***Eric Bruce Weston v. People*. 15PDJ088. May 27, 2016**.

Following a reinstatement hearing, a hearing board denied Eric Bruce Weston (attorney registration number 26296) reinstatement to the practice of law under C.R.C.P. 251.29. Weston may not file another petition for reinstatement for two years.

In 2002, Weston was convicted in California of an attempted lewd act on a minor under the age of fourteen. Based on that conviction, Petitioner's law license was suspended for three years in 2002. He has remained suspended since that time.

Weston's reinstatement petition was not granted because he failed to present clear and convincing evidence that he has been rehabilitated from his former conduct and that he has maintained his professional competence during his long absence from the practice of law. In reaching that determination, the hearing board focused on Weston's failure to cogently explain why he engaged in misconduct and to furnish proof that he has been rehabilitated from such behavior. 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: ERIC BRUCE WESTON **Respondent:** THE PEOPLE OF THE STATE OF COLORADO	Case Number: **15PDJ088**
OPINION AND DECISION DENYING REINSTATEMENT UNDER C.R.C.P. 251.29(e)	

More than thirteen years ago, Eric Bruce Weston ("Petitioner") was convicted in California of an attempted lewd act on a minor under the age of fourteen. Based on that conviction, Petitioner's law license was suspended for three years. He now seeks reinstatement to the bar, despite a paucity of evidence showing that he has been rehabilitated from his former conduct or that he has maintained his professional competence while absent from the practice of law. Because he has not met his burden of proof, Petitioner's bid for reinstatement to the roll of practicing attorneys must be denied.

I. PROCEDURAL HISTORY

Petitioner filed with Presiding Disciplinary Judge William R. Lucero ("the PDJ") a "Verified Petition for Reinstatement Pursuant to C.R.C.P. 251.29(c)" on October 8, 2015. James S. Sudler, Office of Attorney Regulation Counsel ("the People"), filed an answer on October 20, 2015, and a hearing was scheduled for February 11-12, 2016.

On January 7, 2016, the People filed a motion seeking discovery sanctions against Petitioner. After receiving Petitioner's response, the People withdrew their motion for sanctions, requested that the hearing be continued, and asked that Petitioner be ordered to serve disclosures and discovery responses by a date certain. The PDJ granted all three requests in an order dated January 13, 2016. The People filed an amended answer on March 7, 2016, opposing Petitioner's reinstatement, and the parties reset the hearing for March 29-30, 2016.

On March 29, 2016, a Hearing Board comprising Linda S. Kato and Mickey W. Smith, members of the bar, and the PDJ held the reinstatement hearing under C.R.C.P. 251.29(d) and 251.18. Petitioner appeared pro se, and Sudler attended on behalf of the People. The

Hearing Board considered testimony from Petitioner, James S. Kimmel, James Ray Staples, Julie Oxenford-O'Brian, Bruce Weston, and Kristine Love. The PDJ admitted stipulated exhibits S1-S4, Petitioner's exhibits 1-15, and the People's exhibit A.

II. FINDINGS OF FACT

The findings of fact here—aside from the sections describing Petitioner's disciplinary history—are drawn from testimony offered 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 October 23, 1995, under attorney registration number 26296. 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

In February 2000, Petitioner struck up a conversation in an internet chat room called "Little Girls Sex Chat" with Sheila13, a person who purported to be a thirteen-year-old girl living in California.[2] During that chat, Petitioner asked Sheila13 about her sexual experience and inquired whether she would like to engage in certain sex acts with him.[3] Petitioner then asked Sheila13 to talk on the telephone with him; he gave Sheila13 his telephone number and asked her to call him collect, even though he acknowledged he was taking a "risk" and could get in "trouble" for talking "that way" to someone who was so young.[4]

Petitioner and Sheila13 spoke on the phone, and Petitioner asked her to send a photograph, which she supplied. During the following two weeks, Petitioner and Sheila13 engaged in several additional chat sessions of a very explicit nature. Petitioner also requested, and Sheila13 sent, another picture. Petitioner then volunteered to fly from Colorado to California if he could first call her. Sheila13 provided Petitioner with a telephone number, and they talked. During that call, Petitioner again suggested meeting in person and told Sheila13 not to tell her friends about their conversations. Petitioner corresponded with Sheila13 in additional chat room discussions over the following few weeks; he described various sexual acts he would do with her when they met.

Petitioner eventually arranged to meet Sheila13 at a mall in Southern California on March 18, 2000. He flew to California for the meeting and was arrested at the mall upon meeting a sheriff's department employee posing as a teenage girl. After the arrest, police searched Petitioner's car and hotel room. In the car they found Petitioner's notebook in

[1] *See* C.R.C.P. 251.1(b).
[2] Ex. S3. Sheila13 was, in fact, a California Riverside County Sheriff's Department detective trained to investigate child abuse crimes.
[3] Ex. S3.
[4] Ex. S3.

which he had jotted down what he believed to be Sheila13's name, height, weight, skirt size, panty size, and bra size. In the hotel they found, among other things, condoms, spermicide, a Polaroid camera, and a certificate that read, "MY FIRST TIME, March 18, 2000, DADDY'S LIL GIRL'S NOT A VIRGIN ANYMORE."[5]

At trial in Riverside, California, Petitioner testified that he initially assumed Sheila13 was thirteen years old but soon came to believe that she was an adult who had a fantasy of being a child.[6] On July 19, 2002, a jury of twelve citizens unanimously rejected this defense and convicted Petitioner of an attempted lewd act on a minor under the age of fourteen with the intent of arousing, appealing to, and gratifying the lust, passions, and sexual desires of himself and the child in violation of section 644/288(A) of the California Penal Code. Petitioner appealed his conviction, contending that he had "good reason to believe [Sheila13] was an adult carrying out a school girl sex fantasy."[7] The California Court of Appeals concluded that although evidence existed to support Petitioner's fantasy defense, there was also substantial evidence in the record to support the jury's verdict.[8] The appeals court upheld his conviction in an unreported decision issued on October 2, 2003.[9]

After Petitioner was convicted, he was sentenced to 180 days incarceration, with credit for his fifty-seven days of presentence confinement, and three years of probation.[10] He was released early from the California Department of Corrections after serving approximately 114 additional days.[11] He was allowed to return to Colorado to complete his probation but was required to register as a sex offender. Petitioner later completed his term of probation.[12] As of the date of the reinstatement hearing in this matter, he remained on the sex offender registry.

Petitioner self-reported his conviction to the People in compliance with then-governing disciplinary rules.[13] He was immediately suspended from the practice of law in Colorado on September 6, 2002, and he later stipulated to a three-year suspension of his law license in case number 02PDJ086.[14] In the stipulation, Petitioner agreed that his conduct violated Colo. RPC 8.4(b), which provides that it is professional misconduct to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.[15] The suspension order was issued on June 19, 2003, *nunc pro tunc*

[5] Ex. S3.
[6] Ex. S3.
[7] Ex. S3.
[8] Ex. S3.
[9] Ex. S3.
[10] Ex. S2.
[11] Ex. S2.
[12] Stip. Facts ¶ 3.
[13] Stip. Facts ¶ 1.
[14] Ex. S2.
[15] Ex. S2.

to May 1, 2003.[16] Petitioner was not required to pay any restitution.[17] He has no disciplinary history other than the underlying case.[18]

Petitioner's Reflections About His Conviction

Petitioner testified that "to a great extent" he has always been an idealist. From a young age he was interested in romantic relationships; by the time he graduated from high school, he recalled, he had resolved to be married by age twenty-six and soon thereafter start a family. This plan, he said, became for him a "concrete idea."

Petitioner met his first love as a junior in college, and they enjoyed an "amazing relationship" for four years.[19] But she "broke [his] trust," which devastated him. He could not regain that trust, and he ended the relationship. For several years after, Petitioner frequented nightclubs with his friends and sought out one-night stands. He described that behavior as a "band-aid" that he used without success to fill the "gaping hole" left by the absence of a meaningful personal relationship and by his disappointment in failing to adhere to his ideal timeline for establishing a family. In 1998, while he was in law school, he met another woman whom he dated seriously. Though she expected a ring, he "wasn't particularly excited about marrying her," and the relationship fizzled.

It was then that Petitioner started going online "as a way of reaching out to people, but not really." He found that he enjoyed how effortlessly he could meet people without having to share anything about himself. Through chat rooms he met Susan, a Canadian citizen, and they visited each other in person several times during autumn 1999. But Petitioner soon realized that in close proximity "things weren't as ideal as they'd seemed," and Susan began to question whether she wanted to pursue a long-distance entanglement. Trying to preserve the relationship in an "act of desperation," Petitioner sent her a ring as a symbol of his commitment, but she returned the ring and ended their liaison. Petitioner recalls this as the "triggering event" that propelled him toward setting up a "tryst" with Sheila13.

Even during his romance with Susan, Petitioner investigated other chat rooms—almost exclusively while he was at work—and discovered "how easy it is to create a sort of fantasy in your head as far as um, not just who you are, but who the other person is and how they fit into your life." At the hearing, Petitioner steadfastly maintained that at first he was driven by mere curiosity to explore the "Little Girls Sex Chat" site. That curiosity, he said, morphed into a preoccupation with proving that Sheila13 was not, in fact, thirteen years old and gaining "the upper hand" against her in the "game" they were playing. But when Susan broke off their relationship, Petitioner testified, he gave up on his "goal" of trying to prove that Sheila13 was older than thirteen, returned to his former pattern of seeking casual sex,

[16] Ex. S1.
[17] Stip. Facts ¶ 4.
[18] Stip. Facts ¶ 2.
[19] *See* Ex. 4 at 3.

and tried to "hook up" with Sheila13—someone whose fantasy, he believed, was posing as a young teenager. Though he never asked Sheila13 whether she harbored such a fantasy, and though he said that Sheila13 swore she was indeed a thirteen-year-old, Petitioner repeatedly insisted at the reinstatement hearing that "I did not believe the person I was talking to was thirteen."

With the money he received from returning Susan's ring, Petitioner purchased an airline ticket to California in the hopes of bringing about a weekend tryst. He testified that he was ambivalent about whether to go through with the assignation, but he nevertheless appeared at the designated time and place and approached the person he believed he was supposed to meet. He was immediately arrested. "The first thing that flashed through my mind was the impact that this was going to have, but not just, necessarily, to me personally." He recalled feeling as though he had "virtually tainted everything that [he] touched," including his church, his law firm, and his large extended family. And he recognized that he "had just done damage to the profession that [he] love[d]."

Petitioner was released on bond, and he returned to Colorado. The news of his arrest spread, and he was forced to confront his family's questions. He also reported the arrest to his boss and offered to resign. His law firm, however, elected to keep him on until he went to trial—almost two-and-a-half years later. From the time of his arrest to the time of his conviction, he limited contact with people and threw himself into his work.

Petitioner went to trial in July 2002 and was convicted. His bond was continued to comply with presentencing requirements, including completion of a psychological evaluation conducted by Dr. Craig C. Rath, who concluded that Petitioner "does not appear to be appropriately attuned to his feeling states" but is "not a pedophile, not a danger to the community and not a danger to the victim or victims in this case."[20] Even so, at a sentencing hearing on September 27, 2002, the judge unexpectedly ordered Petitioner to undergo a further psychological review, the results of which Petitioner did not submit to the Hearing Board. According to Petitioner, on the basis of those results the judge ordered him to serve his time not in jail, as Petitioner had expected, but in the California state prison in Chino.[21] Petitioner appealed. He was released from prison in January 2003, but not until October 2003 was his conviction upheld.

Returning to Colorado after serving his prison sentence, Petitioner enrolled in sex offender treatment as a condition of his probation. As part of that treatment, he occasionally visited a therapist, regularly completed workbook therapy modules, and attended two to three times a week an intensive accountability group during which he was required to share "arousals," or any type of negative feeling that might function as a trigger

[20] Ex. 4 at 4.

[21] In contrast to Petitioner's testimony, the California appeals court decision states that Petitioner was sentenced to three years' probation, subject to several conditions, including that he was to serve 180 days in county jail. Ex. S3.

to reoffending. As he related, he was resistant to the program for about six months before he began to trust others, feel comfortable, and make progress.[22] Eventually he was viewed as a leader in the group and was encouraged to mentor another man in the group who also attended Petitioner's church. In retrospect, Petitioner said, the program was valuable in that it helped him understand the link between feelings and behaviors; he realized that he has a choice about what to do when negative feelings arise. He testified that he learned not to be reactionary but instead to step back and examine his feelings.

At the reinstatement hearing, Petitioner was asked to reflect on whether he held himself accountable for his conviction and disciplinary suspension. He replied that everything that had happened to him was a result of choices he had made. Those choices included the decision to become "engrossed" in a "game" of trying to "prove someone wrong" and "gain the upper hand." "I felt like someone was trying to fool me," he said. "It was like waving a red flag in front of a bull." That red flag effectively blinded him to the possible consequences: that his assumptions could have been wrong and he was actually engaging in explicit conversations with a thirteen-year-old, thereby hurting that person. He also asserted that he had committed serious misconduct by engaging a stranger in sexual chat and by being willing to have sex with a stranger.

Petitioner's term of probation ended in November 2005. His treatment program terminated when he was released from probation, and he has not sought any formal therapy since that time. He did not call any expert witnesses to opine about his psychosexual profile, his treatment, or his rehabilitation.

Testimony Regarding Petitioner's Qualifications for Reinstatement

Since Petitioner's return to Colorado more than thirteen years ago, he has, for the most part, spent his time in three ways: working, spending time with his family, and serving his church.

Petitioner's Work

Within a month of his release from prison in 2003, Petitioner secured a position as a mortgage broker for a firm headed by a member of his church. He later struck out on his own and established his own company, Four-Way Lending. Petitioner's second cousin Julie Oxenford-O'Brian testified to Petitioner's competence in helping her to refinance her house in 2004. She characterized his performance as "definitely professional and definitely helpful," noting that the process, while relatively painless, saved her quite a bit of money. According to Petitioner, Colorado laws were revised in 2006 to require that mortgage brokers be licensed by regulatory authorities. Worried that a background check for the licensure process would reveal his conviction, Petitioner voluntarily dissolved his company.

[22] Petitioner's petition makes reference to monthly reports that his treatment provider submitted to his probation officer, but Petitioner did not seek to introduce into evidence those reports.

From 2006 to 2007, Petitioner was "essentially unemployed." In 2007, he began searching for a new job. He did not seek out employment as a paralegal or in any other legal capacity, he said, because he was discouraged by the gossip about him that had circulated amongst members of the bar in the lead-up to his trial, and because he had been warned that a return to law practice would be difficult in light of his conviction. Instead, he decided to apply for a newspaper delivery position, a position he still holds today. Petitioner has not looked for other employment during his suspension.

Petitioner characterizes his job as "taxing," a sentiment echoed by his supervisor, Kristine Love. Love said that delivery work is "grueling" and "exhausting," and it requires year-round dedication, seven days a week. Carriers are required to arrive at the newspaper warehouse by midnight; folding papers and delivering them might require anywhere from four hours to ten, depending on the day of the week, the weather, and the carrier's speed. Love described Petitioner as an "awesome" carrier who has an "excellent work ethic." Petitioner is proud that his subscribers have rated him highly[23] and that he always strives to complete his job in a responsible, effective, and friendly manner.

Petitioner said that he made around $16,000.00 in 2014 and $22,000.00 in 2015, though he admitted that he had refused to provide any of his tax returns to the People when they requested those documents in this proceeding.[24] He has entered into an installment land contract to purchase his house from his parents—and they have quitclaimed the house to him for legal purposes—but as of the reinstatement hearing he had not made any payments on that contract. Petitioner also acknowledged that his student loans now exceed $100,000.00, including principal, interest, and penalties, and that he has made no payments toward those loans since 2007.

Petitioner's Personal Life

Upon his return from California, Petitioner reengaged with his large, close-knit extended family in Colorado. He began to attend—and later organize—monthly breakfasts for thirty or more family members. He again started to attend a yearly family picnic in Evergreen. He arranged a reception to greet an out-of-town family member. He planned a large fiftieth anniversary party for his parents and another couple in the family. He helped care for his ailing grandmother and her sister, and he has tended to his parents when they have been sick or needed assistance around the house. "We seem to be a lot closer that we used to be, which I enjoy," his father said. His family, in turn, has supported him. They rallied around him upon his return to Colorado. His parents have loaned him money and, in 2006, they purchased a house in which he still lives, rent-free. As his father observed, Petitioner's "support [following his conviction] came from two places: one was the family, and one was the church."

[23] *See* Ex. 8.
[24] *See* Ex. 5; *see also* Pet'r's Hr'g Br. at 5-7.

Petitioner was raised in the Methodist church and was active in his church community from a young age. He drifted from its embrace until after serving time in California, when he returned and found the environment welcoming. Between 2003 and 2007, Petitioner again became heavily involved with his church and its ministries.[25] He began attending a men's fellowship once a month and acted as president of that group for two years. He volunteered to drive a church van once a month for members who otherwise would have remained homebound. He was certified as a lay speaker, capable of conducting an entire worship service by himself. He served as a member of the church administrative council and was very involved with the fellowship. But when Petitioner took on his newspaper routes and began working irregular hours, his involvement in the church tapered off as he phased out many activities.

Even so, he testified, he still endeavors to volunteer or perform charitable acts for the community when he can. Thrice a year for the past five years he has served meals at a men's homeless shelter.[26] He stops to help stray dogs while delivering papers.[27] He notifies local authorities when he notices anything of potential concern.[28] He also strives to financially support his favorite charities, including Maxfund—where he adopted his dog—the Blue Knights of Colorado, and the Denver Rescue Mission.

Petitioner's Professional Competence

Petitioner began his testimony in this proceeding with a statement of admiration for "The Law." For as long as he can remember, he said, he was drawn to lawyering as a noble profession entrusted with a responsibility to help the public. He asserted that regaining his license is a matter of great import to him and that he wishes to return to legal practice.

In spring 2006, Petitioner testified, he retained a lawyer to pursue a stipulation for reinstatement. But he parted ways with the lawyer before a petition was filed, and he put reinstatement "on the back burner" for almost two years. Hoping to toll the provisions of C.R.C.P. 251.29(b), which requires an attorney who is suspended for five years or longer to again pass the bar examination, Petitioner petitioned for reinstatement in spring 2008. The People objected on the grounds that Petitioner had already been suspended for more than five years, based on his immediate suspension in autumn 2002. Petitioner unsuccessfully took the bar examination and then withdrew his petition.

A year and a half later, in July 2010, Petitioner again took the bar examination, this time with passing results. Petitioner delayed in filing a new petition, however, because he wanted to seek removal from the sex offender registry and "erase that black mark" on his

[25] *See* Ex. 6.
[26] *See* Ex. 10.
[27] *See* Ex. 9.
[28] *See* Exs. 12-13.

record. According to Petitioner, he could not petition for removal from the registry until November 22, 2015—ten years after the expiration of his criminal probation. Ultimately, however, he decided to put off his campaign for removal from the sex offender registry in favor of prioritizing this proceeding and his pro se efforts to enforce an implied easement in a property dispute with his neighbors.

That dispute involves his access to—and thus his ability to repair—one wall of his carport siding, which immediately abuts his property line and along which his neighbors have erected a fence.[29] Petitioner points to his work on that litigation as evidence of his professional competence: "at the time this dispute arose," he related in his hearing brief, he "viewed it not only as a need to obtain legitimate relief, but also as an opportunity to gain hands-on legal experience after not practicing for a significant length of time."[30] But on cross-examination, Petitioner conceded that he had "neglected" in that case to timely file formal disclosures under the rules of civil procedure. That his disclosures were about six months late, he said, was an "oversight on [his] part," but he insisted that the information he provided in his complaint had fulfilled the spirit of the disclosure rule. On cross-examination, Petitioner also described his reluctance to allow opposing counsel to depose him in the property dispute case.[31]

Petitioner contended that he was competent to practice law based on a slew of continuing legal education ("CLE") courses that he recently took after he filed his petition for reinstatement.[32] In his hearing brief, he also points out that his professional competence is evinced in his two pro se petitions for reinstatement (one in 2008 and his current petition) and through the installment land contract that he is using to buy his house from his parents. The Hearing Board heard no testimony and received no evidence, however, about how Petitioner's pro se petitions or this work on the land installment contract show his professional competence.

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

[29] *See* Ex. S4.

[30] Pet.'s Hr'g Br. at 8.

[31] *See* Ex. A (Petitioner's letter to opposing counsel stating, "It would be easy to characterize your request as an attempt to inconvenience me by requiring me to travel downtown and waste hours," noting that he was "strongly considering pursuing a protective order to ensure that [his] time is not wasted," and inviting opposing counsel to call him to discuss the parameters of a deposition).

[32] *See* Ex. 15. Petitioner asserted that his passing bar examination results do not demonstrate his competence to practice law and instead only measure what he remembered from law school. He resisted the relevance of a panoptic concept of competence to practice. Competence is a concept that should not be applied, he suggested, in a one-size-fits-all paradigm; one is not competent in all fields of practice but rather only in discrete areas of study and research, he maintained.

rehabilitated.[33] Failure to prove even one requirement is fatal to a petitioner's reinstatement.[34]

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 all provisions of the PDJ's order of suspension, and with all rules governing suspended lawyers.[35] 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

Petitioner argues that the Hearing Board can be assured of his professional competence based on the 68 general credit hours and 3.4 ethics credit hours he amassed by taking CLE courses between November 4, 2015, through March 15, 2016.[36] His fitness to practice is also evidenced, he contends, in his prosecution of the ongoing property dispute litigation with his neighbors. The People disagree. They maintain that neither his CLE credits, nor his bar examination results, nor his present occupation reflect competence to practice law.

We must agree with the People. 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. Yet Petitioner had only completed sixteen CLE credits before he petitioned for reinstatement in October 2015, all of which he accrued before June 2006.[37] Indeed, from 2003 through October 2015, Petitioner appears to have had very little meaningful engagement with the law—save for his bar examination results, results that by now are nearly, if not already, stale[38]—that would demonstrate his fitness to practice. It was only after the People objected to Petitioner's reinstatement on this score that he began to zip through CLE courses, in November 2015. Thus, while Petitioner's CLE credits are now numerous, they do not clearly or convincingly satisfy us that at the time he filed his petition he could be said to have kept abreast of legal developments or maintained necessary legal

[33] C.R.C.P. 251.29(b).
[34] *See In re Price*, 18 P.3d 185, 189 (Colo. 2001).
[35] Stip. Facts ¶ 5.
[36] Ex. 15.
[37] Petitioner did not pursue any credits between June 2006 and October 2015, a stretch of more than nine years.
[38] The People question whether Petitioner's passing results, delivered five years and one day before he filed his petition, fulfill his obligations under C.R.C.P. 251.29(b) as mediated by C.R.C.P. 211.3(2), which requires an applicant to the bar to take the oath of admission no later than eighteen months after receiving news of a passing score. The Hearing Board need not grapple with that legal question here, however, because Petitioner never pointed to his success in passing the July 2010 bar examination as a basis on which to find him competent to practice.

skills. Perhaps just as worryingly, from 2007 onward Petitioner never even investigated possibilities for paralegal work or any other work that would draw or build upon legal skills.

Petitioner's prosecution of his property dispute litigation does not nudge us any closer to finding that he has met his burden of proof on this element. From the evidence submitted to the Hearing Board, it appears that Petitioner has filed a complaint and defeated a motion to dismiss in that matter.[39] On the other side of the ledger, Petitioner admitted that he had neglected for six months to file formal disclosures in that litigation. Taken together, these facts do not clearly indicate that he is fit to practice. We simply do not feel confident in Petitioner's professional competence, given the lengthy hiatus he has taken from legal activities that would enable him to cultivate his skill set and maintain his base of knowledge.

Our finding on this element renders Petitioner ineligible for reinstatement.[40] So as to set forth findings for all three reinstatement prongs, however, we also address the deficiencies in Petitioner's presentation concerning rehabilitation, deficiencies that also leave us no choice but to deny his petition for reinstatement.

Rehabilitation

The Hearing Board cannot grant reinstatement simply upon a showing that Petitioner has engaged in proper conduct or refrained from further misconduct. Instead, we must look to whether he has experienced an overwhelming change in his state of mind such that he could be said to have undergone a regeneration.[41] 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.[42] These factors 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 Petitioner's life; and recognition of the seriousness of his previous misconduct.[43] The *Klein* criteria provide a framework to assess the likelihood that Petitioner will repeat his prior misconduct.

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[39] Ex. S4.

[40] *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.").

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

[42] 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).

[43] *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: 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

We first consider those *Klein* elements that bear no direct relation to Petitioner's criminal conviction. Although Petitioner's professional competence and his present business pursuits do not militate in favor of finding that he is fit to practice law, those elements do militate in favor of concluding that Petitioner is responsible, industrious, and well-regarded in his current occupation. Likewise, much of Petitioner's conduct since he was suspended, the personal aspects of his life, his community service, and the recommendations of his family members who testified lead us to believe that Petitioner meaningfully served his church for a time, is invested in his family's welfare, and looks for small opportunities to help his community.

When, however, we consider those *Klein* elements that do bear upon Petitioner's conviction, namely, his character, his candor and sincerity, and his recognition of the seriousness of his misconduct, our analysis is not so clear-cut. Because the imposition of discipline is necessarily predicated upon a finding of some shortcoming, whether it be a personal or professional deficit, our examination of Petitioner's character is directed toward determining whether he has addressed his shortcomings.[44] But identification of the shortcoming in Petitioner's character that led to his conviction and suspension is problematic.

According to Petitioner, the underlying character flaw made manifest was his overwhelming urge to win a game and prove someone else wrong, coupled with his readiness to have sex with a stranger. He flatly repudiated the notion—one that the People seemed to advance—that his underlying character flaw was a willingness to act on his desire to have sex with an underage girl. In essence, Petitioner asked us to find that the jury's verdict was incorrect, that he never intended to have sex with a minor, and that he was not actually guilty of attempting to do so. In support of that theory, Petitioner noted that Dr. Rath concluded he was neither a pedophile nor a danger to the community. Petitioner also vowed many times that "I did not believe the person I was talking to was thirteen." Somewhat incongruously, Petitioner stressed that he had completed an intensive course of therapy for sex offenders, and he also offered into evidence two studies for the proposition that, contrary to public perception, sex offenders present a "lower rate of general recidivism . . . compared to most other offender types."[45]

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these newly articulated factors are encompassed in our analysis, we do not explicitly rely on them as guideposts for our decision.

[44] *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).

[45] Ex. 3 at 14; Ex. 2. Without objection from the People, Petitioner also moved for and was granted permission to introduce into evidence a letter from Allan F. Stanley, stepfather to one of Petitioner's friends and an individual who claims to have a background in law enforcement and a tenure with the Colorado State Board of Parole. Ex. 14. Stanley states in the letter that Petitioner is the "kind of individual that has demonstrated he has no intention to violate any law, particularly laws related to sex offen[s]es." Stanley goes on: "It may be true that we can never be totally certain of what may occur in the future, but I believe in his particular case there is very little chance of him being involved in the actual commission of a crime of any kind." Ex. 14.

Petitioner bears the burden in this proceeding to cogently explain why he engaged in misconduct and what he has done to effect a rehabilitation so encompassing that he could be said to have undergone a regeneration. But his failure to present solid evidence on these scores prevents us from discarding the jury's verdict and making the finding he tacitly seeks. By way of example, he did not undergo an independent medical examination in advance of this hearing. He did not call an expert to provide supportive testimony at the hearing. He did not present his probation treatment reports. And he did not introduce the findings of the psychological analysis ordered by the judge in his criminal case.

Without a compelling basis for rejecting the jury's verdict, as affirmed by the California court of appeals, we cannot conclusively find that the shortcoming resulting in his conviction was not, in fact, a desire to have sex with a young teenager. And we certainly do not have adequate assurances from Petitioner that he has been rehabilitated from such a shortcoming: aside from his testimony that he completed his probation-mandated sex offender treatment and his rather indefinite statements about learning to connect "feelings and behaviors," we have little before us that shows rehabilitation.

Worth noting is that even if we were to accept Petitioner's premise—that at the time of his misconduct he suffered only from a myopic desire to win a game and prove someone wrong—we could not find by clear and convincing evidence that he has experienced a genuine transformation in that aspect of his character. We agree with Petitioner that his focus appears to be evolving outward, directed more toward what he can offer others than what he can gain from them. But certain instances of Petitioner's recent conduct give us appreciable pause about whether that evolution includes sloughing off his penchant for gamesmanship, especially when facing an antagonist. Specifically, we are concerned that Petitioner refused to turn over his last five years of tax returns when those documents were requested by the People; his refusal does not reflect the attitude of transparency and candor that we hope to see in petitioners. His resistance to being deposed in his property dispute, notwithstanding opposing counsel's right to depose him under C.R.C.P. 26(b)(2)(A), likewise hints at an aggressively oppositional approach to litigating in order to gain the upper hand. In all, the self-portrait Petitioner painted did not reveal the vast and abiding change of character necessary for rehabilitation.

IV. CONCLUSION

Petitioner was sentenced to 180 days in prison, with three years of probation thereafter. He served his time and fulfilled his probationary conditions. He has thus paid his debt to society for the crime he was found to have committed. But reinstatement to the legal profession is decided under a different standard: not by passage of time, not by discharge of a criminal sentence, but by demonstration of a fitness to practice law and a rehabilitation from the shortcomings that caused the misconduct. Because Petitioner did not furnish the proof necessary to assuage our real concerns as to these factors, we cannot grant him reentry to the profession.

V. ORDER

1. The Hearing Board **DENIES** Petitioner's "Verified Petition for Reinstatement Pursuant to C.R.C.P. 251.29(c)." Petitioner **ERIC BRUCE WESTON**, attorney registration number **26296**, **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 of this proceeding **on or before Friday, June 10, 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 Friday, June 17, 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** petition for reinstatement within two years of the date of this order.[46]

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

DATED THIS 27th DAY OF MAY, 2016.

Originally signed

_____

WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

Originally signed

_____

LINDA S. KATO
HEARING BOARD MEMBER

Originally signed

_____

MICKEY W. SMITH
HEARING BOARD MEMBER

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