IN RE: OSCAR W. WEEKES, JR.

NO. BD-2005-009

S.J.C. Judgment Denying Reinstatement entered by Justice Duffly on April 16, 2015.[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	)	
OSCAR W. WEEKES,	)	**SJC No. BD-2005-09**
Petition for Reinstatement	)	

HEARING PANEL REPORT

I. Introduction and Summary of Proceedings

Represented by counsel, on March 7, 2014, Oscar W. Weekes filed with the Supreme Judicial Court a petition for reinstatement from an order of indefinite suspension the Court entered on June 26, 2007, effective retroactively as of February 8, 2005. Matter of Weekes, 23 Mass. Att'y Disc. R. 777 (2007). Bar counsel opposed the petition.

On referral of the matter from the Court, S.J.C. Rule 4:01, §18(5), we received evidence under the petition at hearings on June 23 and July 1, 2014. The petitioner testified on his own behalf, called one witness to testify telephonically, and relied on the transcript of testimony from witnesses taken during proceedings under a prior petition for reinstatement.[1] Bar counsel called no witnesses. Twenty-five exhibits were admitted into evidence.

At the request of counsel, we then held the matter open to receive into evidence additional records of the petitioner's treatment for depression, and an affidavit verifying the telephonic testimony from the petitioner's treating psychiatrist (which included cross-examination by bar counsel and questions from the panel). The evidentiary record was complete

[1] The prior proceedings terminated without a final decision when the petitioner sought, and with bar counsel's assent obtained, dismissal without prejudice on December 20, 2012.

and closed on August 21, 2014, when, the additional records were received by agreement and, after the treating psychiatrist did not return the signed affidavit, the parties agreed his testimony could be used as substantive evidence notwithstanding the absence of a formal oath.

After considering the evidence and testimony, the panel recommends that the petition for reinstatement be denied. While this panel was impressed by the petitioner's acknowledgement of the wrongdoing that resulted in his suspension from the practice of law, his full participation in the life of his child who has significant special needs and his substantial military career, including during the time of his suspension, Ex. 11; Ex. 13, we find that the petitioner has not met his burden of proving reform. Our decision turns on the burden of proof rather than an independent and affirmative finding of unfitness. The petitioner was suspended for acts of dishonesty. His testimony during the hearing was at times confusingly contradictory; and because of this contradictory testimony the panel was unable to discern whether or not the petitioner was untruthful or just confused. In addition, the panel cannot reach a firm conclusion as to the extent to which the petitioner's failure to meet his burden resulted from tactical decisions about how the evidence was placed before us or whether sufficient evidence to prove reform does not exist. As such, we recommend that the petitioner be allowed to file a new petition for reinstatement on or after July 1, 2015, the one-year anniversary of the last evidentiary hearing under the current petition.

II. Standard

A petitioner for reinstatement to the bar bears the burden of proving that he possesses "the moral qualifications, competency, and learning in the 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." S.J.C. Rule 4:01, § 18(5); Matter of Daniels, 442 Mass. 1037, 1038, 20 Mass. Att'y Disc. R. 120, 122-123 (2004) (rescript). See Matter of Dawkins, 432 Mass. 1009, 1010, 16 Mass. Att'y Disc. R. 94, 95 (2000) (rescript); Matter of Pool, 401 Mass. 460, 463, 5 Mass. Att'y

Disc. R. 290, 293 (1998). Rule 4:01, § 18(5) establishes two distinct requirements, focusing, respectively, on (i) the personal characteristics of the petitioner; and (ii) the effect of reinstatement on the bar and the public. Matter of Gordon, 385 Mass. 48, 52, 3 Mass. Att'y Disc. R. 69, 73 (1982).

In making these determinations, a panel considering a petition for reinstatement "looks to '(1) the nature of the original offense for which the petitioner was [suspended], (2) the petitioner's character, maturity, and experience at the time of his [suspension], (3) the petitioner's occupations and conduct in the time since his [suspension], (4) the time elapsed since the [suspension], and (5) the petitioner's present competence in legal skills.'" Daniels, 442 Mass. at 1038, 20 Mass. Att'y Disc. R. at 122-123, quoting Matter of Prager, 422 Mass. 86, 92 (1996), and Matter of Hiss, 368 Mass. 447, 460, 1 Mass. Att'y Disc. R. 122, 133 (1975).

III. Disciplinary Background

The petitioner received an indefinite suspension based on a stipulation to facts, violations and discipline.

During May through October 2001, while employed as assistant general counsel to a publishing corporation, Houghton Mifflin, the petitioner fraudulently caused his corporate client to issue three checks payable to a non-existent entity that, he told general counsel, was a corporate vendor. The petitioner used the checks to pay rent for his residential apartment. In May 2002, he also caused his corporate client to issue a check payable to an attorney based on his oral and written misrepresentations that the attorney had provided outside-counsel representation to the client. In fact, the petitioner used the check to pay rent on a summer vacation home, and he misrepresented to the named payee that the check reimbursed him for expenses on behalf of the corporate client. The petitioner made full restitution. Ex. 18, at 85-88; Ex. 15, Reinstatement Questionnaire, Part One at 3.

The petitioner was ordered temporarily suspended from practice on February 8, 2005, under an application from bar counsel that was accompanied by the petitioner's assent to the

order. The petitioner's indefinite suspension was recommended by the board under a petition for discipline and the petitioner's answer and stipulation for discipline, filed in March 2007, approved by the board on June 11, 2007, and so ordered by the Court on June 26, 2007, retroactive to the petitioner's temporary suspension.

We are presented with a threshold question concerning the petitioner's evidence. Before us, he testified, and presented medical/psychological records, concerning his struggles with depression and alcoholism. Yet, the petitioner's stipulation in 2007 to an indefinite suspension stated that both sides had considered all matters in mitigation and aggravation, and they did not present these conditions as factors in mitigation. Ex. 23. In reciprocal proceedings, the District of Columbia board on professional responsibility ruled that the petitioner had waived mitigation in Massachusetts, and it rejected the petitioner's proffer before it. Ex. 1, at 4-7. Also, in the prior reinstatement proceeding in 2012, the petitioner testified that he did not commit his misconduct because of depression. Ex. 18, at 55.

The posture of the matter before us is far different than in the original disciplinary proceedings and the consequent reciprocal proceedings. In the reciprocal proceedings in Washington, D.C. the question was whether the petitioner should be free to obtain an outcome different from what actually issued in Massachusetts. Here, the petitioner does not ask us for a different disciplinary outcome: his indefinite suspension is the starting point of our analysis. The relevance of the petitioner's depression, his addiction, and his recovery from them, to his current moral fitness was not fully and fairly litigated in the underlying disciplinary proceedings. The petitioner should be free to present a narrative in which his efforts to address those conditions constitute at least a part of the demonstration of his current fitness to practice.

IV. Findings

A. Moral Qualifications

The petitioner submitted sufficient evidence of his treatment and recovery from depression, but, there is not enough credible evidence to show recovery from alcoholism. In

addition, the contradictory testimony outlined below regarding petitioner's alleged recovery, his failure to adequately explain what the panel perceives to be misrepresentations to health care providers and other inconsistencies in testimony raise the question as to whether petitioner has been completely honest with himself and the panel. As such, the panel finds that he has not met the burden of showing current moral fitness. The petitioner received an indefinite suspension for intentional dishonesty. Where that misconduct is conclusive proof of his unfitness at the time of his indefinite suspension and continues to be presumptive proof of unfitness in these proceedings,[2] his evidence does not sufficiently address the necessary reform, given our concerns, to meet the petitioner's burden of proof.

The petitioner was raised in a middle-class family in Mattapan, Massachusetts (Tr. I:132 (Weekes); Ex. 18, at 29-31), he attended Boston Latin School and Colby College, and he earned his law degree from Northeastern University Law School. Tr. I:15 (Weekes); Ex. 18, at 33-36. He was admitted to the Massachusetts bar in 1988, and he then took positions at prominent Boston-area law firms, practicing general liability and medical malpractice defense, and later focusing on employment litigation. Tr. I:15-17 (Weekes); Ex. 18, at 37-40. The petitioner then joined Houghton-Mifflin as senior counsel and director of litigation and employment counsel. Tr. I:18 (Weekes); Ex. 18, at 40. In that role he directed outside litigation counsel, he developed corporate employment policies, and he oversaw compliance programs. Tr. I:18-19 (Weekes); Ex. 18, at 41-44.

After the petitioner lost his job at Houghton-Mifflin around 2003 because of his professional misconduct, he was called to active duty from his position as a Naval reservist. Tr. I:22-24 (Weekes); Ex. 18, at 45. From January 2003 through August 2008, he served as an intelligence officer in the United States Navy, including supervising other interrogators, in Iraq,

[2] The conduct giving rise to the petitioner's suspension is "conclusive evidence that he was, at the time, morally unfit to practice law...." Dawkins, 432 Mass. at 1010-1011, 16 Mass. Att'y Disc. R. at 95 (citations omitted). That misconduct "continued to be evidence of his lack of moral character ... when he petitioned for reinstatement," Dawkins, 432 Mass. at 1010-1011, 16 Mass. Att'y Disc. R. at 95, and to same effect, see Matter of Centracchio, 345 Mass. 342, 346 (1963), Matter of Waitz, 416 Mass. 298, 304, 9 Mass. Atty. Disc. R. 336, 342 (1993).

Guantanamo Bay, and Washington, D.C. Tr. I:24-28 (Weekes); Questionnaire, Part One (Ex. 15), at 2, 6. He received an honorable discharge on September 1, 2008. Ex. 18, at 88-89; Ex. 15, at 2, 6.

Around that time he also pursued self-employment as a "Certified Asset Protection Specialist," but the business did not succeed.[3] Tr. I:30-31 (Weekes); Ex. 15, at 3; Ex. 18, at 78-79, 104-105. From 2008 to the present he has parented his son and run his household while his wife is employed as a pediatric radiologist. Tr. I:28-29 (Weekes); Ex. 15, at 3. The petitioner also testified he provides proof-reading services for a sports and talent agency, in return for which he has been told he owns a 12% interest in the business, but he does not anticipate making money from the business, which is run by a close friend. Tr. I:116-120 (Weekes); Ex. 15, at 3.[4] He has applied for a number of non-law-related jobs since 2008, but he has not succeeded in finding appropriate employment.[5] Tr. I:185-187 (Weekes).

At the time of the petitioner's misconduct at Houghton Mifflin, in 2001, he was facing marital problems, Ex. 18, at 49-50, as well as his father's disabling stroke and his parent's financial difficulties. Tr. I:19-20 (Weekes); Ex. 18, at 46. He drank heavily, suffered a breakdown, and after a short hospital stay he was admitted for extended in-patient treatment for depression. Tr. I:32-35 (Weekes); Ex. 18, at 46-47, 49, 119-120, 121-122 (Weekes). At that time he identified as being depressed. Tr. I:110 (Weekes). He had follow-up treatment before being called to active duty. Tr. I:110-111 (Weekes). Since his return to civilian life he has

[3] The petitioner started the business while still in the Navy. Ex. 18, at 105.

[4] The petitioner denied providing legal advice in connection with his ownership in the sports agency but was unable to provide an explanation as to why he would receive a 12% interest in a company for proof-reading contracts which does not in and of itself seem to be a contribution which would warrant owning a portion of the company. The petitioner testified that he was looking at major league baseball player contracts and soccer contracts to "see that they are initialed where they are supposed to be initialed." Tr. I: 118. The petitioner did not testify that he was providing business advice or even seem to understand how the business was structured. He does not know if the agency is a partnership or corporate entity and thinks his ownership interest is documented in an email. Id. at 117-119.

[5] The petitioner's son has special needs and requires significant therapy. Tr. I:47-48, 142 (Weekes); Ex. 18, at 65, 77, 101-102. We reject any suggestion that it was a sign of infirm moral character that the petitioner did not obtain employment while raising and caring for his son.

received treatment for depression and counselling. Tr. I:36 (Weekes); Ex. 18, at 68-69, 125, 126-128. Because of his progress in his on-going therapy for his depression, the petitioner has, with his psychiatrist's concurrence, not taken anti-depressants since around January 2014. Tr. I:43, 45-46, 103-104, 105, 156-157 (Weekes); Ex. 18, at 133-134; Tr. II:7-11, 11-12, 30-32 (Keller). His psychiatrist has reduced his appointments to once every ninety days or so. Tr. I:157-158 (Weekes). The petitioner is prepared to continue treatment in Massachusetts if he and his family relocate here. Tr. I:131 (Weekes). His treating psychiatrist sees no psychiatric contraindications to the petitioner's resumption of the practice of law. Tr. II:13 (Keller).

The petitioner used alcohol since high school, Tr. I:20-21 (Weekes), and he recognizes that at the time of his inpatient treatment for depression in 2001 he was also diagnosed with alcohol dependency.[6] Tr. I:32-35 (Weekes); Ex. 18, at 48, 120. The petitioner reports that he is now sober, Tr. I:88, 107 (Weekes), and he testified that after taking part in the Alcoholics Anonymous program he no longer feels like he needs a drink every day, and he has only "wet his lips" three times since 2008. Tr. I:39-41, 44-45, 87-88, 108-109 (Weekes); see also Ex. 18, at 84. He also reports that he attends meetings of Alcoholics Anonymous. Tr. I:107, 153-156 (Weekes).

The petitioner acknowledged the misconduct leading to his indefinite suspension. Tr. I:19, 21, 50-51 (Weekes). He expresses remorse and acknowledges the harm that he caused. Tr. I:51-53 (Weekes); Ex. 10. While he offered this panel his account of the circumstances surrounding the misconduct that resulted in his suspension, he did not attempt to shift or avoid blame. Tr. I:20, 53-54 (Weekes).

The petitioner testified that he feels prepared for the stresses of the practice of law. He has changed his life and his lifestyle. At the time of his misconduct he was "arrogant ... angry ... young," Tr. I:61 (Weekes), he was a "train wreck waiting to happen." Ex. 18, at 82. Now, in contrast, he feels that he is "in a better place emotionally, mentally, physically, [and]

[6] Until his hospital admission, the petitioner was in denial about his alcoholism. Tr. I:106-107 (Weekes).

intellectually," Tr. I:46 (Weekes), even compared to when he first came before the board in 2012 seeking reinstatement. Tr. I:46-47 (Weekes). He had "lost [his] way" and is a "better person now," Tr. I:63 (Weekes), and in better physical and emotional health. Tr. I:167-168 (Weekes). He attributes much of his improvement to having his "moral compass" reset by active military duty, including his responsibility for the welfare of young soldiers, and his commitment to his family. Tr. I:47-48, 50-51, 126-128 (Weekes); Ex. 18, at 66.

Despite this evidence, we do not find that the petitioner has met his burden of proof. A "fundamental precept of our system is that a person can be rehabilitated," Matter of Ellis, 457 Mass. 413, 414, 26 Mass. Att'y Disc. R. 158, 163 (2010). Still, "[r]eform is a 'state of mind' that must be manifested by some external evidence ... [and] the passage of time alone is insufficient to warrant reinstatement." Waitz, 416 Mass. at 305, 9 Mass. Att'y Disc. R. at 343; see also Daniels, 442 Mass. at 1038, 20 Mass. Att'y Disc. R. at 123. The petitioner must carry his burden of showing "that, during his suspension period, he [has] redeemed himself and 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 (citations omitted); see also Ellis, 457 Mass. at 414, 26 Mass. Att'y Disc. R. at 163-164. Where the petitioner was indefinitely suspended for dishonesty, we cannot say that the petitioner has carried his burden because of the continuing questions about his honesty left unanswered on the record before us. Perhaps if the petitioner had better explained, or owned, admitted to, and shown efforts to correct, the pattern of apparent dishonesty we now trace, our conclusion might be different. But, despite his attorney's closing argument suggesting that he has corrected any incorrect prior testimony, he has not done so.

Specifically, we note the following problems in the petitioner's testimony:

History Of Drinking, Treatment For Alcoholism, And Sobriety Date

As noted above, the petitioner testified about his struggles with alcoholism and his recovery by, among other things, attendance at meetings of Alcoholics Anonymous. Before this panel the petitioner testified that his sobriety date – his last real drink -- was 2008. Tr. I:87, 107

(Weekes). The petitioner's treating psychiatrist, Dr. Keller, testified that, according to the petitioner in May 2014, his last intake of alcohol was April 2006.[7] Tr. II:13 (Keller); Ex. 25, at 10 of 59. Yet, treatment notes by the petitioner's therapist Dr. Lopez-Marino in 2010 indicate that the petitioner was drinking daily and "clearly uncompliant."[8] Tr. I:90-91 (Weekes). Other than claiming that the therapist's notes were wrong, the petitioner provided no explanation for the inconsistency. Tr. I: 90-91. In 2012, the petitioner claimed that he did not drink from 2002 to 2007 because his service in the military made that difficult. Ex. 18, at 124-125. Later in that same testimony, the petitioner acknowledged that in 2009 he told his treating psychologist that he had been drinking on and off. Ex. 18 (transcript 11/6/2012), at 131; Ex. 20, at BBO (2)-311. Again, the petitioner did not provide a reason for the inconsistent testimony nor did the petitioner explain why his testimony in 2012 contradicts the testimony before this panel. Based on all of this testimony it is difficult for the panel to discern whether sobriety has been reached.

In addition to the contradictions about his sobriety date, the petitioner's statements about his path to recovery are inconsistent. Before us, in 2014, the petitioner emphasized that his attendance at Alcoholics Anonymous helped him to stop drinking. However, in 2012, he testified that after his release from inpatient treatment in 2001 he undertook the SMART program for combatting alcoholism, and then he discontinued that program because he did not think it was right for him. Ex. 18, at 123. Yet, in September 2008 his psychologist recorded the petitioner's report that he did not attend Alcoholics Anonymous because he "did the SMART program instead." Ex. 20, at BBO(2)-307. Also, in his 2012 testimony the petitioner testified that after the SMART program, he stopped drinking with the exception of an occasional glass of

[7] At the petitioner's initial intake with Dr. Keller in May 2012, he denied a history of alcohol abuse and did not mention attendance at AA. Tr. II:16 (Keller).

[8] The petitioner testified that some of his treatment notes are inaccurate and reflect problems he had communicating with his provider. Tr. I:37-40, 88-89, 136-138 (Weekes); Ex. 18, at 126, 128, 129-130. There is also a suggestion in the record that the petitioner did not agree with his therapist's reliance on prescription medications, which contributed to the end of the therapeutic relationship. Tr. I:89 (Weekes); Ex. 18, at 71-72. We have difficulty crediting these explanations for the inconsistencies in the evidence in light of the sheer volume of instances where the petitioner says his treatment providers incorrectly recorded his statements to them.

wine with meals; he did not credit Alcoholics Anonymous with helping to maintain his sobriety. Ex. 18, at 123-124. Before us, the petitioner contended that he attended Alcoholics Anonymous meetings. However, the petitioner's testimony about his attendance at AA jumped around from monthly attendance to occasional attendance, to attendance "as needed." Tr. I:40, 87, 88, 107, 108, 154. So, we cannot with confidence determine whether the petitioner is being truthful about the role of AA in connection with his attempts to obtain sobriety. Further, the petitioner never provided any testimony as to why he omitted any reference to AA as part of his recovery during his 2012 testimony.

Representing Self As A Lawyer After Indefinite Suspension

Around 2007, the petitioner described himself as a lawyer who was raising his son at home; he did not mention that he had been suspended and was then serving in the Navy. Tr. I:41-42 (Weekes); Ex. 18, at 90-91, 98-99; Ex. 20, at BBO(2)-303. Around September 2008 he represented to a psychologist that he was "an attorney for a company in the District of Columbia where he practices employment law. He travels 10-12 days per month...."[9] Ex. 20, at BBO(2)-308. Yet, during this time period, the petitioner was suspended from the practice of law. He has acknowledged that he was less than forthcoming with his healthcare providers about his suspension. Ex. 18, at 98-99, 125-126. While the petitioner explained that this failure to disclose his current occupation resulted from embarrassment, shame, and a desire to protect his status as a classified intelligence officer, and while he points out that he did disclose his suspension to his next care provider, Tr. I:41, 93-95 (Weekes); Ex. 18, at 142, 145; Tr. II:17 (Keller), we are concerned about the apparent ease with which the petitioner can rationalize his misrepresentations where they have served his purposes. We note the divergence in subsequent testimony in the petitioner's explanations for his dissembling. Tr. I:174-175, 177, 179 and Ex. 18, p. 142 (did not want a record that he was an intelligence officer receiving mental health

[9] The petitioner could offer no explanation for why the psychologist's notes contain this purportedly inaccurate entry with its accompanying details about the nature of his work that correspond to his pre-suspension practice. Tr. I:136-138 (Weekes).

treatment, as it could have affected his career); Tr. I:172-173 (Weekes) (did not want to disclose classified information).

The petitioner's tax returns have also referred to him as a lawyer.[10] Tr. I:77 (Weekes); Ex. 15, at BBO(2)-144; Ex. 18, at 105-107. He testified before us that his wife is primarily responsible for the family's tax returns. Tr. I:169-170, 171-172 (Weekes). He also testified before us and in 2012 that he did not practice law or actively hold himself out as a lawyer to potential clients; he only failed to correct his accountant because of embarrassment and shame. Tr. I:48-49, 150-151 (Weekes); Ex. 15, at BBO(2)-144; Ex. 18, at 68, 96, 108, 141-142. Yet despite his testimony in 2012 that he recognized this failure to correct the representation was an error, his 2013 tax return took advantage of deductions for unreimbursed business expenses claiming his occupation as a lawyer. Tr. I:76-77 (Weekes); Ex. 17, at BBO(2)-229. The petitioner's explanation before us was that the 2013 tax return simply had a typographical error and he subsequently advised his accountant that he was not a lawyer. Tr. I:76-77 (Weekes). We might have been prepared to accept this explanation if the representation on the 2013 tax return was an isolated incident. But, considering the pattern of misrepresentation where the petitioner held himself out to be a practicing attorney to his physicians and on his tax returns and his own acknowledgement of the misrepresentations in 2012, the panel would have appreciated some corroborating evidence concerning this latest incident; without it, we are unable to resolve the matter to our satisfaction.

Explanation Concerning Businesses Started By Petitioner

In 2005 the petitioner started a business called Strategic Operations & Planning. The Articles of Incorporation for Strategic Operations & Planning, Inc., before us as Ex. 7, at 57-58 describes the company's corporate purpose as "Business Consulting & Legal Services." Tr.

[10] Some of the petitioner's tax returns filed before his 2012 reinstatement proceedings listed expenses from the petitioner's failed asset protection business and other income and expenses on schedules declaring income and expenses for a law practice. Ex. 12, at BBO(2)-91, 102-103, 118-119, 127-128, 130-131; Ex. 18, at 106-107, 108-113.

I:114-115 (Weekes). The petitioner claims that the company never performed legal services and that the corporation was formed to conduct an (ultimately unsuccessful) asset protection business. Tr. I:30-32; 114-115 (Weekes). The petitioner is listed as the Incorporator, President, Secretary and Registered Agent. Ex. 7. The petitioner admits that he signed the Articles of Incorporation submitted to the Florida Department of State Division of Corporations, but testified that he did not fill out the form and does not remember reading the document or signing it. Although the petitioner is listed as the sole owner of the business he could not provide an explanation as to why the business purpose listed in the Articles of Incorporation included "legal services" other than that he did not fill out the form. Tr. I: 114-115. He claims he had a business partner and that his business partner filled out the form. *Id.* However, there is no other officer or director listed in the Articles of Incorporation; nor was the name of his business partner provided. Ex. 7, Tr. I: 114-115. Again, we do not have enough information to tell whether the listing of "legal services" was merely a mistake by a business partner or a representation by the petitioner which as of today has not been fully explained.

In 2006 the petitioner formed a second business called Home Relationship Team. In 2012, the petitioner was asked about records from the Florida Department of State, Division of Corporations, for Home Relationship Team, Inc., that list him as an officer. Ex. 8. In 2012 he had testified that he was unaware of the listing until it was brought to his attention during the 2012 Reinstatement process. Ex. 18, at 104-105. In 2012 the petitioner claimed that his dog walker asked him how to incorporate a corporation. He never testified he was part of the business. Ex. 18 at 105. Yet, before us in 2014, the petitioner testified that he and his dog walker together had a business called "Home Relationship Team," which planned to make referrals to small businesses. Tr. I:31-32 (Weekes). The petitioner did not provide any testimony as to why he previously denied being part of the business or having any knowledge of the business.

Uncorrected Misstatements On Questionnaire

According to the petitioner, while he was on active deployment his wife signed re-financing papers for him under a power of attorney. Ex. 18, at 149-151. He and his wife tried to modify the mortgage after a large increase in his adjustable rate mortgage, without success, Ex. 18, at 79-80, and on the advice of counsel, he allowed the mortgage to go into default. Ex. 18, at 80. Yet his questionnaire in his first reinstatement proceedings did not list his interest in his home, his mortgage debt, or the foreclosure proceedings on his home, notwithstanding that by the time he signed the questionnaire he had been notified of the foreclosure action. Ex. 18, at 99-101, 102-103. Even if we credit the petitioner's testimony that, when he answered the questionnaire he did not yet know of his interest in the property and the foreclosure, and his later signing the questionnaire without correcting this was an oversight, Ex. 18, at 99-101, the petitioner has continued his failure of disclosure under the current petition and the accompanying questionnaire responses. Tr. I:85 (Weekes); Ex. 15.

The petitioner's character witnesses -- presented through the transcript of the hearing in 2012 and in several letters -- do not compensate for the doubts raised by these contradictions. To be sure, the witnesses are aware of the petitioner's misconduct and describe a person currently of good character, and they assert that he has worked his way through "bad patches" in his life and emerged stronger for it. Ex. 18, at 8-9, 10, 11-12 (Blackburn); Ex. 18, at 15-16, 16, 16-17, 17-18 (Butler); Ex. 18, at 24-25, 25, 25-27 (Gorman); Ex. 13 (Farr letter); Ex. 22 (Gorman letter); Ex. 24 (Budd, Butler, Elam, Farr, and Mangines letters re moral character). Yet the letters and prior testimony do not sort out for us, on the one hand, the petitioner's progress concerning his drinking and his depression from, on the other, his progress in addressing concerns about his dishonest conduct. They lack any specificity that would demonstrate actual reform in precisely those areas of our greatest concern. The petitioner has lived in Florida since 2008. But, none of his character references are from people with whom he interacts in his daily life or even occasionally in Florida. The letters that have been submitted are not from people who have

interacted with the petitioner on a regular basis during the course of his suspension and can testify as to changes that he has made.[11]

We are aware of our heavy responsibility in this matter. "The act of reinstating an attorney involves what amounts to a certification to the public that the attorney is a person worthy of trust." Daniels, 442 Mass. at 1039, 20 Mass. Att'y Disc. R. at 123; Centracchio, 345 Mass. at 348. The petitioner must show 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. at 92, quoting Matter of Hiss, 368 Mass. at 452, 1 Mass. Att'y Disc. R. at 126. "[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); Matter of Keenan, 314 Mass. 544, 547 (1943). On the record before us the petitioner has not satisfied us that we may responsibly hold him out to the public as worthy of trust.

B. Learning in the Law

Under S.J.C. Rule 4:01, § 18, a petitioner must demonstrate that he has the "competency and learning in the law required for admission to practice law in this Commonwealth." We find that the petitioner has demonstrated the competency required for admission to the bar; in light of our findings concerning moral fitness we need not address the adequacy of the petitioner's current learning.

During 2013, the petitioner attended, via webcast or recorded webcast, seven continuing legal education seminars held in Massachusetts, in fields of law relevant to corporate and employment law practice, including securities law, employee privacy, and employment law, as well as three courses here concerning legal ethics. Tr. I:55-58, 78-80 (Weekes); Ex. 15, at 3-4.

[11] We do not downplay the petitioner's charitable endeavors. He provided volunteer services to two schools in which his son was enrolled. Tr. I:30 (Weekes); Ex. 15, at 3; Ex. 18, at 77-78. He has also volunteered time with the alumni chapter of his fraternity, mentoring young men. Ex. 18, at 77. He intends to provide pro bono representation to veterans of the wars in Iraq and Afghanistan seeking veterans' benefits. Ex. 15, at 3. This is consistent with his pre-suspension conduct: he was engaged in pro-bono work and volunteered his time on the board of editors of Massachusetts Lawyers Weekly and on the board of directors for WGBH-TV. Ex. 18, at 82.

During 2011, he attended seminars sponsored by the National Academy of Continuing Legal Education on topics including employment-related immigration law, the basics of trademark law, and ethics. Ex. 15, at 4. These courses are relevant to his anticipated practice on re-admission, with a focus on employment law as well as some immigration, criminal defense and personal injury, all in a small-firm environment.[12] Tr. I:58-60 (Weekes); Ex. 15, at 5; Ex. 18, at 93-95.

The petitioner has also subscribed to or read library copies of Massachusetts Lawyers Weekly and the New York Law Journal. Tr. I:55 (Weekes); Ex. 18, at 73.

The petitioner's professional acquaintances describe him as a good lawyer, Ex. 18, at 15 (Butler); Ex. 18, at 25 (Gorman), who has followed recent developments in the law. Ex. 18, at 18 (Butler).

Based on the foregoing, we conclude that the petitioner has the required competence. In light of our conclusions, above, concerning moral fitness, we leave it to the next panel to determine on the evidence at that time, whether the petitioner has sufficiently kept himself abreast of the developments in the law during his suspension.

C. Effect of Reinstatement on the Bar, the Administration of Justice and the Public Interest

Finally, the petitioner must show that his 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." S.J.C. Rule 4:01, § 18(5). "In this inquiry we are concerned not only with the actuality of the petitioner's morality and competence, but also on the reaction to his reinstatement by the bar and public." Matter of Gordon, 385 Mass. at 53, 3 Mass. Att'y Disc. at 73. "The impact of a reinstatement on public confidence in the bar and in the administration of justice is a substantial

[12] This is a change in plans since the petitioner's 2012 reinstatement, where he indicated he would like to return to an in-house practice. Ex. 18, at 141; see also Ex. 18, at 27 (Gorman). Even then, however, he was speaking about engaging in civil employment litigation. Ex. 18, at 19 (Butler).

The petitioner is considering returning to Massachusetts where he and his wife have family and other connections; if not, he is considering applying for admission to the Florida bar, although he is not considering setting up a practice there. Ex. 18, at 92, 137-139.

concern." Matter of Waitz, 416 Mass. at 307, 9 Mass. Att'y Disc. R. at 345, and see Matter of Centracchio, 345 Mass. 342 (1963) (fact that disbarred attorney was a special justice of the District Court and responsible for enforcing laws he violated at the time of misconduct was relevant re public welfare and perception of the courts; reinstatement denied).

Where we are not persuaded by a preponderance of the evidence on the record before us that the petitioner has truly attained reform in the critical areas, we are also not persuaded that the petitioner has carried his burden on this element of proof.

V. Conclusions and Recommendation

For the foregoing reasons, we recommend that the petitioner's petition for reinstatement be denied, with leave to re-apply on or after July 1, 2015.

Respectfully submitted,
By the Hearing Panel,

Regina E. Roman, Esq., Chair

Francis P. Keough, Member

Maureen Mulligan, Esq., Member

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