Dana Kirk Nottingham v. People. 24PDJ009. September 12, 2024.

Following a readmission hearing, a hearing board denied Dana Kirk Nottingham (former attorney registration number 31944) readmission to the practice of law in Colorado under C.R.C.P. 242.39. Nottingham may not again petition for readmission until at least two years after the date of the Hearing Board's opinion.

In July 2015, Nottingham was disbarred after he failed to pursue four clients' cases and failed to communicate with them about their matters. In addition, Nottingham knowingly converted three clients' funds, and he did not abide by his agreement with one of those clients to repay the client after the client sued Nottingham in small claims court. Nottingham then disobeyed that court's order that he return the client's file. Finally, Nottingham did not participate in his discipline case, resulting in the entry of default against him.

In 2023, before Nottingham petitioned for readmission, he passed the Colorado bar examination and the multistate professional responsibility examination. Even so, the Hearing Board concluded that readmission was not appropriate because Nottingham otherwise failed to show by clear and convincing evidence that he is fit to practice law and that he is rehabilitated from his misconduct.

The case file is public per C.R.C.P. 242.41(a). Please see the full opinion below.

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203	
Petitioner: DANA KIRK NOTTINGHAM, #31944 **Respondent:** THE PEOPLE OF THE STATE OF COLORADO	Case Number: **24PDJ009**
OPINION DENYING READMISSION UNDER C.R.C.P. 242.39(e)(1)	

Dana Kirk Nottingham ("Petitioner") seeks readmission to the practice of law after he was disbarred in 2015. Between 2012 and 2014, Petitioner failed to pursue four clients' cases and failed to communicate with them about their matters. He knowingly converted three clients' funds. In one of those matters, Petitioner did not abide by his agreement to repay his client after the client sued him in small claims court. Petitioner then disobeyed that court's order that he return the client's file. In addition, Petitioner did not participate in his discipline case, resulting in the entry of default against him. During the readmission hearing, Petitioner failed to prove by clear and convincing evidence that he is fit to practice law and has been rehabilitated from his misconduct. He is thus not entitled to be readmitted to the practice of law in Colorado at this time.

I. PROCEDURAL HISTORY

On January 31, 2024, Petitioner, through his counsel Jane B. Cox, filed "Petitioner's Verified Petition for Readmission" with Presiding Disciplinary Judge Bryon M. Large ("the PDJ").[1] On behalf of the Office of Attorney Regulation Counsel ("the People"), Justin P. Moore answered on February 20, 2024, opposing the petition. The PDJ set a two-day readmission hearing to take place from July 17-18, 2024. On May 2, 2024, the PDJ notified the parties that the readmission hearing would take place in Courtroom 2A of the Lindsey-Flanigan Courthouse in Denver, Colorado.[2]

[1] Petitioner paid the costs deposit required under C.R.C.P. 242.39(g). Am. Stip. Facts ¶ 15.

[2] At the time of the readmission hearing, the office building at 1300 Broadway in Denver, where the PDJ's courtroom is located, was closed to employees and to the public due to damage to the building. The PDJ extends his gratitude to the judges and staff at the Denver Juvenile Court for generously providing space to hold this hearing.

From July 17-18, 2024, a Hearing Board comprising the PDJ and lawyers Katayoun A. Donnelly and Robert Bacaj held a readmission hearing under C.R.C.P. 242.39. Petitioner appeared with Cox, and Moore attended for the People. The Hearing Board received testimony from Petitioner and remote testimony from Samuel Melessa and lawyer Kurt P. Leffler via the Zoom videoconferencing platform. The PDJ admitted the parties' stipulated exhibits S1-S3 and S6-S9 as well as the parties' amended stipulated facts.[3]

II. FINDINGS OF FACT[4]

Petitioner was admitted to practice law in Colorado on October 16, 2000, under attorney registration number 31944.[5] He is thus subject to the jurisdiction of the Colorado Supreme Court and the Hearing Board in this readmission proceeding.

Petitioner's Professional Background and Disciplinary History

Petitioner attended law school from 1995 to 1998 at the University of Pittsburgh School of Law.[6] During law school, Petitioner served as vice president of the international law society, attended an international moot court competition in Toronto, Ontario, and participated in the school's elder law clinic.[7] After law school, Petitioner relocated with his family to the Denver metropolitan area. He obtained his law license in October 2000 and began his legal career practicing municipal law.[8] In 2006, Petitioner opened Nottingham Law, P.C., as a sole practitioner, specializing in immigration law, criminal law, business law, and general civil litigation.[9] Petitioner worked at Nottingham Law, P.C., for the remainder of his legal career except for one year around 2008.[10]

Petitioner's disciplinary history includes three formal cases and a probation revocation matter.[11] On April 10, 2013, in case number 12PDJ086, the parties' stipulation was approved,

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[3] On July 15, 2024, Petitioner filed an "Unopposed Motion to Withdraw Stipulated Exhibit List, Stipulated Exhibits S4 and S5, and Stipulated Facts" based on the unavailability of Petitioner's treating psychologist to testify at the readmission hearing. The PDJ **GRANTS IN PART** Petitioner's unopposed motion and **STRIKES** the parties' stipulated exhibit list, stipulated exhibits S4-S5, and stipulated facts.

[4] Factual findings are drawn from testimony offered at the readmission hearing where not otherwise indicated.

[5] Am. Stip. Facts ¶ 1.

[6] Am. Stip. Facts ¶ 16.

[7] Am. Stip. Facts ¶ 17.

[8] Am. Stip. Facts ¶¶ 18-19.

[9] Am. Stip. Facts ¶¶ 20-21.

[10] Am. Stip. Facts ¶ 20.

[11] *See generally* Ex. S1 at 1010-18.

suspending Petitioner for six months, all stayed on his successful completion of a two-year period of probation with conditions, including practice monitoring. The sanction was based on Petitioner's admission that he violated Colo. RPC 1.3 (a lawyer must act with reasonable diligence and promptness when representing a client); Colo. RPC 1.4(a) and (b) (a lawyer must reasonably communicate with a client and must explain a matter so as to permit the client to make informed decisions regarding the representation); Colo. RPC 1.15(a), (b), and (c) (2008) (a lawyer must hold client property separate from the lawyer's own property; a lawyer, upon receiving funds or property in which a client or third person has an interest, must promptly deliver to the client or third person any funds that person is entitled to receive; and a lawyer must keep separate any property in which two or more persons claim interests until there is an accounting and severance of those interests); and Colo. RPC 1.16(d) (a lawyer must protect a client's interests upon termination of the representation, including by giving reasonable notice to the client and returning any papers and property to which the client is entitled). Effective May 1, 2014, Petitioner's probation was revoked and the stay on his suspension lifted because he did not comply with the probationary condition requiring him to obtain a practice monitor.

On September 24, 2014, the People filed a complaint in case number 14PDJ081. Petitioner failed to answer, and default was entered against him on December 3, 2014. On January 8, 2015, the People filed a complaint in case 15PDJ003; the two cases were consolidated on January 14, 2015. Petitioner failed to participate in the disciplinary proceeding, resulting in the entry of default judgment against him.[12] All facts set forth in the complaints and all rule violations were thus deemed established by clear and convincing evidence. The established facts and rule violations spanned four client matters.

One of the client matters was Luis Salas-Sanchez's immigration case. During the representation, which began in June 2012, Petitioner failed to perform agreed-upon legal services and did not advise Salas-Sanchez of the status of his case. In addition, Petitioner did not keep unearned retainer fees and filing fees belonging to his client in a trust account. From October 2012 to July 2013, Salas-Sanchez made repeated attempts to contact Petitioner with no success.

In July 2013, Salas-Sanchez sued Petitioner in Denver County Small Claims Court for the refund of his fees and return of his file. Before the trial, the parties reached a settlement agreement that required Petitioner to return $1,590.00 to Salas-Sanchez and return his file by September 2, 2013. The court accepted the parties' stipulation. Petitioner did not abide by the agreement, however, and on September 4, 2013, the court entered judgment against him for $1,590.00 and ordered him to return Salas-Sanchez's file by September 11, 2013. Though Salas-Sanchez told disciplinary authorities that Petitioner eventually paid him $500.00, the court's register at the time of the disciplinary proceeding indicated that Petitioner still owed Salas-Sanchez $1,590.00. Petitioner never returned the file.

[12] Am. Stip. Facts ¶ 22.

In the Salas-Sanchez matter, Petitioner violated seven Rules of Professional Conduct: Colo. RPC 1.3; Colo. RPC 1.4(a)(3) (a lawyer must keep a client reasonably informed about the status of the matter); Colo. RPC 1.5(f) (a lawyer does not earn fees until a benefit is conferred on the client or the lawyer performs a legal service); Colo. RPC 1.15(a) (2008); Colo. RPC 1.16(d) (a lawyer must protect a client's interests upon termination of the representation, including by returning unearned fees and any papers and property to which the client is entitled); Colo. RPC 3.4(c) (a lawyer must not knowingly disobey an obligation under the rules of a tribunal); and Colo. RPC 8.4(c) (it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation).

In another immigration case, Petitioner represented Christian Arellano from August 2012 until May 2013. During the representation, Petitioner violated six Rules of Professional Conduct: Colo. RPC 1.3, by failing to reasonably pursue Arellano's deferred action matter, having done virtually nothing to advance the case even though Arellano prompted him numerous times to do so; Colo. RPC 1.4(a)(3), by neglecting to keep Arellano reasonably informed about the status of his case and about his funds; Colo. RPC 1.5(f), by not maintaining Arellano's unearned retainer and filing fees in a trust account; Colo. RPC 1.15(a) (2008), by failing to safeguard Arellano's unearned legal fees and filing fees; Colo. RPC 1.16(d) (2008), by failing to return Arellano's file and fees upon termination of the representation; and Colo. RPC 8.4(c), by knowingly converting Arellano's unearned retainer and filing fees by exercising unauthorized dominion and control over those funds.

In the third matter, Petitioner engaged in misconduct related to his representation of Loretta Sanders, which lasted from September 2013 to February 2014. During that period, Petitioner failed to take any action to advance his client's personal injury claim; failed to answer his client's calls for several months; ignored his client's numerous attempts to contact him; and refused to return his client's file when she requested it. Through his conduct in Sanders's case, Petitioner violated Colo. RPC 1.3, Colo. RPC 1.4(a)(3), Colo. RPC 1.4(a)(4) (a lawyer must promptly comply with reasonable requests for information), and Colo. RPC 1.16(d) (2008).

The fourth matter involved a client, Scott Kerley, and lawyer David Calvert, with whom Petitioner shared an office. Kerley had paid Calvert a flat fee of $2,500.00 to help Kerley settle his credit card debts. Kerley did not know that Calvert was disbarred at the time, however; when Calvert suggested that Petitioner represent Kerley so that Petitioner could work off debts he owed to Calvert, Kerley agreed. No written fee agreement memorialized the arrangement.

In September 2013, Kerley gave Calvert a check for $20,000.00 made out to Nottingham Law. Calvert, in turn, gave the check to Petitioner, who deposited the check in his trust account on September 26, 2013. The funds were to be used for paying negotiated amounts to Kerley's creditors; Kerley did not authorize Petitioner or anyone else to use the money for any other purpose. Even so, Petitioner transferred $3,000.00 of Kerley's money from his trust account into his operating account in four online transfers. Petitioner treated the funds as his own and consumed them without Kerley's permission. In October 2013, Petitioner paid $2,500.00 from his trust account to settle one of Kerley's debts.

In November 2013, Kerley asked Calvert for an update on the matter, and Calvert replied that Petitioner had "skipped out of his office owing him money."[13] During the next two months, Kerley tried to contact Petitioner, who did not respond. Kerley sent Petitioner a certified letter terminating the representation and asking him to advise Kerley's creditors that he no longer represented Kerley. Kerley also requested an accounting and a full refund. As of the letter's date, Petitioner had settled only the one debt of $2,500.00 for Kerley and should have held $17,500.00 of Kerley's funds in his trust account. But Petitioner's trust account balance was only $6,767.33. Petitioner had thus converted $10,732.67 of Kerley's funds.

On January 26, 2014, Petitioner gave Kerley a signed statement promising to return $14,500.00 by February 3, 2014, and another $3,000.00 by February 15, 2014. But Petitioner converted an additional $500.00 from Kerley on January 29, 2014. On February 6, 2014, after making a cash deposit into his trust account, Petitioner gave Kerley a check from that account for $14,500.00. Petitioner also provided Kerley a signed statement acknowledging that he owed Kerley the following items: a full accounting, copies of correspondence from Petitioner to Kerley's creditors disclosing that Petitioner no longer represented Kerley, and the $3,000.00 balance. But Petitioner instead ceased communicating with Kerley and did not refund his $3,000.00.

In the Kerley matter, Petitioner violated Colo. RPC 1.3; Colo. RPC 1.4(a)(3); Colo. RPC 1.4(a)(4); Colo. RPC 1.15(a) (2008); Colo. RPC 1.15(b) (2008); Colo. RPC 1.16(d) (2008); and Colo. RPC 8.4(c).

Finally, Petitioner failed to respond to the People's investigatory requests in the Sanders and Kerley matters in derogation of Colo. RPC 8.1(b) (a lawyer must not knowingly fail to respond to a lawful demand for information from a disciplinary authority) and former C.R.C.P. 251.10(a) (a lawyer must respond to a written notice of investigation).[14] On August 2, 2014, Petitioner attempted to resign his law license. Because C.R.C.P. 227(A)(8) precludes a lawyer from resigning while disciplinary matters against the lawyer are pending, the People did not accept Petitioner's resignation.

Following a sanctions hearing, Petitioner was disbarred on June 4, 2015.[15] The disbarment took effect on July 9, 2015.[16]

The opinion and decision disbarring Petitioner ordered him to remit restitution to Salas-Sanchez in the amount of $1,820.00 and to Kerley in the amount of $3,000.00.[17] At the time

[13] Ex. S1 at 1015.
[14] C.R.C.P. 251 governed lawyer discipline cases until C.R.C.P. 242 took effect on July 1, 2021.
[15] Am. Stip. Facts ¶ 2; Ex. S1 at Ex. A.
[16] Am. Stip. Facts ¶ 3; Ex. S1 at Ex. B.
[17] Am. Stip. Facts ¶ 12.

Petitioner was disbarred, Salas-Sanchez and Kerley had pending claims with the Colorado Attorneys' Fund for Client Protection ("the CPF"), which ultimately made payments to them.[18]

Petitioner's Reflections on His Misconduct

At the readmission hearing, Petitioner framed his misconduct in his clients' matters as the product of long-simmering personal troubles that came to a boil in the period before his disbarment. Over the slow course of years, he said, he sank into a depressed state under the weight of his conflict-laden marriage, family loss, and financial distress related to his underperforming solo legal practice. As early as 2008, his depression affected his work as a lawyer and created dysfunction in his legal practice. Petitioner said he struggled to manage his practice as a business, could not focus on his clients' cases, and succumbed to the urge to avoid conflicts with his clients by ignoring their communications. Whether "as a lawyer, . . . as a legal assistant, as the office manager, as all of that—I avoided it all," he said.

Petitioner's Statements about His Personal Struggles

Though Petitioner attributed his depression to a confluence of personal and financial factors, the most significant was his difficult marital relationship, which fueled his depression like "kindling to the fire." The marriage was an unhappy one beset by the couple's inability to effectively resolve conflicts in their relationship. Petitioner explained that his former spouse is an "aggressive" communicator, whereas he sought to avoid conflict and would "withdraw and hide from" confrontational discussions.[19] Years later, Petitioner came to understand that "shutting down, withdrawing, and not talking" increased, rather than diminished, conflict in the relationship.

Adding to the friction were significant life events marked by welcoming more children to the family and, tragically, the loss of Petitioner's fourth child in infancy in 2006. Soon after that loss, Petitioner transitioned to solo practice, which brought additional stress. Petitioner did not take in as robust an income as a solo practitioner as he had expected, and his former spouse began working to supplement the household income. Even so, Petitioner said, the family's finances were "a disaster." Matters came to a head in 2008 when Petitioner's home was placed in foreclosure. Petitioner also sought bankruptcy protection about that time.

The cascading financial crises deepened the divide between Petitioner and his former spouse. Petitioner described feeling isolated and without support. He had no contacts who were not close to his former spouse. In addition, he resisted seeking therapy; he was skeptical of its

[18] Am. Stip. Facts ¶¶ 13-14.

[19] Petitioner and his former spouse divorced in 2023, but we use the term to describe her throughout the opinion.

efficacy, and the notion of discussing his personal issues with a therapist discomfited him. Seeing no other options, Petitioner internalized his distress and attempted to carry on for several years.

In 2011, at his former spouse's suggestion, Petitioner eventually sought mental health therapy for depression.[20] He reported to his therapist that he experienced financial and professional stress; that he felt overwhelmed by the burden of work; that he found diminished enjoyment in activities like playing the piano and being with his kids; that he felt guilty about his financial predicament and about emotionally withdrawing from his family; and that he felt hopeless and helpless about his situation.[21] In addition, Petitioner lost his mother in late 2010.[22] Medical professionals prescribed fluoxetine at the time.[23] Petitioner found that he regained some focus while taking the medication but otherwise did not experience any benefit.

Despite receiving treatment, Petitioner said that by 2012 he was "so deep in the hole [of depression] that there was no hope to get out of it"—so deep that he "couldn't see the light over the hole." When he ran out of fluoxetine in 2013, he decided to stop the medication to see how he would adjust.[24] Petitioner's mood and motivation declined further after he stopped taking the medication.[25]

Petitioner's Statements about His Clients' Matters and His Legal Practice

At the readmission hearing, Petitioner briefly discussed the Kerley case. He believed from Calvert that Kerley would pay him $3,000.00 to negotiate settlements of Kerley's credit card debts, and he agreed to take the matter on that basis. Petitioner maintained that he did not know Calvert was disbarred when he took Kerley's case.

Petitioner said he performed work in Kerley's matter but managed to settle only one of the debts when Kerley ended the representation and asked Petitioner for a refund. Petitioner could not return all Kerley's funds, however, because he had used money from his account for another client matter. Petitioner acknowledged that he told Kerley he would repay the $3,000.00 and that he knowingly failed to do so.

Petitioner expressed regret that he did not use a fee agreement for the representation and relied on an intermediary to communicate with his client. He implied that his misconduct in that regard was driven by his need for clients and for money. Petitioner also acknowledged that he should have safeguarded his client's funds but attributed his failure to do so to poor bookkeeping, which resulted from his inability to focus and stay organized in the case.

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[20] *See* Am. Stip. Facts ¶¶ 35-36.
[21] Am. Stip. Facts ¶ 36.
[22] Am. Stip. Facts ¶ 36.
[23] Am. Stip. Facts ¶ 36. Fluoxetine is marketed under the brand name Prozac.
[24] *See* Am. Stip. Facts ¶ 37.
[25] *See* Am. Stip. Facts ¶ 37.

After Petitioner was disciplined in 2013, he decided to wind down his legal practice. Though he managed to refer some of his clients to other lawyers and did his best to refund the clients who fired him, his depressed state impeded him from properly winding down his clients' matters.

In January 2014, Petitioner sought additional mental health therapy for depression and again started taking fluoxetine at his therapist's direction.[26] But he did not continue meeting with his therapist, doubting that therapy would help him understand and resolve his personal and professional issues. Nor did he perceive any viable avenues of support for the problems in his legal practice. He could not afford to hire help, he did not participate in bar associations or other professional groups, and he had no connections with lawyers other than Calvert and John Prater, with whom Petitioner shared office space after parting ways with Calvert. But Petitioner did not trust those lawyers to help him. He said that Calvert used him to provide legal services to clients whom Calvert could no longer represent, and Prater struggled with his own practice and looked to Petitioner for assistance while offering none in return.

By February 2014, Petitioner was spent. He stopped communicating with his remaining clients and "walked away" from his legal practice.

Petitioner's Statements about His Disciplinary Matter

During the period Petitioner attempted to wind down his practice, he did not obtain a practice monitor as the terms of his disciplinary probation required. He could not afford to engage one; besides, he said, he planned to surrender his law license. But by the time he attempted to resign his license in August 2014, the People had moved to revoke his probation, were investigating additional complaints of misconduct against him, and declined to accept his resignation. When Petitioner realized he faced another suspension or even disbarment, he lost any desire to defend himself in the proceeding. "At that point, I'd given up," he stated. He completely withdrew from the People's investigation, just as he had withdrawn from his family and from his legal practice. He did not participate in the disciplinary proceeding that resulted in his disbarment.

In July 2015, within weeks of his disbarment, Petitioner and his family relocated from Colorado to Seward, Nebraska. Petitioner had abandoned his P.O. box where he had received court filings, and he thus was not aware of the opinion disbarring him or the order of disbarment until another lawyer forwarded copies to him several months thereafter. But shame and embarrassment kept him from reading the opinion until June 2016. Petitioner recalled that when he eventually reviewed the opinion, he clearly saw the wrongfulness of his conduct. "What a rotten thing to have done. What a rotten person I was," he said.

[26] *See* Am. Stip. Facts ¶ 37.

Petitioner said that he accepts full responsibility for his misconduct. He expressed sincere remorse for the harm he caused his former clients and wished he could apologize to them and to the Spanish-speaking community he sought to serve through his immigration practice. Petitioner also regretted the disrepute he brought to the legal profession and the stress and disappointment he caused his family.

Petitioner's Activities Since His Disbarment

After Petitioner left his law practice in 2014, he worked for approximately one year as a landman for an oil and gas company. The work is not considered to be the practice of law, Petitioner said, which suited him just fine; he had no wish to return to legal practice. "At that point, I was done," he said.

By summer 2015, Petitioner left his position as a landman and started writing opinion pieces for online publications for extra income.[27] That July, Petitioner and his family relocated from Colorado to Seward to pursue a promotion—along with a significant pay increase—for Petitioner's former spouse. Once in Seward, Petitioner discovered that the cost of living there was much lower than in Colorado. With the change in the family's financial circumstances, Petitioner stepped away from regular employment and became a stay-at-home parent.[28] The relocation gave Petitioner a "clean slate that he desperately needed" and an opportunity to contribute to his family and community without the financial pressures and stress of legal practice. As the grip of Petitioner's depression loosened, he began to emerge from his hole and wanted to engage with people. Soon after arriving in Seward, Petitioner felt he no longer benefited from fluoxetine and stopped taking it.

Involvement in the Community

Relieved of financial pressures and finding satisfaction in managing his family's domestic needs, Petitioner thrived in his new environment. He quickly became involved in numerous community activities, including:

- Reader and judge for high school quiz bowls from 2015 to the present;
- Candidate for Seward City Council in 2022;
- Piano accompanist for the local middle school choir from 2015 to 2021;
- Accompanist and eventual leader of the Seward singing group, the Kitones, which performed at community events, in assisted-living facilities, and at other events by invitation until the group ceased performing two years ago;
- Performer in the Seward Fourth of July celebration;

[27] *See, e.g.*, Ex. S9. Petitioner eventually authored several articles published for the Federalist Papers and the Western Journal between 2015 and 2019. Am. Stip. Facts ¶ 41.
[28] *See* Am. Stip. Facts ¶ 23.

- Aid in high school business and finance classes;
- Assistant in track & field and cross-country events; and
- Coach for youth baseball, soccer, and basketball teams.[29]

Petitioner's community involvement rekindled his passion for piano and performance, and he took joy in developing deeper relationships with his children. For Petitioner, Seward offered a fresh start in the wake of his disbarment. He likened his life in Colorado to a completed puzzle that was knocked off the table "in a thousand pieces." Moving to Seward, he said, gave him the chance to pick up all of the pieces and put them back together.

Community Members' Statements About Petitioner[30]

The People interviewed Clark Kolterman as a potential character witness for Petitioner.[31] Kolterman has known Petitioner for ten years, all while Petitioner lived in Seward.[32] Kolterman, who works as a teacher in Seward, taught two of Petitioner's children and has observed Petitioner in the community.[33] Kolterman noted that Petitioner is very involved with his children and their school activities, including quiz bowls that the school holds six times per year, the speech team, and the scouting program.[34] According to Kolterman, Petitioner is also deeply involved with his church.[35]

Kolterman described Petitioner as having the highest character and a strong work ethic.[36] Kolterman said that Petitioner is trustworthy and has his respect, adding that he would "go to [Petitioner]" if Petitioner returns to the practice of law.[37]

The People also interviewed Jonathan Jank as a potential character witness for Petitioner.[38] Jank has known Petitioner since 2016, when Jank began serving as the president and chief executive officer of the Seward County Chamber and Development Partnership.[39] Jank knows Petitioner through their mutual involvement in the Kiwanis Club and in the Kitones.[40] Jank

[29] Am. Stip. Facts ¶¶ 24-25.
[30] The statements were collected during the People's interviews with the community members, who did not testify at the readmission hearing.
[31] Am. Stip. Facts ¶ 45.
[32] Am. Stip. Facts ¶ 46.
[33] Am. Stip. Facts ¶ 47.
[34] Am. Stip. Facts ¶ 48.
[35] Am. Stip. Facts ¶ 49.
[36] *See* Am. Stip. Facts ¶ 52.
[37] Am. Stip. Facts ¶ 53.
[38] Am. Stip. Facts ¶ 54.
[39] Am. Stip. Facts ¶¶ 55-56.
[40] Am. Stip. Facts ¶ 57.

observed that Petitioner is reliable, prepared, and communicates well in matters concerning the Kiwanis Club and the Kitones, and he stated that Petitioner is "always there."[41] Jank also observed that Petitioner is active in the community through his church and as a former candidate for city council.[42] Jank was impressed with Petitioner's candidacy, calling him a well-informed candidate.[43]

Though both Kolterman and Jank know Petitioner personally, neither one has experience with Petitioner in a professional or law-related setting.[44] In addition, neither Kolterman nor Jank knows the details of Petitioner's disciplinary history or disbarment.[45]

Leadership Roles in the Church

In Seward, Petitioner accepted opportunities to serve in leadership roles with increasing responsibility in his church, the Church of Jesus Christ of Latter-day Saints ("the LDS Church" or "the Church").[46] Upon his arrival in Seward in the summer 2015, Petitioner and his family joined the local Church's branch. Just a few weeks later, the Church asked Petitioner to serve as counsellor to the Seward branch president, the head of the entire congregation in the Seward geographic area.[47] Petitioner described the role of counsellor as supporting the branch president by discharging various spiritual and administrative responsibilities for the president, such as receiving, handling, and depositing funds contributed by branch members and by acting as a youth leader. Petitioner added that counsellors are forbidden from handling the Church's funds unless another Church member is present.

In 2016, Petitioner was appointed as the Seward branch president, a role he held until October 2021.[48] As branch president, Petitioner administered the Seward branch's finances, which were verified by a second member of the branch and subject to regular audits to ensure proper collection and disbursement of funds, per standard procedures.[49] As branch president, Petitioner collected tithes and other offerings and transmitted the funds through the proper banking channels to the Church.[50] He also received a budget to cover local expenses.[51]

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[41] Am. Stip. Facts ¶ 58.
[42] Am. Stip. Facts ¶ 59.
[43] Am. Stip. Facts ¶ 59.
[44] *See* Am. Stip. Facts ¶¶ 53, 61.
[45] *See* Am. Stip. Facts ¶¶ 50-51, 60.
[46] Am. Stip. Facts ¶¶ 24, 26-27.
[47] The Seward branch covers five cities and many smaller communities. *See* Am. Stip. Facts ¶ 28.
[48] Am. Stip. Facts ¶¶ 28, 32.
[49] Am. Stip. Facts ¶¶ 29, 31.
[50] *See* Am. Stip. Facts ¶ 30. In the LDS Church's organizational structure, wards are similar to but larger than branches.
[51] *See* Am. Stip. Facts ¶ 30.

As branch president, Petitioner also had the authority to distribute branch funds to disadvantaged members who needed assistance with basic living expenses.[52] Petitioner described this as a welfare program designed to "support life, not lifestyles." As the Seward branch president, Petitioner had sole discretion to approve or deny branch members' requests for assistance.

Another function of Petitioner's role as branch president was to counsel branch members who sought his guidance with their personal matters. This aspect of the position was "uplifting and lifechanging" for Petitioner. He helped members navigate significant events in their lives and observed the spectrum of outcomes that resulted from members' choices. This work helped Petitioner understand how to process changes in his own life. From his perspective as a counsellor, Petitioner recognized that the members who sought his input and talked with him about their problems often benefitted from the experience of "talking through things."

When his appointment as the Seward branch president ended in 2021, Petitioner was selected to serve on the Lincoln Stake High Council and as a stake auditor.[53] As a member of the Lincoln Stake High Council, Petitioner had broad responsibilities throughout the stake as a representative of the stake president.[54] Occasionally, he gave sermons. He also audited branches in the Lincoln Stake, handling two audits per year. In that role, Petitioner encountered poor receipting and, occasionally, a branch president's deviation from the Church's money-handling practices. He addressed these issues by training the branch presidents and their counsellors on proper practices.

Petitioner completed his appointments as a member of the high council and as a stake auditor during his readmission proceeding. He said that he was released from the two positions at the same time, approximately one month before his readmission hearing. Looking ahead, Petitioner's next assignment is to attend the Church's Spanish-speaking branch in Lincoln, Nebraska, and to assist the branch president with matters as needed.

Despite the clear fiduciary and financial aspects of the branch president, high council, and stake auditor positions, Petitioner acknowledged that he did not disclose his disbarment or his conversion of client funds to Church authorities before any of his appointments. Petitioner stated that the discussions focused instead on issues he would likely face during his service as well as on disqualifying moral considerations, like acts of infidelity or moral dishonesty. "Disbarment and professional issues did not come up," he said. Those issues were in the past, he added, and he has since made amends with God, repented for his conduct, and worked on being a better person.

[52] Am. Stip. Facts ¶ 30.
[53] Am. Stip. Facts ¶ 33.
[54] Am. Stip. Facts ¶ 33.

Testimony from Church Members

At the readmission hearing, we heard remote testimony in support of Petitioner's bid for readmission from two members of his church, both of whom testified via the Zoom videoconferencing platform.

Samuel Melessa is the Lincoln stake president in the LDS Church and a professor of accountancy at the University of Nebraska. As the Lincoln stake president, Melessa oversees ten congregations in the Lincoln geographic area, including the Seward branch. Melessa has known Petitioner for approximately four-and-one-half years while they both served in various Church leadership roles.

According to Melessa, Petitioner's post as the branch president in Seward required a commitment of about fifteen volunteer hours a week and entailed substantial responsibility overseeing the finances and administration of the branch. In that role, Melessa said, Petitioner was responsible for ensuring that tithes in his congregation were collected, tracked, safeguarded, and disbursed according to the Church's stringent guidelines. Those guidelines integrate multiple layers of oversight, Melessa explained, including limitations on who can handle Church funds, prohibitions on handling funds outside of the presence of at least one other authorized Church member, and regular audits of a branch's finances and compliance with the Church's procedures.

Melessa complimented Petitioner's performance as the Seward branch president. In particular, he praised Petitioner's honesty, transparency, and organization with respect to the branch's finances: the Church's audits revealed no deficiencies in money handling or adhering to appropriate procedures. On that basis, Melessa asserted that Petitioner is able to be honest and use good judgment in financial dealings.

Melessa also said that Petitioner showed "effective and humble leadership" during the COVID-19 pandemic, when Church leaders navigated the unfamiliar waters of returning to in-person services while balancing public safety concerns, compliance with state and local health regulations, and strong differences of opinion among branch members. Melessa recalled one dispute involving two Seward branch members who were upset about a decision Petitioner made and his response to the concerns they voiced. The members approached Melessa, who in turn raised the matter with Petitioner. Melessa said that Petitioner acknowledged that he could have managed the situation better and penned a letter to the members in which he took account of his role in the dispute. "It struck me as . . . the right thing to do," Melessa said.

Melessa was also satisfied with other aspects of Petitioner's performance, saying that Petitioner always met deadlines in fulfilling his Church responsibilities. He added, "if I need something done, [Petitioner] is one of the group I could call and rely on." Melessa also noted the clarity of Petitioner's communications and the sound judgment behind his comments at high council meetings.

According to Melessa, he and Petitioner did not discuss any details of Petitioner's legal practice until one or two months before the readmission hearing. In those conversations, Petitioner disclosed to Melessa that he was disbarred in Colorado and seeking readmission. Petitioner told Melessa that he was disbarred because did not return his clients' money after he failed to do work that the clients had paid him to perform, and because he had not responded to his clients' communications.

We also heard testimony from Kurt P. Leffler, a lawyer and member of the LDS Church. Leffler, a solo practitioner in criminal and domestic relations law, is based in Lincoln. Leffler and Petitioner served in the same or similar leadership roles within the Church, including as branch president, stake auditor, and member of the Lincoln Stake High Council. Leffler said that he first met Petitioner around 2015 but did not come to know him until they served together on the high council.

Like Melessa, Leffler was impressed by Petitioner's performance as Seward branch president, a role Leffler described as "*the* position of responsibility" in the branch. Leffler, who audited the Seward branch during Petitioner's tenure as president, said that the audits revealed no issues or concerns as to the branch's finances. The audits, he added, reflected that Petitioner complied with the Church's protocols that dictate how its funds must be handled. Those protocols include prohibitions against members handling money without another member present and keeping records of all collections, transactions, disbursements, and reimbursements. Leffler likened the Church's oversight system of protocols and audits to horizontal and vertical supports ensuring that members properly manage Church funds. Leffler noted that the Seward branch's financial records were better organized under Petitioner's leadership than other branches.

Leffler said he first learned a year or so ago that Petitioner had practiced law, when Petitioner approached him for a letter of support in the readmission process. Petitioner told Leffler that he had been disbarred and that he did not participate in his disciplinary case. Leffler then went online to read the disbarment opinion; he concluded that Petitioner's account of the matter was consonant with the opinion. Leffler said that he did not inform Church members of Petitioner's disbarment because Petitioner was no longer a branch president and Leffler was no longer on the high council. Had those circumstances been different, however, he would have "instantly" alerted Melessa about the disbarment.

Leffler recalled only five or six other discussions concerning the practice of law. None touched on how to manage a legal practice, he said, and Petitioner never asked him for help or advice about returning to practice. Leffler could not recall Petitioner ever discussing what he plans to do if he is readmitted. Though Leffler supports Petitioner's return to law, he readily acknowledged that legal practice is more demanding than is service as a branch president.

Campaign for City Council

In 2022, the chairwoman of a local political party approached Petitioner about running for Seward City Council in that year's election. The chairwoman, who knew Petitioner through the community, had already researched Petitioner's background and knew of his disbarment. Petitioner confirmed that he engaged in the misconduct described in the disciplinary opinion but added that he had become a different person and worked to improve himself every day. The chairwoman's party continued to support Petitioner's candidacy.

During the campaign, a member of the public posted on Seward's community Facebook page and asked Petitioner, "Are you the Dana Nottingham who is disbarred in Colorado?" Petitioner confirmed that he was and turned the conversation back to the issues in the election. Petitioner ultimately did not prevail in the election.

Marital Separation and Additional Mental Health Treatment

Petitioner's self-confidence increased as he took on greater responsibilities in his church and community. As he became more comfortable facing conflict, he said, he began to "stand up for [himself]" in his marriage. But this created new tensions in the marriage. In July 2023, his former spouse filed for divorce, which became final in October 2023.[55]

During discussions about ending their marriage, Petitioner's former spouse suggested that he seek therapy to cope with the marital turmoil and to assist him in dealing with life transitions.[56] Petitioner was receptive to the idea. As the branch president in Seward, Petitioner often counseled members of his congregation, and he observed that seeking outside help could spark positive change. In 2023, Petitioner met with a new therapist, and they focused on a holistic approach to his problems, emphasizing the importance of social, physical, and cognitive activities to maintain a balanced and strong psychological mindset.[57] Petitioner and his therapist addressed various stressors, including his disbarment, his goal to be readmitted to practice law, his desire to find consistent and meaningful work to support his lifestyle financially, his relationships with his family and children, and his pending divorce.[58] Petitioner's treatment provider evaluated him again in June 2024 and concluded that Petitioner appeared not to have experienced any further major depressive episodes since 2014.[59]

At the readmission hearing, Petitioner said that he has emerged from the metaphorical hole of his depression and is now "in the light." He seeks counsel with others when he feels sad, facing his mood rather than suppressing it and letting it fester. He remains open to professional

[55] *See also* Am. Stip. Facts ¶ 34.
[56] *See* Am. Stip. Facts ¶ 38.
[57] Am. Stip. Facts ¶ 38.
[58] Am. Stip. Facts ¶ 38.
[59] Am. Stip. Facts ¶ 38.

therapy, he said, but has not returned to his therapist since losing insurance coverage under his former spouse's plan.

Petitioner expressed happiness with his life. He is confident and in good health and feels "totally different than [he] felt years ago," he enthused. Petitioner hikes, camps, and enjoys time with his children, the youngest of whom is in high school. In addition, Petitioner is training for his first triathlon.

Petitioner's Decision to Seek Readmission

Petitioner testified that he first felt the stirrings of the desire to return to legal practice in 2020. Around that time, he began to reconsider his earlier renunciation of law practice. "As I'm changing and being a better person, maybe I can do this," he mused.

Petitioner applied to sit for the July 2023 Colorado bar examination. In the three months before the bar examination, Petitioner prepared for the test while also navigating his marital separation, moving to a new residence, and adjusting to a new life. Despite these challenges, he passed the bar examination.[60] In November 2023, he passed the multistate professional responsibility examination ("MPRE").[61] Petitioner said he was "amazed" at what he was able to accomplish in this period, as he successfully tackled tasks that needed his attention rather than avoiding or hiding from them. In doing so, Petitioner said, he showed himself that he had overcome the shortcomings that led to his disbarment.

On January 3, 2024, Petitioner reimbursed the CPF for $5,890.00, which represented the payments the CPF made to his former clients and a payment the CPF made to a third former client whose matter was not addressed in the opinion disbarring Petitioner.[62] Petitioner recalled that he first learned that he needed to repay the CPF in 2021, when he consulted a lawyer about his readmission. Until that time, he said, he believed the CPF functioned as an insurance program and did not require reimbursement. Petitioner said that he waited to reimburse the CPF because he could not afford to make the payments before his divorce was finalized in 2024.

On January 31, 2024, Petitioner filed his petition for readmission.[63] During this readmission proceeding, Petitioner received a copy of the "Order Re: Statement of Costs" issued in his disciplinary matter on July 27, 2015.[64] Before he received a copy of that order, he said, he was not

[60] Am. Stip. Facts ¶ 40; Exs. S6-S7.
[61] Am. Stip. Facts ¶ 40; Exs. S6-S7.
[62] Am. Stip. Facts ¶ 14; *see also* Exs. S2-S3.
[63] Am. Stip. Facts ¶ 4; Ex. S1.
[64] Am. Stip. Facts ¶ 10.

aware that the People had filed a statement of costs in the case.[65] On February 15, 2024, Petitioner remitted payment in the amount of $107.44 for the assessed costs.[66]

In early March 2024, Petitioner completed twenty credits of continuing legal education ("CLE") courses, including seven ethics credits and one diversity credit.[67] Petitioner focused on courses related to his shortcomings as a lawyer, he said, including proper legal practice management and trust account practices. In addition, Petitioner has reviewed decisions released by the Supreme Court of the United States as another way to maintain currency in the law.[68]

Petitioner briefly addressed his selection of witnesses for his readmission case, stating that his witnesses in this matter can speak to the person he is today and comment as to how he differs from the lawyer described in the disciplinary opinion. In contrast, Petitioner said, his acquaintances from Colorado have no recent knowledge of him and could not testify as to the person he has become. As such, they would not have helped him tell his story.

Petitioner's Current Activities and His Plans if Readmitted

Petitioner is not currently employed. He said that looking for work has been difficult with his disbarment "hanging over his head" and readily discoverable by an online search of his name. Living frugally and managing his finances, he supports himself with funds from the divorce and from an inheritance he received in 2022. But those funds are dwindling, he said, and he is seeking work in the legal field. Petitioner has focused his search on law offices in Nebraska but has been unsuccessful because of his disbarment, he said.

Looking ahead to his potential return to the practice of law, Petitioner expressed a sincere desire to be of service and to help clients in need. He likened this aspect of legal practice to his role as branch president, though he acknowledged that practicing law is "a totally different animal" in terms of pressure and time commitment.

Overall, Petitioner struggled to articulate any concrete plan for his return to law practice if he is readmitted. Instead, he offered a list of potential and often disparate scenarios, as if brainstorming: he wants to work in Nebraska but would move to Colorado for employment; he wishes to return to immigration law but would also consider working with Leffler, who does not practice in that field; he hopes to work in a firm or a setting with other lawyers but is open to returning to solo practice. He was similarly noncommittal about his course of action if he is not

[65] Am. Stip. Facts ¶ 10.
[66] Am. Stip. Facts ¶ 11. Neither the opinion disbarring Petitioner nor the order directing him to pay the People's costs provided for the accrual of interest on untimely paid costs.
[67] *See* Ex. S8.
[68] Am. Stip. Facts ¶ 39.

readmitted, saying only that he will seek employment and build a career in hopes of finding "[another] way to serve."

Petitioner assured the Hearing Board that if readmitted he will take "every precaution and safeguard necessary" to protect the public, the profession, and his reputation. For example, he said, if he returns to solo practice he will complete additional CLE courses about law practice management, participate in the local bar association and similar professional organizations, and consider engaging a practice monitor. He added that he will seek therapy if he returns to a depressive state. Beyond those definite steps, however, he offered only the general assurance that he has learned from his past mistakes and will not avoid difficult conversations with clients. "I evaluated myself. I'm in a different position," he said.

Petitioner did not describe how he would afford a practice monitor or a therapist given his tightening finances. In fact, he evinced little concern that he would falter under the financial and managerial pressures that afflicted his earlier practice. To the contrary, he expressed confidence that he would respond to those challenges by working harder and improving his practice now that he is no longer under the cloud of his unhappy marriage. "I one hundred percent attribute my struggles to the marriage strain I had, and that's no longer there," he said.

Notably, Petitioner did not identify any actions he has taken to address the shortcomings in his office and account management other than completing some CLE courses. He candidly acknowledged that if readmitted he is "not prepared tomorrow to hit the ground running [but is] prepared to prepare." He has not established relationships with lawyers whom he can ask for help in his practice. Indeed, he has not yet identified any lawyers other than Leffler, stating, "I don't live in Colorado anymore, and I'm not a lawyer in Nebraska."

III. LEGAL ANALYSIS

To be readmitted to the practice of law in Colorado under C.R.C.P. 242.39, a lawyer must prove by clear and convincing evidence that the lawyer has complied with applicable disciplinary orders and rules, is fit to practice law, and has been rehabilitated. Readmission signifies that the lawyer possesses all of the qualifications required of applicants admitted to practice law in Colorado.

As an initial matter, we find that Petitioner has satisfied the preconditions that C.R.C.P. 242.39(a)(1) requires for petitions to readmit: he filed his petition on January 31, 2024, more than eight years after his disbarment took effect on July 9, 2015,[69] and he passed the Colorado bar examination and the MPRE within the eighteen months preceding his petition, in

[69] Am. Stip. Facts ¶ 5.

July and November 2023, respectively. We also find that Petitioner's bid for readmission is not barred by C.R.C.P. 242.39(f),[70] as he has filed no other petitions for readmission.[71]

Compliance with Disciplinary Orders and Rules

The Hearing Board first considers whether Petitioner has complied with all disciplinary orders and rules, including the Rules of Professional Conduct.

The parties stipulate that Petitioner "substantially complied" with his obligations under the opinion disbarring him.[72] They agree that the "Order and Notice of Disbarment" dated July 9, 2015, required Petitioner to comply with the provisions of C.R.C.P. 251.28 "to the extent applicable."[73] They also agree that "[Petitioner] did not file any [a]ffidavit [p]ursuant to C.R.C.P. 251.28(d) at the time of his disbarment, as none of the notice and 'winding up' provisions applied to his circumstances."[74] According to the parties' agreement, those circumstances are: that Petitioner did not accept any new retainers or legal employment following the sanctions hearing in his disciplinary case; that he had no active clients to notify of his disbarment; that he had no pending matters in any court; and that he was not licensed in any other jurisdiction.[75]

Based on the parties' stipulation, we find that Petitioner substantially complied with disciplinary orders and rules.

Fitness to Practice Law

Next, we analyze whether Petitioner is fit to practice law, as measured by whether he satisfies the relevant eligibility requirements set forth in C.R.C.P. 242.39(d)(2)(C). That rule requires petitioners to prove by clear and convincing evidence that they can be honest and candid with clients, lawyers, courts, regulatory authorities, and others; that they can reason logically; that they use a high degree of organization and clarity in communicating with clients, lawyers, judicial officers, and others; that they are able to use good judgment on behalf of clients and in conducting professional business; that they act with respect for and in accordance with the law; that they exhibit regard for the rights and welfare of others; that they can comply with the Colorado Rules of Professional Conduct, the law, applicable rules, and orders of tribunals; that they are able to act diligently and reliably in fulfilling obligations to clients, lawyers, courts, and

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[70] "Successive Petitions. No petition for reinstatement or readmission under this section 242.39 may be filed within two years after issuance of a final decision denying a previous petition for reinstatement or readmission. . . ."

[71] Am. Stip. Facts ¶ 6.

[72] Am. Stip. Facts ¶ 9.

[73] Am. Stip. Facts ¶ 7.

[74] Am. Stip. Facts ¶ 7.

[75] Am. Stip. Facts ¶ 8.

others; that they are able to be honest and use good judgment in personal financial dealings and on behalf of clients and others; and that they can comply with deadlines and time constraints.

The parties stipulate that Petitioner can reason logically, recall complex factual information, and accurately analyze legal problems (C.R.C.P. 242.39(d)(2)(C)(ii)); act with respect for and in accordance with the law (C.R.C.P. 242.39(d)(2)(C)(v)); and exhibit regard for the rights and welfare of others (C.R.C.P. 242.39(d)(2)(C)(vi)).[76]

We begin our discussion of the specific factors by considering Petitioner's honesty and candor. Here, we struggle to harmonize incongruous evidence. For example, Petitioner's witnesses all attested to his trustworthiness, and we have no reason to doubt his ability to honestly respond to a question, as when he acknowledged that he was a disbarred lawyer during his city council run. But other evidence casts doubt on Petitioner's candor. In our view, Petitioner should have informed Church leaders that he was disbarred for converting client funds and other misconduct. But he never disclosed his discipline at any time before or during his appointments as counsellor, branch president, or high council member. His failure to be forthcoming is especially grievous because his leadership positions involved handling money and overseeing others handling Church funds. And though we acknowledge that Petitioner candidly discussed his disbarment with the local party leader when she approached him to run for city council, his disclosure is muted by the fact that she had already researched Petitioner and knew of his disbarment. Because we cannot conclude by clear and convincing evidence that Petitioner can be candid with clients, lawyers, courts, regulatory authorities, or others, we find that he has not established this eligibility requirement.

In contrast, we find that Petitioner's service in Church leadership roles demonstrates his ability to use a high degree of organization and clarity in his communications with others. Melessa and Leffler—both of whom are able communicators themselves—each praised Petitioner's ability to clearly and effectively discuss Church matters.

We also find that Petitioner demonstrated his ability to use good judgment on behalf of clients in conducting professional business. His audits received high marks from Leffler and others who reviewed his books. In addition, Petitioner effectively managed his branch's welfare program; neither Melessa nor Leffler knew of any complaints about Petitioner's decisions to approve or deny requests for assistance. We remain concerned that Petitioner could have exercised better judgment and disclosed his disbarment to Church leaders, but we believe that issue bears more on Petitioner's honesty and candor.

We also find that Petitioner demonstrated during his leadership of the Seward branch that he can comply with rules and orders. Leffler testified that Petitioner's audits showed that the branch had implemented and adhered to the Church's procedures for handling funds. In addition, during the pandemic Petitioner effectively managed the branch's return to in-person services and

[76] Am. Stip. Facts ¶¶ 42-44.

complied with applicable regulations and orders. In our view, this demonstrates Petitioner's ability to comply with the Colorado Rules of Professional Conduct as well as other rules and orders.

We next turn to Petitioner's ability to act diligently and reliably in fulfilling his obligations to parties in the legal system. In considering this eligibility requirement, we are mindful of Petitioner's testimony that the stress from his legal practice contributed to his failure to diligently pursue client matters and that those stressors disappeared from his life when he stopped practicing law. Though Petitioner demonstrated that he diligently and reliably fulfilled his obligations to his church and community, the evidence shows that those responsibilities did not carry a similar degree of pressure as his law practice, with the possible exception of the dispute with branch members over the return to in-person meetings during the pandemic. But the evidence suggests that Petitioner did not handle that matter appropriately in the moment, requiring Melessa's involvement and Petitioner's damage control. Otherwise, we saw no evidence that Petitioner has been tested in a high-stress environment that would resemble the pressure he faced—and would again face—in law practice. Accordingly, we are unable to find that Petitioner demonstrated by clear and convincing evidence that he can act diligently and reliably to fulfill his obligations to clients, lawyers, courts, and others. Even so, due to Melessa's testimony extolling Petitioner's reliability in meeting his responsibilities as branch president and as a member of the stake high council, we are convinced that Petitioner has the ability to comply with deadlines and time constraints.

We also consider whether Petitioner can be honest and use good judgment in personal financial dealings and on behalf of clients and others. Petitioner showed evidence of good judgment in his church-related work, and we commend him on that score. That Petitioner performed these duties within the framework of the horizontal and vertical supports Melessa and Leffler described, however, renders impossible a finding by clear and convincing evidence that Petitioner would meet this eligibility requirement in a solo legal practice or similar unsupervised environment. For example, though Petitioner showed that he handled Church funds appropriately, he was subject to rules that forbade him from handling that money alone. Rather, safeguards such as witnesses and audits are integrated throughout the process to check the risk of mishandling Church funds and to ensure compliance with Church rules. In our view, Petitioner's conduct under the aegis of these comprehensive safeguards, standing alone, does not equate to clear and convincing evidence that he can be honest and use good judgment in personal dealings and on behalf of clients and others. We acknowledge that no sure way to demonstrate such good judgment exists. But evidence showing that Petitioner appropriately handled money entrusted to him while he was not subject to such rigid external safeguards would have assuaged our concerns, as lawyers are expected to independently handle client funds. Petitioner offered no such evidence, however. Thus, we are unable to find by clear and convincing evidence that he can use good judgment in personal financial dealings and on behalf of clients and others.

In general, we are left with more questions than answers as to Petitioner's fitness to practice. What is clear to us is that Petitioner has done wonderful things in his church and in his

community since his disbarment. We hear in Petitioner's voice his passion and excitement for his work in the Church. Though some of that work speaks to Petitioner's fitness to practice law, the evidence before us does not meet his heavy burden to clearly and convincingly demonstrate his fitness to practice law. We base our determination not on the quality of Petitioner's service to his church but on the evidence showing that his responsibilities within the Church do not sufficiently translate to the skills required of a lawyer in legal practice. As discussed above, the safeguards that Melessa and Leffler described lead us to conclude that all of Petitioner's Church-related money handling was subject to external controls designed to ensure compliance with rules and procedures.[77] This is not typically the case in legal practice. As another example, we contrast the evidence showing that Petitioner's leadership roles generally entailed minor time commitments that did not give rise to the stress and pressure endemic to legal practice. On a related note, we juxtapose Petitioner's passion for his church service with the despondency he experienced during the final years of his legal practice.

In sum, then, Petitioner failed to present clear and convincing evidence that he can be honest and candid with clients, lawyers, courts, regulatory authorities, and others; that he can diligently and reliably fulfill his obligations to clients, lawyers, courts, and others; and that he can be honest and use good judgment in personal financial dealings and on behalf of clients and others. In our view, these essential eligibility requirements are especially critical given the nature of Petitioner's misconduct underlying his disbarment. Based on the record before us, we are unable to conclude that Petitioner is fit to practice law.

Rehabilitation

The final legal prong the Hearing Board must consider in this case is whether Petitioner has been rehabilitated from his misconduct. In gauging Petitioner's rehabilitation, we are charged with considering the circumstances and seriousness of his original misconduct, his conduct since being disbarred, how much time has elapsed, his remorse and acceptance of responsibility, restitution for any financial injury, and evidence that he has changed in ways that reduce the likelihood of future misconduct.[78] These criteria provide a framework to assess the likelihood that Petitioner will again commit misconduct.

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[77] We acknowledge, however, that some of Petitioner's work in the Church was independent in nature, and his congregation relied on his leadership.

[78] C.R.C.P. 242.39(d)(2)(A); *see also People v. Klein*, 756 P.2d 1013, 1015-16 (Colo. 1988) (relying upon an early edition of the Lawyers' Manual on Professional Conduct (ABA/BNA) 101:3005 to enumerate several rehabilitative considerations, including the petitioner's character, recognition of the seriousness of the misconduct, conduct since the imposition of the original discipline, candor and sincerity, recommendations of other witnesses, professional competence, present business pursuits, and community service and personal aspects of the petitioner's life). While some of the *Klein* factors are encompassed in our analysis, we do not rely on them as guideposts for our decision, as the factors now set forth in C.R.C.P. 242.39(d)(2)(A) largely mirror those articulated

We begin by acknowledging the serious nature of Petitioner's original misconduct. He failed to diligently pursue his clients' cases, he knowingly converted client funds, and he failed to abide by court orders. This misconduct, in our view, is quite serious.

Petitioner left the practice of law in 2014 during the proceeding that led to his disbarment. Nine years have passed since his disbarment took effect in July 2015. Shortly after his disbarment, Petitioner and his family moved to Seward. The move gave Petitioner a "clean slate" to find a new path outside of the practice of law. We have no doubt that he has done great work in his community and in his church in Seward, and we commend his overall conduct since his disbarment. Petitioner demonstrated that he successfully fulfilled his duties in his leadership roles within his church while complying with the stringent protocols that applied to his positions. The People concede that Petitioner is appropriately remorseful for his misconduct and that he has paid restitution for the financial injuries he caused. As a corollary, we also find that Petitioner has demonstrated appropriate acceptance of responsibility for his misconduct.

We then are left to determine whether Petitioner clearly and convincingly demonstrated that he has changed in ways that reduce the likelihood of future misconduct. Here, we are unable to find any objective metric of his improvement, as the record contains no clear evidence that demonstrates such a change. Indeed, we understand from Petitioner's testimony that he experienced the transformative "clean slate" in Seward precisely because he was free of the financial pressures and stress of practicing law. But Petitioner remains untested in the type of high-stress situations to which he attributed his misconduct, and he testified that he is again facing difficult financial circumstances following his divorce. Further, he did not describe any efforts to develop the professional and social connections that he lamented were absent before his disbarment, even while he acknowledged he will need support from the legal community if he resumes the practice of law. Finally, Petitioner offered no objective evidence linking his misconduct to his marital troubles or to his struggles with being conflict-avoidant. Thus, we are unable to conclude from his testimony alone that the resolution of either issue amounts to a change that reduces the likelihood of future misconduct.

In addition, as we described above, the evidence showing Petitioner's trustworthiness in managing funds under his control is too attenuated to convince us that he has changed such that he can be trusted to handle client money unsupervised.

In sum, Petitioner did not marshal convincing evidence showing that he is now able to respond to the stressors he testified to experiencing in his law practice. Nor did he demonstrate that he can appropriately handle client funds. In other words, Petitioner showed that he changed his environment, not his character. We are unable to conclude that he has clearly and convincingly demonstrated that he has changed in ways that reduce the likelihood that he would again engage in misconduct in the future. Because we are not convinced that Petitioner's progress serves to

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in an updated version of the ABA/BNA manual. *See* Lawyers' Manual on Professional Conduct (ABA/BNA) 101:3001 § 20.120.30, Bloomberg Law (database updated July 2020).

demonstrate he is unlikely to engage in future misconduct, we are unable to conclude by clear and convincing evidence that Petitioner is rehabilitated.

V. CONCLUSION

Petitioner has made great personal progress since he was disbarred in 2015. We acknowledge the work he has done in his church and in his community. Every indication is that he is a well-respected member of his branch and a tremendous asset to his community. For the purposes of ensuring the protection of clients in Colorado, however, these great strides fail to show Petitioner is rehabilitated or that he is fit to practice law.

VI. ORDER

1. The Hearing Board **DENIES** "Petitioner's Verified Petition for Readmission." Petitioner **DANA KIRK NOTTINGHAM**, attorney registration number **31944**, **IS NOT** readmitted to the practice of law in Colorado.

2. Under C.R.C.P. 242.39(g)(1), Petitioner **MUST** pay the costs of this proceeding. The People **MUST** submit a statement of costs **on or before September 19, 2024**. Petitioner **MUST** file his response, if any, **within seven days**. The PDJ will then issue an order establishing the amount of costs to be paid or refunded and a deadline for the payment or refund.

3. Any posthearing motion **MUST** be filed with the Hearing Board **on or before September 26, 2024**. Any response thereto **MUST** be filed **within seven days**.

4. Petitioner has the right to appeal the Hearing Board's denial of his petition for readmission under C.R.C.P. 242.34.

5. Under C.R.C.P. 242.39(f), Petitioner **MAY NOT** petition for readmission within two years of the date of this order.

DATED THIS 12th DAY OF SEPTEMBER, 2024.

BRYON M. LARGE
PRESIDING DISCIPLINARY JUDGE

ROBERT BACAJ
HEARING BOARD MEMBER

Katayoun A. Donnelly
KATAYOUN A. DONNELLY
HEARING BOARD MEMBER