COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: BD-2017-061 and
BD-2019-007

IN RE: JOSEPH PATRICK FINGLISS, JR.

JUDGMENT DENYING REINSTATEMENT

This matter came before the Court, Gaziano, J., on a Petition for Reinstatement and the Recommendation and Vote of the Board of Bar Overseers (Board) filed on December 11, 2019, recommending that the Petition for Reinstatement be denied.

On January 29, 2020, counsel for the lawyer filed a motion in accordance with S.J.C. Rule 4:01, § 18(8) for leave to reapply for reinstatement in less than one (1) year from the entry date of this judgment; with assistant bar counsel filing her opposition to the motion on February 6, 2020.

Whereupon, it is ORDERED and ADJUDGED that the petition for reinstatement to the practice of law in the Commonwealth of Massachusetts, be and hereby is, denied.

It is FURTHER ORDERED that the motion be, and hereby is, allowed. The lawyer may reapply for reinstatement three (3) months

prior to November 12, 2020, the date of the Board's Vote, that is on or after August 12, 2020.

By the Court, (Gaziano, J.)

Assistant Clerk

Entered: February 18, 2020

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

In the Matter of	
Joseph P. Fingliss, Jr.,	**SJC Nos. BD-2006-0237, 2019-0007**
Petition for Reinstatement	

HEARING PANEL REPORT

I. Introduction

On March 20, 2019, the petitioner, Joseph P. Fingliss, Jr., filed his petition for reinstatement with the Supreme Judicial Court. He has been suspended twice, both times after stipulation: on June 9, 2017, for a year and a day, and again on January 16, 2019, for five months. The second suspension occurred while the petitioner was still suspended for the 2017 misconduct; it included a provision that he could petition for reinstatement three months before the expiration of the second suspension. Hearings were held July 26, 2019 and August 21, 2019. The petitioner, represented by counsel, testified on his own behalf and called two witnesses: Attorney Brian Sullivan and Attorney Joseph Sylvia. Bar counsel called no witnesses. Thirty-one exhibits were admitted into evidence. At the end of the hearing, bar counsel recommended against reinstatement. After considering the evidence and testimony, we recommend that the petition for reinstatement be denied.

II. Standard

A petitioner for reinstatement to the bar bears the burden of proving that he has satisfied the requirements for reinstatement set forth in 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. 263, 264-265 (2016). The S.J.C.'s rule establishes two distinct requirements, focusing on (1) the personal characteristics of the petitioner and (2) 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.'" Matter of Daniels, 442 Mass. 1037, 1038, 20 Mass. Att'y Disc. R. 120, 122-123 (2004), 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 History

The petitioner was admitted to the bar of the Commonwealth on June 11, 2001.[1] Ex. 1(1). His 2017 suspension was imposed after he stipulated to misconduct in two cases. Matter of Fingliss, 33 Mass. Att'y Disc. R. 142 (2017); Ex. 1 (10-11). The first was a personal injury matter where he represented a client in a suit against several defendants. He failed to research the claims adequately, failed to recognize the existence of a consortium claim on the client's wife's behalf, and failed to properly determine where to file suit which resulted in his missing the statute of limitations. Initially, the insurer offered a significant sum to settle, but there was a large workers' compensation lien, and the client rejected the offer. After two defendants successfully moved to dismiss because the petitioner had missed the statute of limitations, the insurer made a much lower offer. In order to obtain his client's agreement to accept the lower offer, the petitioner fabricated a conversation that he had purportedly engaged in with defense counsel, during which she advised him that the insurer, OneBeacon, was filing for bankruptcy. He related the substance of this fabricated conversation to his client. See Tr. 1:54-55 (Petitioner). In doing so, he intentionally misrepresented the reasons for the lower settlement offer. The petitioner ultimately offered to waive his fee and pay the client $20,000 of his own funds, in exchange for the client's

[1] The petitioner was admitted to the Rhode Island bar on June 12, 2002. Ex. 4 (70). After his first suspension, the Supreme Court of Rhode Island suspended him for a year and a day by order dated October 31, 2017. Ex. 19 (286-288). He did not report his 2019 suspension to the Rhode Island disciplinary authorities (Tr. 2:147 (Petitioner)); Ex. 19 (289). Bar counsel did, and was informed that it will be addressed if and when he applies for reinstatement there. Ex. 19 (289).

waiver of all claims against him. The petitioner did not make known the conflict of interest inherent in his offer, and did not recommend that the client consult with independent counsel.

In the second matter, the petitioner represented a husband in modification and contempt proceedings in the probate court. Ex. 1 (11-12); Tr. 2:126-127 (Petitioner). He accused the ex-wife, who was seeking sole custody, child support and payment of some debts, of stealing drugs from the hospital where she worked as a nurse, keeping the drugs in the house where the children were present, and injecting herself and her friends. Without conducting an adequate investigation, the petitioner displayed photocopies of photographs his client had given him, representing that they showed drugs and needles in the ex-wife's bedroom. He repeated the accusations at a subsequent hearing and added claims of alcohol abuse. The ex-wife denied all the accusations and any knowledge of the photographs or their contents.

After the ex-wife and her counsel reported the petitioner to Bar Counsel, the petitioner prepared a settlement agreement that conditioned any settlement of the probate court matter on the withdrawal of the disciplinary complaint, absent which he threatened to pursue the drug allegation against the ex-wife, sue her for defamation and sue her counsel for malpractice. He also made intentional misrepresentations, including that he had consulted with health care professionals who agreed that the ex-wife could lose her nursing license and face criminal charges, and that he had retained a computer expert to enhance the photographs, and a pharmacist. The matters were settled after the petitioner deleted from his proposed judgment a requirement for immediate withdrawal of the bar complaint. In mitigation of both matters, the client in the first case satisfactorily settled a malpractice action against the petitioner, and the client in the second case did not sustain ultimate harm.

The 2019 suspension was for conduct that occurred between 2009 and 2014, when the petitioner represented an elderly client in various trust and estate-related matters. Matter of Fingliss, 35 Mass. Att'y Disc. R. __ (2019); Ex. 1(13). He charged his hourly legal rate for the performance of tasks including non-legal activities, like picking up mail, paying bills and cleaning out the client's house. His fees were deemed to be excessive; in addition to this, he neglected the trust assets and made unauthorized charitable donations some of which, we learned at the hearing, were made in such a fashion so as to appear to come from him personally. In mitigation, the petitioner made a substantial payment to the trust as a fee refund and towards compensation for his neglect, and the trust

beneficiaries reached an agreement for termination of the trust and distribution of its assets.

IV. Findings and Conclusions

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 the petitioner's suspension is affirmative proof that he lacks the moral qualifications to practice law. See Matter of Hiss, 345 Mass. at 460. 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. at 92, quoting Matter of Hiss, 368 Mass. at 452, 1 Mass. Att'y Disc. R. at 126. He can do this by proving he has reformed, since 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).

1. Lies Attendant to the Personal Injury Matter/Lack of Rehabilitation

On many points, we did not find the petitioner candid or credible. We were struck by the vehemence and certainty with which he broadcast and repeated the lie he had told to the personal injury client in the 2017 disciplinary case, and his concomitant failure, subsequently and before us, to disavow it consistently and completely. In brief, as summarized above, to induce the client to accept a significantly lower settlement than had first been offered — a settlement that was lower because the petitioner had missed the statute of limitations — the petitioner lied, telling the client in essence that the insurance company, OneBeacon,[2] was bankrupt, that this had affected its decision to make a reduced offer, and that the client risked receiving nothing if he declined the low offer. In order to support his assertion, the petitioner made up a conversation he claimed to have had with counsel for OneBeacon, in which she allegedly told him that OneBeacon was filing for bankruptcy. He relayed the substance of that made-up conversation to his client. As discussed below, this is the lie that the petitioner perpetuated and repeated subsequent to his 2017 stipulation.

Before that stipulation, the petitioner was deposed on May 19, 2015 in a malpractice case brought by the personal injury client he represented. During that deposition, the petitioner

[2] Sometimes spelled "One Beacon." We use "OneBeacon" for consistency.

falsely testified that OneBeacon's attorney "[a]bsolutely, positively 100 percent" told him that OneBeacon was filing for bankruptcy. Ex. 25 (BC0027). Although he made substantive corrections to his deposition in a later-filed errata sheet, he continued to insist that OneBeacon's attorney had told him "they're filing bankruptcy." Ex. 28 (BC0044). The petitioner thereafter gave a statement under oath to bar counsel on November 4, 2015 during which he dug in deeper, repeating this lie several times. Ex. 26 (BC0049, BC0060-61). In response to bar counsel's question as to whether he stood by testimony he had given in the 2015 deposition, to the effect that OneBeacon's attorney had told him OneBeacon was filing bankruptcy, he replied: "I swear on the souls of my children, absolutely, positively." Ex. 26 (BC0047-0048).

As noted, the lie about OneBeacon filing bankruptcy came to light eventually, the petitioner admitting in the 2017 stipulation that he had intentionally misrepresented to the client: that OneBeacon was bankrupt; that the supposed bankruptcy weighed heavily in its decision to make the reduced offer; and that the client would or might receive nothing if he declined the reduced offer. Ex. 9 (208).

After signing the stipulation acknowledging his lie about OneBeacon filing bankruptcy, the petitioner was again deposed, this time in 2018 by a different former client who was suing him for malpractice. Tr. 1:229 (Petitioner). Asked in that deposition about the basis for his 2017 suspension, he unambiguously lied about the circumstances of the personal injury matter:

> That was an issue where an attorney ... had made representations to me at a settlement negotiation ... that OneBeacon Insurance was filing for bankruptcy. Based on that information, I informed my client that ... OneBeacon was filing for bankruptcy ... That information was, in fact, false. And I did not find out that it was false until after the fact, the statute of limitations had run. And, in fact, they weren't filing for bankruptcy, they were filing for what's called re-domestication into another state.

Ex. 29 (BC0076-77).

The deposing attorney then pressed further, asking if the petitioner had tried to confirm his understanding of the pending bankruptcy claim:

> [D]id you make any effort to confirm that they were filing for - - any independent effort to confirm that they were filing bankruptcy?

Ex. 29 (BC0077-0078).

The petitioner testified unambiguously in response, blaming OneBeacon's counsel for his failure to properly confirm or investigate the representations, *all the while knowing full well that the conversation had never taken place*:

> No, because at the time I had this discussion with [OneBeacon's attorney, she] stated to me – and I'm going to quote her exactly—"I probably shouldn't be telling you this, but I'm letting you know your client should consider our offer of settlement because One Beacon is filing for bankruptcy." She said, "If I'm ever asked if I ever told you this, I'm going to deny it."

Ex. 29 (BC0078).

Questioned before us about the 2018 deposition testimony, the petitioner at first appeared to admit that he had once again lied.

> Q: You are repeating the same false statement that you just took responsibility for a year before, correct?
>
> A: (by Petitioner): Yes.
>
> Q: Under oath. You said it again even though you said in 2017 I take responsibility for everything. You repeated it under oath?
>
> Q: Yes.

Tr. 2:132 (Petitioner). Questioned further, he attempted to recast his straightforward answers, trying to convince us that his answers in the 2018 deposition testimony had been an attempt to explain to the questioner the basis for the disciplinary complaint against him. Tr. 2:134-2:135 (Petitioner).

We find that the petitioner lied to us. His explanation of his deposition testimony was patently unconvincing and not consistent with the clear and unambiguous language of the deposition interchange. The petitioner was asked what had happened in the personal injury matter. See Ex. 29 (0076). He did not admit or say anything about the fact that the conversation between him and the attorney for OneBeacon had never occurred. He did not admit that, knowing that the statute

of limitations had already passed, he made up a lie to convince his client to take a lower settlement offer.

It is abundantly clear to us that, rather than admit in the 2018 deposition in a malpractice case that he had earlier committed malpractice and lied to cover it up, the petitioner resurrected the lie once again. And while he initially admitted to us that he had indeed repeated, in 2018, the lie for which he had been disciplined in 2017, he then did an about-face and tried to get us to believe a wholly implausible interpretation of his clear and unambiguous sworn testimony. The petitioner's back and forth changes of position to suit his particular and immediate needs are, manifestly, indicative of a lack of moral reformation.

2. **Other Examples of Lack of Candor**

The petitioner was not fully candid with us in many other respects. When questioned about his financial statements and pressed about the high monthly expenses he listed, he admitted that his wife "contributes the vast majority of these funds." Tr. 2:155 (Petitioner). This was not made clear in his papers and would have gone uncorrected had we not inquired. Ex. 2 (63); Ex. 5 (163). Asked about the high monthly malpractice premium he had listed (id.), he admitted that he has not paid this expense since his suspension; it should not have been included. Tr. 2:155 (Petitioner). He claimed he has money set aside to begin a new practice were he to be reinstated (Tr. 2:157), but this money is not identified as such anywhere in his financial statements. Exs. 2, 5.

In responding to a question about his affidavit of compliance, the petitioner denied that he had "made certain arrangements with [Attorney] Los after your first suspension with respect to the furtherance of your practice." Tr. 2:81-82 (Petitioner). The actual affidavit, introduced after his denial, contradicted his testimony and reflected that he had indeed made some arrangement with Los, telling at least two clients that he was unable to practice law due to his suspension, but that "[f]ortunately, I have named Attorney Los as the Interim attorney for my legal matters until I can return to practicing law." Ex. 30 (BC0003, BC0011).

When the petitioner was cross-examined about the unauthorized charitable contributions, we learned that not only did he make these, but he made them to charities important to him personally, including his former high school. He used checks in his own name drawn on the account of the deceased trust client so that it appeared that he, not the deceased client, was the generous benefactor. Tr. 2:29-30; 2:34

(Petitioner). Indeed, in one case, he got a letter from the school district thanking him personally for a donation he had made in his own name using the deceased client's funds without attribution. Tr. 2:43-44 (Petitioner). Notably, he offered no testimony that he has made any attempt to correct that misconception.

The petitioner stated on the first day of the hearing that he had voluntarily reimbursed the estate of the deceased client $50,000. Tr. 1:135 (Petitioner). He affirmed this statement on the second day. Tr. 2:68 (Petitioner). Not disclosed, but brought out by bar counsel on cross-examination, was that the $50,000 payment was made only after several of the charitable beneficiaries had filed objections in probate court and a motion for a full accounting. Once the petitioner paid $50,000, the objections were withdrawn. Tr. 2:72-73 (Petitioner).

3. **Questionnaires and Testimony**

The petitioner's most serious misconduct in the three matters described above consisted of intentional misrepresentations in the personal injury matter, threats, overbearing conduct and intentional misrepresentations in the probate court matter, and charging excessive fees and making unauthorized donations to the beneficiaries' detriment in the trust matter. See generally Ex. 1 (11, 12, 13); Ex. 9 (210, 214); Ex. 10 (217); Ex. 14 (232-233); Ex. 15 (238). Neither the petitioner's personal statement nor his hearing testimony fully illuminated for us what had caused this misconduct.

Turning first to the petitioner's personal statement, we find that it does not accurately identify all of his misconduct or explain how and why it occurred. Ex. 4 (158-160). The vague platitudes – "I lost my way"; "could not say 'no'"; "spread myself and staff out too thin"; "forgot exactly what it means to be a licensed and practicing attorney"—do not reach the heart of or reason for the misconduct, especially the intentional actions. While there are stray references to making "misleading representations while trying to zealously advocate for my client" and crossing "over the line ... through words and actions," (Ex. 4 (158)), there is no analysis or insight as to why he lied to his client in the personal injury matter, lied to, threatened and intimidated his client's ex-wife and her counsel in the probate court matter, and significantly overcharged his elderly client and his estate in the trust matter. It appears to us that he does not accept responsibility for his actions.

The petitioner's testimony at the hearing was not elucidating in this respect. He told us repeatedly that he

panicked in the personal injury matter. E.g., Tr. 1:50-51, 1:56, 2:98 (Petitioner). Yet he could not explain with any clarity why this had happened. He admitted that he had malpractice insurance at the time, and that he should simply have admitted his mistake to the client and put the insurance carrier on notice. Tr. 1:55-56. He tried to convince us that he will not panic again (Tr. 2:98-99), a pledge that defies human nature and that we think will prove highly difficult to keep. Further, panic does not explain the continued reaffirmation of the original lie as recently as 2018.

Other explanations we heard included that the petitioner was in over his head; wanted to help people but could not solve everyone's problems; gave too much of himself; could not say "no" to people; and was not focused or paying attention to details. Tr. 1:35, 1:40; Tr. 2:104-2:111 (Petitioner). These explanations might have been more convincing if the gravamen of the petitioner's misconduct had been incompetence or negligence, but these alleged shortcomings—some of which transmute moral shortcomings into virtues—have virtually no bearing on or relevance to intentional misconduct such as misrepresentations and lying.

4. **Work and Volunteer Activities**

Evidence of moral reform can be found in good works that demonstrate a sense of responsibility to others. See Matter of Wong, 442 Mass. 1016, 1017-1018, 20 Mass. Att'y Disc. R. 540, 544 (2004) (Court notes approvingly physical labor, active role in church community, participation in sons' activities and community work); Matter of Sullivan, 25 Mass. Att'y Disc. R. 578, 583 (2009) ("[a] petitioner's moral character can be illustrated by charitable activities, volunteer activities, commitment to family, or community work.").

For part of his suspension, the petitioner worked as a substitute teacher in a high school and a middle school. Tr. 1:85 (Petitioner); Ex. 1 (1-2). He worked at the high school in October and November 2017, and in the middle school from December 2017 to June 2018. Ex. 1 (1-2). At both schools, his duties included teaching the curriculum assignments left by the absent teacher and monitoring the hallways and cafeterias during lunch and study periods. At the middle school, he was primarily responsible for special education and at-risk students; his duties included following and implementing approximately thirty-five Independent Educational Plans. Ex. 1 (2). During the summer of 2018, he did landscaping and lawn cutting, although it does not appear that he claimed the income on his tax return. Id.; Tr. 1:85, 2:159 (Petitioner). At the same time, i.e., the summer of 2018, the petitioner's son was diagnosed with

autoimmune disorder, and the petitioner cared for him. Ex. 4 (71).

We credit the petitioner's testimony that he currently spends much of his time as the primary caregiver for his elderly, infirm parents. Tr. 1:19-22, 1:85-86 (Petitioner); see Ex. 4 (71). Since his suspension, he has done charitable work, including serving on a real estate committee for the Fall River Diocese to evaluate church properties. Tr. 1:88-89 (Petitioner); Ex. 4 (71). This takes fifteen to twenty hours per week. Tr. 1:89 (Petitioner). He also sits on the Somerset Zoning Board of Appeals, has volunteered for the Greater Fall River YMCA, and has volunteered at My Brother's Keeper, a Catholic charity. Tr. 1:89-90, 91-92 (Petitioner). We note that pre-suspension, the petitioner was involved in many volunteer endeavors. See generally Ex. 4 (71-72). We commend these good works but find, below, that they are not enough to overcome deeper moral deficits.

5. **Witness Testimony and Letters**

Brian Sullivan, Esq., the first of the petitioner's two witnesses, has known the petitioner since 2001, and had worked with him on perhaps twelve cases between 2012 and 2017. Tr. 1:149-150, 180 (Sullivan). He described the petitioner as a good, caring person, and a conscientious and skillful attorney. Tr. 1:151, 1:153 (Sullivan). Sullivan stated that the petitioner had told him "everything" about the three matters. Tr. 1:154 (Sullivan). He also testified that he "grilled" the petitioner to find out if he had any intention to deceive, (Tr. 1:154), and that even after understanding what the petitioner had admitted to, he did not think he was a deceptive person. (Tr. 1:154-155 (Sullivan)). Sullivan had no explanation for the petitioner's misconduct, beyond observing that the petitioner did not say "no" enough, tried too hard for his client in the probate court case, and got involved in things he should not have undertaken, like trust work. Tr. 1:173-175 (Sullivan). He testified that he questioned what he thought was the reason for the suspension which, as he understood it, was the petitioner's failure to advise a "non-client," referring to the missed consortium claim. Tr. 1:154; 1:168, 169 (Sullivan). He thinks the petitioner's suspension experience has caused him to reflect a lot more on things and "take maybe more time in addressing matters." Tr. 1:159 (Sullivan).

Joseph Silvia, Esq., has known the petitioner since 2001 or 2002. Tr. 1:185 (Silvia). He has observed the petitioner practicing law, and has found him to be zealous, effective and competent. Tr. 1:188-189 (Silvia). Silvia believed he was

aware, and has discussed with the petitioner, the circumstances of the misconduct. Tr. 1:190 (Silvia). Sylvia was unable to explain the misconduct, finding it inconsistent with the man or lawyer he knows, and noting that while the petitioner is "intense," Sylvia had never seen anger, finding the petitioner to be appropriate and a zealous advocate. Tr. Tr. 1:191; 1:203-204 (Sylvia). Sylvia considers the petitioner to have taken full responsibility for his ethical lapses, and thinks he is a "great guy" who made a "huge mistake" and deserves a second chance. Tr. 1:195-196 (Sylvia).

The petitioner submitted eleven letters in support of his reinstatement, authored by eight individuals. Ex. 27. Three individuals, and two sets of couples, wrote two letters each; except for the dates, each pair of letters is nearly identical. Although the petitioner testified that he spoke to all of the letter writers and that "each and every person was informed of the disciplinary action, facts relating to it, what I did wrong, that I accepted full responsibility," (Tr. 1:120 (Petitioner)), the letters do not support this, and are noteworthy in a few respects. First, none of the letters, even those written after the 2019 suspension, refers to "suspensions" in the plural; they all use the singular word "suspension." Next, those letters that do give specifics about the suspension [sic] describe it in various ways, none wholly accurate or complete, i.e., making "charitable contributions mostly to the Catholic Church at the request of a client" (Ex. 27 (353)); "charitable donations and fee dispute" (366); "misrepresentations [and] filing a case in the wrong jurisdiction and the charitable contribution he made without first seeking the courts [sic] permission in addition to the subsequent fee disagreement" (Ex. 27 (380-381)); "[h]e made one mistake . . . ." (389).

We infer from these letters that the petitioner was not as expansive and forthcoming with the writers as he led us to believe. This undermines his credibility.

Evidence that does not distinguish the petitioner's conduct before and after his underlying discipline, that sheds little light on his rehabilitation, or that does not acknowledge the petitioner's unethical conduct, carries little weight. See Matter of Dawkins, 432 Mass. 1009, 1011, n.5, 16 Mass. Att'y Disc. R. 94, 96, n.5 (2000); Matter of Corben, 31 Mass. Att'y Disc. R. 91, 101 (2015); Matter of Lee, 28 Mass. Att'y Disc. R. 540, 549-551 (2012). The Court has specifically disclaimed reliance on letters where the writers "knew little or nothing about the reasons for either of [the petitioner's] suspensions or of the fact that he had been suspended twice." Dawkins, id.

We recognize the loyalty the petitioner has inspired in former clients, friends and colleagues. However, we have not seen evidence, in the witness testimony or the letters, of what we were actually looking for: information that distinguishes the petitioner's conduct before and after his underlying discipline, and that sheds light on his rehabilitation. Aside from scattered references to reflection, and taking responsibility, we remain in the dark about the causes of the petitioner's misconduct and the robustness of any rehabilitation, and are unconvinced by his assertions of personal contrition.

6. **Conclusions as to Moral Qualifications**

We have concluded above that notwithstanding the chastening and sobering effects of suspension, the petitioner continues to lie. That alone would be enough to deny reinstatement. Our conclusion that the petitioner remains morally unfit for reinstatement is confirmed by the other shortcomings we have listed. Further, without a clearer understanding of what caused the most severe misconduct – the repeated lies, intimidation and overreaching – we cannot conclude that the petitioner has reformed. The fact that he lied to us in his testimony evidences that he has already relapsed. In light of all we have discussed above, we conclude that the petitioner has fallen short in proving that he is morally qualified for reinstatement.

B. Competence and Learning in Law

Under S.J.C. Rule 4:01, § 18, a petitioner must demonstrate that he has the "competency and learning in law required for admission to practice law in this Commonwealth."

The petitioner practiced law from 2001 until his suspension in 2017, most of that time as a sole practitioner. Tr. 1:27-28 (Petitioner). In March 2018, he took and passed the Multistate Professional Responsibility Examination. Ex. 4 (120). He has included in his answers to Part I of the questionnaire MCLE courses he has taken through the years, going back as far as 2002. Ex. 4 (73); Ex. 22a (297). He reads the Massachusetts Lawyers Weekly, and he has read two books during his suspension: Getting to Yes, by Roger Fisher and William Ury, and Unconditional Wisdom, by Adam Grant. Ex. 4 (73).

Most of the MCLE/continuing legal education courses the petitioner identified were given in Rhode Island. Ex. 22a. Of the twelve certificates of completion since the petitioner's suspension became effective, only one – Estate Administration from Start to Finish – was given in Massachusetts. Ex. 22z (322). Questioned about this at the hearing, the petitioner claimed that even though the courses he took were held in Rhode

Island, “many of the facilitators are Mass and Rhode Island trained attorneys ... [and] you can ask the facilitators any questions, Mass, Rhode Island, whatnot ....” Tr. 2:53-54 (Petitioner). While this may indeed be the case, we note the lack of Massachusetts courses, especially in the areas of law – personal injury and domestic relations – where the petitioner has indicated a desire to work (Tr. 2:46 (Petitioner)), and where he ran into trouble before. We recognize that the petitioner took and scored well on the MPRE. Ex. 4 (120). Still, we would have liked to have seen evidence that he took at least one Massachusetts ethics course. See Tr. 2:56-58 (Petitioner).

We note finally that the petitioner misstated the meaning of the lien language in the fee agreement he formerly used, demonstrating that he still lacks proficiency in this area of the law. Ex. 30 (BC0006); Tr. 2:95-97 (Petitioner). Cf. Matter of Leo, 35 Mass. Att’y Disc. R. __, ___ (2019), SJC No. BD-2001-024, slip op. at 19 and n.6 (citing, as pertinent to learning in law, shortcomings in petitioner’s pro se legal papers and inability, at hearing, to explain basic legal concepts). He appears to be unwilling to admit that he does not know something or that he did something wrong. This is part of why the petitioner got in trouble in the first place. While we recognize that before his suspension the petitioner practiced law for sixteen years, and while we give this pre-suspension practice some weight, we cannot conclude that he has shown sufficient learning in law and competence to qualify him for recommendation to reinstatement.

C. Effect of Reinstatement on the Bar, the Administration of Justice and 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, supra, 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, supra, 385 Mass. at 52, 3 Mass. Att'y Disc. R. at 73. "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).

It would be anomalous indeed to find in the petitioner's favor on this factor, in light of what we have found and concluded above. His deficiencies in the areas of moral redemption and learning and competence in the law drive our conclusion here.

V. Conclusions and Recommendation

Based upon the petitioner's written submissions, his own testimony, and that of his witnesses, the Hearing Panel recommends that the petition for reinstatement of Joseph P. Fingliss, Jr., be denied.

Respectfully submitted,
By the Hearing Panel,
Kevin P. Scanlon, Esq.
Marsha V. Kazarosian
Francis P. Keough
Members, BOARD OF BAR OVERSEERS

Dated: _____