***W. Bradley Betterton-Fike v. People.* 21PDJ079. May 13, 2022.**

Following a reinstatement hearing, a hearing board denied W. Bradley Betterton-Fike (attorney registration number 36250) reinstatement to the practice of law under C.R.C.P. 251.29.

In April 2020, Betterton-Fike was suspended for eight months with the requirement that he petition for reinstatement, if at all, under C.R.C.P. 251.29(c). Betterton-Fike was suspended because he physically assaulted his wife, which constituted criminal conduct that reflected adversely on his fitness as a lawyer. The Hearing Board concluded that reinstatement was not appropriate because Betterton-Fike failed to prove by clear and convincing evidence that he is fit to practice law and that he has been rehabilitated from his underlying misconduct.

The case file is public per C.R.C.P. 251.31. 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: W. BRADLEY BETTERTON-FIKE **Respondent:** THE PEOPLE OF THE STATE OF COLORADO	Case Number: **21PDJ079**
OPINION AND DECISION DENYING REINSTATEMENT UNDER C.R.C.P. 251.29(e)	

W. Bradley Betterton-Fike ("Petitioner") seeks reinstatement of his law license after imposition of an eight-month suspension from the practice of law. Petitioner was suspended because he physically assaulted his wife, which constituted criminal conduct that reflected adversely on his fitness as a lawyer. During the reinstatement hearing, Petitioner failed to prove by clear and convincing evidence that he is fit to practice law and has been rehabilitated from his misconduct. He is thus not entitled to be reinstated to the practice of law at this time.

I. PROCEDURAL HISTORY

On April 15, 2020, a hearing board issued an "Opinion and Decision on Remand Imposing Sanctions Under C.R.C.P. 251.19(b)" in case number 18PDJ043, suspending Petitioner's law license for eight months, with the added requirement that he petition for reinstatement, if at all, under C.R.C.P. 251.29(c).

On November 5, 2021, Petitioner filed with Presiding Disciplinary Judge William R. Lucero ("the PDJ") a "Verified Petition for Reinstatement After Discipline."[1] Alan C. Obye, on behalf of the Office of Attorney Regulation Counsel ("the People"), answered on November 26, 2021.[2]

The PDJ presided over Petitioner's reinstatement hearing held on March 22, 2022, via the Zoom videoconferencing platform. The PDJ was joined on the Hearing Board by lawyers Patrick J. McCarville and E. Lee Reichert III. Petitioner appeared pro se, and Obye

[1] Ex. S6. Petitioner filed his petition under C.R.C.P. 242.39(b)(3), which took effect on July 1, 2021. Because Petitioner was required to petition for reinstatement under C.R.C.P. 251.29(c), however, we decide his petition under that rule.
[2] Ex. S7.

represented the People. The Hearing Board considered testimony from Petitioner, Theodore W. Brin, and N. Nora Nye. The PDJ admitted stipulated exhibits S1-S9 and Petitioner's exhibits A-F.

II. FINDINGS OF FACT

The findings of fact are drawn from testimony offered at the reinstatement hearing, where not otherwise noted. Petitioner was admitted to practice law in Colorado on May 18, 2005, under attorney registration number 36250.[3] He is thus subject to the jurisdiction of the Colorado Supreme Court and the Hearing Board in this reinstatement proceeding.[4]

Petitioner's Background and Disciplinary History

Petitioner grew up near Keyser, West Virginia. He moved to Colorado in 1996 and attended the University of Colorado in Boulder and Colorado Springs, earning a degree in English. In 2001, he enrolled in the William Mitchell College of Law in St. Paul, Minnesota, graduating in 2004. He is admitted to practice law in Colorado and federal court; he is not licensed to practice in any other jurisdiction. After Petitioner obtained his law license, he alternated between practicing civil litigation as a solo practitioner and as a law firm associate. Most recently, he was in solo practice from 2014 until his suspension in December 2020.

In July 2018, the People filed a complaint against Petitioner in case number 18PDJ043, alleging that he violated Colo. RPC 8.4(b), Colo. RPC 8.4(d), and Colo. RPC 3.4(c).[5] The People moved for partial judgment on the pleadings, and the PDJ entered judgment as to Petitioner's violation of Colo. RPC 8.4(b), which prohibits criminal conduct. That violation stemmed from Petitioner's jury conviction in Denver County Court for assaulting his ex-wife in May 2017.[6] In that criminal matter, Petitioner was sentenced to supervised probation for twelve months, which required him to be evaluated and treated for domestic violence.[7] He completed his criminal probation in October 2018.[8]

On February 5, 2019, a hearing board held a hearing in Petitioner's disciplinary case. The hearing board issued an "Opinion and Decision Imposing Sanctions Under C.R.C.P. 251.19(b)" on March 22, 2019, suspending Petitioner from the practice of law for nine months with the requirement that he petition for reinstatement under C.R.C.P. 251.29(c).[9] A

[3] Ex. S1 at 2.
[4] *See* C.R.C.P. 251.1(b).
[5] Ex. S1 at 1.
[6] Ex. S1 at 2. The jury found that Petitioner violated Denver Municipal Code section 38-93, which provides that "[i]t shall be unlawful for any person to intentionally or recklessly assault, beat, strike, fight or inflict violence on any other person." Ex. F.
[7] Ex. S1 at 2.
[8] Ex. C at 1.
[9] Stip. Facts ¶ 1; Ex. S1.

majority of the hearing board determined that Petitioner violated Colo. RPC 8.4(d), prohibiting conduct prejudicial to the administration of justice, when he failed to pay a court reporting bill for more than two years.[10] The full hearing board also found that Petitioner had violated Colo. RPC 8.4(b), as established in the PDJ's order entering partial judgment on the pleadings.[11] The hearing board found by clear and convincing evidence that he spat in his ex-wife's face while she was in their bed, punched her in the arm eleven times, paused briefly, and then punched her in the arm four more times. The hearing board credited in-person testimony from Petitioner's ex-wife, who said that her arm began to bruise almost immediately and that her injury was "incredibly painful." The People introduced three photographs of the injury—two taken by medical staff two days after the assault and one taken by Petitioner's ex-wife four days later.

Petitioner disputed his ex-wife's testimony and insisted that he never punched her. He testified that he and his ex-wife were arguing on the day of the incident and the argument escalated that night in bed, leading to a tug-of-war over the bed sheets. He conceded at the hearing that his ex-wife's arm could have been bruised during "contact" between their arms and legs during the tug-of-war.[12] Even so, he suggested that she might have used makeup to alter her arm's appearance in the photographs. Petitioner's account was undercut, however, by testimony from Yumil Jimenez, owner of Aspen Treatment Services, where Petitioner received domestic violence treatment as part of his criminal probation. Jimenez testified that Petitioner acknowledged during treatment that he had been "wrong" to hit his ex-wife.[13] In his own testimony, Petitioner maintained that Jimenez was mistaken, claiming that he never admitted to hitting his ex-wife. But the hearing board ultimately rejected Petitioner's account, finding his ex-wife more credible based on "[Petitioner's] jury conviction [and] also on the photographic evidence and the manner and demeanor of [the] witnesses . . . ."[14]

The hearing board suspended Petitioner from the practice of law for nine months and required him to petition for reinstatement under C.R.C.P. 251.29(c).[15] In determining the appropriate sanction, the hearing board agreed that the assault was the most serious misconduct in the case, with the majority acknowledging that "[Petitioner's] violation of Colo. RPC 8.4(d) should not measurably increase the level of discipline imposed [because the] gravamen of this case is [his] physical assault on his wife . . . ."[16] The hearing board suggested that Petitioner enroll in a program or course of treatment in anger management and behavioral health skills.[17]

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[10] *See* Stip. Facts ¶ 1; Ex. S1 at 1.
[11] *See* Stip. Facts ¶ 1.
[12] Ex. S1 at 3.
[13] Ex. S1 at 4.
[14] Ex. S1 at 4.
[15] Stip. Facts ¶ 1.
[16] Ex. S1 at 16.
[17] Ex. S1 at 16.

Petitioner appealed the two rule violations[18] and successfully moved the hearing board to stay his suspension pending the appeal. On March 9, 2020, the Colorado Supreme Court issued an opinion reversing the hearing board majority's determination that Petitioner violated Colo. RPC 8.4(d), affirming the hearing board's finding that he violated Colo. RPC 8.4(b), and remanding the matter to the hearing board to determine the appropriate sanction in light of the partial reversal.[19]

On April 15, 2020, the hearing board issued an "Opinion and Decision on Remand Imposing Sanctions Under C.R.C.P. 251.19(b)," suspending Petitioner for eight months with the requirement that he petition for reinstatement under C.R.C.P. 251.29(c).[20] The hearing board reasoned that because the original nine-month suspension was premised primarily on Petitioner's assault of his ex-wife, "a reduction in [his] sanction should be proportionate to the significance we originally accorded the finding of a Colo. RPC 8.4(d) violation."[21] The hearing board reiterated that it "strongly suggest[s] . . . that [Petitioner] follow a program or course of treatment in anger management and behavioral health skills before petitioning for reinstatement."[22] Petitioner again appealed, and the Colorado Supreme Court affirmed the new opinion on November 2, 2020.[23]

On November 16, 2020, Petitioner filed an affidavit under C.R.C.P. 251.28(d).[24] That same day, he notified his clients in all pending matters of the Colorado Supreme Court's order via certified mail, as required by C.R.C.P. 251.28(b);[25] he notified opposing counsel in pending matters of the order via certified mail, as required by C.R.C.P. 251.28(c);[26] and he notified the U.S. District Court for the District of Colorado of the order, as required by C.R.C.P. 251.28(d)(3).[27]

On December 4, 2020, the PDJ issued an "Order and Notice of Suspension," making Petitioner's suspension effective on December 18, 2020.[28] Petitioner paid the costs associated with his disciplinary case around July 28, 2021.[29] In a letter to the People, he explained that he had experienced financial hardship and paid the costs as soon as he was

[18] Stip. Facts ¶ 1.
[19] Stip. Facts ¶ 2; Ex. S2.
[20] Stip. Facts ¶ 3; Ex. S3.
[21] Ex. S3 at 8.
[22] Ex. S3 at 9.
[23] Stip. Facts ¶ 4; Ex. S4. The hearing board granted Petitioner an additional stay of his suspension pending the second appeal.
[24] Stip. Facts ¶ 5; Ex. S8.
[25] Stip. Facts ¶ 6; Ex. S8 at 3-6.
[26] Stip. Facts ¶ 7; Ex. S8 at 8-9.
[27] Stip. Facts ¶ 8; Ex. S8 at 11. At the time Petitioner was suspended, he was licensed to practice law only in Colorado and in the U.S. District Court for the District of Colorado. Stip. Facts ¶ 8.
[28] Stip. Facts ¶ 9; Ex. S5.
[29] Ex. S9. The parties stipulate that "Petitioner paid the costs associated with 19PDJ079 . . . ." Stip. Facts ¶ 10. We assume that the parties intended to refer to Petitioner's disciplinary case, case number 18PDJ043, in that stipulated fact.

able to do so.[30] Although his payment was not timely, the People state that to their knowledge, he has complied with all applicable disciplinary orders and with all provisions of Chapter 20, including the Colorado Rules of Professional Conduct.[31]

Events Since Petitioner's Suspension

At the reinstatement hearing, Petitioner described his activities during his suspension. He stated that he worked on legal assignments, relocated away from Colorado, and focused on family matters.

Petitioner noted that his suspension took effect at the beginning of the COVID-19 pandemic, which limited his opportunities to work in the legal field. He tapped his contacts in the profession, leading to several assignments as a contract worker. Theodore W. Brin was among those who hired Petitioner during his suspension. Petitioner worked as Brin's associate from 2010 to 2014. During his suspension, Petitioner conducted legal research for Brin, providing the results in reports. Brin recalled that Petitioner also worked on several motions, including a motion for default judgment, and "wrote a letter or two" for him.[32] He estimated that Petitioner logged five or six hours per month on his assignments, with a majority of that time spent on legal research.[33]

Brin was "absolutely" satisfied with Petitioner's work during that time, describing him as detail-oriented and meticulous. Brin further opined that Petitioner has the ability and character to practice law in Colorado, stating that he is able to conduct himself with respect and honesty in connection with his legal work; is "quite good at applying law to the facts"; can communicate clearly; has "tremendous" respect for the law and the court system; and has never missed a deadline. Brin did not specify whether he observed these traits during Petitioner's suspension or earlier, when Petitioner worked as his associate.

Brin testified that he was somewhat familiar with the facts of Petitioner's misconduct, as he was aware of the domestic assault conviction that ultimately led to Petitioner's suspension. Even so, he said that he "never ever" questioned Petitioner's conduct or observed Petitioner engage in unethical behavior. He said that he would not hesitate to refer clients to Petitioner if Petitioner were reinstated to the practice of law.

Petitioner also worked for N. Nora Nye as a "ghost writer" during his suspension. Nye, a Colorado-licensed lawyer, testified that she met Petitioner at a networking event in 2005. During Petitioner's suspension, Nye said, he drafted motions and contracts for her.

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[30] Stip. Facts ¶ 10.

[31] Stip. Facts ¶ 14.

[32] Petitioner stated that he researched for Brin the COVID-19 pandemic's impacts on legal practices. He said he also drafted pleadings, contracts, interrogatories, and document requests at Brin's request.

[33] Petitioner, in contrast, testified that he worked on average six hours per week on Brin's assignments during his suspension, though he conceded that he worked less in recent months as Brin wound down his practice. Without additional evidence to support either testimony, we credit Brin's account because he does not benefit from distorting the facts.

She recalled that he worked "no more than twenty to thirty hours" for her.[34] She stated that Petitioner "definitely maintained professional competence" in his work, which did not require significant revisions. Nye declared that she would refer clients to Petitioner "in a heartbeat" if he were reinstated to the practice of law, saying that she was very impressed with his legal work. She added that he has exercised good judgment and acted diligently and reliably when representing clients. She further opined that Petitioner follows the Rules of Professional Conduct "better than most lawyers [she knows]" and that he complies with statutes and rules. Nye believes Petitioner has regard for the rights of others and wants to help people.

Nye testified that she was familiar with Petitioner's misconduct, noting that she worked with him to appeal his disciplinary case. She was impressed with his ability to maintain his practice and to prioritize his clients during his criminal and disciplinary proceedings, she said. She assured the Hearing Board that Petitioner "is an honest and good lawyer," adding that she has "no doubt whatsoever that he will continue to be." Finally, Nye emphasized that she is not concerned about Petitioner's ability to follow the law if he is reinstated, saying that she believed his assault on his ex-wife was an isolated event. Though she considers Petitioner a friend as well as a colleague, she said, she could not attest to whether he has changed in his personal life other than to note that he is doing well in his new marriage.

Petitioner testified that in addition to working with Brin and Nye, he also researched legal issues for lawyer Paul Chamberlain in connection with an appellate brief. Petitioner added that he had worked as a clerk for Chamberlain during law school.

In July 2020, Petitioner moved to Maryland to be near his husband, whom he married in December 2020. He said that he began studying Mandarin—his husband's native language—during his suspension and is learning Chinese culinary techniques. Since his relocation to Maryland, Petitioner has also been more involved in the lives of his sister and his nephews, even becoming an ordained minister to officiate at his two eldest nephews' weddings. He described the experiences as "rewarding."

Petitioner testified that he prepared a family-based visa petition during his suspension, explaining that his husband, an H1B visa holder, filed the petition in March 2021 to convert his H1B visa to a green card. He said that the application required a lot of work to fill out forms, determine which documents were needed from authorities in his husband's home country, arrange for the translation of those documents, and follow the U.S. government checklist for the petition. He added that he drafted a letter to Maryland Senator Chris Van Hollen to expedite his husband's petition. Petitioner opined that his role in the visa petition process was "in the nature of a paralegal" and had concluded that he was operating

[34] Nye's account of Petitioner's hours on her assignments sharply differs from Petitioner's estimate that he logged "full-time work" for Nye in May and June 2021 ahead of a trial in July 2021 as well as additional hours to prepare for a mediation in October 2021. We credit Nye's account for the same reason we credit Brin's. *See supra* note 33.

on his own behalf as a family member, rather than engaging in the unauthorized practice of law on behalf of his husband.[35]

Petitioner did not present evidence of completing any continuing legal education ("CLE") courses during his suspension. Most recently, he obtained six credits from video CLE courses in late April 2019.[36] He acknowledged that if he were reinstated, he would need to take more CLE courses to meet Colorado's requirement of forty-five credit hours every three years.

Finally, as already described, Petitioner filed his petition for reinstatement on November 5, 2021.[37] He paid the $500.00 cost deposit associated with his petition as required by C.R.C.P. 251.29(i).[38] The parties agree that Petitioner has cooperated in their investigation related to this reinstatement proceeding.[39]

Petitioner's Reflections on His Misconduct

At the reinstatement hearing, Petitioner acknowledged that he verbally and physically abused his ex-wife on May 6, 2017:

> I understand that my behavior toward [my ex-wife] was abusive. I was emotionally abusive to include verbal abuse, saying mean, terrible things. I was physically abusive. I was abusive to her, fighting with her over the bed clothes. I was abusive toward her in excluding her from her bed . . . the marital bed. . . . I should not have gotten into a physical shoving match with [my ex-wife].

Petitioner acknowledged that he "[is] the one who abused [his ex-wife]; [he] is the one who caused her injury," and he said that he "unreservedly apologizes" for his behavior. But he denied that he struck or spat on her: "I have said this all along and I will say it again today: that hitting [my ex-wife], punching her did not happen. Spitting on her did not happen." He continued, "If I had punched my wife, I would admit to that." He added, "I accept that a jury found [my ex-wife's] version of events to be credible; I accept that the hearing panel found [my ex-wife's] version of events to be credible." He insisted that whether or not he punched his ex-wife is "not really relevant," because "what [he] did was abusive." He remarked, "Whether I punched her or whether we got into a shoving match over the blankets, they're all abusive behaviors. They're all wrong."

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[35] At the hearing, the People stated that Petitioner's description of selecting and preparing immigration forms for family members is technically the practice of law. But because they ordinarily would not pursue a charge of the unauthorized practice of law based on facts substantially similar to those that Petitioner presented, they said, they do not oppose his reinstatement on that basis. (As corrected in "Order Correcting Clerical Mistake Under C.R.C.P. 60(a)" (June 24, 2022, *nunc pro tunc* to May 13, 2022).)

[36] Ex. D.

[37] Stip. Facts ¶ 11; Ex. S6.

[38] Stip. Facts ¶ 12.

[39] Stip. Facts ¶ 13.

Petitioner attributed his misconduct to several personal factors, including his health, professional burnout, and underlying personality issues. First, he explained that his physical health was "in shambles" at the time of the assault due to chronic pain from slipped spinal discs. He said that he had monthly appointments with a pain management doctor, who prescribed him opiates for pain as well as CBD treatments and muscle relaxants for muscle spasms. But despite the medications, multiple surgeries, and physical therapy, "nothing seemed to be helping," Petitioner recalled. He also suffered from mental health issues; he met monthly with a psychiatrist and saw a therapist every week. In addition to his regimen for pain management, Petitioner took medications prescribed by his treatment providers for anxiety and Attention-Deficit/Hyperactivity Disorder.[40] He testified that he was also experiencing severe professional burnout when he abused his ex-wife; he was doing the "bare minimum" to help his clients and was not seeking new business.

Petitioner also attributed his misconduct to personal shortcomings, observing, "I should have left the house when [my ex-wife] asked me to. I think this is something that is both the product of my personality and something that was learned. . . . I was very argumentative." He called his behavior "abusive" and "childish" and said that he exercised poor impulse control. He recounted that he had worked on these issues when participating in the domestic violence treatment program.[41] He "jumped into [the domestic violence treatment program] with both feet," he said, because it offered him the opportunity to address the shortcomings that led to the assault. He noted that he attended all twenty-five of the required treatment sessions.[42] The classes taught him what domestic violence is and what physical and domestic abuse is. He also learned that his behavior toward his ex-wife had been abusive. Petitioner described learning to manage his anger and to control aggressive behaviors, crediting his success to the exercises from the *Strategies for Success* workbook he received from Aspen Treatment Services.[43] He noted that the workbook section on accepting personal responsibility was "very transformative." The most important lesson he learned from the domestic violence treatment, he said, is that he is solely responsible for his choices in life. Petitioner said that he reviews the workbook "at least weekly, if not more often," adding, "This is a process. It's something I work on every day."

At the reinstatement hearing, Petitioner testified that he composed an apology letter to his ex-wife as another component of his domestic violence treatment. He clarified that he did not actually send the letter to her but drafted it to include in his probation file. In the letter, Petitioner wrote, "I recognize my fault in the circumstances leading to the Incident and am sorry for everything that I did that caused and led up to the Incident."[44] Petitioner also documented his account of his ex-wife's role in the assault, stating that she was

[40] Petitioner said that he cut back on his medications in 2018 and 2019, reduced his opiate medications in 2020, and stopped taking opiates altogether in July 2021. He explained that he changed his approach to dealing with chronic pain by adopting mindfulness techniques that help him accept his pain and limitations.
[41] Ex. B at 2, 6; Ex. C at 2.
[42] *See also* Ex. B at 6.
[43] Ex. A.
[44] Ex. E.

inebriated that night and said hurtful things to him about his family. He testified that if he were to write the letter again today, he would simply apologize for his abuse and not include his perception of the events.

Petitioner noted that his therapist at Aspen Treatment Services did not recommend additional treatment or referrals when he was discharged in August 2018.[45] Though he attended check-in sessions with his therapist "off and on" following his discharge, the pandemic interfered with his ability to attend sessions regularly, he said. He recalled that his depression began to feel unmanageable in late 2019, prompting him to attend some video appointments. He stated that he has participated in "a couple" of video sessions since moving to Maryland.

Last, Petitioner testified that he has expressed remorse to his ex-wife's family, stating that he talked with her mother and brother about the assault "numerous times." He opined that he was "not quite sure they entirely believed the story that [his ex-wife] told in court or to the hearing board [in his disciplinary case]."

III. LEGAL ANALYSIS

Compliance with Disciplinary Orders and Rules

Under C.R.C.P. 251.29(c)(4), a lawyer petitioning for reinstatement must show compliance with all disciplinary orders and rules. The parties stipulate that Petitioner has complied with all applicable disciplinary orders and with all provisions of Chapter 20 of the Colorado Rules of Civil Procedure, including the Colorado Rules of Professional Conduct.[46] Petitioner contends that he has complied with all provisions of the April 2020 disciplinary opinion, his December 2020 order of suspension, and the rules governing suspended lawyers, save for his untimely payment of the costs of his disciplinary case due to financial hardship. The People, however, do not challenge that Petitioner has met his burden as to this prong of our reinstatement inquiry. We accept the parties' stipulation on this issue and find that Petitioner has satisfactorily complied with disciplinary orders and rules.

Fitness to Practice Law

We next examine whether Petitioner is fit to practice law, as measured by whether he has maintained professional competence during his suspension and whether he is qualified to resume practicing law if reinstated. Petitioner primarily argues that Brin's and Nye's testimony establish his fitness to practice. He qualifies the extent of this work, however, contending that the COVID-19 pandemic limited his opportunities to engage in law-related endeavors. He points to his work on his husband's visa petition and his completion of CLE courses as additional evidence of his fitness to practice law.

[45] *See* Ex. B at 6-7.
[46] Stip. Facts ¶ 14.

The People contend that Petitioner has not shown by clear and convincing evidence that he is fit to resume legal practice. He engaged in limited law-related work during his suspension, they argue, and he failed to complete any CLE courses during his suspension.

Though a close call, we conclude that the evidence of Petitioner's fitness to practice law is not clear and convincing. We acknowledge that Brin and Nye uniformly lauded Petitioner's work. Yet their assignments during Petitioner's suspension were limited: in the fifteen months before his reinstatement hearing, he worked only five or six hours a month on Brin's matters, and he spent at most thirty hours on Nye's cases.[47] We also note that Brin's experience with Petitioner largely predates the suspension, and Petitioner's work for him primarily involved legal research. Though we do not question Nye's candor, we find that her friendship with Petitioner somewhat attenuates her endorsement of his reinstatement. We did not hear from Chamberlain, but Petitioner said that he "did some legal research" on Chamberlain's appellate brief, leading us to conclude that this work was also limited. Finally, though Petitioner compared his work on his husband's visa petition to that of a paralegal, he did not call any witnesses to discuss the nature, quality, or outcome of his work on the matter. We thus conclude that Petitioner's work-related activities during his suspension are not sufficient to establish his fitness to practice law.

Petitioner also did not make an effort to maintain his professional competence through continuing legal education, as he did not enroll in any CLE courses during his suspension. Indeed, he has not earned any CLE credits since April 2019, more than eighteen months before his suspension began. Moreover, because remote CLE courses were ubiquitous during the pandemic, Petitioner had ample opportunity to supplement his law-related work with continuing legal education classes. Yet he did not do so.

Though Petitioner implied that he would have engaged in more law-related work but for the pandemic, he did not provide evidence showing his attempts to secure additional employment or volunteer opportunities in the legal field. He also mentioned a newfound interest in immigration law and volunteerism stemming from his experience with his husband's visa petition, commenting that immigration issues are "near and dear to [his] heart." But we did not see evidence that he sought work or volunteer opportunities in that area.

Based on these facts, Petitioner more likely than not maintained his professional competence during his suspension. We find that the facts do not, however, satisfy his burden here to clearly and convincingly show that he is fit to practice law.

Rehabilitation

Finally, the Hearing Board must consider whether Petitioner has been rehabilitated from his misconduct. We cannot grant reinstatement simply on a showing that he has

[47] These estimates amount to 130 hours—the equivalent of less than four full-time work weeks.

engaged in proper conduct or refrained from further misconduct during his suspension.[48] In assessing Petitioner's rehabilitation, we consider the seriousness of the misconduct leading to his suspension.[49] We also assess whether he has experienced a change in his state of mind.[50] In this analysis we are guided by the leading case of *People v. Klein*, which enumerates several criteria for evaluating rehabilitation: 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 his life.[51] The *Klein* criteria provide a framework to assess the likelihood that Petitioner will again commit misconduct.

We begin by examining the seriousness of Petitioner's misconduct and whether he has addressed the shortcomings or weaknesses underlying that misconduct, since discipline is necessarily predicated upon a finding of some shortcoming, whether it is a personal or professional deficit.[52] We do so by first considering Petitioner's disciplinary record.[53] Petitioner's prior misconduct is limited to the assault of his ex-wife, for which he was convicted by a jury. His rehabilitation from that conduct is thus the focus of our inquiry. The hearing board in his disciplinary case found by clear and convincing evidence that Petitioner spat in his ex-wife's face and repeatedly punched her in the arm, causing her to bruise. This misconduct, unquestionably, is serious.

Petitioner argues that he is not the same person he was in 2017 when he abused his ex-wife. He has spent the last five years trying to address his abusive behavior and to resolve the character and mental issues that led to the abuse, he says. He contends that his probation case file shows his accomplishments and his development. Even though his counselor at Aspen Treatment Services recommended no further referrals or treatment for

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

[49] *See Lawyers' Manual on Professional Conduct* (ABA/BNA) 101:3001 at 13 § 20.120.30, Bloomberg Law (database updated July 2020) ("Examination of a lawyer's rehabilitation and fitness begins with a review of the seriousness of the original offense. . . .").

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

[51] 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). We note that the *Klein* decision relies upon an earlier edition of the *Lawyers' Manual on Professional Conduct* (ABA/BNA) 101:3005, which listed the above factors for assessing the rehabilitation of lawyers seeking reinstatement. A new online practice guide, which draws on 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. *Lawyers' Manual on Professional Conduct* (ABA/BNA) 101:3001*, supra* note 49. While some of these newly articulated factors are encompassed in our analysis, we do not explicitly rely on them as guideposts for our decision.

[52] *See In re Johnson*, 298 P.3d 904, 906-07 (Ariz. 2013) (approving a two-step process to show rehabilitation: first, identifying the weakness that caused the misconduct, and second, demonstrating that the weakness has been overcome); *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).

[53] *See* C.R.C.P. 251.29(e) ("In deciding whether to grant or deny the petition, the Hearing Board shall consider the attorney's past disciplinary record.").

domestic violence, he says, he continues to walk on a path to change, which is an ongoing process that requires his constant diligence. The People counter that Petitioner, in denying that he struck his ex-wife, neither recognizes the seriousness of his misconduct nor evinces candor and sincerity in seeking reinstatement. They also contend that Petitioner does not have sufficient evidence to show that he has rehabilitated from his misconduct during his suspension.

We agree with the People that Petitioner has not met his burden to show by clear and convincing evidence that he is rehabilitated from his misconduct. As we see it, he failed to demonstrate his rehabilitation in two respects. First, he has refused to admit the facts of the misconduct on which his discipline was predicated and thus has not addressed the shortcomings underlying his misconduct. He rejects the contention that "[he] can't be rehabilitated because [he] won't admit to doing something that [he] didn't do." Instead, he acknowledges that he engaged in a pattern of less severe abuse and argues that he is rehabilitated from that behavior. "Whether I punched her or whether we got into a shoving match over the blankets, they're all abusive behaviors," he said, conflating under one label two very different abusive acts and accepting responsibility for only the less egregious behavior. We reject this construction and categorically disagree with Petitioner that whether he punched his ex-wife is "not really relevant" to his reinstatement case. To the contrary, whether he has acknowledged that he struck his ex-wife speaks to whether he has accepted responsibility for his actions. It is therefore among the most relevant facts to our inquiry into his rehabilitation.

In addition, we are troubled by the ongoing subtext of Petitioner's position: that his ex-wife was not truthful in her testimony during his criminal and disciplinary cases. We are particularly disturbed by his testimony that he discussed the assault with his ex-wife's family "numerous times," intimating that they did not believe the "story" she relayed to the jury and the hearing board. We also note with concern that Petitioner's apology letter reflects that he assigns to his ex-wife a share of responsibility for her own assault. Though he testified at the reinstatement hearing that he would choose to rewrite the letter as a simple note of apology, he did not renounce his description of his wife's actions. Indeed, his testimony echoed the account described in the letter. In short, Petitioner continues to deny the most grievous facts of the assault for which he was convicted and suspended. As such, we cannot find that he has experienced a change in his state of mind that led to his misconduct if he does not first acknowledge that the misconduct occurred. That he still assigns to his ex-wife some culpability for the assault reinforces our conclusion that he has not taken responsibility for his actions.

Second, Petitioner's rehabilitation efforts almost entirely predate his suspension. For instance, he completed the domestic violence program at Aspen Treatment Services before his disciplinary hearing, and the hearing board in that matter considered the details of that treatment when deciding his sanction. Those facts therefore are not relevant to our evaluation of whether he has experienced a change of his state of mind since his suspension took effect. But he did not present any witness or documentary evidence to demonstrate his

rehabilitation in the time following his disciplinary case. For instance, he declined to seek additional treatment to bolster his behavioral health skills and address his anger management, as the hearing board in his disciplinary case twice suggested. We thus cannot find that he sought to understand and address his misconduct through therapy or other interpersonal interventions during his suspension.

Overall, Petitioner has taken meaningful yet incomplete steps toward accepting accountability for his actions. Though he shirked responsibility for the assault of his ex-wife, he expressed remorse for perpetrating less severe abuse during the marriage, and we find his testimony on that score to be sincere. We also credit his efforts to apply the lessons from the domestic violence program to manage his anger, impulse control, and other personal shortcomings, and we commend his commitment to improving his mental and physical health. In addition, we are encouraged to learn of his interest in working or volunteering in immigration law and applaud any contributions he may make to that underrepresented field. Ultimately, however, we observed in Petitioner someone who showed remorse for who he had been but not for what he did, so we cannot find that he has developed a maturity of understanding that would enable him to acknowledge the full extent of his wrongdoing. Whether unwilling or unable, Petitioner has not adequately accounted for, and thus has failed to clearly and convincingly show rehabilitation from, his misconduct.

IV. CONCLUSION

Petitioner has not accepted responsibility for his misconduct. He expressed remorse for behavior related to but fundamentally different from the assault for which he was disciplined, and he disputed the underlying facts established in his disciplinary case, including his victim's account of the assault. Further, he introduced no evidence that he has been rehabilitated other than his own testimony. Nor did he muster clear evidence of his fitness to practice law. During his suspension, he performed limited law-related work, which he did not supplement with continuing legal education. For these reasons, we determine that Petitioner has not met his burden to establish his fitness to practice law and his rehabilitation from his misconduct by clear and convincing evidence, and thus deny his bid for reinstatement.

V. ORDER

1. The Hearing Board **DENIES** Petitioner's "Verified Petition for Reinstatement After Discipline." Petitioner **W. BRADLEY BETTERTON-FIKE**, attorney registration number **36250**, **SHALL NOT** be reinstated to the practice of law in Colorado.

2. Under C.R.C.P. 251.29(i), Petitioner **SHALL** pay the costs of this proceeding. The People **SHALL** submit a statement of costs **on or before Friday, May 20, 2022**. 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 Friday, May 27, 2022.** Any response thereto **MUST** be filed **within seven days**.

4. Petitioner has the right to appeal the Hearing Board's denial of his petition for reinstatement under C.R.C.P. 251.27.

5. Under C.R.C.P. 251.29(g), Petitioner **MAY NOT** petition for reinstatement within two years of the date of this order.

DATED THIS 13th DAY OF MAY, 2022.

William R Lucero

WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

/s/ Patrick J. McCarville

PATRICK J. MCCARVILLE
HEARING BOARD MEMBER

/s/ E. Lee Reichert III

E. LEE REICHERT III
HEARING BOARD MEMBER