PUBLIC MATTER

FILED

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**STATE BAR COURT OF CALIFORNIA**

**HEARING DEPARTMENT - SAN FRANCISCO**

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| In the Matter of<br><br>STEPHEN LIEBB,<br><br>Petitioner for Reinstatement. | ) | Case No. 17-R-05126-PEM<br><br>DECISION |

## INTRODUCTION

This matter comes before the court on the petition for reinstatement to the practice of law filed by petitioner **Stephen Liebb** (Petitioner), after resigning with charges pending, effective March 3, 1989, following his convictions of first degree murder and aggravated assault. The Office of Chief Trial Counsel of the State Bar of California (OCTC) opposed the petition for reinstatement.

After carefully considering all of the evidence and arguments of the parties, this court concludes that Petitioner has not sustained a lengthy period of time of unsupervised good conduct. Petitioner killed his friend in 1981 and spent 32 years in prison. Evidence of his rehabilitation is most compelling and impressive. He has taken responsibility for his life and past misconduct; he has resurrected himself into a trustworthy, law-abiding and conscientious member of the community. But, because Petitioner was discharged from supervised release only in November 2016, his sustained exemplary conduct of less than two years is not a meaningful

period of time. Therefore, Petitioner's request for reinstatement to the practice of law is denied at this time.

## SIGNIFICANT PROCEDURAL HISTORY

On August 29, 2017, Petitioner filed a petition for reinstatement. On January 8, 2018, OCTC filed an opposition to the petition.

At the March 19, 2018 pretrial conference, Petitioner stipulated to the facts found on pages 2 through 11 of the State Bar's pretrial statement filed March 8, 2018.

A five-day trial was held on March 27, 28, and 29; and April 17 and 18, 2018. Petitioner represented himself. OCTC was represented by Senior Trial Counsel Maria J. Oropeza and Deputy Trial Counsel Laura Huggins. Following closing arguments on April 18, 2018, 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 (CSF) as a result of his/her prior misconduct. (Rules Proc. of State Bar, rule 5.441.)

## FINDINGS OF FACT

The following findings of fact are based on the petition for reinstatement, Petitioner's stipulation as to the facts regarding his criminal convictions, and the evidence before the court.

**Petitioner Resigned with Charges Pending**

Petitioner was admitted to the State Bar of California on December 16, 1980. A few months later, in July 1981, he committed a murder.

In September 1982, after rejecting a plea to second degree murder, Petitioner was convicted of (1) first degree murder of Michael Diller, with a deadly weapon (a knife), in violation of California Penal Code sections 187 and 12022, subdivision (b); and (2) assault with a deadly weapon on Joseph Gold, in violation of California Penal Code section 245. On January 31, 1983, Petitioner was sentenced to 25 years with a one year enhancement for a total of 26 years to life with the possibility of parole.

On December 30, 1982, having been convicted of first degree murder, a crime involving moral turpitude, Petitioner was placed on interim suspension effective January 28, 1983, by the Supreme Court of California, pending the final disposition of his criminal proceeding. On November 26, 1986, the Supreme Court referred Petitioner's criminal matter to the State Bar for a hearing and decision recommending the discipline to be imposed for the convictions of first degree murder and aggravated assault.

On December 2, 1988, Petitioner submitted his resignation with charges pending. On February 2, 1989, the Supreme Court vacated its November 26, 1986 referral order and accepted Petitioner's resignation, effective March 3, 1989. The Supreme Court further ordered that the criminal referral matter was dismissed without prejudice to further proceedings should Petitioner hereafter seek reinstatement.

**Background Leading to First Degree Murder (Michael Diller) and Aggravated Assault (Joseph Gold)**

***1977-April 1981 (Disputes with Michael Diller's Family and Friends)***

In 1977, Petitioner moved from Brooklyn, New York, to Los Angeles to attend UCLA law school. During the summer of 1978, he met Michael Diller (Michael), the murder victim, who was an undergraduate at UCLA. They remained friends until Petitioner's completion of law school. During that time, Petitioner met Michael's family.

In 1978, Michael's father, Stanley Diller (Stanley), hired Petitioner to manage his apartment building at 303 South Doheny, Beverly Hills (Diller apartment), in exchange for a rent-free apartment in the building. Stanley, who was the Chairman of the Board of Los Angeles New Hospital, also hired Petitioner as a clerk at the hospital.

Soon, Petitioner became embroiled in a series of business disputes with Michael's family and friends.

In November 1980, David Altschuler became the supervising manager of the Diller apartment. With Stanley's approval, Altschuler decided that Petitioner should pay a reduced rent rather than no rent for the apartment. In February 1981, after Altschuler sent a letter to Petitioner, setting forth his position, he began to feel some resentment from Petitioner.

In February 1981, Dr. Eugene Landy rented unit #103 at the Diller apartment. Petitioner signed a receipt for deposit of Dr. Landy's rent funds as "Stephen Claymore," and said that he was a professional boxer. Petitioner never informed Altschuler that the unit had been rented nor provided the monthly rent to Altschuler. Instead, Altschuler's account showed that apartment #103 was vacant.

On February 23, 1981, in response to Altschuler's letter that his apartment would no longer be rent free, Petitioner told Altschuler that it took more time to manage the building than the proposed rent reduction was worth; that his time was worth $100 an hour; that he had not

been given 30 days' notice of the change; and that he would continue to act as the manager in exchange for free rent until March 31, 1981, when he would voluntarily vacate the apartment. Shortly before March 31, 1981, Petitioner spoke with Joe Gold, a friend of the Diller family, and said that he did not intend to move out of the Diller apartment in the near future.

On March 31, 1981, Petitioner charged into Altschuler's office and caused a commotion. Altschuler asked him to leave, but Petitioner refused and continued to insult Altschuler. Gold was also at the office. As Petitioner was leaving, he spoke angrily to Gold, "You want it next?" Altschuler told Gold not to answer an angry man; Gold stopped speaking with Petitioner and returned to work. Gold remained at his desk for a period of time, and then went to the elevators in the hall. As Gold was waiting, Petitioner came out of the office lobby area and started to threaten and swing at Gold. Gold ran back into the lobby of his office. Petitioner followed and hit Gold hard on the side of the head. Petitioner had his hands around Gold's neck and pushed Gold towards the door of the waiting room with great force. Several people attempted to pull Petitioner away from Gold; Petitioner then fled.

After Gold filed a complaint with the police against Petitioner, Petitioner called him on at least three occasions to try to talk him into withdrawing the charges. Gold eventually withdrew the charges because he felt that Petitioner was penitent.

At the end of April 1981, Petitioner vacated his apartment. Altschuler found the apartment badly damaged with chairs turned over, windows broken, stains on the floor, and filthy sinks and fixtures.

Gold then took over as the apartment manager and soon became aware that unit #103 was not vacant.

*May-July 1981 (Assault on Gold and Others)*

On May 4, 1981, after he had moved out, Petitioner called Dr. Landy, the tenant, and said that to give him a good deal for a longer rental, he would take $100 per month for rent. Dr. Landy paid Petitioner the rent for six months in advance.

On May 11, 1981, Gold entered apartment #103 and found that someone was living there. He then changed the locks. Meanwhile, Petitioner called Dr. Landy's secretary, Ms. Turner, and told her that someone was fooling with the apartment locks and that she should check it out. Moments later, Ms. Turner appeared at the apartment and demanded access. Gold refused and explained to Ms. Turner that the apartment was listed as being vacant, and that the owners had never received any rent for the unit.

At about 7:00 p.m., Gold left the Diller apartment with Michael and Michael's brother, Arthur. As they were walking out the front door, Petitioner charged up the front steps from out of the bushes, carrying a baseball bat. Petitioner hit Gold 15 times over the head and various parts of his body with the bat. Petitioner also hit Arthur on the thigh several times and on the shoulders. Gold suffered serious injuries. He then filed a police complaint and pressed charges against Petitioner.

Mrs. Diller, Michael and Arthur's mother, then telephoned Petitioner's father in Brooklyn to tell him about the attack and ask him to come out and check into the matter. She told Petitioner's father that Petitioner had also embezzled money from her husband.

On July 10, 1981, Petitioner telephoned Mrs. Diller and threatened to kill the entire Diller family if she would not call his parents and retract what she had said.

The next morning, Arthur confronted Petitioner. They fought, and Petitioner hit Arthur with a pipe, breaking his nose and causing injuries requiring stitches on his face.

*July 12, 1981 (Murder of Michael Diller)*

On July 12, 1981, Petitioner waited for Michael to pick up his girlfriend from her apartment building. When Michael arrived in his car, she entered on the passenger side. Before she could close the car door, Petitioner grabbed the door, pulled it open, jumped on her lap, and hit her and Michael. Michael accelerated the car and Petitioner grabbed the wheel, causing the car to crash into a building. After the crash, Michael jumped out of the driver's side and ran towards a park. Petitioner chased after him. Michael ran to the park office and dove through a half-open window. Petitioner lay on the window sill of the park office, facing Michael. Petitioner had a knife, and Michael grabbed it cutting his hand. Petitioner pulled the knife away from Michael, stabbed him in the chest and twisted the blade, and then ran away. Petitioner walked calmly as if nothing had happened and rode away on his motorcycle.

Michael died shortly thereafter. He died of loss of blood and a stab wound through his lung and heart. Michael was 23 and Petitioner was 25 years of age.

That evening, Petitioner had dinner with his employer, Kelly Bixby, whom he had worked for as an attorney. At 12:30 a.m., Bixby called the police.

Petitioner had been in custody since his arrest on July 12, 1981. After his conviction in January 1983, Petitioner was sentenced to prison for 26 years to life with the possibility of parole.

**Conduct While in Prison (1983-2013)**

***Disciplinary History in Prison (1989-1991)***

Petitioner's disciplinary history while incarcerated consisted of two rules violation reports CDC-115 (California Department of Corrections) and one disciplinary memo (CDC-128A):

(1) A CDC-115 was issued on March 26, 1989, for fighting with another inmate;

(2) A CDC-115 was issued on July 7, 1990, for refusing to work for religious reasons; and

(3) A CDC-128A was issued on June 22, 1991, also for refusing to work for religious reasons.

Petitioner's record is violence-free since 1989.

***Petitioner's Rehabilitation/Positive Programming in Prison (1983-2013)***

Petitioner went to prison in February 1983. After spending time in various state prisons, including Corcoran,[1] Petitioner went to San Quentin in 1995. Petitioner began psychological therapy to deal with his issues of anger management. His progress was intense and steady.

While in San Quentin, Petitioner took advantage of all the available rehabilitative resources, including individual and group therapy and self-help treatment programs. In 2002, he enrolled in the Father's program and in December 2003, he enrolled in the Insight Meditation class.

By 2003, he became fully engaged with the Insight Prison Project, which had a vision of four pillars for their rehabilitation program: (1) violence prevention; (2) offender accountability; (3) emotional intelligence; and (4) mind-body integration aspect of yoga.[2]

From 2003 to 2009, Petitioner fully participated in the Incarcerated Men Putting Away Childish Things (IMPACT) program. The program was designed to teach incarcerated men empathy, self-control, and humility. In November 2005, Petitioner participated in Friend Outside, Creative Conflict Resolution Workshop, whose topics included anger management, conflict resolution and communication. In 2007, Petitioner completed 32 hours of instruction in

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[1] The State Prison at Corcoran began to develop a reputation as one of the deadliest, most abusive prisons in the biggest, most troubled prison system in the United States.

[2] The emotional/mental value of yoga is a way of quieting the mind.

Nonviolent Communication (NVC). NVC is a tool for improving communication skills and promoting peace and partnership. Petitioner was commended for his attendance, motivation and efforts toward self-improvement. At the same time, Petitioner devoted himself to studying and practicing yoga's tenets of mindfulness, emotional balance, and physical and mental stability.

Throughout 2008 and 2009, Petitioner participated in the Teaching Responsibility Utilizing Sociological Training (TRUST). It was a year-long course that focused on examining one's values and understanding of how these values were shaped by the historical and cultural realities of race relations in America. The course also provided a safe environment that allowed participants the opportunity to purge negative thoughts and behaviors, and to replace them with a positive, more responsible self-image.

Petitioner also participated in the New Leaf on Life Group program and the Change Is Possible program. Change Is Possible involved weekly one-on-one sessions in which he explored the factors that led to his commitment offense. The counselor therapist found that Petitioner in these sessions showed an empathetic understanding of the great pain he had inflicted on his victims, and the family and friends of the victim.

In 2010, Petitioner began attending Alcoholics Anonymous (AA) sessions as it allowed him to listen to other prisoners' vulnerability. In 2012, Petitioner successfully completed the year-long Guiding Rage Into Power (GRIP) program, a life-skills program that taught how to stop violence, become emotionally intelligent, cultivate mindfulness and come to understand victim impact. It was a rigorous program that taught mastery of impulse control, developing emotional intelligence and understanding victim impact. Jacques Verduin, the founding Director of GRIP, stated that he was able, over a period of nine years, to witness Petitioner's steady progress. He described Petitioner as today a humble man with a reputation for helping others.

In March 2013, Petitioner completed the 50-week (110 hours) restorative justice program at San Quentin called the Victim Offender Education Group (VOEG). The purpose of this group was to help incarcerated men fully understand and take responsibility for the impact of their crimes and to make the necessary changes in their lives to live a productive life free from prison. The program included meeting with a panel of survivors to hear their stories to understand the impact of crime in their lives. Kathleen Jackson, the facilitator of VOEG, found that Petitioner always acted with integrity, enthusiasm and genuine willingness throughout his participation.

*Education in Prison*

In 2006, Petitioner successfully completed a three-year paralegal program and earned a paralegal certificate. In 2012, Petitioner received an Associate of Arts degree from a college program run by the Prison University Project (Patten University housed in San Quentin).

*Work Experience in Prison*

During the 32 years in prison, Petitioner worked as a food services clerk, janitor and education clerk. He had an extensive history of laudatory reports from correction officers and correctional staff for his exemplary performance and attitude. His evaluations were all exceptional, indicating that he had developed a strong work ethic and ability to work with others. His prison behavior had been excellent since 1991.

*Assisting Fellow Inmates*

While in prison, Petitioner assisted his fellow inmates with legal work. Contrary to the State Bar's assertion, there is no evidence that he engaged in the unauthorized practice of law. In his petition for reinstatement, Petitioner stated that his motivation for helping other prisoners was to use his legal knowledge "to empower others in the service of justice." He further stated that he "researched and wrote dozens of federal and state habeas petitions on behalf of peers, obtaining several court orders for new parole consideration hearings - and, in some cases, orders

for release on parole." Furthermore, in 2005, he filed a civil rights petition against the California Department of Corrections (CDC), challenging the official use of racial categories to segregate and double-cell inmates. And in 2006, he assisted in a civil rights action on behalf of his cellmate, Viet Ngo, challenging the administrative exhaustion requirement of the Prison Litigation Reform Act, which was later heard by the United States Supreme Court *(Ngo v. Woodford* (2006) 548 U.S. 81).[3] He had also prepared and filed petitions on behalf of at least eight other inmates.

From 2011 to 2013, Petitioner volunteered as a legal writer for the San Quentin News, a monthly publication, to provide information about laws affecting the incarcerated population. He wrote about new legal developments pertaining to prison conditions and parole.

**Parole History**

*Parole Denied (1996, 2000, 2003, 2006, 2007, and 2009)*

Petitioner was found unsuitable for parole six times – 1996, 2000, 2003, 2006, 2007, and 2009. The Board of Parole Hearings (Board) found that Petitioner would pose an unreasonable risk of danger to society and a threat to public safety if released from prison.

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[3] While Petitioner helped fellow inmates, including Viet Ngo, in preparing multiple legal documents, there is no evidence that he held himself out as an attorney – his name did not appear on any of the district court decisions or published opinions. Code of Regulation Title 15 section 3163 authorizes inmates to assist another inmate. It provides that "One inmate may assist another in the preparation of legal documents, but shall not receive any form of compensation from the inmate assisted. Legal papers, books, opinions and forms being used by one inmate to assist another may be in the possession of either inmate with the permission of the owner. All papers must be returned to the respective owners when either inmate is transferred to another institution or when other administrative action prevents direct communications between the inmates. An inmate may be barred from giving legal assistance to other inmates when violations of regulations and established procedures relate directly to such activities. An inmate will not be barred from giving or receiving legal assistance for violations of regulations and procedures which are unrelated to providing or receiving legal assistance. However, no otherwise prohibited contacts or access to prohibited areas will be permitted because of this regulation."

In 1996, the Board denied his parole because his offense itself exhibited a callous disregard for the life and suffering of another. The Board found that Petitioner had not participated in sufficient beneficial self-help and therapy programming, and that he continued to be unpredictable and a threat to others.

In 2000, the Board denied his parole because the crime itself was carried out in an especially cruel manner, demonstrating an exceptionally callous disregard for human suffering. The Board found that Petitioner failed to participate sufficiently in self-help and therapy programs, failed to participate in any group plans or programs, did not have any letters of support, and had no solid work plans.

In 2003, the Board found that Petitioner had not taken enough of the self-help classes to assure the panel that Petitioner knew how to control his anger. The Board found that although Petitioner took meditation classes, received exceptional work reports, and was involved in the Father's program, these positive aspects of his behavior did not outweigh the factors of unsuitability.

In 2006, the Board found that Petitioner had not been involved with the self-help programs over an extended period of time, given his lack of understanding of the internal dynamics that contributed to the homicide. The Board recognized the tremendous amount of support he received from outside the prison and the commendations from correctional staff and others.

In 2007, the Board found that the offense was carried out in an especially cruel and callous manner. The Board observed that there was still some resistance from Petitioner to actually discuss the crime in terms of what it really was, and that therefore called into question if Petitioner really understood the nature and magnitude of the crime. While the Board found that he was unsuitable for parole, it commended Petitioner for his commendable work reports, his

achievement of a paralegal certificate, his recent participation in a self-help groups, his participation in the violence prevention programs, the lack of CDC-115 violations, and taking a class to read Arabic.[4]

In 2009, the Board found that Petitioner committed the offense in an especially heinous, atrocious and cruel manner because multiple victims were attacked and injured, and one was killed. The offense was carried out in a dispassionate and calculated manner, which demonstrated an exceptionally callous disregard for human suffering. The motive for the crime was very trivial in relationship to the offense. The Board was concerned over the depth of Petitioner's insight and sincerity. Petitioner's continuous inconsistent versions conflicted significantly with the facts of the case, coupled with Petitioner's admission that he had lied on several issues in the past, led the Board to believe that he lacked adequate insight into the causative factors associated with his decision to commit the crime. While the Board denied his parole, they commended Petitioner for his participation in numerous self-help programs, including non-violent communication, conflict resolution, and completion of several book reports. The Board also noted the positive aspects of his adjustment, his lack of assaultive history as a juvenile, his lack of criminal history, his stable social history, his present age reduced his recidivism risk, and no serious misconduct for 18 years (since 1991).

*Parole Granted*

In August 2012, despite his heinous and atrocious crimes which occurred more than 31 years ago at the time of the hearing, the Board found that Petitioner was suitable for parole and would not pose an unreasonable risk of danger to society or a threat to public safety if released from prison. The Board was very thoughtful in going through all of the suitability factors. It

[4] The Board found Petitioner's taking Arabic showed that he was working toward getting an understanding of other people and outside of himself.

weighed the severity of the crime against the lengthy record of rehabilitation as well as his age. He was 25 years old at the time of the crime and 56 at the time of the parole hearing, which reduced the probability of recidivism. The Board's finding was based on Petitioner's demonstration of genuine remorse and his identification of the causative factors of his behavior, including the character defects that negatively influenced his behavior. The Board found that Petitioner had explored why his anger turned to violence and the fact that Petitioner had over the years developed effective strategies to keep his anger from influencing his behavior in the future. Petitioner presented a relatively low risk of violence in the free community.

More importantly, the Board considered Petitioner's positive programming not only during the last review period in 2009 but throughout Petitioner's whole term of incarceration. They noted that he had consistently been involved in AA and other 12-step programs, as well as restorative justice and violence prevention programs. The Board also commended Petitioner for being discipline free for 21 years at the time of the hearing and that it was difficult to do that in a prison setting. It found that Petitioner had been punished and had been rehabilitated. He had an overall low risk for both violent recidivism and general recidivism. He had developed a feasible parole plan, including vocational options, continued participation in self-help programming and transitional housing. Finally, his participation in education, vocational and self-help programs has enhanced his ability to function within the law upon his release. His parole conditions included random drug testing, no possession or consumption of alcohol, attendance at Parole Outpatient Clinic, and no contact with the victims or their families.

*Reversal of 2012 Grant of Parole*

After Petitioner was granted parole in 2012, the Governor exercised his discretion to reverse the grant of parole in January 2013. The Governor based his decision for the reversal of

the grant of parole on Petitioner's commitment offense, which he found especially heinous, atrocious, and cruel, and on Petitioner's lack of insight into the offense.

*Release from Prison (October 2013)*

As a result of the Governor's reversal, Petitioner filed a writ of habeas corpus with the Los Angeles Superior Court on February 20, 2013. On August 22, 2013, the Superior Court granted his habeas petition, vacating the Governor's decision. The Superior Court found that there was not a single citation to any documents in the record of the Governor's denial. The Governor merely recited the facts of the crime and provided some boilerplate language that he did not find Petitioner's explanation of the crime acceptable.

Consequently, after 32 years in prison since 1981, Petitioner was released from San Quentin on October 30, 2013.

**Conduct After Release from Prison**

*Successful Parole (October 2013-November 2016)*

Petitioner was paroled to Alameda County in October 2013. Within days of his parole, he was housed with Options Recovery Services in Berkeley, California. He was mandated to take anger management classes and attend mandatory group classes and AA meetings five days a week.

In November, his parole was transferred to San Francisco. There, he took anger management classes at least four to five times a week. He also attended yoga classes at least three times a week.

From February 2014 until July 2015, he was part of a mentorship program for recently released lifers. The purpose of the program, coordinated by the San Francisco Parole Office, was to facilitate the reintegration of formerly incarcerated individuals with a focus on lifers into the community through mentoring. He called or met with his assigned mentee several times a week.

Along with other peers in the program, he participated in monthly meetings with officials of CDC. Petitioner described his being a mentor as a way of keeping him rooted in his appreciation for being free.

Upon his request, his parole was transferred back to Alameda County in 2014, and he was no longer in transitional housing. From April 2015 through August 2017, Petitioner engaged in weekly therapy to help him transition into the community. Although his therapy ended in August 2017, Petitioner began weekly sessions with a somatic coach to improve his relationships with others.

*Gainful Employment*

From April 2016 to April 2017, Petitioner worked as a part-time legal clerk for the Law Offices of David Uthman, a former law enforcement officer, in San Francisco. He interviewed clients, prepared legal correspondence, maintained a client database, conducted legal research, and filed court documents. Since May 2017, Petitioner has been working for this office as an independent contractor. He also performs legal research for Charles Carbone, a prisoner rights attorney in San Francisco, on a contract basis.

In addition, since July 2016, Petitioner has worked as a part-time program assistant for the Asian Prisoner Support Committee (APSC), a non-profit agency that provides reentry assistance to formerly incarcerated persons of Asian and Pacific Islander descent. He also works with ROOTS (Restoring Our Original True Selves), an APSC program, based in Oakland Chinatown, that helps formerly incarcerated individuals to reintegrate by immersing them in community events and providing opportunities to engage in service and build relationships.

*Community Service and Charitable Activities*

Since January 2014, Petitioner has volunteered as an intern at the Center for Gender and Refugee Studies (Center) of the University of California, Hastings College of the Law

(Hastings). Its mission is to protect the fundamental rights of asylum seekers and refugees with a focus on the LGBT community and to move forward with impact litigation. In 2014, he worked at the Center twice weekly. Since 2016, he works five to six hours a week. In the office, he helps maintain an evidence bank and writes country conditions reports used to support asylum applications.

In 2015, Petitioner received a certificate of honor from the San Francisco Board of Supervisors in recognition of his outstanding work as a Community Clean Team volunteer for the San Francisco Public Works.

Since December 2016, Petitioner has been a member of the Hastings Prisoner Outreach, a law student organization that raises awareness of criminal justice issues and provides legal assistance to inmates under a law professor's supervision. Petitioner participates in group meetings and gives talks to students about what it is like to be incarcerated and how students can target their advocacy on behalf of prisoners.

Whether in the form of pro bono services or simply volunteering as he does for the Center and the ROOTS program, 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.)

*Discharge from Supervised Release (November 15, 2016)*

He reported to his parole officer on a monthly basis. He filled out progress reports on his activities and he was tested for drugs. He was on parole for three years out of a potential seven years, which is noteworthy. Based on Professor Jonathan Simon's testimony, early discharge from parole indicates, in the eyes of the parole board, that Petitioner poses zero risk to public safety. It required, in his case, three years of clean urine tests, regularly scheduled and kept check-ins with the parole agent, and no flagged contact with law enforcement.

Petitioner was discharged from supervised release on November 15, 2016.

**Evidence of Good Character**

In support of his effort to prove his rehabilitation and present moral qualifications, Petitioner presented an impressive array of 17 highly reputable character witnesses credibly attesting on his behalf. They included numerous prominent community leaders in prisoner support organizations, six California attorneys, law professors, former incarcerated prisoners and friends, and a family member. Many of them have worked with Petitioner in their respective organizations during his incarceration and after his release from prison. Favorable character testimony from employers and attorneys are entitled to considerable weight. (*Feinstein v. State Bar* (1952) 39 Cal.2d 541, 547). Because judges and attorneys have a "strong interest in maintaining the honest administration of justice" (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319), "[t]estimony of members of the bar . . . is entitled to great consideration." (*Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403.)

The character witnesses were fully aware of the conduct leading up to Petitioner's resignation with charges pending, his conduct while in prison, his activities since being released from state prison custody, and his current community activities. They have had regular dealings with him, both personally and professionally. All of them stressed that Petitioner is extremely remorseful for his crimes and commended Petitioner's commitment to serving and improving his community. They all testified favorably regarding petitioner's honesty, integrity, kindness, compassion, fairness, trustworthiness, dedication, and respect for others.

Many of those witnesses have dedicated their career in the criminal justice and prisoner support systems, educating prisoners in San Quentin and helping former inmates to integrate to society. They firmly believe in Petitioner's self-transformation and deep commitment to give

back to society. They uniformly attested to Petitioner's good moral character, expressed confidence in his rehabilitation, and urged his reinstatement.

For example, Dr. Jody Lewen testified that during his incarceration, Petitioner respected the rights of others, was concerned about the well-being of other inmates in San Quentin, and was always honest and fair.

Dr. Kony Kim opined that Petitioner has overcome incredible obstacles to rehabilitate and survive the prison system and then transition, face the stigma and emotional trauma that results from being in prison. She testified that someone like Petitioner, who can handle all that and still find it in himself to volunteer in the community and care about his peers, deserves to be a member of the legal profession. There are not enough people who have survived that system and have had the experience of turning their lives around. She believes that to have more people who have travelled that road would be an asset to the legal profession.

Marvin Mutch, who served 41 years in San Quentin for a wrongful conviction, testified that Petitioner was one of the most honest people in prison and was always fair. Petitioner was reliable and protected the confidentiality and rights of fellow prisoners. He did not abide by the racial politics of the prison despite threats and its very hostile environment. He got Jewish prisoners listed as "other" so that they did not have to reside with the Nazis and white supremacists. He interacted with other races. Prisoners respected him and the respect did not come through violence.

Karen Musalo, a law professor at Hastings and founding Director of the Center for Gender and Refugee Studies, is "impressed beyond measure by [Petitioner] as a human being." She has engaged in social justice work for over 35 years as a lawyer, and she counts Petitioner as among the handful of individuals who have most impressed her. She believes that Petitioner used his 32 years in prison "to work towards self-transformation, and to grow intellectually,

emotionally and spiritually ... since his release he has demonstrated just how genuine and profound this inner change has been. [Petitioner] radiates kindness, thoughtfulness, and tranquility."

Eddy Xiaofei Zheng, a former inmate, is the vice president of SQUIRES, a juvenile delinquency deterrence program, and co-director for the Asian Prisoner Support Committee which has a program called ROOTS inside San Quentin. He was the youngest person sent to San Quentin. Zheng thinks very highly of Petitioner, attesting to his kindness, generosity, openness to different cultures, and trustworthiness, especially when they were in prison. Petitioner was his mentor in San Quentin and is now his daughter's godfather.

**Recognition of Wrongdoing and Remorse**

In his petition for reinstatement in 2017, Petitioner wrote:

> I deeply regret that I can never restore the life I took and the harm I caused [36] years ago. In petitioning for reinstatement, I do not seek to diminish the gravity of my crime or its devastating consequences. What I do seek, however, is an opportunity to contribute to society and to the legal profession as a fully rehabilitated individual and continue on a path of service.

As far back as 1999, Petitioner has acknowledged his wrongdoing and expressed remorse for his crime. At his parole hearings, he acknowledged that he was the aggressor in the killing and that his victim had not threatened him in any way, and in fact made every effort to get away from him. Petitioner expressed remorse for the victim and the victim's family. He has not personally apologized to the Diller family because any contact with the family means he could be re-incarcerated (legal jeopardy). While in prison, he did write a remorse letter to the family. The Diller family never responded.

Petitioner accepts responsibility for his crime, understands the causes of the offense and has demonstrated remorse.

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

The parties stipulated, and this court finds, that Petitioner: (1) passed the Multistate Professional Responsibility Examination (MPRE) on August 13, 2016, within one year prior to the filing of the instant petition for reinstatement; (2) passed the February 2016 California State Bar Attorneys' Examination, which was within three years prior to the filing of his petition for reinstatement; (3) has never been the subject of a claim with the CSF and does not owe the CSF any reimbursement; and (4) has no outstanding discipline costs.

At the time he resigned with disciplinary charges pending, Petitioner had no prior record of discipline.

**DISCUSSION**

Petitioner has presented clear and convincing evidence of his present learning and ability in the general law and has timely passed a professional responsibility examination. The critical issue before the court is whether Petitioner has established, by clear and convincing evidence, his rehabilitation and present moral qualifications for readmission. As discussed below, the court concludes he has not.

Petitioner was found guilty of an intentional criminal homicide and faces a heavy burden of proving his rehabilitation. Petitioner "can be found morally fit to practice law only if the evidence shows that he is no longer the same person who behaved so poorly in the past, and only if he has since behaved in exemplary fashion over a meaningful period of time. This heavy burden is commensurate with the gravity of his crimes." (*In re Gossage* (2000) 23 Cal.4th 1080, 1098.)

While the law looks with favor upon the regeneration of erring attorneys, a petitioner seeking reinstatement bears a heavy burden of proving his or her rehabilitation and "must show by the most clear and convincing evidence that efforts made toward rehabilitation have been

successful." (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1091-1092; *Calaway v. State Bar* (1986) 41 Cal.3d 743, 745; *Tardiff v. State Bar, supra,* 27 Cal.3d 395, 403.) Although the petitioner need not demonstrate perfection, "overwhelming proof of reform" is necessary. (*Feinstein v. State Bar, supra,* 39 Cal.2d 541, 546; *In the Matter of Brown, supra,* 2 Cal. State Bar Ct. Rptr. 309, 315.)

A person seeking reinstatement 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." (*Tardiff v. State Bar, supra*, 27 Cal.3d at p. 403, quoting *Roth v. State Bar* (1953) 40 Cal.2d 307, 313.) In determining whether the burden has been met, the evidence of present character must be considered in light of the moral shortcomings which resulted in the imposition of the discipline. (*Ibid.*) He must be able to show, by sustained exemplary conduct over an extended period of time, that he has reattained the standard of fitness to practice law. (*In re Giddens* (1981) 30 Cal.3d 110, 116.)

Although Petitioner was not disbarred, but rather resigned with disciplinary charges pending, "he must meet the same requirements for readmission." (*In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546, 552.)

The State Bar need only proffer sufficient adverse evidence to lower the persuasiveness of Petitioner's evidence so that he does not meet the burden to prove his case by clear and convincing evidence. Nor is Petitioner entitled to the benefit of the doubt if equally reasonable inferences may be drawn from a proven fact. (*In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894.)

Before an attorney can be restored to the profession, the court must be "fully convinced by positive evidence that the effort he has made toward rehabilitation of his character has been successful." (*Feinstein v. State Bar, supra*, 39 Cal.2d 541, 546.)

Proof of rehabilitation must include at a minimum a lengthy period of not only unblemished, but exemplary conduct, and in that respect actions speak louder than words. (*In re Menna* (1995) 11 Cal.4th 975, 988-990.) The Supreme Court has held that the burden of showing good moral character is substantially more rigorous for an attorney seeking reinstatement than for a first time applicant. (*Id.* at p. 986.)

"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, supra,* 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 a petitioner's resignation, the more evidence of rehabilitation and present good moral character is needed to justify reinstatement.

**Lack of Exemplary Conduct over an Extended Period of Time**

While the court commends Petitioner's tremendous efforts in successfully integrating into society and commitment to making amends for his crime, Petitioner has not shown exemplary conduct over an extended period of time since his discharge from supervised release in November 2016. The burden of proof to show rehabilitation is indeed very heavy.

Cases authorizing admission on the basis of rehabilitation commonly involve a substantial period of exemplary conduct following the misdeeds. (*In re Gossage, supra,* 23 Cal. 4th at p. 1096; see also *Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1071-1072 [emphasizing seven or eight-year period that elapsed since applicant wrongfully evaded payment of a civil judgment]; *Martin B. v. Committee of Bar Examiners* (1983) 33 Cal.3d 717, 726 [emphasizing nine-year unblemished record after applicant was accused of rape as a Marine]; *In re Nevill* (1985) 39 Cal.3d 729, 735 [applying similar principle to disbar attorney convicted of voluntary

manslaughter]; *Roth v. State Bar* (1953) 40 Cal.2d 307, 313 [applying similar principle to deny reinstatement to disbarred attorney convicted of grand theft].)

The misconduct that led to Petitioner's resignation was heinous; the murder was carried out in an especially cruel and callous manner. Petitioner has acknowledged full responsibility for murdering his friend and for the assaults on others. Petitioner is genuinely remorseful and regrets the pain he caused his victim's family. He has demonstrated an appreciation of the gravity of his misconduct and recognition of his wrongdoing. (*In the Matter of Brown, supra,* 2 Cal. State Bar Ct. Rptr. 309, 317.)

The court's concern "is not just in counting the correct number of years for measuring petitioner's rehabilitation; but more importantly, to assess the quality of petitioner's showing in light of his very serious misconduct ...." (*In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459, 464.) Here, Petitioner's quality of rehabilitative evidence demonstrates that he has made tremendous progress towards rehabilitation. But, when Petitioner's record is viewed in its entirety, the sustained period of exemplary conduct of less than two years since his discharge from supervised release is insufficient.

Petitioner's character witnesses presented strong evidence of his rehabilitation in support of his petition for reinstatement. They found petitioner to be of good moral character. "In reinstatement cases, 'the favorable testimony of acquaintances, neighbors, friends, associates and employers with reference to their observation of the daily conduct and mode of living of an attorney who has suffered disbarment' is particularly insightful. (*In the Matter of Andreani* (1939) 14 Cal.2d 736, 749-750.)" (*In the Matter of Distefano* (Review Dept. 1999) 1 Cal. State Bar Ct. Rptr. 668, 675.) The court gives this evidence significant weight. But the favorable character testimony of an attorney is neither conclusive nor necessarily determinative on the issue of rehabilitation. (*Feinstein v. State Bar, supra,* 39 Cal.2d 541, 547.)

"'Character testimony, however laudatory' does not alone establish the 'requisite rehabilitation.' [Citations.] Nor, when weighed against the enormity of his previous misconduct, does applicant's apparent recovery... necessarily justify his admission." (*In re Menna, supra*, 11 Cal.4th at p. 988.)

Petitioner now accepts responsibility for his misconduct and – as illustrated by his impressive list of character witnesses – has evolved considerably since his release from prison in 2013. Petitioner has gone through a process of reformation and transformation. He is not the same person as he was in 1981, almost 37 years ago. He committed this crime a month after his 25th birthday. He has clearly now matured. He is one of the convicted who has so much to teach society about rehabilitation and redemption – what it takes to be a person again and give back to society. Petitioner has demonstrated genuine and sincere insight into the causes of his crime and the mechanism he would need to achieve to prevent those results.

But, considering the nature and magnitude of his offense, Petitioner's good character and rehabilitation evidence over the 10 months between his discharge from supervised release in 2016 and the filing of the present petition in 2017, or over the period of less than two years between the discharge and the trial in this matter in 2018, is simply insufficient to demonstrate his rehabilitation and present moral qualifications for reinstatement. "Good conduct is normally demanded of a prisoner and a parolee." (*In re Menna, supra*, 11 Cal.4th at p. 989.) "It is not enough that [Petitioner] kept out of trouble while being watched on probation; he must affirmatively demonstrate over a prolonged period his sincere regret and rehabilitation." (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 939.)

Before finding him suitable for parole in 2012, the Parole Board repeatedly encouraged Petitioner to continue on his positive progress towards rehabilitation by remaining discipline free, continuing with the self-help activities, and continuing with earning positive reports. The

Board later found him to have far exceeded the standard of rehabilitation. He stayed out of trouble and participated in many positive programs throughout his incarceration of 32 years.

Similarly, this court commends Petitioner's earnest effort toward rehabilitation and good moral character. His community activities and deep commitment to help former prisoners to integrate to society, since his release from prison in 2013 and his discharge from supervised release in 2016, show his outstanding progress in rehabilitating himself as a member of society. As stated in his petition, he clearly has "unique and valuable contributions to make to the legal profession." Yet, such a short period of time of exemplary conduct does not "compel the conclusion that he has regained the highest moral attributes required of an attorney." (*Feinstein v. State Bar, supra,* 39 Cal.2d 541, 548.) In short, a sustained period of time of exemplary conduct is the only obstacle to his reinstatement, despite his continuous remarkable advancement toward rehabilitation.

Therefore, after careful consideration of the facts presented in the instant proceeding, the court finds that Petitioner has failed to meet his heavy burden of proving by clear and convincing evidence his rehabilitation and present moral qualifications through a lengthy period of exemplary conduct.

**CONCLUSION**

The court finds that Petitioner **Stephen Liebb** has the requisite learning and ability in the general law and has passed the required MPRE. However, he has not established, by clear and convincing evidence, that he is rehabilitated by a sustained period of exemplary conduct and thus possesses the present moral qualifications for reinstatement to the practice of law.

Accordingly, the petition for reinstatement is **DENIED** at this time.

Dated: June 13, 2018

Pat McElroy

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 Court Specialist 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 June 13, 2018, I deposited a true copy of the following document(s):

DECISION

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

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

STEPHEN LIEBB
1130 3RD AVE,
APT 1309
OAKLAND, CA 94606-2245

☐ 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:

Maria J. Oropeza, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 13, 2018.

George Hue
Court Specialist
State Bar Court