

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of)	Case No. 06-R-12337-RAH
ALAN MICHAEL SHAPIRO,)	DECISION
Petitioner for Reinstatement.)	
_____)	

I. INTRODUCTION

In this proceeding for reinstatement to the practice of law, ALAN MICHAEL SHAPIRO (“petitioner”) was represented by Michael G. Gerner, Esq. The Office of the Chief Trial Counsel of the State Bar of California (“Trial Counsel”) was represented by Supervising Trial Counsel Alan B. Gordon and Deputy Trial Counsel Melanie J. Lawrence, Esq.

The court concludes that over the 14 years since his resignation, petitioner has shown his rehabilitation from the misconduct that formed the basis of his resignation with charges pending, and has otherwise clearly and convincingly satisfied all of the requirements for reinstatement to the practice of law. This court therefore recommends that petitioner be reinstated to the practice of law in the State of California.

II. PERTINENT PROCEDURAL HISTORY

Petitioner filed his petition for reinstatement on May 17, 2006. Trial Counsel filed its response to petitioner’s reinstatement petition on October 20, 2006. Trial was held on April 30, May 2 and May 8, 2007. After briefing, this matter was submitted for decision on July 5, 2007.

III. FINDINGS OF FACT

A. State Bar Membership.

Petitioner was admitted to the practice of law in California on December 22, 1976 and was a member of the State Bar of California until he resigned with charges pending, which resignation was accepted by the California Supreme Court on February 17, 1993 in Supreme Court Case No. S031091 (State Bar Court Case No. 92-Q-19185).

B. Petitioner's Prior Misconduct

1. Criminal Convictions.

On June 14, 1993, petitioner entered a guilty plea to felony violations of Penal Code section 186.10 [money laundering] and Revenue and Taxation Code section 19406 [filing false partnership income tax statement]. (*People v. Alan Michael Shapiro*, Los Angeles Superior Court Case No. BA061586, "the state case".) As a result of this plea, petitioner was sentenced to three years in state prison, with a recommendation that his sentence be completed with 68 days in the state prison reception center, 14 months residency in a halfway house, and then one year of parole.

On July 27, 1993, in a federal charge arising out of the same events as those described in the state offense, petitioner plead guilty to a violation of 26 U.S.C. 7206(1) [subscribing to false personal income tax returns for tax years 1988 and 1989]. (*United States of America v. Alan Michael Shapiro*, U.S. District Court for the Central District of California, Case No. CR-94-00346-JMI, "the federal case".) Petitioner was sentenced to 24 months imprisonment with 18 months credit for time served in the state case. Petitioner's remaining sentence of six months was to be served in a federal halfway house.

No restitution was ordered in the state case, but petitioner was named in a civil forfeiture action wherein petitioner agreed to transfer his and his wife's interest in his family residence and bank accounts to the government. (Exhibit 3, pages 332-345.) Full restitution was not ordered in the federal case, in light of petitioner's limited assets, the financial needs of his dependents, and because the government had civil remedies. (Exhibit 4, page 6.)

2. Facts preceding and underlying the criminal convictions and resignation.

Petitioner's father, Haskell Shapiro, began practicing law in California in the 1950's. At some point in his father's career, he and Warren Finn ("Finn") became partners. Their firm primarily represented plaintiffs in personal injury matters.

As a young man of 17 years old, petitioner worked at his father's law firm, doing odd jobs. In 1970, petitioner was married to Barbara, his high school sweetheart. He started law school in 1972, and continued to work at his father's firm. During his entire tenure at the law firm, he reported to Finn, not his father. At this time, petitioner's brother, Jerry, also worked at the firm. In 1973, the firm name was changed to Shapiro & Finn, but petitioner still reported to Finn. When petitioner was admitted to practice on December 22, 1976, he was hired as an associate of the firm and assumed various administrative responsibilities for its operation. While he was excited to get into the family business, he did not receive any real guidance from his father. They did not have a relationship that included such mentoring. At the time he joined the firm, there were eight or nine lawyers, five of whom were members of either the Shapiro or Finn families.¹

Even from the age of 17 when he started working at Shapiro & Finn, petitioner was aware of inappropriate activities being conducted by the firm.² Later, when he was an attorney with the firm, he became aware of payments being made for referrals. At that time, he did not think it was a particularly serious matter, since it was done openly and his father often boasted about it. When a fee needed to be paid, either his father or Finn would pay using a check. These checks were written out of a "cost account" funded by unreported attorneys' fees. Petitioner knew this

¹Warren Finn is married to petitioner's older sister, Glenda. When they were first married, petitioner was eight years old.

²On one occasion, when petitioner was doing odd jobs for the firm, he wrote "referral fee" on a check to be given to an individual who had referred a case to the firm. Finn took the check from him, ripped it up, and told him to rewrite the check without the reference to "referral fee." At that time, petitioner knew that something was occurring that was wrong.

In another instance, petitioner recalls receiving a referral fee from his father for sending a friend of his to the firm for legal work.

was unreported income.³

In approximately 1977, Jerry left the firm. Petitioner's father was not in the office very much⁴; therefore, most of petitioner's interaction was with Finn. In 1983, his father left the firm and went to work in the office of Melvin Belli. When his father left the firm, petitioner technically stepped into his partnership position. However, nothing about his activities changed, except his income, which dramatically increased. He was a 50% owner of the firm, had signature authority on the bank accounts, but he still looked to Finn for supervision. While he was excited about being a partner, Finn never looked at him as an equal. In fact, Finn resented his new position as an equal partner with petitioner. When petitioner asked questions about the operation of the firm (including the referral fee process), he was met with ridicule, humiliation, and anger from Finn, and was given more work. On such occasions, he was told by Finn that "this was the way the firm worked" and that if he did not like it, he could leave. Although he did not like his relationship with Finn, he did enjoy the income, so he put up with the distasteful relationship. Throughout the relationship with Finn, petitioner remained unassertive and passive in his dealings with his partner.

In approximately 1983, the firm hired two non-lawyers – David Shin ("Shin") and Ron Lee ("Lee"). When they were hired, petitioner spoke with Finn regarding their role. He learned that they would be paid to generate business. Petitioner thought that their contacts were primarily from the Korean community, but was not sure. Petitioner did not argue with Finn about the hiring of these individuals. In fact, petitioner did not have much contact with these individuals until litigation commenced, at which time they were used as interpreters. At this time, he still felt that such arrangements were common practice in the legal community. Finn asked petitioner to take over the "books" of these two individuals, which petitioner did. After petitioner became a partner in 1983, the percentage of business resulting from illegal referrals

³While he knew it was unreported income and that the funds were used to illegally pay cappers, petitioner did not know if these payments were deductible under the tax laws.

⁴Petitioner's father had a mistress and was leading a double life.

increased.

In the late 1970s or early 1980s, petitioner and his wife tried to start a family. They met frequent disappointments in this endeavor. He and his wife went to a fertility specialist. His wife underwent several procedures involving her fallopian tubes and artificial insemination. None was successful.

Right after he became a partner, in 1983, his wife became pregnant. He was ecstatic at the prospect of being a father. Unfortunately, she miscarried. In 1984, she conceived again, and she gave birth to a boy in April 1985. While at the hospital after the birth, petitioner overheard a doctor saying that the baby's blood type was type A. Petitioner knew that his blood type was B positive, and that his wife's blood type was type O. Petitioner became obsessed with the knowledge that the baby may not be his. Barbara swore that the baby was his and told him to stop worrying about it. Ultimately, he found out that, in fact, the baby was not his son. That day, he moved out of his house and moved on to a boat in Marina del Rey.

After knowledge of his paternity problems, petitioner became distraught and depressed. He began drinking heavily and was suicidal for the first time in his life. At this point, his life style began to change. He continued drinking, began gambling, and started to spend money on extravagant items, including travel. He sought to escape his reality. One way he escaped was by immersing himself in his work. His income steadily increased, and he received positive reinforcement from this "success."

With increasing income, petitioner became very self-absorbed. He spent enormous amounts of money on "toys" and became very greedy. After the breakup with Barbara, he became wrapped up in self-pity. He felt everything should be for him. In his words, "he had lost his belief system" and "was totally out of control."

In approximately 1989, Finn brought in Jorge Ventura ("Ventura"), another employee who was paid for referrals. Petitioner was never formally introduced to him, but he became aware of him by seeing him around the office. In addition, Finn brought Goody Basa ("Basa") into the firm. Like Ventura, Basa apparently had ties to a particular ethnic community. Further, as with Shin and Lee, petitioner had very little contact with these individuals until the matters

matured into litigation.

In 1990, the authorities started to descend on the law firm and some of its employees. On February 8, 1990, petitioner learned that Ventura had been arrested for staging an accident. This was the first time that petitioner became aware that the firm was involved in criminal activities other than capping. In fact, others in the firm were involved in insurance fraud for staging phony accidents, money laundering, and tax evasion. When petitioner first learned about the staged accidents, he called Finn, who was in Mexico at the time. Finn advised petitioner that he [Finn] “would take the hit.” The authorities came into the office in March 1990. Thereafter, some of the employees quit. Insurance companies stopped dealing with the firm. Petitioner’s income dropped precipitously. Petitioner did not leave the firm immediately, because he was financially unable to do so. However, it eventually became apparent to him that he had to separate himself from the firm.

In February or March 1990, search warrants were served on the firm by the district attorney’s office. Petitioner was arrested on August 5, 1992. He was charged with various crimes, but at some point, the district attorney stopped pursuing petitioner for insurance fraud.⁵ Petitioner never entered a plea to the insurance fraud charges, since he was never aware of any

⁵Petitioner contends that the insurance fraud charge was dismissed because the authorities were convinced of petitioner’s lack of involvement in the crime. Petitioner based this belief on a statement contained in a declaration by Deputy District Attorney Richard A. Rosenthal that, in Mr. Rosenthal’s opinion, there was not sufficient evidence to convict petitioner of involvement in the insurance fraud scheme. Trial Counsel contends that this decision did not represent a finding of innocence, but rather a finding that “there was insufficient evidence to convict” petitioner. Trial Counsel contends that petitioner’s interpretation of the statement by Deputy District Attorney Richard A. Rosenthal as to why the charge was dismissed demonstrates “a stubborn failure by Petitioner to accept due responsibility for the harm caused by the criminal enterprise that was the law firm of Shapiro & Finn.” (State Bar’s Closing Brief, p. 14, lines 2-3.) The court does not concur with this last contention. The court finds that petitioner credibly testified as to his position on this topic – that is, that he did not know of the insurance fraud. His wife corroborated that fact to the extent he told her, at the time of the arrest, that he had no knowledge of such activities. The court puts little weight on petitioner’s interpretation of what “became clear to the authorities”, since he had no personal knowledge of their mental processes. However, similarly, this court refuses to infer from the district attorney’s comment that, in fact, there was evidence that petitioner committed insurance fraud.

insurance fraud taking place.⁶

In the end, petitioner, along with Finn, failed to report receipt of \$3,987,291 in income to the law firm. The funds were deposited from the attorneys' fee portion of settlements into a separate cost account and these funds were used to pay cappers who referred business to the firm. The payments that were made to cappers were deducted from the firm's gross income on its tax returns as a business expense. This deduction was disallowed by the Internal Revenue Service and the Franchise Tax Board. Petitioner was found to owe over \$11 million in taxes, penalties and interest.

Petitioner was incarcerated, but was able to post bail pending his trial. On January 16, 1993, while out on bail, he married Rita, his current wife. Rita had been an employee of the law firm, and petitioner had known her on a professional and personal level while a partner in the firm.

C. Misstatements in Application

At trial, Trial Counsel referred to several misstatements or omissions that petitioner made in his application. These misstatements included the undervaluation of the amount previously owed the IRS, some technical mistakes as to whether he was "charged in three cases" when he was charged in one and convicted in two, and the understatement of the amount of a loan to his brother-in-law by a few thousand dollars. In addition, there were other minor omissions or mistakes in the application.

⁶Finn entered a plea to eight state felony charges, including Penal Code section 186.10 (money laundering), Insurance Code sections 556(a) and 1871.1 (insurance fraud), with a special allegation that the offense involved funds in excess of \$100,000, three counts of Revenue & Taxation Code section 19406 (filing false partnership returns), with special allegations that as to one of those three counts, he obtained more than \$25,000 and more than \$100,000 as to the other counts. Finn was sentenced to five years in prison. On November 4, 1992, Finn tendered his resignation with charges pending and went on inactive enrollment (Supreme Court Case No. S031088). On July 29, 2003, he was reinstated to the practice of law by order of the Supreme Court. Finn filed for bankruptcy and many of his debts were discharged.

D. Petitioner's Rehabilitation and Present Moral Qualifications.

1. Petitioner's activities in jail or while on probation.

Initially, petitioner served his time in custody in the Hall of Justice jail.⁷ There, he assisted other inmates who could not write by writing letters to their friends and family. Often, he helped other inmates write love letters. He did this because it helped his self esteem and because he felt he needed redemption. He was later released on bail, then after his plea, he served time in County Jail. He then went to Wasco State Prison from October to December 1993. While at Wasco, he helped the corrections officers fill out incident reports. While he recognized this was not particularly significant, he felt he needed to do something to help repay society and to "save his soul." Thereafter, petitioner went to Chino State Prison for one week, then he moved again.

Petitioner was transferred to the Central City Community Restitution Center ("Center") in downtown Los Angeles. Immediately upon arrival, he became active in the governance of the Center. He was elected men's advisory liaison and remained in that position throughout his tenure. In that role, he acted as a representative or ombudsman for the other male inmates, assisting in mediating disputes. During his residence at the Center, he was required to find work within 30 days and contribute one-third of his earnings toward restitution⁸ and one-third to the Center for his expenses. He was allowed to keep the remainder. His job was at Express Personnel Services, and involved answering the telephone, filing, and scheduling appointments.

⁷Prior to his incarceration, petitioner was evaluated by Jeffrey W. Whitting, Ph.D., a clinical psychologist. Dr. Whitting recommended a course of treatment that involved regular twice-weekly sessions. Petitioner started these sessions, but did not fully comply with the recommendation of Dr. Whitting prior to entering jail. The Office of the Chief Trial Counsel contends that this represents a failure in his rehabilitation process. However, the court does not agree. While incarcerated, petitioner embarked on a rather clear, directed plan of rehabilitation, as set forth in more detail in this decision. While it is true that he did not do everything Dr. Whitting recommended, he substituted other, equally valid forms of rehabilitation.

⁸Although he later learned that this portion of the money he earned would go to the Franchise Tax Board ("FTB"), he did not have any discretion as to how it was spent nor did he receive any accounting as to how much was sent. It was simply designated to be given to the "victim" of his crimes.

He worked for minimum wage, and he used the time to regain the humility that he had lost during his life as a lawyer.

Later, petitioner worked for attorney Dale Gribow, again receiving minimum wage. He answered telephones, assisted in the drafting of legal documents, and performed other office tasks. His income was sent directly to the Center, with him receiving only his one-third. After that job, he worked for Golden West Express, a delivery company. There, he was a delivery person, driving a van. Later, he became a dispatcher and also assisted in collecting accounts receivable. While he started at minimum wage, his income went up to \$8.00 per hour.

While at the Center, he contributed significantly more time to community service than was required by the terms of his sentence. In fact, he received recognition for such service from the Parole Administrator. This service was documented in logs signed by his supervisor. (See Exhibit R, pages 2 - 5.) He was required to log 100 hours of community service in the Center. In all, he documented over 300 hours of community service for various agencies, including United Way and the American Red Cross. (Exhibit R, pages 6 and 8.) When the Northridge earthquake devastated the San Fernando Valley, petitioner volunteered time with the City of Los Angeles Department of Building and Safety ("Department") to assist in assessing the damage, repairing buildings, and handling telephone calls from victims. For several consecutive days, he answered phones on twelve hour shifts. He was thanked for his contribution by the Department. (Exhibit R, page 7.) Also, while at the Center, petitioner established a recycling program, for which he received commendation. (Exhibit R, page 1.) While in the Center, petitioner helped form a softball program for the other inmates to participate in on Saturdays and Sundays from 6:00 to 8:30 p.m. He was a team captain and helped arrange transportation to the park from the Center.

These activities, while to some degree required for all inmates, were performed in an outstanding and dedicated manner by petitioner, and his activities well exceeded the requirements of the Center.

After he completed his state sentence at the Center in February 1995, he was transferred to a federal half-way house to begin his federal sentence. While at the half-way house, he did do community service, and reports of that service were turned into the administration.

2. Petitioner's family life.

After petitioner completed his incarceration at the state and federal facilities, he was able to come home to be with his family. Petitioner's marriage to Rita changed his life in many ways. He refers to her as "an angel." He feels that she is smart, analytical, and sees the bigger picture in life. She saw good in him when he saw nothing good in himself. She visited him every night in jail and convinced him that he had something to live for. In his words, she was his "anchor," and was a "godsend."

Rita and petitioner now have three sons. These children have also changed petitioner's life in a very big way. They all think the world of petitioner. One child is receiving straight A grades and has not missed a day in school. Another son is very outgoing, despite having had two open heart surgeries, with the most recent in July 2006. His youngest son is five years old and is devoted to his father. By all accounts, petitioner is a devoted and loving father. He nurtures his sons, encouraging them to be all they can be. He tries to instill in them the values that he feels are important. He tells them to never give up. He tries to set an example for them. He teaches them to know right from wrong. In his words, they are the center of his existence.

3. Petitioner's financial situation and the resolution of his debts.

Petitioner's wife delivered his first child in January 1994, while petitioner was incarcerated. Upon his release, he immediately began working at minimum wage to help raise his family. Since his release from jail, petitioner has worked for his brother in Oakhurst, California. Petitioner started with absolutely nothing. His home and all of his possessions were sold to pay the amounts he owed the government. Petitioner now earns approximately \$3,500 per month, and his wife earns approximately \$2,200 per month.⁹ Petitioner and his family live a modest, humble existence in Ahwahnee, California. He is happier now than he ever has been, despite not having the creature comforts of cars, boats, big houses or money that he had at the time of his criminal conduct. His home is small, and he faces continual financial challenges,

⁹Petitioner's debts predate his marriage, and, as such, are likely not the responsibility of his wife. However, his wife's income is mentioned because it is relevant when considering his current financial obligations and condition.

including sometimes lacking the ability to pay for medical care. He has also had difficulties paying other bills. On several occasions, he has been unable to pay the utilities, including the propane to heat his house (located in the rural foothills of the Sierra Nevada Mountains.) When this happened, the family simply huddled together to stay warm. On other occasions, he was unable to pay his telephone bill, and so he temporarily lost his service until the bill could be paid. In addition, he has, on occasion, been unable to pay the electric bill, and it has been disconnected. He limits his own trips to the dentist to save money for his family. His mother helps him sometimes financially, but she was recently admitted to the hospital and has financial constraints of her own. Both his mother and his wife's mother live with them, and, to the extent these elderly women are able, they assist with expenses.¹⁰

Petitioner wanted to pay other, more serious debts, including a loan to Wells Fargo Bank (the business loan of Shapiro & Finn) and to Sears Consumer Financial Corporation (a \$66,000 deficiency judgment on the loan for his boat). Petitioner found out just before trial that Finn had already paid or assumed the obligation to pay the Wells Fargo loan. However, up until that time, petitioner felt that he still had an obligation with respect to this debt.¹¹ Petitioner has not filed for bankruptcy, feeling that these, and the others, are legitimate debts from which he does not seek to be released. However, the court finds that petitioner has no present financial ability to pay the debts with which he is faced.¹²

Petitioner has filed all his required tax returns since his release, correctly stating all income and other personal information. While his returns may have entitled him to refunds (including the one-time \$300 credit given by the Internal Revenue Service), he never received

¹⁰The court found credible petitioner's testimony regarding his financial circumstances and his inability at times to pay certain bills.

¹¹Finn had, in fact, assured petitioner when the firm was dissolved that he would assume the obligation for this loan. However, petitioner had not heard from him whether that had been done.

¹²Trial Counsel also noted several other, smaller debts and liens. There is no evidence that petitioner has tried to avoid payment of any of his debts. Rather, petitioner simply lacks the ability to pay these amounts.

any such payments. He assumed that the taxing authorities were taking those funds as repayment of his tax debts.

The FTB filed liens against petitioner but never commenced any collection proceedings against him. The Internal Revenue Service (“IRS”) also filed liens and levied on his accounts. (Exhibit D.) Petitioner contacted the IRS and spoke with a revenue agent regarding a restitution plan. Petitioner met with the agent and discussed his financial condition in great detail. In addition, in response to a request from the IRS, petitioner wrote a “letter of hardship” to the agent to explain his status. (Exhibit F¹³.) In 2005, petitioner had further meetings with the IRS. He again provided information on his financial condition. Finally, he reached an agreement as to a payment schedule. The IRS accepted payment of \$350 per month commencing March 2005.¹⁴ This was to continue until October 2005. Petitioner made every payment in a timely manner. Thereafter, the IRS reduced the lien to zero. (Exhibit 17, page 11.) Although petitioner has no firm supporting information, he believes that the FTB also released their lien at about the same time.¹⁵

Petitioner also owed money to his ex-wife, Barbara. On several occasions, petitioner tried to make arrangements with her regarding the payment of this debt. However, she did not want any contact with him, and advised him she did not want any money from him. She took no steps to collect the amounts owed.

4. Petitioner’s Remorse/Recognition of Wrongdoing.

Petitioner has spent a lot of time thinking about his misconduct. His actions “sicken him.” He recognizes that he not only acquiesced in the bad acts, but he actively participated in them. He knows it was wrong, and that he hurt many people, including close family and friends.

¹³Exhibit F was received into evidence to show that petitioner made contact with the IRS regarding his restitution plan. It was not received for the truth of the matters asserted in the letter, since Trial Counsel could not independently verify the statements contained therein.

¹⁴This amount was later changed to \$338 per month.

¹⁵He concludes this because after that date, he began receiving credit card applications in the mail, but he has no other evidence of such a release of lien.

He knows that he hurt the profession and the esteem of lawyers in general. For that he is very sorry and ashamed. He notes that, after his arrest, he immediately saw how responsible he was for this lapse in integrity and wisdom.

Petitioner feels that now he has an entirely different focus. He has recovered from the crushing episode with Barbara, and now is able to focus his attention on Rita and his three boys. He anxiously looks forward to participating in their growth through school and as they develop lives of their own. He has committed himself to a life of “moral fitness” and wants to never risk losing what he now has. He feels that he is through being a weak person and will always exercise his best judgment, not relying on others to do that for him.

5. Testimony regarding petitioner’s character.

Petitioner presented several witnesses to testify regarding his character. All who testified in court were fully aware of the criminal history and the reasons for petitioner’s resignation with charges pending.

Petitioner married **Rita Shapiro** on January 16, 1993. They met while both worked at the law firm. She was very young - approximately 18 to 19 years old - when she first started at the firm. She began at the firm as a receptionist and later became a file clerk. At the time that they first met, petitioner was married to Barbara. Rita became aware of petitioner’s difficulties in his marriage, and specifically, his paternity problems with Barbara’s son. She noticed that after the marriage failed, petitioner’s personality changed. He became withdrawn and depressed. He was not the happy-go-lucky person that she knew before the marital problems. In 1985, she and petitioner began dating. He was separated from Barbara at the time. They dated until 1993 when they got married. While they were dating, they lived an exciting life style. There was a lot of partying and drinking. Petitioner owned exotic cars and boats. He had a lot of money and he spent it freely and irresponsibly.

Warren Finn fired her from the firm in 1986 when he learned she was dating petitioner. Nevertheless, her relationship with petitioner continued, and she actively supported him during his incarceration, visiting him daily in jail and often when he was at the Center or at the halfway house. She was able to observe during these multiple visits a dramatic change in his life. He

became humbled. He recognized the importance of family in his life. When he was released in November 1992 from the county jail, they planned their marriage for the following January. Since his release from incarceration, she has experienced many challenges in their relationship, including civil forfeiture proceedings, lawsuits, seized bank accounts, and generally extremely difficult financial times. They lost the home that they lived in to creditors and were faced with multiple occasions where their utilities were cut off.

She noted that petitioner made a commitment to her before they were married that none of the actions that caused his problems would occur again. She notes that petitioner has never broken that commitment. Both she and petitioner recognize his debts to the tax authorities. She notes that petitioner took those debts very seriously and repeatedly contacted the IRS regarding their resolution.

Rita described their financial situation in some detail.¹⁶ She explained that she and petitioner have never had a savings account since his release, despite petitioner's hard work, often for a minimum wage. She further explained that petitioner feels that their difficult financial situation is entirely his fault. He frequently wishes that he could support his family in a better fashion, but he never complains about his station in life. Rather, she notes that he focuses his entire attention on his work and his family. He is "incredibly dedicated" to his boys, coaching them in after school sports, volunteering at their school, and helping them with their homework. She says that he has never indulged himself at the expense of his family.

Rita has no concerns that petitioner will engage in further criminal activity or dishonest conduct. She believes in him and believes that he has changed.

Philip Michels is an attorney who was admitted to the practice of law in December of 1973. He has a bachelor's degree, master's degree and law degree from UCLA. He currently practices in the medical malpractice field and handles other cases involving injuries to children. He is a member of the American Board of Trial Attorneys, the American Board of Professional

¹⁶The court found credible Rita Shapiro's testimony regarding the family's financial circumstances.

Attorneys, the Consumer Attorneys of Los Angeles, and often lectures at state conventions for these organizations. He is currently the treasurer of Consumer Attorneys of Los Angeles and will be its president in approximately three years. Mr. Michels has known petitioner since 1973, when he (Michels) married another of petitioner's sisters. For a period of time, he worked at the law firm of Shapiro & Finn and saw petitioner outside of the office socially. He was able to observe the relationship between petitioner and Warren Finn. He noted that petitioner was not a forceful or assertive person at the firm. He also noted that Warren Finn ran the office by himself. Mr. Michels and petitioner had the role of doing litigation with respect to cases in the firm, but had very little to do with the actual operation of the firm. He has known petitioner for many years and has always felt that petitioner was honest and trustworthy. In fact, he noted that petitioner never violated a trust. He is also aware that petitioner has moved out of Los Angeles and is now married to a loving wife and has three children, to whom petitioner is very devoted. Mr. Michels has no concerns that petitioner will re-offend. He says that the significant changes in petitioner's life have caused him to be much more mature, have changed his life style, and have reoriented his focus in favor of his wife, his children and providing for that family. He has no concerns or any hesitations in recommending petitioner's reinstatement. He feels that petitioner is morally fit to reassume the duties of a lawyer. He has no concern of petitioner posing any danger to clients, to the public, to the court system or to the administration of justice. He is confident that petitioner will not be an embarrassment to the profession. Further, he would not hesitate to refer clients to petitioner in the event that he is reinstated.

Garth Pillsbury is a photographer with the Department of Building and Safety and was formerly with the Los Angeles Police Department. He has worked for the City of Los Angeles for 25 years and has been a reserve law enforcement officer for 22 years. From 1982-1986 he was a crime scene photographer for the Los Angeles Police Department. He is also a cousin of petitioner. He has known petitioner since he (petitioner) was four years old, and he knew him when he was an attorney. Prior to petitioner's arrest, Mr. Pillsbury had used petitioner's firm for legal problems, including one arising out of his stepdaughter's disputes with a credit card company. He always felt that petitioner handled his matter and other matters honestly and in a

trustworthy fashion. He feels that petitioner is an ethical and reliable person who stands by his word. In fact, when he was requested to use his house as collateral for petitioner's bail, he agreed to do so, knowing that petitioner would not do anything which would jeopardize his only significant asset. Mr. Pillsbury fully supports petitioner's request for reinstatement. He feels that he has learned from his mistakes and has changed his life dramatically such that those mistakes would not be repeated. He is familiar with petitioner's current financial situation and his living environment in the Sierra Foothills. He is also familiar with the dedication that petitioner has to his family. He feels that petitioner poses no danger to clients, the public or the court system. He is confident that he would not be an embarrassment to the profession and he would not hesitate to refer a case to him.

Ronald W. Hedding has been an attorney since November 1976. His area of practice is primarily in criminal defense. He has known petitioner since law school. They lived near each other - approximately one block away - and they have maintained that friendship over the last 20 years. Mr. Hedding trusts petitioner implicitly. In fact, like Mr. Pillsbury, he put up his house as security for petitioner's bail, confident that he would not violate the obligations to appear. He was aware of petitioner's reaction to the criminal investigation and conviction. He notes that petitioner was very embarrassed, was "crushed," and feels great remorse. He is confident that petitioner will not violate the criminal laws ever again. He emphatically states that there is "no chance whatsoever" that he would do so. He points to petitioner's new, austere lifestyle in a remote part of California. While his lifestyle has dramatically changed, Mr. Hedding notes that petitioner is much happier. Mr. Hedding also notes that the change in personality that he has observed in petitioner would result in petitioner not likely being influenced by others with strong personalities. He feels that petitioner would now stand up for himself if confronted with a domineering person. He is confident that petitioner is morally fit to be reinstated to the practice of law and he has no reservations about that recommendation. He would not hesitate to refer

clients to petitioner if he were reinstated.¹⁷

J. C. Ige is an attorney who was admitted to practice law in May 1981. She practices in the area of philanthropy, private foundations and public charities. She is a solo practitioner but was previously a legal secretary in petitioner's father's firm. She has known petitioner since petitioner was in junior high school, when he would come visit the office. She also knew petitioner later when he worked in his father's office. She started at the firm in 1965. She always felt that petitioner was an honest person, even when he was a child. He was always trustworthy. She noted that petitioner had little to do with the administrative activities in the firm. In her words, "Finn was the bottom line." She described petitioner's reaction upon his discovery that Barbara's son was not his. She said the news made him feel as if he was "at the bottom of a well." When she found out that he was arrested, she was very surprised. In fact, she suffered from total disbelief. She felt that this was very much out of character for petitioner. She has observed the very positive impact that Rita has had on petitioner's life. She saw how they pulled together when faced with their child's birth defects. She has also observed petitioner as extremely remorseful. She notes that the process he has gone through has been very painful to him, but that he has always accepted responsibility for his actions. He has never blamed anyone else, but rather has looked at himself very deeply and has tried to gain insight into the causes of his crimes. She feels that he has always been honest with her. She has no hesitation in recommending that petitioner be reinstated, and she has no concerns that, if reinstated, he would repeat his violations or otherwise engage in misconduct. Based on her knowledge of petitioner throughout most of petitioner's life, she has no concerns that he would be a danger to the public. She is confident that he would never do anything to demean the profession, and she would not hesitate to refer clients to him.

Warren Finn was very supportive of petitioner's reinstatement. Although Mr. Finn's background is somewhat tainted by his complicity, with petitioner, in the crimes underlying

¹⁷Without diminishing the evidentiary import of the other witnesses, the court was particularly impressed by the credibility of the testimony of Ronald Hedding in support of petitioner's reinstatement to the practice of law.

petitioner's resignation, he repeatedly noted that petitioner was honest, trustworthy, and hard working. He recognized that petitioner has undergone huge changes in his life, and he was confident that there would be no repeat of the conduct that led to his resignation. He felt that petitioner would be no danger to the public and would not demean the profession. As noted above, after also resigning with charges pending arising out of the same events, in 2003, Finn was reinstated to the practice of law.

Other letters from family and friends admitted into evidence similarly reflect positively upon petitioner's dramatic rehabilitation. All are convinced that petitioner would no longer be a threat to society or the profession. (See exhibits H, I, J, K, L, O, P, and Q.)

E. Petitioner's Present Learning and Ability in the General Law.

From 1997, petitioner has worked at his brother's law office. During this time, he has maintained current in the law by drafting pleadings, including complaints, demurrers, injunctions, and motions. He has been exposed to an active practice, often does legal research and discusses the cases with his brother. He has taken a number of continuing legal education and ethics courses, totaling over 100 hours. (Exhibit B.) He has read many other sources on law and ethics, including Civil Procedure Before Trial, as well as manuals put out by various lecturers. He has participated in both on-line and live continuing legal education seminars.

F. Multistate Professional Responsibility Examination

Additionally, petitioner has successfully completed the Multistate Professional Responsibility Examination within one year before the filing of his petition for reinstatement. (Exhibit A.)¹⁸

IV. DISCUSSION/CONCLUSIONS OF LAW

To be reinstated to the practice of law, a petitioner who resigned with charges pending must provide proof of passage of a professional responsibility examination within one year prior to filing a reinstatement petition and must establish, by clear and convincing evidence, his

¹⁸Trial Counsel acknowledged, in its closing brief, that petitioner passed the examination. (See State Bar's Closing Brief, page 18.)

rehabilitation, present moral qualifications for reinstatement, and present learning and ability in the general law. (Rules Proc. of State Bar, rule 665.)

Based on the evidence presented and the factual determinations by the court which are set forth above, the court concludes that petitioner has demonstrated, by clear and convincing evidence, that he has taken and passed a professional responsibility examination and has present learning and ability in the general law.

The remaining issues are whether petitioner has demonstrated, by clear and convincing evidence, his rehabilitation and present moral qualifications for readmission.

In reinstatement proceedings, a petitioner “must show by the most clear and convincing evidence that efforts made towards rehabilitation have been successful.” (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1092.) In *Hippard*, the Supreme Court noted, “[¶] In seeking reinstatement, petitioner bears a heavy burden of proving rehabilitation. [Citations omitted.] He must show by the most clear and convincing evidence that efforts made towards rehabilitation have been successful. [Citation omitted.] The evidence presented is to be considered in light of the moral shortcomings that previously resulted in discipline. [Citations omitted.] (*Id.* at pp. 1091-1092.)

The court views the conduct which led to petitioner’s criminal convictions, and which underlies his resignation with charges pending, as particularly serious, as the misconduct was directly related to the practice of law. While a 50% owner of the Shapiro & Finn law firm, petitioner was unassertive and passive in his dealings with his partner Warren Finn. Petitioner, while a partner with the firm, was well aware that the firm was engaging in capping. However, unbeknownst to petitioner, Finn and the firm were also engaged in money laundering and tax evasion. Nevertheless, petitioner was convicted of money laundering, filing a false partnership income tax statement and subscribing to false personal income tax returns for 1988 and 1989, misconduct which is particularly offensive for an attorney.

In addition, at the time of the misconduct resulting in his convictions, petitioner was dealing with the emotional turmoil of learning that his wife, with whom he had tried so hard to have a child, had given birth to another man’s child.

It is therefore with this understanding of petitioner's misconduct that the court must view petitioner's evidence of rehabilitation. A person seeking reinstatement must present "stronger proof of his honesty and integrity than one seeking admission for the first time whose character has never been in question." (*Calaway v. State Bar* (1986) 41 Cal.3d 743, 746.)

In addition, a petitioner for reinstatement must demonstrate proof of "sustained exemplary conduct over an extended period of time." (*In re Giddens* (1981) 30 Cal.3d 110, 116.) "[O]verwhelming proof of reform' is necessary. (*Feinstein v. State Bar* [(1952)], 39 Cal.2d at p. 547, and cases cited therein.)" (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 315.)

At the time that trial commenced in this matter, it had been 17 years since petitioner's last criminal act for which he was convicted; over 14 years since petitioner's arrest and resignation with charges pending; nearly 14 years since his convictions; and 11 years since the conclusion of his criminal sentence. "The passage of an appreciable period of time" constitutes "an appropriate consideration" in determining whether a petitioner has made sufficient progress toward rehabilitation." (*In the Matter of Brown, supra*, 2 Cal. State Bar Ct. Rptr. at p. 316, quoting *Hippard v. State Bar, supra*, 49 Cal.3d at p. 1095.) (*In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546, 558.) It has been over 14 years since petitioner's resignation with charges pending was accepted by the Supreme Court. Petitioner could have applied for reinstatement much earlier.¹⁹ Instead, however, he continued on a steady, uninterrupted path of rehabilitation for many additional years before applying for reinstatement.

Petitioner's evidence of rehabilitation is compelling. Petitioner's rehabilitation began upon his arrest, when he realized his responsibility for the misconduct. While incarcerated, although he was required to perform some community service, he logged over three times more hours than were required, and he performed his community service in a dedicated and outstanding manner.

¹⁹Indeed, Finn was reinstated on July 29, 2003 (Supreme Court Case No. S117548), despite a much longer period of misconduct and more serious criminal convictions.

Petitioner's life has changed dramatically since the misconduct, and petitioner is no longer the same sort of person he was during the period he was engaging in criminal activity. He now lives a very modest and humble existence in a remote area of California and, despite severely lacking in finances, he is happier now than he ever has been. He is dedicated to his wife and children. In addition, petitioner has expressed great remorse for his misconduct and has committed himself to a life of "moral fitness".

Furthermore, several character witnesses testified or submitted letters attesting to petitioner's good character. Many of these individuals were attorneys who noted that they would refer clients to petitioner if he were reinstated.²⁰ Among other things, petitioner was described as honest, trustworthy, humble and morally fit. These character witnesses had no concern that petitioner would engage in further criminal activity and unequivocally support petitioner's reinstatement to the practice of law. "Character testimony and reference letters, especially from employers and attorneys, are significant in reinstatement proceedings. ([Citations omitted].) Great consideration is due to '[t]estimony of members of the bar and public of high repute who have closely observed [a] petitioner' for reinstatement. ([Citations omitted].) (*In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423, 431.)

Regarding petitioner's misstatements and the omissions from his reinstatement petition, "[a]n omission may not be fatal to a reinstatement petition where the information omitted is insignificant and there is no intent to mislead the State Bar or conceal derogatory information (*Calaway v. State Bar*, *supra*, 41 Cal.3d at p. 748.). However, where the omissions are significant or misleading, reinstatement may be denied. (*In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25, review den. Aug. 15, 1990 [S015226].)" (*In the Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668, 673, fn. 1) While the court is cognizant of the need to be careful in preparing such documents, the court finds that the misstatements and omissions in this matter were of such a minor nature as to not affect

²⁰Although a couple of the letter writers were not aware of the nature of petitioner's misconduct, this does not undermine the overall positive strength of the character evidence presented by petitioner in this matter.

petitioner's overall application, which was complete and honest in every other respect. The court finds that the misstatements and omissions were not significant, nor were they made with the intent to mislead. Thus, the court finds that these misstatements and omissions do not undermine petitioner's evidence of rehabilitation and present moral qualifications for readmission.

With regard to the resolution of petitioner's debt, the court finds that petitioner has not tried to avoid payment of his debt. Rather, petitioner has no present financial ability to pay the debts with which he is faced. Petitioner and his former firm were found to owe the taxing authorities over \$11 million in taxes, after the imposition of penalties and interest. In addition, petitioner has several other financial debts. However, petitioner has not filed for bankruptcy, feeling that these debts, including a debt to his ex-wife, are legitimate debts from which he does not seek to be released. In fact, while incarcerated, and thereafter (as set forth below), petitioner made modest payments of restitution.

“[R]estitution is neither mandatory, nor in and of itself determinative of rehabilitation. ([Citation omitted].) Applicants for reinstatement are to be judged not solely on the ability to make restitution, but by their attitude toward payment to the victim. ([Citations omitted].)” (*In the Matter of Distefano, supra*, 1 Cal. State Bar Ct. Rptr. at p. 674.) “[T]he weight to be accorded to restitution depends on the petitioner's attitude, as evidenced by a spirit of willingness, earnestness, and sincerity.” (*In the Matter of Miller, supra*, 2 Cal. State Bar Ct. Rptr. at p. 430.)

When petitioner was released from incarceration, he had absolutely nothing. His home and all of his possessions were sold to pay the amounts he owed the government. He now lives a modest, humble existence with his wife, his sons, his mother and his mother-in-law and faces continual financial challenges, including sometimes lacking the ability to pay for medical care and basic utilities, including propane, telephone and electricity. Although his mother and mother-in-law help him sometimes financially, these women have financial constraints of their own.

On several occasions, petitioner tried to make arrangements with his ex-wife regarding the payment of the debt that is owed to her. However, she did not want any contact with him and

advised him that she did not want any money from him. Petitioner contacted the IRS, spoke and met with a revenue agent, provided the IRS with information on his financial condition, reached an agreement as to a payment schedule, and timely paid restitution to the IRS until the IRS reduced its lien to zero. The court therefore finds that petitioner has the proper attitude towards restitution but has no present financial ability to pay the debts with which he is faced. As such, the court does not find that petitioner's failure to fully pay his debts undermines his strong demonstration of rehabilitation and present moral qualifications for readmission.

In determining whether petitioner has met his burden of establishing his rehabilitation and present moral qualifications for reinstatement, the court must compare the facts in this case with those in other reinstatement matters. (*In the Matter of Rudman, supra*, 2 Cal. State Bar Ct. Rptr. at p. 556.) The court finds that petitioner's demonstration of rehabilitation and present moral qualifications for reinstatement is at least as strong as the showing by the petitioners in other matters in which reinstatement was granted. (See *In the Matter of Rudman, supra*, 2 Cal. State Bar Ct. Rptr. 546; *Resner v. State Bar* (1967) 67 Cal.2d 799; *Allen v. State Bar* (1977) 20 Cal.3d 172; *Werner v. State Bar* (1954) 42 Cal.2d 187.)

Therefore, based on the totality of the evidence, the court finds that petitioner has demonstrated, "by a sustained course of good conduct that he has attained a standard of character which entitles him to be a member of the Bar." (*In re Distefano*, [(1975)], 13 Cal.3d at p. 481.)" (*In the Matter of Distefano, supra*, 1 Cal. State Bar Ct. Rptr. at p. 673.) Respondent has made the required showing, by clear and convincing evidence, of his rehabilitation and present moral qualifications to return as an active member of the State Bar of California. On the record in this proceeding, petitioner's reinstatement to the practice of law at this time is therefore fully

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warranted.

V. RECOMMENDATION

It is recommended that petitioner **ALAN MICHAEL SHAPIRO** be reinstated to the practice of law in the State of California upon payment of all applicable fees and the taking of the oath required by law.

Dated: December ____, 2007

RICHARD A. HONN
Judge of the State Bar Court