

IN RE: CARLOS M. GOMEZ

NO. BD-2001-042

S.J.C. Order Denying Reinstatement entered by Justice Cypher on November 15, 2019.¹

Page Down to View Hearing Panel Report

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

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

In the Matter of

CARLOS M. GOMEZ,

Petition for Reinstatement

SJC No. BD-2001-042

HEARING PANEL REPORT

I. Introduction

Represented by counsel, on February 11, 2019, Carlos M. Gomez (the “petitioner”) filed a petition for reinstatement with the Supreme Judicial Court from an order of indefinite suspension the Court entered on March 5, 2003, retroactive to July 26, 2001. Matter of Gomez, 19 Mass. Att’y Disc. R. 182 (2003). The petition was opposed by bar counsel.

We received the evidence at a hearing on July 17, 2019.

The petitioner testified on his own behalf and called one witness, a former colleague practicing in Springfield, MA. Bar counsel called no witnesses. Twenty-five exhibits were admitted into evidence, some subject to a protective order.¹ 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 possesses “the moral qualifications, competency, and learning in the law required for admission to practice

¹ The petitioner’s tax returns and documents concerning his treatment for addiction, including those related to his claims under a disability policy, are impounded exhibits. In this report, therefore, we recite our findings and conclusions, supported by citations to the pertinent sections of the impounded exhibits, but we refrain from reciting the evidentiary details contained there except to the extent they were discussed at the public hearing.

law in this Commonwealth, and that his or her resumption of the practice of law will not be detrimental to the integrity and standing of the bar, the administration of justice, or to the public interest.” S.J.C. Rule 4:01, § 18(5); Matter of Daniels, 442 Mass. 1037, 1038, 20 Mass. Att’y Disc. R. 120, 122-123 (2004) (rescript). See Matter of Dawkins, 432 Mass. 1009, 1010, 16 Mass. Att’y Disc. R. 94, 95 (2000) (rescript); Matter of Pool, 401 Mass. 460, 463, 5 Mass. Att’y Disc. R. 290, 293 (1988). Rule 4:01, § 18(5) establishes two distinct requirements, focusing, respectively, on (i) the personal characteristics of the petitioner; and (ii) the effect of reinstatement on the bar and the public. Matter of Gordon, 385 Mass. 48, 52, 3 Mass. Att’y Disc. R. 69, 73 (1982).

In order to determine whether or not the petitioner has met that burden, a panel considering a petition for reinstatement “looks to ‘(1) the nature of the original offense for which the petitioner was [suspended], (2) the petitioner’s character, maturity, and experience at the time of his [suspension], (3) the petitioner’s occupations and conduct in the time since his [suspension], (4) the time elapsed since the [suspension], and (5) the petitioner’s present competence in legal skills.’” Daniels, 442 Mass. at 1038, 20 Mass. Att’y Disc. R. at 122-123, quoting Matter of Prager, 422 Mass. 86, 92 (1996), and Matter of Hiss, 368 Mass. 447, 460, 1 Mass. Att’y Disc. R. 122, 133 (1975).

III. Disciplinary Background

The following disciplinary history is based on the published summary of the petitioner’s discipline, Matter of Gomez, 19 Mass. Att’y Disc. R. 182, S.J.C. No. BD-2001-042 (2003), available on the Board’s website at <https://bbopublic.blob.core.windows.net/web/f/bd01-042.pdf> and before us as part of exhibits 1, 2, and 9.

In 2003, under a stipulation with bar counsel, the petitioner agreed to an indefinite suspension, retroactive to his temporary suspension in 2001. On February 10, 2003, the board voted to accept the stipulation, and the Court accepted the board’s recommendation by its order of March 5, 2003.

The indefinite suspension arose from the petitioner's complete abandonment of his practice in 2001.

The petitioner's abandonment left his practice in disarray, with numerous cases neglected and incomplete and numerous clients with funds owed to them. Matters neglected included a real estate closing that had to be rescheduled with another closing attorney, other real estate cases that required post-closing work to resolve creditor claims, personal injury cases that were settled but in which funds received could not yet be disbursed, and several bankruptcy cases in which fees had been received but cases had not been filed.

After this abandonment, the petitioner failed to respond to bar counsel's efforts to contact him, including a subpoena. The Court ordered the petitioner's temporary suspension on July 26, 2001. The Court also appointed a commissioner to dispose of the clients' files and over \$50,000 in funds remaining in two trust accounts.

The appointed commissioner found the petitioner's records to be inadequate, leaving the commissioner unable to account for or to determine the correct recipient of funds in the trust accounts. Not all clients mentioned in the petitioner's financial records or making claims against the petitioner could be matched to client files, and some client files were incomplete. Some of the claimants sought funds withheld from personal injury settlements to pay liens or third parties; some clients said they had paid flat fees and not received all services; one client sought funds withheld from a real estate closing for the payment of taxes and another sought the return of a real estate deposit on a closing that did not go forward.

By order of the Court, the commissioner paid four clients and, in May 2002, deposited the remaining funds with the Clients' Security Board to cover additional client claims. Clients seeking payment were notified to contact the CSB for determination of their claims.

The petitioner's abandonment of his practice, failure to take required actions on withdrawal, and failure to cooperate with bar counsel violated Mass. R. Prof. C. 1.1 (competence), 1.2 (a) (pursue the client's lawful goals), 1.3 (diligence), 1.4 (communications

with and explanations to the client), 1.16 (c) - (e) (duties on withdrawal), and 8.4 (h) (other conduct reflecting adversely on fitness to practice), and S.J.C. Rule 4:01, § 3 (duty to cooperate with bar counsel investigation) and Mass. R. Prof. C. 8.4 (g) (same). The petitioner's failure to keep proper trust account records violated Mass. R. Prof. C. 1.15 (a), (b), and 1.16 (d).

As we discuss below, the immediate cause of the petitioner's abandonment of his practice was his addiction to crack cocaine and abuse of alcohol.²

IV. Findings

A. Moral Qualifications

The petitioner has not persuaded us that he possesses "the moral qualifications ... required for admission to practice law in this Commonwealth" S.J.C. Rule 4:01, § 18(5).

We start by emphasizing the practical burden of proof the petitioner must satisfy. His effort to persuade us that he has the requisite moral character does not start with the meter at zero, but instead in the red. The misconduct giving rise to the petitioner's indefinite suspension in 2003, which occurred when he was a mature lawyer with about sixteen years of experience, is "conclusive evidence that he was, at the time, morally unfit to practice law... ." Matter of Dawkins, 432 Mass. 1009, 1010, 16 Mass. Att'y Disc. R. 94, 95 (2000). That misconduct "continued to be evidence of his lack of moral character ... when he petitioned for reinstatement." Dawkins, *id.*; to same effect, see Matter of Centracchio, 345 Mass. 342, 346 (1963), Matter of Waitz, 416 Mass. 298, 304, 9 Mass. Att'y Disc. R. 336, 342 (1993). He bears a "heavy burden" of proving current moral fitness. Matter of Ellis, 457 Mass. 413, 415, 26 Mass. Att'y Disc. R. 158, 164 (2010), Matter of Wynn, 30 Mass. Att'y Disc. R. 470, 471 (2014), and Matter of Foley, 28 Mass. Att'y Disc. R. 331, 332 (2012).

Faced with this burden, the petitioner's testimony about reform and recovery focused too

² As the petitioner understood at the time he agreed to his suspension, the published summary of his discipline did not reference his addiction. Tr. 58-59 (Gomez); Ex. 1, at 0008-0010. His reinstatement proceedings are the first public disciplinary records connecting his professional misconduct to abuse of controlled substances.

narrowly on the date of his complete abstention from crack cocaine. Despite his purported disclaimer at Tr. 72 (Gomez), that testimony put more emphasis on that date than on his more recent abstention from alcohol and other drugs. Tr. 165-166, 175-176, 188 (Gomez). Yet the petitioner was not suspended for using crack cocaine, or any other specific drug. He was suspended primarily because he abandoned his clients and his practice. The petitioner needs to demonstrate that any risk of abandonment or other ethical lapse is no longer substantial enough to bar reinstatement. He has not done so because he has not persuaded us that his remission is reasonably permanent or he has attained insight into why he put his clients at risk by turning to drugs and alcohol, and he has not shown complete moral reform because of, among other things, the absence of any expressions of remorse for the harm he caused.

Personal History: Petitioner's Personal and Professional Successes Before Abandonment

The petitioner comes from a family that succeeded socially and financially in the United States after escaping the Communist revolution in Cuba. Tr. 11-14 (Gomez). Tr. 12, 13-17, 18, 19-20, 138 (Gomez). He did well in high school, academically and in school sports. Tr. 19-22 (Gomez). He also did well in college. Tr. 23-28 (Gomez). During college he "smoked pot, and it was pretty common in college. There was marijuana and drinking, but [he] pretty much held off until towards graduation, and [he] did indulge, but nothing... dysfunctional." Tr. 28 (Gomez). At Columbia Law School he did "[n]ot that well, actually, but not that poorly." Tr. 28 (Gomez). During this time his parents separated, and he had a falling out with his father.

After summer internships, his admission to the bar in 1985, and about six years working in law firms, Tr. 29, 32-35 (Gomez); Ex. 2, at -0017, in 1991 he opened his own firm, where he was principal until he abandoned his practice in 2001. Tr. 37-39 (Gomez). He attempted to manage the growing volume of work he was generating by leveraging paralegal staff and technology and hiring a series of associates. Tr. 39-41 (Gomez).

We credit the petitioner's evidence that he was a well-regarded and accomplished attorney before his fall, who engaged in community-oriented and charitable work. Tr. 41-43, 48-

49 (Gomez) (charitable activities pre 2001); Ex. 2, at -0022 to -0023, -0033.

Substance Abuse and the Petitioner's Downward Spiral

The petitioner's abuse of alcohol and crack cocaine started around 1999 or 2000 with after-work drinking in a local bar, where he was introduced to cocaine. Tr. 50-51, 98-99, 106 (Gomez). His introduction to the "anesthetic" like properties of crack cocaine resulted in increasing absences from the office. Tr. 54 (Gomez). We credit that his substance abuse was a substantial contributing cause of his ethical violations, and that his substance abuse reached crisis proportions during a difficult time in his life. Tr. 54, 96 (Gomez); Ex. 2, at -0018 to -0019, Ex. 3, at -0079, -0080. Specifically, his complete abandonment of his clients was fueled both by his perceived need for "self-medication" and by that self-medication using crack cocaine and alcohol. Tr. 55, 96-98 (Gomez); Ex. 2, at -0018 to -0019, Ex. 3, at -0079, -0080.

Continuing Substance Abuse During Suspension

That abuse of substances continued well into the petitioner's suspension. He was still relapsing into use of crack cocaine as he prepared in 2015 to start the reinstatement process by preparing for the 2016 Multistate Professional Responsibility Examination and as he was preparing his petition for reinstatement in 2017. Tr. 176-178, 179 (Gomez); Ex. 2, at 0026, 0046; Ex. D/15, at -0329, -0356 to -0357.³

We credit that petitioner last used crack cocaine around April 2017. Tr. 72, 73 (Gomez); Ex. 3, at -0080; Ex. D/15, at -0275 (6/15/2017), -0203 (1/9/2019), and -0194 (3/22/2019). Nevertheless, the petitioner was overly optimistic in describing himself as having held his substance abuse "in check" for "the vast majority of the past ten years," given his extended

³ The parties listed the impounded exhibits on their joint list of agreed exhibits using numeric exhibit identifiers (portions of exhibits 3 and 11 and exhibits 14 through 16, inclusive) while the impounded documents were offered into evidence at the hearing bearing alphabetic identifiers. (A through E, inclusive). The parties confirmed the correspondence between letter and number identifiers. Tr. 4-6, 92-94. For the convenience of the reader, we identify the impounded exhibits by both their alphabetic and their numeric identifiers in this format: Ex. [letter designation]/[numeric designation] at I-[numeric portion of the Bates number of pertinent page].

history of relapse.⁴

Even after he started his now two-years-plus abstention from crack cocaine, and even after first applying for reinstatement on May 30, 2017 (Ex. 11), he continued to use other substances: marijuana, alcohol and, on at least two occasions, in August and September 2018, powder cocaine. Ex. D/15, at -0266 (8/17/2017) (dates are of therapy sessions), -0263 (9/7/2017), -0257 (10/19/2017), -0254 (11/21/2017), -0248 (1/9/2018), -0242 (3/1/2018), -0236 (4/17/2018), -0233 (5/10/2018), -0227 (6/21/2018), -0218 (9/5/2018), -0215 (10/2/2018); and see Tr. 166-173, 175 (Gomez) (while attributing his use of powdered cocaine to social contact with a woman user, the petitioner also identified triggering stressors at the time; and he acknowledged his use of marijuana). Further, the use of drugs other than crack cocaine as disclosed in his treatment records appears to be somewhat more extensive than he acknowledged in his testimony before us. Contrast Ex. D/15 (at passages just cited) with Tr. 73, 174 (Gomez). The petitioner acknowledges that his use of marijuana and alcohol helped him stave off urges for cocaine. Tr. 174-175 (Gomez).

The petitioner, therefore, has suffered from a long-standing dependency on a variety of substances including crack cocaine, alcohol,⁵ marijuana, and powdered cocaine.

⁴ The petitioner testified to about a year of sobriety sometime around 2003, but he “fell back” into use around 2004. Tr. 60-61 (Gomez). The records of his therapy sessions before us, starting in 2010, disclose repeated incidents of relapse. Ex. 3, at -0080. Contrast, e.g., Ex. D/15, at -0266 (8/17/2017), -0329 to -0330 (3/8/2016), -0332 to -0333 (2/18/2016), -0338 to -0339 (12/22/2015), -0341 (12/1/2015), -0344 (10/28/2015), -0347 (10/5/2015), -0350 (9/22/2015), -0353 to -0354 (9/1/2015), -0356 (8/13/2015), . . . -0437 to 0438 (8/27/2013), -0440 (7/30/2013), -0443 to -0444 (6/5/2013), -0446 to -0447 (4/24/2013), -0449 to -0450 (3/21/2013), -0453 and -0455 to -0456 (2/27/2013), -0461 (12/21/2012), -0464 to -0465 (12/7/2012), -0469 (10/31/2012), -0478 (8/3/2012), -0486 (7/20/2012), -0490 (11/10/2011), -0499 (11/4/2011), -0501 (7/20/2011), -0506 to -0507 (7/8/2011), -0509 (6/20/2011), -0512 (5/12/2011), -0526 (10/4/2010), -0529 (9/20/2010), -0532 (8/17/2010), -0535 (6/15/2010), -0541 (6/3/2010). Not all pertinent sessions are listed here; as above, dates are of therapy sessions.

⁵ In 2008, about five years into his suspension, he was arrested for, charged with, and (we infer) admitted to sufficient facts for a finding of guilt on charges of operating under the influence and possession of cocaine, charges which were continued without a finding on probationary terms. Tr. 69 (Gomez); Ex. 2, at 14, 0067 to 0069. The petitioner’s response to the reinstatement questionnaire, part two, acknowledges that he “was incapacitated by virtue of [his] abuse of alcohol and crack cocaine. . . .” Ex. 3, at -0079. As far back as we have records, the petitioner’s abuse of alcohol was a major component of the petitioner’s diagnosis, Ex. C/14, at -0139, -0142, and it remained so for years. Ex. D/15 at, e.g., -0207 (12/31/2018).

The Limited Evidentiary Weight of the Petitioner's Assessment of His Own Recovery

The petitioner's self-assessments about the strength of his recovery are of limited evidentiary weight. As noted above, he began to prepare for reinstatement in 2015, a year when, his therapist indicated (and the petitioner now agrees), he was not yet ready to return to work because of the risk he continued to pose to his clients. Tr. 183-185 (Gomez); Ex. C/14, at 0156. His first petition for reinstatement, dated May 2017, was filed before he had established more than a month or so of sobriety from crack cocaine. He had to be talked out of pursuing that first petition by bar counsel, primarily because of his lack of CLE and issues about the strength of his recovery, and on reflection he now realizes that at that time his recovery was not strong enough.⁶ Tr. 84-85, 157-159 (Gomez); Ex. 22. We do not doubt the sincerity of the petitioner's belief that he has been on a steady arc towards recovery and that he is literally terrified of using again and losing his new-found sense of serenity. Tr. 230-231 (Gomez). We are mindful, however, that before 2017 he did not consistently stop using crack cocaine even when his use caused him remorse and depression, leading to more drinking. Tr. 115 (Gomez).

The records and testimony before us demonstrating complete abstention from all controlled substances and alcohol, based to a large extent on the petitioner's self-reports to his therapist, are of only recent vintage. The first records we have to this effect are dated after November 15, 2018, contrast Ex. D/15, at -0209 and at -0200, and the petitioner acknowledges use of marijuana and alcohol during the Christmas holiday period at the end of 2018. Tr. 174, 192 (Gomez). In fact, the petitioner did not finally dispose of the cell phone connected with his drug usage until February 2019, at least four months after he purportedly cut off his relationship with the woman who had induced him to use powdered cocaine in August and September 2018.

⁶ When he first petitioned, his tax returns described his occupation as "disabled," and he was collecting proceeds of a disability policy; bar counsel expressed some concern about that, also. Tr. 84-85, 157-159 (Gomez); Ex. 22. We credit the petitioner's testimony suggesting that he considered himself "disabled" from his job for disability insurance purposes (and, therefore, for the purpose of tax returns reporting the receipt of disability insurance proceeds) for as long as he is suspended, and that calling himself that in connection with his insurance is not equivalent to saying he is still disabled by his addiction. Tr. 186-187 (Gomez).

Tr. 83, 222-224; Ex. D/15, at 0197.

Absence of Persuasive Expert Opinion About Permanence of Remission and Recovery

We were presented with no live expert testimony to support a claim that the petitioner's complete abstention is reasonably likely to endure. A therapist's letter concerning the insignificance of his use of powder cocaine in August and September 2018 (Ex. 17) does not mention his use of marijuana and alcohol to stave off urges for cocaine. The therapist's letter fails to address the stability of the petitioner's sobriety in the context of a near-two-decades-long pattern of relapse, especially where the petitioner has been in remission for extended periods in the past. Tr. 204 (Gomez) ("There were prolonged periods of abstinence, but it came back...."). See also n.4, above (about a year of sobriety circa 2003-2004), and Tr. 57-58 (Gomez) (petitioner was successful in remaining sober for about a year around 2001 or 2002 when he went to live with his mother and attended rehab).

In this connection we reiterate that it is the petitioner's burden to show current moral fitness and, therefore, reform from the unfitness established by his indefinite suspension. See cases cited at 4-5, above.

Lack of Insight into Root Causes of Misconduct

In addition to our doubts about the solidity of the petitioner's remission/recovery from substance abuse, we were presented with no evidence of sustained and successful therapy for whatever psychological conditions contributed to the petitioner's dependency on substance abuse and his resulting abandonment of clients. We do not suggest that such therapy is required in every reinstatement involving addiction, especially if recovery and a reformed character have been persuasively shown. In this case, however, those two features are lacking, and the absence of demonstrated insight into the cause of addiction weighs against reinstatement.

We credit that the petitioner's marriage was failing both before and for approximately three years after (2001-2004) his abandonment of his practice and his clients. Tr. 31, 49-50 (Gomez). Nevertheless, and although the petitioner's testimony suggested a link between his

law practice and the failure of his marriage, Tr. 31, 49-50, 209 (Gomez), there is no evidence that the petitioner has used therapy to examine the failure of his marriage and how it, or the causes that led to it, might have contributed to his dependency on and abuse of controlled substances.

The petitioner briefly noted the possibility of a connection between his addiction and verbal abuse as a child, but that was only briefly noted in passing, and we heard no evidence that this was addressed or resolved in therapy.⁷ Tr. 18-19 (Gomez).

Nor do we have any evidence explaining why the petitioner “had an inability to say no” (Tr. 210 (Gomez)) and felt driven to work sixty- to seventy-hours work weeks, with the resulting negative impact on his marriage. Tr. 49-50 (Gomez). We do not know why he was so unsuccessful in hiring associates, resulting in his excessive hours at work and away from his family. Tr. 48-49 (Gomez) (ten associates over nine years, none of whom worked out). Furthermore, when questioned about the personal relationships that had contributed to his cocaine use, his most coherent response about how he would handle this situation in the future was “Hopefully, this second therapist can help me with this if something comes up in a new relationship and how to address whatever might entangle my mind as to what might happen in the future.” Tr. 228 (Gomez). A petitioner for reinstatement, asked about future risks, ought to be able to demonstrate at least as much insight into what has caused his previous lapses as his hope that a therapist will help him to gain insight in the future.

We are not convinced that the petitioner has accepted any explanations for his tendency to substance abuse, or that any such root cause has been addressed successfully. He notes that he was feeling “completely empty inside” when he reached out to Lawyers Concerned for Lawyers in 2000 for a referral to a psychiatrist; he does not know why he felt that way, and his referral to a psychiatrist did not provide answers. Tr. 50-51 (Gomez). He sought help for his budding use

⁷ The petitioner gave some vague testimony about “connecting some of the dots” around the time a therapist talked to him about verbal abuse. Tr. 58, 67 (Gomez). He did not explain what he meant by that, or what the “dots” were that he or his therapist connected.

of cocaine, but there is no persuasive evidence that he sought help probing and understanding the underlying psychological causes of his sense of emptiness and need for self-medication.⁸ Tr. 51-52 (Gomez). The triggers the petitioner has identified for his relapses bear little resemblance to his circumstances in 2000 and 2001 when he spiraled downward into abandonment. Tr. 77-79 (Gomez) (two brothers, one of whom used to encourage him to drink, and female acquaintances from the suburbs who used with him in his home). We note our concern that even when he first sought psychiatric help, he was not seeking insight and resolution, but instead he hoped that a psychiatrist would “give [him] a pill or something.” Tr. 50-51 (Gomez).

The records before us of therapy post-abandonment are behavior-oriented. They provide no insight to us and, we necessarily infer, to the petitioner, about the causes of his substance abuse. The petitioner’s response to the reinstatement questionnaire dates the beginning of his drug and alcohol dependency to a period of job dissatisfaction arising, at least in part, from taking on too much work to the detriment of his family life and, as a result, the disintegration of his marriage. Ex. 2, at 0018 to -0019. The petitioner’s testimony pointed to his failing marriage as part of the circumstances leading to his abandonment of practice. Tr. 51, 53, 80 (Gomez). We saw no evidence that the petitioner now understands why he took on too much work at the cost of his family life, and we are not persuaded that he has attained the insight that will empower him to keep his promise to us that he would not again overburden himself with work and thereby put his clients at risk. Tr. 88, 212 (Gomez). His vague references to unsuccessful therapy and inability to find local resources before abandoning his practice do not fill that void. Ex. 2, at 0018.

⁸ We do not credit the petitioner’s testimony suggesting that he tried to understand his sense of emptiness and, hence, his addiction. Tr. 51 (Gomez). His testimony disclosed repeated rejection of insights offered by therapists: “Then *I thought* maybe it was something in me, They said no. They gave me tests. They referred me to domestic relations counsellors, and *I didn’t think that was it.*” Id. (emphasis supplied). His response to a referral by LCL to a domestic practitioner was “[N]o, *you’re not listening to me*, I have problems, I’m using cocaine.” Tr. 51 (emphasis supplied). He was urged to attend “meetings” (presumably AA or NA) and succeeded in avoiding alcohol for a few months, Tr. 52 (Gomez), but he offered no explanation why he did not stay the course and remain sober.

The petitioner testified that he is now seeing a second psychotherapist at the urging of his counsel, but his description of that therapy did not provide insight into the dynamics of his addiction and abandonment, or how to avoid their recurrence. Tr. 210-211 (Gomez). There was the barest glimmer of insight when, asked how he will balance off the care he provides to his family members with his work obligations, he said: "When I mentioned the two things that drove me, the desire to save the world and economic viability, I certainly will be much more circumspect in the cases I take, because I have an independent source of income." Tr. 212 (Gomez). The "independent source of income" piece of this does not address the vaguely referenced "desire to save the world." Nothing in the transcript unpacks for us what the petitioner meant by that, or how it contributed, if at all, to his fall—whether by causing him to take too many cases, or by setting him up for professional disappointment and fatigue with the everyday reality of the practice of law, or for some other reason. Whatever he meant, we see no evidence that the petitioner has truly come to grips with this driver or with, as he put it, "trying to ... be all things to all people." Tr. 212-213 (Gomez). To the contrary, the petitioner's personal statement about returning to the practice of law, while generally commendable in its emphasis on service to the community, still resonates with the theme of being a community savior, and the threat of taking on too much in an effort to be "all things to all people" in that community. Ex. 2, at -0032 to -0033.

Lacking insight into the causes of his dissatisfaction and his addiction, the petitioner cannot provide assurance that he will avoid a serious relapse into dependency if faced with job dissatisfaction and stress. The petitioner has not proposed a strategy for dealing with work stress he cannot avoid; he appears to intend to rely on the same strategy of escape and isolation that led to his increasing use of alcohol and eventually crack cocaine in 2000-2001.⁹ Compare Tr 80

⁹ The petitioner had already fallen into a practice of escaping from work well before his complete abandonment in May 2001. Tr. 99-100 (Gomez) ("There was actually one significant one which was, I think, two weeks of time. ... Sometimes I just didn't want to go into work ... if it were a weekend, you know, it might spill into a Monday and not wanting to go into work. ... Sometimes I would just go to a motel room and shut the drapes and just sleep."). We would not typically blink at a firm principal taking time away, but here a destructive pattern

(Gomez) (“[I]f I’m back in the practice and I have a rough day, ... I would just go home.”) with Tr. 53, line 17, to 54, line 5 (“[T]he free base version [of cocaine]... took me into a world I was not accustomed to ... it was kind of like an escape, ... anesthesia.”). We are concerned that the petitioner stopped attending AA meetings simply because, as he told us, “they moved into kind of a dilapidated building.” Tr. 193 (Gomez).

In light of this lack of insight, we are not persuaded that the petitioner has attained complete and reliable reform from his dependence on self-medication with controlled substances. Rather, until only two or so years ago the petitioner appears to have satisfied himself with a “recovery” that consisted of “harm reduction,” i.e., using alcohol and crack less often and only in his home. Tr. 73-74 (Gomez); Ex. 3, at -0080, Ex. C/14, at I-0159, Ex. D/15, at I-0357, 0548, -0486, 0441. See also Tr. 180-181 (Gomez) (despite continued use in intervening years, first petition for reinstatement, filed in 2017, stated that last major relapse was in 2008; “last major relapse” meant last use with adverse repercussions). Unfortunately, clients can be abandoned as completely by an attorney self-medicating at home as by an attorney self-medicating outside of the home, and that is true whether the abandoning attorney is abusing crack cocaine, powdered cocaine, marijuana, or alcohol.

Absence of Objective Evidence of General Moral Reform; Lack of Remorse

Our determination that the petitioner has not demonstrated the required reform is buttressed by the absence of evidence that the petitioner has attained an overall “state of mind” constituting true “reform.” See Waitz, 416 Mass. at 305, 9 Mass. Att’y Disc. R. at 343.

The petitioner has shown commendable care for members of his family, and that has resulted in some undefined collateral benefit to others. Tr. 160-163 (Gomez); Ex. 2, at -0023. In

emerged. In addition, we are concerned about the petitioner’s response to a panel member’s question asking what he has learned about managing stress and his relationships with others. Among other things, he said: “... I’m not looking to go out and meet people, unless it’s connected to something like a charitable event or something that’s akin to what is productive. I don’t see any lifestyle in socializing just for socializing sake. Maybe that sounds like I have been a recluse... And, hopefully, this second therapist can help me with this if something comes up in a new relationship and how to address whatever might entangle my mind as to what might happen in the future.” Tr. 227-228 (Gomez).

addition, the petitioner testified before us to occasional assistance he has provided elderly neighbors with snow removal. Tr. 163-164 (Gomez). Before the petitioner's suspension, he engaged in community-oriented activities. Ex. 2, at -0022 to -0023. These carry some weight; but on this record, where our focus is current moral fitness, they do not suffice.

The petitioner testified that, at least since 2008, he has tended to responsibilities when he had them. Tr. 189-190 (Gomez). Yet, the petitioner's reduction in substance abuse and the anticipated correlative reduction in the effect on the petitioner's ability to function have not been tested by the hard experience of earning a living by service to clients. Since 2005, the petitioner has subsisted primarily on the proceeds of a disability policy.¹⁰ Tr. 65-69, 121, 128-130, 133-140, 145- (Gomez); Ex. 3, at -0071 to -0072, Ex. A/3 (tax returns from 2009 to 2017, inclusive) and Ex. 16/E (tax return for 2018). We are not persuaded that the petitioner made more than a half-hearted effort to obtain employment as a paralegal. Tr. 88,152-154 (Gomez) (accepted word of a single Springfield-area practitioner and his "idea" of the Springfield/Holyoke legal community that if he were hired as a paralegal, he would spend his time doing translation work, and he has a "feeling" that doing paralegal work would be a step backward). The petitioner acknowledged that he could have been more productive during his suspension. Tr. 151-152 (Gomez). In short, perhaps since 2008 the petitioner has consistently tended to such responsibilities as he had because he was then already on his way to recovery, but perhaps the responsibilities he did have did not realistically test the extent of his recovery.

The petitioner's answers to the reinstatement questionnaire and his testimony do not indicate that he has attained a reformed state of mind in which concern for the interests of the individual clients are now paramount and can be relied on to act as counterweight to any desire to self-medicate with drugs or alcohol.

¹⁰ We note some inconsistency as between the petitioner saying that part of the reason he did not seek regular employment was his substance abuse, Tr. 202-203 (Gomez), and the testimony, just noted, that since 2008 he has attended to responsibilities when he had them. His effort to reconcile these two positions by saying that he was concerned about his ability to maintain a regular schedule, Tr. 203, is unpersuasive.

The petitioner showed no remorse for the mess he left for his clients, his staff, bar counsel, the commissioner, and the CSB—including the accounting mess.¹¹

The abandonment of his practice unfairly imposed on his staff to keep the office running in the (disappointed) expectation that he would return; it caused chaos and hardship to his clients; and it unfairly imposed on bar counsel, the court-appointed commissioner, and the Client's Security Board to sort through that chaos and make restitution to clients whose funds languished in his trust accounts after his abandonment. Yet his response to the reinstatement questionnaire hardly acknowledges these hardships and impositions, while taking some unwarranted credit for restitution that others effectuated:

While I undeniably neglected the needs of numerous clients and my employees, I take some solace in the fact that I never attempted to access funds from my clients, nor did I steal money from anyone else. All of my clients were ultimately able to be compensated for any monetary loss that they had suffered, since I had an approximately \$50,000 surplus balance in my office accounts at the time of my abandonment. (Ex. 2, at 0019)

I am acutely aware of the fact that I abandoned a thriving practice nearly eight years ago and left many clients and employees in a state of bewilderment to say the least. (Ex. 2, at 0030).

Despite the petitioner's purported "acute awareness" of his "undeniabl[e] neglect[...]," his "Personal Statement" in part one of the reinstatement questionnaire (Ex. 2) and his "Additional Statement" in part two (Ex. 3) are void of expressions of contrition. Instead, they appear to attempt to "zero out" his misconduct with his pre-suspension community work and suggest that he has already paid his debt. Ex. 2, at -0033.¹² He expressed an intention to rebuild

¹¹ The petitioner appears to have restricted his testimony about "remorse" to remorse over using drugs. See Tr. 115 (Gomez): "I can tell you the depression came after using because I was remorseful about what I was doing when I was under the influence. Not that I had any specific activity that I was focused on. It was just the use itself that made me remorseful."

¹² "Despite my past abandonment and addictive illness which began in April of 2001, ... I dedicated substantial resources, often on a pro bono basis, to the Western Massachusetts Hispanic community." Id

his practice based on the large clientele he once had. Ex. 2, at -0030 to -0031. Yet he has not explained what he might need to do to regain their trust and, in fact, did not even mention his former clients when describing the trust he has to rebuild as part of his recovery.¹³ Tr. 204-207 (Gomez). He has not acknowledged that he should also seek his former clients' forgiveness.

His testimony does not fill the void in his questionnaire responses; it is similarly devoid of any expression of remorse for the harm his misconduct caused. At Tr. 111-113, he minimized the burdens visited on his clients, his staff, bar counsel, the commissioner, and the Clients' Security Board as a result of his failure to maintain his bookkeeping. Instead, he focused on a purported "surplus" balance of \$27,000 in his trust accounts and his conclusion that there were "no shortages anywhere."

He asks us to accept that all clients received all their funds, and that this surplus was, at least in part, merely a result of his commingling earned expenses to avoid bounced checks. We do not share his confidence in this regard because of his inability to give an *accounting* for where the "surplus" came from—and the fact that he himself claimed that only part of the surplus consisted of commingled personal funds (Tr. 112, lines 11-15). Complete client restitution is not established merely because the \$27,000 "surplus" was unclaimed, where it was not positively shown to *be* a surplus consisting solely of the petitioner's own commingled funds, rather than property abandoned by frustrated clients. We are also not persuaded that full restitution has occurred by the petitioner's vague, conclusory, and unsubstantiated assertions about purported investigations into the condition of his trust account. Tr. 112 (Gomez) ("But the IOLTA committee monitored, and I hired people to come in, and they went six months into my IOLTA

¹³ The petitioner did not mention rebuilding client trust until near the end of his testimony when, in response to a question from a panel member, he explained that his practice on reinstatement would ramp up slowly because: "I was suspended. ... You're going to have a hard time getting clients to trust you under the circumstances." Tr. 214-215 (Gomez). That is, the petitioner mentioned rebuilding client trust as an obstacle to business development, not as a part of his own reform and recovery. Yet, at Tr. 232 (Gomez), the petitioner suggests that he still has a good reputation in the Hispanic community, and that the goodwill he had built up in the community "far exceeds and of the negative consequences of [his] abandonment."

account the previous year and accepted that everything was in order.”).

On a petition for reinstatement, “making restitution ... 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. Failure to make restitution, and failure to attempt to do so, reflects poorly on the attorney’s moral fitness.” Matter of McCarthy, 23 Mass. Att’y Disc. R. 469, 470 (2007). The petitioner’s somewhat cavalier attitude towards how his clients obtained restitution, and his willingness to leave the hard work to his abandoned staff, bar counsel, the commissioner, and the Client’s Security Board, does not reflect well on the petitioner’s current moral fitness.¹⁴

Further, as noted above, even while relapsing into crack cocaine use between therapy sessions (along with occasional alcohol use), in 2015 the petitioner began the process of seeking reinstatement. The tax return he filed in April 2017, just before filing his first petition for reinstatement, described his occupation as “disabled.” Tr. 155-157 (Gomez); Ex. A/3 at I-32. This set of facts does not evidence a primary concern for client welfare.

The Petitioner’s Character Witness Does Not Allay Our Concerns

The petitioner’s character witnesses, John Dalcy, Esq., did not overcome these obstacles to a finding that he currently has the moral character required to resume practice. Dalcy, who considers himself the petitioner’s professional friend, Tr. 240 (Dalcy), spoke well of the petitioner, but his praise for the petitioner’s ethics and compassion before his fall, Tr. 243-244 (Dalcy), only heightens the mystery surrounding the causes for that fall.

Dalcy had limited contact with the petitioner during the petitioner’s suspension. Tr. 241-242 (Dalcy). He “didn’t really know what [the petitioner] went through” Tr. 240 (Dalcy) and,

¹⁴ The petition (Ex. 1, ¶ (c)) recites as follows: “Upon information and belief, Petitioner has made whole all clients ... who were injured by his abandonment [T]he disbursement of [settlement] funds was handled by petitioner’s staff ... after Petitioner’s abandonment, but before his suspension... . After investigation, the Client Security Board determined that there were valid claims” Significantly, he does not there give any credit to the work of bar counsel and the appointed commissioner. The petitioner admitted during cross-examination that he had no role in helping clients retrieve their files, and that he did not communicate with or reach out to the commissioner appointed to close out his practice. Tr. 103 (Gomez).

therefore, cannot tell us about the petitioner's personal growth during his suspension. Further, Dalcy failed to note any substantial difference in the petitioner as between 2015, when he was undeniably still disabled by addiction, and currently, and until he listened to the testimony presented to us he was not aware of the petitioner's struggles. Tr. 240, 246-247 (Dalcy). Dalcy described the appearance of the petitioner at different times, which is relevant to the petitioner's management of his specific addiction, Tr. 241-243 (Dalcy), but, as we have noted, that does not fully address the fundamental issue of ethical reform. Dalcy acknowledges that he does not know "whether [the petitioner is] ready or not ... with respect to the struggles," Tr. 245 (Dalcy), and that he has not had any discussions with the petitioner about how he has grown as a person during his suspension. Tr. 248 (Gomez). Indeed, Dalcy's testimony culminated with his suggestion that "it might be good if Carlos could maybe initially do some volunteer work as a lawyer. ... Maybe he could demonstrate over a period of time his sobriety and maybe some competence in community service and doing those things before being, I guess, fully authorized to hang a shingle, if you will." Tr. 250 (Dalcy). Cf. Matter of Hiss, 368 Mass. at 464, 1 Mass. Att'y Disc. R. at 137-138 (the Court and the board discounted testimony from witnesses who did not acknowledge the petitioner's guilt and did not distinguish his character before and after the underlying conviction leading to disbarment); Matter of Dawkins, 432 Mass. at 1011, n. 5, 16 Mass. Att'y Disc. R., at 96, n. 5 (hearing panel warranted in discounting supportive letters that focused on good works before suspension, shed little light on rehabilitation or current moral qualifications, and one of the writers admitted knowing little of the petitioner's wrongdoing or that the petitioner had been suspended twice); Matter of Keenan, 314 Mass. 544, 550 (1943) ("[e]vidence of character or reputation from friends or acquaintances is usually subject to discount for the complacency of witnesses who are willing to be accommodating and many of whom, although sincere, may not fully appreciate the necessity of protecting the public interest.").

Conclusion About Moral Reform

A “fundamental precept of our system is that a person can be rehabilitated,” and even conviction of a serious crime does not preclude a showing of present moral fitness. Matter of Ellis, 457 Mass. 413, 414, 26 Mass. Att’y Disc. R. 158, 163 (2010). The petitioner is on a path to recovery, and we do not diminish his accomplishments towards recovery over the past eighteen years or so. Nevertheless, “[i]t [is] incumbent on [the petitioner], ... to establish affirmatively that, during his suspension period, he [has] redeemed himself and become ‘a person proper to be held out by the court to the public as trustworthy.’” Dawkins, 432 Mass. at 1011, 16 Mass. Att’y Disc. R. at 95; see also Matter of Ellis, 457 Mass. at 414, 26 Mass. Att’y Disc. R. at 163-164. “Reform is a ‘state of mind’ that must be manifested by some external evidence ... [and] the passage of time alone is insufficient to warrant reinstatement.” Matter of Waitz, 416 Mass. at 305, 9 Mass. Att’y Disc. R. at 343.

The petitioner has not established that he understands the ethical gravamen of the basis for his suspension—his abandonment of clients and failure to ensure they received the money he held in trust for them—or that he can give adequate assurances that it will not recur. We do not minimize the evidence that the petitioner has made progress in his recovery from addiction. We emphasize that our decision is not based on disbelief in the evidence of progress; it is based primarily on our finding that the petitioner has not met his burden of proof.

B. Competence and Learning in the Law

Under S.J.C. Rule 4:01, § 18(5), a petitioner must demonstrate that he has the “competency and learning in the law required for admission to practice law in this Commonwealth.” We find that the petitioner has not made this showing.

When the petitioner first sought reinstatement in May 2017, he had not taken any continuing legal education seminars, nor had he studied any law aside from preparing for the MPRE; he reported reading no legal periodicals or other legal literature. Tr. 84, 194 (Gomez); Ex. 11, at -0165. Twenty-one months later, in his current, February 2019, petition for

reinstatement, he reported that he had “begun the process of updating his legal skills and knowledge by taking a variety of seminars and training.” At that point he had completed only four MCLE webcasts in nearly two years. Ex. 2, at -0026. The materials attached to his responses to Part One of the Reinstatement Questionnaire (Ex. 2, at -0048 to -0053) identified six courses he had purchased. Of those six, most appear to be basic courses (Practical Skills: Preparing and Trying a Civil Case; Practicing in the Massachusetts District and Superior Courts; Contract Negotiation, Review and Analysis; and The Paperless Office) and two appear to have been intermediate (Limited Liability Companies, Business and Commercial Law; Drafting Successful Medicaid Trusts). One of these courses is irrelevant to his current plans for resuming practice; he no longer seeks to engage in estate planning. Tr. 85, lines 16-18 (Gomez); Tr. 268-269 (representation by petitioner’s counsel). We credit that when he filed the instant petition for reinstatement he had taken these six courses. Tr. 195 (Gomez). We put no weight in his testimony that, by the time he had purchased an MCLE online pass he was “up to eight” (Tr. 195), because the two additional courses are not documented in the record, and we do not know their subject matter or their depth or sophistication of coverage.

The petitioner belatedly supplemented this lackluster effort by purchasing an online pass subscription to MCLE products in April 2019, i.e., two months *after* filing his current petition for reinstatement. Ex. 18. Using this subscription, he has downloaded additional eLectures (fifteen, with one duplicate), eForms (three), and eBooks (two). We credit that he has read sections of the written materials he has downloaded. Tr. 196-197. The topics of these materials ranged broadly over personal injury, real estate, and domestic relations, as well as litigation skills generally.

As facially impressive as this list might be, however, the petitioner’s testimony did not clarify for us how in depth each of these items was. We credit that he has watched all of the eLectures he purchased, Tr. 197, and that he has taken “close to thirty courses” all told. Tr. 85 (Gomez). Still, we do not know what, specifically, all those courses were (agreed exhibit 19 showing only fifteen eLectures purchased), or how in depth they covered their topics. Tr. 85-86

(Gomez). By way of example, the petitioner testified that he watched a lecture on ethics for family law practitioners that lasted only twenty-two minutes. Tr. 198 (Gomez).

On the one hand, the petitioner had about fifteen years of successful practice before his misconduct and abandonment. Dalcy credibly characterized him as a “fine lawyer,” a “fantastic lawyer... highly respected,” who had a “thriving practice.” Tr. 240-241 (Dalcy). That characterization appears to be supported by the petitioner’s practice before his fall. Those fifteen years of practice have some persuasive weight. Further, in 2015, the petitioner was able to assist Dalcy in representing him, and he displayed lawyerly competence in doing so, Tr. 243 (Dalcy), over the course of telephone conversations and meetings. Tr. 244-245 (Dalcy).

On the other hand, however, the petitioner has been away from the practice of law for longer than he was engaged in it. This length of absence suggests that a more carefully focused effort to update skills is in order, rather than the four courses spread over nearly two years, followed by three-months of MCLE purchases, which we cannot be sure were fully used, let alone in depth enough to make up for eighteen lost years.

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

The petitioner has not demonstrated “that his or her resumption of the practice of law will not be detrimental to the integrity and standing of the bar, the administration of justice, or to the public interest.” S.J.C. Rule 4:01, § 18(5).

“In this inquiry we are concerned not only with the actuality of the petitioner’s morality and competence, but also on the reaction to his reinstatement by the bar and public.” Matter of Gordon, 385 Mass. at 53, 3 Mass. Att’y Disc. at 73. “The primary considerations here involve the impact of reinstatement on the deterrence function served by the disciplinary process ... and the reputation of the bar for integrity.” Matter of Pool, 401 Mass. 460, 468, 5 Mass. Att’y Disc. R. 293, 298 (1988). We must consider whether the public will perceive the bar as viewing the original offense with sufficient gravity and find confirmation of the seriousness with which the

board and the Court take their obligation to assure the protection of the public above all else, along with the deterrent effect of the decision whether or not to reinstate in this case. Matter of Ellis, 457 Mass. at 418, 26 Mass. Att'y Disc. R. at 168.

On the record before us, we conclude that both the bar and the public would look with disfavor on reinstating the petitioner. His abandonment of his clients occurred when he should have been at the peak of his career as a mature lawyer. It was fueled by a dependence on controlled substances from which he has suffered for nearly two decades and from which he has been in remission for less than a year. When that history is conjoined with a lack of remorse, lack of insight, and insufficient efforts to update legal learning and competence, the effect of reinstatement on the public and the bar would no doubt be detrimental.

V. Conclusions and Recommendation

For the foregoing reasons, we recommend that the petition for reinstatement filed by Carlos M. Gomez be denied.

Respectfully submitted,
By the Hearing Panel,

April C. English /*ni*
April C. English, Esq., Chair

David B. Krieger, M.D. /*ni*
David B. Krieger, M.D., Member

Marianne C. LeBlanc /*ni*
Marianne C. LeBlanc, Esq., Member

Filed: August 27, 2019