***People v. Alfonso S. Cabral*. 16PDJ003. August 12, 2016**.

Following a reinstatement hearing, a hearing board denied Alfonso S. Cabral (attorney registration number 18328) reinstatement to the practice of law under C.R.C.P. 251.29. Cabral may not file another petition for reinstatement for two years.

In 2011, Cabral was suspended from the practice of law for three years for neglecting three client matters, repeatedly failing to communicate with his clients, and engaging in conduct prejudicial to the administration of justice. The length of his suspension was based in large measure on his extensive history of prior discipline.

A hearing board denied Cabral's reinstatement petition because he failed to marshal clear and convincing evidence that he has been rehabilitated and that he is fit to practice law.

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: ALFONSO S. CABRAL **Respondent:** THE PEOPLE OF THE STATE OF COLORADO	Case Number: **16PDJ003**
OPINION AND DECISION DENYING REINSTATEMENT UNDER C.R.C.P. 251.29(e)	

In 2011, Alfonso S. Cabral ("Petitioner") was suspended from the practice of law for three years for neglecting three client matters, repeatedly failing to communicate with his clients, and engaging in conduct prejudicial to the administration of justice. The length of his suspension was based in large measure on his extensive history of prior discipline. In this reinstatement proceeding, Petitioner seeks reentry to the practice of law. But he failed to present clear and convincing evidence that he is fit to practice law and has been rehabilitated. Because he has not met his burden of proof, his petition for reinstatement must be denied.

I. PROCEDURAL HISTORY

Petitioner filed a "Petition for Order of Reinstatement" on January 12, 2016, with Presiding Disciplinary Judge William R. Lucero ("the PDJ"). Katrin Miller Rothgery, Office of Attorney Regulation Counsel ("the People"), answered the petition on January 25, 2016. Petitioner did not timely comply with the PDJ's prehearing deadlines in this matter, filing his witness list one day late and his prehearing brief three days late. He also neglected to give the People any documents prior to the prehearing deadline and was thus unable to stipulate to the admission of any exhibits.

On May 24, 2016, a Hearing Board comprising Cynthia F. Covell and John E. Hayes, members of the bar, and the PDJ held a reinstatement hearing under C.R.C.P. 251.29(d) and 251.18. Petitioner appeared pro se, and Rothgery attended on behalf of the People. The Hearing Board considered testimony from Kathleen Olano, Sheyanne Hurtado, Miles Cabral,

Jesusita Mondragon, Brien Darby, and Petitioner.[1] The PDJ admitted Petitioner's exhibits 4-7 and the People's exhibits A, C, and F.

II. FINDINGS OF FACT

The findings of fact here—aside from the sections describing Petitioner's disciplinary history—are drawn from Petitioner's testimony at the reinstatement hearing, where not otherwise noted.

Petitioner took the oath of admission and was admitted to the bar of the Colorado Supreme Court on April 27, 1989, under attorney registration number 18328. He is thus subject to the jurisdiction of the Colorado Supreme Court and the Hearing Board in this reinstatement proceeding.[2]

The Basis for Petitioner's Discipline and His Disciplinary History

On February 3, 2011, a hearing board suspended Petitioner in case number 10PDJ077 for three years for his misconduct in three client matters, the details of which are summarized below.[3] The hearing board applied five aggravating factors (prior discipline, multiple offenses, refusal to acknowledge the wrongful nature of his conduct, vulnerability of victim, and substantial experience) and two mitigating circumstances (absence of a dishonest or selfish motive and the remoteness of three of Petitioner's prior disciplinary offenses).[4] In determining the appropriate sanction for his misconduct, the hearing board was "most influenced" by the "extent and similarity" of Petitioner's disciplinary history, finding that he had an extensive past record of lack of diligence, neglect, incompetence, and conduct prejudicial to the administration of justice.[5] Although the hearing board found that Petitioner's conduct fell "just short of actual abandonment or an established pattern of neglect," the hearing board nevertheless determined that a lengthy suspension was warranted when considering his misconduct in light of his past discipline.[6]

Alvarez Matter

On June 17, 2008, Emily Pacheco filed a lawsuit in Denver District Court against Maria Alvarez, alleging claims for breach of contract and unjust enrichment based upon Alvarez's apparent default on a $50,000.00 promissory note.[7] On July 2, 2008, Alvarez met with Petitioner, and he agreed to represent her in the lawsuit.[8]

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[1] Mondragon and Darby testified by telephone.
[2] *See* C.R.C.P. 251.1(b).
[3] *See* Ex. A for the hearing board's complete decision in case number 10PDJ077.
[4] Ex. A at 0011-12.
[5] Ex. A at 0013.
[6] Ex. A at 0013; *see also* Ex. A at 0012 ("In light of the multiplicity of [Petitioner's] prior disciplinary offenses, his pattern of misconduct, and his refusal to acknowledge the wrongful nature of his conduct, we conclude [Petitioner] should be suspended for three years.").
[7] Ex. A at 0002.
[8] Ex. A at 0002.

The Denver District Court notified Alvarez and Pacheco on September 18, 2008, that Pacheco's lawsuit would be dismissed on October 20, 2008, due to her failure to prosecute.[9] Petitioner gave Alvarez a copy of the court's notice, advised her that the case was closed, and told her it was unlikely that Pacheco would refile her case.[10] Alvarez considered the matter over.[11] After Pacheco's case was dismissed, however, Petitioner consented to a change of venue to Arapahoe County District Court on October 17, 2008, and that court issued a case management order a few weeks later.[12] Petitioner did not inform Alvarez of these developments, and instead filed an answer on her behalf on November 6, 2008.[13] The court then set the case for trial on March 5, 2009.[14] Pacheco's attorneys filed disclosures and a motion for summary judgment in December 2008.[15]

Petitioner sent Alvarez a letter on January 5, 2009, written in English, informing her that he had received the motion for summary judgment. In that letter, he also indicated that Alvarez had not contacted Petitioner's office for quite some time, and he informed her that if she did not contact him within ten days, he would withdraw from her case.[16] Alvarez, who could not read English, went to Petitioner's office after receiving his letter and waited for him, but he never appeared.[17] She placed telephone calls to him and asked his receptionist about the letter.[18] Alvarez was unable to reach Petitioner after receiving his letter.[19] Petitioner never filed a response to Pacheco's summary judgment motion, nor did he seek an extension of time within which to file a response.[20] During that time, Petitioner received numerous telephone calls from Pacheco's attorney, attempting to discuss the case and to coordinate the filing of a trial management order, but Petitioner never returned the attorney's calls.[21] Pacheco's attorney informed that court that Petitioner had been unresponsive to his communication attempts.[22]

On February 6, 2009, the court granted summary judgment in Pacheco's favor, awarding her a judgment of $73,435.36 against Alvarez.[23] Petitioner received a copy of the order granting summary judgment, but he did not notify Alvarez. Instead, Alvarez received notice from the court.[24]

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[9] Ex. A at 0003.
[10] Ex. A at 0003.
[11] Ex. A at 0003.
[12] Ex. A at 0003.
[13] Ex. A at 0003.
[14] Ex. A at 0003.
[15] Ex. A at 0003.
[16] Ex. A at 0003.
[17] Ex. A at 0004.
[18] Ex. A at 0004.
[19] Ex. A at 0004.
[20] Ex. A at 0004.
[21] Ex. A at 0004.
[22] Ex. A at 0004.
[23] Ex. A at 0004.
[24] Ex. A at 0004.

The hearing board concluded that Petitioner's conduct in the Alvarez matter violated Colo. RPC 1.3, which requires a lawyer to act with reasonable diligence and promptness when representing a client, and Colo. RPC 1.4(a), which mandates that a lawyer promptly communicate and reasonably consult with clients about the status of their matters.[25] He also prejudiced the administration of justice in violation of Colo. RPC 8.4(d).[26]

Michel Matter

In February 2008, Ernesto Michel was convicted of several crimes in Alamosa County District Court, including third-degree assault, resisting arrest, and criminal mischief.[27] After his conviction, Michel informed the Alamosa Probation Department that his pre-sentence investigation report was incorrect, because it referred to a New Mexico case that was unrelated to him.[28] The probation department told Michel that it would file an addendum with the court requesting that case to be removed, which it did.[29]

Michel was worried that his pre-sentence report contained additional errors, so he hired Petitioner to fix the report and paid him $500.00.[30] On August 12, 2008, Petitioner entered his appearance in the criminal matter, but sometime between September 15 and October 1, 2008, Michel terminated the representation.[31] Petitioner refunded Michel's $500.00 retainer on October 1, 2008.[32] Petitioner neglected to file a motion to withdraw, however, and remained as counsel of record for Michel.[33] Michel later attempted to contact the court clerk, but the clerk refused to communicate with him because Petitioner was listed as his attorney of record.[34] Michel called Petitioner and requested that he withdraw from the case, but Petitioner failed to respond and never filed a motion to withdraw.[35] Petitioner's conduct prevented Michel from obtaining information about his case for nearly two years.[36]

In the Michel matter, the hearing board found that Petitioner's conduct transgressed Colo. RPC 1.3 and Colo. RPC 1.16(a)(3), which provides that a lawyer must promptly withdraw from representation of a client if the lawyer is discharged.

Loera Matter

[25] Ex. A at 0005.
[26] Ex. A at 0005.
[27] Ex. A at 0005.
[28] Ex. A at 0005.
[29] Ex. A at 0005.
[30] Ex. A at 0006.
[31] Ex. A at 0006.
[32] Ex. A at 0006.
[33] Ex. A at 0006.
[34] Ex. A at 0006.
[35] Ex. A at 0006.
[36] Ex. A at 0009.

On June 25, 2008, Petitioner filed in Arapahoe County District Court a petition for allocation of parental responsibility on behalf of his client, Jesus Loera.[37] On November 12, 2008, Loera's wife filed a motion for contempt, alleging that Loera had willfully disobeyed the child support order.[38]

On January 5, 2009, a court clerk set a hearing on the contempt citation for 10:00 a.m. on April 30, 2009, and set a hearing on the petition for allocation for 3:00 p.m. that same day.[39] But on February 23, 2009, the court issued an order to show cause concerning the petition for allocation, stating that it did not have jurisdiction to determine allocation of parental responsibilities and parenting time issues.[40] The parties were required to show cause in writing no later than March 10, 2009, as to why the court should not dismiss the motion for allocation, vacate the hearing on that motion, and require Loera to instead pursue a course of action in the children's home state.[41]

The order to show cause was served on Petitioner through the court's e-filing system.[42] Petitioner did not respond to the show cause order.[43] Instead, on April 13, 2009, Petitioner filed a motion to withdraw as counsel.[44] He did not serve his client with this motion, and it was not granted by the court.[45]

Petitioner failed to appear for the contempt hearing on April 30, 2009. Loera appeared and told the court that Petitioner had promised to attend.[46] Petitioner did not appear for the hearing to determine allocation of parental responsibility held that afternoon, either.[47] Loera appeared for this hearing.[48] The court called Petitioner's office and cell phone numbers at the beginning of the hearing but could not reach him.[49] The court did not proceed with the hearing in Petitioner's absence.[50] Petitioner never filed any document with the court explaining his failures to attend the hearings and to respond to the court's order to show cause.[51] The contempt hearing was rescheduled for May 2009.[52] Petitioner was ordered to appear, which he did, and the parties reached a resolution of the contempt matter.[53]

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[37] Ex. A at 0006.
[38] Ex. A at 0006-07.
[39] Ex. A at 0007.
[40] Ex. A at 0007.
[41] Ex. A at 0007.
[42] Ex. A at 0007.
[43] Ex. A at 0007.
[44] Ex. A at 0007.
[45] Ex. A at 0007.
[46] Ex. A at 0007-08.
[47] Ex. A at 0008.
[48] Ex. A at 0008.
[49] Ex. A at 0008.
[50] Ex. A at 0008.
[51] Ex. A at 0008.
[52] Ex. A at 0008.
[53] Ex. A at 0008.

The hearing board concluded that Petitioner's misconduct in the Loera matter contravened Colo. RPC 1.3 and Colo. RPC 8.4(d).

Petitioner's Prior Disciplinary History[54]

Aside from his three-year suspension imposed in 2011, Petitioner has been disciplined on eight other occasions, as described below.

On December 18, 1991, Petitioner received a private letter of admonition for neglect and conduct prejudicial to the administration of justice in a client matter and for dishonesty and obstructing the course of his disciplinary proceeding.[55] Petitioner received a second private admonition on October 29, 1992, for entering into a contingent fee agreement in a criminal case and for handling a legal matter without adequate legal preparation.[56] On December 29, 1995, Petitioner received a third letter of admonition for repeatedly failing to communicate with his client about a case.[57] Petitioner was publicly censured on January 17, 1995, for neglect and conduct prejudicial to the administration of justice in his handling of two client matters.[58] Petitioner then received a letter of admonition on February 18, 1997, for failing to adequately communicate with his client about the nature of a release the client signed in connection with a settlement.[59]

On May 10, 2000, Petitioner was suspended for ninety days, all stayed upon successful completion of a two-year period of probation, for conduct that included commingling of funds and neglect of two client matters.[60] Petitioner received a public censure on October 21, 2008, imposed in a reciprocal disciplinary proceeding based on the same sanction ordered by the Tenth Circuit for his incompetence and lack of diligence in matters before that tribunal.[61] On September 21, 2009, Petitioner was suspended for sixty days, all stayed upon the successful completion of a two-year period of probation, for conduct that included his failure to adequately supervise non-lawyer staff in two separate client matters, failure to appear at a court appearance in one client matter, failure to appear for his own contempt hearing, communicating directly with an opposing party represented by counsel without the opposing counsel's consent, incompetence in his interpretation of a particular court order, and bringing a frivolous proceeding based on his incompetent reading of the court order.[62]

[54] *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.").
[55] Ex. F at 0001-02.
[56] Ex. F at 0003-04.
[57] Ex. F at 0011-12.
[58] Ex. F at 0005-10.
[59] Ex. F at 0013-14.
[60] Ex. F at 0015-17.
[61] Ex. F at 0027-46.
[62] Ex. F at 0047-75.

Notice to Clients After His 2011 Suspension

Once Petitioner's three-year suspension took effect in 2011, he was required to notify his clients of his discipline under C.R.C.P. 251.28(b) and to file an affidavit under C.R.C.P. 251.28(d) indicating, in part, that he had so notified his clients. Petitioner did not inform any clients of his suspension, nor did he file the required affidavit.[63]

In 2014, Petitioner filed a petition for reinstatement, which he later withdrew. During their investigation of that petition, the People served Petitioner with interrogatories and requests for production of documents.[64] Petitioner responded to the People's interrogatories, indicating that he had complied with C.R.C.P. 251.28(b) but had not satisfied the requirements of C.R.C.P. 251.28(d) due to an oversight.[65] He also stated that he did not have copies of the letters he sent to each client along with proof of service because the letters had been shredded.[66]

Yet Petitioner testified at his reinstatement hearing that the reason he did not comply with C.R.C.P. 251.28(d) was that he had no clients in 2011 to notify of his suspension. He contended that when he sold his law practice to his son, Miles Cabral, in early 2010, he did not retain any clients. He stated that Miles instructed him to send letters to each of his clients informing them of the sale and asking them whether they wanted to keep Miles as their attorney. Petitioner maintained that he sent the letters, as instructed, but that they had since been shredded. It was those letters, he said, that he referred to in his response to the People's discovery requests. Petitioner testified that he was not being dishonest with the People, as he felt that his responses were appropriate and inclusive.

Testimony at the Disciplinary Hearing

Petitioner's Personal and Professional Background

Petitioner was born in Walsenburg seventy-two years ago. Petitioner testified that his father immigrated to the United States from Mexico to work in the coal mines. His mother was a housewife. Petitioner's father passed away when he was five, after which he, his mother, and his five siblings moved to a west Denver neighborhood. Petitioner said that his family survived on welfare, and when he was ten, he began selling and delivering newspapers as a source of income.

When Petitioner was fourteen years old, he purchased a car for $35.00 and delivered packages to the airport after school. At one point, he quit high school to work full-time, but his mother eventually convinced him to return to school to graduate, and he did. Petitioner later enlisted in the U.S. Marines and was able to travel the world. He eventually left the

[63] *See* C.R.C.P. 251.28(d) (requiring a suspended attorney to file an affidavit with the Colorado Supreme Court or the Hearing Board showing that the attorney notified clients of the suspension).
[64] *See* Ex. C.
[65] Ex. C at 21 (indicating that all requirements of C.R.C.P. 251.28(b) were met but that his affidavit was not filed due to an oversight).
[66] Ex. C at 26 (indicating that he had shredded the letters).

Marines and enrolled in the University of Colorado at Denver, obtaining a degree in education. While attending college, he worked in construction full-time. Petitioner received a master's degree in education from the University of Colorado and a law degree from the University of Denver.

After graduating from law school in 1989, Petitioner took the bar examination and started his own law practice, which he managed for nearly twenty years. During those two decades, Petitioner said, he had "thousands of success stories." In 2009, his business grew uncontrollably, however, and at one point he had over 600 open case files. In February or March 2010, he sold his law practice to his son Miles. He had approximately fifty active cases, and all of those clients went to Miles.

Petitioner's Reflections About His 2011 Suspension

During the reinstatement hearing, Petitioner acknowledged that his neglect of client matters was his biggest failing while he practiced law. He said that this neglect stemmed from the rapid growth of his law practice and his failure to restrict that growth. He also speculated that his neglect resulted from substandard office management, including his failure to pay attention to detail, lack of organization, and poor docketing and calendaring systems. Petitioner described himself as "a mess" seven to eight years ago. In fact, when he was practicing law then, he was overwhelmed on a daily basis, as his life and law practice were "spiraling out of control," and he harbored feelings of inadequacy as a lawyer. He was also in poor health: he weighed 100 pounds more than he does today, and he and his wife had poor eating habits. He has since filed for divorce. Petitioner offered no testimony about his nine prior disciplinary offenses other than to state that five of those offenses were remote in time.

Petitioner expressed remorse for his misconduct in the Alvarez, Michel, and Loera matters. Thoughts about his neglect of client matters keep him awake at night, he said. He is not proud of how he handled those matters and hopes to receive a second chance. Being suspended after working hard to obtain his law license and enjoying a long legal career was one of the worst things that ever happened to him, he attested. But he stated that his three-year suspension was justified. In fact, he said his suspension was a blessing in disguise because he was on a downward spiral, both health- and career-wise, and he had sunk into the depths of depression. After having several years to reflect on his past misconduct, he can admit now that his conduct was wrong, he said. Petitioner described himself as a sinner who has seen the light. Today he is ready to take on the responsibilities of being a good lawyer, is aware of how to prevent neglect, and wants to be the "poster boy for reinstated attorneys." Petitioner said that he is humbled, shamed, and embarrassed by his previous attitude, and he urged the Hearing Board to allow him a fresh start. He opined that he has undergone a meaningful transformation and does not believe that reinstating his license would endanger the public.

Petitioner's Activities Since His Suspension

Since his suspension, Petitioner has strived to help as many people as he can. He is bilingual, and he testified that he assists other residents in his apartment complex when they need a Spanish interpreter or when they need something as simple as transportation to a doctor's appointment. He has led a voter registration drive at his apartment building and volunteered as a voting judge during elections so he can help Spanish speakers. He testified that he treats people well, goes to church, and has never said a bad word to anyone. He believes that his character is worthy and he prides himself on his honesty. As an example, he testified that he has found a number of wallets containing cash on the street and personal belongings left behind in church, and he has returned every single item.

Petitioner has not been employed on a regular basis during his suspension, as he considers himself retired. But he did work for his son Miles for ten months, ending his employment in October 2015 to focus on his petition for reinstatement. While at Miles's firm, Petitioner stated that he organized files, rewrote fee agreements, ran errands, and performed very limited tasks. He completed no legal work, other than basic legal research assignments. Petitioner testified that during his time with Miles he learned how to run an organized law firm. According to Petitioner, Miles ran his office very differently from the way Petitioner had practiced. Petitioner observed Miles's system for docketing matters, client scheduling, and calendaring—all of which he says were impeccable—and gained insight into the importance of these tasks and communication with clients. He said, without elaboration, that he has adopted these checks and balances in his own life.

Miles confirmed that Petitioner worked with him for ten months in 2015, for approximately four to six hours a day. Miles noted that when Petitioner came to work for him, Petitioner wanted to learn how Miles ran his firm. Miles testified that although he hoped Petitioner would give him a second opinion about his cases, the law had changed quite a bit during the years that Petitioner was away from the practice of law and consequently Petitioner was not able to do so. Miles also anticipated that Petitioner's ties to the community would "drive in" business. According to Miles, he gave Petitioner legal research assignments, but Miles had to help Petitioner with online research tools; as Miles explained, it was like "teaching an old dog new tricks." While Petitioner worked for Miles, he never performed legal work, talked to clients, or went to court with Miles.

With some hesitancy, Miles stated that he would support Petitioner's reinstatement, since Petitioner now has been suspended for five years. Miles spoke very highly of Petitioner's reputation within the community, however, noting that Petitioner was always very friendly, nice to everybody, and a hard worker for his clients. He could take an impossible case and achieve a favorable result, Miles attested. Even today, Miles commonly encounters judges and lawyers who have great respect for Petitioner, in particular for how he treated people. Miles opined that Petitioner's personality drew in clients and made them believe in him. Petitioner's ability to connect with people is something Miles strives to achieve in his own practice.

Miles does not know the facts underlying Petitioner's three-year suspension because Petitioner never spoke with him about it. At the time of his suspension in 2011, Petitioner was difficult to talk to, his ex-wife and step-daughter greatly influenced him, and the last person he wanted to hear from was his own son, said Miles. Miles speculated that Petitioner engaged in misconduct, in part, because he had "an ego" that he could not "turn off," and he had the "worst ability" to hire talented staff members who cared about or understood how to handle clients and their cases. Miles opined that the people who worked with Petitioner never spoke up about anything that might hurt him because they simply did not care. Miles also believed that Petitioner surrounded himself with family members who did not have his best interests at heart. For example, Petitioner's ex-wife went with him everywhere, Miles recalled, and she influenced whom he hired and fired. It is hard to tell if Petitioner will fall prey to these types of people in the future, Miles opined, but he believes that Petitioner is rehabilitated and will take the necessary steps to avoid future misconduct if he is reinstated.

During his suspension, Petitioner has volunteered for a number of nonprofit entities. When he lost his law license, he lost his livelihood, his then-wife, his family, and his home, sinking into a great depression. He was able to pull himself out of this state by working with nonprofits and volunteering. Petitioner testified that he loves to perform community service because he finds it fulfilling; it "puts a smile" on his face, he explained. During summer and fall 2015, Petitioner volunteered with the Mariposa Urban Farm, a joint project between the Denver Botanic Gardens and the Denver Housing Authority.[67] Brien Darby, the manager of this program, testified that the organization runs three urban farm plots, along with a greenhouse, in the Mariposa neighborhood. All the harvested food is then distributed within the neighborhood. Petitioner volunteered at the urban farm for five hours per week from May to October 2015, watering, weeding, and harvesting food.[68] Darby has no experience with Petitioner as a lawyer, nor does he know why Petitioner was suspended.

Kathleen Olona, a friend of Petitioner, has known him for years through their volunteer work at local food banks and programs supporting the homeless. She testified that over the past year she and Petitioner started their own program of delivering bags filled with personal hygiene products to the homeless population in Denver. Olona and Petitioner use their own money to pay for these products. Their goal is to pass out about fifty bags each month, she said. Olona supports Petitioner's reinstatement and believes that he has a good character, one that she herself would look for in an attorney. She thinks his heart is in the right place and, in fact, once observed him giving the shirt off of his back to a member of the homeless community.[69] She has no experience with Petitioner as an attorney and does not know why he was suspended from the practice of law.

Throughout 2015 and in the beginning of 2016, Petitioner also volunteered with the Senior Assistance Center of Denver for approximately five hours each week.[70] Jesusita

[67] *See* Ex. 7 (letter from Darby).
[68] Ex. 7.
[69] *See* Ex. 6 (letter and pictures from Olona).
[70] *See* Ex. 5 (letter from Mondragon).

Mondragon, the director of food bank services, testified that she observed Petitioner communicating with the participants in both English and Spanish and believes that he cares about the food bank clients. At the food bank, Petitioner performed many tasks, including mopping, sweeping, taking out the trash, and lifting heavy boxes and furniture.[71] In her letter supporting Petitioner's reinstatement, Mondragon stated that Petitioner conducted himself professionally and always completed tasks without complaint.[72] She is very hopeful that his license to practice law will be reinstated, although she is not aware of why he was suspended.

Petitioner testified that he completed over 200 hours of continuing legal education ("CLE") home study courses during his suspension. He said he chose courses that he thought addressed the areas in which he was found deficient by the hearing board in 2011, but he did not offer many details about those courses, other than that he took notes during each course and frequently reviewed those notes. Petitioner did not offer into evidence his notes or any CLE affidavits, though he provided invoices for the classes he purchased, which include the title of each CLE course.[73]

Petitioner's Qualifications for Reinstatement

Petitioner hopes he can regain his law license, he testified, because he believes he would be more useful to people as a licensed attorney. He vowed never to repeat his misconduct or fall prey to his old habits. He described his past legal practice as "hell"—waking up each morning, going to court, being yelled at by judges, having upset clients, and getting in trouble. He has learned from his past mistakes, he claimed; if he ever were to open his own practice again, he said, he knows how to avoid misconduct, including instituting better calendaring practices and paying closer attention to his clients. It's not "rocket science," he said; "it's very simple" to avoid neglecting clients.

Despite purporting to have learned these lessons, Petitioner represented that he has no desire to run a law firm and practice law at the same time. Nor does he want to assume the costs associated with running this own practice. Instead, he looks forward to a new career path. Petitioner aspires to work in the nonprofit industry, serving as a board member for various organizations. In fact, he has been invited to serve on several nonprofit boards but waited to see whether he is reinstated before accepting these positions. He believes he would be more useful to nonprofits as a licensed attorney because he could offer legal advice to members when appropriate. Although he does not want to act as general counsel, Petitioner envisions himself representing nonprofit agencies on 501C3 issues and tax matters, or providing in-house corporate advising services.

[71] Ex. 5.
[72] *See* Ex. 5.
[73] Ex. 4. Sheyanne Hurtado, an employee of the Colorado Bar Association ("CBA") CLE department, testified that Petitioner's CLE invoices demonstrate only that he purchased the courses from the CBA's website, not that he completed the courses. Hurtado also stated that the CBA does not accept affidavits from a lawyer who is age-exempt from taking CLE courses.

III. LEGAL ANALYSIS

To be reinstated to the Colorado bar, an attorney who has been suspended for longer than one year must prove by clear and convincing evidence that the attorney has complied with applicable disciplinary orders and rules, is fit to practice law, and has been rehabilitated.[74] Failure to prove even one requirement is fatal to a petitioner's case.[75]

Compliance with Disciplinary Orders and Rules

An attorney petitioning for reinstatement must show compliance with disciplinary orders and rules. The Colorado Supreme Court has commented, however, that "[t]echnical violations of the disciplinary orders and rules will not always preclude reinstatement."[76] To decide whether a technical violation should bar reinstatement, the Hearing Board must examine the nature of the violation, including whether it affected clients or opposing parties, and whether it caused harm or potential harm.[77]

Here, the People assert that Petitioner has not met his burden of proof as to this prong because he did not comply with C.R.C.P. 251.28(d) after his suspension. Specifically, they contend that Petitioner did not file the required affidavit, which should have included proof that he had notified his clients of his suspension. They also aver that Petitioner was not forthcoming about whether he complied with C.R.C.P. 251.28(b) and (d), because in 2014 he stated that he provided his clients with notice but shredded the letters, yet here he stated that he did not notify his clients because he had none.

Petitioner admits that he did not comply with C.R.C.P. 251.28(d) but maintains that any violation of this rule was merely technical. He contends that he sent each of his clients a letter in 2010 when Miles purchased his firm and that these were the letters he referred to in 2014. Because he had no clients in 2011, he did not believe it was necessary to file the affidavit—an oversight on his part, he recognized. Petitioner insists that he was not being dishonest, either in 2014 or here, even though he offered varying accounts of what he had done. His answers at the time were accurate and inclusive, he said, and any mistake on his part was unintentional and caused no harm.

In our view, this is a technical violation that, standing alone, should not bar Petitioner's reinstatement. Miles testified that he purchased Petitioner's law practice in early 2010. Petitioner stated he notified all of his clients then that Miles was acquiring the practice and that he no longer represented any clients after Miles took over. This was consistent with Miles's credible account. Thus, we find that Petitioner had no cases when he was suspended in 2011 and that no clients or opposing parties were harmed or potentially harmed from his lack of notice. Even so, Petitioner should have followed the rules governing suspended lawyers and filed the appropriate affidavit noting that he had no clients to notify. Although he could have been more forthcoming in his responses to the People's interrogatories, we

[74] C.R.C.P. 251.29(b).
[75] *See In re Price*, 18 P.3d 185, 189 (Colo. 2001).
[76] *Id.* at 191.
[77] *Id.*

do not conclude that he was intentionally deceptive. Under these circumstances, his failure to file the affidavit did not cause meaningful harm and is therefore not fatal to his petition for reinstatement.

We do note, however, that this violation appears to reflect a pattern of inattention to detail, as does his failure to timely file his prehearing materials in this proceeding. We thus will reexamine these issues in our analysis of Petitioner's rehabilitation.

Fitness to Practice Law

Petitioner argues that the CLE courses he completed, along with his ten months working with Miles, demonstrate his fitness to practice law. The People disagree. They maintain that Petitioner's CLE courses and his work for Miles, which included no meaningful legal work, are insufficient to meet his burden of clearly and convincingly proving this element.

Although a close call, we side with the People here. Petitioner must affirmatively prove his fitness to practice law in a manner that satisfies us that reinstatement of his license will not pose a threat to the public. C.R.C.P. 251.29(c)(5) requires Petitioner to set forth in his petition evidence that he maintained professional competence during the period of his suspension. By his own admission, Petitioner has had little meaningful engagement with the law during his suspension other than CLE homestudies. Since being suspended he observed how Miles ran his firm, but he performed only narrow online legal research tasks, limited to assignments geared more toward teaching Petitioner than assisting Miles. While his work with Miles showed Petitioner the value in properly calendaring matters, Petitioner failed to timely file his required prehearing materials in this matter. His conduct here causes us some apprehension about his ability to pay attention to detail.

Petitioner avers that the CLE courses he took also demonstrate his professional competence. Although he claims to have taken over 200 credit hours targeted to address his past deficiencies, we are unable to verify how many hours he completed. His failure to keep better track of his accumulated credits calls into question his organization and attention to detail. Further, a lack of substantive legal knowledge did not, in the main, lead to his past misconduct, so we have trouble understanding how those courses actually helped him improve upon his diligence, management, and communication skills. Petitioner also stated that he took voluminous notes while listening to the CLE classes, yet he neglected to produce those notes in this proceeding. Thus, while Petitioner furnished some evidence that he listened to many CLE programs, that evidence did not meet Petitioner's burden of proof to show clearly and convincingly that he kept well informed of legal developments or maintained the necessary legal skills during his suspension.

Finally, although his volunteer efforts are noble, they themselves do not show that he is fit to practice law. Although Petitioner described his involvement in many activities that demonstrate valuable services to his community and his supervisors spoke to his dedication and commitment, neither he nor his supervisors showed how his work would translate into cultivating his fitness to practice law. For example, no testimony suggested that any of his

volunteering tasks were detail-oriented or deadline-driven, or that he was responsible for calendaring events or meeting specific deadlines. Petitioner offered no other evidence that might count towards his fitness to practice.

The evidence Petitioner presented falls short of demonstrating that he possesses the fitness necessary to practice law at this time. Our finding on this element renders Petitioner ineligible for reinstatement.[78] But we also address the deficiencies in his presentation concerning rehabilitation—deficiencies that also persuade us to deny his petition.

Rehabilitation

The Hearing Board cannot grant reinstatement simply upon a showing that Petitioner has engaged in proper conduct or refrained from further misconduct during his suspension.[79] To determine whether Petitioner has been rehabilitated, we first look to the seriousness of his original discipline[80] and to whether Petitioner has experienced an overwhelming change in his state of mind such that he could be said to have undergone a regeneration.[81] In this analysis, we are guided by the leading case of *People v. Klein*, which enumerates several criteria for evaluating whether Petitioner has been rehabilitated.[82] These criteria are: Petitioner's character; his conduct since the imposition of the original discipline; his professional competence; his candor and sincerity; the recommendations of other witnesses; Petitioner's present business pursuits; community service and personal aspects of Petitioner's life; and his recognition of the seriousness of his previous misconduct.[83] The *Klein* criteria provide a framework to assess the likelihood that Petitioner will repeat his prior misconduct.

We first review the misconduct that led to Petitioner's three-year suspension, along with the salient aggravating and mitigating factors the hearing board considered in that case.[84] There, the hearing board determined that Petitioner engaged in serious neglect of

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[78] *Price*, 18 P.3d at 189 ("Because the lawyer seeking reinstatement must prove that all three factors exist, a failure of proof on any one factor is fatal to the lawyer's reinstatement.").

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

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

[81] *See In re Cantrell,* 785 P.2d 312, 313 (Okla. 1989); *In re Sharpe*, 499 P.2d 406, 409 (Okla. 1972).

[82] 756 P.2d 1013, 1015-16 (Colo. 1988) (interpreting language of C.R.C.P. 241.22, which embodied an earlier version of the rule governing reinstatement to the bar).

[83] *Id.* at 1016. We note that the *Klein* decision relies upon an earlier version of the *Lawyers' Manual on Professional Conduct* (ABA/BNA) 101:3005, which listed the above factors for assessing the rehabilitation of lawyers seeking reinstatement. The current version of the manual sets forth a number of other factors to consider when evaluating a lawyer's rehabilitation and fitness: 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. *Id*. at 101:3013. While some of these newly articulated factors are encompassed in our analysis, we do not explicitly rely on them to reach our decision.

[84] *See Lawyers' Manual on Professional Conduct* (ABA/BNA) 101:3013 (indicating that a factor to consider in determining whether a lawyer has been rehabilitated is an evaluation of the circumstances of the original misconduct, including mitigating factors).

three client matters and failed to communicate with his clients. The hearing board also determined that Petitioner's misconduct adversely affected three clients and two court proceedings, that his neglect and lack of communication bordered on abandonment in the Alvarez matter, and that his failure to withdraw in Michel's case prevented Michel from obtaining information about his own case for an extended period of time. The hearing board was significantly influenced by Petitioner's pattern of misconduct, his refusal to acknowledge the wrongful nature of his conduct, and his extensive history of prior discipline—although it determined that three of these past instances were remote in time and served as mitigation.

Much like the hearing board in 2011, we find Petitioner's misconduct in the Alvarez, Michel, and Loera matters to be gravely serious, particularly when coupled with his disciplinary history, which includes similar misconduct.[85] Petitioner was disciplined nine times between 1991 and 2010, and we are troubled that his disciplinary history is based upon the same type of misconduct that underlies his 2011 suspension—neglect of client matters, failure to communicate, and lack of diligence.

Even now, Petitioner does not appear to have a good handle on why he has continually engaged in similar misconduct. Although Petitioner identified his neglect during the 2008 to 2009 timeframe as resulting from poor choices made in his personal life and a substantial caseload, he failed to explain why he had engaged in similar misconduct in the past. In fact, his disciplinary history is full of comparable transgressions dating all the way back to 1991, only two years after he was licensed to practice law. Petitioner's testimony suggests that he believes his neglect and his failures to communicate with and to diligently represent clients only began to surface seven to eight years ago. He offered no testimony as to why this conduct occurred repeatedly long before then. Rather than learning from his past transgressions, he continually engaged in similar misconduct over a period of twenty years. We are not confident that even now, Petitioner truly understands the reasons for his misconduct or that his deficiencies have been sufficiently addressed. We have concerns—based in part on his failure here to comply with the PDJ's deadlines—that he will again engage in similar misconduct if reinstated.

Next, in order to determine whether Petitioner has undergone an overwhelming change in his state of mind such that he could be said to have been rehabilitated, we consider his character, including his candor and sincerity, his recognition of the seriousness of his misconduct, the nature of his community service, and aspects of his personal life. We also reflect on Petitioner's present business pursuits and his professional competence.

Our analysis begins with whether Petitioner has addressed his shortcomings that led to his previous misconduct.[86] In Petitioner's case, his misconduct appears to have stemmed from both personal and professional deficiencies. According to Petitioner, around 2009 he felt inadequate as a lawyer and experienced an overwhelming sense that his life and law

[85] *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 history.").

[86] *See 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).

practice were out of control. He described himself at that point in time as unhealthy and a "mess," frequently making poor choices with his ex-wife. Miles also opined that Petitioner's ex-wife and step-daughter influenced many of his professional decisions, including whom he should hire and fire, without considering whether their advice would benefit him. While Petitioner offered little detail about his personal life at present, he did state that he has filed for divorce from his ex-wife, lives with his new girlfriend, with whom he is hoping to purchase a home, and has lost more than 100 pounds. He stated that his health issues are now under control, and that his character is exemplary—he is honest, sincere, and finds fulfillment in helping other people. Miles attested that Petitioner has a good reputation for treating others well. It appears to us that Petitioner is making strides toward a healthier and more effective personal lifestyle.

We find Petitioner's evaluation of his misconduct that resulted in his 2011 suspension to be sincere, and we determine that he has accepted responsibility for this wrongdoing, recognizing how significant it was. While he was suspended, Petitioner reflected upon his transgressions in the Alvarez, Michel, and Loera matters and exhibited remorse for his conduct in those cases. He accepted blame for neglecting his clients' cases, recognizing that his deficiencies in running his law firm and the poor choices he made in his personal life led directly to his misconduct. His willingness to admit and accept responsibility for his misconduct in those matters demonstrates some progress toward his rehabilitation, and we believe that his absence from the practice of law has made a difference in his attitude and ability to recognize what went wrong there. We are troubled, however, that Petitioner offered no testimony about his reflections on his history of similar misconduct between 1991 and 2010, leading us to believe that he has not thoroughly analyzed and accepted the professional deficiencies that have clouded his long legal career.

Much of Petitioner's conduct since he was suspended, including his community service and the recommendations of his witnesses, lead us to believe that Petitioner is invested in his community's welfare and looks for many opportunities, both big and small, to help his community. We commend his initiative in delivering hygiene products to the homeless and in providing help to tenants in his apartment building. It is clear that he commits many hours to volunteering, including his work with the Senior Assistance Center and with the urban farm project. We adjudge Petitioner to be well-intentioned and genuinely interested in assisting others, and we hope that he continues to serve his community. But we cannot grant him reinstatement on those bases alone. We must consider his qualifications as a lawyer—not a community volunteer—and determine whether if reinstated, his conduct would uphold the integrity of the bar and the administration of justice.

To that end, Petitioner's present business pursuits and professional competence do not militate in favor of finding that he has sufficiently addressed the professional deficiencies that led to his original discipline. Petitioner acknowledged that as his law firm grew in 2009 he failed to pay attention to details and neglected cases. Petitioner assured us, however, that his misconduct is unlikely to reoccur, in part because he will not return to solo practice. In addition, Petitioner maintained that if he were to represent clients again, he would implement the calendaring and communication lessons he learned from observing

Miles's practice. But he offered no concrete plan for executing a successful strategy should he return to the practice of law, either as a corporate lawyer or as a solo practitioner. Effective time management and communication require more than a calendaring system, and Petitioner did not provide any specifics to allay our concerns about reinstating his law license. Further, although Petitioner purports to understand that he learned lessons from his past misconduct, his claims are belied by his actions here. After he was suspended in 2011, he chose not to file the required affidavit under C.R.C.P. 251.28(d) and failed to retain copies of the letters he sent to clients in 2010. This conduct reflects poorly on his competence, organizational skills, and attention to detail. He also testified that he learned the importance of calendaring deadlines, yet he did not provide the People with exhibits for stipulation, and he filed his witness list and prehearing brief late. Such conduct does not support Petitioner's claim of rehabilitation. Indeed, it suggests that a change in Petitioner's character has not occurred and that the professional deficiencies that contributed to his misconduct still exist.

Our finding here that Petitioner has not maintained his professional competence is buttressed by our analysis above of his fitness to practice law. Petitioner has not remained actively occupied in the legal field during his suspension, and although he has taken numerous CLE courses and worked with Miles, neither activity appeared to help him improve on his organization, diligence, or communication—skill sets he was lacking at the time of his 2011 suspension and throughout the course of his practice. He was unable to comply with the PDJ's deadlines here or to work with the People by stipulating to exhibits.

Despite some evidence signifying progress toward rehabilitation, the Hearing Board must conclude that Petitioner has not proved by clear and convincing evidence that he has been fully rehabilitated. Although he has engaged in valuable community service and has taken responsibility for the misconduct leading to his 2011 suspension, we do not find that he has sufficiently addressed his professional deficiencies since being suspended.

IV. CONCLUSION

The Hearing Board finds that, taken as a whole, Petitioner has failed to satisfy his burden that he is fit to practice law and has been rehabilitated, as he is unable to show that he has undergone a substantial enough change in character that will ensure protection of the public.[87] Therefore, we **DENY** Petitioner's petition for reinstatement.

[87] *See Lawyers' Manual on Prof'l Conduct* at 101:3013 ("Throughout the [rehabilitation] inquiry runs an element of 'public qualification, i.e., that reinstatement will not be detrimental to the integrity and standing of the bar, the administration of justice, or the public interest.'").

V. ORDER

1. The Hearing Board **DENIES** Petitioner's "Petition for Order of Reinstatement." Petitioner **ALFONSO S. CABRAL**, attorney registration number **18328**, **SHALL NOT BE REINSTATED** to the practice of law.

2. Under C.R.C.P. 251.29(i), Petitioner **SHALL** pay the costs of this proceeding. Petitioner has paid the People a $500.00 cost deposit. The People **SHALL** submit a statement of costs **on or before August 26, 2016**. Petitioner **MUST** file his response to the People's statement of costs, if any, **within seven days thereafter**. 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. Petitioner **MUST** file any posthearing motion with the Hearing Board **on or before September 2, 2016**. Any response thereto **MUST** be filed **within seven days**.

4. Petitioner has the right to appeal this decision under C.R.C.P. 251.27.

5. Petitioner **SHALL NOT** file a petition for reinstatement within two years of the date of this order.[88]

[88] C.R.C.P. 251.29(g).

DATED THIS 12th DAY OF AUGUST, 2016.

Originally signed

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WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

Originally signed

_____

CYNTHIA F. COVELL
HEARING BOARD MEMBER

Originally signed

_____

JOHN E. HAYES
HEARING BOARD MEMBER

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