***Patrick C. Hyde.* 21PDJ013. March 3, 2022.**

Following a reinstatement hearing, a hearing board denied Patrick C. Hyde (attorney registration number 14633) reinstatement to the practice of law under C.R.C.P. 251.29. On September 30, 2022, the Colorado Supreme Court affirmed the order without opinion. Hyde may not file another petition for reinstatement for two years.

In November 2018, Hyde was suspended for six months with the requirement that he petition for reinstatement, if at all, under C.R.C.P. 251.29(c). Hyde's disciplinary suspension was premised on his failure to follow recordkeeping requirements and his mishandling of funds held in trust, which resulted in the commingling of unearned funds with his own funds.

A majority of the Hearing Board concluded that reinstatement was not appropriate because Hyde failed to prove by clear and convincing evidence that he is fit to practice law and that he has been rehabilitated from his underlying misconduct.

The case file is public per C.R.C.P. 251.31. 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: PATRICK C. HYDE, #14633 **Respondent:** THE PEOPLE OF THE STATE OF COLORADO	Case Number: **21PDJ013**
AMENDED OPINION AND DECISION DENYING REINSTATEMENT UNDER C.R.C.P. 251.29(e)[1]	

Patrick C. Hyde ("Petitioner") seeks reinstatement of his law license after imposition of a six-month suspension from the practice of law, which took effect in January 2019. The suspension was premised on Petitioner's inadequate recordkeeping and mishandling of funds he held in trust, resulting in the commingling of unearned funds with his own funds. Petitioner has failed to prove by clear and convincing evidence that he is fit to practice law and has been rehabilitated from his underlying conduct. Therefore, he is not entitled to be reinstated to the practice of law.

I. PROCEDURAL HISTORY

On November 27, 2018, a hearing board issued an "Opinion and Decision Imposing Sanctions Under C.R.C.P. 251.19(b)," suspending Petitioner's law license for six months with the added requirement that he petition for reinstatement, if at all, under C.R.C.P. 251.29(c).

On June 28, 2019, Petitioner filed with the Presiding Disciplinary Judge ("the PDJ") a "Petition for Reinstatement" under C.R.C.P. 251.29(e).[2] A few months later he withdrew that petition.[3] More than a year thereafter, on March 9, 2021, Petitioner filed an amended petition.[4] Jacob M. Vos, on behalf of the Office of Attorney Regulation Counsel ("the People"), answered on March 11, 2021.

[1] The Hearing Board has amended this order under C.R.C.P. 60(a) to correct Petitioner's misspelled name in the caption.
[2] Ex. S21 (though Petitioner dated the petition July 28, 2019, he in fact filed it one month earlier).
[3] Ex. S24.
[4] Ex. S25 (submitted by Petitioner's former counsel, H.J. Ledbetter).

The PDJ presided over Petitioner's reinstatement hearing held on January 19, 2022, via the Zoom videoconferencing platform. The PDJ was joined on the Hearing Board by lawyers Douglas D. Piersel and Terry F. Rogers.[5] Petitioner appeared with his counsel, Troy R. Rackham, and Vos represented the People. The Hearing Board considered testimony from Petitioner, Jerry Lopez, Father Andre Y Sebastian Mahanna, and William O'Donnell III. The PDJ admitted stipulated exhibits S1-S34 as well as Petitioner's exhibit P1.

II. FINDINGS OF FACT

The findings of fact here are drawn from testimony offered at the reinstatement hearing, where not otherwise noted. Petitioner was admitted to practice law in Colorado on May 29, 1985, under attorney registration number 14633.[6] He is thus subject to the jurisdiction of the Colorado Supreme Court and the Hearing Board in this reinstatement proceeding.[7]

Petitioner's Background and Disciplinary History

Petitioner grew up in the Denver area. He served in the Air Force during the Vietnam War, then earned undergraduate degrees in French and German languages and cultural studies.[8] He successfully completed law school at the University of Denver College of Law, obtaining his law degree in 1982.[9] Since 1985, he has run a solo law practice specializing in immigration law, with an emphasis in representing clients in asylum, deportation, and related proceedings.[10] Petitioner estimates that he has handled over 30,000 cases during more than thirty years in private practice.

Petitioner has been formally disciplined three times. In January 2008, he stipulated to a private admonition for violating Colo. RPC 1.3 and 1.4(a).[11] The private admonition was premised on his failure to review a client's immigration application, which was denied because it was insufficient on its face, and his failure to adequately communicate with his client about the application.[12]

On July 6, 2016, a hearing board suspended Petitioner's law license for one year and one day, with three months served and the remainder stayed on his successful completion of a two-year period of probation.[13] In that case, Petitioner was found to have inadequately

[5] Hearing Board member Rogers was empaneled after Petitioner successfully moved to recuse Diana May from hearing the case.
[6] Stip. Facts ¶ 2.
[7] *See* C.R.C.P. 251.1(b).
[8] Ex. S34.
[9] Stip. Facts ¶ 1.
[10] Stip. Facts ¶ 3; Ex. S34.
[11] Ex. S1.
[12] Ex. S1.
[13] Stip. Facts ¶ 4; Ex. S2.

explained important legal matters to a client and failed to set forth the basis or rate of his fees in writing in contravention of Colo. RPC 1.4(b) and 1.5(b).[14] He then made a misrepresentation by omission when he neglected to tell his client that she had paid him more than the balance reflected in his own accounting ledger, thereby violating Colo. RPC 8.4(c).[15]

Petitioner appealed that opinion,[16] which the Colorado Supreme Court affirmed on February 2, 2017.[17] The sanction took effect on March 27, 2017. Petitioner thereafter filed an affidavit complying with C.R.C.P. 251.29(b) and paid all costs in the case.[18] His three-month served suspension ran from March 27 through June 27, 2017, after which he was reinstated to the practice of law, subject to a two-year period of probation. As part of his probation, he met regularly with his practice monitor, lawyer Teresa Casillas.[19] Petitioner also attended the People's ethics school in November 2017.[20]

Meanwhile, a separate disciplinary proceeding—case number 18PDJ030, the case from which Petitioner is seeking reinstatement here—moved forward, with a hearing on October 2, 2018. As set forth in the November 2018 disciplinary opinion, Petitioner was suspended for six months with the requirement that he petition for reinstatement.[21] The discipline was premised on his misconduct in commingling a third party's funds with his own and failing to maintain records related to his trust account and client billing.[22]

As described in that opinion,[23] Petitioner met on October 18, 2011, with a U.S. citizen named Yesica Trujillo, who was married to Armando Benjamin Ramos, an El Salvadorian citizen living in the United States without legal status and subject to a 2008 removal order. Trujillo spoke to Petitioner about Ramos's case and gave him a $1,000.00 money order for work that she believed he would perform in the case. The memo line of the money order read "Attorney fees," and Trujillo wrote in a street address with an apartment number. Petitioner provided Trujillo a receipt with the notation "Motion to Reopen." He deposited the $1,000.00 into his trust account under the name "Armando Benjamin Ramos Estrada." Two years later, even though Petitioner never performed legal services in the matter, he transferred $1,000.00 in the name of "Armando Ben Ramos Estrada" from his trust account into his operating account, erroneously assuming that he had somehow earned the funds.

[14] Ex. S2.
[15] Ex. S2.
[16] *See* Exs. S6-S9.
[17] *See* Ex. S3.
[18] Stip. Facts ¶¶ 6-7.
[19] Stip. Facts ¶¶ 8-9.
[20] *See* Ex. S25 at 2013-14.
[21] Stip. Facts ¶ 10; Ex. S4.
[22] Ex. S4.
[23] *See generally* Ex. S4.

In 2017, Trujillo and Ramos hired immigration lawyer William O'Donnell III, who moved to reopen the removal case, arguing in part that Petitioner provided ineffective assistance of counsel. O'Donnell contacted Petitioner in February 2017, expressing concern that Petitioner had never filed Ramos's motion to reopen and asking him to refund the $1,000.00. Petitioner initially offered to give Trujillo $750.00; when O'Donnell insisted on a full refund, Petitioner complied in March 2017.[24]

By transferring the funds from his trust account into his operating account, the People alleged, Petitioner commingled Trujillo's funds with his own, thereby breaching Colo. RPC 1.15(a) (2013), which required lawyers to hold client and third-party property separate from the lawyer's own property. Petitioner, meanwhile, insisted that trust accounts were reserved solely for client funds, and since neither Trujillo nor Ramos was an actual client, he properly transferred the $1,000.00 out of his trust account. To retain those funds in trust, he argued, would be to engage in commingling. The hearing board concluded that Petitioner violated the rule. It rejected his purported understanding of trust accounts and specifically noted that the plain language of the rule applies not only to client funds but to funds belonging to third persons. The hearing board concluded, "[r]egardless of whether he believed for a time that he had somehow earned the funds due to his failure to recognize Ramos's name, he nonetheless violated the rule because it is a lawyer's duty to ensure that records are clear and accurate enough to prevent the transfer of unearned funds out of trust accounts."[25]

The People also claimed that by failing to keep adequate records, Petitioner violated Colo. RPC 1.15(j) (2013), which required lawyer to maintain, among other things, an appropriate recordkeeping system identifying each separate person or entity for whom the lawyer holds money or property in trust, showing the payor of all funds deposited in such accounts, the names and addresses of all persons for whom the funds are or were held, the amount of such funds, the description and amounts of charges or withdrawals from such accounts, and the names of all persons to whom any such funds were disbursed. The hearing board concluded that Petitioner violated this rule by failing to document that Trujillo was the payor of the funds he received and by failing to record Trujillo's address. It rejected Petitioner's attempt to blame Trujillo for failing to give him a valid address, noting that she had provided a good address on the money order she gave him, and finding in any event that he was responsible for collecting an address that he deemed acceptable.

The People requested a six-month suspension with the requirement of formal reinstatement proceedings, while Petitioner seemed to suggest that no discipline at all was warranted. The hearing board noted that aggravating factors outweighed mitigating factors and specifically called attention to Petitioner's repeated misconduct despite his substantial experience as a lawyer. It also voiced concern that Petitioner "refuse[d] to acknowledge, or [wa]s unable to recognize, his wrongdoing," evincing a "seeming disregard for the Rules of

[24] Stip. Facts ¶ 12; Ex. S4.
[25] Ex. S4 at 453.

Professional Conduct . . ."[26] Adopting the People's recommendation, the hearing board suspended Petitioner for six months and required him to petition for reinstatement if he wished to resume the practice of law.

Petitioner sought a stay of his suspension pending appeal. The hearing board rejected his request on several grounds.[27] First, the hearing board opined that Petitioner's conduct in the proceeding showed that he misunderstood fundamental principles of professional conduct, despite having attended ethics school and undergone a lengthy period of practice monitoring. The hearing board characterized Petitioner's insistence that trust accounts are reserved solely for client funds as "nonsensical" and expressed concern that his narrow view of his fiduciary and recordkeeping duties posed a risk to the public, specifically to prospective clients.[28] Second, the hearing board worried that Petitioner's failure to take little, if any, responsibility for his actions augured poorly for his ability to ethically represent clients. And third, the hearing board questioned Petitioner's fitness to practice law. That he failed to review the ABA *Standards for Imposing Lawyer Sanctions* before his disciplinary hearing; that he improperly moved to discharge his 2016 disciplinary order under the instant case, rather than the relevant case[29]; and that one page of his notice of appeal was devoted to a claim on which he prevailed at trial[30] gave the hearing board pause as to whether he could perform coherent legal analysis. No "conditions of probation or supervision would ameliorate the risk to the public" posed by his continued practice of law pending appeal, the hearing board concluded.[31] Petitioner's suspension thus took effect on January 18, 2019.[32]

Events Since Petitioner's Suspension

After his suspension, Petitioner complied with C.R.C.P. 251.28(a)-(c), which required him to wind up his affairs, provide notice to parties in pending matters, and give notice to parties in litigation.[33] He also complied with C.R.C.P. 251.28(d) by filing an affidavit with the PDJ setting forth his pending matters and attesting that he had notified both his clients and all jurisdictions where he was licensed of his suspension.[34] Finally, he paid all costs associated with his disciplinary case.[35]

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[26] Ex. S4 at 459.
[27] *See* Ex. S13.
[28] Ex. S13 at 515.
[29] *See* Exs. S10, S12.
[30] Respondent had prevailed as to the People's claim premised on an alleged violation of Colo. RPC 1.15(i)(6) (2013); even so, he included the claim in his appeal. *See also* Ex. S14 at 1338-39 (repeating arguments as to Colo. RPC 1.15(i)(6) in opening brief on appeal).
[31] Ex. S13 at 516.
[32] Stip. Facts ¶ 11.
[33] Stip. Facts ¶ 13.
[34] Stip. Facts ¶ 14.
[35] Stip. Facts ¶ 15; Ex. S33.

Petitioner then appealed his discipline. In his opening brief, Petitioner challenged the People's claim that he had failed to reconcile his trust account records, even though he prevailed on that claim before the hearing board.[36] Throughout his brief, he maligned Trujillo and Ramos[37] and traduced O'Donnell's competency.[38] He also requested that the Colorado Supreme Court award him attorney's fees to compensate him for the People's "negligent and egregious investigation in th[e] action" against him.[39] His amended reply brief contained similar imprecations aimed at the People.[40] The Colorado Supreme Court affirmed the hearing board's opinion on August 30, 2019.[41]

Meanwhile, Petitioner petitioned for reinstatement pro se in June 2019.[42] In their answer, the People argued that the petition contained no supporting evidence and failed to mention rehabilitation.[43] Later that summer, Petitioner answered the People's discovery requests, again disparaging the People's integrity.[44] Soon thereafter, he withdrew his petition, insisting that the order requiring him to petition for reinstatement after his six-month suspension was "in conflict . . . [and] contradictory and outside the express language of [] Rule 251.29(c), and likely illegal."[45] In withdrawing his petition, Petitioner also remarked that as part of a showing of rehabilitation he would be required to admit he stole Trujillo's money and to present "some indication" that he would "not commit such crime in the future," which he was "not willing" to do.[46]

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[36] *See supra* note 29.

[37] *See, e.g.,* Ex. S14 at 1344 (calling Ramos a "fugitive under the law"); Ex. S14 at 1346 (accusing Ramos of marrying Trujillo without informing her of his immigration status and committing "deception, fraud, and deceit" on the court, disentitling the couple to the equity of the court); Ex. S14 at 1346-47 (alleging that the couple's union was, as a matter of immigration law, a "fraudulent marriage"); Ex. S14 at 1363-64 (maintaining that Ramos was a fugitive from justice and recriminating the couple for failing to come to the hearing with "clean hands," which, he said, rendered them undeserving of the equity of the hearing board).

[38] *See, e.g.*, Ex. S14 at 1345 (labeling O'Donnell "an unscrupulous attorney" who filed a "frivolous" motion to reopen); Ex. S14 at 1346 (calling O'Donnell "incompetent").

[39] Ex. S14 at 1368.

[40] *See, e.g.*, Ex. S18 at 1581 (opining that the People were subject to "undue and improper outside influence from other immigration attorney's [sic] . . . competing with [Petitioner] for immigration client's [sic], . . . suggesting not only at least bias on the part of the [hearing board], but corruption on the part of the [People]. Investigation of [Petitioner's] previous contacts and experiences would indicate the same corruption in the [People]."); Ex. S17 at 1504 (justifying his request for attorney's fees by suggesting that "the People's harassment" had interfered with his business earnings); *see also* Ex. S19 at 1523-24 (responding to the Board of Immigration Appeals' notice of intent to discipline by arguing that imposing reciprocal discipline would result in injustice, given the "corruption by the Disciplinary Judge, the Disciplinary Board, the [People], the unscrupulous law firm and their unscrupulous expert employee, as well as undue influence by immigration attorneys advising the [People] regarding the alleged incompetence of the [Petitioner] . . . .").

[41] *See* Ex. S24 at 1701.

[42] Ex. S21.

[43] Ex. S23.

[44] Ex. S22 at 1600-01.

[45] Ex. S24 at 1701. This argument ignored the plain language of C.R.C.P. 251.29(b), which read, "Unless otherwise provided by the Supreme Court, a Hearing Board, or the Presiding Disciplinary Judge in the order of suspension, an attorney who has been suspended for a period of one year or less shall be reinstated by order of the Presiding Disciplinary Judge . . ."

[46] Ex. S24 at 1701.

During his suspension, Petitioner was primarily occupied with two activities. First, he testified, at the beginning of his suspension he spent time referring matters to and consulting about those matters with various immigration lawyers in the Denver metro area. He referred matters to his wife, Martha Hyde, who came out of retirement to take over some of his cases. He assisted her and other lawyers to fill out immigration application forms, and he discussed with them the cases he referred.[47]

One such lawyer, Jerry Lopez, whom Petitioner has mentored for about a decade, averred that Petitioner acted as an outside observer for Lopez's law practice during the suspension, providing "essential guidance that has proven to be of [a] vital nature for our cases."[48] Lopez opined that Petitioner, whom he holds in high esteem, is a tenured, knowledgeable lawyer who has been "a guiding light" for his office, the immigration law bar, and the broader legal community. Given the great unmet demand for immigration law expertise, Lopez said, Petitioner's talents are needed now more than ever. Though Lopez was not aware of the nature of Petitioner's misconduct that led to his suspension, Lopez wholeheartedly endorsed his reinstatement.

As Petitioner testified, his second main pursuit while suspended was working alongside Fr. Andre Y Sebastian Mahanna, founder and president of the Apostolate of Our Lady of Hope/St. Rafka Mission of Hope and Mercy. Fr. Mahanna founded this nonprofit organization to provide emergency medical and basic needs assistance to persecuted Christian refugees in the Middle East. According to Fr. Mahanna, Petitioner began volunteering for the organization in April 2017, attending regular officers' meetings and board meetings. Further, Petitioner provided the organization free legal services: he drafted and reviewed independent contractor contracts; redrafted articles of incorporation and corporate bylaws; registered the organization as a nonprofit 501(c)(3) entity; incorporated an international affiliate in Lebanon; instituted two accounting systems; and advised Fr. Mahanna about employment issues and lobbying rules and regulations.[49] Using his immigration experience, Petitioner also counseled the organization about individual asylum matters and accompanied Fr. Mahanna to various advocacy meetings in Washington, D.C., including to a meeting with representatives from the Department of Homeland Security.

Fr. Mahanna testified that Petitioner notified him of Petitioner's suspension in 2019 and thereafter ceased to give the organization legal advice, instead merely providing business advice and referrals to community resources.[50] Although Fr. Mahanna acknowledged that he did not know the underlying reasons for Petitioner's suspension, he nonetheless urged the Hearing Board to reinstate Petitioner in light of Petitioner's "very caring character" and the selfless service he has rendered to the St. Rafka Mission.

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[47] *See also* Ex. S27 at 22. Petitioner asserts that he was always careful to not engage in the practice of law during his suspension.
[48] Ex. P1; *see also* Ex. S27 at 21.
[49] *See also* S25 at 2013.
[50] *See also* S27 at 23.

On March 9, 2021, Petitioner filed an amended petition for reinstatement under C.R.C.P. 251.29.[51] He notes in the amended petition that he successfully completed trust account school on October 16, 2020.[52] He also attests that between October and December 2020 he earned fourteen continuing legal education ("CLE") credits, including five credits awarded for attending trust account school and several other ethics credits awarded for training in topics related to law office management.[53]

In response to renewed interrogatories propounded by the People, Petitioner endorsed many of the same themes that appeared in his appeal and in his original petition for reinstatement: that the disciplinary hearing board's decision was an abuse of discretion and that O'Donnell, as his competition in the immigration law sphere, stood to benefit from his discipline.[54] He also repeated his legal rationale for removing Trujillo's money from his trust funds: that "[t]he Rules [of Professional Conduct] require that only money deposited for clients can be placed in the trust account."[55] Finally, he announced that he had discovered additional evidence—the Trujillo file—that he did not present at his disciplinary hearing. He remarked that the file likely would have caused the disciplinary hearing board to reach a different conclusion.[56]

At his reinstatement hearing, Petitioner explained that he had not been able locate his file for the Trujillo matter because it was labeled with Trujillo's name, not Ramos's, and because it had been misplaced in his 2014 archived files behind a file of a former client whose name starts with the same letters as Trujillo's. When he pulled the file for the former client, he noticed Trujillo's file, which contains notes on the folder as well as handwritten notes and other documents in the folder.[57] The file shows that Petitioner made several attempts to contact Trujillo in mid-December 2011, but the telephone number she provided was incorrect; that in late December 2011, Petitioner sent Trujillo a letter to another address she provided, but the letter was returned unclaimed; and that Petitioner called Trujillo again in early January 2012, but he received a message that the person he called was unavailable.[58]

Petitioner's Reflections on His Misconduct

According to Petitioner, his misconduct stemmed from his misunderstanding of the law due to its purported lack of clarity, his unquestioning reliance on the information his clients gave him, and a lack of law practice management software.

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[51] Stip. Facts ¶ 18.
[52] Stip. Facts ¶ 16; *see also* S25 at 2019-20.
[53] Stip. Facts ¶ 17; Ex. S32.
[54] *See* Ex. S27 at 6, 14.
[55] Ex. S27 at 15.
[56] Ex. S27 at 7-8.
[57] *See* Ex. S31.
[58] *See* Ex. S31 at 6-8, 40.

First, Petitioner conceded that his understanding of the law "was not absolutely correct." He explained that he thought he was permitted to hold only client funds in his trust account, attributing this misconception to a perceived ambiguity in Colo. RPC 1.15(a). He testified that because he knew Ramos was not a client,[59] he believed he had no choice but to remove Ramos's funds from trust, lest he be accused of commingling client and nonclient funds. But since that time, he maintained, the Rules of Professional Conduct have changed in ways that clarify his trust account obligations. When pressed to articulate those obligations, however, Petitioner's responses were somewhat garbled. Once, he remarked (correctly) that if he discovered that he did not know the identity of an owner of unearned funds held in his trust account, he could indefinitely hold that unearned money in trust or obtain the People's permission to turn over the unclaimed funds.[60] But at another point, he mused that he ought to have told Trujillo that he was prohibited from holding money for her until she or Ramos became clients. Further, on occasion he seemed to suggest that the proscription against commingling was designed to separate client funds from nonclient funds, rather than to separate unearned funds from earned funds. And once he appeared to claim that he had not made any mistakes in Trujillo's case at all.

Second, Petitioner asserted that some of his difficulties arose from his misplaced reliance on the information Trujillo gave him. He relied on Trujillo to give him an accurate mailing address, he said. Later, he relied on her best recollection of when they had last discussed the case, as his chronological filing scheme hinged on the year in which he last had contact with the client. He testified the Trujillo matter taught him that he must be "more leery" of the information his clients provide him.

Third, Petitioner stated that at the time of his misconduct he did not have a sophisticated law practice management software program of the caliber available today. Had he access to such software in 2011, he claimed, he would have been able to track affiliations between client and payor, link spouses, contemporaneously document communications, avoid lost files, and record the disposition of unearned funds. Acknowledging that his paper filing system was not effective in unusual situations, Petitioner expressed confidence that an electronic system would have prevented all of his mistakes in the Trujillo matter.

Petitioner testified that he accepts responsibility for his misconduct, and he promised to make changes to his methods of practice if he were to be reinstated. He said he intends to manage his law practice using a software program—without identifying which program he envisioned implementing—and to verify client information independently. He mentioned the possibility of practicing in a partnership with other lawyers, and he suggested obliquely that his optimal case load might be lower than the number of cases he

[59] The hearing board in Petitioner's underlying disciplinary case did not make this finding, instead declining to reach the question whether Ramos and Trujillo were properly considered Petitioner's clients. Ex. S4 at 455.

[60] Petitioner testified that he could donate those funds to charity; the Hearing Board assumes that he instead meant that he could remit unclaimed funds to COLTAF under the process set forth in Colo. RPC 1.15B(k).

handled before he was suspended. In all, Petitioner said, he loves helping people in critical legal situations, and he aspires to emulate Goethe, who worked into his late eighties. "I have no intention to stop until I can no longer serve the community," he avouched.

III. LEGAL ANALYSIS

To be reinstated to practice law in Colorado under C.R.C.P. 251.29(c), 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.[61] Reinstatement signifies that the lawyer possesses all of the qualifications required of applicants admitted to practice law in Colorado.[62]

Compliance with Disciplinary Orders and Rules

Under C.R.C.P. 251.29(c)(4), a lawyer petitioning for reinstatement must show compliance with all disciplinary orders and rules. Petitioner contends that he has complied with all provisions of the November 2018 disciplinary opinion, his January 2019 order of suspension, and the rules governing suspended lawyers. The People do not assert that Petitioner has failed to comply with the terms of his suspension arising from the Trujillo case, and the Hearing Board finds clear and convincing evidence that Petitioner complied with all obligations attendant to that suspension.[63]

Fitness to Practice Law

We next examine whether Petitioner is fit to practice law, as measured by whether he has maintained professional competence during his suspension and whether he is qualified to resume practicing law if reinstated.

Petitioner argues that his vast experience in immigration law, his efforts to stay current on CLEs, and his active engagement in charitable activities all demonstrate his fitness to return to legal practice. That he will be aided in his practice by more advanced technology, he says, should lend further comfort that he will be fit to practice going forward. In closing arguments, Petitioner's counsel urged the Hearing Board to disregard as irrelevant to Petitioner's fitness his "foolish choice" to represent himself in his earlier disciplinary matters. Petitioner knows immigration law and plans to "stay in [that] lane," his

[61] C.R.C.P. 251.29(b).

[62] C.R.C.P. 251.29(c)(3); C.R.C.P. 208.1(5)(a)-(j) (listing essential eligibility requirements for admission to practice law in Colorado).

[63] Though the People question Petitioner's compliance with the terms of his earlier suspension running from March 2017 through June 2017—they suggest that Petitioner may have engaged in the practice of law for the St. Rafka Mission's benefit while he was suspended in 2017—that conjecture falls outside the scope of our inquiry, which is focused on whether Petitioner complied with disciplinary rules and orders during the time of his suspension from which he must seek reinstatement.

counsel argued, so Petitioner's fumbles in the disciplinary arena—an area of law about which he knows little—should not be counted against him.

The People dispute that the errors in Petitioner's disciplinary filings are inconsequential. He flubbed matters involving elementary principles of law, they say, not hypertechnical legal arcana. They also insinuate that the Hearing Board cannot trust assurances that Petitioner will confine himself to practicing immigration law, citing the wide range of legal guidance he has provided Fr. Mahanna, including advice about business formation, nonprofit governance, and employment law.

Whether Petitioner is fit to practice is a close call, but the majority concludes that he has not met his burden of proof here. Five of the fourteen CLE credits he reported were for his required trust accounting course. The remaining nine credits were clustered in late 2020, which bespeaks a box-checking exercise for reinstatement, not an ongoing effort to maintain professional competence. Indeed, Petitioner presented no specific evidence of his engagement with the law during calendar year 2021. And, as discussed below, regardless of the number, timing, or recency of the CLEs, Petitioner's understanding of his trust account obligations does not seem to have meaningfully matured following this education.

Just as crucial, however, the majority agrees with the People that Petitioner has not overcome the serious questions about his fitness raised by the basic legal errors he made in his underlying disciplinary case and during his first attempt at petitioning for reinstatement. For instance, Petitioner could not explain, save for his own misunderstanding, why he argued an issue on appeal on which he had prevailed before the disciplinary hearing board. And he continued to defend at the reinstatement hearing his opening appellate brief's demand to assess fees against the People. Though the majority finds that Petitioner is probably competent to practice as an immigration lawyer, his basic procedural missteps in his disciplinary matters cause us to doubt his fitness in more generalized practice. Nor are we convinced that he would limit his practice solely to immigration matters; the majority worries that Petitioner may dabble in other areas of law, which could result in harm to recipients of his legal counsel. In short, Petitioner has not met his burden of proof to show that he is fit to practice law.

Rehabilitation

Finally, the Hearing Board must consider whether Petitioner has been rehabilitated from his misconduct. We cannot grant reinstatement simply on a showing that Petitioner has engaged in proper conduct or refrained from further misconduct during his suspension.[64] In assessing Petitioner's rehabilitation, we consider the seriousness of his original discipline[65] and whether he has experienced a change in his state of mind.[66] In this

[64] *See* C.R.C.P. 251.29(c)(3).

[65] *See Lawyers' Manual on Prof'l Conduct* (ABA/BNA) 101:3013 (2012) ("Examination of a lawyer's rehabilitation and fitness begins with a review of the seriousness of the original offense. . . .").

analysis we are guided by the leading case of *People v. Klein*, which enumerates several criteria for evaluating rehabilitation: 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 his life.[67] The *Klein* criteria provide a framework to assess the likelihood that Petitioner will again commit misconduct.

We begin by examining the seriousness of Petitioner's misconduct and whether he has addressed the shortcomings or weaknesses underlying that misconduct, since discipline is necessarily predicated upon a finding of some shortcoming, whether it be a personal or professional deficit.[68] We do so by first considering Petitioner's disciplinary record,[69] acknowledging at the outset that the three matters for which Petitioner was disciplined were not nearly as serious as other misconduct from which some lawyers have been reinstated. He made errors of accounting, recordkeeping, and communication—all lapses in law practice management, which, with the correct orientation, can be prevented from reoccurring.

As the majority sees it, the thread running through the three cases is Petitioner's attitude toward those lapses. Although his counsel insisted that Petitioner had developed humility, and although Petitioner stated that he accepted responsibility for his mistakes, his was not the mien of a humbled, remorseful lawyer. Instead, we observed a lawyer who lashed out at former clients, blamed successor counsel, and accused the People of working in league with his competitors. We also observed a lawyer who deflected his own responsibility by insisting that a newly discovered file exonerated him, hypothesizing that technological assists would have averted his mistakes, and attributing his misconduct to a lack of clarity in the operative rules at the time. These explanations seemed designed to minimize Petitioner's misconduct, but they do not really address the crux of the problem: Petitioner's failure to heed his obligations under the rules. The newly discovered file is, as

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[66] *See Cantrell*, 785 P.2d at 313; *In re Sharpe*, 499 P.2d 406, 409 (Okla. 1972).

[67] 756 P.2d 1013, 1015-16 (Colo. 1988) (interpreting language of C.R.C.P. 241.22, an earlier version of the rule governing reinstatement to the bar). We note that the *Klein* decision relies upon an early edition of the *Lawyers' Manual on Professional Conduct* (ABA/BNA) 101:3005, which listed the above factors for assessing the rehabilitation of lawyers seeking reinstatement. A new online practice guide, which draws on the manual, sets forth a number of other factors to consider when evaluating a lawyer's rehabilitation: the seriousness of the original offense, conduct since being disbarred or suspended, acceptance of responsibility, remorse, how much time has elapsed, restitution for any financial injury, maintenance of requisite legal abilities, and the circumstances of the original misconduct, including the same mitigating factors that were considered the first time around. *Lawyers' Manual on Professional Conduct* (ABA/BNA) 101:3001 § 20.120.30, Bloomberg Law (database updated July 2020). While some of these newly articulated factors are encompassed in our analysis, we do not explicitly rely on them as guideposts for our decision.

[68] *See In re Johnson*, 298 P.3d 904, 906-07 (Ariz. 2013) (approving a two-step process to show rehabilitation: first, identifying the weakness that caused the misconduct, and second, demonstrating that the weakness has been overcome); *Tardiff v. State Bar*, 612 P.2d 919, 923 (Cal. 1980) (considering a petitioner's character in light of the shortcomings that resulted in the imposition of discipline).

[69] *See* C.R.C.P. 251.29(e) ("In deciding whether to grant or deny the petition, the Hearing Board shall consider the attorney's past disciplinary record.").

the People put it, a red herring. The file reveals that Petitioner attempted to communicate with Trujillo, but it does not relate to—and thus does not absolve—his mishandling of unearned funds. In a similar vein, law practice management software may have helped him to better document his interactions with Trujillo, but it would not have cured his misreading of the trust account rules, which the disciplinary hearing board considered to be "quite clear."[70]

As for Petitioner's conduct since the imposition of his discipline, including his business pursuits and community service, we commend his generosity in performing countless hours of volunteer work for the St. Rafka Mission. We also acknowledge that Lopez and Fr. Mahanna value Petitioner's advice and wish to see him reinstated, even though neither man could say why Petitioner had been suspended. But Petitioner's acts of charity and the personal recommendations made on his behalf do not show that he has been rehabilitated from his failings in law practice management.[71]

Overall, we did not observe a lawyer who appeared to have absorbed from his discipline the lessons of which funds may go in trust and when those funds may be removed. He was unable to answer those questions clearly, even though he has worked with a monitor and attended both trust account school and ethics school. For that reason, the majority is skeptical that Petitioner has undergone a change in his state of mind such that we can be confident that he is unlikely to commit similar misconduct in the future. Ultimately, the majority concludes Petitioner has failed to marshal clear and convincing evidence that he has been rehabilitated.

IV. CONCLUSION

Petitioner appears to have a fixed understanding of his obligations under the Rules of Professional Conduct, and no amount of education or intervention has managed to meaningfully budge him from that preconceived view. As a result, the majority finds that Petitioner has failed to demonstrate by clear and convincing evidence that he is fit to practice or that he has undergone a genuine change in character that will ensure protection of the public. Petitioner's amended petition for reinstatement thus must be denied.

[70] Ex. S4 at 457.

[71] Petitioner's hearing brief declares that if he is reinstated he "plans to work in a firm with a structured environment to ensure proper handling of client payments, trust accounting, administrative matters, docketing, and client communications." Pet's Hr'g Br. at 9. But Petitioner's testimony about this issue was in fact equivocal, suggesting that he has not done much detailed thinking about the contours of his legal practice if he were to be reinstated. He mentioned no concrete plan or partnership offer, only hazy possibilities.

V. ORDER

1. The Hearing Board **DENIES** Petitioner's "Amended Petition for Reinstatement." Petitioner **PATRICK C. HYDE**, attorney registration number **14633**, **SHALL NOT** be reinstated to the practice of law in Colorado.

2. Under C.R.C.P. 251.29(i), Petitioner **SHALL** pay the costs of this proceeding. The People **SHALL** submit a statement of costs **on or before Thursday, March 17, 2022**. 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 Thursday, March 23, 2022**. 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 reinstatement under C.R.C.P. 251.27.

5. Under C.R.C.P. 251.29(g), Petitioner **MAY NOT** petition for reinstatement within two years of the date of this order.

HEARING BOARD MEMBER TERRY R. ROGERS, *dissenting*:

I respectfully dissent from the majority's conclusion that Petitioner has proved neither his fitness to practice nor his rehabilitation from his underlying misconduct.

In my view, Petitioner is fit to practice. He has attended trust account school and ethics school. He has worked with a practice monitor. And he has completed more than a dozen CLE credits, many of which were focused on improving law practice management. I believe he has learned the lessons from his misconduct. He testified that he must communicate with clients, document his fee structure in writing, and keep unearned fees in his trust account.

I also believe that Petitioner has been rehabilitated. In reaching this conclusion, I consider Petitioner's activities to improve his community and to help others. He cares about his clients and wishes to be of service, evidenced both by his decades of practice as an immigration lawyer and by his charity work on behalf of the St. Rafka Mission. To deny his reinstatement is to deprive Coloradans access to the services of a skilled and experienced immigration lawyer—services that are in short supply and high demand.

I also consider the time that has elapsed between this proceeding and Petitioner's misconduct, which was not nearly as egregious or harmful as the types of professional failings that normally necessitate a lawyer to petition for reinstatement. To deny his reinstatement is to bar him from petitioning for reinstatement for another two years. Given that he has already been suspended for three years at this juncture, he will have served a suspension of more than five years before he can again petition to regain his license. But under the rules, a lawyer suspended for more than five years is required to pass the bar examination before seeking reinstatement. As a result, denying his petition now is tantamount to disbarring him, a result that is far too harsh a response to Petitioner's errors in law practice management.

I therefore dissent. I would reinstate Petitioner to the practice of law.

DATED THIS 31st DAY OF MARCH, 2022.
Nunc Pro Tunc to March 3, 2022.

William R Lucero

WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

/s/ Douglas D. Piersel

DOUGLAS D. PIERSEL
HEARING BOARD MEMBER

/s/ Terry F. Rogers

TERRY F. ROGERS
HEARING BOARD MEMBER