

Filed May 6, 2022

**STATE BAR COURT OF CALIFORNIA**  
**REVIEW DEPARTMENT**

In the Matter of	)	SBC-20-R-30300
	)	
TROY LAWRENCE ELLERMAN,	)	OPINION
	)	
Petitioner for Reinstatement.	)	
_____	)	

This is Troy Lawrence Ellerman’s second petition for reinstatement to practice law in California. In 2007, he resigned with disciplinary charges pending related to his criminal convictions for obstructing justice, filing a false declaration, and criminal contempt. His criminal misconduct began in 2004 and involved multiple egregious acts during the practice of law. Ellerman now requests review of the hearing judge’s decision denying his petition for reinstatement. The judge found insufficient evidence to support reinstatement and determined that Ellerman demonstrated a lack of insight by committing a further breach of his fiduciary duty to a former client during the reinstatement trial. The Office of Chief Trial Counsel of the State Bar (OCTC) requests we affirm the judge’s decision.

Upon our independent review of the record (Cal. Rules of Court, rule 9.12), we conclude Ellerman failed to meet his heavy burden of proving by clear and convincing evidence<sup>1</sup> that he has been rehabilitated and has the present moral qualifications to practice law in California. Given the seriousness of Ellerman’s misconduct—involving no less than 13 bad acts, including instances of

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<sup>1</sup> Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

dishonesty to the court, lying to law enforcement, and blame shifting—he has the heaviest of burdens in establishing overwhelming proof of rehabilitation and present moral fitness to practice law. While our analysis does not rely entirely on the same factors as the hearing judge in deciding whether Ellerman’s rehabilitation efforts support reinstatement, we ultimately agree that Ellerman has failed to meet the required burden of proof and, therefore, reinstatement should be denied.

## **I. PROCEDURAL HISTORY**

On February 28, 2007, Ellerman tendered his resignation from the practice of law with disciplinary charges pending, which the Supreme Court accepted on April 13, 2007. He filed his first petition for reinstatement on May 9, 2016. After a contested trial in early 2018, the petition was denied and Ellerman did not appeal. He filed the present petition on May 11, 2020. On March 1, 2021, Ellerman and OCTC filed a joint pretrial Stipulation Concerning Undisputed Facts (Stipulation). A five-day trial was held on March 19 and then from March 23 through 26. Following closing briefs, the matter was submitted for decision on April 16, and the hearing judge issued her decision on June 16, 2021.

## **II. ELLERMAN’S MISCONDUCT LEADING TO CONVICTION AND RESIGNATION**

### **A. Background**

Ellerman was admitted to practice law in California on December 14, 1992. After two years in private practice, he began working for the Sacramento County District Attorney’s Office. In 1996, he opened a solo practice handling criminal defense matters. Ellerman had no prior record of discipline before engaging in the criminal misconduct underlying the reinstatement petition, which began around June 2004 and led to his federal conviction and bar resignation.

### **B. Ellerman’s Criminal Conduct and Federal Conviction**

In September 2003, Ellerman received a phone call from Victor Conte, founder and president of Bay Area Laboratory Co-operative (BALCO), regarding criminal defense

representation after the Federal Bureau of Investigation (FBI) executed search warrants on Conte's home and the BALCO laboratory. A few days after the call, Ellerman, Conte, and another attorney, Robert Holley, met to discuss the FBI investigation. During the phone call and a later meeting, Ellerman obtained client confidences from Conte.

On February 12, 2004, a federal grand jury returned an indictment against Conte and other defendants, including James Valente, in the United States District Court for the Northern District of California. Ellerman and Holley entered into a joint defense agreement representing, respectively, Valente and Conte. On February 27, the prosecution agreed to provide the defendants with a copy of the grand jury testimony of various professional and amateur athletes, including Tim Montgomery, Jason Giambi, Barry Bonds, and Gary Sheffield. Ellerman agreed during a court hearing that production of the grand jury transcripts would be subject to a stipulated protective order.

On March 4, 2004, Ellerman signed the stipulated protective order. In that order, United States District Court Judge Susan Illston stated that copies of all the grand jury transcripts provided to the defendants by the government "shall not be disseminated to the press or used for economic benefit" by any parties or their attorneys. In our proceedings, Ellerman stipulated that, before signing the protective order, he read it and knew it prohibited disclosure of the grand jury transcripts.

In June 2004, Ellerman willfully disobeyed Judge Illston's protective order by allowing Mark Fainaru-Wada, a reporter for the *San Francisco Chronicle* (*Chronicle*), to take verbatim notes of Tim Montgomery's grand jury testimony. *Chronicle* reporters Fainaru-Wada and Lance Williams later published excerpts of Montgomery's testimony in the *Chronicle*. On June 25, Judge Illston held a hearing on the apparent violation of her protective order regarding the *Chronicle* story. During the hearing, Ellerman denied he was the source of the leak and told the

judge he was “angry” about it and stated, “there’s a lot of damaging information that is out there that we don’t want to be released.”

On July 12, 2004, Ellerman filed a declaration with the district court, signed under penalty of perjury, stating he had not copied nor discussed any grand jury transcripts with anyone. He falsely asserted he had no idea who discussed Montgomery’s grand jury testimony with the media or why. Ellerman further declared the leak was “very damaging to Mr. Conte’s right to a fair trial and slanderous to him both personally and professionally.”

Ellerman stipulated during our proceedings that he knew the statement in his declaration was false at the time he filed it and that his statements were material to Judge Illston’s efforts to determine who violated the protective order. On August 27, 2004, Ellerman signed a document entitled Status of Memorandum Re: Media Leaks (Memorandum), which was also filed with the district court. In the Memorandum, Ellerman stated that, because of the media leaks, the defendants could not get a fair trial with “the case and the media leaks spinning out of control.”

On October 8, 2004, Ellerman and Holley filed a motion to dismiss the indictment. The motion alleged, in pertinent part, that a dismissal was warranted based on “repeated government leaks of confidential information to the media [making] a fair trial practically impossible anywhere in the country,” and that “the government ... [disseminated] information furiously, maliciously, and dishonorably in such a manner that it amounts to outrageous governmental conduct....” Ellerman again stipulated during our proceedings that, in signing the motion, he acted corruptly with the specific intent to obstruct and impede the due administration of justice against his client.

In November 2004, while the motion to dismiss was pending, Ellerman again willfully disobeyed the protective order. This time he allowed Fainaru-Wada to take verbatim notes of the

grand jury testimony of Jason Giambi, Barry Bonds, and Gary Sheffield, which the reporter published in the *Chronicle*. Ellerman also gave the reporter a copy of Barry Bonds's testimony.

On November 18, 2004, Ellerman signed a closing brief related to the motion to dismiss, which was filed the next day. In this document, Ellerman again asserted that the government leaked the grand jury transcripts. He accused the government of "deliberately" sabotaging the defendants and "so badly [tilting] the playing field in this case that no safeguard could ever bring back the ability of the Court to insure the defendants their Sixth Amendment right to a fair trial."

On December 3, 2004, Judge Illston notified the parties that grand jury transcripts and possibly discovery materials had been disclosed or disseminated in violation of her protective orders and that she was referring the matter to the United States Department of Justice for an investigation. Later that day, Assistant United States Attorney Jeff Nedrow and Special Agent Jeff Novitsky called Ellerman, who claimed the leaks were coming from co-defendant Victor Conte. Ellerman stated, "Victor is doing things on his own."

On September 25, 2006, Fainaru-Wada and Williams were held in contempt of court for their failure to comply with subpoenas requiring them to name the source who provided them with grand jury transcripts. The reporters faced up to 18 months in prison. Ellerman chose to remain silent during the reporters' contempt proceedings. On October 16, a confidential witness working with the FBI recorded statements from Ellerman indicating that Ellerman was the source of the grand jury transcripts published in the *Chronicle*.

On October 31, 2006,<sup>2</sup> Ellerman was interviewed by FBI agents, and he lied to them about the grand jury transcripts. He told them he did not leak BALCO federal grand jury materials, and he did not know for sure who did. He stated he thought Conte leaked them, but Conte would deny if asked. Ellerman also told the agents that Conte was playing two

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<sup>2</sup> By this point in time, Conte and Valente's criminal proceeding had concluded.

newspapers, the *San Jose Mercury News* and the *Chronicle*, against each other and that Valente, now his former client, had a relationship with the reporters covering the BALCO investigation.

On December 13, 2006, FBI agents confronted Ellerman at his home in Colorado. Ellerman initially denied he had been the source of the leaks. When confronted with the recording's existence, he demanded to hear it. He then acknowledged that he allowed Fainaru-Wada to review the grand jury transcripts but claimed that it was before he signed Judge Illston's protective order. He also stated he never provided the *Chronicle* reporters with copies of the transcripts, when in fact he did provide Fainaru-Wada with an actual copy of Barry Bonds's transcript.

On January 24, 2007, Ellerman's counsel contacted the prosecutors and informed them Ellerman would admit to disclosing the grand jury testimony of Tim Montgomery, Jason Giambi, Barry Bonds, and Gary Sheffield to Fainaru-Wada and enter into a plea agreement with the government. On February 16, Ellerman pleaded guilty to two counts of criminal contempt (18 U.S.C. § 401), one count of filing a false declaration (18 U.S.C § 1632(a)), and one count of obstruction of justice (18 U.S.C. § 1503). On July 12, 2007, United States District Court Judge Jeffrey S. White sentenced Ellerman to 30 months of incarceration and three years of supervised release with conditions, including that he undertake 10 law school presentations on ethics. During the sentencing hearing, Judge White stated that Ellerman's case was not just a case of "somebody wrongfully revealing protected or secret information . . . [Ellerman's] crimes have really affected and infected every aspect of our judicial system, the relationship to the court, the functioning of the grand jury, the integrity of the [government], and it's hard . . . to conceive a series of events that have had a greater impact on our system."

Ellerman's sentence was reduced to 10 months after he completed a 500-hour residential drug abuse program. In July 2008, he transitioned from prison to a halfway house. Ellerman complied with the terms of his probation, which ended on January 15, 2012.

**C. Ellerman's Release from Custody and Post-Conviction Activity**

After Ellerman's release from custody, he completed his court-ordered community service. He also sought therapy from Jordan Hamilton, Ph.D., Marvin Todd, Ph.D., and Chuck May, Ph.D. To date, he has engaged in over 150 hours of personal therapy.

In 2010, Ellerman began assisting Jason Harper as a non-paid volunteer for Character Combine, a San Francisco non-profit community outreach organization for economically and socially disadvantaged children. That same year, he enrolled at Western Seminary to pursue a master's degree in Marriage and Family Therapy. As part of his studies, he completed coursework in substance abuse. Ellerman graduated with his master's degree in May 2013.

Also in 2010, Ellerman wrote a book titled *Forging Iron*, which was published in 2011. Ellerman authored the book as a memoir, in which he stated his motivations for violating the protective order and releasing the grand jury transcripts. In *Forging Iron*, he claimed that he chose to break the law for the sake of exposing the truth about performance enhancement drug use in professional baseball and the federal government's inconsistent claim that it was cleaning up professional sports while not going after the athletes using those drugs. Ellerman justified his criminal conduct as a solution to injustices in professional baseball.

In January 2011, Ellerman was approved by federal judges in the United States District Court for the Eastern District of California to assist defense counsel as a court-appointed paralegal. In 2012, he started working as a paralegal for Brady & Vinding, a law firm specializing in environmental law and business litigation. He continues to work as a court-appointed paralegal and a paralegal for Brady & Vinding.

### III. LEGAL PRINCIPLES

Under rule 5.445 of the Rules of Procedure of the State Bar, Ellerman must satisfy a number of requirements before he may be reinstated to the practice of law: (1) pass a professional responsibility examination within one year prior to filing the petition; (2) establish rehabilitation; (3) establish present moral qualifications for reinstatement; and (4) establish present ability and learning in the general law by providing proof of taking and passing the Attorneys' Examination within three years prior to the filing of the petition. In accordance with the parties' stipulation, the hearing judge found that Ellerman had passed the Multistate Professional Responsibility Examination within one year of filing his petition, and that he had passed the Attorneys' Examination within three years prior to filing his petition.<sup>3</sup>

Accordingly, we focus our analysis on the two remaining issues: whether Ellerman has demonstrated that he is rehabilitated and that he possesses the requisite moral qualifications for reinstatement. To do so, Ellerman must present overwhelming proof of reform. (*Feinstein v. State Bar* (1952) 39 Cal.2d 541, 547; see also *In re Glass* (2014) 58 Cal.4th 500, 520 [more serious misconduct warrants stronger showing of rehabilitation].) He must also show rehabilitation by "sustained exemplary conduct over an extended period of time." (*In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25, 30.)

### IV. ELLERMAN'S REHABILITATION EVIDENCE

#### A. Character Witnesses

Ellerman presented 32 character witnesses who affirmed his longstanding commitment to community service, legal acuity, remorsefulness, honest character, and kind demeanor. These witnesses included a psychologist, two psychotherapists, 15 attorneys, a retired superior court

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<sup>3</sup> The hearing judge also found that Ellerman has paid all discipline costs and fees and does not owe the Client Security Fund any money, as required by the pre-filing requirements under rule 5.441(B)(2) of the Rules of Procedure of the State Bar.



judge, a university professor, a sheriff, a rabbi, a bishop, four family members, three friends, and two community service leaders. All of the witnesses stated they were fully aware of the scope of Ellerman's misconduct. Several have known Ellerman for over 20 years and testified that his misconduct and convictions did not affect their positive views of his character. One attorney witness, who has known Ellerman for 25 years, testified that he was "candid and honest regarding his misconduct" and praised Ellerman's "excellent legal support" as a paralegal in federal criminal defense cases.<sup>4</sup> Rabbi Seth Castleman, the director for the Exodus Project—a program for felons re-entering society—observed Ellerman serving as a mentor to other felons. The rabbi described him as a man with integrity and stated Ellerman has worked to make amends for his misconduct.

In its brief, OCTC argues "many of the witnesses had inaccurate understandings of petitioner's rehabilitation and insights into his misconduct" and very few witnesses acknowledged that Ellerman had attempted to justify his misconduct after his release from custody. OCTC also argues that some witnesses recommended his reinstatement with the understanding that he would not practice criminal defense. We reject OCTC's arguments on this point as overbroad or unsupported when the full record of the witnesses' statements is reviewed.

Ellerman's current employer, Robert Gladden, testified that he has personally noticed Ellerman's reform and believes he will be scrupulous about his ethical obligations if reinstated. Other attorneys held similar opinions. Retired Judge James Roeder has known Ellerman since the beginning of the 1990's and testified Ellerman contacted him after prison, expressing

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<sup>4</sup> The hearing judge concluded that Ellerman's limited role in working as a paralegal in federal criminal defense cases shields him from strategic calls and responsibility. She also determined that his changed lifestyle, which Ellerman testified includes reduced stress due to his sobriety and therapy, suggests he is "performing in a highly protected environment," and does not strongly support his rehabilitation to practice law. We reject these findings as unsupported by any authority.

“extreme remorse” and apologizing for the harm he caused to the legal system. Several witnesses testified Ellerman has become humbler and understands the gravity of his misconduct. They believe Ellerman is remorseful, experienced personal growth, and is unlikely to engage in similar misconduct again.

#### **B. Ellerman’s Community Service**

Ellerman has a notable record of involvement in community service since his release from custody. He completed his court ordered community service in 2012. In 2014, he volunteered an additional 30 hours of service by presenting nine presentations on ethics. He volunteered at The Salvation Army between 2015 to 2016 as a group presenter and designed curriculum based on his own failures, which included his battle with substance abuse. He mentors recently released felons to assist them with their transition from prison into society. Between 2019 and 2021, Ellerman made multiple presentations to undergraduate and law school students on his moral development and the importance of adhering to attorney ethical obligations. One of his character witnesses, Jason Harper, who serves as a pastor and community service leader, testified regarding Ellerman’s substantial community involvement and stated he constantly shows remorse. We commend Ellerman for continuing to perform meaningful community service for several years after being required to do so as a condition of parole. (*In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459, 464 [greater weight assigned to positive contributions performed after completion of criminal probation].)

### **V. DISCUSSION**

#### **A. The Seriousness of Ellerman’s Dishonesty and Crimes Heightens His Burden**

The seriousness of Ellerman’s past misconduct, involving multiple acts of dishonesty and moral turpitude committed in the practice of law, requires a showing of truly exemplary conduct over a sustained period of time to demonstrate fitness to practice law. (*In re Glass, supra,*

58 Cal.4th at p. 522.) We are guided by the Supreme Court’s opinion in *Glass*, which instructs, “[w]hen there have been very serious acts of moral turpitude, we must be convinced that the applicant ‘is no longer the same person who behaved so poorly in the past[.]’”<sup>5</sup> (*Id.* at p. 521.)

We must view Ellerman’s rehabilitation in light of the moral shortcomings that preceded his resignation. Ellerman’s numerous and egregious acts involved significant deceit. He violated a court order by disseminating confidential grand jury transcripts and spent two years engaging in multiple lies to cover up his acts. He tried to leverage his lies to his advantage by misleading a federal judge and filing multiple pleadings that falsely blamed the government for the leaks. Ellerman also attempted to shift blame to Conte and remained silent while *Chronicle* reporters faced contempt charges due to Ellerman’s misconduct. He lied to FBI agents on multiple occasions, and it was only after he was confronted with the recording that exposed his lies that he admitted guilt. Ellerman’s actions struck a terrible blow to the integrity of the judicial system and the credibility of the legal profession—in sum, Ellerman’s past misconduct was reprehensible. While case law favors rehabilitation (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 316, citing *Resner v. State Bar* (1967) 67 Cal.2d 799, 811), Ellerman’s acts of misconduct establish a very low point from which he needs to climb in order to demonstrate his rehabilitation.

#### **B. Ellerman’s Testimony During His Reinstatement Trial**

The hearing judge found Ellerman’s reinstatement testimony “troubling,” because she found that he voluntarily disclosed client confidences from an unrelated criminal case.

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<sup>5</sup> We acknowledge that *In re Glass* was a moral character case and not a reinstatement case as is this matter. However, the Supreme Court has recognized that these two case types share many of the same legal purposes and principles. (See *In re Glass, supra*, 58 Cal.4th at p. 521.)

Specifically, Ellerman testified about a child molestation case involving his former client MS.<sup>6</sup> He testified that, while serving as MS's criminal defense counsel, it dawned upon him that "[MS] did it" when he noticed similarities between the witnesses' testimony about MS's odd odor and Ellerman's own recollection of his former client's odor.

OCTC urges adoption of the hearing judge's finding and argues Ellerman's disclosure was both a new instance of misconduct and proof of a lack of understanding of his duty to maintain client confidences and secrets. Ellerman claims he commented about his former client only to provide context about the mental stressors he faced during the time that he committed the underlying misconduct.

The nature of reinstatement proceedings invites petitioners to be candid in explaining their thoughts and motivations regarding past misconduct and Ellerman did exactly that. However, his testimony on this point, albeit well-intentioned, displayed carelessness regarding his professional responsibility to MS. The duty of confidentiality is much broader in scope than the evidentiary attorney-client privilege and it "prohibits an attorney from disclosing facts and even allegations that might cause a client or former client public embarrassment." (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 189, citing *Dixon v. State Bar* (1982) 32 Cal.3d 728, 735, 739.)

We reject Ellerman's attempts at oral argument to minimize his careless testimony by asserting that the details regarding MS's odor was a matter of public record. (*In the Matter of Johnson, supra*, 4 Cal. State Bar Ct. Rptr. at p. 190 [unnecessary disclosure of client's felony

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<sup>6</sup> As the hearing judge noted, MS's full name was referenced during the disciplinary trial. Like the judge, we will refer to Ellerman's former client by his initials out of privacy concerns in light of the dismissal of MS's criminal charges. We also note Ellerman testified that his former client's unrelated criminal case was dismissed based on a statute of limitations "technicality." The hearing judge concluded that Ellerman's use of the word "technicality" further showed a lack of rehabilitation as it was an attempt to suggest his former client's guilt. We disagree. We do not take issue with Ellerman's use of such legal terminology.

conviction, although matter of public record, breaches duty of confidentiality to client].) Ellerman's divulgence of client confidences went beyond what was appropriate for him to disclose in order to explain his prior misconduct in connection with this reinstatement proceeding, but we do not find the incident to demonstrate a lack of rehabilitation as the hearing judge found.

**C. Ellerman's Rehabilitative Efforts Are Commendable, but He Has Not Sustained Exemplary Conduct over an Extended Period of Time**

Ellerman has made rehabilitative gains since his convictions. His current work as a court-appointed paralegal with the United States District Court for the Eastern District of California is noteworthy. His appointment was judicially approved and requires him to guard confidential records such as matters subject to protective orders. In our view, his activity here serves to specifically diminish his carelessness regarding his testimony about MS previously discussed. We equally credit his dedication to community involvement, as shown through Ellerman's law school presentations to students on the importance of ethics after the conclusion of his criminal probation. However, despite Ellerman's impressive character evidence and commitment to service, such evidence on its own is not determinative of reform, no matter how positive or great in quantity. (*Feinstein v. State Bar, supra*, 39 Cal.2d at p. 547.)

Although perfection from a petitioner is not required, when prior misconduct is sufficiently egregious, overwhelming proof must include a lengthy period of not only unblemished but exemplary conduct. (*In re Menna* (1995) 11 Cal.4th 975, 989.) OCTC argues Ellerman lacks responsibility and understanding of his misconduct because he spent two years engaging in multiple lies to cover up his wrongdoing. OCTC also claims Ellerman minimized his misconduct in *Forging Iron*. Ellerman asserts his rehabilitation has been a gradual process—he could not fully appreciate the extent of the internal troubles that led to his criminal behavior until after starting therapy sessions with Dr. May.

Dr. May began treating Ellerman in December 2012. He determined Ellerman suffered from an immature personality and from issues related to his ego, and both contributed to his decision to not take full responsibility for his actions in *Forging Iron*. Dr. May provided therapy for Ellerman's depression and attachment-disorder issues and worked with him to address his alcohol and substance abuse. He opined Ellerman was fully rehabilitated by 2013.

The hearing judge factored Ellerman's explanations in *Forging Iron*, in which he depicted his choice to break the law as an attempt to clean up professional baseball, as evidence of a present lack of insight. We disagree that Ellerman has a present lack of insight and conclude the evidence only supports a finding that Ellerman had not established cognizable steps towards reform until at least 2012. This view is also supported by the prior hearing judge's finding in Ellerman's 2018 reinstatement case—that Ellerman began accepting full responsibility for his actions and gained insight into his misconduct between mid-2012 to early 2013.

Ellerman relies on four cases to support his petition for reinstatement.<sup>7</sup> He argues that, in comparison to relevant case law, his exemplary behavior supports reinstatement. In *Brown*, the petitioner sought reinstatement 15 years after his misconduct that resulted in three criminal convictions for obstructing justice, falsifying documents, and falsifying public records. Brown engaged in an illegal scheme with a municipal court clerk to improperly reduce driving under the influence (DUI) charges against his clients by having his clients admit guilty pleas to reckless driving in 54 cases, without the knowledge of the judge or prosecuting attorney. Two years later, Brown initiated a similar scheme that resulted in the illegal manipulation of 85 DUI cases.

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<sup>7</sup> *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309; *In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459; *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423; and *In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546.

Ellerman believes *Brown* lends supports for his reinstatement since the court concluded the egregiousness of Brown's misconduct did not preclude reinstatement.

Ellerman's case shares certain similarities to *Brown*. Both attorneys engaged in numerous acts of deceitful misconduct involving the judicial process while practicing law. Nonetheless, one of the biggest differences between these cases is the severity of Ellerman's misconduct. As discussed above, Ellerman was convicted of four federal felony charges involving 13 acts of dishonesty, lies, and deceit in a two-year coverup that greatly impacted the administration of justice, as noted by the federal judge who sentenced him. He lied to another federal judge, a federal prosecutor, and FBI agents. He falsely attempted to cast blame onto Conte and the government regarding his failure to follow a protective order, and failed to accept responsibility even when the reporters faced criminal contempt charges. These factual distinctions reveal Ellerman has further to go before his rehabilitation is supported under *Brown*.

We also find distinctions between Ellerman's record and other cases he cites in support of proving rehabilitation. *Bodell* involved an attorney convicted of a single count of felony mail fraud. The *Bodell* court found that the attorney had established rehabilitation in the ten years following his conviction and distinguished Bodell's misconduct from "extremely serious misconduct for an extensive time" found in other cases where petitioners had committed multiple felonious acts involving moral turpitude. (*Bodell, supra*, 4 Cal. State Bar Ct. Rptr. at p. 463.)

In *Miller*, petitioner misappropriated over \$80,000 from his client in a probate proceeding. Miller confronted the severity of his wrongdoing by confessing his misconduct to the probate court and the State Bar; he also admitted his ethical violation to the family and ended his extravagant lifestyle for which he had misappropriated the funds. Miller voluntarily decided to resign and rehabilitate himself whereas no evidence exists to suggest that Ellerman would have stopped his dishonesty or admitted to his misconduct absent the FBI's investigation.

Lastly, we do not find that *Rudman* lends much support to Ellerman’s case. Rudman’s misconduct—which included federal convictions for conspiracy and counterfeiting currency—was limited in duration, occurring over a period of less than five months.

The Supreme Court in *Glass* emphasized the court’s duty to protect the public and maintain the integrity and high standards of the profession and, therefore, our focus is “on the [petitioner’s] moral fitness to practice law.” (*In re Glass, supra*, 58 Cal.4<sup>th</sup> at p. 526.) Like the applicant in *Glass*, Ellerman expended considerable efforts to fabricate his lies and, once exposed, both Glass and Ellerman initially chose to protect themselves rather than “freely and fully admit and catalogue all of [their] fabrications.” (*Id.* at p. 523.) If Ellerman is reinstated to practice law, California courts and others will rely on his word and moral fitness as an officer of the court. On this record, Ellerman has demonstrated that he has begun his path to rehabilitation, but not yet met the required overwhelming proof of reform that is necessary to establish successful rehabilitation in light of his misconduct. (See *Feinstein v. State Bar, supra*, 39 Cal.2d at p. 547 [overwhelming proof required to establish rehabilitation].)

## VI. CONCLUSION

We reiterate that the burden to show rehabilitation, when a petitioner has engaged in misconduct as egregious as Ellerman, is a very heavy one. Examining Ellerman’s past misconduct and focusing on the nine-year period since he completed his felony probation, we find insufficient evidence at this point to prove rehabilitation when weighed against his 13 acts of moral turpitude. When the “record fails to show that [a petitioner] has sufficiently rehabilitated himself to be entrusted with the responsible duties of an attorney at law, his application for reinstatement should be denied. [Citation.]” (*Wettlin v. State Bar* (1944) 24 Cal.2d 862, 869.) We thus find Ellerman has not yet established the requisite rehabilitation



and moral fitness to resume the practice of law, and we affirm the hearing judge's decision to deny Troy Lawrence Ellerman's petition for reinstatement.

McGILL, Acting P.J.

WE CONCUR:

HONN, J.

VALENZUELA, J.\*

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\*Currently serving as a hearing judge of the State Bar Court, appointed by the California Supreme Court, and designated to serve as a review judge in this matter by the Acting Presiding Judge of the State Bar Court, pursuant to rule 5.155(F) of the Rules of Procedure of the State Bar.

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*In the Matter of*  
**TROY LAWRENCE ELLERMAN**

*Hearing Judge*

**Hon. Phong Wang**

*Counsel for the Parties*

For State Bar of California:           Peter Allen Klivans, Esq.  
State Bar of CA/OCTC  
180 Howard Street  
San Francisco, CA 94105

For Petitioner:                           Michael Erik Vinding, Esq.  
Brady & Vinding  
455 Capitol Mall, Ste. 220  
Sacramento, CA 95814