

**STATE BAR COURT**  
**REVIEW DEPARTMENT**

In the Matter of

**ALFRED MORRISS MILLER**

Petitioner for Reinstatement

No. 91-R-03564

Filed May 10, 1993

**SUMMARY**

Petitioner practiced law without misconduct from 1939 to 1976, when he became the executor of an estate from which he misappropriated funds. In 1982, the trustee of the estate objected to the final accounting. After failing to pay a stipulated sum to the trustee, petitioner admitted his misappropriation to the probate court and the State Bar, wound up his practice, voluntarily became an inactive member of the bar, and resigned with disciplinary charges pending. From May 1984 onwards, he worked as a paralegal for his son. In 1991, he sought reinstatement, and the hearing judge recommended that it be granted. (Hon. Jennifer Gee, Hearing Judge.)

The deputy trial counsel requested review. The primary issue was whether petitioner had met his heavy burden of proving rehabilitation and present moral qualifications in light of his prior misconduct. Petitioner had told former clients that he was "retiring" rather than resigning, and had continued his employment as a paralegal for his lawyer son despite misgivings about his son's use of a potentially misleading law firm name. In light of petitioner's overall showing, the review department held that neither of these facts was a sufficient basis to deny reinstatement. Given the hearing judge's very favorable credibility findings, the review department concluded that petitioner had met his burden of proof and recommended his reinstatement.

**COUNSEL FOR PARTIES**

For Office of Trials: Mary J. Schroeter

For Petitioner: Baron Lewis Miller

**HEADNOTES**

**[1] 135 Procedure—Rules of Procedure**  
**2590 Reinstatement—Miscellaneous**

An attorney who resigns with disciplinary charges pending rather than being disbarred must still establish rehabilitation through a reinstatement proceeding. (Trans. Rules Proc. of State Bar, rule 662.)

- [2] **169 Standard of Proof or Review—Miscellaneous**  
**2504 Reinstatement—Burden of Proof**  
Although review department gives great deference to credibility findings by hearing judge in favor of petitioner for reinstatement, petitioner continues to bear a heavy burden of proof on review. Petitioner must present overwhelming proof of reform and must show by the most clear and convincing evidence that efforts toward rehabilitation have been successful. Such evidence must demonstrate sustained exemplary conduct over an extended period of time.
- [3] **135 Procedure—Rules of Procedure**  
**2504 Reinstatement—Burden of Proof**  
A petitioner for reinstatement must pass the Professional Responsibility Examination and must show present ability and learning in the general law, as well as rehabilitation and present moral qualifications for readmission. (Trans. Rules Proc. of State Bar, rule 667.) A claim that the petitioner has held himself or herself out as entitled to practice law pertains to the issue of rehabilitation and moral qualifications.
- [4] **171 Discipline—Restitution**  
**2590 Reinstatement—Miscellaneous**  
Restitution is fundamental to the goal of rehabilitation. It forces attorneys to confront in concrete terms the harm caused by their misconduct.
- [5 a, b] **159 Evidence—Miscellaneous**  
**745.10 Mitigation—Remorse/Restitution—Found**  
**2504 Reinstatement—Burden of Proof**  
External pressures to pay restitution for misappropriated funds, including court orders and agreements with victims of misappropriation, do not preclude consideration of such restitution in reinstatement proceedings. The weight to be accorded to restitution depends on the petitioner's attitude, as evidenced by a spirit of willingness, earnestness, and sincerity. Where a reinstatement petitioner who had misappropriated funds from a probate estate had subsequently recognized the gravity of his misconduct; admitted his misappropriation to the probate court and the State Bar; cooperated in an audit of the estate's records; secured his debt to the estate by granting it interests in his real and personal property, and fully repaid both the misappropriated funds and additional interest, surcharges, fees, and costs, his restitution deserved significant weight even though it was required by a probate court order.
- [6 a, b] **2504 Reinstatement—Burden of Proof**  
Postmisconduct pro bono work and community service are factors evidencing rehabilitation and present moral qualifications. Where a petitioner for reinstatement did some pro bono research as a paralegal and performed volunteer work for, and made donations to, a museum, his showing could have been clearer and more impressive, but still constituted a factor in favor of his reinstatement.
- [7] **2504 Reinstatement—Burden of Proof**  
**2590 Reinstatement—Miscellaneous**  
Although a petitioner for reinstatement does not need to occupy a fiduciary position in order to prove rehabilitation, evidence that the petitioner has successfully occupied such a position after misconduct is of probative value. Where a petitioner exercised fiduciary responsibilities for a probate estate and a trust after his resignation with disciplinary charges pending, his distribution of funds for the probate estate and the trust without problems constituted a factor in favor of his reinstatement, even though the sums involved were relatively small.

- [8]       **2504     Reinstatement—Burden of Proof**  
Rehabilitation requires an acceptable appreciation of one's professional responsibilities and a proper attitude toward one's misconduct. Where a petitioner for reinstatement, after being unable to deliver funds misappropriated from an estate, had confronted the severity of his misconduct; confessed his wrongdoing to the probate court and the State Bar and cooperated with both; discussed his misconduct and plans for resignation and rehabilitation with his family; ended the excessive spending for which he had misappropriated funds; and voluntarily wound up his practice and resigned from the State Bar, this conduct reflected an awareness of his professional responsibilities and constituted a significant factor in favor of his reinstatement.
- [9 a-d]   **148       Evidence—Witnesses**  
**2504     Reinstatement—Burden of Proof**  
Character testimony and reference letters, especially from employers and attorneys, are significant in reinstatement proceedings. Great consideration is due to the testimony of members of the bar and public of high repute who have closely observed a petitioner for reinstatement. Not every witness or letter writer must have recent close contact with the petitioner; a variety of persons with different relationships to the petitioner can reflect present moral qualifications. Where a petitioner presented favorable testimony by five character witnesses, one of whom had observed him closely since his misconduct, and favorable reference letters from four persons, three of whom had had recent contact with him, such testimony and reference letters were entitled to consideration as factors supporting his reinstatement.
- [10]       **114       Procedure—Subpoenas**  
**148       Evidence—Witnesses**  
**199       General Issues—Miscellaneous**  
**2590     Reinstatement—Miscellaneous**  
Where a municipal court judge and a state appellate justice were subpoenaed as witnesses, it was proper for them to testify in a reinstatement proceeding.
- [11 a, b] **2504     Reinstatement—Burden of Proof**  
Where reinstatement petitioner's misconduct had occurred over a single period of four to six years; character witnesses provided an impressive description of petitioner's premisconduct character, and petitioner had practiced law without misconduct for at least 37 years and done extensive pro bono work, evidence suggested that petitioner's misconduct was aberrational.
- [12]       **230.00   State Bar Act—Section 6125**  
**231.00   State Bar Act—Section 6126**  
**2590     Reinstatement—Miscellaneous**  
It was not improper for petitioner for reinstatement to have continued to work as a paralegal for his son in his former office after resigning with charges pending, where petitioner did not engage in any acts constituting the practice of law while so employed.
- [13 a-c] **1913.42   Rule 955—Compliance—Notice**  
**2504     Reinstatement—Burden of Proof**  
Where an attorney, while winding up his law practice before resigning with disciplinary charges pending, told clients that he was "retiring" but made clear that he would not be practicing law, this notification did not violate rule 955 of the California Rules of Court because it was given while the attorney was still an active member of the bar. While the evasiveness of the notification was relevant to the attorney's rehabilitation and moral qualifications for subsequent reinstatement, it did not mandate an adverse conclusion on those issues.

- [14]     **231.00 State Bar Act—Section 6126**  
**2590 Reinstatement—Miscellaneous**  
Statement by resigning attorney to clients that he would assist another attorney in handling their matters was proper, where attorney did not suggest that he would be acting as clients' attorney in so doing.
- [15]     **231.00 State Bar Act—Section 6126**  
**2590 Reinstatement—Miscellaneous**  
Where a resigned attorney continued to work as a paralegal for another attorney, and two former clients of the resigned attorney, although aware he was no longer practicing law, submitted checks payable to him for legal services from the other attorney, and where he promptly endorsed the checks over to the other attorney, neither the checks nor the resigned attorney's handling of them supported the claim that he had held himself out as entitled to practice law.
- [16]     **231.00 State Bar Act—Section 6126**  
**2590 Reinstatement—Miscellaneous**  
Where a resigned attorney continued to work as a paralegal for a sole practitioner, and attorney-client contracts and letters from the sole practitioner contained plural references to attorneys, these plural references did not establish that the resigned attorney had held himself out as entitled to practice law, where the resigned attorney was not aware of these plural references, and the sole practitioner hired other attorneys to assist on a contract basis.
- [17 a-d] **236.00 State Bar Act—Section 6132**  
**253.10 Rule 1-400(D) [former 2-101(A)]**  
**2590 Reinstatement—Miscellaneous**  
A law firm is required by statute to remove from its business name the name of an attorney who is disbarred or resigns with discipline charges pending. The May 1989 Rules of Professional Conduct explicitly provide that a law firm's name can itself constitute a prohibited misleading communication, and the definition of "communication" in the predecessor rules was also broad enough to encompass law firm names. However, where a resigned attorney continued to work for his attorney son as a paralegal despite the son's adoption of a firm name which might have been construed to imply that the resigned attorney was a member of the firm, any possible misconduct by the son regarding his firm's name was not before the State Bar Court on the father's petition for reinstatement.
- [18 a, b] **165 Adequacy of Hearing Decision**  
**230.00 State Bar Act—Section 6125**  
**231.00 State Bar Act—Section 6126**  
**2504 Reinstatement—Burden of Proof**  
Where a resigned attorney continued to work as a paralegal for his son's law firm despite the son's adoption of a firm name which might have been construed to imply that the resigned attorney was a member of the firm, but the evidence indicated that the firm name was beyond the resigned attorney's control, and there was no credible evidence that the public or clients were in fact misled or that the resigned attorney had practiced law after resigning, the review department deferred to the hearing judge's favorable credibility determinations and concluded that the resigned attorney had not held himself out as entitled to practice law. The resigned attorney's continued employment in a situation where the public and clients could easily be misled clearly called into question his suitability for reinstatement, but under all the circumstances did not establish his lack of rehabilitation or present moral qualifications.

**[19] 2504 Reinstatement—Burden of Proof**

Rehabilitation is a state of mind which may be difficult to establish. Readmission to the bar does not require perfection. No unnecessary burdens should be placed upon erring attorneys in proving rehabilitation and present moral qualifications.

**[20 a-e] 2504 Reinstatement—Burden of Proof  
2510 Reinstatement Granted**

Whether a petitioner has met the heavy burden of proof in a reinstatement proceeding depends on a comparison of the facts of the proceeding with the facts in other reported cases. Petitioners have obtained reinstatement despite weaknesses in their showings of rehabilitation and present moral qualifications. Where the showing of rehabilitation and present moral qualifications by a petitioner for reinstatement was as strong as similar showings by petitioners who obtained reinstatement despite alleged weaknesses in their cases, and where petitioner's case was distinguishable from reported cases in which petitioners failed to prove rehabilitation and present moral qualifications, the review department recommended reinstatement despite petitioner's evasive notice to clients that he was "retiring" and despite petitioner's continuing to work as a paralegal for a law firm even though he questioned the propriety of the law firm's name.

**[21] 2504 Reinstatement—Burden of Proof  
2510 Reinstatement Granted**

Reinstatement petitioner's admission of misconduct, cooperation with authorities, lifestyle changes, curtailment of spending, and restitution were significant factors in favor of reinstatement. Postmisconduct pro bono work, community service, and handling of fiduciary responsibilities, as well as character witnesses' testimony and reference letters, also supported reinstatement.

**ADDITIONAL ANALYSIS**

**Other**

166 Independent Review of Record

## OPINION

NORIAN, J.:

We review the decision by a hearing judge of the State Bar Court to grant reinstatement to petitioner, Alfred Morriss Miller. The primary issue before us is whether petitioner has met his heavy burden of proving rehabilitation and present moral qualifications in light of his prior misconduct. We conclude that, given the hearing judge's very favorable credibility findings, petitioner has met his burden of establishing current moral fitness, and we recommend that he be reinstated.

## I. FACTS

The record supports all of the hearing judge's findings of fact, and we adopt them. We also adopt the supplemental findings suggested by the deputy trial counsel in her opening brief on review, except for the suggested findings about the date when petitioner's misappropriation began and about the credibility of a former client who testified against petitioner. (See section III.I and fn. 5, *post*.)

Petitioner was admitted to the State Bar in 1939. He practiced law without misconduct until 1976, a period of 37 years, when he became executor of the probate estate of Elaine T. Barthorpe ("Barthorpe Estate").

Between 1976 and 1982, petitioner misappropriated about \$86,250 from the Barthorpe Estate. He used the money to purchase art and antiquities and to travel extensively. He wrote checks on the Barthorpe Estate's account and deposited them into his own account. There was no evidence that petitioner's misconduct caused contemporaneous harm to any of the Barthorpe Estate's beneficiaries, who continued to receive their fixed monthly payments from remaining estate funds.

As executor of the Barthorpe Estate, petitioner filed a final accounting in May 1982. As trustee, the Bank of America objected to the final accounting. In October 1982, petitioner and the Bank of America reached a stipulation for the delivery of funds to the Bank of America. In November 1982, the probate court found petitioner in contempt for failure to comply with the stipulation. On December 8, 1982, petitioner admitted to the probate court that he had misappropriated funds from the Barthorpe Estate, although he did not know the total amount involved. On December 10, 1982, he voluntarily sent the State Bar a letter admitting his misappropriation.

The probate court ordered petitioner to pay \$232,955 to the Barthorpe Estate. This amount covered the misappropriated \$86,250 plus \$146,705 in interest, surcharges, fees, and costs incurred as a result of the misappropriation. As security for the debt owed to the Barthorpe Estate, petitioner voluntarily provided a deed of trust on his home and his interest in another real property, as well as a security interest in all his art, antiquities, and furniture. By May 1986, he had completed payment of the entire amount owed to the Barthorpe Estate.

Between December 1982 and May 1984, petitioner wound up his law practice. He then voluntarily became an inactive member of the State Bar and tendered his resignation with disciplinary charges pending. In September 1985, he entered into a stipulation with the State Bar regarding the facts of his misconduct. On December 30, 1985, the Supreme Court accepted his resignation, which became effective in January 1986.<sup>1</sup> [1 - see fn. 1]

Since his resignation, petitioner has worked as a paralegal for his son, Baron Miller, who represented him in these petition proceedings. He has also done some pro bono and volunteer work. After his resignation, petitioner administered another probate estate and remained co-trustee of a trust. He completed the distribution of funds in both matters without complication or impropriety.

1. [1] Although petitioner resigned with disciplinary charges pending and was not disbarred, he must still establish his rehabilitation through a reinstatement proceeding. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1092, fn. 4; see also

*Calaway v. State Bar* (1986) 41 Cal.3d 743, 745; *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 314, fn. 2; Trans. Rules Proc. of State Bar, rule 662.)

## II. PROCEDURAL HISTORY

In June 1991, petitioner filed a petition for reinstatement. Hearings were conducted between December 1991 and February 1992. In June 1992, the hearing judge filed a decision recommending reinstatement. The deputy trial counsel seeks review on two grounds: that the record does not clearly and convincingly show petitioner's rehabilitation and present moral qualifications and that petitioner has improperly held himself out as entitled to practice law.

## III. DISCUSSION

### A. Independent Review of the Record

Petitioner contends that we must give great weight to the hearing judge's findings. Although her determinations of testimonial credibility deserve great weight, we must independently review the record. (Trans. Rules Proc. of State Bar, rule 453(a); *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373, 382.) This review requires us to reweigh the evidence and pass upon its sufficiency. (*In the Matter of Brown*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 315.)

### B. Petitioner's Burden of Proof

Petitioner argues that although he bore a heavy burden of proof before the hearing judge, the deputy trial counsel now must show that the hearing judge's findings lack support in the evidence. [2] Although we give great deference to credibility determinations of the hearing judge, petitioner continues to bear a heavy burden of proof. (*Hippard v. State Bar*, *supra*, 49 Cal.3d at p. 1091; *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219, 222.) He must present "overwhelming proof of reform" (*Feinstein v. State Bar* (1952) 39 Cal.2d 541, 547, and cases cited therein) and "must show by the most clear and convincing evidence that [his] efforts . . . towards rehabilitation have been successful." (*Hippard v. State Bar*, *supra*, 49 Cal.3d at p. 1092.) Such evidence must demonstrate "'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; see also *In the*

*Matter of Wright*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 223.)

### C. Requirements for Reinstatement

[3] To obtain reinstatement, a petitioner must pass the Professional Responsibility Examination ("PRE") and must show present ability and learning in the general law, as well as rehabilitation and present moral qualifications for readmission. (Trans. Rules Proc. of State Bar, rule 667.) The record shows that petitioner passed the PRE and has present ability and learning in the general law, and the deputy trial counsel does not argue otherwise. The main issue before us is whether petitioner has sufficiently established his rehabilitation and present moral qualifications. The deputy trial counsel's claim that petitioner has held himself out as entitled to practice law pertains to this issue.

### D. Restitution

[4] "Restitution is fundamental to the goal of rehabilitation." (*Hippard v. State Bar*, *supra*, 49 Cal.3d at p. 1094.) It forces culpable attorneys to "'confront in concrete terms'" the harm caused by their misconduct. (*Id.* at p. 1093, quoting *Brookman v. State Bar* (1988) 46 Cal.3d 1004, 1009, quoting *Kelly v. Robinson* (1986) 479 U.S. 36, 49, fn. 10.)

The deputy trial counsel suggests that the hearing judge overemphasized petitioner's restitution and argues that whether restitution constitutes significant evidence of rehabilitation depends on whether the payment was spontaneous. Because petitioner complied with the probate court's restitution order, the deputy trial counsel argues that his restitution was induced by "external pressures" and therefore is not a significant factor in favor of his reinstatement.

We disagree. [5a] External pressures to pay restitution for misappropriated funds, including court orders and agreements with the victims of misappropriation, are common. Despite such pressures, the Supreme Court has considered restitution in proceedings in which petitioners have obtained reinstatement. (*Resner v. State Bar* (1967) 67 Cal.2d 799, 802, 809-810 [restitution owed pursuant to an agreement with the victim of misappropriation]; *In*

*re Gaffney* (1946) 28 Cal.2d 761, 763, 764-765 [restitution owed pursuant to a promissory note to the victim of misappropriation]; *In re Andreani* (1939) 14 Cal.2d 736, 744-746, 750 [restitution owed pursuant to a stipulated judgment].) The Court has stressed that the weight to be accorded to restitution depends on the petitioner's attitude, as evidenced by a spirit of willingness, earnestness, and sincerity. (*Resner v. State Bar*, *supra*, 67 Cal.2d at p. 810; *In re Gaffney*, *supra*, 28 Cal.2d at pp. 764-765; *In re Andreani*, *supra*, 14 Cal.2d at p. 750.)

[5b] Petitioner's restitution in the current proceeding deserves significant weight. After the Bank of America's objection to his final accounting for the Barthorpe Estate and his failure to pay the necessary sum to the Bank of America in 1982, his behavior was exemplary. He recognized the gravity of his misconduct and admitted his misappropriation to the probate court and the State Bar. He facilitated the use of an outside accountant to audit the records of the Barthorpe Estate. To ensure payment of the entire debt to the Barthorpe Estate, he provided a deed of trust on his home and his interest in another real property, as well as a security interest in all his art, antiques, and furniture. By May 1986, he fully complied with the probate court order to repay both the misappropriated \$86,250 and the additional \$146,705 in interest, surcharges, fees, and costs. His conduct thus reflects an appropriate willingness, earnestness, and sincerity.

#### E. Postmisconduct Pro Bono Work and Community Service

[6a] Postmisconduct pro bono work and community service are factors evidencing rehabilitation and present moral qualifications. (See *In the Matter of Brown*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 317.) One successful petitioner for reinstatement attended church regularly and participated in community affairs for five years. (*Allen v. State Bar* (1962) 58 Cal.2d 912, 914.) Another successful petitioner participated in community affairs, donated time to the Red Cross, and was active in his church for a number of years. (*Werner v. State Bar* (1954) 42 Cal.2d 187, 190.) A third successful petitioner donated his services to civic and public projects for much of six years. (*In re Andreani*, *supra*, 14 Cal.2d at p. 748.)

[6b] The record reveals postmisconduct pro bono work and community service by petitioner. As a paralegal, he did pro bono research on a prisoner's rights in a capital case and on free speech issues in another matter. He also performed volunteer work for, and made donations to, the Jewish Community Museum. Although petitioner's showing of postmisconduct pro bono work and community service could have been clearer and more impressive (cf. *In the Matter of Brown*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 317 [one full day donated every week for four years to doing pro bono work for a legal services program]), such work and service still constitute a factor in favor of his reinstatement.

#### F. Postmisconduct Fiduciary Responsibilities

Observing that petitioner divested himself of control of his own funds after his misconduct, the deputy trial counsel claims that petitioner should neither have undertaken his fiduciary responsibilities for the other probate estate nor have continued his fiduciary responsibilities for the trust. She suggests that such conduct reflects a lack of proper caution, given his misappropriation from the Barthorpe Estate, and is not a significant factor in favor of his reinstatement.

We disagree. [7] Although a petitioner for reinstatement does not need to occupy a fiduciary position in order to prove rehabilitation (*Tardiff v. State Bar* (1980) 27 Cal.3d 395, 404; *Werner v. State Bar*, *supra*, 42 Cal.2d at p. 194), evidence that the petitioner has successfully occupied such a position after misconduct is of probative value. (*Werner v. State Bar*, *supra*, 42 Cal.2d at p. 194.) In *Jones v. State Bar* (1946) 29 Cal.2d 181, 182-183, the Supreme Court granted the reinstatement petition of an attorney who had been convicted of grand theft, but who later managed a great deal of money and proved himself to be very honest. In *Preston v. State Bar* (1946) 28 Cal.2d 643, 644-645, 646-647, 650, the Supreme Court granted the reinstatement petition of an attorney who had been convicted of four counts of recording a false instrument, as well as conspiracy to commit grand theft, but who later properly handled large sums of money and gained a reputation for integrity. Even though the sums involved in petitioner's exercise of fiduciary responsibilities for

the other probate estate and the trust were relatively small, his distribution of funds for the other probate estate and the trust without problems constitutes a factor in favor of his reinstatement. (See *Tardiff v. State Bar, supra*, 27 Cal.3d at p. 403, quoting *Roth v. State Bar* (1953) 40 Cal.2d 307, 313 [petitioner's evidence must be considered in light of prior moral shortcomings].)

#### G. Admission of Wrongdoing, Cooperation with Authorities, and Curtailment of Spending

[8] Rehabilitation requires an acceptable appreciation of one's professional responsibilities (*Feinstein v. State Bar, supra*, 39 Cal.2d at p. 548; see also *Roth v. State Bar, supra*, 40 Cal.2d at p. 314) and a proper attitude toward one's misconduct. (*Feinstein v. State Bar, supra*, 39 Cal.2d at p. 547; *Wettlin v. State Bar* (1944) 24 Cal.2d 862, 870.) In late 1982, when petitioner was unable to deliver the necessary funds for the Barthorpe Estate to the Bank of America, he confronted the severity of his misconduct. He confessed his wrongdoing to the probate court and the State Bar and cooperated with both. He told his family that he had committed a serious ethical violation and that he had decided to resign, rehabilitate himself, and seek readmission in the future. He and his wife ended the exaggerated lifestyle and excessive spending for which he had misappropriated funds. In May 1984, having wound up his practice, he voluntarily became an inactive member of the bar and submitted his resignation, which became effective in January 1986. His conduct since 1982 thus reflects an awareness of his professional responsibilities, as well as the gravity of his misconduct, and constitutes a significant factor in favor of his reinstatement.

#### H. Testimony by Character Witnesses and Letters of Reference

[9a] Character testimony and reference letters, especially from employers and attorneys, are significant in reinstatement proceedings. (*Feinstein v. State*

*Bar, supra*, 39 Cal.2d at p. 547; *In the Matter of Brown, supra*, 2 Cal. State Bar Ct. Rptr. at pp. 317-318; see also *Preston v. State Bar, supra*, 28 Cal.2d at p. 651.) Great consideration is due to "[t]estimony of members of the bar and public of high repute who have closely observed [a] petitioner" for reinstatement. (*Tardiff v. State Bar, supra*, 27 Cal.3d at p. 403; see also *In re Andreani, supra*, 14 Cal.2d at pp. 749-750 [heavy weight accorded to "the favorable testimony of acquaintances, neighbors, friends, associates and employers with reference to their observation of the daily conduct and mode of living" of a petitioner].)

In this proceeding, petitioner presented testimony by five character witnesses: three attorneys, a municipal court judge, and a state appellate justice.<sup>2</sup> [10 - see fn. 2] All confirmed petitioner's good moral character prior to the disclosure of his misconduct, as well as his skill and professionalism as an attorney. Except for the state appellate justice, who expressed no opinion, all recommended his reinstatement.

Petitioner also presented four reference letters urging his reinstatement: three from attorneys and one from a shorthand reporter. These letter writers praised petitioner's honesty, integrity, and competence as an attorney.

The deputy trial counsel argues that petitioner's witnesses and reference letters attest to his past character, not to his present character. She states that petitioner has relied upon old friends and colleagues who have spent little, if any, time with him since his resignation.

[9b] Although the character witnesses who testified at trial on petitioner's behalf included impressive members of the bench and bar, only one had had the opportunity to observe him closely since his misconduct: Baron Miller, who is his son, employer, and counsel in this proceeding. Leland Spiegelman, petitioner's former partner, has had relatively brief, infrequent encounters with him since 1984; attorney

2. [10] The municipal court judge and the state appellate justice properly testified under subpoena. (Cal. Code Jud. Conduct, canon 2B; *Grim v. State Bar* (1991) 53 Cal.3d 21,

28, fn. 1; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 290, fn. 4; see *In the Matter of Brown, supra*, 2 Cal. State Bar Ct. Rptr. at p. 318, fn. 5.)

Frank Winston has not been in contact with him often during the last few years; and neither Justice Donald King nor Judge George Choppelas had seen him since 1982.

[9c] Three of the four persons who wrote reference letters have apparently had more recent contact with petitioner. Attorney David Katz asserted that he had known petitioner for 28 years and continued to know him. Attorney Lowell Sucherman stated that he had known petitioner professionally and socially for over 25 years and had continued a social relationship with petitioner after 1984. Shorthand reporter Daniel Benard indicated that he had known petitioner for over 30 years, had common friends with petitioner, and saw petitioner "somewhat often."

[9d] The testimony by character witnesses and the reference letters for petitioner are entitled to consideration as factors in favor of his reinstatement. Although petitioner's character evidence could have been stronger (see, e.g., *In the Matter of Brown*, supra, 2 Cal. State Bar Ct. Rptr. at pp. 318-320), we do not agree with the deputy trial counsel that this evidence should be discounted entirely. Not every witness or letter writer must have recent close contact with petitioner. A variety of persons with different relationships to petitioner can reflect his present moral qualifications. (*Id.* at p. 319.) Overall, those who testified and wrote letters for petitioner provided evidence of his current good character.

#### I. Petitioner's Misconduct

[11a] On the basis of testimony by petitioner's character witnesses, the hearing judge concluded that his misconduct was aberrational. The deputy trial counsel disputes this conclusion on the ground that his misappropriation "was on-going over a period of years and involved several transactions." The evidence, however, reveals only that petitioner improperly drew "checks from the account" of the Barthorpe Estate "[o]ver a period of time" between

1976 and 1982 and that he could have begun using money from the account in 1976, 1977, or 1978. (I R.T. pp. 13, 62, 64.)

[11b] The record contains substantial evidence about petitioner's character before 1976. In her opening brief on review, the deputy trial counsel acknowledged that petitioner's character witnesses provided an impressive description of his premisconduct character. At oral argument, the deputy trial counsel conceded that we may properly take into account the fact that petitioner practiced law without misconduct for at least 37 years. Further, it is undisputed that he did extensive pro bono work during his legal career. Such evidence about his earlier character suggests that his misconduct was aberrational.

#### J. Examiner's Claim that Petitioner Has Held Himself out as Entitled to Practice Law

Citing various facts, the deputy trial counsel claims that petitioner has held himself out as entitled to practice law. None of these facts supports the claim.

##### 1. *Work in the same office*

[12] After his resignation, petitioner continued to work as a paralegal in the office which he had maintained as an attorney. The record contains no credible evidence that while working as a paralegal, petitioner engaged in any acts constituting the practice of law.<sup>3</sup> The deputy trial counsel does not deny that petitioner had the right to become a paralegal. As the hearing judge observed, California law does not require an attorney who has resigned to leave his former place of work. At the age of 68, petitioner decided to remain in the same office and do paralegal work for his son. By doing such work, he was able to earn money, assist his son, and maintain his ability and learning in the law. We conclude that it was not improper for him to work as a paralegal in the same office where he had worked as an attorney.

3. A former client testified that petitioner had held himself out as entitled to practice law during the time when he was working as a paralegal. The hearing judge, who heard and saw

the witness, found her testimony neither credible nor plausible. We have no reason to modify this credibility determination. (Trans. Rules Proc. of State Bar, rule 453(a).)

## 2. Sale agreement

On April 30, 1984, petitioner executed an agreement to sell his law practice to his son as of May 1, 1984. Pursuant to covenant 3 of the agreement, petitioner was to inform his existing clients that he was "retiring on or about May 1, 1984," to suggest that they retain his son as their attorney, and to advise them that he would "assist [his son] in handling" their matters. An addendum to the agreement was signed on April 30, 1986, effective as of May 1, 1986; and a restated, modified agreement was signed on April 30, 1991, retroactively effective as of May 1, 1984. The modified agreement did not contain a provision requiring him to advise his clients that he would assist his son in handling their matters.

The record contains no example of the letters which the agreement required petitioner to send to his existing clients. Nor does it indicate how many such letters petitioner sent or what they actually said. [13a] Petitioner offered undisputed testimony that during the period from December 1982 to May 1984, when he was winding up his practice, he "notified" clients that he would be "retiring," that he "would not be practicing law," and that his son "would be in practice" and available for them to retain. (I R.T. p. 27.) The examiner sought no clarification of this testimony.

The deputy trial counsel argues that by using the word "retiring," petitioner implied that he was making a voluntary choice and was still entitled to practice law. Also, because petitioner applied for reinstatement on June 4, 1991, the deputy trial counsel infers impropriety from the deletion of the provision about petitioner's assisting his son in the modified agreement signed on April 30, 1991.

Petitioner objects to the deputy trial counsel's suggestion that he had an obligation to inform his clients that he was resigning with discipline charges pending. Such an obligation, according to petitioner, would have further humiliated him and would make the legal profession "unbearably intolerant and self-righteous . . ." He maintains that by using the word "retiring," he was seeking to preserve his dignity and

avoid scorn. He also points out that the modified sale agreement reflects various changes in the arrangement with his son.

[13b] Because petitioner informed his clients of his "retiring" while he was still an active member of the bar before he submitted his resignation, he did not violate the requirement of rule 955 of the California Rules of Court that he notify them of his resignation and consequent disqualification from the practice of law. Undisputed evidence establishes that when he resigned, he had only one client, to whom he gave proper notification. As the deputy trial counsel acknowledged at oral argument, petitioner complied with rule 955.

Although petitioner used the word "retiring," his son told every former client who sought representation that petitioner was not practicing law. No evidence shows that any such client had a justifiable basis to suppose that petitioner was practicing law after May 1984.

[14] The record does not indicate whether petitioner, in winding up his practice, actually stated to his clients that he would assist his son in handling their matters. Even if he made such statements, they were proper so long as he did not suggest that he would act as their attorney. The record contains no evidence of such a suggestion.

Nor does the record show impropriety because the modified sale agreement deleted the provision requiring petitioner to inform his clients that he would assist his son. Petitioner's son offered uncontroverted testimony that the deletion was not intended to conceal the fact that the earlier agreement contained such a requirement. The modified agreement however reflects various alterations in the arrangement between petitioner and his son and was entered into on a reasonable date, the anniversary of the original agreement and the addendum.

[13c] It was evasive for petitioner to notify clients that he was "retiring." As he conceded at oral argument, he wanted to conceal his misconduct and the pending disciplinary proceedings. To protect his

reputation, he was less than straightforward with his clients.<sup>4</sup> Petitioner's evasiveness reflects to some extent on his acceptance of responsibility for his actions and is therefore relevant to his rehabilitation and present moral qualifications. On balance, however, we do not find that this factor mandates an adverse conclusion regarding petitioner's rehabilitation and present moral qualifications.

### 3. Checks payable to petitioner

[15] Two former clients of petitioner submitted checks payable to him for legal services from his son's firm in resolving a property dispute. He previously had told the former clients that he was not practicing law. Upon receiving the checks, he promptly endorsed them over to his son. Neither these checks nor his handling of them supports the deputy trial counsel's claim that he held himself out as entitled to practice law.

### 4. Plural references to attorneys

[16] Attorney-client contracts and letters from the law firm of petitioner's son, Baron Miller, contain plural references to attorneys. Undisputed evidence shows that petitioner was not aware of the plural references in the contracts, that Baron Miller signed the letters in question, and that Baron Miller, although the only attorney in the firm, hired other attorneys on a contract basis to help handle cases. Thus, the plural references do not establish that petitioner held himself out as entitled to practice law.

### 5. Work for the firm of Miller & Miller

Since May 1984, petitioner has worked for Baron Miller, who began using the business name "Miller & Miller" after petitioner's resignation. Baron Miller adopted the name because he "had always wanted to become [petitioner's] partner and for [the two] to call [themselves] Miller & Miller." Although he "no longer believed that that could ever happen,

[he] decided [he] would at least use the name." Also, he adopted the name because he "could see the suffering [petitioner] was going through, the embarrassment and humiliation, and [he] hoped that [his] expression of [his] desire to do business as Miller & Miller would pick [petitioner] up emotionally." (I R.T. p. 138.)

When people have inquired "who the other Miller of Miller & Miller is," Baron Miller has informed "them there is no other Miller, that [petitioner] was a lawyer and that [he] began using the name after [petitioner] retired." (*Id.* at pp. 138-139.) The people who make such inquiries are "generally not clients," but "acquaintances, new people," who somehow learn that Baron Miller does business as Miller & Miller, perhaps by seeing his business card. (*Id.* at pp. 143-144.) Although Baron Miller found it "hard to say" how many such inquiries he had received "over the years," he estimated that the total number was "[m]aybe 10 or maybe 20." (*Id.* at p. 144.)

On rare occasions, people who knew petitioner and knew that petitioner no longer practiced law asked Baron Miller about the name "Miller & Miller." Baron Miller responded that "it is [his] business name and [he] like[s] it." (*Id.* at p. 139.)

Several times, petitioner questioned Baron Miller about using the firm name "Miller & Miller." Petitioner "had read a code section that [he] felt [Baron Miller] should examine" to determine the propriety of the name. Although the record does not specify the code section, petitioner testified that "[t]he code section applied to lawyers who were no longer members of the firm, had [*sic*] no bearing on existing lawyers, or the name of [*sic*] the existing lawyers use." (*Id.* at p. 171; see also *id.* at pp. 42, 72.)

Baron Miller told petitioner that the firm's name was beyond petitioner's control and that Baron Miller would do what he decided to do. (*Id.* at p. 43.)

4. The deputy trial counsel does not discuss petitioner's statements about his resignation to former clients who called petitioner after his resignation. According to petitioner's testimony, when he received such calls, he told them "that I have resigned; that I've retired" (I R.T. p. 39); "that I have

resigned" (*id.* p. 69); and "that I had retired." (II R.T. p. 265.) The hearing judge concluded that petitioner could not "recall exactly whether he verbally told the clients that he had resigned or retired." We accept this conclusion. (Trans. Rules Proc. of State Bar, rule 453(a).)

Petitioner felt that the firm's name was beyond petitioner's control because Baron Miller was the attorney and petitioner was not. (*Id.* at p. 72.)

Baron Miller asserted that his use of the name "Miller & Miller" was no different from the use of a fictitious business name by any other firm. (*Id.* at pp. 138, 141-142.) Yet he conceded that the name "could be misleading." A person "who is unaware that [petitioner] is no longer practicing law and who knows that [petitioner] used to practice law would, perhaps, believe that Miller & Miller means Alfred Miller and Baron Miller . . .—that seems obvious . . ." (*Id.* at p. 142; see also *id.* at p. 274 ["for anyone who knows Alfred Miller and does not know that he's no longer practicing law, yes, they could be confused into thinking that Miller & Miller means Alfred Miller and Baron Miller as practicing lawyers today"].) Baron Miller stressed, however, that "that is not the case with any of [his] clients nor has it ever been the case with any of [his] clients since the time that [he] started to use [the] name ['Miller & Miller'], because every single client who was previously a client of [petitioner's] has been informed by [Baron Miller] that [petitioner] is no longer practicing law." (*Id.* at p. 274.)

**[17a]** In a supplemental brief requested by the review department, the deputy trial counsel argues that Baron Miller's use of the name "Miller & Miller" violates Business and Professions Code section 6132, which became effective January 1, 1989. Pursuant to section 6132, a law firm must remove from its business name the name of an attorney who is disbarred or resigns with discipline charges pending. According to the deputy trial counsel, Baron Miller should have stopped using the name "Miller & Miller" after the enactment of section 6132.

**[17b]** In supplemental briefing, the deputy trial counsel also argues that Baron Miller's use of the business name "Miller & Miller" violates rule 1-400 of the Rules of Professional Conduct, which prohibits certain communications by attorneys seeking

employment. As of May 27, 1989, rule 1-400(A) defined the term "communication" as "any message or offer made by or on behalf of a member [of the bar] concerning the availability for professional employment of a member or a law firm directed to any former, present, or prospective client"; rule 1-400(A)(1) specified that the term "communication" includes the name of a firm; and rule 1-400(D)(2) provided that a communication shall not "[c]ontain any matter, or present or arrange any matter in a manner or format which is false, deceptive, or which tends to confuse, deceive, or mislead the public."<sup>5</sup> According to the deputy trial counsel, the name "Miller & Miller" implies that Baron Miller and petitioner practice law together. The deputy trial counsel argues that this name "has the potential for misleading the public," that "[p]etitioner knew this," and that petitioner asked Baron Miller not to use the name. "At the very least," contends the deputy trial counsel, petitioner's "passivity with regard to the use of the name shows a disregard for the potential for misleading the public and [petitioner's] former clients."

**[17c]** The deputy trial counsel's supplemental brief suggests that Baron Miller's use of the name "Miller & Miller" also violated the predecessor of current rule 1-400: former rule 2-101 of the Rules of Professional Conduct, effective from January 1, 1975, to May 26, 1989. Former rule 2-101(A) defined the term "communication" as "a message concerning the availability for professional employment of a member [of the bar] or a member's firm." Like current rule 1-400(D)(2), former rule 2-101(A)(2) prohibited any communication "which is false, deceptive, or which tends to confuse, deceive or mislead the public." Although former rule 2-101 did not list examples of what constitutes a communication in the way that current rule 1-400(A) does, the definition of a communication in former rule 2-101(A) was broad enough to encompass the name of a law firm. Also, as the examiner points out, California Ethics Opinion 1986-90 specified that former rule 2-101(A) applied to the name of a firm. (See Cal. Compendium on

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5. Although some of the Rules of Professional Conduct were revised as of September 14, 1992, the relevant provisions of rule 1-400 remain the same.

Prof. Responsibility, pt. IIA, State Bar Formal Opn. No. 1986-90, at p. IIA-271.)

[17d] The examiner points to the possible violation by the law firm of section 6132 of the Business and Professions Code, as well as current rule 1-400 and former rule 2-101 of the Rules of Professional Conduct. Any alleged misconduct by the member who controlled the law firm—Baron Miller—is not before us for adjudication. The relevant issue for this reinstatement proceeding is whether and to what extent petitioner’s showing of rehabilitation and present moral qualifications to practice law suffers because of his working as a paralegal for Baron Miller after Baron Miller began doing business as Miller & Miller.

[18a] Even if petitioner Alfred Miller had no control over the firm name—and there is no evidence in this record that he did—petitioner was obviously aware that the name “Miller & Miller” could confuse the public. Petitioner’s repeated questioning of Baron Miller about the use of the name reveals concern about its propriety. That he continued to work as a paralegal for Baron Miller in circumstances where the public and clients could easily be misled clearly calls into question his showing of rehabilitation and present moral qualifications. However, the issue of whether petitioner held himself out as practicing law was the subject of close inquiry below; and we must defer to credibility determinations made by the hearing judge. Petitioner and Baron Miller were found to have undertaken successful efforts to ensure that clients were not misled into mistakenly believing that petitioner was practicing law. No credible evidence was found to establish either that the public or clients were in fact misled or that petitioner did ever practice law after his resignation.

[18b] Put in a positive light, petitioner’s questioning of his son’s choice of firm name can be interpreted as underscoring his concern for compliance with ethical obligations, not passivity and disregard for such obligations. Given petitioner’s advanced age and familial relationship, it is understandable that he did not cease working as a paralegal at Miller & Miller even though he was uncomfortable with the firm name. Based on the credibility findings below, we cannot conclude that petitioner’s

continued employment as a supervised paralegal for Baron Miller after Baron Miller started doing business as Miller & Miller by itself establishes lack of rehabilitation or present moral qualifications to practice law.

In supplemental briefing, the deputy trial counsel also suggests the applicability to the current proceeding of *Crawford v. State Bar* (1960) 54 Cal.2d 659. In *Crawford*, an attorney formed a partnership with his father, who had recently been disbarred. They called the partnership “Crawford & Crawford” and divided the profits equally. Although the father was not named as an attorney and did not appear in court, he gave legal advice independent of the son and conferred directly with clients regarding the preparation of deeds and certificates, probate matters, escrows, real estate deals, and mining claims. The son was publicly reprovved for violating a former rule prohibiting a member of the bar from employing another to solicit and for aiding or abetting the unauthorized practice of law.

The facts of the current proceeding differ radically from the facts of *Crawford*. Petitioner and Baron Miller did not form a partnership. Petitioner received wages, not a percentage of Baron Miller’s profits. Petitioner did not give legal advice. Although petitioner was found to have met once with a client at Baron Miller’s request when an emergency prevented Baron Miller from meeting with the client, petitioner did not act as an attorney and only gathered information for Baron Miller. Thus, *Crawford* does not apply to the current proceeding.

#### K. Petitioner’s Showing of Rehabilitation and Present Moral Qualifications

[19] Rehabilitation is a state of mind which may be difficult to establish. (*Resner v. State Bar, supra*, 67 Cal.2d at p. 811; *In re Andreani, supra*, 14 Cal.2d at p. 749; *In the Matter of Brown, supra*, 2 Cal. State Bar Ct. Rptr. at p. 315.) Readmission to the bar does not require perfection. (*In the Matter of Brown, supra*, 2 Cal. State Bar Ct. Rptr. at p. 315; *In the Matter of Giddens, supra*, 1 Cal. State Bar Ct. Rptr. at p. 37.) Nor should we place unnecessary burdens upon erring attorneys in proving rehabilitation and present moral qualifications. (*Tardiff v. State Bar,*

*supra*, 27 Cal.3d at p. 404; *In the Matter of Brown*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 315.) [20a] “Whether petitioner has met his heavy burden [of proof] depends on a comparison of the facts of the current proceeding with the facts in other reported California reinstatement proceedings.” (*In the Matter of Brown*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 320.)

[20b] Despite alleged weaknesses in their showings of rehabilitation and present moral qualifications, various petitioners have obtained reinstatement. In *Allen v. State Bar*, *supra*, 58 Cal.2d 912, Allen had pled guilty in 1957 to two counts of soliciting others to commit perjury and had been disbarred in the same year. Thereafter, he did some legal research and law-related work, but supported himself mainly through other employment. At his reinstatement proceeding, his honesty, integrity, and rehabilitation were attested to by numerous character witnesses, including a deputy probation officer, a businessman, three attorneys, a dentist, and a former employer. The minister of Allen’s church testified that Allen had gained a new realization of the responsibilities and requirements of an attorney. In addition, Allen maintained his family relationships, attended church regularly, and participated in community affairs. Yet his application for reinstatement posed problems. After his disbarment, he engaged in activities that bordered upon, if they did not constitute, the practice of law. He asked questions at an administrative hearing on behalf of his employer when the employer’s attorney was unable to attend the hearing, and he corrected and filed a brief after the hearing. He may have been indiscreet in associating with persons of questionable reputation; and he had minor errors in his income tax returns and his petition for reinstatement, although no evidence showed that he made these errors in order to deceive anyone. The Supreme Court concluded that these problems did not warrant denial of his reinstatement.

In *Resner v. State Bar*, *supra*, 67 Cal.2d 799, Resner had been disbarred for mishandling client funds. Prior to his disbarment in 1960, disciplinary charges were also pending against him for misappropriation from a client. During his misconduct, Resner suffered from severe emotional problems. After his disbarment, Resner worked in real estate develop-

ment and did legal research for various lawyers. Numerous attorneys commented on his rehabilitation, trustworthiness, fiduciary responsibility, and character and recommended his reinstatement. His girlfriend and a former legal associate testified that he no longer suffered from his prior emotional problems. An attorney and long-time friend testified that he recognized his misconduct and was full of remorse. Although the Supreme Court recognized that he had improperly filed a general denial in a civil action against him, it reinstated him because of the general strength of his showing of rehabilitation and present moral qualifications.

In *Werner v. State Bar*, *supra*, 42 Cal.2d 187, Werner had been charged in 1937 with soliciting the offer of a bribe and with attempted grand theft. Although eventually acquitted on both criminal charges, he had been disbarred in 1944 on the basis of the record in the criminal case. After his disbarment, he worked at first for a railroad and later as a research clerk and appraiser for an attorney. He took an active role in community affairs and in his church and donated substantial time to the Red Cross. Many members of the bench and bar and many lay witnesses testified that he was a man of honesty, integrity, and fidelity. Among the witnesses were men who had known him throughout his career and who were familiar with the events leading to his disbarment and since his disbarment. He was restored to membership in fraternal organizations which had excluded him for moral reasons after his disbarment. The Southern California Women Lawyers investigated him and recommended his reinstatement. Although the Supreme Court recognized that he had made unwarranted denials in verified pleadings in civil actions brought against him after his disbarment, it reinstated him because of the general strength of his showing of rehabilitation and present moral qualifications.

[21] In the current proceeding, petitioner’s admission of misconduct, cooperation with authorities, lifestyle changes, curtailment of spending, and restitution are significant factors in favor of his reinstatement. Also, his postmisconduct pro bono work, community service, and handling of fiduciary responsibilities, as well as the character witnesses’ testimony and reference letters which he presented,

support his reinstatement. [20c] Although his notifications to clients that he was “retiring” were evasive and although his working as a paralegal for Baron Miller when he questioned the propriety of Baron Miller’s doing business as Miller & Miller deserves criticism, these factors by themselves do not establish a lack of rehabilitation and present moral qualifications to practice law. Overall, his showing of rehabilitation and present moral qualifications is as strong as the showings by Allen, Resner, and Werner.

[20d] The facts of the current proceeding are distinguishable from the facts of reported reinstatement proceedings in which the petitioners have failed to prove rehabilitation and present moral qualifications. (See, e.g., *Hippard v. State Bar*, *supra*, 49 Cal.3d 1084, 1098 [no meaningful attempt by petitioner to make restitution in whole or in part and no inability to do so]; *Tardiff v. State Bar*, *supra*, 27 Cal.3d 395, 405 [continued misdeeds by petitioner long after disbarment]; *Feinstein v. State Bar*, *supra*, 39 Cal.2d 541, 548 [no recognition by petitioner of wrongdoing and no attempt to determine whether his activities had resulted in losses to others or to reimburse his victims]; *In the Matter of Wright*, *supra*, 1 Cal. State Bar Ct. Rptr. 219, 227-228 [no effort by petitioner to pay certain creditors, lack of concern by petitioner to keep creditors informed of his whereabouts, character evidence limited to an affidavit from an attorney employer, failure by petitioner to inform the employer of his disbarment, and omission from his reinstatement application of a relatively recent lawsuit against the employer]; *In the Matter of*

*Giddens*, *supra*, 1 Cal. State Bar Ct. Rptr. 25, 32-33, 37-38 [inexcusable carelessness by petitioner in his application for reinstatement by failing to disclose two lawsuits to which he was a party].) Evidence of the sort which prevented reinstatement in these reported proceedings is not found in the current proceeding.

Recently, in *In the Matter of Brown*, a hearing judge also made credibility determinations in favor of the petitioner to which we deferred. There, however, the findings made by the hearing judge were inconsistent with her conclusion that Brown had not proved rehabilitation and present moral qualifications to practice law. (See *In the Matter of Brown*, *supra*, 2 Cal. State Bar Ct. Rptr. at pp. 315, 317, 318, 320-321.) In the current proceeding, the hearing judge made findings which were consistent with her ultimate conclusion. Unlike *In the Matter of Brown*, precedent supports the hearing judge’s conclusion in the current proceeding.

#### IV. CONCLUSION AND RECOMMENDATION

[20e] We conclude that petitioner has met the requirements for reinstatement. We thus 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.