

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of) Case No.: **14-R-03409-PEM**
)
NEAT ALLEN SAWYER,) **DECISION**
)
)
Petitioner for Reinstatement.)
_____)

Introduction

This matter comes before the court on the petition for reinstatement to the practice of law filed by petitioner **Neat Allen Sawyer**, after resigning with charges pending, effective May 21, 2006. The petition for reinstatement is opposed by the State Bar of California, Office of the Chief Trial Counsel (State Bar).

After carefully considering all of the evidence and arguments of the parties, this court concludes that petitioner has met his burden of proof. Accordingly, this court recommends that he be reinstated to the practice of law upon the payment of all applicable fees and costs.

Significant Procedural History

On June 16, 2014, petitioner filed his petition for reinstatement. On October 20, 2014, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed an opposition to the petition.

On January 20, 2015, the parties filed a Stipulation as to Facts and Admission of Documents (Stipulation). The court approved the Stipulation.

A four-day trial was held on January 20, 21, 22, and 23, 2015. Petitioner was represented by attorney Jerome Fishkin of Fishkin & Slatter, LLP. The State Bar was represented by Senior Trial Counsel Robert A. Henderson. Following the filing of post-trial/closing briefs on January 30, 2015, the matter was submitted for decision.

Requirements for Reinstatement

Rule 5.445 of the Rules of Procedure provides that a petitioner for reinstatement, who previously had been disbarred or resigned with charges pending, must:

1. pass a professional responsibility examination within one year prior to filing the petition;
2. establish his/her rehabilitation;
3. establish present moral qualifications for reinstatement; and
4. establish present ability and learning in the general law by providing proof that he/she has taken and passed the Attorneys' Examination administered by the Committee of Bar Examiners within three years prior to the filing of the petition.

A reinstatement petitioner must also submit proof that he/she has paid all discipline costs and has reimbursed all payments made by the Client Security Fund as a result of his/her prior misconduct.¹ (Rules Proc. of State Bar, rule 5.441.)

The evidence is uncontradicted, the parties stipulated, and this court finds that petitioner: (1) passed the Multistate Professional Responsibility Examinations (MPRE) on August 17, 2013, within one year prior to the filing of the instant petition for reinstatement; (2) passed the February 2013 California State Bar Attorneys' Examination, which was within three years prior to the filing of the date that petitioner filed his petition for reinstatement;(3) has never been the subject of a claim with the Client Security Fund and does not owe the Client Security Fund any reimbursement; and (4) has paid all discipline costs.

¹ The court record in this matter shows and it is uncontested that petitioner has no prior record of discipline.

Thus, the only disputed issues in this matter are whether petitioner has sustained his burden of proving that he is rehabilitated and has the present moral qualifications for reinstatement.

Legal Principles Regarding Rehabilitation/Present Moral Qualifications

The legal principles regarding reinstatement proceedings are well established. When a member resigns from the California Bar with charges pending, as opposed to having been disbarred, he must meet the same requirements for readmission as the disbarred member. (*In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546, 552.)

“Petitioner bears a heavy burden of proving his rehabilitation. [Citation.] He ‘must show by the most clear and convincing evidence that efforts made towards rehabilitation have been successful.’ [Citation.] Petitioner must present stronger proof of his present honesty and integrity than one seeking admission for the first time whose character has never been in question. [Citation.] ‘In determining whether that burden has been met, the evidence of present character must be considered in light of the moral shortcomings which resulted in [petitioner’s resignation with disciplinary charges pending].’ [Citation.]” (*In the Matter of Rudman, supra*, 2 Cal. State Bar Ct. Rptr. 546, 552-553.) And, that is because, “‘The amount of evidence of rehabilitation required to justify [reinstatement] varies according to the seriousness of the misconduct [underlying petitioner's resignation with charges pending].’” (*In re Menna* (1995) 11 Cal.4th 975, 987 quoting *Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1086 (dis. opn. of Lucas, C. J.)) Thus, the more egregious the misconduct underlying petitioner's resignation, the more evidence of rehabilitation and present good moral character is needed to justify reinstatement.

It is also equally well established that “[t]he law looks with favor upon the regeneration of erring attorneys and should not place unnecessary burdens upon them.” (*Resner v. State Bar* (1967) 67 Cal.2d 799, 811.) “There can, of course, be no absolute guarantee that petitioner will

never engage in misconduct again. But if such a guarantee were required for reinstatement none could qualify. All [this court] can require is a showing of rehabilitation and of present moral fitness.” (*Ibid.*) In short, petitioner is not required to show perfection. (*In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25, 37.)

Findings of Fact

The following findings of fact are based on the petition, the parties’ stipulation, and the evidence before the court.

Petitioner’s Background, Charges and Conduct Leading to Resignation

Petitioner was born in Davis, California. He moved with his family to Stockton when he was 14 years old. He attended Delta Junior College for a year and half and then transferred to the University of the Pacific. After graduating from the University of the Pacific with a degree in philosophy, petitioner continued his studies at the University of California, Hastings College of Law (Hastings) from which he graduated in 1994. He was admitted to the practice of law in California on December 12, 1994. From 1995 to 1999, he was employed as a deputy district attorney in San Joaquin County. As a district attorney, petitioner primarily prosecuted cases involving domestic violence.

On March 6, 1999, petitioner was appointed as Chief Deputy Director to the California Office of Criminal Justice Planning (OCJP) by Governor Gray Davis. Under petitioner’s direction as deputy director, his office dealt with at-risk youth programs and programs that addressed violence against women. On February 2, 2002, he was named Interim Director of OCJP. In those roles, petitioner was required to file with the State, an annual Statement of Economic Interests, Form 700, which he did.

Petitioner's Conduct Relating to Sunlaw Energy Corporation

In 2001, Leon Briones (Briones), a friend of petitioner's and a consultant for Sunlaw Energy Corporation (Sunlaw), approached petitioner to seek his assistance in finding a suitable location for an "environmentally ultra clean power plant" in San Joaquin County. Petitioner researched and verified the environmentally ultra clean characteristics of Sunlaw's technology. He then discussed the business opportunity regarding the creation of a partnership with Sunlaw with another friend, San Joaquin County Sheriff Baxter Dunn (Dunn). Dunn thought the opportunity looked promising and suggested that they discuss the opportunity with a local land use consultant Monte McFall (McFall). McFall also looked favorably on the idea. Consequently, McFall, Dunn, and petitioner decided to research the proposal further and explore entering into a partnership to assist Sunlaw Energy Corporation establish a power plant in San Joaquin County.

Thereafter, petitioner consulted with the California Fair Political Practice Commission (CFPPC) regarding entering a partnership with Sunlaw and also discussed the proposal regarding Sunlaw with his colleagues at OCJP in Sacramento.² Additionally, petitioner retained the services of a Sacramento corporate law firm, Trainor-Robertson. Based on his discussions and the legal advice he received, petitioner concluded there was no conflict of interest between his public position at OCJP and the business venture he was forming with Dunn and McFall. And, petitioner further concluded that he could legally and ethically engage in the business pursuit of aiding Sunlaw build an environmentally friendly power company in his home town of Stockton.

In March 2001, McFall, Dunn, and petitioner established SMTM Partners, L.P. McFall was the general partner. Dunn and petitioner were limited partners. McFall set up a second

² Virginia Papan who had been the mayor of Millbrae in San Mateo county testified that she worked at OCJP at the same time as petitioner; and as such, she was aware of his work with Sunlaw.

entity, MSD Ventures, which was wholly owned by McFall. If the Port of Stockton approved the Sunlaw project, Sunlaw would make the agreed upon payment to MSD, which in turn would pay over the net profit after expenses to SMTM. Thus, in the months following March 2001, McFall, Dunn, and petitioner pursued the business opportunity and attempted to have Sunlaw placed in the Port of Stockton. To that end, during his workday petitioner attended meetings with officials who might be able to influence the approval of the Sunlaw project in San Joaquin County. He attended governmental meetings as an agent of Sunlaw and distributed his official state business card at those meetings, thereby implying that he was representing the interest of the State. Petitioner also received emails at work concerning Sunlaw. In August of 2001, the Port of Stockton rejected Sunlaw Energy Corporation's proposal. Instead, the Port of Stockton selected Sunlaw's competitor, Calpine.

In July and August of 2002, petitioner was interviewed by the FBI. Thereafter, in November 2002, McFall was indicted on various federal charges.

In early November 2002, petitioner resigned from OCJP. He then testified in front of the federal grand jury on November 13, 2002. On September 9, 2004, petitioner was indicted and added as a co-defendant to the federal prosecution of McFall.

OCJP Award of Federal Funds

Petitioner participated in official OCJP actions relating to an award of federal funds to the San Joaquin Sheriff's Office. He did not disclose that he had entered into a personal business venture with the Dunn, who was the San Joaquin County Sheriff.

Failure to Disclose on 2001 Statement of Economic Interest

Petitioner did not disclose his interests in SMTM or MSD when in March 2002, he filed his annual Statement of Economic Interests Form 700 for the year 2001. Petitioner did not believe he had to disclose his interests in SMTM or MSD, because by 2002, he no longer was

involved with SMTM or MSD. On April 17, 2002, SMTM filed for a certificate of Dissolution with the effective date of dissolution being August 30, 2001.

The Plea

On January 11, 2005, petitioner pled guilty to a violation of sections 1341 (mail fraud) and 1346 of Title 18 of the United States Code. Sections 1341 and 1346 are felonies. The theory of law advanced by the government was that petitioner had an obligation to report on the Form 700, filed in 2002 for the 2001 calendar year, that he had economic interests in the two companies, MSD Ventures and SMTM Partners. As petitioner had mailed the Form 700, rather than filing it personally, the theory of the prosecution was that he had committed federal mail fraud. As part of the plea agreement, the government dismissed extortion, conspiracy, and perjury charges.

A guilty judgment was entered against petitioner on June 17, 2005. "At petitioner's sentencing hearing, prosecutors moved for a U.S.S.G. § 5K1.1 downward sentencing departure; a departure that prosecutors may, in their discretion, recommend where a cooperating witness provides `substantial assistance. [Citation.]" (*U.S. v. McFall* (9th Cir. 2009) 558 F.3d 951, 964, fn. 11.) During that sentencing hearing, the government also made a declaration to the court, affirming that petitioner had provided truthful cooperation in the case to the FBI, the prosecution team, and the grand jury.

Petitioner was sentenced to six months incarceration and an additional six months home confinement.³ Thereafter, he was placed on a three-year term of supervised release, which ended on January 6, 2009. Petitioner also was assessed a fine of \$20,000. It was determined that

³ Petitioner surrendered to the Bureau of Prisons on July 7, 2005.

petitioner did not have to pay interest on the fine, because he did not have the ability to pay the interest.⁴

Petitioner Reports Plea of Guilty to the State Bar

Petitioner reported his conviction to the State Bar. On April 28, 2005, the State Bar Court entered an order of interim suspension based upon the plea. On December 1, 2005, the State Bar moved the State Bar Court for an order recommending summary disbarment. Petitioner contested the motion. On March 22, 2006, the Review Department of the State Bar Court (review department) filed its order recommending summary disbarment, finding that petitioner's conviction of honest services mail fraud (18 U.S.C. §§ 1341 and 1346) met the criteria for summary disbarment in that the offenses of which petitioner was convicted are felonies and mail fraud.⁵ Based on that ruling, petitioner tendered his resignation with charges pending on April 7, 2006.⁶ His resignation, which was accepted by the Supreme Court, became effective on May 21, 2006. Petitioner then filed his Rule 955⁷ declaration on a timely basis.

Legal Proceedings After Plea

In 2006, petitioner moved to vacate his conviction pursuant to Section 2255 of Title 28. As petitioner had waived his right to collaterally attack his conviction, his motion was denied. The only defendant who went to trial was McFall. During his trial, McFall offered into evidence petitioner's grand jury testimony. The trial judge refused to allow that grand jury testimony to be admitted into evidence.

⁴ Petitioner spent at least \$250, 000 for his legal defense.

⁵ Wire Fraud is commonly known as mail fraud. Mail Fraud is a felony of moral turpitude per se.

⁶ On April 7, 2006, petitioner's resignation with charges pending was filed. On April 21, 2006, the Supreme Court accepted his resignation.

⁷ Rule 955 has since been renumbered as rule 9.20.

Thereafter, in 2009, the Ninth Circuit held the ruling by the trial judge hearing the *McFall* case to be erroneous. (*U.S. v. McFall* 558 F.3d 951, *supra*, at 960-964.) In that ruling, the court of appeals pointed out that after his plea agreement, but before being sentenced, petitioner reaffirmed the truthfulness of his grand jury testimony; and, after that, the prosecutors filed a statement under U.S.S.G. §5K 1.1, confirming petitioner's cooperation under the plea agreement. That cooperation included his continued denial of any conspiracy and the reaffirmation of his grand jury testimony. (*Id.* at page 964, fn. 11.)

On June 24, 2010, the United States Supreme Court issued an opinion in *Skilling v. United States* (2010) 561 U.S. 358. In that opinion, the Court held that 18 USC 1346 *only* applies to bribery and kickbacks. After the Court held in *Skilling* that conduct like that of petitioner's was not criminal, petitioner filed a petition for writ of *coram nobis*. In his petition for a writ of *coram nobis*, petitioner did not contest the factual basis to which he had agreed in his guilty plea. The government had alleged and the theory of its case against petitioner was that he had deprived his employer and the citizens of the State of California of their intangible right to honest services by using the prestige of his position to influence San Joaquin officials to support a power project that if built would have netted him a commission. The government's theory of the case as to petitioner lacked any allegation of kickbacks or bribes involving petitioner.

Petitioner's claim, as set forth in his petition for a writ of error *coram nobis*, was based solely on the change in law wrought by the *Skilling* decision. The U.S. Attorney, who was an Assistant U.S. Attorney back in 2005 when he had been part of petitioner's prosecution team did not oppose the petition for writ of *coram nobis*. The government's brief of non-opposition to the *coram nobis* petition, acknowledged that the *Skilling* decision specifically rejected the position

that the “honest services statute” encompasses the sort of conduct to which petitioner had pled guilty.

On February 1, 2011, petitioner’s petition for writ of *coram nobis* was granted and petitioner’s conviction for mail fraud was set aside and vacated in its entirety.⁸

Life After Prison

At the time petitioner was sentenced and reported to prison he was thirty-six years old, married to Victoria Sawyer, a school teacher, and had two young children. He was personally, professionally and financially devastated. Prior to petitioner’s plea of guilty to mail fraud, he never had been involved with or in an incident or complaint relating to professional misconduct and/or discipline as an attorney. As a direct result of his conviction, petitioner lost his ability to practice law and his financial circumstances deteriorated.

Having lost his license to practice law and bearing the stigma of a convicted felon, petitioner was unable to meet his financial obligations upon his release. Consequently, he had cars and real estate repossessed. Petitioner’s solution was to start a series of businesses and partnerships. Specifically, petitioner found business opportunities in construction, wine, transportation, manufacturing, and retail.

Petitioner’s Employment

As noted, *ante*, upon leaving prison, petitioner found it difficult to find employment as a convicted felon. Among the businesses and partnerships he formed was a construction company, “Belismo Builders.” He also formed a company, which he heads, under the label “Blue Frog.” Blue Frog is wine company that sells wine. Part of the company also included a wine bar,

⁸ In *Skilling*, the Court specifically rejected the government’s argument that the honest services statute encompasses “undisclosed self-dealing by a public official or private employee – i.e., the taking of “official action by the employee that furthers his own undisclosed financial interests while purporting to act in the interests of those to whom he owes a fiduciary duty.” (*Skilling*, *supra*, 561 U.S. 358, 409.)

However, when the Napa earthquake struck in 2014, the wine bar was forced to close. Petitioner also established another company, "Coast to Coast Direct," which sells products to the retail and food industry. Among its products are deli sheets, deli containers, garbage bags and printed portion bags. Additionally, petitioner established a business called All Transportation, Inc., which transports containers to and from railroads.

As petitioner explained in his testimony, he formed all of the aforementioned businesses, because he had stopped practicing law and was not readily employable. It was petitioner's hope that one of the businesses would help him to support his family. However, none of the businesses were particularly lucrative because of the recession. Finally, after being exonerated, petitioner started a political consulting business, "Wire to Wire." Wire to Wire has been involved in five political campaigns, two of which have been successful.

Rehabilitation and Present Moral Qualifications for Reinstatement

Petitioner's Community Service and Charitable Activities

Since being exonerated, petitioner has re-entered "public life." He has sought to become an active contributor to the public and the betterment of his community. Petitioner has returned to volunteering and participating in community projects in San Joaquin County. Since 2012, petitioner has been volunteering with the Stockton Kids Club (Kids' Club), formerly known as the Boys and Girls Club of Stockton (the B & C Club). From 2012, until the date of his testimony in January 2014, petitioner had provided 100 hours of volunteer work for the Boys and Girls Club/Kids Club.

In her declaration (Exh. FFF), submitted in support of petitioner, **Sharon Simas** (Simas) states that she first met petitioner two and a half years ago when they both served as board members for the Kids Club. Since that time they have both worked for the Kids Club. Simas currently works as the executive assistant to the Mayor of the City of Stockton and is President

of the Board of Directors of the Stockton Kids Club. Petitioner is a member-at-large on the Board.

Simas finds petitioner to be very intelligent and professional. She explained that when the Kids Club had been known as the B& C Club, it lost its charter. Petitioner, who understood the importance of reestablishing the B&C Club as a nonprofit for the youth of Stockton, worked with the Board to achieve that end. He also worked with the Board to ensure that the contracts between the Kids Club and the Stockton Unified School District for tutoring services and afterschool care remained in place.

Simas attested to the fact that petitioner tutors members in the Kids Club afterschool program. He also spends time at the Kids Club annual camping trip. For the Kids Club 50th anniversary celebration, petitioner raised money, moved furniture, and assisted in any way he could to make the event a success.

Simas believes that petitioner has demonstrated that he has “learned a huge lesson” and should be allowed to practice law. She observes that he has the heart for making their community a better place to live. Among other things, his volunteer work evidences that goal.

Petitioner also started a grass roots organization called Stockton Safe Streets. He has worked as a political consultant since 2012. Although petitioner derives income from some of his consulting services, he also provides consulting services pro bono for charitable and/or community purposes – which reflects positively on his character.

Whether in the form of pro bono services or simply volunteering and “assisting in any way he [can],” as he did for the Kids Club, petitioner’s community activities are positive evidence of his rehabilitation efforts and present good moral character. (Cf. *Calvert v. State Bar* (1991) 54 Cal.3d 765, 785, quoting *Schneider v. State Bar* (1987) 43 Cal.3d 784, 799.)

Evidence of Good Character

In support of his effort to prove his rehabilitation and present moral qualifications, petitioner presented good character evidence from individuals, including, inter alia, the mayor of Millbrae, California, a former vice mayor of Stockton, California, as well as the current vice-mayor of Stockton, two of petitioner's business partners, several law enforcement officers, and several attorneys. These individuals communicated their observations and opinions regarding petitioner's rehabilitation and moral character. Some noted that petitioner is remorseful for his conduct that led to his resignation with charges pending. And, like Sharon Simas, several other character witnesses and/or declarants provided testimonials regarding petitioner's commitment to serving and improving his community. All of the character witnesses and declarants were very supportive of petitioner and commented positively upon his honesty, truthfulness, and integrity.

Each of the character witnesses had been provided with a packet, provided to them by petitioner's attorney in this matter, that included a statement describing, among other things, the conduct leading up to petitioner's resignation with charges pending, his activities since being released from federal custody, his current community and political activities, and a statement of what petitioner has learned from his experience. Also included in the packet were pages 16 through 19 of the pleading entitled, "*Factual Basis for Plea Agreement*," which document had been filed in the *United States of America v. Allen Sawyer*, and which was included as part of petitioner's personal statement, submitted as Attachment C to his petition for reinstatement. Additionally, the witnesses/declarants were also provided with the "*State Bar's Response to Petition for Reinstatement*," filed in this matter. Thus, each witness, in addition to whatever knowledge he or she previously had regarding petitioner, was provided with information regarding the background and issues in this reinstatement matter. All of petitioner's character witnesses presented by petitioner, as well as the individuals who submitted declarations on

petitioner's behalf were aware of the nature of the proceedings and petitioner's conduct that resulted in the criminal charges that had been filed against him. The court finds that each of the character witnesses who testified on petitioner's behalf and the individuals who submitted declarations on his behalf were credible.

As noted, several attorneys, who are particularly aware of the high standard of moral character necessary in their profession, appeared as character witnesses in support of petitioner or submitted declarations made under penalty of perjury.

Virginia Papan (Papan), the mayor of Millbrae, California testified on petitioner's behalf. Papan is also an attorney licensed to practice law in California. She met petitioner when he was her supervisor at the OCJP. She was aware that petitioner was involved in the Sunlaw project, but she never saw him work on the Sunlaw project in the office. While at the OCJP, she and petitioner became friends. In 2013 and 2014, they were in contact about one to two times per month. Papan knows about petitioner's indictment. She visited him when he was in prison and talked to him while he was in prison.

Papan testified that she believes that petitioner is "absolutely fit to practice" law. He is exceptionally reliable and she trusts petitioner implicitly.

Papan noted that petitioner has acknowledged that he failed to use good judgment in terms of the Sunlaw project. Petitioner mentioned in her testimony that she loaned money to petitioner after he was released from prison. Petitioner has not yet fully paid what he borrowed. He, however, is working to pay off the debt by doing jobs around her home.

Armando Villapudua (Villapudua) submitted a declaration (Exh. GGG) in this matter. Villapudua is a licensed attorney in good standing with the State Bar of California. He and petitioner went to law school together; but, they were not personally acquainted at that time. They met for the first time the night that they were sworn in as members of the Bar. It was not

until six months later that they again made contact. Petitioner was working in the San Joaquin County District Attorney's Office (the DA). Petitioner informed Villapudua that the DA was interviewing to fill a position. Villapudua interviewed for the position and was hired. It was while working at the San Joaquin County District Attorney's Office that petitioner and Villapudua's friendship developed. Petitioner, who was thereafter offered a job with the OCJP, accepted the position and left the DA's office. Villapudua also left the DA's office and started his own solo practice.

When the federal investigation of petitioner started, he decided to leave his position at the OCJP. Thereafter, he approached Villapudua about becoming his law partner. Villapudua has always believed that the investigation and conviction were politically motivated. Based on his knowledge and experience with petitioner, Villapudua also believes that petitioner did not commit criminal acts. Villapudua, who was friends with Dunn and knew McFall, concludes that petitioner was naïve and showed a lack of judgment – especially because he had been warned against getting involved with McFall. Despite what transpired, Villapudua is convinced that petitioner is a kindhearted, loyal, and honest person. When petitioner resigned with charges pending, he and petitioner dissolved their law partnership. Although their firm had assets, petitioner was fair about the whole process and the dissolution of the business was not at all difficult.

Villapudua, who worked with petitioner at the San Joaquin DA's office and as his law partner believes that petitioner has all the attributes of a good attorney. He is a problem fixer, cares about people, and want to help others. Villapudua, thus, urges that petitioner be reinstated to the practice of law.

Douglas A. Goss (Goss), the attorney who represented petitioner in his successful writ of *coram nobis* to vacate his conviction for honest services mail fraud, submitted a declaration in

this proceeding (Exh. DDD). In his declaration, Goss attested to the fact that petitioner has satisfied his financial obligations under the fee agreement, which he and Goss had entered.

Goss first met petitioner when he was a deputy district attorney. Goss then became a private criminal defense attorney. Between 1995 and 1999, Goss was defense counsel on numerous cases on which petitioner was the prosecutor. Petitioner and Goss also were co-counsel on numerous criminal cases when petitioner was in private practice between the years 2002 and 2005.⁹

In those legal matters involving petitioner, which Goss observed, petitioner conducted himself ethically as both a prosecutor and as a private practitioner. Petitioner had an outstanding reputation in the San Joaquin County legal community as a prosecutor and as a private attorney. His reputation was that of a “fair” and “balanced” prosecutor.

In preparing for filing the writ of coram nobis, Goss reviewed the previous companion Ninth Circuit decision, *U.S. v. McFall* (Exh. AA), which absolved petitioner of the offenses that had been dismissed as part of the plea agreement. The Ninth Circuit either specifically rejected the government legal theory or found that the government had endorsed petitioner’s continuous denials of wrongdoing by granting a truthful cooperation reduction.¹⁰

⁹ In August 2001, the Port of Stockton rejected Sunlaw Energy Corporation’s proposal. Thus, petitioner’s tenure as a private attorney between 2002 and 2005 took place subsequent to the conduct that resulted in the federal charges against him and his resignation from the State Bar with charges pending.

¹⁰ There has been no credible evidence presented in this proceeding to indicate that petitioner was ever involved in a conspiracy involving extortion or bribery or that his denials of such involvement are anything but honest.

In this proceeding, the only person who testified that petitioner was in any way involved in an offer to make a bribe or participate in a conspiracy to offer a bribe is State Bar witness, Donald Moyer (Moyer). On January 22, 2015, Moyer testified before this court that in 2003, petitioner had been present at a meeting where McFall offered Moyer a bribe in the presence of petitioner. Moyer’s testimony before this court, however, is inconsistent with the facts he had previously provided in his 2003 interview regarding the meeting at which he claims money was offered to him by McFall. On April 17, 2003, Moyer told investigator Kenneth Melgoza, an

Goss “wholeheartedly support[s] the reinstatement of [petitioner’s] right to practice law in California.

Gary Winuk (Winuk) is a California attorney, who was employed by the Fair Political Practice Commission as the Chief of Enforcement of the Fair Political Practice Act at the time he testified in this matter. Winuk testified that it is his opinion that based on petitioner’s position as a partner in SMTM, petitioner was required to disclose his role as a partner and his connection to Sunlaw on the Form 700 that he submitted in 2002. According to Winuk, the most common consequence for an omission, such as that made by petitioner in relation to the Form 700, normally would have been a warning letter. Petitioner, however, did not receive a warning letter. Winuk also noted that petitioner had no duty to disclose his involvement in MSD, if no money was made. And, the political reform act states nothing about incidental use of a government facility.

In sum, it is Winuk’s belief and position that petitioner has a strong “moral center” and is a person of good moral character. Thus, Winuk strongly supports petitioner.

investigator for the San Joaquin Office of the District Attorney that McFall offered Moyer \$50,000 to \$100,00. Moyer thought the offer might be part of a bribe. In that 2003 interview, Moyer specifically stated that petitioner showed up at that meeting **after** Moyer had made the offer of money and that that no reference to money or a bribe occurred after petitioner’s arrival. (See Exhibit HHH.)

However, in 2015, 12 years after his interview, Moyer’s recollection of the incident had changed and he offered a different account of what had transpired. Moyer testified before this court that petitioner had been present when a bribe had been offered to Moyer by McFall. The details of Moyer’s 2015 testimony are inconsistent with and contrary to the 2003 statement he made to Kenneth Melgoza. Other than Moyer’s testimony before this court there is no evidence that petitioner was ever present when money or a bribe was offered by McFall. There is no explanation offered by Moyer for his failure to mention for 12 years that petitioner was present when the alleged offer of money was made.

After carefully considering Moyer’s testimony, including his inaccurate recollection of numerous details, this court finds Moyer’s 2015 testimony to be unreliable at best. Moyer’s testimony is not credible.

As discussed, all of the individuals who submitted declarations in support of petitioner commented favorably on his honesty and integrity.

Of note are the comments of two individuals, each of whom has been a business partner of petitioner. One of the business partners, **Kevan Johnston** (Johnston) is the Chief Executive Officer of “Coast to Coast Direct Products.” He and petitioner met approximately six years ago and a friendship developed. When petitioner mentioned his conviction to Johnston, Johnston decided to google petitioner and read newspaper articles about petitioner. The articles and the google search caused Johnston to have concerns about doing business with petitioner. So, Johnston asked petitioner about the things he had read. Petitioner was willing to answer all questions asked. Johnston notes that the answers he was given by petitioner are consistent with the information that was provided to him in the packet he received regarding this matter.

Johnston believes petitioner is honest and trustworthy. Additionally, petitioner has shown himself to be a hard worker and “a good family man.” He has demonstrated that he cares about his business relationships and his friendships.

Johnston asserts that petitioner has much to offer others and should be allowed to practice law. He sees petitioner as an individual who brings much value to his community and if he were licensed to practice law, he would be able to contribute more to the community.

Like Johnston, **David Hartgraves** (Hartgraves) is a Stockton businessman. He owns two businesses with petitioner. One of the businesses is a construction company and the other is a commercial transportation company. Hartgraves and petitioner have known each other for nine years. Like, Johnston, he finds petitioner to be very trustworthy. He describes petitioner as a “man of his word with integrity.” Hartgraves acknowledges that he is not familiar with petitioner’s legal skills. But, he is aware that petitioner had been an attorney and would like to return to the practice of law. Based on his personal and professional relationship with petitioner,

Hartgraves is confident that if petitioner were reinstated, a finer attorney could not be found. His opinion comes from working in business with petitioner, the integrity petitioner displays each day, petitioner's levelheadedness, and a true commitment to his word.

As an example of petitioner's integrity and honesty, Johnston describes how petitioner deals with situations involving finances. Johnston notes that there have been times when the business has owed money to others, but has not yet been paid by other businesses for work performed. Petitioner insisted that their business must pay its debts to others, before they pay themselves. Petitioner insisted that first and foremost, they had to meet their obligations to others, before they pay themselves.

Another character witness **Patrick Withrow** (Withrow) is a sergeant in the San Joaquin County Sheriff's Office. He learned of petitioner 15 years ago, when petitioner was working for the San Joaquin County Sheriff's Department. He and petitioner got to know each other four years ago on a personal level, when Withrow decided to run for the position of San Joaquin County Sheriff. Petitioner approached Withrow and offered to consult on his campaign. Petitioner immediately addressed his personal history with regard to the FBI investigation, conviction, and exoneration. He explained to Withrow that hiring him was a huge risk and that political opponents would use petitioner's history against Withrow and his campaign negatively. Petitioner's candor impressed Withrow, who found petitioner to have amazing character.

Withrow states that he is unfamiliar with petitioner's legal skills, because petitioner has been careful not to give him legal advice. When Withrow called petitioner with a question that was legal in nature, he replied that he couldn't answer because he was not an attorney and that Withrow should find an attorney to consult. Withrow believes that petitioner should be allowed to practice law because he is honest and professional. Withrow further asserts that in his position as sergeant he has worked with numerous attorneys and it is his opinion that petitioner is more

honest and forthright than the other attorneys with whom he has worked. Finally what strikes Withrow about petitioner is that despite his conviction and all he has been through he is not bitter. “Petitioner has been to prison and lost everything, but he has come back to San Joaquin County and is committed to [the] community.”

As the testimony and declarations of the witnesses/declarants indicate, several have personal as well as professional relationships with petitioner. Some have known petitioner since before the occurrence of the misconduct that caused him to resign with charges pending had occurred. Others met him after the occurrence of the misconduct. All of the witnesses/declarants were aware of the circumstances surrounding the activities/conduct that resulted in petitioner’s entering a guilty plea for having violated the honest services statute. All expressed their opinions that petitioner is of good moral character. Some provided evidence of their knowledge of petitioner’s acceptance of responsibility for his misconduct. Others testified to his honesty and integrity. Petitioner has gained the trust and confidence of his business partners, as well as other individuals for whom he had provided consulting services.

The review department of this court has “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 Salyer* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 816, 822-823; quoting *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 317-318.) Moreover, it is well-established that favorable testimony from members of the bar and members of the public held in high regard is entitled to considerable weight. (See, e.g., *In the Matter of Salyer, supra*, 4 Cal. State Bar Ct. Rptr. at p. 824; *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423, 431.) While such character testimony does

not alone establish the requisite good character, it can, as it does here, corroborate and expand on the other evidence of rehabilitation and present good moral character received by this court.

Additional Evidence of Rehabilitation and Moral Qualifications

1. Petitioner's Recognition of Wrongdoing and Remorse

On January 11, 2005, petitioner submitted a personal statement to the sentencing judge in his criminal matter. (Exh. Q.)¹¹ In that letter/statement to the sentencing judge petitioner acknowledged and took responsibility for conduct and actions in which he had engaged and which resulted in the criminal charges that were brought against him. Petitioner acknowledged that during meetings with local officials, he used the prestige and influence of his office to garner support for his personal business venture regarding the Sunlaw Energy Company. Specifically, he admitted to handing out his business card from the OCJP. Petitioner acknowledged that his conduct left an inappropriate impression. He now understands that to use the influence and prestige of one's public position to advance one's private /financial interests is improper and misleading. He stated, "I deeply regret that conduct."

Petitioner also acknowledged his failure to report his interest in SMTM and MSD on his 2002 Fair Political Practice Commission (FPPC) Form 700, which form required that he disclose all business positions (e.g., his position as a partner in SMTM) in business entities.¹² Petitioner also admitted using a government conference room for a conference regarding the Sunlaw business venture, improperly left an impression with some individuals that the governor was

¹¹ Petitioner's letter/personal statement provided to the sentencing judge on January 11, 2005, is consistent with and similar to his Personal Statement (Attachment Section C) submitted as part of his Petition for Reinstatement in the instant proceeding.

¹² Petitioner stated in pleadings submitted in this proceeding and in his testimony that based on his discussions with the FPPC, he believed that he did not have a duty to disclose a financial interest in a failed business effort that resulted in no financial gain. Petitioner's testimony was credible in that he held an honest belief that he was not required to disclose his interest in SMTM.

supporting Sunlaw's bid to have its energy plant located in the Port of Stockton. Petitioner further testified to using a government cellphone for his private business venture.¹³ Petitioner now recognizes that using one's official public position to further private financial ventures is improper. Petitioner testified that he would never again engage in such acts.

Petitioner not only has recognized and acknowledged that it was wrong to use the influence and prestige of his office to garner support for a personal business venture, but that the harm he caused involved more than an appearance of impropriety. He testified that he put a lot of people who trusted in him in jeopardy. He described his conduct, which led to the federal investigation and his resignation with charges pending, as more than the result of naiveté and poor judgment. He labeled the conduct as "reckless." He testified that he regrets his decision to pursue a private business venture while he was a public official and if he could relive the past he would not pursue such a business venture. He also indicated that now that he is working as a public consultant, he will not pursue such private business ventures.

Petitioner is committed to "never again make decisions that will cast doubt on [his] integrity or ethics." (*Petition for Reinstatement*, filed June 16, 2004, Attachment C Personal Statement, p. 15.)

2. Petitioner's Financial Obligations after Imprisonment/Efforts to Meet Financial Obligations

Upon his release from prison, petitioner decided to forgo bankruptcy and make a commitment to pay off his debts. It is the State Bar's contention that petitioner lacks moral character because he has been unable to pay certain debts. This court finds no merit to the State Bar's contention.

¹³ Petitioner reimbursed the State for use of the government cellphone.

Petitioner has not filed bankruptcy and instead is working to pay off his debts. As a result of this conviction, petitioner owed at least \$ 250,000 in legal costs. His debt record is as follows:

1. In 2009, petitioner owed \$10,554 to a credit card company (Discover), which charged off the debt owed;
2. Petitioner had a balance due to Bank of America of \$46,519. Bank of America has charged off that debt;
3. Petitioner owed money to a Rothschild in the amount of \$19,000. He has made some payments on the debt and he and Rothschild are in the process of agreeing to a payment plan; and
4. Petitioner owes money to Quin Denvir (Denvir), an appellate attorney. Petitioner and Denvir have established a payment plan.

As noted, *ante*, and as petitioner testified, he found it difficult to find employment as a convicted felon. As a thirty-six year old unemployed, married father of two children, petitioner was personally, professionally, and financially devastated. As a result of his criminal conviction, petitioner lost his ability to practice law and his financial circumstances deteriorated.

Having lost his law license and bearing the stigma of a convicted felon, petitioner was unable to meet his financial obligations upon his release. He had cars and real estate repossessed. Petitioner's solution was to start a series of businesses and partnerships. It was petitioner's hope that one of the businesses would help him to support his family and pay his debts. However, none of the businesses were lucrative, in part, because the broader economy had begun to fail.

Petitioner had financial obligations he was unable to meet. The State Bar argues that petitioner has demonstrated his willingness to put his own interests before those of his creditors. However, the fact that an individual's debts may exceed that person's ability to pay is not synonymous with moral deficiency or depravity. (See, e.g., *Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) Specifically, in this case the court finds that the fact that petitioner has not

succeeded in paying all of his debts is not a marker of any moral deficiency on his part. As previously noted, petitioner credibly testified that job opportunities for convicted felons are limited. Petitioner spent most of his time between his release from prison and the grant of the writ of *coram nobis* trying to pay back his debts and support his family. However, even under pressure he did not file for bankruptcy. He chose to take on the responsibility of paying his debts to the best of his ability. Although petitioner's debts are large, he has worked and continues to work toward paying them off. As attested to by several declarants and/or character witnesses, it is petitioner's belief that if he or a business in which he has an interest owes money to an individual or entity, all efforts should be made to repay that entity or individual.

3. Petitioner's Community and Charitable Activities Provide Evidence of Exemplary Conduct

The State Bar further contends that petitioner's community and charitable activities for the Boys and Girls Club of Stockton should not be considered when evaluating petitioner's rehabilitation. This contention lacks merit, both factually and legally. There has been no showing that petitioner derived direct personal benefit from his efforts on behalf of the Boys and Girls Club. He is entitled to receive credit here for his personal efforts in securing benefits to the members of his community. As noted, Sharon Simas in her declaration, attested to the fact that petitioner tutors in the Kids Club afterschool program. Petitioner also spent time at the Kids Club annual camping trip, assisting in any way he could. There is no legal or factual basis why such efforts and volunteer work by petitioner should not be recognized when evaluating his rehabilitation. There is no factual or legal basis to show that petitioner's personal efforts on behalf of the Boys and Girls Club provide any personal benefit to him. Petitioner's volunteer work on behalf of the Stockton Kids Club is a means for him to return something positive to his community.

Discussion

It is well established that the law favors the regeneration of erring attorneys and should not place unnecessary burdens upon them in proving rehabilitation. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 315, citing *Tardiff v. State Bar* (1980) 27 Cal.3d 395, 404; *Resner v. State Bar* (1967) 67 Cal.2d 799, 811; *In re Gaffney* (1946) 28 Cal.2d 761, 764; *In re Andreani* (1939) 14 Cal.2d 736, 749; and *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373, 382.) Even an attorney's prior "egregious past misconduct" does not preclude reinstatement. (*In the Matter of Bellicini* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 883, 890.) While evidence of sustained exemplary conduct is required for reinstatement to be granted, sustained exemplary conduct "does not require perfection from an applicant nor total freedom from true mistake." (*In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25, 37; see, e.g., *In the Matter of Salyer, supra*, 4 Cal. State Bar Ct. Rptr. 816 [member reinstated despite failure to file rule 955 affidavit]; *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423 [petitioner's failure to be forthcoming with his clients about the circumstances of his resignation, suggesting to them that he was retiring and concealing his discipline, was not a bar to reinstatement]; *In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546 [DUI conviction after resignation not a bar to reinstatement].) "Where the evidence is uncontroverted . . . and shows exemplary conduct extending over a period of from eight to ten years without even a suggestion of wrongdoing, it would seem that rehabilitation had been established." (*In the Matter of Brown, supra*, 2 Cal. State Bar Ct. Rptr. at p. 317; quoting *Werner v. State Bar* (1954) 42 Cal.2d 187, 198 (conc. opn. of Carter, J.).)

As set forth, *ante*, in March of 2001, petitioner formed a partnership with Dunn and McFall in an attempt to have Sunlaw placed in the Port of Stockton as part of a business

opportunity which would result in a profit for petitioner, Dunn, and McFall. Petitioner misused his position and influence as the Chief Deputy Direct of OCJP to, among other things, advance his own private financial interests. However, in August 2001, the Port of Stockton rejected Sunlaw's proposal. Thus, from March 2001 to August 2001, a period of six months, petitioner engaged in self-dealing and what at best might be termed questionable behavior. Additionally, in March 2002, petitioner did not disclose his partnership interest in SMTM when he filed his annual Statement of Economic Interest Form 700 for the year 2001.¹⁴

Yet, while petitioner engaged in misconduct, this is not a case of a long-term period of "multi-layered, complex and harmful course of public dishonesty." As set forth by the U.S. Attorney in the government's non-opposition to petitioner's "Petition for Writ of Error *Coram Nobis*, petitioner was a first-time offender, who, arguably, was less culpable than the other defendants involved in this case.

No negative character inferences can be drawn. The only person who testified negatively regarding petitioner was Moyer. And, as set forth, *ante*, Moyer's testimony has been found by this court to be totally unreliable and lacking credibility.

Nor is there evidence of any misconduct or problems in petitioner's professional life prior to 2001 or since March of 2002. There is no evidence of any misconduct by petitioner in the years that have elapsed since the misconduct that gave rise to his resigning from the practice of law with charges pending. Instead, he has presented overwhelming evidence, including extensive testimonials from leaders of his community and members of the legal profession of his rehabilitation and present good moral character. In fact, as noted by those individuals providing

¹⁴ There is no evidence that demonstrates that petitioner was obliged to include MSD on his Form 700, as that entity was wholly owned by McFall and no money had ever been transferred between SMTM and MSD, which would have been the trigger requiring petitioner to include MSD on his Form 700.

testimony and declarations as to petitioner's good character, he has become a highly-regarded member of his community.

Truly exemplary conduct includes service to the community. Petitioner's work with Stockton Kid's Club, when considered in context, is significant. Petitioner was a convicted felon, who went to prison, and lost his license to practice law. Additionally, he had a wife and two children to support. Furthermore, petitioner paid \$250,000 for his legal defense for a crime he was later found not to have committed. Nonetheless, despite struggling to pay his debt, petitioner declined to take the easy route and declare bankruptcy. Under such circumstances, the fact petitioner found the time to engage in community service is a mark of exemplary conduct.

Since his resignation with charges pending, petitioner has rebuilt his life in an exemplary fashion. Petitioner complied with his criminal probation, even though he was later found not to have been guilty of a crime. He has obtained employment, supports his family, has not declared bankruptcy, and is on schedule to pay his debts.

Additionally, this court finds that petitioner's testimony in this proceeding was candid and credible. Petitioner accepts full responsibility for the misconduct that led to his resignation. He is well aware of the harm his misconduct caused his former clients and the legal profession. For 10 years, he has worked hard, been productive, and given of himself through charitable and civic volunteer activities to atone for the wrongs he committed. Petitioner seeks readmission to the Bar because he wants to serve his community and redeem himself – at least in his own eyes.

Petitioner's present moral character is attested to by many character witnesses. The court finds that petitioner's sustained period of exemplary conduct, his recognition of the seriousness of his misconduct, his dedication to his family, and his genuine expression of remorse, are all strong indicators of petitioner's rehabilitation and present honesty and integrity. Reviewing the record as a whole, the court finds that petitioner has demonstrated rehabilitation and moral

reformation from the acts which led to his resignation and that he currently possesses the moral qualifications for reinstatement to the practice of law.

Conclusion and Recommendation

In conclusion, the court finds that petitioner **Neat Allen Sawyer** (1) passed a professional responsibility examination within one year before he filed his petition for reinstatement, (2) established his present ability and learning in the general law by providing proof of having taken and passed the Attorneys' Examination administered by the Committee of Bar Examiners within three years prior to filing the petition for reinstatement, and (3) has established that he is rehabilitated and presently possesses the moral qualifications for reinstatement to the practice of law in California. (Cal. Rules of Court, rule 9.10(f).)

Accordingly, Neat Allen Sawyer's June 16, 2014 petition for reinstatement after resignation with disciplinary charges pending is GRANTED. Further, this court RECOMMENDS that **Neat Allen Sawyer** be reinstated as a member of the State Bar of California upon his payment of the required fees and his taking the oath required by law. (Cal. Rules of Court, rule 9.10(f); Bus. & Prof. Code, § 6078; Rules Proc. of State Bar, rule 5.445(A).)

Dated: May _____, 2015

Pat McElroy
Judge of the State Bar Court