

*Terrence Thomas McGannon v. People*. 22PDJ009. January 10, 2023.

Following a reinstatement hearing, a hearing board reinstated Terrence Thomas McGannon (attorney registration number 15366) to the practice of law under C.R.C.P. 242.49, effective January 10, 2023.

In 2007, McGannon was suspended from the practice of law for two years. The suspension was premised on his criminal conviction for a class-four felony of possession of methamphetamine, a schedule II-controlled substance. The hearing board reinstated McGannon, finding that McGannon proved by clear and convincing evidence that he has been rehabilitated and that he is fit to practice law. The hearing board also found in its discretion that McGannon's failure to comply with all disciplinary rules and orders should not prevent his reinstatement to the practice of law.

The case file is public per C.R.C.P. 242.41(a). 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	
<b>Petitioner:</b> TERRENCE THOMAS MCGANNON, #15366  <b>Respondent:</b> THE PEOPLE OF THE STATE OF COLORADO	Case Number: <b>22PDJ009</b>
<b>OPINION GRANTING REINSTATEMENT UNDER C.R.C.P. 242.39</b>	

Terrence Thomas McGannon (“Petitioner”) seeks reinstatement of his law license after a two-year suspension from the practice of law in 2007. The suspension was premised on his criminal conviction for a class-four felony of possession of methamphetamine, a schedule II-controlled substance. Petitioner has now proved by clear and convincing evidence that he should be reinstated to the practice of law in Colorado.

### I. PROCEDURAL HISTORY

On February 11, 2022, Petitioner filed with the Office of the Presiding Disciplinary Judge (“the Court”) a “Second Verified Petition for Reinstatement in Accordance with Colo.R.Civ.P. 242.39.” Alan C. Obye, on behalf of the Office of Attorney Regulation Counsel (“the People”), answered on March 8, 2022. In June 2022, the Court continued the reinstatement hearing at Petitioner’s request to afford him additional time to secure an independent medical examination (“IME”). The Court reset the hearing for November 2022.

On November 22, 2022, a Hearing Board comprising Presiding Disciplinary Judge Bryon M. Large (“the PDJ”) and lawyers Charles F. Garcia and Kay Snider held a remote reinstatement hearing under C.R.C.P. 242.39 via the Zoom videoconferencing platform. Petitioner appeared pro se, and Obye represented the People. The Hearing Board received testimony from Petitioner and Shimon Kohn. The PDJ admitted stipulated exhibits S1-S21 and S23.<sup>1</sup>

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<sup>1</sup> The People’s amended stipulated exhibit list, filed on November 9, 2022, lists stipulated exhibit 22. The parties never filed that exhibit, however, so the Hearing Board did not consider it.

## II. FINDINGS OF FACT<sup>2</sup>

Petitioner was admitted to practice law in Colorado on November 5, 1985, under attorney registration number 15366.<sup>3</sup> He is thus subject to the jurisdiction of the Colorado Supreme Court and the Hearing Board in this reinstatement proceeding.

### **Petitioner's Background**

Petitioner grew up in North Dakota, the middle child of three boys. He described his father as an emotionally abusive alcoholic. After graduating from high school, Petitioner obtained an undergraduate degree in social studies education and then attended law school at the University of North Dakota School of Law. In 1985, he graduated from law school and sought admission to practice law in Colorado, where the opportunities for legal employment seemed more plentiful. He founded a successful solo criminal defense practice, specializing in post-conviction work. He also accepted many appointments in dependency and neglect cases, respondent-parent matters, and delinquency cases, establishing a reputation for excellence and compassion in those matters.<sup>4</sup>

Petitioner recounted that even at the height of his success, he experienced difficulties stemming from what he now believes was an undiagnosed bipolar disorder. Through the late 1990s and early 2000s, he regularly used methamphetamine, which he said "leveled [him] off."

### **Petitioner's Disciplinary History and Previous Reinstatement Petitions**

On June 22, 1999, Petitioner stipulated in case number 99PDJ050 to a six-month suspension, all stayed on the condition that he successfully complete a two-year period of probation with conditions.<sup>5</sup> Petitioner was sanctioned because he was found on two separate occasions to have violated Colorado criminal laws while failing to report his convictions to disciplinary authorities in contravention of Colo. RPC 8.4(b).<sup>6</sup> Petitioner successfully completed the sanction in case number 99PDJ050 and complied with all orders, conditions, and requirements in that case, including paying costs, undergoing a psychiatric evaluation and following resulting recommendations, and completing an ethics course.<sup>7</sup> He was cooperative and forthcoming in all respects in case number 99PDJ050.<sup>8</sup>

In 2006, Petitioner was arrested while attempting to purchase methamphetamine from a former client. At the time, Petitioner was suffering from a five-year methamphetamine addiction.

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<sup>2</sup> Factual findings are drawn from testimony offered at the hearing where not otherwise indicated.

<sup>3</sup> Stip. Facts ¶ 4.

<sup>4</sup> See Ex. S7.

<sup>5</sup> Stip. Facts ¶ 6; Ex. S1.

<sup>6</sup> The Hearing Board takes judicial notice of the stipulation in case number 99PDJ050, which describes the two events: (1) a 1994 municipal conviction for disturbing the peace, which was later withdrawn after Petitioner successfully completed a six-month deferred judgment; and (2) a 1998 plea to a class-three misdemeanor of harassment, which was also subject to a deferred judgment.

<sup>7</sup> Stip. Facts ¶¶ 7, 9.

<sup>8</sup> Stip. Facts ¶ 8.

Following his arrest, he admitted himself to a thirty-day residential treatment program in Las Animas, Colorado.<sup>9</sup> Upon his release from the treatment center, he notified disciplinary authorities of his arrest. On October 11, 2007, Petitioner pleaded guilty to a class-four felony: possession of a schedule II-controlled substance – methamphetamine. He was sentenced to fifteen years of probation in the criminal matter. Conditions of his probation included ninety days in county jail, two years of work release jail, 1,000 hours of useful public service, substance and mental health evaluations, and payment of costs. Petitioner underwent drug testing as part of his probation.<sup>10</sup>

In 2007, Petitioner and the People filed a joint petition for determination of disability in 07PDJ055.<sup>11</sup> Petitioner complied with all conditions and orders in connection with that case, including a substance use and psychological IME. Based on recommendations from that IME, Petitioner attended regular 12-step meetings and addiction counseling, and he submitted to monitored drug testing.<sup>12</sup> The examiner also diagnosed Petitioner with bipolar disorder and prescribed medication to address his mood instability.<sup>13</sup> Though Petitioner was allowed to practice under stringent conditions while he recovered from his disability, his disability matter was ultimately dismissed when the parties resolved his related disciplinary matter in case numbers 07PDJ066 and 07PDJ073.<sup>14</sup>

In those cases, Petitioner stipulated in December 2007 to a two-year suspension from the practice of law.<sup>15</sup> The stipulation to discipline was based on Petitioner's criminal conviction and also included an admission that he sent a jailed client a threatening letter, marked "legal mail," demanding the return of a motorcycle that Petitioner believed the client had stolen.<sup>16</sup> This is the suspension from which Petitioner now seeks to reinstate. Petitioner was cooperative and forthcoming in case numbers 07PDJ066 and 07PDJ073, and he substantially complied with all disciplinary rules and orders applicable to suspended lawyers, except for the North Dakota matter described below.<sup>17</sup>

In March 2010, Petitioner petitioned for reinstatement.<sup>18</sup> At the time, he was complying with the terms of his ongoing criminal probation. While this first reinstatement petition was

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<sup>9</sup> See Ex. S9 at 1-6.

<sup>10</sup> In November 2009, Petitioner relapsed briefly and then returned to regular testing. Petitioner states that "the financial effect [of his conviction] was catastrophic entailing a Chapter 7 bankruptcy and the loss of [his] home of 20 years," yet he also credits it for saving his "health and likely his life." Petitioner's Hr'g Br. at 10 n.7.

<sup>11</sup> Stip. Facts ¶ 10; Ex. S16.

<sup>12</sup> Stip. Facts ¶ 10; Ex. S10.

<sup>13</sup> See Ex. S8 at 4.

<sup>14</sup> Stip. Facts ¶ 10; Ex. S16 at 276.

<sup>15</sup> Stip. Facts ¶¶ 5, 11; Ex. S15.

<sup>16</sup> Ex. S15 at 215.

<sup>17</sup> Stip. Facts ¶ 12. Neither party has been able to locate a post-suspension affidavit filed by Petitioner under C.R.C.P. 251.28 after he was suspended in case number 07PDJ066. The People agree that if Petitioner did fail to file such an affidavit, his failure should not be considered grounds to deny his current reinstatement petition, given the passage of time and Petitioner's then-ongoing rehabilitative efforts from addiction. In December 2007, Petitioner had no remaining clients at the time of his suspension, and he paid \$364.58 by check for costs of that disciplinary proceeding. Stip. Facts ¶ 13.

<sup>18</sup> See Ex. S17 at 334.

pending, however, Petitioner was arrested for driving under the influence in May 2010. He withdrew his petition for reinstatement.<sup>19</sup>

Petitioner pleaded guilty to driving while ability impaired (“DWAI”) on February 18, 2011.<sup>20</sup> He was sentenced to one year of probation with conditions, which he successfully completed.<sup>21</sup> His probation terminated in February 2012. The criminal court did not revoke Petitioner’s probation in the earlier methamphetamine-related case, but it ordered a re-start of his fifteen-year probation. Following his arrest, Petitioner voluntarily underwent thrice-weekly drug testing and another twenty-eight-day inpatient treatment.<sup>22</sup> He continued outpatient treatment and weekly alcoholic anonymous (“AA”) meetings thereafter.

As a result of the DWAI conviction, Petitioner stipulated in case number 11PDJ094 to a public censure in December 2011.<sup>23</sup> Considered in mitigation was his sobriety program, including monitored random urinalysis tests (“UAs”), drug testing, counseling, and twelve-step meetings,<sup>24</sup> as well as his inpatient treatment, which he largely completed before the public censure was imposed in case number 11PDJ094.<sup>25</sup> Petitioner was cooperative and forthcoming in all respects in that case.<sup>26</sup> Petitioner avows that he has maintained sobriety from illicit drugs and medications since his last relapse in March 2011.<sup>27</sup>

In late April 2012, Petitioner again petitioned for reinstatement.<sup>28</sup> He listed witnesses as to his personal and professional character along with a record of completed continuing legal education (“CLE”) credits.<sup>29</sup> He alleged—uncontested by the People—that he had complied with all applicable disciplinary orders, conditions, and rules, including those applicable to suspended lawyers.<sup>30</sup> And he secured letters from his probation officer and then-current therapist endorsing his efforts.<sup>31</sup> Further, Petitioner submitted to an IME with Dr. Gary Forrest. Dr. Forrest diagnosed Petitioner with polydrug dependence in full and sustained remission with co-morbid mixed personality features and recommended that Petitioner continue drug testing and therapy as part of his reinstatement.<sup>32</sup> Petitioner complied with those recommendations.<sup>33</sup>

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<sup>19</sup> See Ex. S17 at 334.

<sup>20</sup> See Ex. S14 at 195.

<sup>21</sup> See Ex. S14 at 195.

<sup>22</sup> See Ex. S14 at 196.

<sup>23</sup> Stip. Facts ¶ 14; Ex. S14.

<sup>24</sup> See, e.g., Ex. S11.

<sup>25</sup> Stip. Facts ¶ 16; Ex. S9.

<sup>26</sup> Stip. Facts ¶ 17.

<sup>27</sup> Petitioner clarified the date of his last relapse at the reinstatement hearing, though the parties had earlier stipulated that Petitioner last relapsed in 2010. See Stip. Facts ¶ 15.

<sup>28</sup> Ex. S17 at 333-339.

<sup>29</sup> See, e.g., Ex. S17 at 382; Ex. S18.

<sup>30</sup> Stip. Facts ¶ 20.

<sup>31</sup> See Ex. S9 at 10 (a letter from Petitioner’s probation officer, who vouched for his compliance with probationary conditions, noted that his sobriety date was March 1, 2011, and stated that he had been attending AA meetings, participating in therapy, and submitting to random UAs); Ex. S9 at 8 (a letter from Petitioner’s then-therapist observing that Petitioner had been an active and involved participant in counseling and praising Petitioner for taking full responsibility, sustaining a substance-free lifestyle, and making excellent progress); Ex. S5 (same).

<sup>32</sup> Stip. Facts ¶ 19.

While the 2012 petition for reinstatement was pending, the Colorado Supreme Court decided *In re Miranda*,<sup>34</sup> which affirmed a statute prohibiting lawyers serving felony probation or parole sentences from practicing law.<sup>35</sup> Following the *Miranda* decision Petitioner withdrew his petition again, as he was still on criminal probation and thus his law license could not be reinstated.<sup>36</sup> Petitioner testified that although he found the *Miranda* decision demoralizing, Margaret Funk, then-trial counsel for the People, provided much-needed encouragement to stay the course and petition again at a later date.<sup>37</sup>

### Events Since Petitioner Last Petitioned for Reinstatement

After Petitioner withdrew his petition for reinstatement in 2013, he continued to pursue a “law-abiding lifestyle” marked by risk aversion and a commitment to sobriety.<sup>38</sup> He adhered to his criminal probation conditions: he has not been a party to a criminal, civil, administrative, traffic, or other proceeding since 2010.<sup>39</sup> He has progressed from a Chapter 7 bankruptcy filing in 2010 to a credit score of over 800 as of the date of the reinstatement hearing.<sup>40</sup> At the reinstatement hearing, Petitioner proudly recounted that he has achieved his financial goal of being debt-free.

According to Petitioner, by 2013 he had completely lost any remaining “arrogance” about managing his addiction and had submitted to the “fellowship” of twelve-step programs. He sponsored other people struggling with addiction. Petitioner credibly testified as to the shame he carries for the decisions he has made, noting that he has worked to make “living amends” with those whom he has harmed or disappointed. He continues to take medication prescribed for his diagnosed bipolar disorder, he said.

Over the past decade, Petitioner has been regularly employed as a contract paralegal for several Colorado lawyers and firms that practice in areas as varied as personal injury, criminal defense, and domestic relations. He is an approved paralegal and investigator with the Office of Alternate Defense Counsel (“OADC”) and is regularly authorized to work on those cases. He testified that as a suspended lawyer he has always been meticulous about avoiding direct contact with clients, going so far as to advise his prospective employers that he is ethically prohibited from interacting with clients. Shimon Kohn, a lawyer with whom Petitioner worked before his suspension and for whom Petitioner has worked thereafter, testified on Petitioner’s behalf. Kohn attested to the quality of Petitioner’s legal analysis and his competence as a lawyer, especially in criminal and OADC matters. Though Kohn acknowledged that he has found Petitioner’s written advocacy too prolix in the past, he opined that Petitioner’s motions are now more crisp.

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<sup>33</sup> Stip. Facts ¶ 19.

<sup>34</sup> 289 P.3d 957 (Colo. 2012).

<sup>35</sup> Stip. Facts ¶ 18.

<sup>36</sup> Stip. Facts ¶ 18; Ex. S17 at 307.

<sup>37</sup> See Ex. S4. Petitioner also testified that Funk is one of his heroes, stating that her intervention helped save his life.

<sup>38</sup> Petitioner’s Hr’g Br. at 10.

<sup>39</sup> Stip. Facts ¶ 22; Exs. S2-S3.

<sup>40</sup> Stip. Facts ¶ 28; Ex. S21.

Petitioner has maintained a paralegal membership with the Colorado Bar Association and the Colorado Criminal Defense Bar. He has kept abreast of legal developments by reading *The Colorado Lawyer* magazine, reviewing a state criminal defense email listserv, and availing himself of OADC case summaries and other resources. He also has completed many CLE courses and anticipates enrolling in several others in the near future.<sup>41</sup>

On February 20, 2020, Petitioner was granted early termination of his fifteen-year period of probation in his criminal case, after he had fully complied for over a decade with the conditions, court orders, and monitoring requirements imposed in that matter.<sup>42</sup> Thereafter, Petitioner took the February 2021 bar examination and the August 2021 multistate professional responsibility examination. He passed both tests.<sup>43</sup> On September 20, 2021, he attended the People's professionalism school.<sup>44</sup>

Petitioner has complied with all requirements in his application for admission, including providing fitness and character disclosures, character references, and other required information.<sup>45</sup> Petitioner has been cooperative and forthcoming with the People in this matter.<sup>46</sup>

### **Unauthorized Practice of Law in North Dakota**

In 2021, while Petitioner was suspended from the practice of law, he engaged in conduct that violated the North Dakota Rules of Professional Conduct.<sup>47</sup> Petitioner helped his adult daughter, a North Dakota resident who filed for bankruptcy in 2021, fill out and file a bankruptcy petition, signing the petition as an unpaid petition preparer. Later, without his daughter's permission, he advocated on her behalf in communications with the bankruptcy trustee and in filings he submitted to the bankruptcy court.

By way of background, Petitioner explained that after he took bar examination, he traveled to North Dakota in April 2021 to visit his family, whom he had not seen since the COVID-19 pandemic began. He brought his bipolar condition medication, but he ran out while he was in North Dakota and decided against refilling the prescription. Although he had taken this prescribed medication without deviation since 2007, he resolved in April 2021 to "see what he could do" and to "experiment on his own."

While Petitioner was in North Dakota, his daughter petitioned for bankruptcy. She was facing credit card debt after enduring misfortunes that, according to Petitioner, had rendered her "unrecognizable." A year or two before the COVID-19 pandemic began, her hair salon had been destroyed in a fire. A former methamphetamine addict herself, she later relapsed, became estranged from her family, was criminally charged and jailed for more than a month, and

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<sup>41</sup> See Exs. 13, 20, 23.

<sup>42</sup> Stip. Facts ¶ 26; Ex. S19.

<sup>43</sup> Stip. Facts ¶ 1.

<sup>44</sup> Stip. Facts ¶ 3.

<sup>45</sup> Stip. Facts ¶ 2.

<sup>46</sup> Stip. Facts ¶ 27.

<sup>47</sup> See Ex. S12.

divorced her husband of more than a decade. In April 2021, when Petitioner visited, his daughter was anticipating her one-year sober anniversary and looking forward to a fresh start.

Petitioner stayed with his family in Bismarck for a week so he could be close to his daughter while she completed her bankruptcy paperwork. According to Petitioner, his daughter filled out the paperwork “in rough,” and he essentially typed in what she had written.<sup>48</sup> She had a lot of questions, he recalled, and it “became clear” to him that his daughter could not understand why he was unable to give her legal advice. Ultimately, the petition was filed with the disclosure that Petitioner had assisted his daughter as her father and unpaid preparer.<sup>49</sup>

A meeting of creditors was held on May 13, 2021. Petitioner attended the meeting to lend his daughter emotional support, not as her lawyer. At the meeting, the trustee claimed that the bankruptcy petition improperly identified an exemption for spousal support, as the divorce decree did not provide for spousal support but instead provided for property settlement payments. The trustee took the position that the property settlement payments must be forwarded to him as part of the bankruptcy estate.

After the meeting of creditors, the trustee mailed a letter to Petitioner’s daughter advising her that her property settlement was considered part of the bankruptcy estate, including future property settlement payments due to her. Petitioner testified that he “got emotional” about the trustee’s position. Petitioner believed the trustee “bullied” his daughter during the creditor’s meeting, and he perceived that the trustee’s stance threatened to deprive his daughter of support payments—one of the few, if only, sources of his daughter’s income at the time.

Petitioner emailed the trustee’s assistant on May 14 and May 17, 2021, asking the trustee to refrain from filing an objection and citing a statute and case law to support his request.<sup>50</sup> The trustee responded that the case law was inapplicable to support his request.<sup>51</sup> Petitioner replied on May 18, 2021, emailing a memorandum of legal authority supporting his position.<sup>52</sup> He stated in the transmittal email that “I have also attached a case that I believe controls, at least as to the test applied in the 8th Circuit on the issue at hand.”<sup>53</sup> Petitioner’s legal memorandum was thirteen pages long and contained extensive legal analysis and legal citations.

The trustee filed an objection to the claimed exemptions and served the objection on Petitioner’s daughter. On June 2, 2021, Petitioner attempted to file with the bankruptcy court a response to the trustee’s objections.<sup>54</sup> This filing likewise contained substantial legal analysis and citations. Petitioner signed this filing “Terrence T McGannon (for Debtor, unpaid preparer).”<sup>55</sup> That day, Petitioner also attempted to file with the bankruptcy court “Debtor’s Objection to Trustee’s

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<sup>48</sup> Ex. S12 at 115.

<sup>49</sup> Ex. S12 at 143, 146.

<sup>50</sup> Ex. S12 at 155-58.

<sup>51</sup> Ex. S12 at 158.

<sup>52</sup> See Ex. S12 at 166-77.

<sup>53</sup> Ex. S12 at 160.

<sup>54</sup> Ex. S12 at 179-83.

<sup>55</sup> Ex. S12 at 183.



Application for Approval of Attorney," which bore the same signature block.<sup>56</sup> Petitioner did not have his daughter's permission to submit these filings on her behalf, as she had relapsed into addiction shortly after the creditor's meeting and Petitioner could not immediately get in touch with her.<sup>57</sup> Sometime shortly after he attempted to submit these filings, Petitioner helped his daughter to retain a licensed lawyer.<sup>58</sup>

On December 6, 2021, the North Dakota State Bar Association Inquiry Committee sent Petitioner a letter titled "Confidential Notice of Disposition of Informal Complaint."<sup>59</sup> The letter explained that the committee had found that Petitioner, a suspended Colorado lawyer, violated North Dakota Rule of Professional Conduct 5.5(a) by filing pleadings in a bankruptcy proceeding on behalf of his daughter when he did not have her permission to do so.

The North Dakota disposition is most analogous to a private admonition issued by the Legal Regulation Committee in Colorado under C.R.C.P. 242.10(a)(4)(A) and C.R.C.P. 242.16(a)(2). Though Petitioner was not required to report the North Dakota violation to Colorado disciplinary authorities, as it was not a public disciplinary matter as described in C.R.C.P. 242.11(d), Petitioner nonetheless chose to report the violation in his petition for reinstatement.<sup>60</sup>

### **Petitioner's Most Recent Psychological Evaluation**

As a component of petitioning for reinstatement, Petitioner sat for an IME with Dr. Jackie Grimmet, who penned an IME report dated October 11, 2022.<sup>61</sup> During the IME, Petitioner chronicled for Dr. Grimmet his "severe substance use disorder that had significantly impacted his functioning and essentially led to derailment of his professional and personal life."<sup>62</sup> Because Petitioner has not used illicit substances in over a decade, Dr. Grimmet deemed his disorder "to be in sustained remission."<sup>63</sup> But she also expressed concern that he used marijuana to assist with sleep in the last few years and that he continued to drink alcohol occasionally. Neither of these behaviors, she worried, "were consistent with adherence to 12-step programs in which he had participated," as "substances, in general, are considered to place a recovering addict at risk for relapse."<sup>64</sup>

Dr. Grimmet devoted much of her report to discussing Petitioner's bipolar condition. She noted he was first diagnosed later in life, "most likely due to his ability to mask his symptoms with a high level of occupational functioning and self-medication with stimulants."<sup>65</sup> According to Dr. Grimmet, Petitioner's most prominent bipolar symptoms are "a decreased need for sleep, being more talkative than usual, obsessiveness over meeting specific goals, and disinhibition with

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<sup>56</sup> Ex. S12 at 184-87.

<sup>57</sup> See Ex. S12 at 117, 119, 132, 136.

<sup>58</sup> See Ex. S12 at 128.

<sup>59</sup> Stip. Facts ¶ 23; Ex. S12.

<sup>60</sup> Stip. Facts ¶ 24.

<sup>61</sup> See Ex. S8.

<sup>62</sup> Ex. S8 at 9.

<sup>63</sup> Ex. S8 at 9.

<sup>64</sup> Ex. S8 at 9.

<sup>65</sup> Ex. S8 at 9.

regard to behaviors that may lead to negative consequences (historically substances and poor relationship choices, and more recently engaging in unauthorized practice of the law)."<sup>66</sup>

Dr. Grimmet noted that Petitioner was compliant with his bipolar medication regimen for many years until he discontinued his medication in 2021, causing "a manic episode that led to admonishment for practicing law without a license in North Dakota."<sup>67</sup> Dr. Grimmet was troubled that Petitioner resumed taking mood stabilizing medications only many months thereafter, in spring or summer 2022, despite receiving input from many family members that his behavior—including being overactive, curt, and obsessively focused on tasks—was out of sorts.<sup>68</sup> Dr. Grimmet noted that in June 2022, Petitioner visited Dr. Christopher Bayley, who assessed him to be hypomanic and who tried at that point to establish a therapeutic dose of mood stabilizing medication. Petitioner told Dr. Grimmet that Dr. Bayley was in the process of titrating his mood stabilizer medication dosage upward and was considering tripling it. Dr. Grimmet also observed that Petitioner was taking an antipsychotic/sedative to assist with sleep.

Dr. Grimmet further remarked that Petitioner had in the past attended outpatient psychotherapy with a licensed counselor but had not pursued such treatment in many years. According to Dr. Grimmet's report, another treatment provider—Dr. Keith—recommended that Petitioner see a therapist in May 2022. When Petitioner met with Dr. Grimmet, he spoke of how helpful treatment and support systems had been in his recovery and expressed a desire to have such support. Though he told Dr. Grimmet that he had been waiting to obtain health insurance in order to resume therapy, Dr. Grimmet expressed surprise that he had not sought treatment in many years and was not actively engaged in obtaining services. Dr. Grimmet's report mentions that Petitioner informed her in mid-October 2022 that he had resumed psychotherapy since their meeting.

During the evaluation, Dr. Grimmet found Petitioner lacked insight and minimized his psychological issues. She opined that his speech was pressured and intense and his thought processes tangential. His communication with her about the evaluation, she said, was disorganized, disconnected, and unclear at times. Yet she also recognized that Petitioner's peers praised his work, were untroubled by his communication style, and touted his proven track record of meeting legal demands under the oversight of a supervising lawyer.

Ultimately, Dr. Grimmet opined that Petitioner's "mental health issues, if adequately managed, do not impede his vocational functioning."<sup>69</sup> She offered four recommendations to provide Petitioner support in obtaining full psychiatric stability if he practices law: (1) regular supervision of a psychiatric prescriber and compliance with the provider's treatment recommendations; (2) reestablishment of social supports, such as AA, Narcotics Anonymous, or Colorado Lawyers Helping Lawyers, to ensure his continued psychiatric stability in his ongoing sobriety journey; (3) individual psychotherapy to build coping skills and to assist with the

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<sup>66</sup> Ex. S8 at 9.

<sup>67</sup> Ex. S8 at 10.

<sup>68</sup> See Ex. S8 at 7. Petitioner displayed some awareness of this, acknowledging in a discursive email to the People in March 2022, "I am manic even as I write." Ex. S8 at 5.

<sup>69</sup> Ex. S8 at 10 (emphasis in original).

emotional adjustment of returning to law practice; and (4) practice monitoring to assuage any remaining concerns about his psychiatric stability.

### **Petitioner's Reflections on His Misconduct**

At the hearing, Petitioner reflected briefly on his methamphetamine addiction and criminal conviction. He learned humility from these experiences, he said, and he has "no doubt" that but for the criminal probationary conditions he would not be alive today.

Petitioner also addressed his unauthorized practice of law in North Dakota. He characterized his involvement in his daughter's bankruptcy as a desperate and misguided attempt to protect her by securing the support payments from her divorce, which he believed were exempt from the bankruptcy estate. Although he disclaimed any attempt to minimize his responsibility for the offense, he did offer two explanations for his behavior.

First, he couched his involvement as the act of a protective father whose instincts impelled him to respond on behalf of his struggling daughter. Indeed, he testified that he continues to believe that his daughter's relapse during the bankruptcy case was caused by the loss of her support payments. So, he does not regret "fighting" for his daughter, but he does regret impetuously filing pleadings without her consent, and he is remorseful that he did not hire a lawyer for her from the start. Second, he placed his actions in the context of his ill-considered decision not to refill his bipolar medication prescription in April 2021. Though he did not understand then that his medication is essential to his functioning, he began to realize many months later that the absence of his bipolar condition drugs likely played a role in his impulsivity and poor judgment in North Dakota. In fact, he said, he is grateful for the North Dakota incident because he gained a key insight: he needs medication to manage his bipolar condition and likely will have to continue medicating for the rest of his life.

According to Petitioner, he considered whether to report the North Dakota admonition to the People. Though the governing rules do not require him to report, he testified, his "gut check" drove him to do so, knowing that "a failure to report the matter would be improper and contrary to the rigorous honesty that has been central to the tenets" of his regeneration.<sup>70</sup>

Petitioner remarked that he looks forward to regaining his identity as a licensed lawyer and to practicing law "clear-headed and clean." He contemplates a return to postconviction work if reinstated. At the hearing, Petitioner acknowledged that this path could be fraught, as courtroom work is stressful. And professional stress, he posited, was a major contributor to his impulse to self-medicate through drugs. As such, he wants to reintegrate into law practice slowly, noting, "less is more." Kohn has volunteered to monitor his practice and to rent him office space for at least six months. Petitioner said that with this scaffolding system, the support of his family and friends, and continued weekly therapy, he has another "ten good years" of work. "I have a lot to offer," he concluded.

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<sup>70</sup> Petitioner's Hr'g Br. at 15.

### III. LEGAL ANALYSIS

To be reinstated to the practice of law in Colorado under C.R.C.P. 242.39, a lawyer must prove by clear and convincing evidence that the lawyer has complied with applicable disciplinary orders and rules, is fit to practice law, and has been rehabilitated. Reinstatement signifies that the lawyer possesses all of the qualifications required of applicants admitted to practice law in Colorado.

#### Fitness to Practice Law

We first examine whether Petitioner is fit to practice law, as measured by whether Petitioner satisfies the relevant eligibility requirements for the practice of law set forth in C.R.C.P. 242.39(d)(2)(C). These requirements include, among other things, honesty and candor; the ability to reason logically, recall complex factual information, and accurately analyze legal problems; the ability to use a high degree of organization and clarity in communicating with clients, lawyers, judicial officers, and others; the ability to use good judgment on behalf of clients and in conducting professional business; and the ability to act with respect for and in accordance with the law.

Petitioner argues that he has demonstrated his fitness to practice during his many years doing excellent paralegal work, the numerous CLE courses he has taken, and his success in passing the Colorado bar examination and the multi-state professional responsibility examination. Though Dr. Grimmet expressed some concern about the clarity of Petitioner's communications, Kohn opined that Petitioner's written advocacy has improved, likely corresponding with the reintroduction of his mood stabilizing medication. We do not view this issue as sufficiently significant to warrant a finding that Petitioner is unfit to practice law. Indeed, the People do not contest Petitioner's reinstatement as to this prong, and we conclude that Petitioner has shouldered his burden of proving that he is fit to practice law.

#### Rehabilitation

The Hearing Board must also consider whether Petitioner has been rehabilitated from his misconduct. In assessing Petitioner's rehabilitation, we are charged with considering the circumstances and seriousness of Petitioner's original misconduct, his conduct since being suspended, his remorse and acceptance of responsibility, how much time has elapsed, restitution for any financial injury, and evidence that Petitioner has changed in ways that reduce the likelihood of future misconduct.<sup>71</sup> These criteria provide a framework to assess the likelihood that Petitioner will again commit misconduct.

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<sup>71</sup> C.R.C.P. 242.39(d)(2)(A). *See also People v. Klein*, 756 P.2d 1013, 1015-16 (Colo. 1988) (relying upon an early edition of the Lawyers' Manual on Professional Conduct (ABA/BNA) 101:3005 to enumerate several rehabilitative considerations, including the petitioner's character, recognition of the seriousness of the misconduct, conduct since the imposition of the original discipline, candor and sincerity, recommendations of other witnesses, professional competence, present business pursuits, and community service and personal aspects of the petitioner's life). While some of the *Klein* factors are encompassed in our analysis, we do not explicitly rely on them as guideposts for our decision, as the factors now set forth in C.R.C.P. 242.39(d)(2)(A) largely mirror those articulated in an updated version of

Petitioner submits that he has been sober since March 2011, traveling the long road of recovery to sustained remission. He contends that through inpatient treatment programs, regular twelve-step meetings, random drug testing, substance use therapy, a prescribed medication regime, monitoring, and therapy, he has been rehabilitated from the methamphetamine addiction leading to his criminal conviction. Pointing to Petitioner's successful completion of his lengthy felony probation sentence and his sobriety for more than a decade, the People concede that Petitioner has demonstrated rehabilitation from the misconduct underlying the two-year suspension of his law license.

The Hearing Board agrees. During the more than fifteen years since Petitioner was suspended, he has effected a fundamental change in his life. He has worked hard to manage his addiction, accepted responsibility for his misconduct, and attempted to make amends in his life. Notwithstanding Dr. Grimmet's concern about Petitioner's occasional use of alcohol or marijuana, she confirmed his longstanding diagnosis: sustained remission from a severe substance use disorder. We find this establishes by clear and convincing evidence that Petitioner has been rehabilitated.

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

Finally, we turn to whether Petitioner has complied with all disciplinary orders and rules, as required under C.R.C.P. 2242.39(d)(2)(B). That subsection states that a lawyer petitioning for reinstatement must show compliance with all disciplinary orders and rules, including compliance with the Rules of Professional Conduct.

Petitioner acknowledges that the North Dakota transgression was a violation of this compliance prong, but he contends that he has nevertheless substantially followed all disciplinary rules and orders, citing his full compliance with nearly fifteen years of criminal probationary orders and conditions. He also emphasizes that he did not cause any harm by practicing law in North Dakota while under a suspension order, behavior that he describes as aberrant and thus "unlikely to persist or harm the public."<sup>72</sup>

Though they take no pleasure in doing so, the People object to Petitioner's reinstatement based on this prong. They observe that Petitioner violated North Dakota Rule of Professional Conduct 5.5(a) by practicing law when he was under an order of suspension. They express concern about the recency of this misconduct, particularly because it was significantly influenced by Petitioner's mental health issues, which may not yet be fully managed pharmacologically. The People make clear that they do not object on the basis of Petitioner's bipolar diagnosis; they object due to Petitioner's misconduct in North Dakota and the risk that his misconduct will reoccur. If the Hearing Board opts to reinstate Petitioner, however, the People urge us to grant his reinstatement on conditions mirroring Dr. Grimmet's four recommendations.

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the ABA/BNA manual. *See* Lawyers' Manual on Professional Conduct (ABA/BNA) 101:3001 § 20.120.30, Bloomberg Law (database updated July 2020).

<sup>72</sup> Petitioner's Hr'g Br. at 15-16.

The Hearing Board has carefully weighed Petitioner's North Dakota misconduct as well as the medical and personal backdrop of that misconduct. We take very seriously Petitioner's violation of his suspension order and explicitly decline to deem his violation merely technical or de minimus.

Nevertheless, for several reasons we conclude that Petitioner's North Dakota discipline is not fatal to his reinstatement bid. First, his behavior in North Dakota was uncharacteristic. Petitioner persuasively testified that from the time he was suspended in 2007 until he became involved in his daughter's bankruptcy in 2021, he scrupulously adhered to constraints on suspended lawyers acting as paralegals, going so far as to educate potential employers about the ethical limits of his assistance. Kohn seemed to corroborate this account, and the People presented no evidence to discount it. Second, the confluence of anomalous personal circumstances—his unmedicated bipolar condition and his frantic attempts to protect his vulnerable daughter—convinces us that his risk of recidivism is quite low. We credit his testimony that he has gained from the North Dakota incident a deep understanding that he needs, and as a practicing lawyer likely always will need, medication to manage his condition. Likewise, we have no doubt that Petitioner intervened on his daughter's behalf in a highly charged emotional state, genuinely believing that his daughter faced serious financial and legal peril. We have confidence that he has learned a valuable lesson and will not again pursue such a course of action, regardless of the circumstances. Third, we note that Petitioner's transgression in North Dakota resulted in no harm to the public. And finally, we are swayed by Petitioner's candor. He was not required to report his North Dakota discipline to the People; that he did so speaks well for his honesty and extenuates his behavior to some extent.

Overall, our chief concern stemming from the North Dakota incident is that the event is a harbinger of future ethical lapses if Petitioner fails to adequately manage his mental health issues. But we find that the North Dakota misconduct has bolstered and strengthened Petitioner's rehabilitative process. We also have comfort that if Petitioner ever struggles again, his dedication to ethical client service—which never faltered even while he was in the throes of addiction—his honesty, and his strong support network will all serve to help him regain his footing. Under the totality of the circumstances and in the favorable exercise of our discretion, we conclude that the North Dakota incident should not bar Petitioner from practicing law and that that he should be reinstated to the practice of law in Colorado.<sup>73</sup>

## V. CONCLUSION

Petitioner's law license has been suspended for sixteen years. In that time, he has achieved sustained remission from a serious drug addiction, practiced with honor as a trusted paralegal, and successfully passed the Colorado bar examination and the multistate professional

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<sup>73</sup> The People seek conditions on Petitioner's reinstatement. Although an earlier governing rule, C.R.C.P. 251.29(e), allowed a hearing board to condition a lawyer's reinstatement on compliance with any additional appropriate orders, the current rule, C.R.C.P. 242.39, contains no such grant of authority. We thus cannot do what the People urge us to do. Even so, we wholeheartedly encourage Petitioner to follow Dr. Grimmet's four recommendations, which in our view will best facilitate his successful reentry into the practice of law.

responsibility examination. Though he also attempted to represent his daughter in a North Dakota legal action, violating lawyer discipline rules there, we conclude that this infraction—in large part caused by factors very unlikely to be replicated—should not prevent his reinstatement.

## VI. ORDER

The Hearing Board therefore **ORDERS**:

1. The Hearing Board **GRANTS** Petitioner's "Second Verified Petition for Reinstatement in Accordance with Colo.R.Civ.P. 242.39." Petitioner **TERRENCE THOMAS MCGANNON**, attorney registration number **15366**, is **REINSTATED** to the practice of law in Colorado, **EFFECTIVE IMMEDIATELY**.
2. Under C.R.C.P. 242.39(g)(1), Petitioner **MUST** pay the costs of this proceeding. The People **MUST** submit a statement of costs on or before **Tuesday, January 17, 2023**. Petitioner **MUST** file his response, if any, within seven days. The PDJ will then issue an order establishing the amount of costs to be paid or refunded and a deadline for the payment or refund.
3. Any posthearing motion **MUST** be filed with the Hearing Board on or before **Tuesday, January 24, 2023**. Any response thereto **MUST** be filed within seven days.
4. The People have the right to appeal the Hearing Board's decision to grant Petitioner's petition for reinstatement under C.R.C.P. 242.39(d)(6) and C.R.C.P. 242.34.



DATED THIS 10<sup>th</sup> DAY OF JANUARY, 2023.

A handwritten signature in black ink, appearing to read "B. M. Large".

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BRYON M. LARGE  
PRESIDING DISCIPLINARY JUDGE

\_\_\_\_\_/s/ Charles F. Garcia  
CHARLES F. GARCIA  
HEARING BOARD MEMBER

\_\_\_\_\_/s/ Kay Snider  
KAY SNIDER  
HEARING BOARD MEMBER