

STATE BAR COURT  
REVIEW DEPARTMENT

In the Matter of

GORDON C. WRIGHT

Petitioner for Reinstatement

[No. 89-R-10910]

Filed November 19, 1990

SUMMARY

An attorney who had been disbarred for misappropriation of trust funds was denied reinstatement. On review, the attorney contended that the record of the State Bar proceedings which had led to the attorney's disbarment was improperly admitted in evidence; that a second character affidavit from an employer should have been admitted in evidence; and that the hearing judge was biased against him. (Hon. Alan K. Goldhammer, Hearing Judge.)

The review department rejected these contentions, but modified the findings to state that the attorney had made restitution to the victims of his misconduct. Nonetheless, because the attorney had clearly failed to meet the high burden of proving rehabilitation, present fitness to practice, and present learning in the general law, the review department affirmed the denial of the petition for reinstatement.

COUNSEL FOR PARTIES

For Office of Trials: Lawrence J. Dal Cerro

For Petitioner: Gordon C. Wright, in pro. per.

HEADNOTES

- [1]     **159     Evidence—Miscellaneous**  
       **191     Effect/Relationship of Other Proceedings**  
       **2504    Reinstatement—Burden of Proof**  
       **2590    Reinstatement—Miscellaneous**

In a reinstatement proceeding, records of prior discipline, including the proceeding in which the petitioner was disbarred, are admissible, because the evidence of the petitioner's present character must be considered in light of the moral shortcomings which resulted in the prior discipline.

**[2 a, b] 2504 Reinstatement—Burden of Proof**

The petitioner in a reinstatement proceeding bears the heavy burden of showing by clear and convincing evidence that he or she meets readmission requirements. A person seeking reinstatement after disbarment should be required to present stronger proof of present honesty and integrity than one seeking admission whose integrity has never been called into question; the proof presented must overcome the former adverse judgment of the person's character. Reinstatement may be sought on a showing that the petitioner has regained the required standard of fitness to practice law, by sustained exemplary conduct over an extended period of time.

**[3] 135 Procedure—Rules of Procedure**

**166 Independent Review of Record**

**2590 Reinstatement—Miscellaneous**

The review department gives great weight to the findings of the hearing judge, who saw and heard the witnesses and resolved matters of testimonial credibility. Nevertheless, under rule 453(a), Trans. Rules Proc. of State Bar, the hearing judge's decision serves as a recommendation to the review department, which undertakes an independent review and may make findings of fact or draw conclusions of law at variance with those of the judge.

**[4] 135 Procedure—Rules of Procedure**

**2509 Reinstatement—Procedural Issues**

By obtaining a 30-day extension of the 90-day period to investigate a petition for reinstatement before referral for hearing, State Bar examiner did not violate State Bar procedural rules, which allow investigation even after the 90-day period or any extension of it. (Rule 664, Trans. Rules Proc. of State Bar.)

**[5] 139 Procedure—Miscellaneous**

**2509 Reinstatement—Procedural Issues**

To justify relief based on claimed procedural irregularity, specific prejudice must be shown; relief was denied to reinstatement petitioner who made conclusory claim of prejudice from prolongation of pre-hearing investigation, but did not demonstrate actual prejudice.

**[6 a, b] 142 Evidence—Hearsay**

**159 Evidence—Miscellaneous**

**167 Abuse of Discretion**

**2590 Reinstatement—Miscellaneous**

In a reinstatement proceeding, the hearing judge acted within his discretion in excluding a second affidavit from a character witness. Like a character reference letter in a disciplinary proceeding, the character reference, even though in affidavit rather than letter form, was excludable as hearsay absent a stipulation to the contrary. Further, the second affidavit was cumulative, and the hearing judge carefully considered the more detailed first affidavit, which he admitted into evidence as part of the reinstatement application.

**[7 a, b] 135 Procedure—Rules of Procedure**

**159 Evidence—Miscellaneous**

**194 Statutes Outside State Bar Act**

**2590 Reinstatement—Miscellaneous**

As a formal proceeding of the State Bar Court, a reinstatement hearing is governed by the formal rules of evidence applicable in civil proceedings. (Rule 556, Trans. Rules Proc. of State Bar.) More liberal evidentiary standards applicable in certain other types of statutory proceedings do not apply in State Bar proceedings.

- [8]        **159        Evidence—Miscellaneous**  
          **167        Abuse of Discretion**  
Trial judge has discretion to refuse to admit evidence which is cumulative; hearing judge who carefully considered detailed affidavit from witness did not err in excluding second, less detailed affidavit from same witness.
- [9]        **103        Procedure—Disqualification/Bias of Judge**  
          **159        Evidence—Miscellaneous**  
As sole trier of fact, hearing judge had responsibility to declare in decision how he weighed evidence at hearing, including credibility of party as witness, where party's attitude toward reformation and restitution was fundamental issue in proceeding. Judge's occasional use of blunt language did not show bias.
- [10]       **2551       Reinstatement Not Granted—Rehabilitation**  
Although petitioner for reinstatement made restitution to the victims of the misconduct which had resulted in disbarment, petitioner's lack of concern to keep his creditors at least informed of his whereabouts and his indifferent attitude toward his creditors were negative factors despite his very modest financial resources.
- [11]       **2554       Reinstatement Not Granted—Rule 955**  
Because subdivision (e) of rule 955 provides that a disbarred lawyer's failure to comply with rule 955 may constitute a ground for denial of reinstatement, the clear failure of a petitioner for reinstatement to comply with rule 955 was a serious negative factor regardless of whether the petitioner had any clients at the time when he was required to comply with rule 955.
- [12 a, b] **2504       Reinstatement—Burden of Proof**  
          **2552       Reinstatement Not Granted—Fitness to Practice**  
Character evidence, albeit laudatory, was not alone determinative in a proceeding for reinstatement. Presentation of affidavit of one witness regarding conduct in six years since disbarment was inadequate as showing of good character, and was depreciated by petitioner's concealment of disbarment from employer and omission of recent civil suit from disbarment application.
- [13]       **135        Procedure—Rules of Procedure**  
          **148        Evidence—Witnesses**  
          **2509       Reinstatement—Procedural Issues**  
Petitioner for reinstatement could have presented additional character testimony from out-of-state witnesses without undue expense by taking their depositions. (Rules 318, 666, Trans. Rules Proc. of State Bar.)
- [14]       **2553       Reinstatement Not Granted—Learning in Law**  
          **2590       Reinstatement—Miscellaneous**  
Where petitioner for reinstatement did not adequately demonstrate present learning in the law, reinstatement could have been recommended conditioned on passage of California Bar Examination, if petitioner had been found rehabilitated and morally fit.

ADDITIONAL ANALYSIS

[None.]

## OPINION

STOVITZ, J.:

Petitioner, Gordon C. Wright, was disbarred by the Supreme Court in 1983 for misappropriation of trust funds. (Bar Misc. No. 4609.) A hearing judge of the State Bar Court (Hon. Alan K. Goldhammer) has denied his petition for reinstatement and petitioner seeks our review. Before us, he levies a broad attack upon the proceedings and findings below including contentions that the trial judge erred in refusing to admit in evidence a character reference affidavit; that the judge erred in admitting in evidence the record of State Bar proceedings leading to his disbarment; and that the judge was biased against him.

We have very carefully conducted an independent review of the record below and have concluded that petitioner was afforded a fair hearing. While we have decided to modify one of the findings of the hearing judge, to show that petitioner did make restitution for the losses in the matters which led to his disbarment, the judge's remaining findings are supported by the record and we shall adopt them. Those findings show that petitioner has clearly failed to sustain the high burden he has in this reinstatement proceeding to demonstrate that he is rehabilitated, presently fit and learned in the general law. Accordingly, we shall also adopt the hearing judge's decision denying the petition for reinstatement.

I. BACKGROUND OF PETITIONER'S  
DISBARMENT.

[1] Throughout these proceedings, petitioner has objected to State Bar Court consideration of the records of his disbarment. (See, e.g., R.T. p. 18; Petitioner's Brief in Support of Request for Review, p. 11.) In support of his point, petitioner has cited *Maggart v. State Bar* (1946) 29 Cal.2d 439. Yet, as the examiner has pointed out (see State Bar Brief in Opposition to Petitioner's Request for Review, pp. 28-30), in a later decision distinguishing *Maggart*,

our Supreme Court expressly rejected the claim that in a reinstatement proceeding, records of prior discipline are inadmissible. (*Roth v. State Bar* (1953) 40 Cal.2d 307, 313.) The Supreme Court has followed *Roth* consistently, observing that evidence of present character in a reinstatement case must be considered in light of the "moral shortcomings" which resulted in prior discipline. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1092.) Accordingly, we must reject petitioner's contention.

We summarize briefly the facts surrounding petitioner's disbarment. He was admitted to practice law in California in 1955. Effective May 27, 1983, he was ordered disbarred by the Supreme Court. (Bar Misc. No. 4609.) The disbarment rested on findings of fact showing his misappropriation of trust funds in two matters. In one of the matters, petitioner misappropriated \$23,876.10 from an estate for which he acted as fiduciary, concealed the improper disbursements of estate funds to himself and another and disobeyed a court order to distribute the estate assets until found in contempt. (Exh. 3.) In the other matter which led to his disbarment, petitioner was found to have misappropriated client funds held to satisfy a \$2,300 physical therapist's lien, failed to keep proper records of the clients' funds in the matter, failed to pay the therapist's lien on demand and abandoned his clients after they were sued by the therapist. (Exh. 3.)

II. LEGAL PRINCIPLES SURROUNDING  
REINSTATEMENT MATTERS.

[2a] In one of the first opinions we filed, *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25, 30,<sup>1</sup> we summarized, as follows, the principles often cited by our Supreme Court which guide us in a reinstatement case: "Our Supreme Court has consistently held that the petitioner seeking reinstatement has the burden to show by clear and convincing evidence that he meets readmission requirements and that burden is a heavy one. (E.g., *Hippard v. State Bar* (1989) 49 Cal.3d 1089, 1091-1092; *Tardiff v. State Bar* (1981) 27 Cal.3d 395, 403;

1. Since we were aware that petitioner has resided in New Mexico for the past several years, prior to oral argument in this

matter, we furnished petitioner with our opinion in *In the Matter of Giddens, supra*.

*Feinstein v. State Bar* (1952) 39 Cal.2d 541, 546.) The Court reviewed the standard in *Tardiff, supra*, explaining: ‘As we have repeatedly said: “The person seeking reinstatement, after disbarment, should be required to present stronger proof of his present honesty and integrity than one seeking admission for the first time whose character has never been in question. In other words, in an application for reinstatement, although treated by the court as a proceeding for admission, the proof presented must be sufficient to overcome the court’s former adverse judgment of applicant’s character.’ [Citations.] In determining whether that burden has been met, the evidence of present character must be considered in the light of the moral shortcomings which resulted in the imposition of discipline.” [Citation.]’ (*Tardiff v. State Bar, supra*, 27 Cal.3d at p. 403.)”

[2b] On occasion, in opinions ordering disbarment, the Supreme Court has held that reinstatement may be sought on a showing that the petitioner has regained the required standard of fitness to practice law, by “sustained exemplary conduct over an extended period of time.” (*In re Giddens* (1981) 30 Cal.3d 110, 116, quoting *In re Petty* (1981) 29 Cal.3d 356, 362.)

[3] In our review, we give great weight to the findings of the hearing judge who saw and heard the witnesses and who resolved matters of testimonial credibility. (*Feinstein v. State Bar* (1952) 39 Cal.3d 541, 547; Trans. Rules Proc. of State Bar, rule 453(a).) Nevertheless, under rule 453, our review is independent and the hearing judge’s decision serves as a recommendation to us. We may make findings or draw conclusions at variance with those of the judge. (Trans. Rules Proc. of State Bar, rule 453(a); *Bernstein v. State Bar* (1972) 6 Cal.3d 909, 916.)

### III. THE PRESENT RECORD.

#### A. The Evidence.

##### (i) Restitution.

After his disbarment, petitioner assigned a \$30,000 judgment in his favor in another matter to the bonding company which had earlier reimbursed the estate beneficiaries the amount of funds petitioner misappropriated. (R.T. p. 55.) In the physical therapist lien matter which also led to petitioner’s disbarment, State Bar Court records showed that the therapist obtained a default judgment against petitioner to recover the monies petitioner withheld. Before the review department in petitioner’s earlier disciplinary proceeding, petitioner proffered a stipulation of settlement of the therapist’s suit. (Exh. 3.)

##### (ii) Petitioner’s Lack of Compliance With Rule 955.

The Supreme Court’s order disbaring petitioner directed that he comply with rule 955, California Rules of Court (duty of disbarred, suspended or resigned attorneys to notify clients, courts and opposing counsel of inability to serve as attorney). Petitioner testified both that he did not comply with the rule, and that he did not know whether he complied or not since he did not know what the rule was. (R.T. p. 57.)<sup>2</sup>

##### (iii) Petitioner’s Activities After Disbarment.

In 1983, the year he was disbarred, petitioner moved to Santa Fe, New Mexico. During the first year he was there, he did volunteer work for a retirement home and also worked for Project Light Hawk, a conservation group. (R.T. p. 25.) He then

2. Petitioner was asked and he testified:

“Q. [By the examiner] . . . Did you comply with the [rule 955] order of the Supreme Court?

“A. [By petitioner] I don’t know what that rule is.

“THE COURT: Answer it yes or no, Mr. Wright. If you didn’t comply, just tell him you didn’t.

“THE WITNESS: I didn’t comply. But I don’t know what the rule is, so I don’t know whether I complied or not.” (R.T. p. 57.)

started working for 20 hours per week for a blind New Mexico attorney, Albert v. Gonzales, Sr., as a reader, note taker, legal researcher, case preparer and brief-writer at a salary of \$8 per hour. At the time of the hearing, petitioner was still employed by Gonzales at 20 hours per week but now earns \$10 per hour. This monthly income of approximately \$800 is petitioner's sole income. (R.T. pp. 25-26, 40.) Petitioner hoped to be reinstated so that he could qualify for admission to practice law in New Mexico. (Petitioner's declaration filed June 5, 1989.)

When petitioner obtained employment from Gonzales, he told him that he was retired from the practice of law in California, but did not tell Gonzales that he had been disbarred. (R.T. pp. 43-44; petition for reinstatement, attached letter from Gonzales.) Gonzales learned this from another New Mexico attorney about two years after he had hired petitioner. (R.T. p. 44.)

*(iv) Petitioner's Character Evidence.*

Petitioner presented no witnesses on his behalf nor did he seek to introduce any other character evidence except for an affidavit by Gonzales attached to the petition for reinstatement and another affidavit by Gonzales. Although the examiner objected to both affidavits on the ground of hearsay, the judge admitted the first affidavit since it was part of the petition for reinstatement and "invited" by it; but excluded the second proffered affidavit. The judge based the exclusion of the second affidavit on the ground of hearsay but also that it was redundant and sketchier than the first. (Hearing judge's decision, pp. 6-7.)<sup>3</sup>

Gonzales's first affidavit praised petitioner's work on Gonzales's behalf, stated that although they have had "personality differences" he is a hard worker. "As to moral qualifications, he [petitioner] has al-

ways been honest and seems to be more concerned with ethics than I am." Gonzales stated also that he believed that petitioner had been fully rehabilitated and his reinstatement would be an asset to the bar. As will be discussed *post*, Gonzales's affidavit was also favorable to petitioner's learning in the law.

*(v) Other Evidence Concerning Rehabilitation and Fitness.*

Question 5c of the State Bar Court's application for reinstatement, required petitioner to disclose every civil case, including small claims actions, to which he was a party. Petitioner listed seven civil actions in response. One of these suits was filed as early as 1960, another as late as 1982 but petitioner placed a question mark next to the "Date Filed" question as to four of the suits.

Petitioner did not disclose a recent suit he had filed in the Magistrate's Court of New Mexico against Gonzales for withheld wages after Gonzales terminated petitioner because Gonzales wrongfully suspected petitioner of taking Gonzales's tape recorder. According to petitioner, Gonzales found his tape recorder, the two settled their differences and petitioner dismissed the suit. (R.T. pp. 41-43.) Petitioner testified that he did not think his suit against Gonzales was "that important" to list on his petition. "It was in the Magistrate's Court, for God's sake." (R.T. p. 41.)<sup>4</sup>

Petitioner disclosed on his reinstatement application three specific financial obligations totalling about \$33,400. \$30,000 of that amount was owed the Internal Revenue Service for tax obligations incurred as early as 1970. He testified that he could not pay these obligations due to his financial condition and the IRS was being kind in forbearing. As to the remaining two obligations, \$1,937 owed the City and County of San Francisco for past due local taxes and

3. The hearing judge also considered admitting petitioner's second proffered affidavit of Gonzales for other than the truth of the matter asserted but, after being told by petitioner that in content it was the same but a little more affirmative than the first, concluded that it was very brief, did not add any factual detail to Gonzales's (first) affidavit attached to the petition for

reinstatement, was conclusory and "essentially redundant." (R.T. pp. 30-31, 33.)

4. Petitioner characterized the New Mexico Magistrate's Court as the state's lowest court and its monetary jurisdiction as "halfway in between" California's small claims court and municipal court. (R.T. p. 41.)

about \$1,500 owed an owner of property for back rent, petitioner testified that he did not notify the City and County and did not recall notifying the property owner of his current New Mexico address although he thought the creditors were aware of it. (R.T. pp. 34-37, 51.) Petitioner also listed his former wife on his reinstatement application as a creditor. Petitioner listed no specific amount owed her. Immediately below this he wrote: "Third persons have told me she claims I owe child support.—I dispute this."

At the end of his reinstatement application, petitioner appended his own statement in which he stated that since disbarment, he had engaged in no law violation more serious than a speeding offense, that he was a moral person who followed the "golden rule" in his conduct, that he sincerely regretted his earlier misconduct and stated it would never happen again, "as the circumstances which caused it cannot be repeated."

*(vi) Evidence Concerning Petitioner's Learning and Ability in Law.*

Gonzales's affidavit attached to the petition for reinstatement stated that petitioner's knowledge of law was as complete as any attorney he knew and that petitioner brought to Gonzales's attention all new relevant New Mexico decisions. Gonzales detailed two continuing legal education programs he and petitioner attended together and stated that petitioner also listened to a series of five tapes on legal ethics.

Most of petitioner's showing on his legal learning and ability rested on his own testimony. That testimony was that he did all of Gonzales's research in a number of areas of law, prepared three appellate briefs, and had over 50 hours of continuing legal education credit. (R.T. pp. 27-28.)<sup>5</sup> When asked if he subscribed to any California legal publications, he testified he had recently subscribed to the *Daily Banner*<sup>6</sup> and that he read its "appellate news" section. (R.T. pp. 46-47.) Petitioner presented no examples

of briefs or other written work he had done for Gonzales. However in three of the papers he filed in this reinstatement proceeding, petitioner, a party to the proceeding, signed his own proof of service of those papers on the examiner. (See Opposition to Motion to Extend Investigation Period, filed June 27, 1989; Supplemental Declaration filed June 15, 1989; and Declaration filed June 5, 1989; see also Code Civ. Proc., § 1013, subd. (a); rule 242, Trans. Rules Proc. of State Bar.)

B. The Hearing Judge's Findings.

In his decision, the judge first summarized the evidence presented to him, then adopted specific findings. After making findings as to the background of petitioner's original admission to practice and disbarment, the judge adopted these findings: Petitioner did not comply with rule 955 as he was required to do. (Finding 4.) Petitioner failed to make restitution or satisfy long-standing major debts when his resources would have allowed "more than token" payments and petitioner was hostile, argumentative and evasive regarding inquiries as to his debts. Petitioner has not informed certain creditors of his whereabouts. (Finding 5.) Petitioner failed to complete his reinstatement application fully and correctly, omitted a recent lawsuit he brought against Gonzales and was evasive as to why he had not disclosed the suit. (Finding 6.) While petitioner had attended a number of legal education courses, recently began subscribing to a San Francisco legal newspaper and had been working for Gonzales as a legal research assistant since 1984, the form and content of petitioner's pleadings and his actions, arguments and demeanor at hearing show lack of present ability and learning in the law. (Findings 7, 8 and 9.) Petitioner offered no character testimony other than his own. (Finding 10.) Petitioner was not candid in his reinstatement application and his testimony showed an inappropriate attitude to a role as an attorney. (Finding 11.) Petitioner had not shown rehabilitation, moral qualifications for admission or present ability

5. Petitioner testified that he attended seven continuing education courses with Gonzales in 1987 and 1988. However, Gonzales's affidavit states that he attended only two such

courses with petitioner. (Compare R.T. pp. 27-28 with Gonzales's affidavit attached to petition for reinstatement.)

6. We construe petitioner's testimony to refer to the San Francisco *Banner Daily Journal*.

in the general law, nor sufficient current good moral character to overcome his earlier disbarment. (Findings 12, 13, 14 and 15.)

#### IV. DISCUSSION.

##### A. Petitioner's Procedural Contentions.

Before reaching the merits, we shall deal with the several procedural contentions petitioner has advanced on review.

[4] Petitioner contends that the examiner obtained from the former assistant presiding referee an extension of the time to investigate the petition for reinstatement by a "supplemental motion" not authorized by the rules and that the examiner continued to investigate beyond the extension ordered. Petitioner's claim is without merit. The Rules of Procedure of the State Bar set a specific 90-day period for investigation of a petition for reinstatement before referral for hearing. An extension of the investigation period is also authorized. (Rule 664.) A 30-day time extension was properly obtained. Recognizing that a reinstatement petition may be filed at any time after five years from disbarment, the rules are designed to afford the State Bar Office of Trial Counsel an opportunity to investigate a petition before the time for trial setting commences. The rules do not prohibit investigative acts taken after the 90-day period or any extension of it. Here, the rules were complied with. [5] Moreover, to consider granting relief on a claim of procedural irregularity of the type made here, specific prejudice must be shown. (See, e.g., *Rodgers v. State Bar* (1989) 48 Cal.3d 300, 310-311; *Stuart v. State Bar* (1985) 40 Cal.3d 838, 844-845; *Chefsky v. State Bar* (1984) 36 Cal.3d 111, 120-121.) While petitioner makes a conclusory claim of prejudice he demonstrates no actual prejudice whatever.

[6a] Petitioner also contends that the hearing judge improperly excluded Gonzales's second affi-

davit. We reject petitioner's contention. As we discussed *ante*, the judge excluded this affidavit partly on the ground that it was hearsay, but chiefly on the ground that it was cumulative. [7a] The reinstatement hearing, like a disciplinary proceeding, is a formal proceeding of the State Bar Court. As such, the formal rules of evidence applicable in civil cases apply. (Rule 556, Trans. Rules Proc. of State Bar.) [6b] In a disciplinary case, the Supreme Court has held that character reference letters are "excludable as hearsay in the absence of a stipulation to the contrary (rules 401, 556, Rules Proc. of State Bar; see Evid. Code, § 1200) . . ." (*In re Ford* (1988) 44 Cal.3d 810, 818.) That the evidence was proffered as an affidavit instead of a letter does not change its hearsay nature. (*Windigo Mills v. Unemployment Ins. Appeals Bd.* (1979) 92 Cal.App.3d 586, 597.) [7b] Any liberality expressed in *Windigo* to accepting affidavits in an Unemployment Insurance Appeals Board hearing is distinguishable here because, as the hearing judge correctly noted in his decision (at p. 6), the Unemployment Insurance Code authorizes a more liberal standard than applies in this State Bar proceeding. (*Windigo, supra*, 92 Cal.App.3d at pp. 597-598; see rule 556, Trans. Rules Proc. of State Bar.)

[8] A trial judge also has the discretion to refuse to admit evidence which is cumulative. (See, e.g., *Canavin v. Pacific Southwest Airlines* (1983) 148 Cal.App.3d 512, 537, fn. 13.) We hold that the hearing judge acted within his discretion to exclude the second Gonzales affidavit on that basis as well. The hearing judge's decision shows that he carefully considered the more detailed Gonzales affidavit he deemed admissible. (Decision, pp. 6-7.)

We also reject petitioner's claim that the hearing judge was biased toward petitioner. To support his claim, petitioner cites critical language used by the hearing judge in his decision to characterize petitioner's response during the hearing to questions or colloquy.<sup>7</sup> Petitioner also argues that the judge

7. As examples, petitioner refers to the judge's use of words such as the word "snapped" in the phrase, ". . . [Petitioner] snapped when asked by the Trial Examiner about the date of the judgment . . ."; the words "sarcastic" and "argumentative" in the phrase "Petitioner was also sarcastic and argumentative when asked about restitution"; and the word "galling" in the

phrase, ". . . and it is particularly galling for petitioner to complain he expected a fair and impartial investigation of the petition when it was [p]etitioner who objected to the request made by [the examiner] for more time to investigate the matter."

improperly recited in his decision evidence of petitioner's disbarment, the judge exercised his subjective opinion in commenting on petitioner's attitude toward restitution and made other errors in findings.

[9] As the sole trier of fact, it was the hearing judge's responsibility to declare to the litigants, the public and any reviewing body in his decision how he weighed the evidence including the credibility of petitioner as a party and witness in a proceeding in which the petitioner's attitude toward reformation and restitution is a fundamental issue. (See, e.g., *In re Andreani* (1939) 14 Cal.2d 736, 750.) That the hearing judge occasionally chose blunt language does not show bias. The judge would have been entitled to express his reasonable opinions of the evidence and credibility of witnesses even during the hearing, particularly when sitting without a jury. (See Cal. Const., art. VI, § 10; *Keating v. Superior Court* (1955) 45 Cal.2d 440, 444; *Davis v. Kahn* (1970) 7 Cal.App.3d 868, 880.)

As noted, *ante*, our review of the record is independent. Upon completion of that review, we are satisfied that the hearing judge gave careful attention to petitioner's evidence and arguments and conducted the hearing in a fair and patient manner despite petitioner's assertion of legal arguments without foundation such as that evidence of his disbarment was inadmissible or that the judge could not draw conclusions as to his attitude toward restitution. (Cf. *Meadows v. Lee* (1985) 175 Cal.App.3d 475, 484.)

#### B. The Merits.

Earlier in our opinion, we summarized the law requiring a petitioner for reinstatement after disbarment to make a very strong showing and meet a high burden. We are convinced by petitioner's positions taken throughout the proceedings, that he did not adequately understand these legal principles. We must conclude, as did the hearing judge, that petitioner failed to show adequate proof of his rehabilitation, present moral fitness or learning and ability in the law.

In his favor, petitioner did make adequate restitution to the victims of the matters for which he was disbarred. Although petitioner is a man of very

limited means, he could have made some effort to meet his responsibilities to his remaining creditors. Instead, petitioner did not provide them with his current address in New Mexico. Petitioner also demonstrated by his demeanor at trial an indifference to creditors he listed on his petition for reinstatement. We adopt the last four sentences as a finding of fact which we substitute for finding 5 of the hearing judge.

[10] Although petitioner did make restitution to the victims of his misconduct, his lack of concern to keep his creditors at least informed of his whereabouts and his indifferent attitude toward them is a negative factor despite his very modest financial resources. (See *In re Andreani, supra*, 14 Cal.2d at pp. 750-751.)

[11] Petitioner's failure to comply with the provisions of rule 955, California Rules of Court, is clear and the judge's finding thereon is fully supported. As the examiner points out, rule 955, subdivision (e) provides that a disbarred lawyer's failure to comply may constitute a ground for denial of reinstatement. (*Hippard v. State Bar, supra*, 49 Cal.3d at p. 1096.) Thus, petitioner's failure to comply with the rule was a serious, negative factor whether or not petitioner had clients at the time he was required to comply. (See *Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186-1187, and cases cited therein.)

[12a] Gonzales's affidavit attached to the petition for reinstatement is favorable to petitioner; but character evidence, albeit laudatory, is not alone determinative. (*Feinstein v. State Bar, supra*, 39 Cal.2d at p. 547.) Moreover, Gonzales was the only character reference offered by petitioner to permit the State Bar Court to evaluate his conduct in the six years since his disbarment. [13] Had petitioner wished to present additional character evidence of New Mexico witnesses without undue expense, he could have taken their depositions in New Mexico as the hearing judge pointed out. (R.T. p. 13; see rules 318 and 666, Trans. Rules Proc. of State Bar.) [12b] We hold that petitioner's showing of good character was both insufficient in the circumstances and depreciated by his having concealed from Gonzales his disbarment and having omitted from his application

for reinstatement a relatively recent lawsuit against Gonzales. (See *In the Matter of Giddens, supra*, 1 Cal. State Bar Ct. Rptr. 25.) The evidence at the hearing fell far short of petitioner's required showing of sustained exemplary conduct over an extended period of time. Moreover, that evidence did not serve to overcome the former adverse judgment of petitioner's fitness to practice law embodied in his prior disbarment.

[14] We read the hearing judge's findings as grounding petitioner's lack of learning in the law on the form and content of petitioner's pleadings, and actions, argument and demeanor. (Findings 7, 8 and 9.) While we agree with those findings, we also have doubts about the sufficiency of the other evidence proffered by petitioner regarding his learning in the law. Petitioner's testimony of having kept current in the law rested mostly on his own testimony. He had only recently undertaken some activities such as having read the *Daily Journal*, and he submitted no examples of any of the written work he had done for Gonzales. Had we concluded that petitioner was rehabilitated and morally fit, we would likely have conditioned recommendation of reinstatement of petitioner upon his passing the California Bar Examination, thus assuring that he is learned in the law. (Rule 952(d), Cal. Rules of Court.)<sup>8</sup>

#### CONCLUSION AND DISPOSITION

For the foregoing reasons, we adopt the hearing judge's findings with the minor modification set forth above. Petitioner's application for reinstatement is denied.

We concur:

PEARLMAN, P.J.  
NORIAN, J.

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8. Also a requirement for reinstatement is passage of the Professional Responsibility Examination. (Rule 952(d), Cal. Rules of Court.) The record is silent as to whether petitioner

took or passed that examination, but we need not determine that fact in view of our decision.