PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **STEVEN HOWARD UNGER,** **Former Member No. 121952,** Petitioner for Reinstatement.	Case No.: **16-R-13205-DFM** DECISION ON PETITION FOR REINSTATEMENT

INTRODUCTION

In this proceeding petitioner **Steven Howard Unger** (Petitioner) seeks to be reinstated to the practice of law after resigning from the State Bar of California with charges pending, effective April 17, 2002. Petitioner's effort is opposed by the State Bar.

After carefully considering all of the evidence and arguments of the parties, this court concludes that Petitioner has not met his burden of proof. Accordingly, it is not recommended that he be reinstated to the practice of law.

PERTINENT PROCEDURAL HISTORY

On May 16, 2016, Petitioner filed the instant petition for reinstatement. In his petition, he stated that he had attached proof that he "has taken and passed the Attorneys' Examination within three years prior to the filing of this petition." That proof, however, was the notification, dated May 17, 2013, to Petitioner that he had passed the February 2013 California Bar

Examination, an examination date not within the three-year window prior to the filing of his petition.

On June 27, 2016, the State Bar filed a motion to dismiss Petitioner's petition, based on the fact that Petitioner did not present any proof in his petition that he had taken the Attorney's Examination within the three years prior to the filing of his reinstatement petition. In his opposition to the motion, Petitioner argued that his petition was filed within three years of his being having been notified that he had passed the examination.

Rule 9.10(f), formerly rule 952(d), of the California Rules of Court provides in pertinent part:

> Applicants who resigned with charges pending or who were disbarred must establish present ability and learning in the general law by providing proof, at the time of filing the application for readmission or reinstatement, that they have taken and passed the Attorneys' Examination by the Committee of Bar Examiners within three years prior to the filing of the application for readmission or reinstatement.

This requirement is also set forth in rule 5.441(B)(3)(a) of the Rules of Procedure of the State Bar of California.

On July 27, 2016, this court dismissed the petition based on its conclusion that Petitioner had not taken the required examination within three years prior to the filing of his petition.

Petitioner then sought review of that dismissal by the Review Department of this court. On March 17, 2017, that court issued a decision reversing the dismissal and remanding the matter to this court for further proceedings on its conclusion that Petitioner's filing of his petition within three years of his receiving notice of his passage of the examination fell within the language of the rule.

On April 10, 2017, a notice that the case had been reassigned to the undersigned was issued by this court and a status conference scheduled on May 1, 2017. At that status

conference, the matter was scheduled to commence trial on September 26, 2017, with a four-day trial estimate.

On July 10, 2017, the State Bar of California, Office of the Chief Trial Counsel (State Bar) filed an opposition to the petition for reinstatement.

Trial was commenced on September 26, 2017, and completed on October 3, 2017. Petitioner was represented at trial by attorney Kevin Gerry. The State Bar was represented by Supervising Attorney Mia Ellis and Deputy Trial Counsel Hugh Radigan.

PETITIONER'S EVIDENCE REGARDING BASIS FOR REINSTATEMENT

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

(1) pass a professional responsibility examination within one year prior to filing the petition;
(2) establish their rehabilitation;
(3) establish present moral qualifications for reinstatement; and
(4) establish present ability and learning in the general law by providing proof that they have taken and passed the Attorneys' Examination by the Committee of Bar Examiners within three years prior to the filing of the petition.

An additional pre-filing requirement is that the petitioner must submit proof that the petitioner has paid all discipline costs and reimbursed all payments made by the Client Security Fund as a result of the petitioner's prior misconduct. (Rule 5.441, Rules Proc. of State Bar.)

After the issue of whether Petitioner had taken and passed the Attorney's Examination within the last three years prior to the filing of the petition was resolved by the Review Department of this court, the only remaining disputed issue in this matter is whether Petitioner has sustained his burden of proving that he is rehabilitated and has the present moral qualifications for reinstatement.

REHABILITATION/PRESENT MORAL QUALIFICATIONS

While the law looks with favor upon the regeneration of errant attorneys (*In re Andreani* (1939) 14 Cal.2d 736, 749), the burden on a petitioner to prove his or her rehabilitation is a heavy one. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1091.) The California Supreme Court has consistently held that a petitioner for reinstatement must produce "stronger proof of his present honesty and integrity than one seeking admission for the first time whose character has never been in question." (*Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403.) Proof of such rehabilitation requires "overwhelming" proof of a lengthy period of not only unblemished, but exemplary conduct. (*In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894, 899; *In re Menna* (1995) 11 Cal.4th 975, 989.)

In determining whether that burden has been met, evidence of present character must be considered in the light of the moral shortcomings which surrounded the prior imposition of discipline or resignation with charges pending. It is appropriate, therefore, to first examine the extent of the prior misconduct to begin to determine the length of the road to rehabilitation. (*Tardiff v. State Bar*, *supra*, 27 Cal.3d at p. 403.)

Petitioner's Background/History of Discipline and Misconduct

Petitioner was admitted to the practice of law in California on December 10, 1985, after graduating from Whittier College School of Law. He resigned with charges pending on February 19, 2002, which that resignation being accepted by the Supreme Court on March 18, 2002, effective April 17, 2002.

Prior to resigning from the practice in February 2002, Petitioner had been disciplined on two prior occasions and was facing additional disciplinary charges and numerous client complaints for other misconduct. Notwithstanding his prior disciplines, Petitioner's misconduct, including his unauthorized practice of the law, misappropriation of client funds, and other acts of

moral turpitude, continued even after he had resigned as a member of the bar and eventually led to his two felony criminal convictions in 2005-6 for grand theft and conspiracy to commit the unauthorized practice of the law.

A more detailed history of this extensive misconduct is as follows.

1995 – First Discipline - Private Reproval

On July 19, 1995, this court issued an order imposing a private reproval of Petitioner, with conditions of reproval for a period of one year. In the client matter giving rise to this discipline, Petitioner represented a woman in a personal injury action. Although his client had requested that he obtain a settlement of the action, before Petitioner could do so the woman was killed by her husband.

Initially unaware of his client's death, Petitioner went forth to negotiate a settlement of the deceased client's personal injury case and then executed the settlement documents in the client's name. When he then learned of the client's death, he initially failed to notify the opposing party of that fact. When the opposing party learned of the true facts, it then acted to void the agreement.

In a stipulation executed by Petitioner and the State Bar, Petitioner agreed, and this court found, that Petitioner's conduct in that matter represented violations of California Rules of Professional Conduct[1] rule 3-110(A) [failure to act with competence].

1996 – 2000 - Misconduct After First Discipline

Despite the efforts of this court to educate Petitioner regarding his ethical obligations and to motivate him to comply with them, his misconduct continued after the above one-year period of reproval had expired.

---

[1] Unless otherwise indicated, all references to rule(s) are to this source.

Elizabeth Pressley Matter (Case No. 00-O-12968)

In March 1995, Petitioner was hired by Elizabeth Pressley to represent her in a legal malpractice action against another attorney. Petitioner agreed to handle the case on a contingency fee basis. Petitioner then failed to perform any services on behalf of Pressley in the matter.

In September 1996, just after Petitioner's one-year period of reproval had expired, Petitioner began sending fabricated documents to Pressley, misleading her into believing that he was actively performing services on her behalf. In addition, when Pressley was able to discuss her matter with Petitioner, he personally misled her regarding the status of her case.

This fraudulent conduct culminated in May 1998, when Petitioner provided fabricated documents and false information to Pressley, indicating that Petitioner had been able to settle her action against the other attorney for $21,222,850. In fact, there was neither a lawsuit filed on Pressley's behalf against the attorney nor a settlement of her claims against the attorney.

On June 25, 1998, Petitioner confessed to Pressley that he had not provided any services on her behalf. Although his employment by her was then terminated, he failed to return her files to her. Nor did he take any steps to preserve her claims against the former attorney.

Pressley subsequently filed a complaint with the State Bar against Petitioner. Among the matters about which she complained was the fact that several checks he had issued to her over time had been drawn on insufficient funds.

Lauren Glaser Matter (Case No. 01-O-04149)

Between November 1998 and April 1999, Lauren Glaser retained Petitioner in two separate personal injury matters. The two cases settled. In one case, Petitioner received settlement funds in or about September 1999. In the other matter, he received settlement funds on or about July 26, 2000. In both cases, Petitioner retained portions of the settlement funds to

pay liens of Glaser's medical providers. He then did not do so. As a result, Glaser complained about Petitioner to the State Bar in mid-2001. Although the State Bar sent Petitioner two letters informing him of Glaser's complaints and asking him to respond to them, Petitioner failed to do so.

Alan Schwartz Matter (Case No. 99-O-13520)

In April 1998, Alan Schwartz hired Petitioner to file a case in relation to abuse of process against Abraham Chaplan, who held a New York judgment against Schwartz in excess of $200,000.

In January 1999, Petitioner prepared and presented to Schwartz what purported to be a $1,300,000 default judgment in a California court against Chaplan and in favor of Schwartz. In fact, this document was fabricated and there was no such judgment against Chaplan. Although Petitioner knew or should have known that Schwartz intended to use this purported California judgment in the New York courts as a defense to having to pay the New York judgment, Petitioner did not disclose to Schwartz that the purported California judgment was fabricated.

This misconduct eventually resulted in both Petitioner's second discipline by the State Bar and a lawsuit by Schwartz against Petitioner for this conduct. That lawsuit eventually resulting in a judgment against Petitioner for $500,350.

Joanna L. Willis (Case No. 05-04854)

Joanna Willis retained Petitioner in May 1998 for a personal injury matter.

Willis was subsequently advised that she had been awarded $10,000 for her case. However, she did not receive settlement funds related to her case. Nor did Petitioner pay the medical providers related to the case.

Willis filed her complaint with the State Bar on March 21, 2005.

Debra and Scott Austin

On or about May 19, 1999, Petitioner represented Scott and Debra Austin as plaintiffs in a real estate matter. Petitioner filed the lawsuit but failed to serve the defendants. On or about March 7, 2000, Petitioner moved the court to dismiss the lawsuit without the Austins' knowledge or consent.

Petitioner never told the Austins that the court had dismissed their lawsuit, and he continued to bill the Austins for fabricated services. Petitioner received $5,837 from the Austins based on his fabricated billing statements.

On or about June 4, 2007, the Austins filed a civil complaint against Petitioner for fraud in *Austin v. Unger*. On or about May 1, 2008, Petitioner stipulated to a $25,000 judgment in that lawsuit. As part of the settlement document, Petitioner admitted all of the allegations of the Austins' complaint.

Thereafter, Petitioner renegotiated the terms of this stipulation to allow for lesser monthly payments but a $50,000 judgment in the event of any default in his making those payments. Notwithstanding this renegotiated arrangement, Petitioner failed to timely repay the Austins pursuant to the terms of the renegotiated stipulation and eventually stopped making any monthly payments to them whatsoever. According to an accounting prepared by the Austins, at the time Petitioner stopped making monthly settlement payments in January 2013, he still owed $14,750 to the Austins. (Ex. 54.)

Shannon Leischner (State Bar Inquiry No. 02-12885)

In 1999, Petitioner represented Shannon Leischner in a personal injury case that settled for $7,000. Petitioner paid Leischner $2,000 for her portion of the settlement, kept $2,000 for his fees, and retained the balance of the settlement to pay Leischner's outstanding medical bills. Instead of paying those bills, Petitioner embezzled the money.

On or about November 22, 1999, Petitioner's client trust account was overdrawn by over $3,000.

2000 – Second Discipline – 90-Day Actual Suspension

On June 22, 2000, Petitioner and the State Bar executed and lodged with the State Bar Court a stipulation resolving the State Bar complaint filed by Alan Schwartz (Schwartz) against Petitioner in case No. 99-O-13520. In that stipulation Petitioner acknowledged that he had created on January 13, 1999, and then presented to his client, a false document titled "Judgment by Default by Court." This document purported to be a judgment of $1,300,000 issued by the Orange County Superior Court in the client's favor. In fact, there was no such judgment. Petitioner then provided this fabricated document to Schwartz without disclosing its falsity, knowing that Schwartz would present it to a court in New York to avoid an existing legal obligation in that state.

In the stipulation signed by Petitioner, he agreed, and this court found, that his conduct in the Schwartz matter constituted an act of moral turpitude in violation of section 6106 of the Business and Professions Code.[2] As an explanation by Petitioner for his misconduct, the stipulation further stated, "Petitioner explains that his misconduct resulted from his over-reaction to intense immediate stress related to Schwartz's [his client's] case and his relation with Schwartz. Petitioner is entering therapy to resolve the problems that led him to react as he did." (Ex. 9, p. 10.)

In August 2000, Schwartz filed suit against Petitioner for this conduct, eventually resulting in a judgment against Petitioner for $500,350.

As one of the agreed conditions of probation resulting from this discipline, Petitioner agreed to obtain monthly psychiatric or psychological help/treatment from a licensed therapist

[2] Unless otherwise indicated, all references to section(s) are to this source.

during the period of his probation or until the State Bar Court, relying on a written recommendation by Petitioner's therapist, concluded that such therapy was no longer required. On September 5, 2000, Petitioner began psychological counseling with Dr. Paulette Penton, Ph.D.

In addition to the above therapy requirement, there were numerous other conditions attached to Petitioner's two-year probation. Those conditions included, inter alia, complying with the State Bar Act and the Rules of Professional Conduct during that two-year period of probation and attending and passing the State Bar Ethics School during the first year of the probation.

On October 3, 2000, the California Supreme Court issued an order suspending Petitioner for one year, stayed, and placing him on probation for two years with conditions including an actual suspension of 90 days.

In addition to the conditions of probation, Petitioner was required to comply with then rule 955 of the California Rules of Court and to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year of the effective date of the Supreme Court's order.

The Supreme Court's order, and Petitioner's 90-day actual suspension, became effective on November 2, 2000. Petitioner's 90-day actual suspension terminated on January 31, 2001.

2000 – 2001 - Misconduct After Stipulation to Second Discipline (June 2000)

NSF Checks on Client Trust Account

Between May 4, 2000 and July 31, 2000, Petitioner repeatedly issued checks drawn on his client trust account at the Bank of America against insufficient funds. As noted below, Petitioner would subsequently agree that his issuance of these NSF checks represented acts of moral turpitude, in willful violation of section 6106. (Ex. 14, pp. 4-5.)

Radcliff Chambers (Inquiry No. 02-3806)

During the period of Petitioner's 90-day suspension (November 2, 2000 - January 31, 2001), Petitioner engaged in the unauthorized practice of law by representing client A. Radcliff Chambers in a personal injury matter.

In addition, on November 27, 2000, Petitioner sent the following email to Chambers, acknowledging that he had been dishonest with Chambers during the course of that representation:

> I regret to inform you that I have not been honest with you and there is no settlement or ward [sic] – I have been waiting for the insurance lawyer to make an offer – your case is still pending and viable and needs to be settled still. I know I have been wrong and hope I can do whatever to correct the situation – I have been under the care of a psychologist for the past month. We can leave the attorney who is taking over my practice finish the case or you can get a new attorney – we have given the insurance lawyers everything they need to get the case settled. I am very sorry and ask for your forgiveness.

(Ex. 67, p. 2.)

Derek Lee (Inquiry No. 02-19093)

During the period of Petitioner's 90-day suspension Petitioner also engaged in the unauthorized practice of law by representing client Derek Lee.

On or about November 21, 2000, while Petitioner was suspended from practicing law, Lee retained Petitioner in a personal injury matter. Thereafter, Petitioner entered into a settlement agreement without Lee's knowledge or consent and then failed to pay Lee or his medical providers any funds after Petitioner's receipt of the settlement proceeds.

Lee filed a small claims action against Petitioner, entitled *Derek Lee v. Steven Unger,* and was awarded a $3,127 judgment on or about September 4, 2002.[3] On or about October 4, 2002,

[3] Petitioner failed to disclose this civil action in his Petition for Reinstatement.

Petitioner filed a motion to vacate the judgment. On or about July 3, 2003, a $1,607 judgment was awarded against Petitioner in the small claims action. Thereafter, Petitioner paid Lee $1,607.

2000 – 2001 – Non-Compliance with Rule 955 Obligation

As part of the Supreme Court's October 3, 2000 order, Petitioner was required to comply with rule 955, divisions (a) and (c), within 30 and 40 days respectively after the effective date of that order. He failed to timely comply with that obligation. Worse, on or about February 5, 2001, after the deadline for timely compliance had passed, Petitioner filed a false Rule 955 compliance declaration. In that compliance declaration, signed by Petitioner under penalty of perjury, Petitioner falsely stated that he had notified his clients by certified mail of his suspension and had returned to them their client files and property. In fact, he had done neither. In addition, he represented that, as of the date of the Supreme Court's order, he did not represent any clients in pending litigation. That was also untrue.

Katrine and Craig Evans (Case Nos. 02-11596 and 05-F-03925)

In or about October 2000, just prior to the commencement of Petitioner's 2000 suspension, Katrine and Craig Evans retained Petitioner in a personal injury matter.

In or about June, 2001, Petitioner received a check from the insurance company made payable to the Evans' for rental car reimbursement. Petitioner deposited the check into his client trust account but never gave the Evans their money. On or about October 12, 2001, Petitioner's client trust account was overdrawn by approximately $500.

Baruch Benton (Case No. 01-O-04562)

On or about July 2, 2001, Petitioner represented Baruch Benton in a labor law matter and thereafter provided Benton with a complaint purportedly filed in Los Angeles Superior Court Case SC01345, knowing the document was fabricated and that the case was never filed.

2000 – 2001 – Probation Violations

As conditions of Petitioner's probation, he was obligated to submit to the Probation Unit by November 2, 2001: (1) proof of completion of no less than ten (10) hours of courses approved for MCLE credit in California, in the areas of law office management, attorney/client relations and\or general legal ethics; and (2) proof of attendance and passage of the State Bar Ethics School. Petitioner failed to comply timely with either requirement.

2001 – Failure to Take and Pass Multistate Professional Responsibility Examination

In another provision of the Supreme Court's October 2000 order, Petitioner was obligated to take and present proof of passage of the Multistate Professional Responsibility Examination (MPRE) by November 2, 2001. He did not do so.

Apparently aware that his failure to comply timely with this MPRE obligation would result in his being enrolled involuntarily inactive until such time as he had taken and passed the examination, Petitioner, on November 28, 2001, filed a "Motion to Vacate his Suspension" in this court. In that motion, Petitioner made factual misrepresentations by asserting that he was attorney of record in seven separate client matters with cases pending in the Los Angeles, Orange and Ventura County Superior Courts.[4] After the State Bar challenged the accuracy of those representations in Petitioner's motion and also opposed the motion on other grounds, the motion was denied. As a result, Petitioner was enrolled involuntarily ineligible to practice due to his failure to take and pass the MPRE, effective December 7, 2001. As noted above, he has remained ineligible to practice law in California from that date until the present time.

[4] In his motion, Petitioner noted that he had already been diagnosed as possibly having "symptoms of a bi-polar disorder." (Ex. 16, p. 34.) There is no indication that Petitioner sought medical attention for this condition until 2005.

2002 – Petitioner's Resignation with Charges Pending

On February 21, 2001, the State Bar filed an NDC in case number 00-O-12968, the Pressley matter discussed above.

On May 17, 2001, the State Bar filed an NDC in case number 00-O-14026, involving Petitioner's issuance NSF checks on his client trust account.

On October 22, 2001, in State Bar case numbers 00-O-12968 and 00-O-14026, Petitioner entered into a Stipulation as to Facts and Conclusions of Law with the State Bar, in which he acknowledged numerous violations of his professional obligations, including violations of rules 3-110(A) and 3-700(A)(2) of the Rules of Professional Conduct and acts of moral turpitude in violation of the prohibition of section 6106. This Stipulation as to Facts and Conclusions of Law was filed with State Bar Court in anticipation of a future trial of those cases.

On December 17, 2001, the Office of Probation filed a Motion to Revoke Probation, designated case No. 01-PM-4498. The case was set for a status conference on January 31, 2002.

In addition to the above matters, the State Bar had received complaints and requested information from Petitioner on several other client matters, although Petitioner had failed to comply with those requests.

On February 19, 2002, Petitioner signed and submitted his resignation from the bar with charges pending. On February 19, 2002, Petitioner was enrolled not eligible to practice law because of his pending resignation.

On March 18, 2002, the Supreme Court issued an order accepting Petitioner's resignation "without prejudice to further proceedings in any disciplinary proceeding pending against respondent [Petitioner] should he hereafter seek reinstatement."

2001 – 2002 – Unauthorized Practice of Law Prior to February 2002 Resignation

As previously noted, between December 7, 2001 and February 19, 2002, Petitioner was suspended from the practice of law because of his ongoing failure to take and pass the MPRE. During that time period, Petitioner engaged in the unauthorized practice of law by:

- receiving, disbursing and handling client funds in his Bank of America CTA during the month of December 2001, totaling $48,679.45 in deposits and $38,640.17 in withdrawals;
- receiving, disbursing and handling client funds in his Bank of America CTA during the month of January 2002, totaling $2,346.00 in deposits and $12,944.27 in withdrawals;
- receiving, disbursing and handling client funds in his Bank of America CTA during the month of February 2002, totaling $16,757.14 in deposits and $17,766.00 in withdrawals;
- representing his client, Elaine Hernandez-Aguilar (Case No. 03-10147), in a personal injury matter (discussed in greater detail below);
- representing his client, Pedro Diaz, by filing a Request for Entry of Dismissal in *Diaz v. Quintana*, LASC Case VC033979, on December 17, 2001;
- entering into an agreement on December 18, 2001, to represent Christopher Bley concerning a personal injury matter; and
- representing Kelly Maxwell in December 2001.

2001 – 2002 – Other Misconduct Prior to Resignation

John Willoughby

In 2000, John Willoughby retained Petitioner in a personal injury matter. Between 2000 and 2002, Petitioner repeatedly told Willoughby that his case was being delayed. In or about January 2002, Petitioner forged Willoughby's signature to a release that settled the case for $13,000, without the knowledge or consent of Willoughby, but did not disburse the funds to

Willoughby. This case subsequently became one of the bases for Petitioner's criminal prosecution and conviction.

Cecilia Ibarra (Case No. 02-F-11916)

Cecilia Ibarra retained Petitioner on or about October 16, 1998, to represent her in a personal injury matter. The case settled on or about October 23, 2001, for $8,900. When Petitioner received the settlement check, he had Ibarra endorse the check but informed her that he was going to retain the settlement proceeds while he sought to reduce the amount of the medical liens to which the funds were subject. On or about February 14, 2002, Petitioner finally issued a check for $2,502.50 to Ibarra on his own client trust account. However, when she ought to deposit the check, it was returned due to insufficient funds. When she sought to contact Petitioner about the problem, he did not respond to her inquiries.

2002 – Non-Compliance with Rule 955 Obligations

As part of Petitioner's resignation on February 19, 2002, he agreed to comply with California Rules of Court rule 955, subparts (a) and (b), within 30 and 40 days, respectively, after that date. (Ex. 12, p. 4.) Thereafter, as part of the Supreme Court's order of March 18, 2002, Petitioner was ordered to comply with those provisions of rule 955 within 60 and 70 days, respectively, after the date of the order's filing. Petitioner complied with neither requirement.

During the trial of this reinstatement petition, Petitioner testified that he did not notify any clients of the fact that he had resigned. However, he then indicated that he thought that he did not have any clients. That testimony was clearly inaccurate. (See, e.g., cases discussed immediately below.)

2002 – 2005 – Ongoing Misconduct After Resignation

Prior to December 2001, Petitioner had been working both as an attorney in the law offices of Thomas Stolar (Stolar and Associates) and in Petitioner's own law office. At the

Stolar offices, Petitioner worked with a young attorney named Bryan Kamenetz. In December 2001, Petitioner convinced Kamenetz to leave the Stolar firm and work with him in Petitioner's Glendale office. Shortly thereafter, Petitioner disclosed his ineligible status to Kamenetz and the two agreed that they would continue to work together, albeit under the auspices of "Law Offices of Bryan Kamenetz." Although Petitioner was never authorized to practice law while this firm was in existence, he continued both to practice law and to hold himself out as authorized to do so.

Christopher Bley (Case Nos. 03-CT-01183 and 03-04090)

On December 18, 2001, when Petitioner was not entitled to practice law, Christopher Bley retained Petitioner and the Law Offices of Bryan Kamenetz in a personal injury matter. At the time of this retention, Petitioner did not disclose that he was not eligible to practice law.

In or about April 2002, Petitioner told Bley that he had obtained a default judgment in the case, knowing that this was false.

In or about May 2002, Petitioner told Bley that Bley's case was now worth $75,000 due to delays encountered with the opposing party's insurance company. That statement by Petitioner was also knowingly false.

Between June 2002 and August 2002, Petitioner told Bley that he had made over 56 calls to the insurer and a settlement was in the works for $140,000. These representations by Petitioner were knowingly false.

On or about January 16, 2003, Petitioner false told Bley that a settlement check was ready and could be picked up the next day after signing a release.

When Bley became frustrated about continued delays in receiving any settlement check, he learned from the State Bar's website that Petitioner had previously resigned with charges pending and was no longer eligible to practice law.

On January 21, 2003, Bley confronted Petitioner over the phone with the fact that he was "not an attorney." In response, Petitioner replied, "I never represented that I was, that is why I took the case under Kamenetz." Petitioner went on to say that Bley was making a "bigger deal over nothing." Bley then demanded to receive his file and indicated that he was traveling immediately to Petitioner's office to get it. When Bley received the file later that night, there was no evidence in it of any settlement.

When Bley then reached Petitioner by telephone on January 23, 2003, Petitioner told Bley that the entire story about the settlement process was fabricated from the outset and that there actually was no settlement. Petitioner sought to explain his actions to Bley by stating that he "is a sick man" and is in counseling.

Paley Cowan (Case Nos. 03-CT-00490 and 03-00946)

On November 12, 2001, Paley Cowan retained Petitioner to make a claim against the City of Los Angeles as a result of its euthanizing her dog Spotly. In retaining Petitioner, she paid him $2,500.

On July 26, 2002, Petitioner faxed Cowan a copy of a claim for damages, which purported to have been executed in February 2002, together with a draft complaint for damages for her approval. This draft complaint listed Kamenetz as Cowan's attorney and contained a number of errors in it. After receiving this draft complaint, Cowan tried repeatedly over the course of many months to communicate with Petitioner regarding the status of her action, including whether any action had been filed before the running of the statute of limitations. Petitioner never returned any of her calls or communicated with her in any way. Cowan then terminated Petitioner as her attorney; filed a complaint against him with the State Bar; and recovered her $2,500 from the Client Security Fund.

Cowan testified during the course of the instant proceeding. During her testimony, she indicated that Petitioner has never sought to explain his lack of actions on her behalf; nor has he ever apologized to her.

Kelly Maxwell (Case Nos. 03-CT-03207 and 03-11311)

In August 2001, Kelly Maxwell retained Petitioner in a personal injury matter. On or about December 20, 2001, Bryan Kamenetz mailed a letter to Maxwell stating that the "Law Offices of Steven H. Unger" was now the "Law Offices of Bryan Kamenetz." No explanation was given as to why the firm's name was being changed, and Maxwell was not informed that Petitioner was no longer eligible to practice law.

On or about February 10, 2003, Petitioner, with Kamenetz, appeared at a mediation in the Maxwell matter. Petitioner took the lead in negotiating on Maxwell's behalf. A settlement in the amount of $10,250 was eventually reached, to which Petitioner was entitled to one-third. Other portions of the settlement were subject to medical liens.

Soon after the mediation, a settlement check, made payable to Kamenetz and Maxwell, was sent to Kamenetz' office. On or about March 11, 2003, the settlement check was deposited into Kamenetz' client trust account, with Maxwell's signature forged on the check. Maxwell was not notified by Petitioner or anyone else that this check had been received.

No portion of the settlement funds were paid out to either Maxwell or to her doctors. Instead, Petitioner continued to represent to Maxwell that the settlement check had not yet been received, knowing that this was false.

In early June 2003, Petitioner was confronted by Maxwell about the fact that the settlement check had been received and deposited into the law firm's client trust account, after she learned from the insurance company that the settlement check had been issued and cashed

months earlier. Petitioner indicated that he did not know what had happened, but that a direct deposit would be made into Maxwell's bank account the next day.

On or about June 18, 2003, a check for $4,500, drawn on Kamenetz' trust account and purportedly signed by Kamenetz, was issued to Maxwell. Thereafter, the check bounced and Maxwell never received her settlement; nor were her medical bills paid.

In or about April 2002, prior to the settlement of the Maxwell matter, Petitioner was listed as a signatory on a client trust account opened by Kamenetz. During the trial of this reinstatement matter, Petitioner acknowledged that, when he was working with Bryan Kamenetz, that he would receive money that belonged to a client, deposit it into Kamenetz' client trust account, and then withdraw the money for himself without Kamenetz' knowledge or approval. As discussed more fully below, this conduct by Petitioner ultimately resulted in criminal convictions for both Petitioner and Kamenetz and also in Kamenetz' resignation from the bar with charges pending.

Elaine Hernandez-Aguilar (Case No. 03-10147)

On December 13, 2001, Elaine Hernandez-Aguilar (Ms. Hernandez-Aguilar), her husband, and his cousins were involved in a car accident. They retained Petitioner to handle the matter. In January 2002, Petitioner told Ms. Hernandez-Aguilar that he filed a case against the insurance company to protect the statute of limitations and that he was trying to negotiate their case.

During the period February 2002 – December 2002, Ms. Hernandez-Aguilar constantly called Petitioner, inquiring about the status of her case and leaving messages. She did not receive any response.

In December 2002, Petitioner called Ms. Hernandez-Aguilar and advised that the insurance company did not want to negotiate and that the matter would proceed to trial.

From January 2003 until April 2003, Ms. Hernandez-Aguilar continued to call Petitioner inquiring about the status of the case and left messages for him. Once again, she did not receive a response. Ms. Hernandez-Aguilar then learned that Petitioner was not entitled to practice law through the internet.

Sandra Tocalino

In or about January 2002, Sandra Tocalino retained Petitioner to handle a homeowners' association dispute.

In or around March 2002, Tocalino discovered and confronted Petitioner regarding his suspended status. Petitioner replied that he just needed to pass an ethics examination, that he would have Kamenetz make court appearances and sign legal documents, but that Petitioner would do all the work on her case.

On or about April 5, 2002, Petitioner and Kamenetz attended a homeowners' association meeting representing Tocalino. Thereafter, Tocalino sold her property, ceasing the need for representation in the matter.

In or around September 2002, Petitioner agreed to represent Tocalino after she was in an automobile accident. The retainer agreement was signed with the Kamenetz firm, but Petitioner told Tocalino that he would do all of the paperwork and appear in court beside Kamenetz, since Petitioner was not eligible to practice law.

A personal injury action on behalf of Tocalino was filed, but, unbeknownst to Tocalino, was then allowed to be dismissed for lack of prosecution. When Tocalino would ask for status reports on her case, she was told that the case was progressing well and that settlement offers had been received, even after the case had long before been dismissed.

On June 21, 2005, Tocalino filed a lawsuit against Petitioner entitled, *Sandra Tocalino v. Law Offices of Bryan Kamenetz and Steven Unger,* LASC case number EC041005. Petitioner did not disclose this civil case in his Petition for Reinstatement.

2005 – 2006 – Felony Criminal Convictions

On June 24, 2005, Petitioner was charged with 18 counts of felony in *People v. Unger*, L.A. Superior Court case number BA285690. The charges arose out of Petitioner's actions in the Maxwell, Bley, Cowan, Tocalino, Willoughby, Evans, and Leischner matters discussed above. Additional identified victims of Petitioner's misconduct included Raul and Gela Torres, Jane Orlowski, and Helena Rozbicka.

On December 14, 2005, Petitioner pled guilty to conspiracy to commit a crime, which included 18 overt acts involving the unauthorized practice of law and grand theft.

On October 3, 2006, Petitioner was sentenced to three years' formal probation, serving three days in county jail, and making restitution as follows: $18,754.00 to Wells Fargo Bank (who had reimbursed several of Petitioner's former clients for losses for which he was responsible); $24,688.00 to the State Bar of California; and $9,320.00 to Mark Sanders.

Mark Sanders was not one of the individuals who was originally identified as a victim of Petitioner's criminal conduct in the criminal charges filed against Petitioner. In fact, he was not discovered to be a victim until after Petitioner's guilty plea had been entered. Once discovered, Sanders was included as a suggested restitution payee in the Sentencing Report, filed with the criminal court on October 2, 2006. In that report, the following information was provided to the court:

> As part of the plea agreement alternative sentences were proposed based on each defendant making "full restitution... by the date set from probation and sentencing." Plea transcript, p. 3. Full restitution has not been made by either defendant. In addition, with respect to Defendant Unger, it has been recently discovered that prior to, and at the time of the plea, Unger

was still engaged in the practice of law and defrauded an additional victim, Mr. Mark Sanders. A prerequisite for Mr. Unger's receipt of a probationary sentence was that he not "commit(s) another misdemeanor or a felony." Plea Transcript p. 2.

Mark Sanders Incident:

Mr. Unger was made ineligible to practice law on 12-7-2001 and resigned from the State Bar with charges pending on 4-17-02. According to Mr. Sanders, Unger began representing him on February of 2004 and accepted approximately $1,420.00 from Sanders for this representation. The nature of the legal dispute centered on Sanders' efforts to obtain relief from an EBay [sic] transaction as an aggrieved buyer. Unger allegedly told Sanders that he would file a lawsuit in North Carolina against the seller, and as part of Unger's deception, he allegedly created fictitious court documents and lied to Sanders about obtaining a judgment against the buyer. On their face these acts constitute separate new criminal offenses (the unauthorized practice of law and grand theft). These initial acts, however, predate Mr. Unger's plea.

In September of 2005, after Unger's arrest, Sanders became aware that Unger was no longer licensed to practice law. Unger however continued to lie to Sanders about the "progress" of his case. These lies continued even after Mr. Unger entered his plea and only stopped when Sanders told Unger that he, Sanders, had run a credit check on the putative civil defendants. Sanders finally became aware that Unger had done nothing to pursue Sander's case in August 2006.

(Ex. 27, pp. 5-6.)

As a result of this information, the parties agreed that the restitution obligation would be included to include Sanders.

Petitioner completed his three-year probation in 2011, two years past the scheduled completion date of 2009. This delay resulted from his delay in making the required restitution payments.

On April 18, 2012, Petitioner's request to have his conviction reduced to a misdemeanor and expunged was granted by the criminal court.

Petitioner's Evidence of Rehabilitation and Present Fitness

Petitioner's evidence regarding his rehabilitation and present moral qualities consisted of the information contained in his petition and its disclosure statement, his own testimony during the hearing of this matter, the testimony of seven character witnesses, and the testimony of a consulting therapist.

Petitioner acknowledges the inappropriateness of his conduct prior to his criminal conviction and attributes it to mental health issues that have plagued him since the early 1990's and to financial hardship in 2002. As previously noted, he was aware of his mental health issues at the time of his second discipline in 2000 and agreed that a condition of his probation at that time would be mandatory participation in monthly therapy sessions with a licensed therapist. He then began treatment with a psychologist, Dr. Paulette Penton, Ph.D, in September 2000 and continued with ongoing counseling sessions with her even after his probation ended. Despite those sessions, however, Petitioner's misconduct continued until his therapist referred him to a psychiatrist in May 2005 for the purpose of seeking pharmacological treatment. This psychiatrist, Dr. Inessa Essaian, formally diagnosed Petitioner as suffering from "Bi-Polar Disorder I (Manic)," prescribed medication for that condition, and has continued to monitor Petitioner's condition and medications to the present time.

In his Petition for Reinstatement, Petitioner provided the following recollection of how this medication changed his conduct: "Within a month of taking the medication Petitioner experienced a calm and transformation that is the quintessential life changing experience. Petitioner has come full circle by accepting responsibility for his past conduct including paying

restitution, participating actively in current law events, counseling and practicing the tolls given him by his Psychologist."[5] (Petition, Ex. 6, p. 8.)

Even before his resignation from the bar in 2002, Petitioner began working as a paralegal for various law firms. He has continued to work on an self-employed basis for various firms since that time, has developed a busy practice, and has, with his wife, a "stable income." "Petitioner is mentally, spiritually, and financially in a place now he never imagined he could have before he received counseling and the medications." (Petition, Ex. 6, p. 9.)

In addition to spending time remaining current with legal developments and events, Petitioner has devoted substantial time and energy to the Pet-Assisted Therapy Program at Huntington Hospital, a program where he and his dog, after extensive training, would visit with patients and visitors at the hospital. His volunteer work at the hospital were the subject of very complimentary testimony by a hospital representative during the hearing of this matter.

In his petition, Petitioner concludes:

> Petitioner is remorseful not only as to the consequences of his actions, but also as to the consequences to the Clients and public, with a full appreciation of his ethical obligations as a representative of the legal profession. Petitioner has not been licensed for fourteen years and he wants to practice law again and is in a place in his life that coupled with age and maturity has a mental health he only prayed would be his before. Petitioner has paid restitution with interest. Petitioner has completed many hours of studying and reading to become familiar with current legal issues. Petitioner has fully satisfied his obligations to the Clients, to the California State Bar, his peer attorneys and the public.

(Petition, Ex. 6, p. 9.)

During the trial of this matter, Petitioner presented character evidence of seven individuals, including several attorneys who have hired Petitioner as a paralegal, a representative of Huntington Hospital, and a heavy equipment operator who knew Petitioner from Petitioner's

[5] This history of Petitioner's transformation in mid-2005 fails to explain his ongoing misconduct involving Mark Sanders, described above.

court-ordered community service work for Caltrans. All of these witnesses expressed complimentary opinions regarding Petitioner's moral character and good work ethic.

Finally, Petitioner presented at trial the testimony of Dr. Ronald Markman, a highly-credentialed forensic psychiatrist who also is an inactive member of the bar. Dr. Markman is not one of Petitioner's treating medical professionals, but instead was retained shortly before the trial of this matter to do a mental health evaluation of Petitioner for purposes of this trial. Based on Dr. Markman's review of medical records provided to him from Petitioner's current and former medical providers and Dr. Markman's own meeting with Petitioner, Dr. Markman opined that Petitioner suffers from a bi-polar disorder; that there is presently no active or acute mental disorder; that Petitioner has good emotional and behavioral control; and that the risk of future misconduct is "low to medium" and "extremely low" if Petitioner stays on his medications.

State Bar's Evidence in Rebuttal of Petitioner's Showing

The State Bar contends that Petitioner has failed to demonstrate adequately his rehabilitation due to his failure to have lived an exemplary life since his disbarment. In support of that contention the State Bar presented extensive documentation of the numerous acts of misconduct by Petitioner directed at clients since he submitted in resignation in February 2002 and other acts and omissions reflecting a failure by him to live an exemplary life since that resignation. These many deficiencies are thoroughly summarized in the State Bar's superb Closing Brief.

In addition to the misconduct discussed above, the State Bar presented evidence of Petitioner's delay in paying assessed disciplinary costs and reimbursing the Client Security Fund for monies paid out to his aggrieved former clients. Although Petitioner was also required by the terms of his criminal probation to reimburse the State Bar for much, if not all, of the funds paid

by CSF to Petitioner's former clients, he did not fully reimburse the State Bar for these amounts until November 2010, many years after his reimbursement obligation arose.

In addition to the above issues, the State Bar pointed to the many misstatements and factual omissions in Petitioner's Petition and its supporting Disclosure Statement. In order to seek reinstatement to the Bar, Petitioner was required to file a verified petition for reinstatement. (Rules Proc. of State Bar, rule 5.441.) Misrepresentation and omissions in a reinstatement petition can provide the basis for a request for reinstatement being denied. (*In the Matter of Giddens*, supra, 1 Cal. State Bar Ct. Rptr. at p. 34.)

Petitioner failed to adequately disclose in his Petition his many prior employments since 2002; all of the civil actions filed against him; various past liens for significant unpaid state and federal taxes; and unfulfilled financial obligations and judgments owed to former clients Schwartz and Austin. Those omissions are established by the evidence received by this court, are chronicled in the State Bar's Closing Brief, and detract considerably from Petitioner's effort to prove his rehabilitation. (See also *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219, 227 [indifference to creditors is negative factor weighing against reinstatement].)

CONCLUSION AND RECOMMENDATION

Given the nature and number of Petitioner's many acts of misconduct leading up to and after his resignation from the bar in 2002, Petitioner's showing of rehabilitation must be a strong one. It is well-settled that the more serious the prior misconduct and bad character evidence, the stronger the showing of rehabilitation must be. (*Roth v. State Bar* (1953) 40 Cal.2d 307, 313 [applying similar principle to deny reinstatement to disbarred attorney convicted of grand theft].)

In Petitioner's Closing Brief, he repeatedly asserts that he need only prove his rehabilitation by a preponderance of the evidence. In support of that assertion, he cites to the

decisions in *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 571, 578; and *In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289, 298-299. This assertion by Petitioner is legally incorrect. As stated by the Review Department in *In the Matter of Rudnick* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 27, 35, "The legal standards required for reinstatement are well-established. A petitioner seeking readmission after disbarment or resignation with charges pending has the burden of proving by clear and convincing evidence that he meets the requirements for reinstatement. (*In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25, 30.)" (See also *In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546, 552-553, citing *Hippard v. State Bar*, *supra*, 49 Cal.3d 1084, 1092.) The cases relied on by Petitioner for a contrary conclusion are petitions by suspended attorneys to be restored to active status by providing proof that the suspended member meets the requirements of then standard 1.4(c)(ii), now standard 1.2(c)(1). Those proceedings are so-called "mini-reinstatement" cases – a term that refers to the lesser burden of proof in such cases. (See also Rules Proc of State Bar, rules 5.400, 5.404.)

Having reviewed with care the evidence offered by each of the parties in this proceeding, this court concludes that Petitioner's showing of rehabilitation and present moral qualifications falls short of being clear and convincing. Without purporting to be exhaustive, the court will highlight the following concerns.

As set forth above, the State Bar presented extensive evidence regarding Petitioner's failure to live an exemplary life after his resignation from the bar, including his failures to comply with his rule 955 obligations, his unauthorized practice of the law, the circumstances giving rise to his felony conviction for conspiracy and grand theft (the latter of which would warrant summary disbarment), and his factually deficient Petition. That evidence detracts significantly from any conclusion that Petitioner is now rehabilitated and now has the required

moral qualities. In addition to the above , the court notes, without purporting to be exhaustive, the following additional deficiencies in Petitioner's showing.

Petitioner's case begins with the fact that he has acknowledged the inappropriateness of his prior misconduct. While this is clearly a necessary step in the direction of effecting rehabilitation, it is not a marker that rehabilitation has already been accomplished. That fact is made especially clear by the undisputed facts here, where Petitioner acknowledged his misconduct in both of his two prior State Bar disciplines and in his guilty plea in the criminal proceeding. Despite each of those prior acknowledgements, his misconduct continued and including his ongoing unauthorized and unlawful practice of the law even after he had entered a guilty plea to a felony conviction for such conduct.

In addition, Petitioner's description at the very beginning of his Petition of the circumstances causing his misconduct while working under the auspices of the Law Offices of Bryan Kamenetz raises a real doubt whether Petitioner really understands the immorality of his actions. Rather than acknowledge in his Petition that he knowingly used the name of that young attorney to be able to provide unauthorized legal services to unknowing clients and that he then stole client funds from that attorney's client trust account without the young attorney's knowledge or approval, Petitioner instead depicted himself in his Petition as merely a victim of some lack of support by that attorney:

> In 2006 [sic] as a result of significant financial strain Petitioner embezzled money from a client trust account. Petitioner had turned his existing practice in effect in 2002 over to a young attorney. Initially the arrangement was that Petitioner would work the cases, provide support and ensure that the practice was active. The young attorney that Petitioner gave his practice to had his own personal issues with a wife that had mental health issues.[6] This impacted the practice and cause [sic] dysfunction in the office. Soon Petitioner found himself more involved in

[6] During his trial testimony in this proceeding, Kamenetz disputed the assertion that his wife had mental health issues.

> the practice then [sic] he had envisioned and due to the involvement was unable to tend to work for his regular paying position. Petitioner fell in debt and was six months behind in his mortgage. Petitioner made the decision to take money from the trust account and pay the office account the fees. Petitioner than [sic] took the monies from the office account for his own personal use.

(Petition, Ex. 6, p. 5.)

Moving to other issues, Petitioner's case, as set forth in his Petition, continues with his assertion that he "has profusely apologized to the Clients and victims[.]" (Petition, Ex. 6, p. 8.) The testimony of his victims during the trial of this matter made clear that such was not the case and, in turn, reflects badly on Petitioner's integrity.

Further, in his Petition Petitioner ended his statement in support of a finding of rehabilitation with the assertion that he "has fully satisfied his obligations to the Clients, the California State Bar, his peer attorneys and the public." (Petition, Ex. 6, p. 9.) During his testimony during the trial of this matter, Petitioner acknowledged that this unqualified statement was untrue, given that there are two judgments against him that remain unsatisfied and are essentially being ignored by Petitioner. This lack of honesty by Petitioner about an important marker of rehabilitation detracts from his showing in a number of significant ways.

While Petitioner has made restitution to most of the identified victims of his prior misconduct, the bulk of Petitioner's restitution efforts have resulted from the coercion of his criminal sentence, which placed the imposition of a 16-month sentence as a Damocles Sword over Petitioner's head in the event that he failed to make full and complete restitution as ordered. (Ex. 27, p. 6.) Even with that, Petitioner's criminal probation lasted for an additional two years because of his delay in making full restitution.

Turning to Petitioner's character witnesses, it is well-established that character evidence, no matter how laudatory, does not alone establish the requisite rehabilitation." (*In the Matter of*

Rudnick, supra, 5 Cal. State Bar Ct. Rptr. 27, 39.) Further, the weight of the favorable testimony given by the bulk of these character witnesses was greatly reduced by their lack of significant knowledge of the details of Petitioner's prior misconduct. Indeed, one of these witnesses formed her favorable opinion about Petitioner's honesty while she was working for him as a receptionist in 2001. It was then revealed during this trial that Petitioner's second discipline, and resulting suspension, occurred while this witness had been Petitioner's receptionist, but that he had never informed her that he was not eligible to practice law during that 90-day period.

The persuasive force of Petitioner's presentation of character evidence is also lessened by the absence of potentially important and knowledgeable individuals. By way of example, Petitioner devoted nearly one half of a page of his Petition to describing his relationship with attorney Alan Kessler:

> Petitioner took a position with a solo practitioner in Encino, California who was a mentor and friend. Petitioner has worked as a paralegal at the Law Offices of Alan Kessler for the past 14 years. Petitioner works under the direct supervision of Alan Kessler and has become a valuable and trusted employee. He regularly provides assistance in pleadings, letters, discovery, law and motion and trial work. Petitioner is supervised fully and regularly receives praise for his work.

(Petition, Ex. 6, p. 6.)

In addition to Petitioner's work relationship, attorney Kessler also represented Petitioner in his criminal proceeding, including making subsequent efforts to reduce the amount of the restitution that Petitioner had been ordered to make. Given the breadth of attorney Kessler's knowledge about Petitioner's rehabilitation and present fitness to practice, he would have been an obvious, and perhaps even expected, witness for Petitioner to have called. Despite that fact, Kessler did not appear as a witness - either in person or by way of a character declaration.

The same is true of Petitioner's wife or some other close family member. During the course of Petitioner's testimony, Petitioner reported that his wife now handles all of the family

finances and that she had restricted his circle of friends as a result of the number of former family friends and neighbors who ended up being aggrieved former clients. Such prophylactic measures by Petitioner's spouse are hardly a compelling endorsement of his complete rehabilitation. Against the backdrop of that unfavorable fact, the absence of any appearance by her as a witness was unfortunate.

On the topic of prophylactic measures, both Petitioner and Dr. Markman testified that, were Petitioner to be returned to the practice of law, his practice environment should not be that of a sole practitioner - where there is less peer pressure to toe the line and more help in doing so. Here again, this restriction, proposed to reduce the risk of future misconduct, is hardly a hearty endorsement of Petitioner's new ability to handle the stresses of being an attorney.[7]

The testimony of Dr. Markman was also not persuasive on the critical issue of whether Petitioner has been rehabilitated and presents no significant risk of future misconduct. In the first instance, Dr. Markman is not Petitioner's treating physician. He has had remarkably little contact with Petitioner and, with only a two- hour examination of Petitioner, has had very little opportunity to really investigate or evaluate the reasons for Petitioner's misconduct.[8] Moreover, Dr. Markman's testimony made clear that Petitioner's bi-polar disorder did not cause - and does not explain - Petitioner's many prior acts of misconduct. A bi-polar condition does not distort the victim's ability to differentiate between right and wrong. Instead, the impulsive nature of a bi-polar sufferer results in that individual occasionally exercising poor judgment. Here, Petitioner's misconduct was not impulsive but instead was knowingly wrong, planned in

[7] To use a fowl analogy, it's difficult to conclude that a convicted chicken thief is rehabilitated when he assures you that he'll be OK so long as you don't let him get near any chickens.

[8] During his testimony, Dr. Markman was asked whether, during his limited session with Petitioner, he had asked Petitioner why Petitioner stole the money. He hadn't.

advance, and goal-oriented. As a result, the mere fact that Petitioner's bi-polar disorder is being controlled by medication does not mean that his potential for misconduct has been eradicated.

The circumstances of Petitioner's work since his criminal conviction also make it difficult to assess how he will react to the stresses of being an attorney, working with clients, and handling the money of others. As a paralegal doing contract for different attorneys and law firms, Petitioner has limited opportunity to deal with clients and almost no opportunity to mishandle their funds. Further, because he has been required to disclose to prospective employers his past problems, he is aware that he is being monitored. Indeed, more than one of Petitioner's attorney-character witnesses commented during their testimony to their vigilance in either restricting or supervising Petitioner's work.

Finally, as previously noted, the many factual inaccuracies and omissions of required information in Petitioner's Petition papers and testimony is a source of considerable concern to this court.

For all of the above reasons, Petitioner's petition for reinstatement is **DENIED**.

Dated: December 28, 2017

DONALD F. MILES
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on December 28, 2017, I deposited a true copy of the following document(s):

DECISION ON PETITION FOR REINSTATEMENT

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 Los Angeles, California, addressed as follows:

KEVIN P. GERRY
711 N. SOLEDAD ST.
SANTA BARBARA, CA 93103 - 2437

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

HUGH G. RADIGAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 28, 2017.

Louisa Ayrapetyan
Case Administrator
State Bar Court