***People v. Bradley D. Coldiron*. 16PDJ023. November 3, 2016**.

Following a reinstatement hearing, a hearing board denied Bradley D. Coldiron (attorney registration number 21328) reinstatement to the practice of law under C.R.C.P. 251.29. Coldiron may not file another petition for reinstatement for two years.

In March 2011, Coldiron was suspended for three years, with two years served, for having accepted a substantial loan to refinance his home from a long-time client in April 2009. He promised to pay his client back in ninety days with interest, but he did not do so. In taking the loan, he violated the rules governing business transactions with clients. He further failed to disclose this loan to the bank on his refinance application. He then gave his client three checks in repayment on three occasions, but all three checks were returned due to insufficient funds, and his client was forced to initiate collection proceedings against him. Coldiron did repay his client in full by March 2010 but did not pay any interest. Under the terms of his stipulation to discipline, Coldiron was to pay his client all outstanding interest and her attorney's fees in the collection action by June 2011. He failed to do so, and on September 11, 2011, the stay on the third year of his suspension was lifted.

The Hearing Board concluded that reinstatement was not appropriate because Coldiron was unable to prove his rehabilitation by clear and convincing evidence. 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: BRADLEY D. COLDIRON **Respondent:** THE PEOPLE OF THE STATE OF COLORADO	Case Number: **16PDJ023**
OPINION AND DECISION DENYING REINSTATEMENT UNDER C.R.C.P. 251.29(e)	

In March 2011, Bradley D. Coldiron ("Petitioner") was suspended from the practice of law for three years, with two years served, for having accepted a $300,000.00 loan from a long-time client and family friend in April 2009. He borrowed these funds to refinance his mortgage, promising to pay his client back in ninety days with interest. On his refinance application, Petitioner did not disclose this loan to the bank. Further, he did not comply with the requirements governing business transactions with clients. He then presented his client with three separate checks, all of which were returned due to insufficient funds, and his client was forced to initiate collection proceedings against Petitioner. Petitioner paid his client the principal in full by March 2010, but he did not pay the interest. Under the terms of his stipulation to discipline, Petitioner agreed to pay his client all outstanding interest and her attorney's fees in the collection action by June 2011. He failed to do so, and on September 11, 2011, the stay on the third year of his suspension was lifted. In this reinstatement proceeding, Petitioner petitioned for reentry to the practice of law. Petitioner failed, however, to present clear and convincing evidence that he has been rehabilitated, so his petition for reinstatement must be denied.

I. PROCEDURAL HISTORY

Craig L. Truman, counsel for Petitioner, filed a "Petition for Reinstatement of Bradley D. Coldiron, Attorney Registration No. 21328 Pursuant to C.R.C.P. 251.29(c)" on March 6, 2016, with Presiding Disciplinary Judge William R. Lucero ("the PDJ"). Katrin Miller Rothgery, Office of Attorney Regulation Counsel ("the People"), answered the petition on March 14, 2016.

Petitioner did not submit the required prehearing brief, and instead at the hearing asked the PDJ to take judicial notice of his petition and all attachments. The People did not object, and the PDJ granted Petitioner's request.

On September 28, 2016, a Hearing Board comprising Mark D. Sullivan and Terry Rogers, members of the bar, and the PDJ held a reinstatement hearing under C.R.C.P. 251.29(d) and 251.18. Petitioner appeared with Truman, and Rothgery attended on behalf of the People. The Hearing Board considered testimony from Petitioner. The PDJ admitted stipulated exhibits S1-S5, the People's exhibits A-D, and exhibits A-E attached to Petitioner's petition.

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, unless otherwise noted.

Petitioner took the oath of admission and was admitted to the bar of the Colorado Supreme Court on April 30, 1992, under attorney registration number 21328. He is thus subject to the jurisdiction of the Colorado Supreme Court and the Hearing Board in this reinstatement proceeding.[1]

The Basis for Petitioner's Discipline

As set forth in his 2011 conditional admission of misconduct, Petitioner engaged in misconduct with respect to a substantial loan he borrowed from a client.

Petitioner represented Zoe Gordon and her husband, who passed away in 2005, for about sixteen years.[2] He represented them in business transactions and other legal matters.[3] In early 2009, Petitioner asked Gordon on several occasions for a loan, but she refused.[4] Then, in April 2009, Petitioner informed her that he needed to borrow money to refinance his home.[5] He told Gordon that his home in Cherry Hills was facing foreclosure and that he needed to show the bank he had access to funds equal to twelve months of mortgage payments.[6] Petitioner gave Gordon a letter from a loan officer stating that Petitioner needed these funds in his bank account for sixty days prior to the refinance.[7] Based on statements made by Petitioner, Gordon believed that Petitioner was suffering from multiple sclerosis and Alzheimer's disease.[8]

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[1] *See* C.R.C.P. 251.1(b).
[2] Ex. A at 2.
[3] Ex. A at 2.
[4] Ex. A at 2.
[5] Ex. A at 2.
[6] Ex. A at 2.
[7] Ex. A at 2.
[8] Ex. A at 2.

Petitioner told Gordon that he would hold her funds in his bank account only long enough to complete the refinance and would not use the funds for any other purpose.[9] Petitioner agreed to pay back the loan in ninety days with ten percent interest.[10] He stated in the conditional admission that he had a net worth of eleven million dollars in April 2009 but was cash poor.[11]

On April 15, 2009, Gordon gave Petitioner a cashier's check for $300,000.00.[12] In exchange, Petitioner presented Gordon with a post-dated check for $306,164.38, representing principal and interest.[13] The check was written from Petitioner's personal bank account.[14] Petitioner did not give Gordon a promissory note or any other writing reflecting their agreement.[15] He also did not advise Gordon that she should speak with independent counsel, nor did he provide security for the funds.[16]

Petitioner submitted his refinance application on April 28, 2009, to First Central Mortgage Funding, Inc.[17] On his application, Petitioner declared a net worth of $11,490,925.00.[18] He did not disclose the loan from Gordon or that he owed her interest on the loan.[19]

In June 2009, Petitioner told Gordon that his refinancing was delayed and asked for an extension until August 28, 2009, to repay the loan.[20] On August 28, Gordon deposited Petitioner's check, but it did not clear due to insufficient funds.[21] Petitioner told Gordon that he would be able to repay the loan by November 15, 2009, and provided her with a second check from his personal account for $306,164.38.[22] He did not include any additional interest.[23]

On November 15, 2009, Gordon deposited Petitioner's second check.[24] This check was dishonored by the bank.[25] Petitioner then gave Gordon a third check from a different bank account titled "Coldiron Investment Group, LLC" for $300,000.00.[26] The memo of this check read, "Replacement check w/o interest as agreed."[27] Gordon never agreed to a

[9] Ex. A at 3.
[10] Ex. A at 3.
[11] Ex. A at 3.
[12] Ex. A at 3.
[13] Ex. A at 3.
[14] Ex. A at 3.
[15] Ex. A at 3.
[16] Ex. A at 3.
[17] Ex. A at 4.
[18] Ex. A at 4.
[19] Ex. A at 4.
[20] Ex. A at 3.
[21] Ex. A at 3.
[22] Ex. A at 3.
[23] Ex. A at 3.
[24] Ex. A at 3-4.
[25] Ex. A at 3.
[26] Ex. A at 4.
[27] Ex. A at 4.

zero-interest loan.[28] When Gordon tried to deposit this check, she was told by the bank that it would not clear due to insufficient funds.[29]

On December 8, 2009, Petitioner paid Gordon $150,000.00.[30] She repeatedly asked Petitioner to pay the remaining balance.[31] She also continued to use his legal services, including identifying properties she wanted to purchase and traveling with him to review those properties.[32]

Gordon eventually retained attorney Howard Beck to file a collection action against Petitioner.[33] Petitioner paid Gordon an additional $150,000.00 on March 25, 2010.[34] The interest remained outstanding.[35]

Petitioner's misconduct violated Colo. RPC 1.8(a), which prohibits a lawyer from entering into a business transaction with a client unless the client is advised to seek independent legal counsel and the client gives written informed consent.[36] His misconduct also contravened Colo. RPC 8.4(c), which proscribes conduct involving dishonesty, fraud, deceit, or misrepresentation.[37]

As a sanction for his misconduct, Petitioner agreed to a three-year suspension, with two years served and one year stayed, and to pay costs in the amount of $3,281.53 within ninety days of the PDJ's approval of the conditional admission. He also agreed to pay Gordon restitution of $50,771.95—representing a judgment awarded against him in the collection action—within ninety days.[38] The PDJ approved the conditional admission on March 8, 2011, effective that same day.[39]

Petitioner did not pay restitution and costs by June 6, 2011, however, and the People moved to lift the stay on Petitioner's suspension.[40] Petitioner did not object, and on September 7, 2011, the PDJ lifted the stay on the third year of Petitioner's suspension.[41]

On March 2, 2016, Beck notified the district court in the collection proceeding that Petitioner had satisfied his obligation to Gordon by paying her $47,345.00—an amount the parties agreed upon.[42] In his petition, Petitioner claims that he paid Gordon this amount on

[28] Ex. A at 4.
[29] Ex. A at 4.
[30] Ex. A at 4.
[31] Ex. A at 4.
[32] Ex. A at 4.
[33] Ex. A at 4.
[34] Ex. A at 4.
[35] Ex. A at 4.
[36] Ex. A at 4.
[37] Ex. A at 4.
[38] Ex. A at 4; Ex. B.
[39] Ex. B.
[40] Ex. C.
[41] Ex. D. His three-year suspension took effect March 8, 2011.
[42] Pet. Ex. C.

March 25, 2013, but the attached exhibit does not indicate the date of payment.[43] Petitioner testified that he paid all costs owed to the People, and the People did not dispute his testimony.

Petitioner's Reflections About His 2011 Suspension

Petitioner told the Hearing Board that he had every intention to repay Gordon promptly. Instead, he used her money to pay off his debts, as he was not able to refinance his home. Petitioner admitted that his failure to reimburse Gordon was entirely his fault. He said that he cannot believe he made the choices he did, because he knew that his conduct was unethical. Petitioner attested that he is ashamed of his conduct and appalled by his actions. When asked why Gordon believed that he had multiple sclerosis and Alzheimer's, Petitioner claimed that he did not expressly tell her this but that he did not dispute her belief, either.

Petitioner said that he cannot imagine the pain and frustration he caused Gordon, and he knows that he took advantage of her. He also recognized that Gordon was vulnerable because of her close friendship with his family. Petitioner maintained that he has spent many sleepless nights wondering why he engaged in such atrocious conduct. Luckily, he said, he was able to make Gordon financially whole. Petitioner acknowledged that he did not truly comprehend the severity of his misconduct in 2009, but he assured the Hearing Board that he now knows how much his actions hurt Gordon and his family.

Petitioner's Personal and Professional Life

In 1992, after passing the bar exam, Petitioner took a position as an associate at a large firm in Denver where he practiced real estate and some civil litigation. He said that when he first became a lawyer, he was in the business only to make money and gain prestige. He did not appreciate the important things in life and instead was materialistic and focused solely on himself.

Soon thereafter, Petitioner started his own law firm—Coldiron & Associates P.C. His firm exclusively represented landlords in their disputes with tenants. His firm advised landlords about fair housing, but the cornerstone of the business was eviction proceedings. He said that his firm generated millions of dollars each year successfully handling eviction cases.

Petitioner owned a 10,000 square-foot home in Cherry Hills, multiple vehicles, motorcycles, and other "toys." He described his life then as resembling a "hamster wheel": he "kept going and going and spending and spending." He no longer recognizes the person he was in 2009, he said.

Even though his firm was very successful, his personal finances were dire because of his poor financial choices. He had a substantial amount of debt and was upside down on his

[43] *See* Pet. Ex. C (indicating only that the full satisfaction of judgment was filed in Arapahoe County District Court on March 3, 2016).

mortgage. In 2008, he refinanced his home through Washington Mutual—a big player in the housing crash that same year—and as a result, he could not again refinance his mortgage to help pay his debts. Also in 2008 he borrowed several hundred thousands of dollars from a family trust, and by 2009 he was under pressure to make payments on that loan. Nevertheless, Petitioner stated, he continued to spend money he did not have. He explained that these circumstances compelled him to approach Gordon for the $300,000.00 loan, hoping to dig himself out of the "hole" he was in.

In 2010, Petitioner married a woman he did not know very well. They had a son. Their marriage ended shortly after Petitioner was suspended in 2011. Under the terms of his divorce, Petitioner and his ex-wife share joint custody of their son, and Petitioner pays child and spousal support and a portion of his son's medical and extracurricular expenses. Petitioner said he is current on these payments.

Since the birth of his son, Petitioner has primarily been a stay-at-home dad, working part-time on the days when his son is with his mother. Petitioner explained that he had "no clue" about the important things in life until he became a father. His son is in first grade and attends a local elementary school, where Petitioner spends many hours each year volunteering. Petitioner testified that he was instrumental in setting up a program called the Bird Watchers, which enlists fathers to volunteer their time by providing an extra layer of security at the school. Petitioner also assists the school with drop-off and pick-up, and he reads books to his son's class. In 2015, Petitioner spent over 150 hours volunteering at the school, and in 2016 he has donated seventy-five hours of his time. Petitioner currently is a member of the executive committee at the school. He stated that he disclosed his suspended law license to the other committee members before accepting the position.

Petitioner explained to the Hearing Board that he can work part-time and spend so much time with his son because he borrows money from an irrevocable trust fund that his mother established in 1994. This trust is not the same trust he borrowed money from in 2008. According to Petitioner, his mother created this trust to provide financial assistance to him and his sister and their families. His mother funded the trust through a New York Life whole-life insurance policy. The policy had an original face value of $1.5 million dollars, which has since grown to $1.9 million dollars, and a cash value of approximately $1 million dollars. Each time he or his sister borrows money from the trust it diminishes the cash value of the policy.

When Petitioner's mother opened the New York Life trust, she named both him and his sister as beneficiaries and appointed Petitioner as the trustee. The terms of the trust fund are very liberal, Petitioner claimed. As the trustee, he said, he has broad discretion to request disbursements for him and his sister. He stated that he always clears any disbursement requests with his sister and submits all requests in writing. He sends the requests to New York Life, which then issues the checks. Because the disbursements are considered loans, he and his sister do not have to report the disbursements as income on their tax returns.[44] From 2013 to 2015, Petitioner said, he borrowed a total of $485,000.00

[44] *See* Ex. S1-S3.

from the trust, while his sister has borrowed only $400,000.00. He stated that his sister is aware of this imbalance. Though the loans do not need to be paid back, Petitioner stated, he has every intention of reimbursing the trust for the money he borrowed.

In 2013, Petitioner took his first disbursement from the trust for $300,000.00, which he said he used to pay outstanding debts. Also in 2013, Petitioner reported to the Internal Revenue Service ("IRS") that he made only $2,822.00 that year.[45] On that same return, Petitioner claimed a gambling loss of $6,414.00.[46]

From 2014 to 2015, Petitioner borrowed an additional $185,000.00 from the trust fund. He was unable to recall how many disbursements he requested or the dollar amount of each loan, but he averred that he has kept detailed records of all disbursements in QuickBooks and that there have been no irregularities. Petitioner claimed that each disbursement is accounted for in those records, yet he did not provide any such documentation at the hearing.

Also in 2014, Petitioner reported to the IRS an income loss of $8,942.00 from his business, and gambling winnings of $2,528.00.[47] Petitioner acknowledged that his gambling losses and winnings during 2013 and 2014 look "bad," but he maintained that he attended only two poker tournaments in Las Vegas and spent very little money while there. He also said that he did not use any money from his trust fund for the poker tournament. In 2015, Petitioner reported to the IRS a negative income of $21,209.00.[48] Petitioner contended that even though he operated at a loss during 2014 and 2015, he was able to pay for his and his son's expenses through trust fund disbursements.

When asked why he did not use money from the New York Life trust to reimburse Gordon, Petitioner explained that it did not occur to him. Looking back, however, he admitted that he likely could have borrowed money from the trust to make her whole. Petitioner felt, however, that if he had done so it would have offered him only a short-term solution to his financial problems, and he likely would have continued down the same path he was headed. Instead, the events resulting from his failure to repay Gordon made him a different person, he said.

Petitioner testified that he has not borrowed any money from the New York Life trust in 2016 and that has no plans to do so in the near future. He maintained that he is very careful about how he spends the money he borrows, and he and his son live modestly. They reside in a small home in Windsor—where his ex-wife lives—and they have a strict budget, spending money only on living expenses. Petitioner said that he and his son rarely eat out and they have taken only one vacation—to Universal Studios in Florida—in the past five years. He also drives a used vehicle that has over 100,000 miles.

[45] Ex. S1.
[46] Ex. S1.
[47] Ex. S2.
[48] Ex. S3.

Now that his son is in elementary school, Petitioner said, he can work full time and wants to resume the practice of law. If he were to regain his law license, he said, he would help people who cannot afford legal assistance through mediation, even though he recognizes that there is little money in that endeavor. He wants be an attorney who does something "good" with his career, and he desires to be a role model for his son.

Petitioner's Activities Since His Suspension

While suspended from the practice of law, Petitioner established Coldiron Consulting, LLC, offering customized training and education to landlords concerning the management of their properties.[49] He testified that he has only worked with one client, who hired him to review financial records. He has not otherwise tried to expand this business, he stated.

Petitioner also works as the operations manager at the Klass Law Group, a firm in Denver that represents landlords exclusively. Petitioner testified that he assisted this firm with operations and marketing and referred many of his former clients to the firm.[50] Petitioner does not work with this firm on a regular basis, nor does he keep an office there. According to Petitioner, he does not practice law, offer legal advice, or draft or review any legal documents while at the firm. He also said that if he speaks to a client he tells them up front that he does not have a license to practice law, and the firm likewise states this fact on their marketing materials.[51] Petitioner claimed to have earned over $65,000.00 from his work at this firm over the past few years, but he is currently paid only a small monthly fee as commission for each eviction the law firm handles.

Petitioner has also actively served as a mediator during his suspension. He completed his first mediation training course in 2011 and a second in 2012.[52] Petitioner currently provides mediation services to clients in county court who cannot afford legal representation. He negotiates outstanding household and medical debts for these individuals. Petitioner said that he finds this work rewarding because he is able to help a number of people obtain payment plans from creditors, circumvent substantial interest payments, and avoid judgments. Since becoming a mediator in 2011, Petitioner has assisted over 1,000 people in counties throughout Colorado. Petitioner testified that he does not make much money from these mediations, charging a flat-fee of $60.00 per mediation.

Petitioner volunteered his time by presenting two, fair-housing lectures to Volunteers of America and to housing authorities in Denver.[53] In these seminars he provided general information to the participants about fair housing and regulatory issues. He did not offer any legal advice to attendees, he testified.

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[49] *See* Ex. S5.
[50] *See* Ex. S5.
[51] *See* Ex. S5.
[52] *See* Pet. Ex. D.
[53] *See* Pet. at 2.

To maintain his professional competence during his suspension, Petitioner completed over 100 Continuing Legal Education ("CLE") credits between 2011 and 2015.[54] He took courses in mediation, family law, business, and real estate law.[55]

Petitioner testified that he wanted to engage in some "soul searching" after his suspension, so he saw Will Menaker, Ph.D. for weekly therapy sessions in 2011. Petitioner had seen Dr. Menaker in 2008 and 2009 but stopped because at that time he could not "open up." Petitioner testified that his attitude had shifted in 2011 and he was willing then to "search his soul."

Dr. Menaker did not testify at the hearing, but Petitioner introduced a treatment report that Dr. Menaker wrote in March 2016 based on his observations of Petitioner in 2011.[56] In that report, Dr. Menaker described Petitioner in 2008 as "acquisitive and materialistic."[57] Dr. Menaker observed a shift in Petitioner's orientation in 2011 after he became a father, however.[58] Dr. Menaker opined that the birth of Petitioner's son, coupled with his suspension from the practice of law, served as the "catalyst for initiating a formative developmental shift in which [Petitioner] began restructuring his life around a new set of values."[59] Dr. Menaker explained that although Petitioner's divorce and suspension left him with very little money and a diminished earning capacity, he never once heard Petitioner complain about his circumstances or pass the blame onto others. Rather, Dr. Menaker thought Petitioner had re-evaluated his priorities and fundamentally changed his character, including focusing on being a father and becoming more empathetic and attuned to people's feelings.[60] Dr. Menaker found Petitioner to be honest and open during their sessions in 2011.[61] According to Petitioner, it was hard for him to read Dr. Menaker's report because it forced him to acknowledge the person he had once been.

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.[62] Failure to prove even one element is fatal to a petitioner's case.[63]

Compliance with Disciplinary Orders and Rules

Under C.R.C.P. 251.29(c)(4), an attorney petitioning for reinstatement must show compliance with all disciplinary orders and rules. Petitioner avers that he has complied with

[54] Pet. Ex. D.
[55] Pet. Ex. D.
[56] Pet. Ex. E.
[57] Pet. Ex. E.
[58] Pet. Ex. E.
[59] Pet. Ex. E.
[60] Pet. Ex. E.
[61] Pet. Ex. E.
[62] C.R.C.P. 251.29(b).
[63] *See In re Price*, 18 P.3d 185, 189 (Colo. 2001).

all provisions of the PDJ's September 2011 order of suspension and with all rules governing suspended lawyers.[64] The People do not appear to object to Petitioner's reinstatement on these grounds, and the Hearing Board has no reason to question Petitioner's compliance.

Fitness to Practice Law

We next examine whether Petitioner is fit to practice law. The People do not dispute that Petitioner attended numerous CLEs; instead, they question whether he maintained his professional competence by working as a mediator and a consultant.[65]

The Hearing Board finds clear and convincing evidence that Petitioner is fit to practice law. During Petitioner's suspension, he worked as a consultant, educated landlords about managing their properties, and presented lectures on fair housing practices. These activities compelled him to keep abreast of current legal trends in the area of landlord-tenant law.

Additionally, his work over the past few years with the Klass Law Group appears to have helped him to gain an understanding of law firm operational and marketing practices. Petitioner's CLE's and his work as a mediator help to demonstrate that he is competent to serve as an attorney as well. Petitioner completed over 100 CLE credits during his suspension, including attending two mediation training sessions. While working as a mediator, Petitioner communicated with parties in over 1,000 cases and used negotiation tools to assist them in resolving their debts. In sum, we conclude that Petitioner is professionally competent to practice law.

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.[66] In assessing Petitioner's rehabilitation, we consider the seriousness of his original discipline[67] and whether he has experienced an overwhelming change in his state of mind.[68] In this analysis, we are guided by the leading case of *People v. Klein*, which enumerates several criteria for evaluating Petitioner's rehabilitation.[69] These criteria are: character; conduct since the imposition of the original discipline; professional competence; candor and sincerity; recommendations of other witnesses; present business pursuits; community service and personal aspects of the petitioner's life; and recognition of the

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[64] Stip. Facts ¶ 5.

[65] The People also questioned whether Petitioner engaged in the unauthorized practice of law while suspended by lecturing and mediating, but the Hearing Board did not hear persuasive evidence that would support such a finding.

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

[67] *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. . . .").

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

[69] 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).

seriousness of the previous misconduct.[70] 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.[71] Petitioner's discipline was premised on his failure to comply with the requirements of Colo. RPC 1.8 by borrowing $300,000.00 from Gordon, without providing her with a promissory note or any other writing reflecting the terms of their agreement, advising her that she should seek independent counsel, or offering security for the loan. He borrowed these funds because of his dire financial situation, which was brought on by his excessive spending and by living beyond his means. As a result, he was heavily in debt. Petitioner's discipline was also premised upon his dishonest conduct in obtaining the loan from Gordon and presenting her with three checks written on insufficient funds. He also made misrepresentations by omission to the bank on his refinancing application.

Next, 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 the criteria set forth in *Klein*. Our analysis begins with whether Petitioner has addressed his shortcomings, because the imposition of discipline is necessarily predicated upon a finding of some shortcoming, whether it be a personal or professional deficit.[72]

In Petitioner's case, his misconduct appears to have stemmed from a combination of personal and professional deficiencies. He described to the Hearing Board his unhealthy focus on prestige and wealth while practicing law, which fed his appetite for expensive homes and vehicles. His pricey purchases caused him to overextend himself and to mismanage his finances. In 2009, Petitioner found himself burdened by significant debt, leading him to seek a sizeable loan from a family friend and client under in a less than candid manner.

We find Petitioner credible in his assessment that after the birth of his son in 2010 he began to realize what was important in life. Petitioner has arranged his schedule so he can spend time with his son, and he said that they live modestly compared with his lavish lifestyle in 2009. For instance, Petitioner testified he now resides in a much smaller home, rarely takes vacations, drives a used vehicle, and sends his son to public school. Petitioner adores his son and genuinely enjoys the time he is able to spend with him, including

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[70] *Id.* at 1016. We note that the *Klein* decision relies on an earlier version of the *Lawyers' Manual on Professional Conduct*, 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. *Lawyers' Manual on Prof'l Conduct* (ABA/BNA) 101:3013 (2012). While some of these newly articulated factors are encompassed in our analysis, we do not explicitly rely on them to reach our decision.

[71] *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.").

[72] *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).

volunteering at his school. Petitioner presented himself as an attentive and emotionally present father, and it appears that becoming a parent has made a significant difference in his ability to connect and empathize with others. Although Petitioner says he is closer to reaching financial stability, given his choice to minimize spending and live a more humble life, additional evidence or testimony would be necessary for us to arrive at the same conclusion. For instance, his 2013-2015 tax returns reflect meager income, yet his testimony would suggest that he earned over $120,000.00 during that time period through mediation and the Klass Law Group. Additionally, evidence of his budget or bill-paying practices would serve to corroborate his claim that his finances are in order. The limited evidence Petitioner has presented does not give us the confidence that Petitioner is making wise financial choices and has overcome the personal deficits that triggered his misconduct in 2009.

Petitioner has maintained his professional competence throughout his suspension, and we appreciate his willingness to perform in low-cost mediation for clients who lack legal representation. As for his volunteer service, Petitioner did, indeed, describe his involvement in many activities at his son's school, which demonstrates a strong commitment to his son. We consider him to be well-intentioned and eager to remain actively engaged as a father. Although his pro bono housing lectures may have provided a beneficial service, he has only completed two lectures during his nearly five-year suspension. While we applaud his efforts and find that his heart is in the right place, we cannot grant him reinstatement on those bases alone.

Petitioner's choice to reengage in therapy with Dr. Menaker in 2011 is laudable. But Petitioner discontinued his sessions toward the end of that year. Because Dr. Menaker was not called to testify at the hearing, all we have to support Petitioner's claims of rehabilitation is a report authored more than seven months ago, based on Dr. Menaker's observations drawn in 2011. Also significant, when Petitioner saw Dr. Menaker in 2011 he had yet to pay Gordon the outstanding interest he owed her, even though he could have used funds from the New York Life trust to do so. Petitioner's choice not to use his trust funds to make Gordon whole in 2011 is at odds with Dr. Menaker's conclusion that Petitioner had acted with integrity and behaved responsibly. Further, absent from Dr. Menaker's report is any reflection from Petitioner about his misconduct, including whether he was remorseful. Thus, other than Petitioner's own statements that he is a changed man, we have little evidence of any transformation of his character.

Our reluctance to accept Petitioner's testimony on its own is also bolstered by some of his conduct since the imposition of the original discipline. We are concerned that, as he did in 2008 and 2009, Petitioner continues to borrow large sums of money. He claimed a significant loss of income in his 2014 and 2015 tax returns, and in 2013 and 2014 he reported gambling losses and winnings. Additionally, he borrowed $485,000.00 over a two–year period and offered little explanation about what he did with those funds aside from paying off debts and using this money for living expenses.

We are equally troubled by whether he strictly adheres to the terms of the trust and the rules governing his dual role of beneficiary and trustee so as to avoid conflicts of interest. When he borrowed money from Gordon in 2009, he disregarded his duties to avoid

a conflict of interest and to be honest. Petitioner testified that as trustee of the New York Life trust, he strives to be candid and transparent. He claimed that even though he is both trustee and beneficiary, his management of the New York Life trust has suffered no irregularities. As one example, he contended that he kept detailed accounting records of all disbursements, made all disbursement requests in writing, and notified and sought approval from his sister prior to making any request. He also said that she was aware and accepting of the fact that he had borrowed more money than she. Petitioner chose not to produce his accounting records or to elicit his sister's testimony, however, which would have served to corroborate his account and assure us that he could conform his conduct to the Rules of Professional Conduct. Without other substantiating testimony or documentary evidence, we cannot find the deficits that triggered his misconduct have been corrected.

Petitioner's failure to offer recommendations of any witnesses to support his rehabilitation is also disconcerting, especially in light of his earlier dishonest conduct. At the hearing, his counsel asserted that Petitioner chose not to bring in witnesses to attest to his character because they did not want to put them through the burden of testifying. Instead, Petitioner asserted that his testimony about his metamorphosis and deep commitment to his son should be sufficient to prove his rehabilitation clearly and convincingly. We do not agree. We wish we had heard testimony about Petitioner's character and honesty from his colleagues at the Klass Law Group, his mediation clients, his sister, or other parents at his son's school.

Finally, we do find Petitioner's evaluation of his misconduct to be sincere, and his acceptance of responsibility for his wrongdoing demonstrates some progress toward his rehabilitation. It is noteworthy that Petitioner paid restitution to Gordon prior to seeking reinstatement, but we do not know whether he paid restitution in 2013 or 2016, given the evidentiary discrepancies before us. The timing of this interest payment might have been important to our analysis. Moreover, Petitioner could have borrowed money from the New York Life trust to repay Gordon, not only to satisfy this debt, but also to avoid a three-year suspension. That he chose not to do so is indicative in our minds of his lack of rehabilitation.

Regrettably, we did not hear from other witnesses about Petitioner's honesty and willingness to honor his fiduciary duties and, as a result, questions have been left unanswered. Thus, the Hearing Board concludes that Petitioner has not proved his rehabilitation by clear and convincing evidence. For these reasons, we cannot find that Petitioner is unlikely to repeat his past misconduct.

IV. CONCLUSION

The Hearing Board finds that, taken as a whole, Petitioner has failed to satisfy his burden to show that he has been rehabilitated, and has undergone a substantial enough

change in character to ensure protection of the public.[73] Therefore, we **DENY** Petitioner's petition for reinstatement.

[73] *See Lawyers' Manual on Prof'l Conduct* at 101:3013 (2012) ("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 Reinstatement of Bradley D. Coldiron, Attorney Registration No. 21328 Pursuant to C.R.C.P. 251.29(c)." Petitioner **BRADLEY D. COLDIRON**, attorney registration number **21328**, **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 November 17, 2016**. Petitioner **MUST** file his response, if any, to the People's statement of costs **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 November 24, 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.[74]

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

DATED THIS 3rd DAY OF NOVEMBER, 2016.

Originally signed

_____

WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

Originally signed

_____

MARK D. SULLIVAN
HEARING BOARD MEMBER

Originally signed

_____

TERRY ROGERS
HEARING BOARD MEMBER

Copies to:

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