

PUBLIC MATTER

FILED

DEC 14 2017



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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of

JAMES ALAN KUSHNER,

Former Member No. 63677,

Petitioner for Reinstatement.

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Case No.: 17-R-03686-PEM

DECISION ON PETITION FOR  
REINSTATEMENT

**INTRODUCTION**

Petitioner James A. Kushner (petitioner) was admitted to the practice of law in the State of California on May 8, 1975. Effective August 12, 2012, Petitioner resigned from the practice of law, without disciplinary charges pending.

On June 26, 2017, petitioner filed a petition for reinstatement.

On November 3, 2017, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed its response to the petition for reinstatement, in which it acknowledged that the State Bar was not aware of any conduct or factual basis upon which to oppose petitioner's reinstatement.

The parties submitted the matter on the petition on December 4, 2017; and, this matter was submitted for decision on that same date.

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## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **A. Present Moral Qualifications for Reinstatement**

On May 8, 1975, petitioner was admitted to the practice of law in the State of California. He resigned from the practice of law in California effective August 12, 2017. At the time petitioner resigned from the practice of law in this state, there were no matters pending against him in the State Bar Court. Furthermore, on the effective date of respondent's resignation, there were no criminal charges pending against him, which resulted in either conviction or dismissal.

After resigning from the practice of law, petitioner became a part-time adjunct professor at Golden Gate University School of Law in San Francisco, California. And, after tendering his resignation, Petitioner maintained and updated three casebooks, which he authored or co-authored.<sup>1</sup> Petitioner, also, is the author of two multi-volume treatises for Thomson-West, which he continues to maintain. And, on an annual basis, he has published seven volumes for these treatises.

Petitioner resigned from the State Bar without charges pending and he has never been disciplined by the State Bar. The State Bar's investigation revealed no evidence of bad moral character or evidence to rebut a showing of good moral character. Further, because there is no evidence rebutting petitioner's evidence of good moral character or evidence of prior misconduct, he does not need to establish rehabilitation. Based on the foregoing, the court finds that petitioner meets the criteria under rule 5.455(B)(2) of the Rules of Procedure for reinstatement.

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<sup>1</sup> The casebooks are: Land Use Regulation: 1) Cases and Materials (Aspen Law and Business – formerly Little Brown-1999) with Daniel P. Selmi) (2<sup>nd</sup> edition 2004) (3<sup>rd</sup> edition 2008) (with Daniel P. Selmi and Ed Ziegler); 2) Comparative Urban Planning Law (Carolina Academic Press 2003); and 3) Housing and Community Development - Cases and Materials - 4<sup>th</sup> edition (with Daye, Mandelker; Hetzel, McGee; Washburn, Salsich; and Keating & Bezdec) (Carolina Academic Press 2011) principal author and editor.

**B. Present Learning and Ability in the General Law**

Petitioner is a legal scholar in land use and urban planning. He currently teaches environmental law at Golden Gate University School of law. He also annually updates the text books and treatises, which he has authored. Therefore, petitioner has met the criteria required under rule 5.445 (B)(3) of the Rules of Procedure for reinstatement.

**C. Passage of Professional Responsibility Examination**

On March 18, 2017, petitioner took the Multistate Professional Responsibility Examination (MPRE) and passed it after the effective date of his resignation – but not more than one year prior to the filing of his reinstatement petition. Thus, petitioner has satisfied the requirements of rule 5.455(B)(1) of the Rules of Procedure for reinstatement.

**D. Miscellaneous**

Petitioner has paid all membership fees. In addition, no Client Security Fund reimbursement applications have been filed against petitioner, and there were no pending reimbursement applications filed against petitioner as of December 4, 2017.

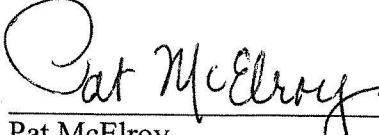
**DISCUSSION**

In order to be eligible for reinstatement, a petitioner who resigns without disciplinary charges pending must show timely proof of passage of a professional responsibility examination and must establish, by clear and convincing evidence, his present moral qualifications for reinstatement and his present learning and ability in the general law. As set forth above, petitioner has timely passed the MPRE and has demonstrated, by clear and convincing evidence, that he has the present moral qualifications for reinstatement to membership in the State Bar of California, and that he has the present ability and learning in the general law to qualify for reinstatement as a member of the State Bar of California. Accordingly, the court will make the following recommendation to the California Supreme Court.

**RECOMMENDATION**

It is recommended that petitioner **JAMES A. KUSHNER** be reinstated to the practice of law in the State of California upon payment of all applicable fees and the taking of the oath required by law.

Dated: December 14, 2017

  
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Pat McElroy  
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 San Francisco, on December 14, 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 San Francisco, California, addressed as follows:  
  
JAMES ALAN KUSHNER  
1 PINE STREET, APT #2308  
SAN FRANCISCO, CA 94111
- ☐ by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:
- ☐ by overnight mail at , California, addressed as follows:
- ☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.
- ☐ By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:
- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Allen Blumenthal, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on December 14, 2017.

  
George Hue  
Case Administrator  
State Bar Court