**IN RE: MATTER OF ROBERT C. MORAN**
**BBO NO. 353960**

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

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| **In the Matter of** **ROBERT C. MORAN,** **PETITIONER,** | ) ) ) ) ) | **SJC No. BD-2016-076** |

**HEARING PANEL REPORT**

## I. Introduction

On June 27, 2024, the petitioner, Robert C. Moran, filed this petition for reinstatement with the Supreme Judicial Court. The petition was transmitted to the Board of Bar Overseers. A hearing was held on December 3, 2024. The petitioner, represented by counsel, testified on his own behalf and called three witnesses: Kristen Bauer, Esq.; Tung Huynh, Esq.; and Joseph M. Fahey, Esq. Bar counsel called no witnesses. Seven 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 Leo, 484 Mass. 1050, 1051, 36 Mass. Att'y Disc. R. 296, 298 (2020), quoting 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 and Procedural Background

The petitioner was admitted to the bar of the Commonwealth on December 16, 1977. Ex. 2 (003). For the petitioner's significant misconduct, both the Board of Bar Overseers and the Single Justice recommended a nine-month suspension, with a reinstatement hearing. Matter of Moran, 33 Mass. Att'y Disc. R. 328 (2017) (Single Justice Memorandum of Decision). Shortly thereafter, on January 17, 2018, the petitioner was held in contempt for failing to comply with the terms of his suspension. Specifically, he did not give the required notices of his suspension, resign all fiduciary appointments, close all trust accounts, properly distribute all trust funds, provide a proper accounting of the funds, or file an affidavit of compliance. He also continued to hold himself out as an attorney, despite his suspension. Matter of Moran, 34 Mass. Att'y Disc. R. 368, 368 (2018).

After its review, the full Court, on April 20, 2018, imposed a fifteen-month suspension. Ex. 2 (015). The Court found, among other misconduct, that in the context of representing two elderly clients, the petitioner had "knowingly misrepresented estate assets on an inventory he filed, under oath, in the probate court, the effect of which was to obscure from the probate court's consideration payments the [petitioner] had made or intended to make to himself and others"; that he had charged and collected clearly excessive fees from the two clients and, after their deaths, from their estates; and that he had drafted testamentary instruments for them which provided for substantial gifts to himself. Ex. 2 (022-23); Matter of Moran, 479 Mass. 1016, 1021-1022 (2018). The Court found no mitigation, but found several factors in aggravation, among them the petitioner's substantial experience, including in the area of law in which the misconduct occurred; the multiple acts of misconduct he had engaged in; the vulnerability of the clients, both of whom were elderly, infirm and without relatives to oversee the petitioner's work; the petitioner's failure to demonstrate understanding of his misconduct; and his failure to refund or repay to the two clients or their estates the excessive fees he had taken. Ex. 2 (023-024); Matter of Moran, supra, 479 Mass. at 1022-1023. The suspension was made retroactive to June 4, 2017, the effective date of the Single Justice's order.

Through counsel, the petitioner filed a petition for reinstatement on April 5, 2019. After a hearing, this was denied on September 18, 2019. Ex. 2 (008); Matter of Moran, 38 Mass. Att'y Disc. R. 358 (2022). The 2019 hearing panel concluded that the petitioner was wanting in all three areas necessary to warrant reinstatement.[1]

Before reaching its conclusion that the petitioner had not proved he should be reinstated, the 2019 hearing panel reviewed in some detail the specifics of his misconduct, and the hearing

[1] The petitioner filed an assent to the denial on April 22, 2022; it is unclear from the Court's docket why this took so long.

committee's findings and conclusions. Ex. 7 (044-049). Many of its findings are highly relevant to our assessment; we summarize some here. As to the first client who had been grossly overcharged, and for whom, before death, the petitioner had operated under a durable power of attorney (DPOA), the panel itemized $83,700 in charges at the petitioner's legal rate for non-legal services like checking the client's mail; paying bills; checking the client's house; preparing for moving and personally cleaning the client's house; and shopping for a box spring and mattress. Ex. 7 (044). It noted that the DPOA did not provide for compensation, and wrote in conclusion: "Therefore, all his payments to himself, $209,500 in total, were unauthorized and clearly excessive." Id.[2]

As to the second client who was overcharged, the petitioner again had prepared a DPOA that did not provide for compensation. Ex. 7 (046). He again charged at his legal rate for non-legal services. The panel itemized almost $71,500 of these charges, among them paying bills; depositing and transferring money at the bank; and cleaning the client's house and preparing for moving. Ex. 7(047). He paid himself a total of $209,000. As was true for the first client, the misconduct continued after the client's death, but this time included lying under oath to the probate court in an estate inventory. The effect of the petitioner's lie was to conceal the fact that he had paid himself $37,000 in unauthorized fees. Ex. 7 (048). Finally, the hearing panel noted that the petitioner had been held in civil contempt for his post-suspension failures to comply with his suspension order. Ex. 7 (049, 054-056).

The panel based its conclusion that the petitioner had not proved moral reform on his failure to come to terms with and clearly acknowledge, both in his questionnaire responses and in his testimony, that he had not simply made errors of judgment, but had lied under oath to benefit

[2] The misconduct continued after the client's death and the expiration of the DPOA. See Ex. 7 (045-046).

himself. Ex. 7 (050-051). It concluded further that the petitioner has "made no effort to determine an appropriate amount of restitution for the two estates he clearly overcharged. He has not repaid money to either estate." Ex. 7, n.8 (059). It did not credit his testimony that "much work was performed but not charged to these estates," and was "not persuaded that any overcharges before the disciplinary hearing were adequately offset by what would be a reasonable fee for the work required to conclude the estates after his disciplinary hearing." Ex. 7, n.8 (059-060). Citing Matter of an Attorney, 29 Mass. Att'y Disc. R 727, 735-737 (2013), it specifically noted that "[t]he probate court's allowance of the petitioner's accounts does not bind the Board in adjudicating matters of professional responsibility." Ex. 7, n.8 (060).

On October 22, 2021, the petitioner filed a petition to be allowed to work as a paralegal. The Court allowed this on April 27, 2022.

## IV. Findings and Conclusions

### A. Moral Qualifications

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, 368 Mass. at 460, 1 Mass. Att'y Disc. R. at 134. 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, id. (citation omitted). 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).

Our discussion of the petitioner's moral qualifications is divided into four subsections: (1) Responses to Reinstatement Questionnaire and Testimony About Misconduct and Restitution; (2) Employment and Volunteer History; (3) Witness Testimony and Letters; and (4) Conclusions as to Moral Fitness.

**1. Responses to Reinstatement Questionnaire and Testimony About Misconduct and Restitution**

Our predecessor hearing panel rejected the petitioner's request for reinstatement for many reasons, but two were prominent: his reluctance to admit that his misconduct had been dishonest, as opposed to merely erroneous; and his failure to make restitution. The centerpiece of the current reinstatement petition and presentation should, accordingly, have been a focus on the concerns enumerated by the first hearing panel. As described in more detail below, we did not see this. See Matter of Solomon, 38 Mass. Att'y Disc. R. 486, 495 (2022) (hearing panel writes that "[t]he petitioner's audacious decision to do nothing different this time around proves to us that he still does not appreciate what is expected of him in a reinstatement hearing"). Cf. Matter of Lakin, 39 Mass. Att'y Disc. R. __ (2023), SJC No. BD-2019-050, p. 7 (hearing panel writes that in second petition, the petitioner "overc[a]me the shortcomings that resulted in his being denied reinstatement in 2021").

**a. The Petitioner's Testimony About His Misconduct**

As noted above, the SJC wrote that the petitioner "knowingly misrepresented estate assets on an inventory he filed, under oath, in the probate court, the effect of which was to obscure from the probate court's consideration payments the [petitioner] had made or intended to

make to himself and others." Ex. 2 (022); Matter of Moran, supra, 479 Mass. at 1021. In his questionnaire responses, the petitioner wrote, as to this set of rule violations, that "[g]enerally, the SJC found that I made a misrepresentation on an Estate Inventory." Ex. 2 (003). We disagree with that mild and incomplete characterization. Worse, in his personal statement, advocating for his sound moral character, the petitioner did not specifically address this conclusion except to note, inexplicably, that none of his misconduct had "involv[ed] dishonesty." Ex. 2 (011).

Threaded throughout the entire hearing was the petitioner's failure to forthrightly and consistently acknowledge that his misconduct had involved dishonesty.[3] While he admitted under questioning by his own counsel that since the denial of his first petition he had gradually come to realize that what he had done was his fault, he later pivoted and stated that at the time of the misconduct he had not had a sufficient understanding of the Rules of Professional Conduct, knowing basically that "you had to generally be honest and all that kinda thing." Tr. 120-121, 151-153 (Petitioner). After acknowledging, his wrongdoing and dishonesty in response to a very pointed question about whether he had remorse for what he had done, he backtracked and began a long explanation about how the hearing committee at the disciplinary hearing "didn't even call it a misrepresentation because they said it wasn't a material fact." Tr. 123 (Petitioner). We note that the earlier hearing panel, confronted with a similar argument by the petitioner about what

[3] We agree with the first hearing panel that there is no indication that the petitioner maintains *factual* innocence of the misconduct, so that a demand that he admit the misconduct would force him to lie. See Ex. 7, n.1 (051), citing Matter of Hiss, 368 Mass. at 454-459, 1 Mass. Att'y Disc. R. at 128-133 ("Simple fairness and fundamental justice demand that the person who believes he is innocent though convicted should not be required to confess guilt to a criminal *act* he honestly believes he did not commit.") (emphasis in original). We find, as did the first panel, that the petitioner "does not deny that he did what he did; he simply refuses to admit that it was dishonest despite the findings of the Board and the Court." Ex. 7, n.1 (051). Cf. Matter of Diviacchi, 491 Mass. 1003, 1005, 38 Mass. Att'y Disc. R. 90, 94 (2022) ("[a]lthough Diviacchi continues to insist that the findings underlying his suspension are factually false and he disputes them at length, we consider them to be conclusively established").

had been found, outright rejected it as "wholly discordant with the findings of the Board and the decision of the Supreme Judicial Court." Ex. 7 (051).

The equivocation continued. When again asked about dishonesty, the petitioner first admitted that he knew there was a "right" way to file an inventory in the probate court, and then proceeded immediately to undermine himself by, once more, claiming that his misrepresentation had not been material, and adding that when he finally reported it, "nobody cared about it." Tr. 161-162 (Petitioner). He summed up by concluding that it was wrong, "regardless of characterizing it as immaterial." Tr. 162 (Petitioner). Offered a lifeline to clarify further, he explained that he should not have omitted so-called pre-death expenses, but that he did eventually report them "so in that sense it wasn't—nobody had balked about it, so it wasn't material, I guess." Tr. 164 (Petitioner).

In lieu of showing us that he understood the nature of his conduct and why it had occurred, the petitioner instead focused on the fact that, at the time of his misconduct, he had not been sufficiently knowledgeable about the Rules of Professional Conduct. He believes that the problems that led to his suspension were based in significant part on the fact that he did not understand the rules, not that his conduct had been dishonest. Tr. 152 (Petitioner). He said that if he had known back then "about separating the time, I just would have done it. I don't bridle at the rule. I just didn't know the rule." Tr. 153 (Petitioner). As a result, he testified that he has "tried to learn the rules as best I can." Tr. 122 (Petitioner).

We reject the argument that not knowing the rules was at the root of the petitioner's misconduct, or somehow mitigates it. As a legal matter, not knowing the rules is no defense to misconduct. See generally Matter of Hrones, 457 Mass. 844, 855, 26 Mass. Att'y Disc. R. 252, 268 (2010), quoting Matter of the Discipline of an Attorney, 392 Mass. 827, 835 (1984) ("[t]here

have been, and will be, few cases of unethical conduct where we consider it relevant that an offending attorney was not aware of the disciplinary rules or their true import.")

More to the point, this argument reflects a lack of insight and understanding about what it means to be a lawyer. Our rules will never be so granular as to warn lawyers not to charge, for unskilled work, the same rate charged for legal work. The implication that this needs to be stated explicitly demeans the uniqueness and significance of lawyers' work. Professional conduct rules do not "exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules." Comment [16], Scope of Rules of Professional Conduct. The petitioner should not have had to be told that, for instance, he could not charge legal rates for non-legal work; recognizing the need to suppress self-interest, to be fair to clients, and to be candid with courts is foundational and underpins everything lawyers do.

### b. <u>The Petitioner's Lack of Restitution</u>

We turn to restitution. Despite the first hearing panel's focus on the weight of restitution and the petitioner's failure to make it, he wrote in the petition before us that he "was not ordered by the Court to make any restitution to clients or others." Ex. 1, ¶ 3 (001); Ex. 2 (006) ("I was never ordered to make any form o[f] restitution by the Hearing Committee, the BBO or the SJC"). While this is technically true, it is somewhat disingenuous, eliding the importance that both the Court and the Board have placed on making restitution both here, specifically, and in the case law, generally.

In addressing the gross overcharging found by every tribunal, the petitioner wrote: "I did make a few relatively minor downward adjustments to one bill as a result of a few errors that I became aware of during the [disciplinary h]earing." Ex. 2 (006). Asked at our hearing about

what, specifically, he had done to rectify these overcharges, he stated: "Well, first of all, I can't. I don't have enough money to do that." Tr. 176-177 (Petitioner). He proceeded to digress about how, when in practice, his hourly rate had been quite low, and how he could have, but did not, charge for his paralegal's time. Tr. 177-178 (Petitioner). In effect, the petitioner again seemed to be justifying his billing as not actually excessive. These are arguments the prior hearing panel decisively rejected. See Ex. 7, n.8 (059-060). He eventually agreed that he would "be willing to sit down with somebody and recalculate the whole thing . . . ." Tr. 179 (Petitioner).[4] However, he obviously has not done so.

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 of reinstatement, that the hearing panel properly relied on the petitioner's failure to make restitution); Matter of Dawkins, 432 Mass. 1009, 1011, 16 Mass. Att'y Disc. R. 94, 95-96 (2000) (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 Goldstone, 40 Mass. Att'y Disc. R. __ (2024), SJC No. BD-2005-006, p. 14 (reinstatement denied October 30, 2024) (hearing panel report recommended denial of reinstatement for, among other things, failing to make restitution to overcharged client and noting that "[g]enerally speaking, a petitioner's failure to make restitution is an insurmountable obstacle to his/her showing of moral fitness"); Matter of

[4] The Hearing Report, of which we take administrative notice, would have been a good place to start. See generally ¶¶ 35-41 (Wilcox Estate) (pre-death, petitioner paid himself $209,500; total acceptable fee would have been $102,655); ¶¶ 91-94 (post-death, petitioner paid himself $17,500; reasonable fee for his services and those of paralegal would have been $7,500 to $10,000); ¶¶ 127-132 (Stevens Estate) (pre-death fees should have been no more than $114,084.25; the petitioner paid himself $219,393.25). But even a good faith effort to work out some compromise with the beneficiaries would have been a promising start. Cf. Matter of McPhee, 34 Mass. Att'y Disc. R. 315, 322 (2018) (observing that writing letters of apology to former clients whose claims were not reimbursed by the CSB would be an "appropriate step towards showing moral rehabilitation").

McCarthy, 23 Mass. Att'y Disc. R. 469, 469, 470 (2007) (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); failure to even attempt to make restitution "reflects poorly on the attorney's moral fitness").

It would be difficult to overstate the importance of restitution in a case like this, where clients have been significantly overcharged. The unspecific "minor downward adjustments to one bill," and the petitioner's concession that he has offered nothing more than this, are a far cry from the restitution anticipated by the SJC and the first hearing panel. "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, supra, 23 Mass. Att'y Disc. R. at 470. Its absence strongly undermines any claim of reform.

### 2. Employment and Volunteer History

#### a. Employment

As noted above, the petitioner was authorized on April 27, 2022 to engage in paralegal work for Attorney Joseph M. Fahey. Fahey has a general practice with a "litigation orientation"; he also does probate and real estate work. Tr. 46 (Fahey). He shares office space with other attorneys. Tr. 63 (Fahey). He testified that the petitioner, who has paid him rent for office space since November 2018, well before the paralegal arrangement commenced, comes into the office daily, and spends four to six hours there. Tr. 48, 51, 73-74 (Fahey); Tr. 106-108 (Petitioner); Ex. 3 (028).

Most of those hours are not spent doing work for Fahey. Fahey estimates that the petitioner has worked perhaps eighty hours for him *over the past two and a half years*. Tr. 57-58

(Fahey). The petitioner "thinks" he has worked more than that, but did not say how much more. Tr. 146 (Petitioner). Asked about the small volume of work, Fahey explained that he has his own paralegal, and that he is not good about delegating work. Tr. 58, 81 (Fahey).

Despite the fact that the Order allowing paralegal work specifies that the petitioner will be paid "approximately $20 per hour," Tr. 148 (Petitioner), the petitioner has not billed Fahey for any work. Although the petitioner had told us earlier in the day that he would like to earn money to take some of the financial burden off of his wife, who still works full-time, see Tr. 118-119, he explained that as to his paralegal work, he is "not looking for any money from [Fahey]," and that it did not feel right to bill Fahey and ask him for money. Tr. 147-148 (Petitioner). He testified that he benefits from his work in other ways, among them "the experience [of] doing the work on a particular case." Tr. 148, 157 (Petitioner). He elaborated that Fahey has not raised his rent in years; that if his copier runs out of paper he takes a ream of Fahey's paper; that he benefits financially in other small ways—citing coffee and electricity—from being in Fahey's office; and that it would be "cheesy" to bill Fahey. Tr. 156-157 (Petitioner).[5]

**b. Volunteer Work**

In addition to gainful employment, 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

[5] Fahey testified that he has paid the petitioner very little over the years, perhaps $200 to $300 for some personal injury work, at the rate of $20/hour. Tr. 56-57 (Fahey). The petitioner disagreed, and said that Fahey had not paid him anything for his paralegal work, but, rather, had paid him money earned on some cases the petitioner had referred to Fahey after he was suspended. Tr. 146-147 (Fahey).

illustrated by charitable activities, volunteer activities, commitment to family, or community work").

The petitioner described helping his children and grandchildren as his "first priority, both in time and effort" during his suspension. Ex. 2 (005). One daughter is a single mother of four, and he has helped her care for the children as well as helping with the care and maintenance of her home. Id. He has driven his grandchildren to sporting events, practices, and other activities. Tr. 101-103 (Petitioner). His oldest son needed help with the sale of a restaurant in New Hampshire at the time of the COVID-19 quarantine; the petitioner helped him to secure and maintain his building, apply for various government assistance programs, and transition to a new career. Ex. 2 (005). The son had lost his driver's license, and the petitioner spent a lot of time driving him to, and then picking him up from, an out-of-state job where he worked the midnight to 7:00/8:00 AM shift. Tr. 104-105 (Petitioner). We find that the petitioner is dedicated to his family, and we give him credit for this steadfast commitment.

The petitioner has also done significant non-family-related volunteer work during his suspension. He is an active member of the Society of St. Vincent DePaul (Society), an international Catholic charitable organization founded and operated by lay people. Ex. 2 (004). A central mission of the Society is making home visits to people in need. Tr. 94 (Petitioner). There are also clothing drives twice a year, and meal deliveries at Thanksgiving, Christmas, and Easter. Tr. 96 (Petitioner). Then there are monthly meetings with all the members, Masses, and a men's group. Tr. 97-98 (Petitioner). The petitioner is an officer (secretary) of the Society, a position he has held for a few years, so in addition to the monthly meetings, he also attends a separate meeting for officers. Tr. 98 (Petitioner). As secretary, he writes up the minutes and sends them to

the members. Tr. 99 (Petitioner).[6] All told, he spends at least several hours per week on Society work and, at some times during the year, significantly more time than that. Id.

The petitioner also volunteers with the Boston Sock Exchange, a group aiding the homeless, by once a month preparing and bagging about 100 lunches and delivering them the following day. Tr. 99-100 (Petitioner); Ex. 2 (005). We find that the petitioner is a dedicated volunteer, and we give him credit for his long-standing and genuine commitment to his community.[7]

### 3. Witness Testimony and Letters

#### a. Kristen Bauer and Tung Huynh

Kristen Bauer and Tung Huynh, retired lawyers who are married to each other and who both know the petitioner through their common membership in the Society, met him about five years ago. Tr. 11-12 (Bauer); Tr. 29, 30 (Huynh).[8] A few years later, Bauer became the Society's president and needed to select officers. She asked the petitioner to be secretary, "[a]ppreciating [his] attention to detail, grace under pressure and thoughtful approach to home visits." Ex. 2 (005); Ex. 4 (031); Tr. 14 (Bauer). At the time, a parishioner advised her of the petitioner's situation. She read online materials about him, and disclosed to her husband that he had been suspended from the practice of law. Tr. 14 (Bauer); Tr. 38 (Huynh).

About six months ago, as this reinstatement hearing approached, the petitioner asked Bauer and Huynh if they would be witnesses on his behalf. Tr. 37 (Huynh). At that point, the

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[6] He does not type well and is "kind of behind [in] using a keyboard," but is helped in this task by his former paralegal, an individual Fahey has hired as his own paralegal. Tr. 85 (Fahey); Tr. 149 (Petitioner).

[7] The petitioner's volunteer work began decades ago. Other historic volunteer work includes activities through church organizations and bar associations, mock trial instructor, involvement in a refugee resettlement program in the 1970s, service on the Arlington Zoning Board of Appeals, and work at a food pantry. Tr. 90-94 (Petitioner); Ex. 2 (011). The petitioner has not indicated that any of the work described in this footnote occurred since his suspension.

[8] Each also wrote a letter. Exs. 4, 5.

petitioner gave Bauer and Huynh suspension-related materials to read, about 300 pages of them, and discussion ensued. Tr. 21, 22 (Bauer); Tr. 42 (Huynh). Prior to 2024, he had never told either one about his suspension. Tr. 37-38 (Huynh); Tr. 138-139 (Petitioner).

Bauer testified that in conversation about the suspension, the petitioner mentioned his improper billing, and the fact that he had made errors on an escrow account. She took away from this discussion that his accounting had been "improperly done"; that he had misrepresented the correct amount of the estate to the probate court, having removed from it amounts billed to him and other vendors; that this was "incorrect"; and that "these were errors in judgment, errors in understanding." Tr. 23 (Bauer). She did not glean from their discussion that there had been any dishonesty. Id.

On the specific subject of moral fitness, Bauer testified that she has come to know the petitioner "very well" over the past five years during their work for the Society. Tr. 12. She and the petitioner have gone on home visits together; she explained that "when you do home visits with somebody, you see how they respond to somebody in crisis, and you see what judgments they make on those cases." Tr. 12, 17 (Bauer). They have also spent time "growing in fellowship [and] growing in holiness" together, some of which involves social interactions. Tr. 13 (Bauer). Based on what she has observed, she described the petitioner as kind, empathetic, thoughtful and fair; in her words, he is "morally upright but with compassion." Tr. 17 (Bauer). She would "absolutely" recommend him for reinstatement. Tr. 18 (Bauer).

Huynh also offered insights about the petitioner's misconduct and his character generally. During discussion about the misconduct, Huynh testified that the petitioner "did not use the word 'dishonesty' that I can – specifically the word 'dishonesty' that I can remember, no." Tr. 39 (Huynh). The petitioner had not gone into detail about his state of mind for each incident of

misconduct, but had shared that he had felt under pressure to close the sale of a client's house, because of her rapid deterioration, and that he had promised certain vendors that they would be paid out of the house proceeds. Tr. 39-40 (Huynh). Huynh inferred from his description that the petitioner had taken "some shortcuts that he shouldn't have in order to fulfill his obligation to the vendor." Tr. 40 (Huynh). As to his conduct going forward, the petitioner "indicated that he needed to understand better, than he apparently did before, the rules of professional responsibility and that he would . . . be more careful to comply with those in the future." Tr. 44 (Huynh).

Huynh has not done home visits with the petitioner, but has gotten to know him well through meetings, at Mass, at the men's group, and in a volunteer and social context. Tr. 31-32, 35 (Huynh). Like his wife, Huynh became the Society's president, and kept the petitioner on as secretary, describing his work as "fantastic." Tr. 32 (Huynh). Having talked with the petitioner about the misconduct, Huynh considers his expressions of remorse genuine, and describes him as kind, and as an "exemplary Vincentian." Tr. 35 (Huynh).

**b. <u>Joseph M. Fahey</u>**

Joseph M. Fahey was the third witness to testify in support of the petitioner's reinstatement. Fahey knows the petitioner well: he was a witness at the petitioner's first reinstatement hearing and, as noted, is the attorney for whom the petitioner is currently permitted to work as a paralegal. At the petitioner's first reinstatement hearing, Fahey had testified that "people can make mistakes for different reasons," and that he did not see the petitioner's behavior as "fundamentally dishonest." Ex. 7 (58); Tr. 68 (Fahey).

Confronted with this testimony at our hearing, Fahey stated that his assessment of the petitioner's conduct has changed since the first reinstatement hearing, and explained why. Tr. 69 (Fahey). After the 2019 denial, the petitioner was hurt and angry. Tr. 51-52, 65-66 (Fahey). Fahey

described the petitioner's gradual acceptance of his misconduct between the time of the first reinstatement hearing and now. He explained that in the context of discussing the petitioner's request to work as a paralegal, and as the result of that work, the petitioner has become more expansive and insightful about his misconduct. Tr. 69-70, 78-79 (Fahey). Fahey thinks he appears to have come to terms with the fact that his misconduct was wrong, and he has become more willing to discuss it, more accepting and more insightful. Tr. 72-73 (Fahey). Fahey thinks he is remorseful. Tr. 52 (Fahey).

Fahey believes the petitioner has the moral qualifications to practice law "because of the remorse he's expressed with regard to his conduct." Tr. 77 (Fahey). Fahey had earlier identified the petitioner's "regret" for the damage he had caused himself, his family, and even Fahey for having to come in and testify. Tr. 54 (Fahey). Asked specifically if the petitioner had expressed remorse for his clients and/or their estates, Fahey responded: "He—in the sense that he has been very clear he would have handled this very differently." Tr. 80 (Fahey). Fahey opined that the petitioner "regrets every bit of it." Tr. 80 (Fahey). He did not say, and we cannot find, that the petitioner's regret includes how he treated his clients and their estates.

Were the petitioner to be reinstated, Fahey "wouldn't hesitate" to refer work and clients to him. Tr. 85 (Fahey). As to the impact on the legal community at large as the result of the petitioner's reinstatement, Fahey does not believe the bar would be upset by it; in his words, the petitioner has "paid his debt," having been out of practice for six years following a year-and-a-half suspension. Tr. 84 (Fahey).

c. **General Assessment of Witness Testimony**

We credit the testimony of Bauer and Huynh that the petitioner is an exemplary Vincentian, and that he is kind, competent and reliable. But they did not know him before his suspension, and were not in a position to tell us about his moral evolution and reform between the time of his misconduct and now. Their testimony, like evidence that does not distinguish a 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, was considered, but we did not feel it was compelling. See Matter of Leo, supra, 484 Mass. at 1052, 36 Mass. Att'y Disc. R. at 299-300; Matter of Dawkins, supra, 432 Mass. at 1011, n.5, 16 Mass. Att'y Disc. R. at 96, n.5; Matter of Corben, 31 Mass. Att'y Disc. R. 91, 101 (2015).

Fahey was better-situated in this regard, and we credit his testimony that he has seen the petitioner become more clear-eyed about the nature and implications of his misconduct. But that evidence only underscores our conclusion that the petitioner is on the path to redemption. It does not compel, or even strongly support, a conclusion that the petitioner is in fact morally reformed.

4. **Conclusions as to Moral Fitness**

Our inquiry boils down to whether the petitioner has "adduce[d] substantial proof that he has 'such an appreciation of the distinctions between right and wrong in the conduct of [people] toward each other as will make him a fit and safe person to engage in the practice of law.'" Matter of Hiss, 368 Mass. at 457, 1 Mass. Att'y Disc. R. at 130 (citation omitted). Only if we can conclude that the petitioner recognizes his wrongdoing can we be sufficiently certain that his misconduct is not likely to be repeated. See Matter of Corben, supra, 31 Mass. Att'y Disc. R. at 96-100 (moral reform not shown where lawyer equivocated and did not show understanding and acceptance of misconduct); Matter of Harrington, 28 Mass. Att'y Disc. R. 412, 423-425 (2012)

(moral reform not shown where lawyer did not acknowledge the reason reform was even necessary); Matter of Lee, 28 Mass. Att'y Disc. R. 540, 549-551 (2012) (moral reform not shown where, among other things, lawyer displayed "incoherence" on issue of understanding and acceptance of misconduct). We are not convinced.

While we do not expect a petitioner to remember and parrot every rule violation, remorse and reform begin with a genuine acknowledgement of what the misconduct was, or, at the least, what was found by prior tribunals. Honesty and candor are critical in this regard.

It bears emphasizing that the petitioner's misconduct was not that he could not recite the Rules of Professional Conduct; it was that his actions, among them overcharging elderly and vulnerable clients, and lying, in his favor, to the probate court, have at their core fundamental dishonesty and self-interest. We gave numerous examples above of the petitioner's failure to come to terms with the true nature and severity of his misconduct. This conclusion is underscored by the witnesses' description of what the petitioner told them about his misconduct. We do not fault the petitioner for not disclosing earlier to Bauer and Huynh that he was a suspended lawyer, but we find that what he eventually conveyed was inadequate and strongly implied that he had made mistakes or errors of judgment, not that he had committed intentional misconduct.

We find further that the petitioner has not proved that he feels true remorse. We gave him a chance at the end of the hearing to express remorse about overcharging his two elderly clients, asking him for his "final thoughts on what you think the impact of your errors have been on your clients." Tr. 186-187. He said nothing reassuring in response, observing that the clients were dead, that all their money had gone to charities, and that the accounting "held up," a variant of an argument decisively rejected by the first hearing panel. Tr. 187-188 (Petitioner); see Ex. 7, n.8 (060). He did not seem to recognize that there had been any impact whatsoever on his clients or

their estates as the result of his significant overcharging. This lack of comprehension no doubt contributed to the petitioner's decision, discussed at length above, not to make any meaningful restitution payments or gestures.[9]

Although we laud the petitioner for his volunteer work, and we find hopeful that he has begun to come to terms with the precise nature of his misconduct, on this record we cannot conclude that he has proved he is morally fit to resume the practice of law.

### 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 for approximately forty years, from 1977 until his suspension in 2017, most of that time in a general practice including "civil litigation, wills and trusts, the administration of estates, probate work, real estate and a variety of other legal work." Ex. 2 (008). We recognize the weight and significance of pre-suspension practice. E.g., Matter of Boudreau, 30 Mass. Att'y Disc. R. 30, 37 (2014) (having practiced for sixteen years, lawyer "obviously has the basic competency to practice law[;] focus is on whether he has maintained his learning during the fourteen years since his disbarment); Matter of Perry, 30 Mass. Att'y Disc. R. 304, 313 (2014) (following fifteen years of practice, lawyer was suspended for ten years, but demonstrated his competence through combination of his "prior practice, his hands-on experience in his own litigation, and his course of

[9] Matter of McPhee, supra, supports our analysis. McPhee made nominal restitution, and candidly acknowledged that while he could have paid more to discharge his debt to the CSB and to make wronged clients whole, he chose instead to favor his family. McPhee, 34 Mass. Att'y Disc. R. at 321-322. The petitioner has done more or less the same thing here. He has claimed he cannot afford to make restitution while at the same time not working for pay, including refusing to bill for the paralegal work he performs. We do not criticize the petitioner for putting his family's needs first, but that choice has necessarily come at the expense of reimbursing overcharged clients or their estates. As was true in McPhee, the petitioner's failure to make restitution, even standing alone, precludes a finding of moral fitness. McPhee, 34 Mass. Att'y Disc. R. at 323-324.

continuing legal education"); Matter of Hrones, 28 Mass. Att'y Disc. R. 463, 477-478 (2012) (citing relevance of thirty-five years of successful practice, including lecturing at law schools and authoring three books; this compensated for modest study during relatively short suspension).

The petitioner took the MPRE in 2018. Tr. 110 (Petitioner). He took six MCLE classes between September 2021 and November 2022. Tr. 129 (Petitioner); Ex. 2 (006-007). These were on introducing and excluding evidence at trial; probate practice; trying civil cases; overview of the TAFDC program, Massachusetts Cash Assistance Program for Families; use of SNAP food stamps; and an elder benefits program. Ex. 2 (006-007); Ex. 6. Although the petitioner has, for years, had a subscription to MCLE that gives him "unlimited access to [MCLE's] entire archive," he has taken only six CLE classes, the most recent in November 2022. Tr. 128, 130 (Petitioner).

The petitioner testified that he did not feel he was learning enough from the courses, and preferred to read books. Tr. 130 (Petitioner). He has studied and/or read the following books and publications: Ethical Lawyering in Massachusetts; Model Rules of Professional Conduct; Massachusetts Basic Practice Manual; The Elements of Legal Style; and the Massachusetts Lawyers Weekly and Practical Guide to Introducing Evidence. Ex. 2 (007-008); Tr. 112-114, 131 (Petitioner). He has studied the Massachusetts Rules of Professional Conduct.

We discussed above in outline form the petitioner's limited work for Fahey, but turn now to an examination of its substance. The petitioner's work for Fahey has included compiling medical records and extracting issues of causation; helping with discovery responses; reviewing pleadings; and, in the context of a client's transportation business, helping with a transfer of license issue. Tr. 48-49, 59-60 (Fahey). Fahey has not asked the petitioner to draft answers to interrogatories, prepare any witness outlines, or draft any pleadings. Tr. 60-61 (Fahey). The petitioner has performed very limited legal research on one or two matters. Tr. 61-62 (Fahey). In

cases he does not actually work on, he has been available to "chat" in informal discussions with Fahey and the other lawyers in the office suite. Tr. 50, 62-63 (Fahey). In response to bar counsel's observation that he did not seem to have done much paralegal work for Fahey in the over two years since he was authorized to do so, the petitioner agreed that there were "relatively few cases" where he had done in-depth work, but that he enjoyed the experience of physically being in a law office and talking about cases and legal issues. Tr. 145, 148 (Petitioner).

While in the office, the petitioner does some work on a complicated family estate he was authorized to handle some years ago. Tr. 50-51 (Fahey); Tr. 114-117 (Petitioner). As noted, he reads the Massachusetts Lawyers Weekly and books on the rules of professional responsibility. Tr. 51, 75 (Fahey). He has become something of an office "watchdog" about the rules, pointing out when certain office practices, like client fee agreements, signs, and confidentiality measures, are not consistent with them. Tr. 75-76 (Fahey).

If reinstated, the petitioner hopes to resume the type of legal work he formerly practiced, namely, drafting simple wills and trusts, probate practice and the administration of estates, residential real estate, and civil litigation. Ex. 2 (008-009); Tr. 117 (Petitioner). He would also like the option of doing legal work for some of the Society's clients. Tr. 118 (Petitioner).

On this record, we cannot find that the petitioner has sufficient learning in the law to be reinstated. He has been away from practice for seven years, a significant time period. With the exception of the very limited paralegal work the petitioner has done for Fahey, and some ongoing work on a cousin's complex estate that is outside of Massachusetts, see Tr. 114-117; Ex. 1 (012), he has done no actual legal work or concentrated study. The petitioner does not seem to have taken advantage of his right to work as a paralegal, or his unlimited access to MCLE materials. Talking generally with other lawyers about the law and legal issues is a start, but is a vague metric

that is impossible to measure. To satisfy this criterion, the petitioner will need to pursue broader and deeper legal study and, optimally, would show more engagement and responsibility as a paralegal.

Part of competence is “keep[ing] abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology.” Mass. R. Prof. C. 1.1, comment [8]. The petitioner has admitted he cannot effectively use a keyboard, and he was unable to print out his MCLE certificates at the time he took the courses because his printer and laptop were not connected. Tr. 127, 149 (Petitioner). Were he reinstated, he proposes to use a desk book calendar for docket control, as he did in the past. Ex. 2 (009). A better approach would be to add to this at least one type of electronic calendar, preferably with a tickler/reminder. We find that the petitioner does not seem to have kept current with technology.

### 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).

Having found the petitioner wanting in the areas of moral redemption and learning in law, it goes without saying that his reinstatement would be inimical to the public good. While it is, accordingly, unnecessary to say more about this criterion, we recognize that the opinion evidence we have received from Fahey – to the effect that the petitioner has been away from practice for significantly more than the term of suspension, and that he cannot imagine anyone would be surprised or upset by it – was worthy of our consideration, but not dispositive. This finding does not meaningfully impact our conclusion that in all three areas, the petitioner has failed to carry his burden.

## V. Conclusions and Recommendation

Based upon the petitioner's written submissions, his own testimony, and that of his witnesses, we recommend that the petition for reinstatement of Robert C. Moran be denied.

Respectfully submitted,
By the Hearing Panel,

*Richard C. Van Nostrand*
Richard C. Van Nostrand, Esq., Hearing Panel Chair

*Rita B. Allen*
Rita B. Allen, Hearing Panel Member

*Lynne Soutter*
Lynne Soutter, Esq., Hearing Panel Member

Dated: February 26, 2025