

**Carl Stuart West v. People. 15PDJ104. April 18, 2016.**

Following a reinstatement hearing, a hearing board denied Carl Stuart West (attorney registration number 23435) reinstatement to the practice of law under C.R.C.P. 251.29. West may not file another petition for reinstatement for two years.

In 2015, West violated terms of his disciplinary probation when he missed two hearings in a domestic relations representation. As a result, he was required to serve the stayed portion of a one-year-and-one-day suspension originally levied in 2009.

West's reinstatement petition was not granted because he failed to present clear and convincing evidence that he has been rehabilitated from his prior misconduct. In reaching that determination, the hearing board focused on West's long and varied history of misconduct, his failure to pinpoint the causes of that misconduct, and the limited evidence of meaningful changes in his life. 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	
<hr/> <b>Petitioner:</b> CARL STUART WEST  <b>Respondent:</b> THE PEOPLE OF THE STATE OF COLORADO	<hr/> Case Number: <b>15PDJ104</b>
<b>OPINION AND DECISION DENYING REINSTATEMENT UNDER C.R.C.P. 251.29(e)</b>	

Carl Stuart West (“Petitioner”) has been sanctioned for professional misconduct on several occasions. In 2015, he violated terms of his disciplinary probation when he missed two hearings in a domestic relations representation. As a result, he was required to serve the stayed portion of a one-year-and-one-day suspension originally levied in 2009. He now seeks to demonstrate that he should be reinstated to the practice of law. His petition cannot be granted because he failed to present clear and convincing evidence that he has been rehabilitated from his prior misconduct.

### I. PROCEDURAL HISTORY

Petitioner took the oath of admission and was admitted to the bar of the Colorado Supreme Court on October 21, 1993, under attorney registration number 23435. He is thus subject to the jurisdiction of the Colorado Supreme Court and the Hearing Board in this reinstatement proceeding.<sup>1</sup>

Petitioner filed his “Petition and Affidavit in Support of Reinstatement Pursuant to C.R.C.P. 251.29” on November 19, 2015. Charles E. Mortimer Jr., Office of Attorney Regulation Counsel (“the People”), responded in opposition on December 2, 2015.

On March 21, 2016, a Hearing Board comprising James L. Cox Jr. and Matthew K. Hobbs, members of the bar, and William R. Lucero, the Presiding Disciplinary Judge (“the PDJ”), held a reinstatement hearing under C.R.C.P. 251.29(d) and 251.18. Petitioner appeared pro se, and Mortimer attended on behalf of the People. The Hearing Board considered

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<sup>1</sup> See C.R.C.P. 251.1(b).

testimony from Petitioner, Collin J. Earl, Julie Bernard, and Laura Rosenthal.<sup>2</sup> No exhibits were admitted.

## II. FINDINGS OF FACT

The findings of fact here—aside from the description of Petitioner’s disciplinary history—are drawn from testimony offered at the reinstatement hearing.

### **Petitioner’s Past Discipline and Revocation of His Probation**

In 2003, in case number 02PDJ092, Petitioner stipulated to suspension of his law license for one year and one day, all but thirty days stayed upon completion of a one-year period of probation. That discipline was predicated on Petitioner’s representation of a woman whose husband had been killed in a traffic accident. Petitioner met with the client shortly after the accident and agreed to pursue a wrongful death claim on a contingent fee basis. He provided incompetent and neglectful representation in the wrongful death matter. In addition, Petitioner informed his client that he was entitled to a one-third share of the decedent’s \$250,000.00 accidental death insurance benefits, though he said he would discount his fee to \$40,000.00. In fact, Petitioner lacked any legal basis for collecting a contingent fee from the insurance benefits, and his statement to his client was knowingly dishonest. He agreed that he had violated Colo. RPC 1.1 (a lawyer shall competently represent a client); Colo. RPC 1.3 (a lawyer shall act with reasonable diligence and promptness when representing a client); Colo. RPC 1.5(a) (a lawyer shall not charge an unreasonable fee); Colo. RPC 1.5(c) (a lawyer shall enter into a contingent fee agreement only if it complies with Chapter 23.3 of the Colorado Rules of Civil Procedure); and Colo. RPC 8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation). Petitioner was reinstated in 2003 and successfully completed his probation the next year.

In January 2009, in case number 09PDJ005, Petitioner again stipulated to a suspension for one year and one day, this time with six months served and the remainder stayed upon successful completion of a three-year period of probation, with conditions to include regular appointments with a doctor, adherence to the doctor’s treatment plan, and continued treatment with a licensed clinical social worker.<sup>3</sup> The stipulation noted that Petitioner had been diagnosed with bipolar disorder in 1994 and that he took his medications inconsistently. The stipulation arose out of two separate violations of Colo. RPC 8.4(b) (a lawyer shall not commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects). First, Petitioner was found to have consumed cocaine. According to Petitioner, he had become concerned that his wife was using illegal drugs. He said he confronted an acquaintance about this issue and took cocaine himself to prove to the acquaintance that he was not working for law

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<sup>2</sup> Rosenthal testified by telephone, as authorized by the PDJ’s order of March 15, 2016, granting Petitioner’s unopposed motion for absentee testimony.

<sup>3</sup> At a probation revocation hearing held in February 2015, which is described below, the evidence demonstrated that Petitioner did not fully comply with probationary conditions requiring the filing of medical reports with the People.

enforcement.<sup>4</sup> Second, in an altercation with his wife, Petitioner grabbed a cell phone from her hand, broke the phone, and threw it at her. When police arrived, Petitioner tried but failed to jump a fence and then attempted to take a swing at an officer. Petitioner pleaded guilty to third-degree assault on his wife, a misdemeanor, and resisting arrest, a class-three misdemeanor. He was sentenced to three years of supervised probation. Petitioner was reinstated from his six-month suspension in October 2009 and was placed on a three-year period of probation.

In July 2009, Petitioner stipulated to a thirty-day served suspension in case number 09PDJ070. There, a former client who was serving a sentence in the Department of Corrections had sent Petitioner a money order for \$350.00, hoping Petitioner would order him a specialty food packet. When Petitioner said he could not do so, the client asked Petitioner to return the money order or send it to his wife. Petitioner negotiated the money order but did not place the funds into his trust account. He stated that he sent the money to the client's wife, but the wife denied receiving the money and Petitioner produced no records to substantiate his account. In this matter, he violated Colo. RPC 1.15(a) (2008) (a lawyer shall hold client property separate from the lawyer's own property) and Colo. RPC 1.15(b) (2008) (a lawyer shall promptly deliver to a client or third person any funds such person is entitled to receive). Petitioner was reinstated from this suspension in October 2009.

In July 2011, the PDJ approved a stipulation to extend by one year Petitioner's probation in case number 09PDJ005 based on new misconduct. The new case, lodged under case number 11PDJ055, was based on Petitioner's plea of guilty to driving while ability impaired ("DWA"). His conduct violated Colo. RPC 8.4(b). Petitioner did not pay the \$91.00 ordered as costs in that matter until after he petitioned for reinstatement in the present case.

Although he could have sought to terminate his probation in case numbers 09PDJ005 and 11PDJ055 in October 2013, Petitioner never filed an affidavit under C.R.C.P. 251.7(f), and he thus remained on probation. In early 2015, the People moved to revoke Petitioner's probation.

A probation revocation hearing took place in February 2015. The People asserted that Petitioner violated the terms of his probation by contravening several Rules of Professional Conduct in a domestic relations representation. The PDJ found the following facts: Lance Salido hired Petitioner to represent him in a parenting time and child support matter in El Paso County District Court. After mediating with opposing counsel, Petitioner failed to appear for a permanent orders hearing on February 10, 2014. The court rescheduled the hearing for February 18, 2014, but neither Petitioner nor his client appeared. Although the

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<sup>4</sup> A dependency and neglect petition was filed against Petitioner's wife after she tested positive for cocaine at an emergency room. Because Petitioner lived with his stepchildren, he was also asked to submit to a drug test, leading to the finding that he had consumed cocaine. An evaluator in the dependency and neglect case concluded that Petitioner did not meet the criteria for a diagnosis of substance abuse or dependence. It does not appear that any criminal charges were filed against him.

court left Petitioner a voicemail message on the record and then issued an order modifying Salido's parenting responsibilities, Petitioner took no action in response. Because Petitioner did not notify Salido of the rescheduled hearing, Salido did not attend the hearing and was not present when the court revised his parenting and child support responsibilities.

The PDJ concluded that Petitioner violated Colo. RPC 1.3 by missing the first permanent orders hearing, failing to communicate with opposing counsel about the status of the matter, neglecting to appear for the rescheduled hearing, and failing to notify his client that the hearing had been rescheduled. Petitioner's conduct also violated Colo. RPC 1.4(a)(2) (a lawyer shall reasonably consult with a client about the means by which the client's objectives are to be accomplished) and Colo. RPC 8.4(d) (a lawyer shall not engage in conduct prejudicial to the administration of justice).

By order dated February 25, 2015, the PDJ revoked Petitioner's one-year period of probation, lifted the stay on the remaining portion of his suspension in case number 09PDJ005, and suspended his law license for six months and one day, effective March 18, 2015.

Although Petitioner had notified clients by certified mail of his prior suspensions, as required by C.R.C.P. 251.28(b), he did do so after the Salido misconduct. He testified that he did give his clients notice, but not by certified mail. Because he had not strictly followed the rule, he said, he decided not to file an affidavit under C.R.C.P. 251.28(d), which directs suspended attorneys to file with the People, within fourteen days of the suspension's effective date, an affidavit showing that the attorney has notified clients by certified mail. Only in March 2016, shortly before the reinstatement hearing, did Petitioner notify clients by certified mail of his March 2015 suspension.

### **Petitioner's Testimony Regarding His Suspension**

During the reinstatement hearing, Petitioner struggled to explain his misconduct in the Salido matter. He first said that he had not calendared a date correctly and had mistakenly thought all pending issues were addressed in a stipulation he had reached with opposing counsel, though he acknowledged that the stipulation did not address the issue of child support. He also explained that he was "burned out" and needed time off to "refresh" himself and come back with a "new pair of eyes." Petitioner speculated that his actions may have reflected his sense of feeling overwhelmed and may have been a "cry for help" to himself. Later in the reinstatement hearing, he admitted that he was frustrated with Salido's case and with Salido himself, who was "very difficult." He said his misconduct was an expression of "throwing my hands up and saying I, I don't want to do this case anymore, I don't want to appear for him, I don't want to go into the court, I, I quit on it." When asked why he didn't move to withdraw, he said simply: "I took it to the eleventh hour and then I didn't appear."

## **Petitioner's Professional and Personal Background**

After a stint working as a manager at a magazine after college, Petitioner attended law school at the University of Denver. While there, he interned for disciplinary counsel and for a professor who specializes in ethics issues. In 1994, the year after earning his J.D., he was hired as a deputy district attorney in the Fourth Judicial District, where his caseload included child support, domestic violence, and drug cases. He opened a solo practice in 1999, focusing on family law, criminal law, and personal injury cases. For many years he shared an office in Colorado Springs with another family law practitioner.

Turning to Petitioner's home life and personal relationships, he testified that his first marriage dissolved in 2004. He married his second wife in 2007, but the couple separated just two years later, after a "tumultuous" union. Petitioner has three children, aged five, twenty-two, and twenty-eight. Along with the child's mother and grandmother, he helps to care for the five-year-old. He mentioned that he has a strong relationship with his own mother, who is a source of emotional support.

Petitioner testified at some length about his practice of the Japanese martial arts kendo and iaido. Petitioner, whose heritage is Japanese-American, has practiced these disciplines since the 1980s and has taught them since the 1990s. He has offered a number of classes free of charge. He is currently preparing for a test to gain international recognition as a teacher. In addition, he spent a decade on the board of a nonprofit devoted to these arts. He described kendo and iaido as highly disciplined art forms that require attention to detail and that teach practitioners to treat others with respect and dignity. Practitioners are supposed to carry these mental disciplines into their daily lives, he said. At the time Petitioner was suspended, he was practicing kendo and iaido once or twice a week, but he now is practicing even more frequently.

Petitioner was diagnosed with bipolar disorder in 1994 and began taking medication for his condition that year. He conceded in his 2009 conditional admission of misconduct, however, that he had not consistently taken his medication. At the reinstatement hearing, Petitioner testified that his bipolar disorder probably contributed to some degree to his convictions and other misconduct but it did not "cause" his misconduct in the Salido matter; he noted that he was diagnosed in 1994 yet maintained a clean disciplinary record for six years. He believes he has achieved stability with his condition, in part due to new, more effective medications, and he said he does not experience any episodes of severe depression. He now sees a psychiatrist just twice a year. He did not think expert testimony from a mental health professional would "add much" for the Hearing Board in this case and regardless, he said, he could not afford to pay for an expert. Petitioner testified that he does not have a problem with illegal drugs.

## **Petitioner's Activities Since His Suspension**

Since his suspension, Petitioner has been employed on a somewhat irregular basis both within and outside the legal field. He has investigated personal injury cases for attorney Collin Earl on an as-needed basis. In addition to writing memos documenting the results of

his investigations, he said, he has spoken with Earl about the practice of law more generally and about the systems Earl uses in his office. Earl testified at the reinstatement hearing that Petitioner has done exactly what was asked of him. Earl believes that Petitioner is competent to work as a lawyer and that his recent suspension was a real “wake-up call.” In Earl’s view, Petitioner has a clear understanding of what he needs to do to overcome his weaknesses, though Earl did not elaborate.

Petitioner also has performed unpaid work as a paralegal for his sister, Laura Rosenthal, and another attorney, Julie Bernard. Rosenthal and Bernard own a virtual law firm that handles intellectual property matters. As a paralegal, Petitioner has drafted documents, such as interrogatories and pleadings, and provided advice about trial strategy. Rosenthal offered that Petitioner’s work product was “very good,” his writing “superb,” and his delivery timely. Since Petitioner has worked so hard to reinstate his license, Rosenthal is confident that his license will mean more to him going forward and that he will do the “right thing.” Bernard also praised Petitioner’s work product, saying he gave her just what she needed. Bernard views Petitioner as responsive, professional, and fit to practice law.

In addition to Petitioner’s work for lawyers, he has been hired on a sporadic basis to install new cashier systems at Walmart and J.C. Penney stores throughout Colorado. These assignments have required him to remove old hardware systems, bring in new cash registers and satellite apparatuses, install programs, and ship back the old equipment. He described these multi-step projects as demanding meticulous attention to detail. Petitioner said he has had no success in finding other employment, despite applying for a range of other jobs, and as a result he earned less than \$20,000.00 in 2015.

Petitioner testified that he has completed some continuing legal education (“CLE”) courses during his suspension. He chose courses that he thought would help him become more self-aware and better able to identify his triggers, such as when he is overtired. Petitioner did not offer into evidence any CLE affidavits, though he attached to his petition a list of programs that he has completed, totaling fifty-three credits.

Petitioner driver’s license is currently suspended. According to Petitioner, he received a ticket for driving without insurance.<sup>5</sup> When he failed to pay the fine, his license was suspended last year. He now must pay about \$600.00 to reinstate his driver’s license. He also owes money in two matters involving failure to pay rent on an apartment and what he described as a constructive eviction issue. A judgment is pending against him for about \$1,600.00 in the first matter, and he recently reached an agreement to pay a similar amount in the second matter. Petitioner has not filed income tax returns since 2012. He testified that his bookkeeper moved out of state and that he could not afford to hire a new bookkeeper. The original bookkeeper has now returned to Colorado, Petitioner said, and is helping him to file his tardy returns.

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<sup>5</sup> Petitioner said that he had listed an incorrect card number for automatic withdrawals, though he did not make clear what he meant.

## **Petitioner's Testimony Regarding His Qualifications for Reinstatement**

Petitioner hopes he can regain his law license, he testified, because he finds it rewarding to help people, find solutions for them, and guide them through the legal process. He identifies as a lawyer and wants to again join the ranks of attorneys to realize that self-conception.

Petitioner said that as soon as he was grieved in the Salido case, he undertook an examination of his moral character, committing himself to identify his strengths and weaknesses and to turn his weaknesses into strengths. When asked what he sees as his flaws, he responded that he has lacked diligence and been neglectful of the “finer points” and details that require close monitoring in legal practice. Petitioner explained that when he was a deputy district attorney he was “doing everything by the book,” but there came a time when he thought it was acceptable not to do so. He knows he can't be that type of person any longer, he said. He recognizes that his neglect has severely affected the court, his client, and even himself.

Since his suspension, Petitioner attested, he has made significant changes in his behavior and in his daily life. He offered the example that he makes sure to arrive at his kendo and iaido classes on time so that his students can ask him questions if they wish.

Petitioner testified that if he returns to the practice of law, he will do so with a different mindset, one he cultivates in his kendo and iaido practice. He will recognize that he simply can't “let up.” Rather than handling family law cases, which he says are particularly stressful, he will focus on criminal law. Petitioner is confident he can maintain a high level of competence in this area. He noted that calendaring for criminal cases is simpler, though he conceded that criminal defendants, like family law clients, can often be difficult to serve. He envisions continuing to work some with Bernard and Rosenthal. On a practical level, he would like to office-share again and to hire paralegals or interns for assistance. Petitioner plans to implement cloud-based technology to help him maintain his calendar and meet deadlines.

### **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.<sup>6</sup> Failure to prove even one requirement is fatal to a petitioner's case.<sup>7</sup>

#### **Compliance with Disciplinary Orders and Rules**

An attorney who is 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

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<sup>6</sup> C.R.C.P. 251.29(b).

<sup>7</sup> See *In re Price*, 18 P.3d 185, 189 (Colo. 2001).

reinstatement.”<sup>8</sup> 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.<sup>9</sup>

Here, Petitioner violated C.R.C.P. 251.28(b) and (d) by failing to timely notify clients of his suspension via certified mail and then neglecting to file the required affidavit. He also did not pay the ordered costs in case number 11PDJ055 until after he petitioned for reinstatement in the present case.

In our view, these are technical violations that, standing alone, should not bar Petitioner’s reinstatement. His delayed payment of \$91.00 in costs certainly caused little harm, and, given his unchallenged testimony that he notified clients of his suspension in some manner, we also cannot find that his failure to use certified mail caused meaningful harm.<sup>10</sup> We do note, however, that these violations appear to reflect a larger pattern of inattention to detail, as does the suspension of his driver’s license and his failure to file tax returns. We thus will revisit these issues in the context of Petitioner’s rehabilitation.

### **Fitness to Practice Law**

The People do not contest that Petitioner is competent to practice law. Although the evidence on this prong is somewhat thin, the Hearing Board finds that Petitioner is fit to practice. His misconduct in the Salido matter did not reflect any intellectual shortcomings, in our view. Petitioner has been employed in the legal field since his suspension, albeit in a somewhat limited capacity. His three witnesses attested to the high quality of his work product, and none of them doubted that he could practice competently if his license were reinstated. Finally, Petitioner’s suspension has been of relatively short duration, so we are not as concerned about a possible loss of relevant skills and knowledge as we would be if he had served a longer suspension.

### **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.<sup>11</sup> In this analysis, we are guided by the leading case of *People v. Klein*, which enumerates several criteria for evaluating whether an attorney has been rehabilitated.<sup>12</sup> 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

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<sup>8</sup> *Id.* at 191.

<sup>9</sup> *Id.*

<sup>10</sup> We would feel more confident in making this assessment if Petitioner had introduced his letters to clients at the reinstatement hearing, but the People have given us no basis for doubting his testimony.

<sup>11</sup> See *In re Cantrell*, 785 P.2d 312, 313 (Okla. 1989); *In re Sharpe*, 499 P.2d 406, 409 (Okla. 1972).

<sup>12</sup> 756 P.2d 1013, 1015-16 (Colo. 1988) (interpreting language of C.R.C.P. 241.22, an earlier version of the rule governing reinstatement to the bar).

Petitioner's life; and recognition of the seriousness of his previous misconduct.<sup>13</sup> The *Klein* criteria provide a framework to assess the likelihood that Petitioner will repeat his prior misconduct.

We first examine the interrelated factors of Petitioner's present business pursuits, his professional competence, and recommendations of other witnesses. As noted above, we are satisfied that Petitioner has maintained his professional competence during his suspension. To his credit, he has remained active in the legal field. His paid and unpaid work for lawyers demonstrates a commitment to returning to the practice of law. And as noted above, Petitioner's witnesses all attested to his competence. His employment installing cash register systems is also positive, in our view. That work is detail-oriented, and attention to detail is one of the skill sets Petitioner recognizes he needs to improve. These three factors under *Klein*, then, represent some progress toward rehabilitation.

Turning to the factor of Petitioner's personal life and community service, Petitioner offered little testimony about these issues. His kendo and iaido practice appears to be a salutary influence, and we commend him for offering some classes free of charge. But his martial arts practice did not instill in him sufficient mental discipline to prevent his prior misconduct, as noted above. On the whole, Petitioner's evidence on this factor was too limited to measurably contribute to any finding of rehabilitation.

Last, we consider together the *Klein* factors of Petitioner's character, his candor and sincerity, his recognition of the seriousness of his misconduct, and his conduct since his suspension. Our analysis of Petitioner's character, in particular, is directed toward determining whether he has addressed his shortcomings, since the imposition of discipline is necessarily predicated upon a finding of some shortcoming, whether it be a personal deficit, a professional deficit, or an environmental challenge.<sup>14</sup>

At the reinstatement hearing, Petitioner acknowledged that his misconduct in the Salido case was serious but could not offer a consistent or compelling explanation for his actions. He said alternately that he did not pay sufficient attention to the details of his practice, he misunderstood the nature of the stipulation reached with opposing counsel in Salido's case, he did not take adequate steps to address feeling overwhelmed, and he "quit on" his representation of Salido. His shifting explanations give us pause as to his candor and sincerity.

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<sup>13</sup> *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 establish a framework for our decision.

<sup>14</sup> 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).

More important, the Hearing Board is not convinced that Petitioner has truly taken ownership of his actions by wrestling with and pinpointing the underlying causes. He has engaged in misconduct in five separate matters, one of which (case number 09PDJ005) involved two wholly distinct instances of misconduct. The repeated nature of Petitioner's misdeeds strongly suggests that one or more substantial causes exist, but he could not offer a cogent explanation. As a logical consequence, he also could not persuasively describe how he would mend his ways. Petitioner testified that he now realizes he must not "let up" when representing clients, yet we lack evidence that he has the ability or commitment to follow through on this realization. In fact, he said he resolved to make significant personal changes upon being grieved in the Salido matter, but he then continued to disregard details by failing to pay outstanding disciplinary costs and to comply with C.R.C.P. 251.28(b).<sup>15</sup> Likewise, his neglect of his tax returns and the loss of his driver's license raise concerns as to his meticulousness.

Indeed, it appears that much in Petitioner's vision for the future mirrors the circumstances under which he previously committed misconduct. He plans to return to work as a solo practitioner, a notoriously difficult form of law practice. While it is encouraging that Petitioner plans to stop practicing family law, we are not convinced that he will experience meaningfully less stress in representing criminal defendants—also a challenging clientele, by his admission. And although it is positive at first blush that Petitioner plans to share an office with a lawyer he described as highly ethical, Petitioner previously engaged in misconduct while office-sharing with this same lawyer. Likewise, Petitioner's continued practice of martial arts may be a favorable influence in his life, yet his past misconduct took place during a period when he was also practicing kendo and iaido.

We also have unresolved concerns about Petitioner's mental health. Many lawyers with bipolar disorder are fully able to practice law, but we have no evidence that this is true in Petitioner's case. In fact, he admitted that his bipolar condition may have played some role in his prior misconduct. Petitioner could have attempted to demonstrate that his mental health is sound by introducing written documentation from one of his treatment providers, but he did not do so.

Our analysis of rehabilitation above focuses on Petitioner's rehabilitation from his misconduct in the Salido matter, since the parties' presentations and the Hearing Board's questions focused on that issue. Yet we also interpret our duties under C.R.C.P. 251.29(c) to include an examination of Petitioner's rehabilitation from the misconduct in case numbers 09PDJ005 and 11PDJ055, since his most recent suspension was triggered by his failure to comply with the probationary terms imposed in those cases. As explained above, Petitioner was disciplined in case number 09PDJ005 for consuming cocaine, assaulting his wife, and resisting arrest, and he was disciplined in case number 11PDJ055 for DWAI. Petitioner did not explain to the Hearing Board why he engaged in this conduct and how we can be sure that he will avoid future illegal activities. Petitioner's past drug use and

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<sup>15</sup> The PDJ also notes that Petitioner was nearly an hour and a half late to his probation revocation hearing in February 2015, which raises similar concerns.

convictions—conduct that raised questions about his judgment and emotional stability—also reinforce our apprehensions about his mental health.

Ultimately, Petitioner’s long and varied history of misconduct, his incertitude about what caused his misconduct, and the limited evidence that he has made meaningful changes in his life convince us that reinstatement is not appropriate. Petitioner had ample opportunity through his law school internships, his work as a deputy district attorney, and more to build a law practice grounded in the rules of ethics, yet he has repeatedly violated those rules. He now professes to have redoubled his commitment to abiding by the Rules of Professional Conduct, but we lack sufficient evidence that he has rehabilitated himself so as to ensure future compliance. We do believe, however, that Petitioner has the potential to maintain the highest standards of professional conduct as a lawyer, and we encourage him to seek reinstatement in two years armed with more persuasive and comprehensive evidence of his compliance with applicable rules, his fitness, and his rehabilitation. To be successful, Petitioner should meaningfully reflect about the shortcomings leading to his misconduct and identify strategies to overcome those shortcomings in his future practice.

#### **IV. CONCLUSION**

The Hearing Board finds that, taken as a whole, Petitioner failed to satisfy his burden of showing that he has undergone a genuine change in character that will ensure protection of the public. We thus deny his petition for reinstatement.

#### **V. ORDER**

1. The Hearing Board **DENIES** Petitioner’s “Petition and Affidavit in Support of Reinstatement Pursuant to C.R.C.P. 251.29.” Petitioner **CARL STUART WEST**, attorney registration number 23435, **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 May 2, 2016**. Petitioner **MUST** file his response, 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 May 9, 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.<sup>16</sup>

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<sup>16</sup> C.R.C.P. 251.29(g).

DATED THIS 18<sup>th</sup> DAY OF APRIL, 2016.

*Originally signed*

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WILLIAM R. LUCERO  
PRESIDING DISCIPLINARY JUDGE

*Originally signed*

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JAMES L. COX JR.  
HEARING BOARD MEMBER

*Originally signed*

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MATTHEW K. HOBBS  
HEARING BOARD MEMBER

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