

James Stern v. People. 23PDJ021. April 3, 2024.

Following a reinstatement hearing, a hearing board reinstated James Stern (attorney registration number 36157) to the practice of law in Colorado under C.R.C.P. 242.39. The reinstatement is effective April 3, 2024.

In November 2022, Stern was suspended from the practice of law for six months, with the added requirement that he petition to reinstate his law license under C.R.C.P. 242.39. Stern's suspension was premised on his unremitting pursuit of an attorney's-fees-first approach in a joint representation that was riddled with conflicts. The hearing board reinstated Stern, finding that Stern proved by clear and convincing evidence that he complied with all disciplinary rules and orders, he is fit to practice law, and he has been rehabilitated from his underlying misconduct.

The case file is public per C.R.C.P. 242.41(a). Please see the full opinion below.

<p style="text-align: center;">SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203</p>	
<p>Petitioner: JAMES STERN, #36157</p> <p>Respondent: THE PEOPLE OF THE STATE OF COLORADO</p>	<p>Case Number: 23PDJ021</p>
<p style="text-align: center;">OPINION GRANTING REINSTATEMENT UNDER C.R.C.P. 242.39</p>	

James Stern ("Petitioner") seeks reinstatement of his law license after being suspended in November 2022 from the practice of law for six months, with the added requirement that he petition to reinstate his law license under C.R.C.P. 242.39. The suspension was premised on Petitioner's unremitting pursuit of an attorney's-fees-first approach in a joint representation that was riddled with conflicts. The Hearing Board concludes that Petitioner has proved by clear and convincing evidence that he should be reinstated to the practice of law in Colorado.

I. PROCEDURAL HISTORY

On May 11, 2023, Petitioner pro se filed with Presiding Disciplinary Judge Bryon M. Large ("the PDJ") a "Petition for Reinstatement Pursuant to C.R.C.P. 242.39."¹ On behalf of the Office of Attorney Regulation Counsel ("the People"), Michele L. Melnick answered on May 25, 2023. The same day, Nicole M. Black entered her appearance as Petitioner's counsel. On September 5, 2023, Nancy L. Cohen also entered her appearance for Petitioner.

The PDJ set this case for a one-day hearing to take place on October 10, 2023. But on October 9, 2023, the People moved to continue the hearing, citing medical issues. The PDJ reset the hearing for December 7, 2023. Due to unforeseen emergency circumstances, the PDJ had to again continue the hearing. The PDJ reset the matter for January 24, 2024.

In the early morning of January 2, 2024, an intruder forced his way into the office building at 1300 Broadway in Denver, where the PDJ's courtroom is located. The intruder set a fire in the building, which resulted in extensive damage to the premises. The PDJ was thus forced to

¹ A week later, Petitioner paid a \$500.00 deposit toward administrative fees and costs associated with this reinstatement case. Ex. S2.

relocate the hearing. On January 16, 2024, the PDJ notified the parties that the hearing would take place on January 24, 2024, beginning at 9:00 a.m. in the Colorado Bar Association's east classroom, which is located on the seventeenth floor of 1290 Broadway in Denver, Colorado.²

On January 24, 2024, a Hearing Board comprising the PDJ and lawyers Katayoun A. Donnelly and Julie A. Stencel held a reinstatement hearing under C.R.C.P. 242.39 in the Colorado Bar Association's east classroom. Petitioner attended, represented by Black and Cohen, and Melnick appeared for the People. The Hearing Board received in-person testimony from Petitioner and Paul Stern and heard remote testimony via the Zoom videoconferencing platform from Cecile Rebolledo. The PDJ admitted stipulated exhibits S1-S10; Petitioner's exhibits 2, 5, and 8; and the People's exhibits A and C. The PDJ also accepted the parties' stipulated facts. On February 13, 2024, the parties delivered closing arguments via Zoom.

II. FINDINGS OF FACT³

Petitioner was licensed to practice law in New York in 1994. He was then admitted as a Colorado lawyer on January 25, 2005, under attorney registration number 36157. He is thus subject to the jurisdiction of the Colorado Supreme Court and the Hearing Board in this reinstatement proceeding.

Petitioner's Discipline

On September 7, 2022, a hearing board issued a disciplinary opinion suspending Petitioner for six months, with the added requirement that he petition for reinstatement, if at all, under C.R.C.P. 242.39.

Petitioner's discipline was premised on his joint representation of several clients in an underlying civil matter, which arose from an unconsummated real estate transaction when the seller of a property backed out of the sale. Petitioner agreed to represent on a contingency basis the seller's broker, Phill Foster & Company ("PF&C"),⁴ PF&C's agent Sharon "Patty" Salazar, and the buyer's agent, Robin Mann, with the goal of recovering from the seller their collective commission. Petitioner signed each as client, but he never obtained his clients' written informed consent to the joint representation, despite the risk that his representation of one or more of them would be materially limited by his responsibilities to the others or by his own personal interests.

When the seller lodged counterclaims against Salazar, Petitioner urged Salazar's insurance carrier to appoint independent counsel to defend against those counterclaims.

² The PDJ thanks the Colorado Bar Association for generously providing adequate space to hold this proceeding.

³ Factual findings are drawn from testimony offered at the reinstatement hearing where not otherwise indicated.

⁴ Phill Foster was PF&C's managing broker.

Salazar's carrier eventually relented and retained for her a defense lawyer. Thereafter, Petitioner ceased advocating for Salazar's interests in the commission case he filed, effectively unilaterally terminating his representation of her. But he never notified Salazar that he was withdrawing as her counsel and that he would no longer represent her to recover her share of the commission.

Sometime later, Petitioner negotiated an aggregate settlement with the seller's lawyer that was materially adverse to Salazar's interests. He did not apprise PF&C, Mann, or Salazar of the settlement's material terms. Nor did he disclose to them the risks involved in the settlement or obtain their written informed consent to settle their claims together. During the negotiations, Petitioner worked to increase his own portion of the settlement to be paid as attorney's fees and attempted to collect an unreasonable amount in attorney's fees.

Once Petitioner and the seller finalized a settlement, the district court case against the seller was dismissed with prejudice. In an ensuing dispute over the distribution of the settlement funds, Mann terminated Petitioner's representation. Soon thereafter, the district court held a hearing on the fee dispute at which Petitioner represented PF&C. During that hearing, Petitioner argued that he was entitled to eighty-two percent of the settlement amount.

The district court issued a written ruling on September 1, 2021. It deemed Petitioner's claimed fee unreasonable and held that Petitioner was entitled to only one-third of the total gross recovery, or \$31,866.66. It directed the clerk of court to make that payment to Petitioner. The court also instructed the clerk to distribute \$31,866.67 to Mann and \$31,866.67 to PF&C, which in turn was to divide those funds with Salazar according to their commission agreement.

The clerk distributed the funds in September 2021.⁵ PF&C deposited its portion of the settlement funds into Petitioner's COLTAF account.⁶ Petitioner warned Mann's new lawyer that he should hold Mann's court-distributed funds in trust, but Petitioner did not deposit his own allotted portion in his COLTAF account.

In October 2021, Petitioner appealed the court's ruling on PF&C's behalf, listing Mann as the responding party. Petitioner later added himself personally as an appellant. The appeal was intended, in part, to recover for Petitioner's benefit a portion of Mann's, Salazar's, and PF&C's funds.

The September 2022 disciplinary opinion concluded that through this conduct, Petitioner violated Colo. RPC 1.5(a) (a lawyer must not charge an unreasonable fee); Colo. RPC 1.7(a) (a lawyer must not represent a client if the representation involves a concurrent conflict of interest); Colo. RPC 1.8(g) (a lawyer must obtain informed consent in writing when settling an aggregate claim); Colo. RPC 1.9(a) (a lawyer who has formerly represented a client in a matter must not later represent another person in the same or a substantially related matter in which that person's interests are materially adverse to those of the former client unless the former client gives written

⁵ Ex. 5.

⁶ Stip. Facts ¶ 1; Ex. S3; Ex. C.

informed consent); and Colo. RPC 1.16(d) (a lawyer must protect a client's interests upon termination of the representation).

The disciplinary hearing board found that Petitioner "proved to be an effective advocate for his clients' interests when they aligned with his own, [but] he was blinded to risks of conflicts by his own selfish profit motive, which jeopardized his clients' financial and legal standing."⁷ Specifically, that hearing board placed great weight on the aggravating factor of selfishness, noting that Petitioner "purposely lined up PF&C, Mann, and Salazar as clients to guarantee that he could protect his own fees"; he "peremptorily designated \$60,000.00 of settlement funds as attorney's fees, maximizing his fees at his clients' and former client's expense"; and "he lodged an appeal to claw funds back from Mann's and Salazar's court-ordered awards."⁸ The disciplinary hearing board also expressed particular concern that Petitioner "trivialized the harm that Mann and Salazar have suffered while refusing to acknowledge his failings in the matter,"⁹ leading the hearing board to conclude that Petitioner "refus[ed] to reflect on his conduct" and "staunch[ly] insiste[d] that he was always in the right."¹⁰

Petitioner's disciplinary suspension took effect on November 15, 2022. The Colorado Supreme Court affirmed the disciplinary hearing board's opinion on February 16, 2023.¹¹

Petitioner's Activities Since His Suspension

Petitioner's Involvement in the Ongoing Fee Dispute

Petitioner testified that he timely complied with all terms of the suspension order. He even preemptively pared down his client roster by the July 2022 disciplinary hearing, so when the disciplinary opinion was issued in September 2022 he had just three or so remaining clients. He timely alerted his clients that his law license had been suspended and made clear he could no longer represent them. In particular, Petitioner informed Foster on November 2, 2022, about the suspension order, writing, "you will not recognize[] many of the stated facts and how I am described, but that is the Opinion of the Court and I have been disciplined."¹² Petitioner advised Foster that he could not represent PF&C while he was suspended and advised Foster to seek legal services from another lawyer if Foster believed he had a need for them.¹³

The next day—November 3, 2022—the Colorado Court of Appeals vacated the district court's order distributing the settlement funds, concluding that the order was void for lack of

⁷ Ex. S1 at 24.

⁸ Ex. S1 at 22.

⁹ Ex. S1 at 23.

¹⁰ Ex. S1 at 24.

¹¹ Ex. S1 at 27.

¹² Ex. 2.

¹³ See Ex. 2.

jurisdiction.¹⁴ Though Mann and Salazar moved for attorney's fees and costs on appeal, the appeals court declined that request. It reasoned that Petitioner's appeal was "not substantially frivolous, substantially groundless, or substantially vexatious"; specifically, that tribunal found the appeal was not substantially frivolous because Petitioner "presented rational arguments supporting the[] appeal."¹⁵

After the appeals court vacated the trial court's distribution order, Petitioner continued to hold PF&C's portion of the settlement funds in his COLTAF account, as they remained disputed in light of the appeals' court decision. Those funds sat in his account until 2023. At the reinstatement hearing, Petitioner acknowledged that between September 2021 and September 2023 he did not notify Mann, Salazar, or their respective lawyers that he was holding PF&C's settlement funds in trust.

Sometime toward the tail end of those two years—presumably after Petitioner filed his reinstatement petition in May 2023—the People raised the question of whether he ought to keep PF&C's settlement funds in his trust account or whether he should interplead them with the district court. Petitioner thereafter wrote to Foster on September 6, 2023, noting that the \$31,866.67 check Foster deposited into Petitioner's COLTAF account remained there and urging Foster to retain a lawyer for advice about the funds.¹⁶ Then, on September 22, 2023, Petitioner moved the trial court in the underlying case to deposit the full \$31,866.67 into Denver County District Court's registry.¹⁷ In that filing, Petitioner twice specifically disclaimed any interest in the funds.¹⁸ According to Petitioner, he disclaimed the funds because he wanted the court to understand that he had no interest in holding or having them. The trial court granted the interpleader motion, and the funds were placed in the Denver County District Court's registry on November 24, 2023.¹⁹

On December 11, 2023, Petitioner filed with the district court a "Notice of Withdrawal of Counsel Pursuant to C.R.C.P. 242.32(d)," reporting that he had withdrawn from PF&C's representation and that he could not represent PF&C due to his disciplinary suspension.²⁰ He filed the notice, he testified, to alert the judge that he no longer represented any party and that he was not a licensed lawyer. Though Petitioner attended a December 2023 hearing about the fees as an observer, he did not participate in the hearing and does not know the status of the fee dispute. To his knowledge, Salazar has not to date received any portion of the fees.

¹⁴ Ex. S6 at 192.

¹⁵ Ex. S6 at 194 (finding the appeal was not substantially frivolous because Petitioner "presented rational arguments supporting the[] appeal").

¹⁶ Ex. S5.

¹⁷ Stip. Facts ¶ 2; Ex. S7 at 220, 222.

¹⁸ Ex. S7 at 220.

¹⁹ Stip. Facts ¶ 3; Exs. S8-S9.

²⁰ Ex. S10.

Law-Related Work and Activities

Petitioner testified that aside from his involvement in the underlying PF&C fee dispute and his pro se work in several unrelated legal suits against Mann for unpaid fees,²¹ he has not worked in the legal field since his suspension took effect.²² Initially, he recounted, he was in shock, reeling from embarrassment and humiliation and unable to bring himself to ask other lawyers for work. Later, he decided against applying for law-related positions because he felt that to do so would be unfair to potential employers, as he assumed he would be reinstated within a matter of months.

During his suspension, he kept abreast of legal developments and deepened his understanding of his ethical commitments through studying, reading, and taking continuing legal education ("CLE") courses. He read more than a dozen Colorado Bar Association ethics opinions and a comparable number of law practice management articles;²³ he completed the Colorado Supreme Court's ethics and trust account schools, its lawyer self-assessment program, and its self-audit checklist; and he attended an unrelated disciplinary hearing to broaden his knowledge of lawyer disciplinary processes. Between March 3, 2023, and May 8, 2023, he completed twenty-five CLE credits.²⁴ After he filed his petition on May 8, 2023, he completed approximately nineteen more.²⁵

Also while Petitioner was suspended, he was required to renew his insurance broker's license with Colorado's Department of Regulatory Agencies ("DORA"). Petitioner recalled that he provided DORA a copy of the disciplinary opinion and answered every question the online renewal application posed about his suspension. Based on this information, DORA renewed his insurance broker's license. Because he completed the renewal application online and did not print a draft, he could not give the People a copy of the application.²⁶

²¹ See Ex. A at 209 (listing three matters involving Mann pending during Petitioner's suspension). The People did not elicit much, if any, relevant testimony about these matters, so we cannot make findings of fact related to them.

²² Petitioner's New York law license has been active during his Colorado suspension. He explained that New York disciplinary authorities have filed a pending reciprocal discipline case in that state but intend to dismiss the reciprocal discipline case if his Colorado law license is reinstated.

²³ See *also* Ex. A at 205-06.

²⁴ See Ex. S4 at 002.

²⁵ See Ex. 8. Some of these credits are relevant to ethics, professionalism, and law practice management; others, like those addressing first-time homebuyer issues and lawsuits under the Americans with Disabilities Act, are not.

²⁶ See Ex. A at 208.

Other Activities and Volunteerism

In the fourteen months between the effective date of Petitioner's suspension and his reinstatement hearing, Petitioner has focused his energies toward supporting his family. According to Petitioner's brother Paul Stern, Petitioner has been a "stay-at-home dad," which has resulted in a "role reversal" with Petitioner's wife, who "took the reins" and became the family's primary wage earner. Meanwhile, Petitioner has maintained the household and helped his youngest daughter navigate life challenges. Petitioner has also assisted his wife in her real estate and interior decorating business by performing manual labor and running errands for her.

Aside from dedicating time to his nuclear family, Petitioner has lent his brother Paul a helping hand. According to Paul, who owns a multi-family unit management business in a low-income neighborhood, Petitioner has helped him manage the building by completing maintenance projects and interviewing potential tenants. Petitioner has also answered telephone calls for Paul's insurance brokerage business when Paul has been on vacation. Paul has not paid Petitioner for this assistance, and Petitioner does not have a financial stake in either of Paul's businesses; Petitioner helps solely as a contribution to his family.

Finally, Petitioner has spent some time volunteering for various organizations. As has been the case for the past several years, Petitioner's most consistent volunteer role during his suspension has been that of speech and debate judge at his daughter's school, logging ten-hour days during the debate season. Further, in October 2023, Petitioner served four times as a welcome team member for Casa de Paz, an organization that arranges transport and sustenance for immigrants released from detention. He volunteered once or twice for a group that gathers provisions for Venezuelan refugees, and he served dinner to unhoused people at the SAME café, where he also prepared food, organized storage, and cleaned. In addition, he hosted a former immigration client in his home for the 2023 holidays.

Testimony of Petitioner's Witnesses

Paul Stern testified that Petitioner's documented misconduct is "absolutely antithetical" to what Paul knows of him, as Paul has never recognized selfishness in his brother. Petitioner's public discipline has been "particularly humiliating," Paul reported, but Petitioner has been "internalizing" the disciplinary opinion and has gradually come to grips with not only his "professional errors" but also the loss of his legal reputation. Paul opined that Petitioner, who "sticks up for what he believes is right," would never intentionally do anything that would jeopardize his law license. After devoting three decades to cultivating his legal skills, Paul remarked, Petitioner would like to get back to practicing law, which means everything to him.

Petitioner also elicited remote testimony from Cecile Rebolledo, Petitioner's close friend for over twenty-five years, the mother of Petitioner's two godchildren, and his one-time client. Rebolledo said that Petitioner has a "huge moral compass" and that she has "zero questions" about his integrity, as he is the "least selfish" person she knows. She agreed to testify on his behalf, she explained, because she knows his "mistake" was not voluntary, that he was not trying

to be greedy, and that his sanction was completely unfair, shocking, and did not fit his infractions. No one, she insisted, could convince her otherwise.

Petitioner was representing Rebolledo in a marriage dissolution at the time he was suspended. He promptly alerted her, gave her the disciplinary opinion, and explained to her the basis for his discipline, which she characterized as “paperwork” that was not completed as it ought to have been. She observed that at the outset of his suspension, Petitioner was humiliated, sad, and prone to insomnia and anxiety, which was “unbearable” for her to watch because he had been such a good person for so long. That first wave of emotion eventually gave way to Petitioner’s anger and, later, acceptance. Rebolledo observed that shift in early 2023, when Petitioner began to express humility, to acknowledge his mistakes, and to voice a strong desire to do better.

Petitioner’s Reflections on His Misconduct

Petitioner’s testimony echoed Rebolledo’s account of his journey toward accepting responsibility for his misconduct. He testified that he was devastated when the disciplinary opinion issued in September 2022. Because he disagreed with the opinion’s factual findings, which he viewed as rooted in fundamental misunderstandings, he appealed, hoping the Colorado Supreme Court would see his conduct differently and vacate the suspension order. He recalled that when that tribunal affirmed, he was forced to reevaluate his ethical obligations in the representation. Eventually, he sought therapy, which has helped him process the disciplinary opinion, particularly its findings that he acted selfishly and unethically. Securing excellent ethics counsel has also helped his thinking evolve; his lawyers have revealed some of his “blind spots” and pointed him in the right direction.

Petitioner has come to regret appealing the district court’s September 2021 fee ruling. He said he believes that representing PF&C in the appeal showed favoritism to Foster, and he has now abjures his own sense of entitlement that fueled the decision to appeal. At the time he appealed he felt he had a right to the funds he sought on appeal. Now, however, he reflected, he does not feel like he is entitled to “anything.”

In May 2023, Petitioner drafted a detailed petition for reinstatement to explain what he learned during his suspension and to persuade the People to stipulate to his reinstatement. He has since realized, however, that some of the statements in his petition are inaccurate, as they fail to correctly characterize the disciplinary opinion’s findings. For example, his petition states that the disciplinary opinion did not express any concern about his ability to clearly communicate with clients; his ability to use good judgment on behalf of clients and in conducting professional business; his ability to accurately analyze legal problems; or his ability to be honest and use good judgment in personal financial dealings and on behalf of clients and others.²⁷

²⁷ Pet. at 10-12.

At the reinstatement hearing, Petitioner explained that these statements in his petition are not ones he would endorse now. In fact, he retracted many of his petition's averments. He conceded that the disciplinary opinion did identify each of those competencies as areas of concern. He also acknowledged that his petition portrays the appeals court's opinion's language about his rational arguments in a different light than was intended. While the appellate decision made that limited finding to decide whether the appeal was substantially frivolous, Petitioner's petition shaded that finding as broader to "put his best foot forward" in this process by casting his arguments about his fee as sound and reasonable. Relatedly, Petitioner agreed at the disciplinary hearing that even rational arguments may not necessarily be ethically well grounded.

Petitioner emphasized that he has learned several lessons in professional responsibility through the disciplinary process. First, he said, he must be mindful of conflicts issues. His decision to sign fee agreements with several people created a "morass" of potential conflicts and competing loyalties that led to his confusion about who his client was and who held viable claims. He vowed never again to undertake a joint representation in all but the most extraordinary circumstances. If he were to represent multiple clients, he would assiduously document the possible conflicts, advise his potential clients to seek individual counsel, and notify them about the pitfalls of joint representation, including that he might be precluded from continuing with the representation if a conflict were to eventuate.

Second, Petitioner resolved to steer clear of hybrid fee agreements, which he considers a "landmine," as well as contingency fee arrangements in small damages cases. He testified that he understands now how outside observers could perceive his decision to pursue both contingent fees and attorney's fees as excessive. Moving forward, he plans to outline in writing for each client the factors involved in calculating his fees. If, in the future, a client disputes his fee, he intends to do everything he can to make the client happy, seeking judicial intervention only as a last resort.

Third, Petitioner testified, he realizes that before his suspension he relied too much on verbal conversations and thus must take care to memorialize in writing all significant client interactions and advisements. Specifically, he learned that he must always immediately send a letter terminating the representation after it concludes.

Toward the end of his testimony, Petitioner accepted responsibility that the disciplinary opinion labeled his behavior as selfish, although he also insisted he is not a selfish person. He said that he regrets the effect his actions had on his former clients, noting that because the representation "started badly," it was beset by problems throughout. If he had approached the representation with more professional responsibility in documenting fee agreements, termination letters, and other writings, he ruminates, the fee dispute likely would not still be ongoing. He expressed confidence that he would never make the same mistakes again, having "internalized every word" of the opinion. Likewise, he assured the Hearing Board that he should have no concerns about his behavior in the future, as he highly values his reputation and will always do what he believes is right. According to Petitioner, his "best and highest purpose" is to be a lawyer.

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.

Compliance with Disciplinary Orders and Rules

The Hearing Board first considers whether Petitioner has complied with all disciplinary orders and rules, including the Rules of Professional Conduct.

Petitioner contends that he has complied with all applicable disciplinary orders and rules. He maintains that he followed the wind-up requirements of C.R.C.P. 242.32, notified New York disciplinary authorities about his Colorado suspension, did not practice during his suspension, and did not violate any Rules of Professional Conduct.

The People contest this prong. They claim that Petitioner violated Colo. RPC 1.15A by keeping PF&C's settlement funds in his trust account without notifying Salazar and Mann that he held the funds. In support, the People point to Colo. RPC 1.15A(c), which requires a lawyer in possession of property in which two or more persons claim interest to keep that property separate until the claim is resolved. Comment 3 to that rule also counsels "the disputed portions of the funds should be kept in trust and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration." According to the People, Colo. RPC 1.15A(c) and its comment 3, read together, obligated Petitioner to suggest means to promptly resolve the fee dispute among Salazar, Mann, and PF&C by notifying Salazar and Mann that he was holding PF&C's settlement funds in trust.

We cannot endorse the People's position. Nothing in the plain language of Colo. RPC 1.15A requires Petitioner to have notified Salazar or Mann that he held PF&C's settlement funds in trust. Nor does the plain language of comment 3 mandate such action. In any event, that comment, which cannot create ethical obligations independent from the text of Colo. RPC 1.15A,²⁸ recommends that a practitioner suggest—not unilaterally employ—means to promptly resolve the dispute. We heard that Petitioner did something of the sort: Petitioner encouraged Foster to find another lawyer to whom Petitioner could transfer PF&C's settlement proceeds and who could represent PF&C's interests in the ongoing fee dispute. And when the People advised Petitioner to interplead PF&C's funds with the court registry, he did so.

Ultimately, as Petitioner observes, other professional constraints implicating confidentiality and conflicts concerns may arguably have prevented him from notifying Salazar or

²⁸ See *In re Storey*, 2022 CO 48 ¶ 38 n.4 (noting the Rules of Professional Conduct can inform a rule's interpretation but do not create ethical obligations themselves).

Mann as to the whereabouts of PF&C's settlement funds. But we need not untangle that knot of interrelated ethical rules here. It is enough to conclude that the People failed to register a plausible legal argument that Petitioner was duty-bound to notify Salazar or Mann that he was holding PF&C's funds in trust. Given this finding, we have no trouble deciding that Petitioner proved by clear and convincing evidence he has complied with all disciplinary orders and rules during his suspension.

Fitness to Practice Law

Next, we analyze whether Petitioner is fit to practice law, as measured by whether he satisfies the relevant eligibility requirements set forth in C.R.C.P. 242.39(d)(2)(C). These requirements include, as relevant here, honesty and candor; the ability to accurately analyze legal problems; the ability to use a high degree of organization and clarity in communicating with clients and others; and the ability to use good judgment on behalf of clients and in conducting professional business.

Petitioner argues that he has demonstrated his fitness to practice through professional education. He notes that he has attended or completed every Colorado Supreme Court-sponsored training available to him, taken dozens of CLE courses, including several that relate directly to law practice management and ethics, and engaged in a self-directed course of study, canvassing both Colorado ethics opinions and articles about legal practice. The People counter that Petitioner has not established his fitness, as his reinstatement petition failed to recognize that the disciplinary opinion threw into question his honesty, his communication, his judgment, and his analytical abilities. If Petitioner lacks the capacity to accurately identify his prior failings, the People intimate, he cannot be considered fit to practice going forward.

The Hearing Board concludes that Petitioner has narrowly proved by clear and convincing evidence that he is fit to practice law in Colorado. Although the CLE courses he took did not evince a deep dive into legal ethics topics, we reckon he completed the courses he could in the six months that he believed he would be suspended. He thus did what was reasonable under the circumstances to improve his legal knowledge and aptitude.²⁹ We also share the People's profound concern that when Petitioner drafted his petition in May 2023, he seemingly failed to appreciate that the disciplinary opinion cast doubt on each of the competencies listed above. But we accept as genuine Petitioner's account that since May 2023 he has engaged in further introspection, attended additional therapy sessions, and sharpened his understanding of his ethical obligations by completing more CLEs and consulting with his ethics lawyers. We believe that after Petitioner drafted his petition, he better absorbed the disciplinary opinion's lessons and now intellectually understands its antecedents.

²⁹ In concluding that Petitioner presented reasonable evidence under the circumstances, we observe that evidence following a six-month suspension will look very different from evidence following a longer suspension. We accord the evidence the appropriate weight, given the circumstances.

Thus, to the extent that Petitioner's fitness rests on his ability to accurately analyze legal problems, he has shouldered his burden of proof as to this prong. As to whether Petitioner has the requisite ability to use good judgment, to communicate with clients, and to exercise honesty and candor in conducting his professional business, we reserve those determinations, as they overlap with our analysis of his rehabilitation.

Rehabilitation

The final legal prong the Hearing Board must consider in this case is whether Petitioner has been rehabilitated from his misconduct. In gauging Petitioner's rehabilitation, we are charged with considering the circumstances and seriousness of his original misconduct, his conduct since being suspended, how much time has elapsed, his remorse and acceptance of responsibility, restitution for any financial injury, and evidence that he has changed in ways that reduce the likelihood of future misconduct.³⁰ These criteria provide a framework to assess the likelihood that Petitioner will again commit misconduct.

We examine this final prong by considering at the outset the seriousness of Petitioner's misconduct. Petitioner was blind to conflicts, ignored his duty of loyalty to two clients, and terminated his representation of one of them unilaterally. He then brokered an aggregate settlement that awarded him unreasonable attorney's fees, disadvantaged his former client, and spawned a fractious fee dispute that is still ongoing. We deem these violations serious, and the hearing board in Petitioner's disciplinary case adjudged his misconduct to be weighty enough to warrant requiring him to petition to reinstate under C.R.C.P. 242.39.

Although the disciplinary hearing board suspended Petitioner for a period of just six months, he has in fact been away from the practice of law for more than twice that time. Fourteen months elapsed between the effective date of his suspension and the date of his reinstatement hearing. During that time, Petitioner recast his role in his family, volunteered in his community, and took time to digest the disciplinary opinion's messages. He was not involved in much, if any, law-related work during his suspension, but we do not hold that against him. His work during his suspension was more internal than external.

³⁰ 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 the ABA/BNA manual. *See* Lawyers' Manual on Professional Conduct (ABA/BNA) 101:3001 § 20.120.30, Bloomberg Law (database updated July 2020).

For several reasons, we do not believe that Petitioner was remorseful about his misconduct when he filed his reinstatement petition in May 2023. First, his petition itself evidences a misconception of the disciplinary opinion's findings, as discussed above. Without a clear-eyed understanding of the opinion's factual findings, whatever remorse Petitioner may have felt at the time was rooted in his own misshapen narrative. Second, his witnesses' testimony convinces us that Petitioner failed to adequately convey to them the gravity of his misconduct. Petitioner's brother Paul described the misconduct as "professional errors" committed over five years ago, while Rebolledo characterized the misconduct as an administrative mistake with financial implications stemming from Petitioner's failure to complete paperwork properly. But Petitioner's misconduct was decidedly neither remote in time nor of an administrative nature. If Petitioner had been attuned to the actual contours of his misconduct and expressed remorse for those actions, we expect his character witnesses would have testified to those expressions. Finally, Petitioner did not disclaim a personal interest in Mann's, Salazar's, or PF&C's settlement funds until autumn 2023. To us, this suggests that until quite recently Petitioner persisted in his belief that he was entitled to additional attorney's fees, which runs counter to any declarations of remorse.

In our view, the delay in this reinstatement proceeding was a blessing in disguise. Petitioner could not have proved his rehabilitation in May or October 2023. But because the reinstatement hearing was postponed, he had additional time to introspect, seek therapy, and emerge from his own echo chamber through discussions with his ethics counsel. As he listened to these outside perspectives, he began to adjust his lens and view his behavior differently. As a result, his expressions of remorse at the disciplinary hearing struck us as sincere. Without qualification, he accepted that he made a mess of the representation. He retracted inaccurate statements in his petition. He relinquished any claim to the settlement fees. And he persuaded us that he has experienced a change of heart that reduces the likelihood he engages in future misconduct.

As a result, we find that Petitioner proved by clear and convincing evidence that he has been rehabilitated from his underlying misconduct. We are compelled to add, however, that this finding is predicated on what we believe is his newfound willingness to consider other voices and opinions. We foreground this point because Petitioner frequently stressed the fact that he has always done what he believes is right, and his brother repeated that same strain in his testimony. Our worry, however, is that it is that same uncompromising belief in his own probity that got Petitioner into trouble: but for his insistence in the underlying disciplinary case that he was entitled to a certain portion of the settlement fees, we likely would not be here today. As such, we encourage Petitioner to approach his post-suspension legal practice with more caution and less inflexibility. We urge him to be less convicted and more open to asking for and incorporating others' advice. We exhort him to establish a formal mentor relationship, put aside his pride, and heed the feedback of trusted, experienced advisors. If he does, we believe he can establish an ethical legal practice that improves the lives of people in need.

V. CONCLUSION

Petitioner proved by clear and convincing evidence that he has been rehabilitated, is fit to practice law, and has complied with all disciplinary rules and orders during his suspension. We thus reinstate him to the practice of law in Colorado under C.R.C.P. 242.39 while imploring him to find an objective mentor who will offer him good, forthright counsel about practicing law ethically.

VI. ORDER

The Hearing Board therefore **ORDERS**:

1. The Hearing Board **GRANTS** Petitioner's "Petition for Reinstatement Pursuant to C.R.C.P. 242.39."
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 **Wednesday, April 10, 2024**. 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 **Wednesday, April 17, 2024**. 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 3rd DAY OF APRIL, 2024.

A blue ink signature of Bryon M. Large.

BRYON M. LARGE
PRESIDING DISCIPLINARY JUDGE

A cursive signature of Katayoun A. Donnelly.

KATAYOUN A. DONNELLY
HEARING BOARD MEMBER

A cursive signature of Julie A. Stencel.

JULIE A. STENCEL
HEARING BOARD MEMBER