

STATE BAR COURT
REVIEW DEPARTMENT

In the Matter of

JERRY D. RUDMAN

Petitioner for Reinstatement

No. 91-R-00004

Filed October 1, 1993

SUMMARY

In 1983, petitioner resigned from the practice of law with disciplinary charges pending following a federal criminal conviction resulting from his participation in a conspiracy to pass counterfeit United States currency. In 1991, petitioner sought reinstatement to the State Bar and the hearing judge found that he met the high standards required for reinstatement. (Hon. Ellen R. Peck, Hearing Judge.)

The Office of Trial Counsel requested review, contending that petitioner was not yet rehabilitated from his prior misconduct and therefore he should not be readmitted to the practice of law. Despite petitioner's single, aberrant drunk driving conviction and minor omissions in his reinstatement petition, the review department concluded petitioner had satisfied the requirements for readmission by proof of rehabilitation in the ten years since the misconduct, during which time petitioner handled millions of dollars in government funding in a fiduciary capacity with complete integrity, and undertook therapy to improve his ability to deal with difficult situations.

COUNSEL FOR PARTIES

For Office of Trials: Janet S. Hunt

For Petitioner: Susan Margolis

HEADNOTES

**[1] 135 Procedure—Rules of Procedure
2504 Reinstatement—Burden of Proof**

In order to gain readmission to the State Bar, a petitioner must pass the Professional Responsibility Examination and must demonstrate (1) rehabilitation and present moral qualifications for readmission and (2) present ability and learning in the general law. (Trans. Rules Proc. of State Bar, rule 667.)

[2] 2504 Reinstatement—Burden of Proof

A petitioner for reinstatement who resigned with disciplinary charges pending must meet the same requirements for readmission as a petitioner who was disbarred.

- [3] **2504 Reinstatement—Burden of Proof**
Petitioners for reinstatement bear a heavy burden of proving rehabilitation; they must show by the most clear and convincing evidence that efforts made towards rehabilitation have been successful, and must present stronger proof of present honesty and integrity than one seeking admission for the first time whose character has never been in question.
- [4] **2504 Reinstatement—Burden of Proof**
The law looks with favor upon the regeneration of erring attorneys and should not place unnecessary burdens upon them. There can be no absolute guarantee that a petitioner for reinstatement will never engage in misconduct again, and the petitioner need not show perfection. All that can be required is a showing of rehabilitation and of present moral fitness.
- [5] **125 Procedure—Post-Trial Motions**
 159 Evidence—Miscellaneous
 169 Standard of Proof or Review—Miscellaneous
The Office of Trial Counsel waived its right to argue on review that certain evidence should not have been admitted when it withdrew its opposition to a post-trial motion before the hearing judge for introduction of the evidence. Accordingly, the review department did not address in detail the Office of Trial Counsel's objections to the evidence.
- [6] **2504 Reinstatement—Burden of Proof**
 2510 Reinstatement Granted
A reinstatement petitioner's showing of acceptance of responsibility for his misconduct, of extreme remorse, and of efforts and success at developing the skills and relationships necessary to deal appropriately with future problems supported the conclusion that the petitioner demonstrated insight into his misconduct and had taken steps to change his character and behavior. The petitioner's showing of a proper attitude to his misconduct and a steady determination to rehabilitate himself warranted favorable consideration in considering his reinstatement.
- [7] **2504 Reinstatement—Burden of Proof**
Reformation is a state of mind which may be difficult to establish affirmatively and may not be disclosed by any certain or unmistakable outward sign. Accordingly, the lack of outward signs such as community involvement does not necessarily demonstrate a lack of rehabilitation. The evidence of rehabilitation must be viewed in its totality.
- [8 a, b] **2504 Reinstatement—Burden of Proof**
A reinstatement petitioner's failure to provide lengthy details about his misconduct to his character witnesses did not negate the petitioner's showing that he had learned to communicate with those close to him, where petitioner informed most of the witnesses of his conviction and loss of his law license and there was no evidence that petitioner concealed his misconduct or misled the witnesses.
- [9 a, b] **2504 Reinstatement—Burden of Proof**
A petitioner's failure to report certain information in the appropriate locations on the petition for reinstatement did not reflect adversely on the petitioner's showing of rehabilitation and present moral fitness where the omitted information was contained in other parts of the petition and where there was no intent to deceive or conceal derogatory information.

[10] 141 Evidence—Relevance**2504 Reinstatement—Burden of Proof**

A petitioner for reinstatement does not have to establish that the changes that have occurred in his or her post-misconduct life are attributable to psychotherapy before that therapy is entitled to weight on the issue of the petitioner's showing of rehabilitation. Rather, the therapy, as well as the other evidence of rehabilitation, must be viewed and weighed collectively.

[11 a, b] 2504 Reinstatement—Burden of Proof

Circumstances which indicated that a reinstatement petitioner had withdrawn from participation in the criminal conspiracy which led to his resignation from the bar could not be ignored simply because the petitioner could have taken other steps to end the criminal conduct. The petitioner's failure to turn himself in to law enforcement immediately at the time of his withdrawal did not negate the fact that his criminal involvement was of limited duration, and did not preclude his later effort to show rehabilitation. Such circumstances, as well as all other circumstances of the criminal conduct, had to be considered in deciding whether the petitioner had met the burden of proof in the reinstatement proceeding.

[12] 2504 Reinstatement—Burden of Proof

Rehabilitation is a process that occurs over a period of time and which is demonstrated by a period of sustained exemplary conduct. A reinstatement petitioner's alleged failure to begin this process during his or her misconduct does not preclude a showing of sustained exemplary conduct over many years after the misconduct.

[13 a, b] 2504 Reinstatement—Burden of Proof**2510 Reinstatement Granted**

In determining whether a petitioner has met the burden of proof in a reinstatement proceeding notwithstanding alleged weaknesses in the showing of rehabilitation and moral fitness, it is essential to compare the facts of the proceeding with the facts of other reported reinstatement cases in which the petitioners were admitted despite such weaknesses. Where a petitioner's showing of rehabilitation included evidence as to the petitioner's remorse, acceptance of full responsibility for the misconduct, candor, honesty and integrity, success in a fiduciary position, and success at meeting financial obligations, it was as strong as the showings of petitioners who had gained reinstatement.

[14] 141 Evidence—Relevance**2504 Reinstatement—Burden of Proof**

The passage of an appreciable period of time constitutes an appropriate consideration in determining whether a petitioner for reinstatement has made sufficient progress towards rehabilitation.

[15] 1511 Conviction Matters—Nature of Conviction—Driving Under the Influence**2504 Reinstatement—Burden of Proof****2510 Reinstatement Granted**

A reinstatement petitioner's recent conviction for driving under the influence did not, by itself, establish a lack of either rehabilitation or present moral fitness, where the conviction was an isolated, uncharacteristic and aberrational incident; the petitioner did not have a chemical dependency problem; the petitioner had taken steps to prevent any further occurrence; and the conviction was petitioner's first DUI offense, was unrelated to the practice of law, and was unrelated to the misconduct which led to petitioner's resignation.

[16] **2504 Reinstatement—Burden of Proof**
 2510 Reinstatement Granted

In deciding whether a reinstatement petitioner has met the burden of proof, the evidence presented must be viewed in light of the moral shortcomings which resulted in the petitioner's loss of his or her license. Where the petitioner's participation in criminal misconduct had been limited and was mitigated by contributing emotional factors that had long since been brought under control, the review department concluded that the petitioner had made an adequate showing of rehabilitation and present moral fitness when viewed against this backdrop and in light of past comparable reinstatement cases.

ADDITIONAL ANALYSIS

[None.]

OPINION

NORIAN, J.:

In this matter, a hearing judge of the State Bar Court originally recommended that petitioner, Jerry D. Rudman, not be reinstated as a member of the bar, and, upon reconsideration, found that he met the high standards required for reinstatement. In 1983, petitioner resigned from the practice of law with disciplinary charges pending following his 1982 federal conviction that resulted from his participation in a conspiracy to pass counterfeit United States currency. The Office of Trial Counsel requested review of the decision on reconsideration, contending that petitioner is not yet rehabilitated from his prior misconduct and therefore he should not be readmitted to the practice of law. Based upon our independent review of the record, we conclude that petitioner has satisfied the requirements for readmission by proof of rehabilitation in the past 10 years in which colleagues and co-workers testified, among other things, to his responsibilities in a fiduciary capacity handling millions of dollars in government funding with complete integrity.

FACTS

The hearing judge's factual findings¹ reveal the following. Petitioner worked primarily in accounting before entering law school in 1970. After his admission to the State Bar in 1975, petitioner was a solo practitioner until 1978 or 1979, when he began to rent space from another attorney, with whom he thereafter entered into a partnership.

At some point in time, petitioner's income from his law practice began to decrease. Petitioner began drifting away from his friends from whom he could obtain support. Beginning in 1979, petitioner failed to pay his income taxes and by 1981, his total tax

liability was about \$100,000.² By the end of October 1981, when he entered into the counterfeiting conspiracy, petitioner had not paid his mortgage payment for at least three months and his residence was either in or about to be in foreclosure. Petitioner did not tell his wife about their true financial status.

In October 1981, Carmen Misuraca met with John Merenda at Merenda's house. During this meeting, Misuraca asked Merenda about the feasibility of printing counterfeit currency on the printing press Merenda had in his home. In late October 1981, Carmen Misuraca, John Merenda and petitioner met at John Merenda's home. John Merenda knew petitioner from a prior legal transaction. During the meeting and in petitioner's presence Misuraca told Merenda that he and petitioner would take care of any money Merenda made. Misuraca said that he would take money to New York and petitioner would take it to Chicago. At this meeting it was agreed that \$1 million in counterfeit currency would be printed and petitioner and Misuraca would take \$500,000. Approximately \$425,000 in counterfeit currency was printed in late October and early November 1981.

In early November 1981, petitioner and Misuraca went to New York with \$280,000 of counterfeit money in their possession. Petitioner and Misuraca met with several people in New York in an attempt to distribute the money. Later on the same day, petitioner met with his friend, Vincent Albano. When Albano arrived petitioner showed Albano two counterfeit bills and told him that he (petitioner) was selling the money. Petitioner did not ask Albano to buy the money. Albano told petitioner to get out of there. Shortly thereafter, petitioner called Albano and went to his house. Petitioner told Albano that he had no money to leave New York. At that point Albano got him an airplane ticket to leave New York. Albano advised the co-conspirators that petitioner had withdrawn from the venture. Petitioner remained

1. Neither party contests the hearing judge's findings of fact. We conclude that the findings are supported by the record and we adopt them. However, we delete the last two sentences of footnote 2 of the October 1992 decision on reconsideration as those sentences appear to have been inadvertently retained from the original July 1992 decision and pertain to matters that the hearing judge resolved in petitioner's favor on reconsideration.

2. Petitioner has paid small monthly payments toward his tax obligations and as of June 1991, he owed approximately \$74,000 to the Internal Revenue Service and \$6,000 to \$7,000 to the California Franchise Tax Board. A stipulation submitted by the parties after oral argument in this matter indicates that petitioner has continued making payments toward his tax obligations.

with Albano in New York for two days and then returned to Los Angeles about November 6, 1981.

Misuraca was arrested and jailed in Los Angeles and petitioner handled Misuraca's bail and release. Petitioner did not know that Misuraca was cooperating with law enforcement authorities. On December 2, 1981, a taped conversation between petitioner and Misuraca was made with the consent of Misuraca. This taped conversation led to petitioner's arrest. The counterfeit currency and the negatives used to print the currency were recovered by law enforcement.

In April 1982 petitioner was convicted of violating 18 United States Code section 472 (attempting to pass counterfeit United States currency) and 18 United States Code section 371 (conspiracy to violate 18 U.S.C. § 472).³ As these crimes involved moral turpitude per se, the Supreme Court interimly suspended petitioner, effective September 1982, and referred the matter to the State Bar for a report and recommendation as to the discipline to be imposed. (See Bus. & Prof. Code, § 6102.) Prior to the report and recommendation, petitioner resigned from the practice of law, which resignation was accepted by the Supreme Court by order, effective January 16, 1984.

Immediately after his interim suspension, petitioner did not seek employment for a period of time, while he reflected upon his past conduct, his depression, and his future life. In 1982, he performed per diem accounting services. From October 1983 to April 1984, petitioner worked for a company as a senior accountant.

At the time of the State Bar Court hearing, petitioner was the controller at Research and Development Laboratories (RDL). He has been employed by RDL since April 1984. RDL is a research and development firm which employs about 42 scientists and technical employees and receives government funding through defense contracts (about \$5-\$8 mil-

lion per year). Petitioner is responsible for financial portions of all contract bids; some contract negotiations; negotiation of bank loans; handling of all financial activity and reporting during administration of defense contracts; and management of all payroll, personnel services and employee benefits within RDL. Petitioner has the absolute trust and confidence of his superiors and colleagues at RDL in the handling of the millions of dollars received by RDL. He is considered a good and hard worker, and is regarded by his superiors as a trusted, loyal and valuable employee.

Petitioner also earned income outside of his salary at RDL as a business management consultant. For the tax years 1987 through 1989, his gross income from this work was \$2,000-\$3,000 per year.

Petitioner married in 1960 and has four children, three adults and one minor. For two years prior to his counterfeiting activity, petitioner's marriage progressively deteriorated, due to lack of communication and financial problems. The marriage was dissolved in 1983. Following his divorce, petitioner continued to be a good father to his children and paid \$800 monthly for child support, which was recently reduced to \$300.

Petitioner acknowledged that one of the motivations for his entry into the counterfeiting conspiracy was to help his financial situation. Also at the time of his entry into the conspiracy, petitioner was experiencing tremendous depression because of his deteriorating relationship with his wife, which was also physically draining; he was feeling lethargic about work; he was having great difficulty in communicating with people around him; and he was holding a lot of his problems inside and never telling anyone. Petitioner felt overwhelmed and in despair, did not see any way out, and did not see any purpose in going on with his life. At the present State Bar Court hearing, petitioner testified that he felt that these factors had severely impaired his judgment at the time he joined the criminal conspiracy in 1981.

3. Petitioner was sentenced on each of the two counts to five years and a \$5,000 fine. The first ninety days of the sentence was to be served on consecutive weekends and the balance of the sentence, including the fine, was suspended and petitioner

was placed on five years probation on conditions which included 1,800 hours of community service. Petitioner complied with his criminal sentence.

Following his counterfeiting arrest and conviction, petitioner obtained psychotherapy for four years, first twice weekly and then on a weekly basis. Petitioner acknowledged that during events surrounding his counterfeiting crime, he failed to deal with problems as they developed and that he failed to communicate his personal feelings with those who were around him. He was embarrassed to ask for financial assistance. Petitioner believes that he has worked very hard to improve his communication skills with family members and friends. He now has a support network of friends with whom he can communicate and look to for other solutions to solving his problems should similar pressures arise. Petitioner's former wife believes petitioner's communication skills with her and their children have improved remarkably since the final years of their marriage.

Numerous witnesses stated that petitioner demonstrated remorse and shame for his criminal activity; that he shouldered full responsibility for his actions; that he did not seek to blame anyone else for his wrongdoing; and that he was appropriately candid about the nature and extent of his conviction. Petitioner stated that the pain of his actions and the pain suffered by those close to him has been with him on a regular basis and will remain with him forever. He regards his conviction as a blemish from which he cannot walk away.

Petitioner presented favorable testimony from a number of character witnesses who represent a fair cross-section of the community in which petitioner lives and works and who have observed him for a long period of time. These witnesses expressed not only their exceptionally high opinion of his good moral character, but also their genuine affection for and trust in petitioner.

Petitioner's conduct since his counterfeiting activity has not, however, been without blemish. In October 1990, petitioner ate dinner at a restaurant, during the course of which he consumed alcoholic beverages. When dinner was over, petitioner drove his car and stopped at the first traffic light. Because he believed that he was too far into the cross-walk, he put his car into reverse and backed into the car stopped behind him, causing property damage to that car. Petitioner was subsequently arrested for driving

under the influence (DUI) and his blood alcohol level was between 0.10 and 0.11 percent. In November 1990, petitioner pled guilty to a violation of Vehicle Code section 23152, subdivision (a), a misdemeanor, and was sentenced to three years probation on conditions, including restitution to the victim. Petitioner's insurance company paid the victim's claim.

At the State Bar Court hearing, petitioner described his drinking habits as moderate to none. Prior to the 1990 incident, petitioner had never been convicted of driving under the influence nor had he been involved in any other traffic violation where alcohol was a factor. Petitioner's drinking habits were confirmed by several witnesses who see petitioner regularly in a social setting and by his former wife. Petitioner's friends expressed surprise at this conviction, stating that such behavior was totally out of character for petitioner.

DISCUSSION

[1] In order to gain readmission to the State Bar, a petitioner must pass the Professional Responsibility Examination (PRE) and must demonstrate (1) his rehabilitation and present moral qualifications for readmission and (2) his present ability and learning in the general law. (Rule 667, Trans. Rules Proc. of State Bar.) The Office of Trial Counsel asserts only that petitioner has failed to demonstrate rehabilitation and present moral qualifications for readmission. The hearing judge's findings, which we have adopted, demonstrate that petitioner has established that he passed the PRE and has established his present ability and learning in the general law. We therefore limit our discussion to the issue of whether petitioner has sufficiently demonstrated rehabilitation and present moral qualifications.

[2] Although petitioner resigned with disciplinary charges pending instead of being disbarred, he must meet the same requirements for readmission. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1092, fn. 4; *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423, 428, fn. 1.) The legal principles governing reinstatement proceedings are well established. [3] Petitioner bears a heavy burden of proving his rehabilitation. (*Calaway v. State Bar* (1986) 41 Cal.3d 743, 745.) He "must show by the

most clear and convincing evidence that efforts made towards rehabilitation have been successful.” (*Hippard v. State Bar*, *supra*, 49 Cal.3d at p. 1092.) Petitioner must present stronger proof of his present honesty and integrity than one seeking admission for the first time whose character has never been in question. (*Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403.) “In determining whether that burden has been met, the evidence of present character must be considered in light of the moral shortcomings which resulted in the imposition of discipline.” (*Ibid.*)

[4] However, “The law looks with favor upon the regeneration of erring attorneys and should not place unnecessary burdens upon them.” (*Resner v. State Bar* (1967) 67 Cal.2d 799, 811.) “There can, of course, be no absolute guarantee that petitioner will never engage in misconduct again. But if such a guarantee were required for reinstatement none could qualify. All we can require is a showing of rehabilitation and of present moral fitness.” (*Ibid.*) Petitioner need not show perfection. (*In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25, 37.)

The petition for reinstatement was filed in January 1991 and the trial of the matter before the hearing judge occurred in September 1991. The hearing judge filed a decision in July 1992 denying the petition for reinstatement on the ground that petitioner had not sustained his burden of proof on the issue of rehabilitation and moral fitness. Petitioner thereafter filed a motion for reconsideration and an application to present additional evidence. In an October 1992 decision, the hearing judge granted the application to present additional evidence, reversed her earlier decision, and recommended petitioner’s reinstatement.

The Office of Trial Counsel asserts on review that petitioner did not sustain his burden of proving rehabilitation and present fitness, that the hearing judge erred in granting the application to present

additional evidence and in granting reconsideration, and that the hearing judge’s original decision denying reinstatement was correct. Essentially, the Office of Trial Counsel’s argument involves two issues: the application to present additional evidence/request for reconsideration and the showing of rehabilitation/present moral fitness.

According to the Office of Trial Counsel, the hearing judge erred in reconsidering her original decision because she should not have admitted the additional evidence. The additional evidence consisted of a letter from petitioner’s insurance company relating to the claim that was paid as a result of petitioner’s 1990 DUI conviction, and portions of petitioner’s deposition taken by the Office of Trial Counsel in this proceeding regarding the insurance claim, petitioner’s outside income from his tax consulting work, and his tax obligations and repayment plan. The deputy trial counsel asserts that the additional evidence presented was not “new” evidence, but was evidence that was available to petitioner before the original trial, and the transcript was inadmissible under the Evidence Code and Civil Discovery Act.

[5] We need not detail the exact arguments and authorities cited in support of these assertions because we agree with petitioner that the Office of Trial Counsel waived its objections to the introduction of this evidence. Initially, the Office of Trial Counsel opposed the application to present additional evidence on the same grounds as now asserted on review. However, at a status conference between the hearing judge and the parties on August 11, 1992, the deputy trial counsel then assigned to this case withdrew his opposition to the application to present additional evidence and based thereon the hearing judge granted the application and admitted the evidence by order filed August 14, 1992. Thus, the Office of Trial Counsel waived its right to object to the introduction of the evidence.⁴

4. Except for the exact amount of the insurance claim, the additional evidence was apparently obtained by the Office of Trial Counsel during discovery. Presumably, the Office of Trial Counsel would not have withdrawn its opposition to the introduction of the additional evidence if there was a question as to its accuracy. Additionally, the Office of Trial Counsel

has not asserted, either before the hearing judge or on review, that the amount of the insurance claim is not accurate. Finally, we note that the deputy trial counsel cited to the deposition transcript in arguing against the request for reconsideration before the hearing judge.

The issue of whether the hearing judge properly reconsidered her original decision pertains to the central issue in this case: the adequacy of petitioner's showing with regard to his rehabilitation and present moral fitness. In arguing that petitioner has not met his burden of proof on this issue, the Office of Trial Counsel asserts: that the evidence petitioner presented indicates the maintenance of a prior lifestyle rather than rehabilitation; that petitioner has not improved his ability to communicate with those close to him; that omissions in his petition for reinstatement indicate careless representations and a lack of good judgment; that petitioner's therapy is entitled to no weight because petitioner did not explain his reasons for seeking therapy and its effect on his post-conviction life; and that petitioner's participation in the counterfeiting scheme lasted longer than petitioner claimed because his efforts at withdrawal were incomplete.

According to the deputy trial counsel, petitioner's post-incarceration activities constitute what is ordinarily expected of a member of society; petitioner offered no evidence of involvement in the community other than his work; and there was no "structure" to petitioner's rehabilitation. In essence, the deputy trial counsel asserts that petitioner is the same person now as he was before his counterfeiting activity. We disagree with this assessment of the record.

[6] Testimony from petitioner and others was presented regarding the financial and emotional problems which contributed to the counterfeiting activity and petitioner's efforts and success at addressing those problems since then. Petitioner testified that he accepts full responsibility for his misconduct; is extremely remorseful; and has worked very hard at developing the skills and relationships necessary to deal appropriately with future problems. The positive changes in petitioner's personality in the 12 years since the counterfeiting activity were attested to by petitioner's character witnesses, including his former wife. The hearing judge concluded that petitioner demonstrated insight into his motivation in entering the counterfeiting activity and has taken steps to change his character and behavior in order to prevent future occurrences. The record supports this conclusion. In short, petitioner has evidenced a proper attitude toward his counterfeiting misconduct and a

steady determination to rehabilitate himself. The Supreme Court has viewed similar facts favorably in granting reinstatement. (*In re Gaffney* (1946) 28 Cal.2d 761, 763.)

[7] As we recently noted in *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 315, "Reformation is a state of mind which 'may be difficult to establish affirmatively' and 'may not be disclosed by any certain or unmistakable outward sign.'" Accordingly, the lack of certain outward signs does not necessarily demonstrate a lack of rehabilitation. Thus, the absence of such outward signs as "community involvement" does not, as asserted by the deputy trial counsel, indicate that petitioner has returned to his former self. The evidence must be viewed in its totality. Having independently done so, we conclude, as did the hearing judge, that petitioner has gained insight into the causes of his counterfeiting activity and has modified his behavior.

[8a] The Office of Trial Counsel next argues that petitioner has not improved his ability to communicate with those close to him. In support of this contention, the deputy trial counsel claims that petitioner did not "spontaneously disclose" the facts underlying his counterfeiting conviction to the character witnesses that testified for petitioner in this proceeding. We agree with petitioner that this argument results from a strained reading of the record. Although petitioner apparently did not provide lengthy details about his misconduct to some of the witnesses, he informed most of them about his conviction and the loss of his law license. There is no evidence that petitioner concealed his misconduct from any of these witnesses in order to gain some advantage or benefit or that, when the witnesses were told, petitioner misled them regarding the details of the misconduct.

[8b] Furthermore, to accept the deputy trial counsel's argument we would have to assume that the character witnesses represented most, if not all, of petitioner's closest friends. The record is otherwise. The 10 witnesses represented a cross-section of petitioner's personal and professional life. The deputy trial counsel seems to argue that immediately upon meeting someone, whether professionally or person-

ally, petitioner should have provided that person with a copy of the factual stipulation entered in the counterfeiting proceeding and his failure to do so demonstrates that petitioner has not improved his communication skills. We disagree. The hearing judge found that petitioner has learned to communicate meaningfully with those close to him and the deputy trial counsel has not directed our attention to anything in the record that would cause us to modify this finding.

[9a] The Office of Trial Counsel next argues that petitioner's failure to indicate the restitution ordered as a result of his DUI conviction and failure to report his self-employment from his independent consulting business in the appropriate locations on the petition for reinstatement demonstrates petitioner's lack of good judgment.⁵ The petition asked for a list of all restitution ordered by any court, to which petitioner answered "none." However, petitioner listed his DUI conviction in response to another petition question and attached to the petition a copy of the criminal court sentencing order that required restitution. Petitioner also did not list his self-employment in the section of the petition requesting employment information, but he attached to the petition copies of his 1987-1989 tax returns which showed that petitioner earned income from self-employment.

According to petitioner, he did not list the restitution because he did not believe that it was the type of restitution that was meant by the question because his insurance company paid the claim before the DUI conviction. Petitioner did not list his self-employment because he did not realize that it should have been listed separately and he included his tax returns which showed his outside work. On reconsideration, the hearing judge found that petitioner's explanations were credible, that there was no intent to deceive the court and that the inaccuracies in the petition were not material to the key issues in this proceeding.

In *Calaway v. State Bar, supra*, 41 Cal.3d at p. 748, the petitioner disclosed a civil lawsuit in which he was a defendant in his petition for reinstatement, but omitted a third party claim, apparently with the same case number, that he filed against his malpractice insurance carrier to force it to defend him in the main action. The Court noted that Calaway's failure to provide details of the third party action was based on his not unreasonable assumption that the State Bar would review the entire case file if it thought the matter significant. (*Ibid.*) The Court reinstated Calaway, finding persuasive the hearing panel's finding that while the petition could have been more detailed, there was no intent to deceive or to conceal derogatory information.

In *In the Matter of Giddens, supra*, 1 Cal. State Bar Ct. Rptr. at pp. 33-34, we concluded that the petitioner's failure to disclose two lawsuits to which he was a party reflected adversely on the standard necessary for reinstatement. The failure to disclose any portion of the litigation left "it to chance whether the bar's investigation process would uncover the two suits." (*Ibid.*)

Here, like *Calaway*, there was no intent to deceive or conceal derogatory information, and unlike *Giddens*, the State Bar had ample opportunity to investigate the information.⁶ [9b] Since the omitted information was contained in other parts of the petition and there was no intent to deceive or conceal, we conclude that the inaccuracies in the petition do not reflect adversely on petitioner's rehabilitation and present moral fitness.

[10] Following his counterfeiting conviction, petitioner obtained psychotherapy for four years, first twice weekly, then on a weekly basis. The deputy trial counsel argues that petitioner's therapy should be given no weight on the issue of his rehabilitation because petitioner did not explain the reasons he sought therapy or its effect on his post-conviction

5. We assume solely for the sake of argument that a demonstrated lack of good judgment, without more, indicates a lack of rehabilitation and/or moral fitness.

6. The deputy trial counsel asserts on review that "It should not be necessary for the State Bar to have to scrutinize all attached

documentation with a fine tooth comb to see if the information on the petition is correct." Public protection and the adversarial nature of these proceedings require adequate scrutiny of the petition and its attachments, together with the presentation to the State Bar Court by competent evidence of any adverse information that it may reveal regarding the petitioner.

life. The deputy trial counsel does not cite any authority in support of this argument. Furthermore, petitioner did explain, though briefly, that therapy had provided him with insight into his personality and that he had worked very hard at improving his communication skills. Petitioner also presented evidence regarding the changes that have occurred in him since the 1982 conviction. We are not aware of any authority that requires petitioner to have established that the changes that have occurred in his post-conviction life are attributable to his therapy before that therapy is entitled to weight. Rather, the therapy, as well as the other evidence of rehabilitation, must be viewed and weighed collectively. The deputy trial counsel has not directed our attention to anything in the record that indicates that the hearing judge gave this evidence any undue weight.

[11a] Finally, the deputy trial counsel argues that petitioner's involvement in the counterfeiting conspiracy lasted longer than the 10 days claimed by petitioner because his withdrawal from the conspiracy was improper. According to the Office of Trial Counsel, petitioner should have immediately turned himself in to law enforcement authorities and disclosed the activities of his co-conspirators, and by failing to do so, petitioner engaged in a "conspiracy of silence" until his indictment in February 1982. The deputy trial counsel asserts that rehabilitation requires exemplary conduct and that petitioner's failure to turn himself in and inform on his co-conspirators falls short of exemplary conduct. The logic of this argument is not clear. [12] Rehabilitation is a process that occurs over a period of time and which is demonstrated by a period of sustained exemplary conduct. The deputy trial counsel has offered no authority or analysis that shows that petitioner's alleged failure to begin this process during his criminal conduct precludes him from demonstrating sustained exemplary conduct over many years after his criminal conduct.

[11b] Whether petitioner's involvement lasted ten days or, as asserted by the deputy trial counsel, five months, it was of limited duration. (Compare *Tardiff v. State Bar*, *supra*, 27 Cal.3d at p. 399 [misconduct continued for three or four years after disbarment].) Furthermore, while still in New York, petitioner experienced an anxiety attack and with-

drew from active participation in the conspiracy. We cannot ignore this circumstance of the criminal conduct simply because petitioner could have taken other steps. We must consider this circumstance, as well as all other circumstances of the criminal conduct, in deciding whether petitioner has met his burden in this proceeding. (*Id.* at p. 403.)

[13a] In summary, the deputy trial counsel points to alleged weaknesses in petitioner's showing of rehabilitation and present moral fitness in arguing that petitioner has not met his burden in this proceeding. However, as we recently noted in *In the Matter of Miller*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 437, past petitioners have obtained reinstatement despite alleged weaknesses in their showings. It is therefore essential to compare the facts of this case with the facts of other reported reinstatement cases in determining whether petitioner has met his burden. (*In the Matter of Brown*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 320.)

In *Resner v. State Bar*, *supra*, 67 Cal.2d 799, the petitioner was disbarred in 1960 for mishandling sums received on behalf of three clients in settlement of their claims. Subsequently, Resner paid each of the clients in full. At the time of his disbarment, Resner also had pending another disciplinary matter involving misappropriation from another client. At the time of the reinstatement hearing, Resner was repaying this client in payments. Resner suffered from severe emotional problems during his misconduct. Following his disbarment, Resner was engaged in real estate development and did legal research for various attorneys. Numerous attorneys testified on Resner's behalf at the reinstatement hearing and recommended his reinstatement.

The State Bar recommended that Resner not be reinstated on account of several alleged weaknesses in Resner's showing of rehabilitation. The Supreme Court reinstated Resner, rejecting most of the alleged weaknesses. However, the Court did find that Resner had filed improper verified general denials in civil litigation in which he was a party. Nevertheless, the Court concluded this conduct, though properly criticized and condemned, did not show a lack of good moral character and that a reading of the entire record indicated that Resner had sustained his burden of

proof. The Court also did not find persuasive the State Bar's assertion that Resner should not have been readmitted because he had substantially greater financial obligations than when he was disbarred, and those obligations would create pressures at some future date with disastrous consequences.

In *Allen v. State Bar* (1962) 58 Cal.2d 912, the former attorney was disbarred in 1957 after having been convicted of two counts of soliciting others to commit perjury. Thereafter, Allen's guilty plea was set aside on the recommendation of a probation officer and the complaint against him was dismissed. After his disbarment, Allen worked at various jobs, including some legal research for another attorney. Numerous witnesses, including a probation officer, a businessman and several attorneys, testified on Allen's behalf at the reinstatement hearing as to their belief in his honesty, integrity, and rehabilitation. The State Bar recommended against Allen's reinstatement because he engaged in activities that bordered upon, if they did not constitute, the practice of law. Allen had questioned a witness at an administrative hearing regarding his employer and later corrected and filed a brief in the matter. The Court concluded that this conduct did not warrant denial of the petition. Allen also made minor errors in his income tax returns and petition for reinstatement, but the errors were minor and there was no evidence that they were made with an intent to deceive.

In *Werner v. State Bar* (1954) 42 Cal.2d 187, the Supreme Court reinstated Werner even though he also made unwarranted denials in verified pleading in civil actions brought against him after his disbarment. Werner was charged with two counts of soliciting a bribe. He was acquitted on one count and the conviction on the other count was reversed on appeal on the ground of insufficient evidence. Nevertheless, Werner was disbarred in 1944 based on the record of the criminal case. After his disbarment, Werner worked for a railroad for several years and as a research clerk and appraiser for an attorney for a year. Numerous witnesses testified on Werner's behalf at the reinstatement hearing, attesting to his good moral character. The Supreme Court concluded that Werner had stated a sufficient case in support of his claim of rehabilitation as he had the recommendation of persons best in a position to judge his moral

character and had conducted himself after his disbarment in his employment and within his community in a manner entitling him to a declaration of rehabilitation.

In *In the Matter of Miller, supra*, 2 Cal. State Bar Rptr. 423, we recommended the reinstatement of a petitioner who had resigned in 1985 with disciplinary charges pending. As executor of a probate estate, Miller had misappropriated over \$86,000 from the estate between 1976 and 1982. After his resignation, Miller had worked as a paralegal for his son; made complete restitution of the misappropriated amounts plus interest, surcharges, fees, and costs; done some pro bono and volunteer work; and occupied fiduciary positions by administering another estate and remaining co-trustee of a trust. Miller presented favorable character evidence from five witnesses and four reference letters. Miller engaged in questionable conduct after his resignation by evasively informing his clients that he was retiring from the practice of law instead of resigning, and by continuing to work in his son's law office even though he questioned his son's continued improper use of the firm name, "Miller & Miller." However, there was no evidence that Miller held himself out as entitled to practice law and efforts were made to ensure that clients were not misled into believing that Miller was practicing law. We criticized this conduct, noting that it called into question Miller's showing of rehabilitation and moral fitness. Nevertheless, the hearing judge had found Miller to be rehabilitated and we concluded that the questionable conduct alone did not establish a lack of rehabilitation and moral fitness, in light of his overall showing.

[13b] In the present case, ten witnesses testified on petitioner's behalf, including a vice president and a scientist at RDL, two accountants that have performed consulting work with RDL, three businessmen that have employed petitioner to do consulting work, two attorneys, and petitioner's former wife. Several of these witnesses have personal as well as professional relationships with petitioner. Some have known petitioner since before his counterfeiting activity, and some met him after. All of the witnesses were aware of the circumstances of petitioner's criminal activity and expressed their opinions that he is of good moral character. These witnesses also testified

as to their observation of petitioner's remorse and shame for his misconduct, his acceptance of full responsibility for the misconduct, his candor about the nature and extent of the misconduct, and his honesty and integrity. Petitioner has gained the trust and confidence of his superiors and colleagues at RDL, and has successfully occupied a fiduciary position as controller of RDL. Petitioner has also maintained financial and moral support for his children, has gained a measure of financial stability, and has made regular payments to reduce his tax obligations. Overall, we find petitioner's showing of rehabilitation and present moral fitness to be as strong as the showings of Resner, Allen, Werner, and Miller.

A considerable period of time has also passed since petitioner's 1981 criminal conduct. [14] "The passage of an appreciable period of time' constitutes 'an appropriate consideration' in determining whether a petitioner has made sufficient progress towards rehabilitation." (*In the Matter of Brown, supra*, 2 Cal. State Bar Ct. Rptr. at p. 316, quoting *Hippard v. State Bar, supra*, 49 Cal.3d at p. 1095.) "Where the evidence is uncontradicted . . . and shows exemplary conduct extending over a period of from eight to ten years without even the suggestion of wrongdoing, it would seem that rehabilitation has been established." (*Werner v. State Bar, supra*, 42 Cal.2d at p. 198 (conc. opn. of Carter, J.))

[15] This raises the issue in the present case of petitioner's recent DUI conviction. The hearing judge found that the DUI conviction was an isolated, uncharacteristic and aberrational incident; that petitioner does not have a chemical dependency problem; and that he has taken steps to prevent any further occurrence. The record supports these conclusions and the deputy trial counsel does not argue otherwise. We also note that the DUI conviction was petitioner's

first, it was unrelated to the practice of law, and it was unrelated to the misconduct which led to petitioner's resignation. As a first offense, the conviction would not have warranted State Bar discipline. (*In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260, 266, fn. 6.) Given the circumstances, we conclude that the conviction by itself does not establish either a lack of rehabilitation or present moral fitness. (Cf. *Hallinan v. Committee of Bar Examiners* (1966) 65 Cal.2d 447, 459.)

[16] As indicated above, in deciding whether petitioner has met his burden in this matter, we must view the evidence presented in light of the moral shortcomings which resulted in his resignation. (*Tardiff v. State Bar, supra*, 27 Cal.3d at p. 403.) Petitioner's participation in the counterfeiting conspiracy was limited and was mitigated by the emotional factors that contributed to the misconduct, which were found to have been long since brought under control by petitioner. Viewed against this backdrop and in light of past comparable reinstatement cases, we believe petitioner has made an adequate showing of his rehabilitation and present moral fitness.

CONCLUSION

We conclude that there is no reason to disturb the hearing judge's conclusion that petitioner has met the requirements for reinstatement. We therefore recommend to the Supreme Court that petitioner be reinstated as a member of the State Bar upon his paying the necessary fees and taking the required oath.

We concur:

PEARLMAN, P.J.
STOVITZ, J.