar of California; (2) that he possesses present ability and learning in the general law; and (3) that he has passed the Multistate Professional Responsibility Examination. Therefore, the court recommends that the Petition be granted and that Petitioner be reinstated to the practice of law upon his payment of all applicable fees and costs.

Dated: July 29, 2004



JOANN M. REMKE
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 San Francisco, on July 29, 2004, I deposited a true copy of the following document(s):

DECISION

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

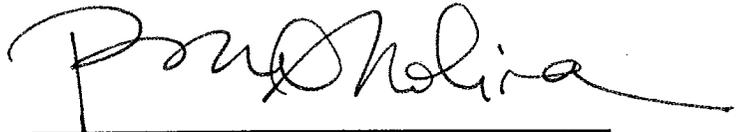
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**ARTHUR LEWIS MARGOLIS
MARGOLIS & MARGOLIS LLP
2000 RIVERSIDE DR
LOS ANGELES CA 90039 3758**

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

ANTHONY GARCIA, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **July 29, 2004**.



Bernadette C. O. Molina
Case Administrator
State Bar Court