IN RE: MATTER OF ERNEST A. SOLOMON
BBO NO. 655261

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

In the Matter of	)	
Ernest A. Solomon,	)	**SJC No. BD-2018-029**
Petition for Reinstatement	)	
	)	

HEARING PANEL REPORT

I. Introduction

On August 10, 2023, the petitioner, Ernest A. Solomon, filed his third petition for reinstatement with the Supreme Judicial Court. We held a hearing on April 2, 2024. Represented by counsel, the petitioner testified on his own behalf and called two witnesses: Gale Brunault, LMHC, and Pastor Craig Mattheson. Bar counsel called no witnesses. Twenty-seven exhibits were admitted into evidence.[1] 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).

[1] The parties had agreed to twenty-six exhibits. At the beginning of the hearing, petitioner's counsel offered a new Reinstatement Questionnaire, with various corrections and changes, including a new personal statement from the petitioner. (Tr. 14-15). We rejected the petitioner's request to substitute it for the original Reinstatement Questionnaire, but we admitted it into evidence as Exhibit 27. (Tr. 146).

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 reinstatement petition "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 2019 Petition for Reinstatement

The petitioner was admitted to the bar of the Commonwealth on December 13, 2002. (Ex. 1 at ES0003). He has been suspended three times, discussed individually below.

The 2014 Suspension

The petitioner's first suspension, for fifteen months, was imposed July 25, 2014. Matter of Solomon, 30 Mass. Att'y Disc. R. 377 (2014). (Ex. 1 at ES0015; Ex. 19 at ES0680). This suspension followed an evidentiary hearing before a hearing committee, review by the Board of Bar Overseers, and review by a Single Justice of the Supreme Judicial Court. The misconduct arose from the petitioner's handling of funds posted as bail by a client, funds that were later returned to the petitioner pursuant to a bail assignment. In findings adopted by the Board, the hearing committee found that "in connection with his receipt of bail funds, the [petitioner] recklessly misused client funds, violated trust account rules, charged an excessive fee, and made intentional misrepresentations to a court." (Ex. 21 at ES0696). This conduct violated Mass. R.

Prof. C. 1.15 (full accounting to client of use of trust funds), 1.5(a) (collection of clearly excessive fee), 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), 8.4(d) (conduct prejudicial to the administration of justice), and 3.3(a)(1) (knowing material misstatement of law or fact to tribunal).[2] Id. Justice Cordy accepted the Board's findings and recommendations as fully supported by the record and, as indicated, imposed a fifteen-month suspension. (Ex. 1 at ES0018).

The 2016 Suspension

In a petition for discipline filed in May 2015, the petitioner was again charged with misconduct. (Ex. 20 at ES0691 to ES0695). This misconduct--intentionally failing to disclose two critical pieces of information to a New Hampshire court in connection with a motion to appear pro hac vice in New Hampshire--occurred in 2013. Id. The petitioner stipulated to the misconduct in an Answer and Stipulation dated December 8, 2015, wherein he admitted the truth of the petition's allegations and admitted that his conduct violated the charged Rules: 3.3(a), 3.4(c) (knowingly disobey an obligation under the rules of a tribunal), 8.4(c), and 8.4(d). (Ex. 20). The petitioner agreed that the misconduct had occurred during the pendency of the prior disciplinary proceeding and that the prior discipline was for similar deceitful misconduct. (Ex. 20 at ES0689). The parties proposed in their Stipulation, and the Board and the Court accepted, a six-month suspension, retroactive to November 24, 2015--the date the fifteen-month suspension imposed in July 2014 would have expired--with the requirement that he be required to petition for reinstatement. (Ex. 1 at ES0019-ES0020; Ex. 1 at ES0020 (suspension retroactive to September 25, 2015); Matter of Solomon, 32 Mass. Att'y Disc. R. 522 (2016) (same).

The 2019 Suspension

[2] This was under the prior version of Rule 3.3(a)(1). The "materiality" requirement was dropped in 2015.

In a petition for discipline dated July 2017, the petitioner was again charged with misconduct. (Ex. 19 at ES0682-ES0687). This misconduct--a conflict of interest in accepting appointment as an executor of an estate; making intentional misrepresentations to beneficiaries of the estate; failing to respond to a demand for an accounting; and making materially false and misleading statements to bar counsel--was alleged to have occurred in the 2013/2014 time period. (Id.). The petitioner stipulated to the misconduct in an Answer and Stipulation dated July 20, 2017, wherein he admitted the truth of the petition's allegations and admitted that his conduct violated the charged rules: 1.7(b) (prohibiting conflict of interest); 1.15(d); 4.1(a) (knowing false statement of material fact or law to third person); 8.1 (knowing false statement of material fact in connection with a disciplinary matter); 8.4(c); 8.4(d); and 8.4(h) (conduct adversely reflecting on fitness to practice). (Ex. 19 at ES0679-ES0681).

The petitioner agreed that the misconduct had occurred over a two-year period during the pendency of the prior disciplinary proceedings and that the prior discipline was for similar deceitful conduct. (Ex. 19 at ES0680). The parties proposed, and the Board and the Court accepted, a one-year suspension, retroactive to February 12, 2018, the date the petitioner became eligible to apply for reinstatement from the 2016 suspension. (Ex. 1 at ES0023; Ex. 19 at ES0679-ES0681). On March 25, 2019, the Court imposed a suspension of a year and a day. Matter of Solomon, 35 Mass. Att'y Disc. R. 576, 578 (2019).

The 2019 Petition for Reinstatement

The petitioner filed his first petition for reinstatement on May 10, 2019. (Ex. 15). After a day of hearing on September 27, 2019, the hearing panel issued an Order of Notice of Reopened Hearing, in which it gave the parties notice of its intent to admit into evidence certain documents and to hold a second day of hearing on December 12, 2019. (Ex. 18 at ES0659-ES0660). The documents admitted were the hearing committee report from the petitioner's first

suspension; the Board Memorandum pertaining to same; the parties' Stipulations as to the petitioner's second and third suspensions; and Part II of the petitioner's Reinstatement Questionnaire. (Id.). The petitioner admitted on the second day of the hearing that he had not read "all three complaints, all three conclusions," and that he had avoided doing so "because it was just reminding me of where I was at that time." (Ex. 19 at ES0613).

The petitioner's failure to review the material underlying his three suspensions had serious consequences. The panel's questions on day two of the hearing reflected their concern with the critical deficiencies in the petitioner's Questionnaire answers and testimony. Specifically, the panel made clear to the petitioner that it found fatal inconsistencies between his testimony at the first day of the reinstatement hearing and his Questionnaire responses, particular facts found by the hearing committee as to the first disciplinary matter, and his own admissions in the two Stipulations he signed. E.g., Ex. 19 at ES0655-ES0669.

In a meticulous and exhaustive report dated March 23, 2020, the hearing panel recommended denial of the petition for reinstatement. It identified example after example of inconsistencies, where the petitioner's hearing testimony or description of his misconduct in the Questionnaire was not consistent with--and always less serious than--what the hearing committee had found, or what he had admitted in his Stipulations. (Id.). The hearing panel laid out, in minute detail, discrepancies among the petitioner's various admissions and representations. It told him explicitly why these discrepancies, and his concomitant under-inclusiveness, amounted to a lack of insight and a refusal to accept responsibility for his serious misconduct. In effect, the first hearing panel gave the petitioner a road map for a successful reinstatement petition.

Shortly after the hearing panel issued its report, the petitioner asked the S.J.C. for permission to withdraw the petition, which relief the Court allowed on March 31, 2020, with the provision that he could not refile until a year from March 25, 2020. (Ex. 12 at ES0462).

The 2021 Petition for Reinstatement

The petitioner filed his second petition for reinstatement on June 1, 2021. (Ex. 6). Hearings were held on November 16 and December 6, 2021. (Exs. 8-11). Represented by counsel, the petitioner testified on his own behalf and called two witnesses: Gale Brunault, LMHC, and Pastor Craig Mattheson. (Id.). Bar counsel called no witnesses. That hearing panel also recommended against reinstating the petitioner. (Ex.12). Among other things, it noted that he did not review the 2019 hearing panel report until after he began seeing a therapist in July 2021 (one month after he filed his second petition for reinstatement). (Id.). Once he did read it, he did nothing to amend his Reinstatement Questionnaire answers or submissions to address the concerns expressed by the first hearing panel. Despite the "wake up" call he had received at the first hearing, he had, once more, failed to review the relevant materials and had failed adequately and fully to describe his misconduct. (Ex. 12 at ES0463). As before, in his testimony and his reinstatement materials, his descriptions of the misconduct that led to his suspensions down-played his actions. The second hearing panel noted that "The petitioner's hearing testimony was replete with errors and omissions," which it described in some detail. (Ex.12 at ES0465, ff).

When discussing the petitioner's work and volunteer activities, the second hearing panel again noted the deficiencies in his written submissions concerning his work and volunteer activities. While the petitioner's volunteer activities were found to be commendable, and he was making an effort toward gainful employment, the second hearing panel found these to be insufficient "to outweigh the significant shortcomings we have identified." (Ex. 12 at ES0467).

As for the petitioner's witnesses, the second hearing panel found the therapist, Gale Brunault, to be credible, but noted that the petitioner had only recently started therapy and that her statements about the petitioner's progress and insights were inconsistent with their observations of the petitioner and not compelling enough to sway their conclusion as to moral

fitness. (Ex. 12 at ES0468). The second hearing panel also found Pastor Matheson to be generally credible, but that he was able to give only "vague reassurances about the petitioner's character, not the specifics and particulars necessary for a successful reinstatement petition." (Ex. 12 at ES0469).

The second hearing panel concluded that the petitioner's supporting letters carried little weight. They were "terse and conclusory and reveal[ed] virtually nothing about the petitioner's moral redemption" and they did not "demonstrate a clear and comprehensive understanding of the petitioner's conduct that led to his discipline." (Ex. 12 at ES0470).

In addition, the second hearing panel was troubled by the petitioner's confusing testimony about his plan to have (or not have) an IOLTA account. He appeared to say he would not have an IOLTA account in order to avoid a temptation to misuse client funds, and the second hearing panel observed that "[a]voiding an IOLTA account suggests that the petitioner is not sufficiently morally rehabilitated such that he would not again engage in similar misconduct." (Ex. 12 at ES0471).

While the second hearing panel felt the petitioner met the second criterion (competence and learning in the law),[3] it concluded he had not met the third criterion (no adverse impact of a reinstatement on public confidence in the bar and in the administration of justice). (Ex. 3 at ES0473). Accordingly, the second hearing panel recommended against reinstating the petitioner, and the Board voted to adopt its recommendation. (Id.).

IV. Findings and Conclusions

A. Moral Qualifications

As a prefatory matter, we acknowledge the many hurdles that the petitioner had to

[3] The second hearing panel's report, Ex. 12 at ES0471-ES0472, correctly noted that its finding was not binding on any future reinstatement panel and that "the petitioner will have to satisfy a new Hearing Panel that he has fulfilled this requirement."

overcome to get an education and become a member of the bar. (Tr. 119, 122-126, petitioner). We also acknowledge that the petitioner has continued to make strides toward a possible reinstatement. His story is often heart-rending. While his testimony is not impounded, we will not embarrass him by repeating some of the details. Nevertheless, we acknowledge that his background led to his being very insecure. We credit that this led to his admitted pattern of denial, of avoiding dealing with problems and his own mistakes, and blaming others. (Tr. 34-35, 40, 118-119, 121-122, 134, 136, petitioner). An example of his fear and insecurity is that, when the bar exam results arrived, he did not open the letter for several days because he was afraid that he had failed. (Tr. 120-121, petitioner). Despite the strides the petitioner has made since his second reinstatement hearing, we nevertheless find and conclude, as explained in more detail below, that he has failed to demonstrate that he has the moral character required for readmission to the bar.

The conduct giving rise to a 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, a 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. The Petitioner's Questionnaire Responses and Hearing Testimony

We noted above that the petitioner filed his third petition on August 10, 2023. This was more than sixteen months after the second hearing panel filed its report, on January 27, 2022. (Ex. 12). Because he knew it was unfavorable, the petitioner did not initially read the second hearing panel report. (Tr. 120-121, petitioner). He did not review it until he did so with his therapist, about a month after it was issued. (Tr. 118, petitioner). Once he did read it, and through his therapy sessions, he realized he had been continuing his prior pattern of avoiding bad news; and that he played the victim and tried to blame others for his own failures. (Tr. 120-122, petitioner).

This time around, and to his credit, the petitioner's testimony was not defensive. With regard to the first matter (the bail case), he said he had "grave problems" and needed money; the bail assignment was a way to get money. And it led to his lying to himself and his friends. (Tr. 131-133, petitioner). He admitted that he had intentionally misled the court because he knew if the court defaulted the defendant, the petitioner would not get the defendant's bond money. (Tr. 13-135, petitioner).

Regarding the second matter (New Hampshire pro hac vice application), he admitted that he had intentionally failed to disclose that he was under investigation in Massachusetts for the first matter. (Tr. 36, petitioner). He also failed to disclose that he had previously submitted pro hac vice applications in New Hampshire on two prior occasions, and that he had been sanctioned in one of those cases. (Tr. 36-37, petitioner). Finally, he admitted that when he appeared for trial in the New Hampshire case, he was unprepared, as a result of which the court ordered him to pay the witness's fees in that case. (Tr. 37, petitioner).

In the third matter (the Louisiana probate matter), he admitted that his intention was not to help his clients but to get back the money he had loaned to his friend, who was a beneficiary

of the will at issue. (Tr. 135, petitioner). He also admitted that, at his second reinstatement hearing, he tried to avoid answering bar counsel's questions; he did not tell the truth and denied that his motive was to get money (i.e., repaid a $17,000 loan he had made to one of the beneficiaries). (Tr. 38-40, 135, petitioner). He admitted that he "has constantly lied, has constantly deceived [and] has constantly omitted." (Tr. 136, petitioner).

While we applaud the petitioner's self-described progress, we cannot credit his testimony that he had previously done things "in my haste" and now he has "made corrections to my questionnaire." (Tr. 136-137, petitioner). In fact, he testified that once, again, in his haste, he submitted the wrong version of this third Reinstatement Questionnaire, which he admitted was "almost identical" to the one submitted in support of his second attempt to be reinstated. As noted above, the corrected one was admitted into evidence at the hearing as Exhibit 27. (Tr. 137-138, 148-149, petitioner). We rejected the petitioner's request that it replace the one he originally filed (Tr. 11-12, 16-17) but, as noted above, admitted it as Exhibit 27.

One of the errors in Ex. 1 that were corrected in Exhibit 27 was the petitioner's rates for translations; the change was made because they were misstated and not because the petitioner had raised his rates. (Tr. 151-152, petitioner). A second was his repetition in Exhibit 1 of an inadequate description of the bail case, where he had omitted the fact that he had been found to have charged a clearly excessive fee. (Tr. 155-156, petitioner). The third matter was the Louisiana probate case. We have examined the description of this in the petitioner's original third reinstatement Questionnaire (Ex. 1 at ES0004) and compared it to his corrected Questionnaire (Ex. 27, at pp. 9-10).[4] Frankly, Exhibit 1 is a more detailed and fulsome description—and admission of—the petitioner's misconduct than his "corrected" Questionnaire,

[4] Exhibit 27 lacks the required Bates numbers so we refer only to the internal page numbers of the document.

Exhibit 27.

As in the petitioner's second reinstatement effort, Exhibit 27 in our case was deficient in omitting his intentional misrepresentations to the beneficiaries, which served to obscure his own financial interest, and omitting his intentional misrepresentations to bar counsel. (Ex. 27 at pp. 9-10). In this regard, Exhibit 27 was a step backward—not forward—from Exhibit 1.

2. Work and Volunteer Activities

At our hearing, the petitioner was not asked on direct exam about his work or his volunteer activities. While the description of the petitioner's volunteer activities came mostly from Pastor Mattheson, more detail concerning his occupation and employment since his suspension came from bar counsel's cross-examination. Part of the petitioner's post-suspension work has been in providing translation services. (Tr. 151-152, 160-161, petitioner). He testified he calls it "Solomon's Services"; he testified that he called it that on his tax returns[5] but he did not list that name, or the address (his home) on the Questionnaire, nor did he state that it was self-employment. (Tr. 165-166, petitioner). It was left to bar counsel's cross-examination to flesh out what this work consisted of, how many hours per week the petitioner worked, how many jobs he did and how much he earned. (Tr. 166-170, petitioner). The petitioner also admitted that part of his work was not correctly or completely described in the Questionnaire, since he also helped people fill out unemployment compensation forms. (Tr. 169-170, petitioner).

His only recent outside employment was working for Peabody Auto Collision. (Tr. 160-161, petitioner). He also worked part time in Honduras for his father's gas station. Apparently,

[5] It is called "Solomon's Servicios" on his tax returns. (Tr. 194, petitioner; Ex. 2 at ES0065).

it is seasonal employment.[6] While the petitioner knows the dates he worked there, he did not include them on his Questionnaire, even though the second hearing panel was frustrated that he had not listed them during his second petition for reinstatement. (Tr. 162-164, petitioner). The petitioner testified that the inconsistencies in his stating how long he worked at his father's gas station were due to his totaling up and rounding off the time he worked there, and he included only the time since the last hearing. (Tr. 165-166, petitioner). The Questionnaire requires detailed information, including dates and a description of the work. Clarification, including providing missing information, is not supposed to be left to cross-examination by bar counsel at a reinstatement hearing.

We acknowledge that 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 his 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."). We agree with the second hearing panel, who wrote: "While there are some strong positives in the petitioner's volunteer endeavors, and while he does seem to be making an effort toward gainful employment, these are not sufficient to outweigh the significant shortcomings we have identified." (Ex. 12 at ES0467).

3. Witness Testimony and Letters

Gale Brunault has been the petitioner's therapist since July 2021. (Tr. 34, petitioner).[7]

[6] As best we can discern, the petitioner's father lives with him in New Hampshire most of the time. However, his father sometimes returns to Honduras and calls the petitioner on short notice to come down to Honduras to help him, including working at the father's gas station. (Tr. 163, petitioner).

[7] While she previously gave some unimpounded testimony on behalf of the petitioner (Ex. 8), this time the entirety of her testimony was impounded. Frankly, this was both unnecessary and unhelpful.

Since all of Brunault's testimony was impounded, as were her treatment notes, and while we have reviewed both, we will describe them only in very broad and general terms. Suffice it to say that Brunault more than once referred to the fact that a lot of tears were shed in therapy sessions in an effort to have the petitioner confront his issues and negative coping mechanisms. At the end of the day, her testimony was not a ringing endorsement of the petitioner's rehabilitation. Rather, she more than once stated that, while he has come a long way, he needs to continue with therapy and also that he needs to consult with the right people before he makes decisions.

We found Brunault credible, but her qualified testimony was insufficient to evidence the requisite degree of reform and rehabilitation on the petitioner's part that is necessary for reinstatement.

Craig Mattheson, the pastor at the petitioner's church, also testified in the petitioner's favor. Pastor Mattheson has known the petitioner for sixteen or seventeen years. (Tr. 49-50, Mattheson). He is the petitioner's pastor. (Id.) He described in some detail the petitioner's involvement with the church, which includes cooking meals, doing buffet dinner set-ups and clean-ups, working with the food pantry, and helping to live-stream services. (Tr. 50-51, Mattheson). He testified that the petitioner pays for the food that he cooks, as a donation to the church. (Tr. 51-52, Mattheson). The petitioner has also donated cash to the church. (Tr. 59-60, Mattheson).

Since the time that the petitioner has been a member of the church, he has discussed his

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Moreover, the impoundment prevents us from referring to specifics that might otherwise be useful to the Board and the parties. In particular, we saw nothing embarrassing or humiliating to the petitioner in Brunault's testimony this time that would have warranted impoundment. Contrast Matter of Ostrovitz, 31 Mass. Att'y Disc. R. 486 (2015) (reinstatement ordered), where the unimpounded testimony allowed the Board and the Court to articulate the challenges that the petitioner faced and how he successfully overcame them, and therefore was unlikely to repeat his mistakes.

bar discipline problems with Pastor Mattheson. The pastor demonstrated a very good understanding of the circumstances surrounding the petitioner's three suspensions and has studied the two prior hearing panel reports. (Tr. 53-57, 61-63, 64-65, Mattheson). He understands that the petitioner was denied reinstatement twice before because he had not met his burden of demonstrating that that he had changed and was ready to be reinstated. (Tr. 65-66, Mattheson).

Pastor Mattheson is aware that the petitioner is in therapy with Gale Brunault and the petitioner has discussed those sessions with him. (Tr. 57, Mattheson).

Pastor Mattheson admitted that he had testified at the petitioner's first and second reinstatement hearings and had felt at both times that he was a good candidate for reinstatement. (Tr. 66-67, Mattheson). When asked to describe any changes in the petitioner between the last hearing and this one (Tr. 67, Mattheson), he said that the petitioner has learned a lot in his three years of therapy; that he has learned he has to be "100% honest with people"; that he has to have boundaries and needs to say "no," which he failed to do in his third suspension case. (Id.). Pastor Mattheson thinks that the petitioner is now "going to follow the book and all of the rules the way that he is supposed to, be up front and honest and to go ahead and be that person that, you know, that he needs to be as an attorney." (Tr. 68, Mattheson). When asked for specific examples of how the petitioner has changed since the last time he testified, Pastor Mattheson said that now in their talks, the petitioner "gets emotional and shows much more remorse" than he did in the past, and he "really feels" that the petitioner should be reinstated, and "I believe that he is a different person." (Tr. 72-73, Mattheson). Based on what the petitioner has said, he feels the petitioner is contrite and sorrowful, and has repented. (Tr. 73-74, Mattheson).

While we found Pastor Mattheson generally credible, he was relying solely on what the petitioner said to him. He did not appear to know the petitioner prior to his suspensions and

could not testify to a change in his personality or behavior. Less weight is accorded to witnesses (and letter writers) who are unable to distinguish a petitioner's pre- and post-discipline character. E.g., Matter of Hiss, 464 Mass. at 464, 1 Mass. Att'y Disc. R. at 137-18. Conversely, much more weight is given to the testimony of a witness who knew the petitioner both before and after his misconduct and has witnessed his rehabilitation. E.g., Matter of Sheehan, 35 Mass. Att'y Disc. R. 528 (2019). Pastor Mattheson was also not aware of the deficiencies in the petitioner's Reinstatement Questionnaire, nor did he know the specifics and particulars necessary for a successful reinstatement effort.

The petitioner submitted two letters, one from Michael M. Martel, Esq. (Ex. 6 at E0345) and one from Mark C. Hooper, Esq. (Ex. 6 at E0347). We take administrative notice of the fact that these are the same two letters that the petitioner submitted in connection with his 2021 reinstatement petition. Given the deficiencies in these letters as noted by the second reinstatement panel,[8] it is unclear to us why the petitioner resubmitted them.

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). Like the second reinstatement hearing panel, we place little reliance on these letters; they are terse and

[8] We quote from the second hearing panel's report: "Martel wrote that he and the petitioner met in approximately 2012, after which the petitioner began to regularly contact him to consult about immigration cases. Ex. 1 (044). Several years later, the petitioner informed Martel that his license had been suspended, and "shared the details that led to his suspension." Id. Martel offered no specifics about these details, nor about how, if at all, the petitioner has reformed himself morally since the misconduct, observing simply that he believes the petitioner "understands his errors and he will be more attentive to ethical rules in the future," and that the petitioner is "prepared to competently and ethically represent clients" in the area of immigration law. Id. Hooper's letter is virtually identical, using, in many cases, exactly the same wording, and is equally unilluminating. Ex. 1 (45-46)." (Ex. 12 at ES0469).

conclusory and reveal virtually nothing about the petitioner's moral redemption. "None of the witness testimony or letters demonstrate a clear and comprehensive understanding of the petitioner's conduct that led to his discipline. Thus, their opinions about his current fitness to practice law carry little weight." (Ex. 12 at ES0470).

4. Conclusions About Moral Fitness

The corrected Questionnaire (Ex. 27) fails to accurately and fully review and describe the petitioner's misconduct. We are not required to synthesize the petitioner's documents (particularly since he sought to withdraw Ex. 1), to create a "most favorable" version for him. We would like to assume it is not an attempt to backtrack from the admission. However, it is the petitioner's burden of proof to meet and, if we accept Ex. 27 on its face, it means he has not evidenced moral reform and insight. Failure to disclose all matters on the reinstatement questionnaire reflects poorly on the petitioner's moral character. See Matter of Weekes, 31 Mass. Att'y Disc. R. 678 (2015). Accordingly, we cannot recommend him for reinstatement.

We add a few observations to our conclusion that the petitioner does not yet have the moral character necessary for reinstatement. It appears to us that the petitioner has benefitted greatly from therapy, and we note that both he and his therapist were specific and detailed about what he has learned and how he has applied his understanding to his past misconduct and his relationships with others. While he has made strides in this regard, we are concerned about two things: first, the basis for Brunault's opinion about his progress, which appears to rest exclusively on the petitioner becoming emotional when discussing matters (i.e., that they have shed a lot of tears). Second, Brunault appears to condition her recommendation about the petitioner on his continuing therapy. Once a petitioner is reinstated, the Board and the Court largely lose control over him. To the extent that Brunault's opinion appears to be that the petitioner is fit to be reinstated only if he has the continued support of therapy, and since he has

no other close support network, we consider this to be too tenuous, particularly in light of the petitioner's other failings as noted later in this report.

We reiterate Brunault's testimony has not convinced us of the petitioner's moral fitness. Since we would recommend against reinstatement because of the petitioner's failures on the remaining two prongs of the reinstatement standard, our recommendation would be the same, even if we had more confidence in the basis for Brunault's opinions.

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."

It is unclear whether, since his second reinstatement hearing, the petitioner has taken any legal education courses. His testimony was unclear in that regard (Tr.138-140, petitioner), and his Reinstatement Questionnaire (Ex. 27) failed to provide the required information.

Where Section G of the Questionnaire says to list all courses taken and, as to each, list the name of the course, the sponsor of the course or program, and the dates of attendance, the petitioner wrote as follows:[9]

1) Online search and Reviews.
2) WebMar Training.
3) IOLTA Trust Fund. Attended a class given by the Bar on May 2, 2019.

Likewise, where the Section H of the Questionnaire says to "List by name and author, if applicable, all periodicals, newspapers, and books to which you have regularly subscribed or which you have read which you believe have assisted you in acquiring or maintaining learning in the law and knowledge of your ethical obligations," the petitioner wrote the following (spelling, capitalization and punctuation in the original):

[9]The Questionnaire also instructs the petitioner to attach certificates of attendance. None were attached, but the petitioner testified he sent them to his counsel. (Tr. 173, petitioner). The references to "WebMar" is a typographical error and should have said "webinar." (Tr. 175, petitioner).

1) Attended at least 9 Webmar Training with 12 CLEs on different areas of the Law;
2) Massachusetts Lawyers Weekly. Reading the latest decision on law in Massachusetts;
3) Reading the AILA publications (American Immigration Lawyers Association) on the latest in Immigration law and changes;
4) Visiting the Lawrence District court attending Motion Hearings and watching trials;
5) Meeting with my former Immigration Mentor, Michael Martel and discussing the latest in Immigration changes.

(Ex. 27 at pp. 4-5; see Tr. 174-175, petitioner). He conceded that he failed to provide the required information concerning the dates and names of courses he took. (Tr. 176-177, petitioner).

Of greater concern for us is the petitioner's failure to understand the requirements of trust accounting and the required three-way reconciliation. His first two suspensions both resulted from his misuse of client funds in his IOLTA account. (Tr. 31-32, 86, petitioner). To us, he freely admitted his lack of familiarity with three-way reconciliations regarding IOLTA accounts. (Tr. 207, petitioner). Initially, the petitioner had said he would like to avoid having an IOLTA account altogether, but that is no longer true. (Tr. 207, petitioner).

A lack of knowledge in trust accounting constitutes a failure to meet the requirement to demonstrate "competence and learning in the law." E.g., Matter of Vespa, 33 Mass. Att'y Disc. R. 476 (2017) (reinstatement denied because he lacked a knowledge of trust accounting, despite having competence and learning in substantive law). In Matter of Passalacqua, 34 Mass. Att'y Disc. R. 471 (2018), the petitioner stated an intention to structure his billing to avoid needing an IOLTA account. Reinstatement was denied because it may not be conditioned on the attorney agreeing not to handle trust funds, because there is a fundamental disconnect between holding out an attorney as trustworthy while not trusting him to handle others' money. See Matter of Shyavitz, 26 Mass. Att'y Disc. R. 612 (2010).

Here, the petitioner continues to fail to demonstrate a sufficient understanding of the

requirements of trust accounting. The petitioner bears the burden of proof and he has failed to meet that burden of demonstrating learning in the law sufficient to permit us to recommend his 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).

We conclude that the petitioner has not met this criterion. First, his failure to understand trust accounting—particularly where two of his suspensions derived from misuse of trust funds—compels the conclusion that it would not be in the public interest to allow him to handle client funds. The Court has said that a lawyer who is not fit to handle client funds is not fit to be reinstated. Matter of Shyavitz, 26 Mass. Att'y Disc. R. 612 (2010).

Second, the many errors and generally poor nature of the petitioner's substituted Reinstatement Questionnaire also mean that it is not in the public interest to reinstatement him.[10]

[10] Among other things, his affidavit says " . . . the foregoing Reinstatement Questionnaire is true and correct tot eh [sic] best of my knowledge;" (Ex. 27 at p, 11), which error also existed in his original Questionnaire (Ex. 1 at ES0012). In section 1.B of both documents, he refers to a "conflict on interest" instead of a "conflict of interest." In section 2.A of both documents, he misspelled the name of his employer as "Peabody Auto Collission Corp." (See Tr. 181, petitioner; the misspelling of "Collision" was

His descriptions of the misconduct that led to his suspensions, while more fulsome than in the past, were nevertheless replete with substantive errors and omissions, as well as errors in spelling and punctuation. (Ex. 27, at p. 2).

The current Questionnaire does not list the claim paid out by the Clients' Security Board, while the 2021 Questionnaire did so. (Tr. 171, petitioner; Ex. 6 at S0307 and ES0331). He was required to list all bank accounts on his Questionnaire, yet he failed to list the very account from which he wrote the check to pay the reinstatement fee. (Tr. 185-187, petitioner).[11] He was also unable to explain his source of income. (Tr. 187-190, petitioner). His only outside employment since 2021 was Peabody Auto Collision; however, even when he submitted his corrected Questionnaire (Ex. 27), he did not provide the required disclosure of his reasons for leaving (Tr. 160-161, petitioner), even though he had done so in his 2021 Reinstatement Questionnaire. (Ex. 6 at ES0306). As noted above, his Questionnaire did not correctly or completely describe his translation-related services. (Tr. 166-170, petitioner). His income tax returns suggested he donated his entire income to charities, including both Pastor Mattheson's church and an orphanage in Honduras and a ministry in Africa. (Tr. I 187-191, petitioner). We simply do not understand how the petitioner can live if he donates his entire income to charities, something that he was unable to explain. He said he reported rental income from his house on his tax return, but was unable to explain where it was to be found. (Tr. 194, petitioner). In fact, he was unable to

not discussed). One would have hoped that, since he filed an amended Questionnaire, he would have corrected the errors in the prior version of the same document.

[11] His explanation for the omission does not aid him. The petitioner said he misread the question and thought it meant "safe deposit boxes or stuff like that," but "[n]ot necessarily a bank account." (Tr. 206, petitioner). However, both questions 2.H(2)(a) and (2)(b) of part II of the Reinstatement Questionnaire require the information about all "accounts," and (2)(a) specifically says "financial institutions in which you are or were a signatory to accounts."

explain the source(s) of his 2020 income. (Tr. 196, petitioner).[12]

In good conscience, we cannot recommend that he be reinstated. See generally Matter of McPhee, 34 Mass. Att'y Disc. R. 315, 343 (2018) (denying reinstatement; "Whether analyzed as moral shortcomings or failures of competence, we conclude that the petitioner's careless approach to answering the reinstatement questionnaire and his ill-advised monitoring agreement show that he is not ready for readmission.").

V. Conclusions and Recommendation

Based upon the petitioner's written submissions and his own testimony, we recommend that the petition for reinstatement of Ernest A. Solomon be denied.

Respectfully submitted,
By the Hearing Panel,

Richard C. Van Nostrand
Richard C. Van Nostrand, Chair

Frank E. Hill, III
Frank E. Hill, III, Member

Ernest L. Sarason, Jr.
Ernest L. Sarason, Jr., Member

Dated: June 17, 2024

[12] Because the petitioner's tax returns are impounded, we cite only to the unimpounded testimony concerning them.