IN RE: WILLIAM C. MCPHEE

NO. BD-2001-040

S.J.C. Judgment Denying Reinstatement entered by Justice Cypher on February 12, 2018.[1]

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[1] The complete order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

COMMONWEALTH OF MASSACHUSETTS
BOARD OF BAR OVERSEERS
OF THE SUPREME JUDICIAL COURT

IN THE MATTER OF THE PETITION FOR REINSTATEMENT OF WILLIAM C. MCPHEE	)	**S.J.C. No. BD-2001-040**

HEARING PANEL REPORT

On November 2, 2015, William C. McPhee filed a petition for reinstatement, including his initial questionnaire response, after having been disbarred by a judgment entered July 19, 2001. On April 25, 2016, he filed a First Amended Reinstatement Questionnaire. On May 26, 2017, he filed a Second Amended Reinstatement Questionnaire, and on June 13, 2017, a Third Amended Reinstatement Questionnaire.

A public hearing on the petition was held on June 26, June 27 and July 13, 2017. Forty-four exhibits were admitted in evidence, including the four questionnaires and attachments as, respectively, Exs. 1, 2, 3 and 4. The petitioner testified on his own behalf and called eleven witnesses, whose credentials and testimony are discussed below. A twelfth witness, Karen O'Toole, Esq., General Counsel to the Clients' Security Board, was called by the hearing panel. Bar counsel called no witnesses. For the reasons set forth below, we recommend that the petition for reinstatement be denied.

I. Standard

A petitioner for reinstatement to the bar bears the burden of proving that he has satisfied the requirements for reinstatement established by S.J.C. Rule 4:01, § 18(5), namely, that he possesses "the moral qualifications, competency and learning in law required for admission to

practice law in this Commonwealth, and that his or her resumption of the practice of law will not be detrimental to the integrity and standing of the bar, the administration of justice, or to the public interest." Matter of Weiss, 474 Mass. 1001, 1002, 32 Mass. Att'y Disc. R. __ (2016).

In determining whether the petitioner has met those requirements, the hearing panel "looks to '(1) the nature of the original offense for which the petitioner was [disbarred], (2) the petitioner's character, maturity, and experience at the time of his [disbarment], (3) the petitioner's occupations and conduct in the time since his [disbarment], (4) the time elapsed since the [disbarment], and (5) the petitioner's present competence in legal skills.'" Matter of Daniels, 442 Mass. 1037, 1038, 20 Mass. Att'y Disc. R. 120, 122-123 (2004) (citations omitted).

The conduct for which the petitioner was disbarred is "conclusive evidence that he was, at the time, morally unfit to practice law, and it continued to be evidence of his lack of moral character . . . when he petitioned for reinstatement." Matter of Dawkins, 432 Mass. 1009, 1010, 16 Mass. Att'y Disc. R. 94, 95 (2000). That the misconduct "continues to be evidence against . . . [the petitioner] with respect to lack of moral character at later times [is] in accordance with the principle that 'a state of things once proved to exist may generally be found to continue.'" Matter of Hiss, 368 Mass. 447, 460, 1 Mass. Att'y Disc. R. 122, 134 (1975) (citation omitted). "It [is] incumbent on [the petitioner], therefore, to establish affirmatively that, during his suspension period, he ha[s] redeemed himself and [has] become 'a person proper to be held out by the court to the public as trustworthy.'" Dawkins, 432 Mass. at 1010-1011, 16 Mass. Att'y Disc. R. at 95. (citation omitted).

II. Disciplinary History

The petitioner was admitted to the bar on December 18, 1981. Ex. 1 (WCM2). He was disbarred after the court accepted his affidavit of resignation signed May 22, 2001. Ex. 1

(WCM62-63). The petition for discipline attached to the affidavit, the allegations of which the petitioner agreed could be proved by a preponderance of the evidence, describes a wide and deep pattern of misconduct in eleven counts charging, among other things, conversion, intentional misrepresentations to clients, neglect, failure to disclose a prior administrative suspension to clients or the court, and an adjudication of contempt for practicing law while suspended. Ex. 1 (WCM64).

By way of examples of that pattern of misconduct, the petitioner converted $20,000 in insurance proceeds due a personal injury client and her husband while misrepresenting to her, for approximately two years, that he had filed suit and was awaiting a court date. Ex. 1 (WCM65-67). He took $2,500 to represent a divorce client, did no work, failed to respond to his client's inquiries, misrepresented that he was sending a refund, and failed to do so. Ex. 1 (WCM74). In another matter, he took over a case after a master had found that his client was owed over $185,000 plus interest. His failure to follow the court's instructions to file a status report resulted in the dismissal of the lawsuit, presumably resulting in the loss of at least $185,000 to his client. He did not move to reinstate the suit and misrepresented its status to his client. He did not withdraw after he was administratively suspended, and he did not tell his client, the court or opposing counsel about the suspension. Ex. 1 (WCM75-76). In a criminal case, he received $9,400 from a client to represent her son, who had been indicted on a murder charge. He never communicated with the son, who already had counsel, ignored the mother's inquiries, misrepresented the case's status when he did speak with her, and then gave her a series of refund checks that were dishonored. Ex. 1 (WCM78-80).

The petitioner had previously received a public reprimand on May 12, 1997, by stipulation, for his conduct in four cases. Ex. 11 (WCM277); 13 Mass. Att'y Disc. R. 533

(1997). The reprimand was imposed for a range of misconduct that included failure to represent clients zealously, neglect of two separate cases, improper conduct before a tribunal, failure to cooperate with bar counsel, and failure to return unearned fees. Id. On two occasions, the petitioner did not repay fees owed to his clients until after they had filed small claims actions against him. Ex. 11 (WCM278, 279); 13 Mass. Att'y Disc. R. at 534, 535. In mitigation, "[h]e was . . . suffering from psychological problems for which he is now in treatment." Ex. 11 (WCM280); 13 Mass. Att'y Disc. R. at 536.

III. Findings and Conclusions

Our findings and conclusions are set forth in three sections, one dealing with whether the petitioner has proved that he now possesses the moral qualifications necessary for reinstatement, the second with the matter of his competence and learning in the law, and the third with the public interest.

A. Moral Qualifications

We find and conclude that the petitioner has failed to demonstrate that he has the moral character required for readmission to the bar. The conduct giving rise to his disbarment is affirmative proof that he lacks the moral qualifications to practice law. See Matter of Centracchio, 345 Mass. 342, 346 (1963). To gain reinstatement, the petitioner has the burden of proving that he has led "'a sufficiently exemplary life to inspire public confidence once again, in spite of his previous actions.'" Matter of Prager, 422 Mass. 86, 92 (1996), quoting Matter of Hiss, 368 Mass. at 452, 1 Mass. Att'y Disc. R. at 126.

"The act of reinstating an attorney involves what amounts to a certification to the public that the attorney is a person worthy of trust." Matter of Daniels, 442 Mass. at 1038, 20 Mass. Att'y Disc. R. at 123; see Matter of Centracchio, 345 Mass. at 348. "Passage of time alone is

insufficient to warrant reinstatement." Matter of Daniels, 442 Mass. at 1038, 20 Mass. Att'y Disc. R. 123. "[C]onsiderations of public welfare are dominant. The question is not whether the petitioner has been punished enough." Matter of Cappiello, 416 Mass. 340, 343, 9 Mass. Att'y Disc. R. 44, 47 (1993).

Our discussion of the petitioner's moral qualifications is in seven subsections, which are (1) Employment History and Work Ethic; (2) Money Owed to the CSB and Former Clients; (3) Tax Returns and Gambling Winnings; (4) Inconsistent Responses to Reinstatement Questionnaire; (5) Causes of Misconduct/Depression; (6) Witness Testimony and Letters; and (7) Conclusions as to Moral Qualifications.

1. Employment History and Work Ethic

Beginning prior to his disbarment, and while administratively suspended, the petitioner worked for Community News Dealers in a variety of positions from October 2000 through May 2007. He began by delivering newspapers seven days a week, working from 2:00 A.M. until 6:00 A.M. Ex. 4 (WCM148-149), Tr. 2-125 (Petitioner). He was promoted to district supervisor in February 2001, working full time from 2:00 A.M. until 10:00 A.M. Tr. 2-130 (Petitioner); Ex. 4 (WCM149). In October 2002, he was promoted to Assistant Branch Manager/Distribution, and in January 2004 he was promoted to Assistant Branch Manager/Customer Service. Ex. 4 (WCM149); see Tr. 2-131-132 (Petitioner). In May 2007, the company consolidated, and he was laid off. Ex. 4 (WCM149); Tr. 2-133-2-134 (Petitioner).

Following a period of unemployment from May 2007 to December 2007, the petitioner's wife asked him to work with her in her insurance firm, Suburban Insurance Agency (SIA). Ex. 4 (WCM149); Tr. 2-134-2-135 (Petitioner). He accepted, and he proceeded to learn the insurance business by reading and taking classes. Tr. 2-135 (Petitioner). His wife suggested he get a

producer's license so that he would be able to go out and see clients. Tr. 2-135 (Petitioner). He disclosed his disbarment on the license application he filed with the Division of Insurance, and the application was rejected. Tr. 2-136 (Petitioner). He filed a second application with an attorney's help; that time, he received his producer's license. Ex. 4 (WCM149); Tr. 2-138-2-139 (Petitioner). In October 2010, he was promoted to Senior Account Executive with SIA, and he worked in that capacity until April 1, 2011 when SIA was sold to Knapp, Schenck & Company (KSC). Ex. 4 (WCM149).

After the sale, the petitioner was offered a position as an independent producer with KSC, to be paid on a commission basis. Ex. 4 (WCM149-150); Tr. 2-147 (Petitioner). KSC was bought by Cross Insurance in November 2015, and the petitioner became an employee of Cross as a producer. Tr. 2-151 (Petitioner). In May 2016, he was promoted to Claims Manager, and he is currently employed in that position. Ex. 4 (WCM149); Tr. 2-151-152 (Petitioner). The petitioner testified that he has risen to a supervisory position everywhere he has worked since his disbarment. Tr. 2-156 (Petitioner).

We recognize that it was humbling and difficult to become a paper boy at age forty-six, working the 2:00 A.M. to 6:00 A.M. shift (Ex. 4 (WCM 148-149); Tr. 2-129 (Petitioner)), and we give the petitioner credit for his work ethic and industriousness. We acknowledge and respect that the petitioner rebuilt his life after hitting bottom, working his way up from an unskilled position to a series of responsible, well-paying managerial roles where he can again provide for his family.

2. Money Owed to the CSB and Former Clients

The Clients' Security Board (CSB) is a seven-attorney board whose members distribute funds to compensate individuals for losses caused by lawyers' defalcations (S.J.C. Rule 4:04, §

1). The CSB made awards of $117,200 to fifteen of the petitioner's former clients. Ex. 1 (WCM32-33); Ex. 16 (WCM404).

The petitioner has paid the CSB $100 a month beginning October 7, 2010, and we acknowledge that he has paid every month since then, at least through early June 2017. Ex. 16 (WCM400); Tr. 2-177 (Petitioner). However, the petitioner has never increased his monthly payments, and he still owes the CSB $109,000. Tr. 2-198, 2-260 (Petitioner). At that rate of payment, it will take over ninety years to make complete restitution.

The petitioner denied that his income has gone up substantially during the period since 2010, claiming that it has increased only in the last year. Tr. 2-260 (Petitioner). The documentary evidence before us disproves that testimony. We find that the petitioner's income increased steadily between 2010 and 2016, rising from $46,799 in 2010, including $9,650 in gambling winnings (Ex. 23 (WCM616, 625-629), to $51,064 in 2014 (Ex. 27 (WCM779, 780)), $72,645 in 2015 (Ex. 28 (WCM823, 824, 825)) and $86,058 in 2016 (Ex. 29 (WCM840, 841)). We find that in 2015, his income was nearly twice what it had been in 2010, yet his monthly contribution to the CSB remained the same.

Asked directly whether he was claiming he was unable to afford to pay more than $100 a month to the CSB, the petitioner admitted that such was not the case; rather, he "chose" to use the funds for his family.

> (Question): Is it your testimony in the year 2015 you were unable to afford to pay the Clients' Security Board anything more than a hundred dollars a month?
>
> (Petitioner): No. I chose to use funds for my family. I could have paid more and then not done what I did with my family. It would be disingenuous for me to tell you I couldn't have done it. I just made a choice.

Tr. 3-43-44.

The petitioner also owes money to former clients whose claims were not reimbursed by the CSB. The petitioner has expressed an intent to make amends by writing letters of apology to those people. Tr. 3-60 (Petitioner). That would be an appropriate step towards showing moral rehabilitation, yet we heard no evidence that any such letters have actually been written.

The petitioner filed a petition in bankruptcy on October 14, 2005. Ex. 12 (WCM282). In the schedule of creditors filed therewith, he listed the CSB but stated that the amount of its claim was "unknown." Ex. 12 (WCM300). (It was not.) The CSB's general counsel testified that to her knowledge, the CSB had not received notice and had not known about the bankruptcy filing until she was asked about it during her testimony before us. Tr. 2-213-2-214, 2-216 (O'Toole). The petitioner or his counsel apparently sent notice to the CSB at the wrong address. Tr. 2-214-2-215 (O'Toole); 2-251 (stipulation as to CSB's address); Ex. 12 (WCM300).

There is authority that such a debt is not discharged. See Caldwell v. Eastman, 248 Mass. 332 (1924) (rejecting defendant's argument that his debt to plaintiff was discharged in bankruptcy where defendant scheduled an incorrect address and plaintiff did not have actual notice of proceedings); In re Gelman, 5 B.R. 230, 232 (Bankr. S.D. Fla. 1980) ("[w]here an incorrect address is scheduled, and the debtor could have ascertained the correct address, or failed to exercise reasonable care and diligence in ascertaining the address, the debt is not discharged unless the creditor had actual, timely, knowledge"). The effect of the petitioner's error was that the CSB had no opportunity to object to the discharge or to file, as it customarily does, an adversary proceeding to "have that brought out of the bankruptcy." Tr. 2-217 (O'Toole).

Further, a defalcation is nondischargeable because it is a theft. Tr. 2-217 (O'Toole); see 11 U.S.C. § 523(a)(4). Only one of the claims in the CSB's breakdown, for $91,593.50, is coded

as "no defalcation." Ex. 1 (WCM33); Tr. 2-211 (O'Toole). That was not one of the claims that was paid by the CSB; the entire $117,200 paid by the CSB was on account of defalcations by the petitioner and therefore presumably nondischargeable.

We do not agree that the petitioner's debt to the CSB was dischargeable in bankruptcy, or that it was discharged. And in any event, the petitioner testified before us that although his debt to the CSB may have been legally discharged, he has a moral obligation to pay it. Tr. 2-175-2-176 (Petitioner). He stated, "I owe them money. I am going to pay them money or die first, and that's what is going to happen." Tr. 2-199 (Petitioner).

However, we conclude that the petitioner's conduct belies any suggestion that he acknowledges a moral obligation to correct the harm he caused his former clients and the resulting costs he imposed on the CSB and the bar. His choice to make only minimal reimbursement to the CSB, when he could clearly have afforded to pay more, and his failure to make any restitution at all to the other clients whose funds he took, preclude a finding of moral fitness.

"For purposes of reinstatement, making restitution is not simply a matter of making clients whole, but is an outward sign of the recognition of one's wrongdoing and the awareness of a moral duty to make amends to the best of one's ability." Matter of McCarthy, 23 Mass. Att'y Disc. R. 469, 470 (2007). Many cases highlight the importance of restitution in the reinstatement context. See, e.g., Matter of Fletcher, 466 Mass. 1018, 1020, 29 Mass. Att'y Disc. R. 263, 266 (2013) (court notes, in upholding denial, that the hearing panel properly relied on the petitioner's failure to make restitution); Matter of Dawkins, 432 Mass. at 1011, 16 Mass. Att'y Disc. R. 95-96 (denying reinstatement because, among other things, Dawkins "failed to reimburse the clients' security board for what it had paid to a former client [and] failed to resolve

outstanding Federal and State tax liabilities"); Matter of McCarthy, supra, 23 Mass. Att'y Disc. R. at 469 (principal reason for hearing panel's negative recommendation was the "failure to make restitution to his victims (or to reimburse the Client Security Board for the amounts it paid out)"); Matter of Wynn, 7 Mass. Att'y Disc. R. 316, 317 (1991) (reinstatement denied; single justice notes, among other things, that "[t]he lack of payment of moneys owed for taxes and payment of restitution to wronged clients . . . pose a *substantial impediment* to a finding that reinstatement would be in the interests of the bar and the public"; emphasis added). Cf. Matter of Pool, 401 Mass. 460, 466, 5 Mass. Att'y Disc. R. 290, 296 (1988) (reinstatement allowed; court notes that "[a]lthough not a controlling consideration . . . where an attorney's disbarment is based on misappropriation of clients' or others' funds, failure to make restitution without justification is a strong indication of lack of rehabilitation"; dicta because of finding that Pool did not misappropriate funds, but failed to return a fee).

The petitioner made no attempt to distinguish, or even to cite, those cases. He merely cited Desy v. Board of Bar Examiners, 452 Mass. 1012, 1013, n.4 (2008), for the proposition that his bankruptcy "could not serve as a basis for refusing admission to the bar." Petitioner's Proposed Findings of Fact and Rulings of Law ("Petitioner's PFCs") at 12, ¶ 38. As stated above, our record does not establish that the payable to the CSB was dischargeable in bankruptcy or, in light of the apparent failure to notify the CSB of the bankruptcy filing, that it was discharged. Therefore, Desy is inapposite. And regardless of his bankruptcy, the petitioner claimed to acknowledge a "moral obligation" to make reimbursement. Taking his acknowledgement at face value, we conclude that the petitioner has failed to make a genuine effort to meet that obligation.

The petitioner admitted that he chose to use the money he earned to help his family, including by paying for weddings for his daughter and his niece. See Tr. 3:42-43 (Petitioner). We understand the petitioner's decision to favor his family and try to compensate them for the pain and betrayal they experienced. But we cannot find him morally fit for reinstatement when he has repeatedly put his own needs, and those of his family, ahead of the CSB and the clients he harmed. That preference and pattern do not bode well for his prospective observance of his ethical obligations. In our particular context, where the petitioner is seeking reinstatement to the profession from a disbarment imposed after he stole well over one hundred thousand dollars from numerous clients, he has not shown moral rehabilitation by favoring his family.

3. Tax Returns and Gambling Winnings

The petitioner and his wife filed joint tax returns for at least the years 2007 through 2016, and their total joint income rose substantially in those years, from $192,242 in 2010 to $252,837 in 2016. Ex. 23 (WCM617), Ex. 29 (WCM842). Their deductions for charitable contributions were high, and in each year an unusually large percentage was for non-cash charitable gifts.

Year	Total Gifts to Charity	Gifts by Cash or Check	Total Non-Cash Gifts	Description	Record Citation
2010	$17,435	$3,135	$14,300	clothing, shoes, books, furniture, computers, lamps	Ex. 23 (WCM619,622,623)
2011	$14,600	$2,300	$12,300	clothes, books, furniture, clothing, computer	Ex. 24 (WCM669, 676,677)
2012	$7,660	$1,660	$6,000	Furniture, clothing	Ex. 25 (WCM712,720)
2013	$10,710	$1,810	$8,900	furniture and electronics, clothing, books, shoes, coats	Ex. 26 (WCM743,744)
2014	$13,895	$2,195	$11,700	clothing, shoes, books, dresses and coats	Ex. 27 (WCM783,784)
2015	$17,750	$3,150	$14,600	furniture, kitchenware, clothing, shoes, books, coats, computer and other electronics	Ex. 28 (WCM828,829)
2016	$12,225	$3,025	$9,200	clothing, shoes, books, furniture, clothing, computer, bike	Ex. 29 (WCM844,846,847)
Totals	$94,275	$17,275	$77,000		

The preceding table reflects that in the years 2010 to 2016, the petitioner and his wife made cash gifts to charity of $17,275. During the same period, he paid the CSB only $7,600. Ex. 16 (WCM402-403). Looked at another way, the petitioner would have to pay the CSB for 14.4 years, at his $100/month rate, to reach $17,275.

Asked about the high deductions for non-cash donations, the petitioner claimed that the donations were all made with his wife's assets, and that he had had no assets since the late nineties. Tr. 2-248 (Petitioner). Responding to a similar question, Debra McPhee testified, "That's me giving that money, yes." Tr. 2-119 (D. McPhee).

We do not accept such a self-serving distinction between "his" and "hers" as to marital assets and debts. Many of the assets that were given away, allegedly by the petitioner's wife, had been bought with joint, marital funds. Tr. 3-38 (Petitioner). Even if Debra paid for items of expensive furniture, the petitioner contributed to other household obligations, such as the mortgage. Id. He admitted that he did not consider selling any of the items and paying the proceeds to the CSB instead of donating them all to charity in exchange for deductions amounting to tens of thousands of dollars. Tr. 3-38-40 (Petitioner). He admitted that he and his wife prioritized what they would do with their money and, as between taking charitable deductions or paying the CSB, chose the former. Tr. 3-59-60 (Petitioner).

The sincerity of the petitioner's stated intent to compensate his clients and the CSB is undermined by his efforts to distance himself from income and marital assets that were actually available to satisfy those obligations. By his testimony concerning his income and charitable donations, the petitioner demonstrated two ethical shortcomings: a lack of sincere concern for those harmed by his misconduct, and a willingness to present less-than-candid testimony in support of his petition for reinstatement.

The petitioner tried to make the same "his and hers" distinction as to gambling winnings. There was testimony that both he and his wife gambled. Tr. 2-96, 2-101 (D. McPhee); Tr. 3-45 (Petitioner). Their respective winnings are reflected in W-2G forms filed with their tax returns; many of those forms are in the petitioner's name. Ex. 20 (WCM508, 509); Ex. 21 (WCM545); Ex. 22 (WCM582); Ex. 23 (WCM625-629). Both the petitioner and his wife tried to convince us that she was the only gambler, and that he just went along for companionship. E.g., Tr. 2-101-2-102 (D. McPhee); Tr. 3-40 (Petitioner). However, the evidence is clear that on those occasions when the petitioner received a W-2G, it was because he had won money. Tr. 2-98, 2-108-2-109, 2-114-2-117 (D. McPhee). We cannot agree that he did not risk and earn money in this pursuit. We reject his testimony that none of the gambling winnings represented income to him. That false testimony appears to us to have been an excuse for not paying more to the CSB, an excuse we do not accept. It confirms the conclusion stated above; namely, that the petitioner has demonstrated a lack of concern for those harmed by his misconduct, and has sought to conceal or excuse that lack of concern by inaccurate testimony about his income.

4. Inconsistent Responses to Reinstatement Questionnaire

In none of his four responses to the required reinstatement questionnaire did the petitioner disclose his 1997 public reprimand. Tr. 3-31 (Petitioner). The omission is significant. The admissions described in the reprimand – that the petitioner's misconduct was mitigated by "psychological problems for which he is now in treatment" – were inconsistent with his testimony and written representations in this proceeding that it was not until some three to four years later, after his separation from his wife in the 2000-01 time period, that he "decided to relent to the continued pleas of those close to me to seek professional help [and to] accept the fact that I may need lifelong help which may include medication and therapy." Ex. 4

(WCM160); Ex. 11 (WCM280); 13 Mass. Att'y Disc. R. at 536; Tr. 2-240-2-241 (Petitioner); Tr. 2-80 (D. McPhee).[1]

The petitioner admitted at the hearing before us that he actually began treatment in 1994, and that he was evaluated at Lawyers Concerned for Lawyers (LCL) in 1996. Tr. 2-237 (Petitioner). He started seeing a psychiatrist, Dr. Vanessa Burtner, in 1994, and saw her until 2000. Id. As of 1996, he was in therapy and taking antidepressant medication. Tr. 2-242 (Petitioner). He told bar counsel in 1998, in a statement under oath, that he was still in counseling every other week, and was keeping in touch with someone at LCL. Tr. 2-243-2-244 (Petitioner).

Those admissions are not consistent with the petitioner's responses to Part II of the reinstatement questionnaire, which we find incomplete and misleading. In his first response, he identified three providers and indicated that he had had treatment with Dr. Burtner from 2001-02. Ex. 5 (WCM178).[2] That is directly in conflict with his testimony before us that he had begun seeing her much earlier.

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[1] The petitioner also failed to mention his public reprimand in an insurance-industry document, the 2009 Uniform Application for Individual Insurance Producer License, which he signed under penalty of perjury. Ex. 1 (WCM49). Question 2, asking about involvement in any "administrative proceeding regarding any professional . . . license" would appear to request exactly that information. Ex. 1 (WCM48); Tr. 3-30-3-31(Petitioner). He told us he "forgot about it." Tr. 3-31 (Petitioner). He did disclose the disbarment, and in his explanatory attachment, he describes "severe and chronic depression" and, again, misleadingly writes that "[i]n 2001, as the discipline process unfolded, I finally decided to seek help." Ex. 1 (WCM50).

[2] In his first amended response, he identified six providers, including the first three but this time with different dates of service, stating that he saw Dr. Burtner from approximately 1994-2002. Ex. 6 (WCM190). His second amended response is the same (Ex. 7 (WCM199), but it changes again in the third amended response, where he offers slightly different dates for the same six providers. Ex. 8 (WCM209). We do not agree with the petitioner that Part II of the questionnaire "did not require [him] to disclose providers who had treated him for any emotional disorder or addiction." Petitioner's PFCs at 19, ¶ 58. The relevant section of the questionnaire asks for information about treatment providers "if you raised in mitigation *during any proceeding regarding your license to practice law* or any other profession a claim that your physical or mental condition caused or contributed to the alleged misconduct" (emphasis added). The petitioner explicitly relied on "psychological problems" as mitigation in the matters sanctioned by public reprimand. Ex. 11 (WCM280). More to the point, if he genuinely believed the provider information was not called for by the question, the better approach would have been not to answer rather than offering an incorrect or misleading response.

There are other inconsistencies between and among the various responses to Part I of the questionnaire. Question 3I concerns "every civil or administrative action commenced or pending in any jurisdiction in which you were a party or in which you claimed an interest." See Ex. 1 (WCM13). The instructions indicate that the information sought pertains to "conduct during the period of disbarment"; as to each action, the applicant is to provide "a summary of allegations, final disposition or current status, amount of judgment and whether it had been paid." Ex. 1 (WCM 6, 13). In his first and second responses, the petitioner wrote "[n]one since disciplined." Ex. 1 (WCM13); Ex. 2 (WCM115).[3]

He became progressively more detailed thereafter. His third response listed twelve actions between 1997 and 2003, but it did not summarize any of the actions and, while indicating that all twelve had been "discharged in bankruptcy," did not identify the bankruptcy proceeding itself. Ex. 3 (WCM135). The fourth version, filed approximately nineteen months after the petition, listed sixteen actions between 1997 and 2009, properly described them, referenced the bankruptcy proceeding, and included the bankruptcy petition and related materials. Ex. 4 (WCM156).

Questioned why he initially listed no actions, the petitioner testified that "I did not know of any until it was brought to my attention." Tr. 2-252-2-253 (Petitioner). He elaborated that in 2001, he was not opening his mail, was in bed twenty-four hours a day, and never went back to his old law office so "the Clients' Security Board letters went unopened." Tr. 3-32 (Petitioner).

[3] He did disclose the bankruptcy in his responses to Part II of the first reinstatement questionnaire, and in the subsequent responses to Part II. Ex. 5 (WCM175); Ex. 6 (WCM187); Ex. 7 (WCM196); Ex. 8 (WCM206); Tr. 3-34 (Petitioner). Under our rules, Part II is not automatically part of the public record; it is filed with bar counsel and "shall be admitted in evidence at either party's request during the reinstatement proceedings subject to redaction or protective order where warranted." BBO Rules, § 3.63.

He explained that he doesn't "have access [to] PACER or any of those things." Tr. 3-33 (Petitioner).

Those statements are implausible, and we do not credit them. The petitioner knew at the least that the clients identified in the petition for discipline might have sued him. His 1997 public reprimand reflected that two of his unhappy clients had done exactly that. Ex. 11(WCM278, 279); 13 Mass. Att'y Disc. R. 534, 535. He knew he had filed a bankruptcy petition in 2005 that led to four adversary proceedings. Exs. 12, 13, 14, 15. Asked in the bankruptcy petition to "[l]ist all suits and administrative proceedings to which the debtor is or was a party within one year immediately preceding the filing of this bankruptcy case," he listed twelve such suits. Ex. 12 (WCM320). He was a co-plaintiff in one of the suits filed by his wife's insurance agency, Suburban Insurance Agency, against its landlord. Ex. 4 (WCM156); Ex. 22 (WCM573); Tr. 2-46, 2-50 (D. McPhee).

It is inconceivable that the petitioner did not know about at least some of these lawsuits in 2015 and 2016, when he filed his response, and his amended response, to the reinstatement questionnaire. His observation that he could have "done a deeper dive before the filing of the petition" is a profound understatement. It is especially harmful to his case because he swore in each questionnaire that his answers were true and correct to the best of his knowledge. Ex. 1 (WCM18); Ex. 2 (WCM120); Ex. 3 (WCM140); Tr. 3-35 (Petitioner).

It should not have taken the petitioner four attempts to provide the basic information called for by the reinstatement questionnaire. He has the burden of proof in this proceeding; it is not bar counsel's job to prompt him to provide accurate responses, as he has suggested in his post-hearing submission. We do not accept the petitioner's excuses for his failure to disclose the

public reprimand and the prior lawsuits. Those excuses ranged from unconvincing to outright false.

We do not agree that the reinstatement process is "iterative" (Petitioner's PFCs at 17-18, ¶ 56); that implies a collaborative process or that bar counsel has some duty to urge or aid a petitioner to be honest, accurate and complete. That is a serious misconception of the process and the applicable burden of proof. We reject any suggestion that a disbarred lawyer, in applying for reinstatement, need not be accurate or truthful in his first, second or third responses to the required reinstatement questionnaire and that if he is not, it falls to bar counsel to insist upon a fully correct response on the fourth try.

5. Causes of Misconduct/Depression

The petitioner testified that he does not "want to be excused for my behavior based on my mental health." Tr. 3-47 (Petitioner). Nonetheless, each of his four questionnaire responses includes, in the "Personal Statement" section, a detailed description of his "chronic and severe bouts with depression," his failure to treat it, his ultimate acceptance of his condition and his compliance with a regimen of therapy, medication and physical exercise. Ex. 1 (WCM16-18); Ex. 2 (WCM118-120); Ex. 3 (WCM138-140); Ex. 4 (WCM160-161). Asked about the cause, in whole or in part, of his misconduct, he promptly cited his chronic and severe depression as the first cause. Tr. 3-7 (Petitioner).

We accept the petitioner's statement that he does not offer his mental health issues as an *excuse* for his extensive misconduct. Yet his presentation to us repeatedly assigned those issues as a major *cause* of that misconduct. The petitioner has not demonstrated that those issues have been resolved sufficiently to allow us to conclude that they would not, if the petitioner is reinstated, once again *cause* similar misconduct in the future. Without a lucid explanation of the

cause, we are hard pressed to conclude that he appreciates the gravity of his misconduct, has recovered from whatever it was that drove him to steal and lie, and will not repeat his misconduct.

We find that the petitioner has not clearly articulated, and perhaps does not know, what caused his misconduct. Although he claimed he was "robbing Peter to pay Paul," (Tr. 2-166 (Petitioner)), it was never made clear to us how and why things began to deteriorate in the first place. And we do not accept the "robbing Peter to pay Paul" characterization; asked directly about this catch phrase, the petitioner admitted that he was actually "robbing Peter and Paul to pay Bill McPhee." Tr. 3-26 (Petitioner). Therefore, we do not think the petitioner fully understands the extent to which he went astray, or why he did. Where we cannot find that he has achieved a solid understanding of those crucial matters, we cannot conclude that sufficient remediation has occurred to justify reinstatement.

In the proceeding before us, the petitioner did not properly place in issue any medical or psychological condition. Nonetheless, he raised depression often. If he was hoping to convince us that he is now stable, his failure to offer expert testimony, medical or therapeutic records is fatal to any such claim. Although he has been seeing a therapist, Eleanor Mapps, since 2009 (Tr. 2-126 (Petitioner)), he offered no records or testimony from her as to his emotional well-being or his compliance with medication and therapy.

Barbara Bowe of LCL wrote that the petitioner is "loyal" in his monthly LCL participation; demonstrates "a real openness and availability for feedback, something he could not do in the past"; and "has remained steadfast in prioritizing his mental health treatment." Ex. 17. We also heard from the petitioner and many of his witnesses that he is compliant with his

treatment protocol and fully functioning. However, much of that testimony was unreliable hearsay or the petitioner's own self-serving testimony.[4]

We were given no evidence from the petitioner's therapist or another professional that he has, in fact, recovered from depression or has at least made progress toward that goal. That type of evidence is essential to a conclusion that he has. See, e.g., Matter of Thalheimer, 31 Mass. Att'y Disc. R. __, S.J.C. No. BD-2008-016 (December 2, 2015), panel report at 8-9 (reinstatement allowed; hearing panel cites extensively to therapist's testimony in support of petitioner's acceptance of intentional nature of misconduct); Matter of Ostrovitz, 31 Mass. Att'y Disc. R. __, S.J.C. No. BD-2008-076 (May 6, 2015), panel report at 4-6 (reinstatement allowed; hearing panel cites doctor's testimony that petitioner is no longer depressed or drug-addicted and is not likely to relapse). Cf. Matter of Dodge, 31 Mass. Att'y Disc. R. __, S.J.C. No. BD-2012-070 (March 23, 2015), panel report at 2-3 (reinstatement allowed after disability inactive status; hearing panel cites detailed letter from treating psychologist).

The petitioner's omission is especially problematic in light of the evidence that he managed to hide his depression, thefts and other misconduct from his wife for many years. See, e.g., Ex. 4 (WCM169); Tr. 2-56, 2-59-2-60 (D. McPhee). The petitioner has not met his burden of convincing us that he has recovered from the emotional conditions that contributed to his misconduct, and that he is not likely to reoffend.

[4] E.g., Knight, Tr. 22 (petitioner told her he "has undergone considerable counseling"); O'Malley, Tr. 72 ("[h]e told me about seeing a therapist"); Boudreau, Tr. 140-141 (petitioner talks about counselor he sees, "taking his medications and basically doing what he's told"); Corrigan, Tr. 189 (petitioner has acknowledged "the importance of both counseling, regular counseling sessions, and taking medications"); D. McPhee, Tr. 2-77 (she knows he goes to see Mapps and goes to LCL meetings); Petitioner, Tr. 2-162 (takes medication, sees therapist, goes to LCL); Petitioner, Tr. 3-9 (only evidence that his depression has been sufficiently addressed "is my testimony together with the testimony of my witnesses regarding my activities over the last . . . five or six years . . . .").

6. Witness Testimony and Letters

As indicated above, many witnesses spoke in the petitioner's favor. It is evident that he has inspired confidence and respect in numerous colleagues. While we generally credit their testimony, we find that much of it was beside the point and not helpful to us in making our decision. See generally Matter of Keenan, 314 Mass. 544, 550 (1943) ("[e]vidence of character or reputation from friends or acquaintances is usually subject to discount for the complacency of witnesses who are willing to be accommodating and many of whom, although sincere, may not fully appreciate the necessity of protecting the public interest.") In any event, this testimony, which we acknowledge and have summarized below, is not sufficiently weighty to overcome the many deficiencies in the petitioner's presentation.

Maureen Knight worked for the petitioner beginning in 1981. Tr. 12 (Knight). She spoke glowingly of his legal skills and compassion. Tr. 13 (Knight). She testified that after five years or so, he formed a new partnership and began to work very hard. Tr. 12,14 (Knight). She described the petitioner as "going crazy trying to carry everything." Tr. 16 (Knight). After the partnership dissolved, the petitioner "was left with a mess." Tr. 16 (Knight). Things went downhill for him, and he became depressed. Tr. 17 (Knight). She left his employment in 1992, lost touch with him and was not aware that he had been disbarred. Tr. 21, 24 (Knight). She agreed that between 1992 and 2001 she had virtually no contact with him. Tr. 25 (Knight). She is now back in touch with him, and she testified that he takes full responsibility for everything that happened, works very hard and goes to counselling. Tr. 21-22 (Knight). She would be confident hiring him as a lawyer, and she wrote a letter in support of his reinstatement. Tr. 24 (Knight); Ex. 30.

Daniel O'Malley is currently a district court judge. Tr. 30 (O'Malley).[5] He has known the petitioner since 1986 and described him, in the period 1986 through 1998, as "one of the preeminent criminal defense lawyers." Tr. 32 (O'Malley). They lost contact when Judge O'Malley first went on the bench in 1998. Tr. 33-34 (O'Malley). He became aware of the petitioner's disbarment but does not remember when. Tr. 33 (O'Malley). Once off the bench, he had significant contact with the petitioner in the context of his insurance needs; the petitioner contacted him and now handles his and his children's insurance business. Tr. 34 (O'Malley).

Judge O'Malley described his legal practice in Quincy, where he worked in an office suite with several other lawyers. Tr. 36 (O'Malley). The petitioner asked if he could work with him as a paralegal, and Judge O'Malley agreed. Tr. 37-38 (O'Malley). The petitioner disclosed that he had been professionally disciplined. Tr. 38 (O'Malley). After he was hired, Judge O'Malley would sometimes have him attend client meetings, and would introduce him as his paralegal and would say "he was a lawyer, practiced law for years, and he's been out of the business . . . for several years and now he's back as a paralegal." Tr. 40,68 (O'Malley). He did not disclose that the petitioner had been disbarred, but would say he had resigned. Tr. 77,78 (O'Malley). Judge O'Malley was highly pleased with the petitioner's work, and described it in detail. Tr. 39-40 (O'Malley); Ex. 18. He also wrote a letter in support of the reinstatement petition. Ex. 31.

Stephen Lowell is a solo practitioner in the suite Judge O'Malley rented before returning to the bench, where the petitioner continues to do paralegal work for another lawyer, Jon Ciraulo. Tr. 81-82 (Lowell). A former state police officer, Lowell met the petitioner in the early nineties,

[5] He was a practicing lawyer, then a judge, then a practicing lawyer and is now again a judge. See Tr. 30-31 (O'Malley).

when he was assigned to the Norfolk County District Attorney's Office and the petitioner was a defense attorney. Tr. 82-83 (Lowell). Lowell was admitted to the bar twenty-five years ago. Tr. 81 (Lowell). He is willing to serve as a mentor should the petitioner be reinstated, and he has written a letter in his support. Tr. 91-92 (Lowell); Ex. 33. The petitioner has never discussed with him the misconduct that led to his disbarment, and he never told Lowell what he acknowledged doing wrong. Tr. 94 (Lowell). He never indicated that he had an earlier public reprimand, or that his misconduct went back to the 1990s. Tr. 97 (Lowell).

Michael Rusconi is another sole practitioner in the same suite. Tr. 98-99 (Rusconi). He was admitted to the bar in 2012, and he got to know the petitioner in the course of the latter's paralegal work for Judge O'Malley. Tr. 99-100 (Rusconi). He wrote a letter in support of the petitioner's reinstatement. Ex. 34. He has read the disbarment and public reprimand decisions. Tr. 106 (Rusconi). He has consulted with the petitioner on legal matters, and has found him accommodating and happy to help. Tr. 107-108 (Rusconi).

James Boudreau first met the petitioner in the 2005/2006 time frame at LCL. Tr. 126 (Boudreau). Boudreau is now a practicing lawyer but was disbarred after stealing from clients. Tr. 126-127 (Boudreau). He shared his personal observations of the petitioner's conduct at LCL meetings, concluding that he has become "much more solid, much happier now." Tr. 136-137 (Boudreau). Although the petitioner spoke at meetings about his offenses, crimes, and history of depression, he did not mention his public reprimand; Boudreau learned about it from the petitioner's attorney in this proceeding. Tr. 147, 150 (Boudreau).

Robert Harnais is a self-employed attorney in Quincy. Tr. 153 (Harnais). He met the petitioner in the early 1980s when he was not yet a lawyer but liked to watch lawyers, including the petitioner, at work in the Quincy District Court. Tr. 154-155 (Harnais). Harnais has been

active in many bar associations; he was the president for many years of the Massachusetts Association of Hispanic Attorneys; the Northeast regional president of the Hispanic National Bar Association; the president of the Massachusetts Bar Association; the president of the New England Bar Association; and the president of the Bar Association of Norfolk County. Tr. 157 (Harnais). He testified that the petitioner has a reputation for truth and honesty in Norfolk County, and that he is a "good man" who "got in over his head." Tr. 163-164 (Harnais). He learned in the late nineties about the petitioner's professional problems. Tr. 165 (Harnais). The petitioner told him that he "dug the hole too deep for himself." Tr. 169 (Harnais).

John J. Corrigan is a solo practitioner in Brookline who teaches a seminar on ethics for prosecutors to third-year students at Harvard Law School. Tr. 175-176 (Corrigan). He is on the Board of Directors of the Massachusetts Association for Mental Health and the Massachusetts Association for the Blind and Visually Impaired, and he is also on a screening committee that advises Senators Warren and Markey on recommendations to the White House for federal judgeships. Tr. 176 (Corrigan). He was admitted to the bar in 1989 and knew the petitioner then by sight and reputation; during the course of his work as an assistant district attorney for Norfolk County, he became friendly with the petitioner. Tr. 177 (Corrigan). He has written a letter strongly supporting the petitioner's reinstatement. Ex. 35. He stated that the petitioner frequently calls him with suggestions for his ethics course, and that he considers them since they "come from a valuable perspective." Tr. 179 (Corrigan). The petitioner told Corrigan about the public reprimand, but he could not remember how he learned about the disbarment. Tr. 181 (Corrigan). He testified that were the petitioner reinstated, he would send him criminal and mental health treatment and commitment issues, and anything involving insurance, noting that

the petitioner has handled his insurance needs, and those of others he has referred, for many years. Tr. 185 (Corrigan).

James McGonigle is the former CFO/COO of KSC. Tr. 192 (McGonigle). He wrote a letter in support of the petitioner's reinstatement, citing among other things his "sound judgment, strong leadership skills, and the ability to deal effectively with different levels of management." Ex. 36. He met the petitioner and his wife in 2009, during the process of due diligence undertaken by KSC before acquiring her agency, Suburban Insurance. Tr. 192 (McGonigle). After the acquisition, the petitioner worked as an independent producer for KSC and was later hired on a permanent, full-time basis. Tr. 195 (McGonigle). More recently, as McGonigle was preparing to retire, and with his encouragement and support, the petitioner was promoted to the claims manager position. Tr. 195-196 (McGonigle). While during the negotiations to purchase Suburban McGonigle had learned of what he described as a "situation" concerning the petitioner, and while he knew that the petitioner no longer practiced law, he learned only recently what the bar discipline was about. Tr. 197-198, 199 (McGonigle). He described it as "using unsubstantiated funds for his own personal use," and said that the petitioner told him that at the time he was disbarred, he had a nervous breakdown. Tr. 206, 208 (McGonigle). Learning about the disbarment gave McGonigle no pause with respect to his support. Tr. 198 (McGonigle).

Jon Ciraulo is a self-employed attorney in the above-described suite. Tr. 2-10 (Ciraulo). He met the petitioner in December 2014 when the petitioner was working as a paralegal for Judge O'Malley. Tr. 2-11 (Ciraulo). The petitioner now works as a paralegal for Ciraulo, who has also agreed to mentor him should he be reinstated. Tr. 2-11-2-12 (Ciraulo). Ciraulo's practice is entirely criminal defense; he has virtually no civil experience except for a dog bite case. Tr. 2-13, 2-19-2-20 (Ciraulo). He related that the petitioner told him when they met that

he had been disbarred for taking client funds. Tr. 2-16 (Ciraulo). Having worked with the petitioner for close to two years, Ciraulo has concluded that he is thorough and does a good job; if reinstated, Ciraulo would be comfortable referring cases to him. Tr. 2-17 (Ciraulo). They have no formal mentoring agreement, but Ciraulo understands that the petitioner would work in a limited capacity, taking a limited caseload of two to three or three to five criminal cases, and that Ciraulo would review his work product, monitor the client funds and review the fee agreements. Tr. 2-21-2-22, 2-23 (Ciraulo). The petitioner would maintain an IOLTA account in the name of his practice, and he would be self-employed. Tr. 2-22-2-23 (Ciraulo).

Paul T. Nolan is another solo attorney in the Quincy suite; his focus is on insurance law. Tr. 2-25, 2-31 (Nolan). He was a police officer for almost thirty years, retiring eight years ago as a Deputy Police Chief. Tr. 2-26 (Nolan). He has known the petitioner for about thirty years; they met in the mid-eighties when Nolan was a police officer and the petitioner a criminal defense attorney in the Quincy District Court. Tr. 2-27, 2-38 (Nolan). They did not remain in touch, and had no contact from the early nineties until 2014. Tr. 2-38 (Nolan). They renewed contact when the petitioner came to work in Judge O'Malley's office. Tr. 2-28-2-29 (Nolan). At that time, they discussed his status at the bar, and the petitioner disclosed why he had been disbarred. Tr. 2-30 (Nolan). Nolan was impressed with his work and also with his insurance knowledge, and he transferred his insurance business to the petitioner. Tr. 2-31 (Nolan). Nolan wrote a letter of support and, were the petitioner reinstated, would "hire him in a minute," despite knowing about his past transgressions. Tr. 2-36 (Nolan); Ex. 43.

The foregoing summary of the testimony and letters reflects that these witnesses knew, and therefore said, almost nothing about the factors that require denial of the petition: failure to make a sincere effort at restitution, carelessness bordering on dishonesty in presenting a case for

reinstatement, and inability (or unwillingness) to demonstrate that the problems that led to extremely serious misconduct have been resolved. While for the most part we do not doubt their sincerity, their oral and written evidence has not aided us significantly in resolving the questions pertinent to reinstatement.

We also received and have considered letters from former clients addressing the petitioner's reinstatement. George Hanscom, the subject of Count 5 of the petition for discipline, wrote that if the petitioner is reinstated, he should be "strongly supervised by an experienced managing partner or by an appointed senior mentor," and should not be allowed to practice as a sole practitioner. Ex. 38A; Ex. 1 (WCM75-77). Robert E. Lewis and Cher-Lynn Avery, the subjects of Count 4 of the petition, wrote that the petitioner "has no moral code of conduct," "makes the good lawyers look bad," and is not "capable of being a morally responsible lawyer." Ex. 39; Ex. 1 (WCM74-75). Debra MacDonald Brackman described the petitioner's representation of her as "years of emotional abuse," and she indicated that he had never reached out to her to right his wrongs, noting that it took years for him to be held accountable for his actions. Ex. 40. Richard Realini wrote that the petitioner "lied to [him] for 10 years about how [his] case was proceeding," caused "considerable financial hardship and marital hardship," and never gave "an explanation or an apology." Ex. 41. Donna Wagner wrote a letter and attached many pages of notes; she wrote among other things that the petitioner "has no integrity or credibility. He has intentionally inflicted detrimental financial and irreversible damage to many of his vulnerable clients with his reckless actions and non-actions." Ex. 42A (emphasis in original).

7. Conclusions as to Moral Qualifications

A "fundamental precept of our system is that persons can be rehabilitated." Matter of Ellis, 457 Mass. 413, 414, 26 Mass. Att'y Disc. R. 162, 163 (2010). Matter of Hiss teaches that "[t]he chastening effect of a severe sanction such as disbarment may redirect the energies and reform the values of even the mature miscreant." Matter of Hiss, 368 Mass. at 454, 1 Mass. Att'y Disc. R. at 127. On this record, however, for the reasons explicated above, we cannot conclude that the petitioner has carried his burden of proving moral reformation and that he currently has the moral qualifications to practice law.

B. Competence and Learning in the Law

S.J.C. Rule 4:01, § 18(5) requires that, in order to be reinstated, a petitioner must demonstrate that he has the "competency and learning in law required for admission to practice law in this Commonwealth." We have no doubt that the petitioner was once a skilled trial lawyer, and that he is now a highly competent paralegal; we credit the evidence to that effect. E.g., Tr. 41-67 (O'Malley); Tr. 107-108 (Rusconi); Tr. 185 (Corrigan); Tr. 2-17 (Ciraulo); Tr. 2-31 (Nolan); Ex. 18. We also credit that he reads the Massachusetts Lawyers Weekly and has generally kept up with legal trends. Tr. 2-158-2-159 (Petitioner).

However, we do not agree that the petitioner has carried his burden on this criterion. Our analysis is aided by Matter of Todrin, 32 Mass. Att'y Disc. R. __, S.J.C. No. BD-1994-044 (July 29, 2016). Todrin's reinstatement materials bear many similarities to the petitioner's: Todrin failed to include certain facts and circumstances in his application, including the existence of numerous lawsuits. Todrin, Board Memorandum at 2. The hearing panel, whose recommendation was adopted by the board and the single justice, "concluded that petitioner's

nonchalant approach to matters of import fails to demonstrate the diligence and competency necessary for reinstatement to the bar." Board Memorandum at 1.

The same holds true here. The fact that the petitioner filed four sets of questionnaire answers, the third and fourth of which were, respectively, more descriptive and expansive, suggests one of two things: either he intentionally withheld information until forced by bar counsel to disclose it (even then omitting to mention his prior discipline); or he devoted far too little thought and foresight to the reinstatement project. We discussed above our rejection of the argument that reinstatement is an iterative process, in which it is acceptable for an applicant to submit successive and incomplete versions of his responses.

We find that the petitioner has displayed a cavalier attitude towards this extremely serious matter. For another instance, the draft monitoring agreement he introduced in evidence, Ex. 44, bears no relation to this case; it does not mention the petitioner, his particulars or his proposed mentors but instead was taken from an unrelated case. It includes nothing about monitoring an IOLTA account, an important subject in light of the petitioner's admission that his misconduct included failing to deposit retainers into the IOLTA account he maintained at the time. Tr. 2-167 (Petitioner). The petitioner's reliance on this inapposite document does nothing to support his claim that he is now competent to conduct a law practice. Whether analyzed as moral shortcomings or failures of competence, we conclude that the petitioner's careless approach to answering the reinstatement questionnaire and his ill-advised monitoring agreement show that he is not ready for readmission.

C. The Public Interest

"Consideration of the public welfare, not [a petitioner's] private interest, dominates in considering the reinstatement of a disbarred applicant." Matter of Ellis, 457 Mass. at 414, 26

Mass. Att'y Disc. R. at 164. The public's perception of the legal profession as a result of the reinstatement, and the effect on the bar, must be considered. "In this inquiry we are concerned not only with the actuality of the petitioner's morality and competence, but also [with] the reaction to his reinstatement by the bar and public." Matter of Gordon, 385 Mass. 48, 52, 3 Mass. Att'y Disc. R. 69, 73 (1982). "The impact of a reinstatement on public confidence in the bar and in the administration of justice is a substantial concern." Matter of Waitz, 416 Mass. 298, 307, 9 Mass. Att'y Disc. R. 336, 345 (1993). The importance of that concern is graphically demonstrated by the strong sentiments expressed by the petitioner's former clients who chose to write letters, which we have summarized above, addressing his potential reinstatement.

In light of the scope and seriousness of the petitioner's misconduct, he bears a heavy burden to prove that reinstatement is warranted. He has not carried it. We rely for this conclusion on many factors: his failure to repay his large debts to the CSB and his former clients; his disingenuous testimony about his tax returns and gambling winnings; his carelessness in preparing successive versions of his responses to the reinstatement questionnaire; and his failure to understand, or to explain, the causes of his misconduct. We acknowledge his recent strong work ethic and the letters and testimony from his witnesses, but we conclude that reinstatement would be detrimental to the integrity and standing of the bar, the administration of justice and the public interest.

IV. Conclusions and Recommendation

We conclude that the petitioner has met none of the criteria for reinstatement. Accordingly, we recommend that the petition for reinstatement filed by William C. McPhee be denied.

Dated: October 25, 2017

Respectfully submitted,
By the Hearing Panel,

Thomas A. Kenefick, III /mrh
Thomas A. Kenefick, III, Esq., Chair

David A. Rountree /mrh
David A. Rountree, Member

Michael G. Tracy /mrh
Michael G. Tracy, Esq., Member