DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	:	
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CHRIS C. YUM,	:	DCCA No. 16-BG-838
	:	Board Docket No. 15-BD-067
Petitioner.	:	Bar Docket No. 2015-D178
	:	
A Disbarred Member of the Bar of the District of Columbia Court of Appeals Bar Registration No. 424602	:	

REPORT AND RECOMMENDATION OF THE BOARD ON PROFESSIONAL RESPONSIBILITY

I. INTRODUCTION

This is a contested reinstatement proceeding. The District of Columbia Court of Appeals (the "Court") disbarred Petitioner, Chris C. Yum, on May 12, 2011, retroactive to November 6, 2009. *In re Yum*, 19 A.3d 367 (D.C. 2011) (per curiam). The disbarment arose from Petitioner's 2006 conviction for making a false statement in violation of 18 U.S.C. §§ 2 and 1001. Petitioner petitioned for reinstatement on June 14, 2015, and Disciplinary Counsel opposed it. An Ad Hoc Hearing Committee ("Hearing Committee") recommended reinstatement after a hearing, concluding that Petitioner met his burden of showing, by clear and convincing evidence, that under D.C. Bar R. XI, § 16(d) and the factors set forth in *In re Roundtree*, 503 A.2d 1215 (D.C. 1985), he was fit to practice law. *In re Yum*,

Board Docket No. 15-BD-067 (H.C. Rpt. Aug. 22, 2016). The case went to the Court on the Hearing Committee's recommendation, where Disciplinary Counsel again opposed reinstatement.

After oral argument, the Court referred the matter to the Board on Professional Responsibility ("Board") to weigh in on two questions:

> First, whether the Hearing Committee should have considered additional facts about Petitioner's conviction that were not a part of the record in his original disbarment proceeding, or whether that additional information is precluded from being considered under Board Rule 9.8.
>
> Second, whether, on the record before the Court of Appeals, the petitioner should be reinstated.

Order, *In re Yum*, No. 16-BG-838 (D.C. June 22, 2017) (per curiam).

For the reasons set out below, we find that the Hearing Committee properly excluded the additional facts relating to Petitioner's conviction. However, we disagree with the Hearing Committee's recommendation that Petitioner be reinstated. Accordingly, we recommend that the Petition be denied.

II. UNADJUDICATED ACTS

A. Rule 9.8 – the Admissibility of Unadjudicated Acts

Board Rule 9.8 governs reinstatement proceedings. Rule 9.8(a) says that evidence of unadjudicated acts of misconduct occurring prior to the Court's disbarment order can only be admitted in a reinstatement hearing if Disciplinary Counsel meets two conditions: (1) Disciplinary Counsel gave notice to the

petitioner that it would seek to use those unadjudicated acts in a later reinstatement proceeding, when it dismissed the Complaint that contained the unadjudicated acts, and (2) Disciplinary Counsel gave notice that it would introduce the unadjudicated acts in its Answer to the Petition for Reinstatement.

Here, Disciplinary Counsel met neither of these conditions.

B. Disciplinary Counsel Did Not Comply with Rule 9.8(a)(i)

Petitioner entered a guilty plea to a violation of 18 U.S.C. § 1001, which prohibits making a knowingly false statement to the executive branch of the United States government, in the United States District Court for the Eastern District of Virginia. The false statement was made in connection with an immigration filing. Petitioner's plea agreement contained a statement of facts that was sufficient to demonstrate that he committed a violation of section 1001, but it did not contain the full detail of the facts surrounding that offense.

Disciplinary Counsel drafted a two-count Specification of Charges that included a much fuller description of Petitioner's alleged conduct in Count I.[1]

[1] "Alleged" is the appropriate description of the conduct in the Specification of Charges beyond the limited facts the Petitioner acknowledged. For example, Disciplinary Counsel alleges that Petitioner knew the statements he made to the government were false; Petitioner contends he willfully disregarded their falseness and was criminally responsible for that reason. *See generally Global-Tech Appliances Inc. v. SEB S.A.*, 563 U.S. 754, 769 (2001).

In Petitioner's criminal case in the Eastern District of Virginia, as in these disciplinary proceedings, the Petitioner's mental state – as well as the truth of other allegations – was never adjudicated. As a result, we describe the additional allegations in Disciplinary Counsel's draft Specification of Charges as just that: *allegations*.

Count II related to Petitioner's alleged failure to notify two state Bars about his conviction. *See Yum*, Board Docket No. 15-BD-067, H.C. Rpt. at 9.[2] However, before that Specification of Charges was approved, Petitioner consented to disbarment. In his Affidavit of Consent to Disbarment, Petitioner acknowledged that he had been convicted of a violation of 18 U.S.C. §1001. Affidavit at ¶ 2. He described an investigation into whether "discipline, including disbarment, should be imposed . . . in light of [his] criminal conviction." Affidavit at ¶ 4. Petitioner states that he understood that charges would be filed against him "alleging that [he] committed a serious crime involving moral turpitude." Affidavit at ¶ 5. However, Petitioner only "acknowledge[d] that the material facts upon which the allegations of misconduct are predicated, are true." Affidavit at ¶ 6. He did not admit to the truth of any facts beyond the "material" facts. His Petition does not mention Count II of the draft Specification of Charges, which alleged a failure to report his conviction.

Disciplinary Counsel's Unopposed Motion to Accept Consent Disbarment notes only that, although it believes that it "could establish that Respondent engaged in all the ethical misconduct alleged in the Specification of Charges, the

[2] The Hearing Committee Report will be referred to herein as "H.C. Report at __." "FF ¶ __" refers to the Findings of Fact in the H.C. Report. "Tr. __" refers to the transcript of the hearing held on March 14, 2016.

misconduct to which Respondent admits in his affidavit provides a sufficient basis to support his disbarment." Motion at 2.

There was no other communication to Petitioner when he was consenting to disbarment that provided notice to him that Disciplinary Counsel would seek to introduce evidence of his other conduct at a reinstatement hearing.

C. Disciplinary Counsel Did Not Comply with Rule 9.8(a)(ii)

Similarly, Disciplinary Counsel's Answer to Petitioner's Petition for Reinstatement did not provide notice that Disciplinary Counsel would seek to introduce additional facts either about Petitioner's conviction or about his failure to notify other Bars of the conviction, as alleged in Count II of the draft Specification of Charges.

As a result, Disciplinary Counsel simply did not comply with either requirement of Rule 9.8(a) to be allowed to use evidence of prior unadjudicated acts of misconduct.

D. Rule 9.8(a) Should Be Read to Mean What It Says

Disciplinary Counsel argues that it should be excused from the requirements of Rule 9.8(a). Disciplinary Counsel notes that "[b]y interpreting Board Rule 9.8 so as to exclude evidence about Petitioner's misconduct in committing immigration fraud that led to his disbarment, as well as subsequent dishonest actions, the Hearing Committee effectively denied itself and the Court the

information needed to assess Petitioner's current moral fitness." Disciplinary Counsel Brief at 2.

Disciplinary Counsel is correct that the result of our reading of Rule 9.8(a) is that some otherwise admissible evidence will not be considered in this reinstatement proceeding. The trouble is that Disciplinary Counsel doesn't offer a competing interpretation of the Rule. Indeed, it is hard to see what Rule 9.8(a) means if it does not mean that Disciplinary Counsel must give notice to Petitioner in this circumstance. We decline to read Rule 9.8(a) out of existence. *Hibbs v. Winn*, 542 U.S. 88, 101 (2004) ("A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant . . . .").

Disciplinary Counsel is correct that generally evidence is admissible under Rule 11.3. But it offers no reason – beyond a policy argument in favor of admitting relevant evidence – for why Rule 11.3 trumps the plain language of 9.8(a). This is not how statutes should be interpreted; "[a] general statutory rule usually does not govern unless there is no more specific rule." *Green v. Bock Laundry Machine Co.*, 490 U.S. 504, 524 (1989). Disciplinary Counsel has provided no reason to depart from this familiar canon of statutory construction.

It is true that the Hearing Committee, the Board, and the Court will not have some evidence in this reinstatement proceeding. However, the fault is not with

these entities; the power to prevent that result lies entirely with Disciplinary Counsel. It could have complied with Rule 9.8(a). It did not. We cannot read Rule 9.8(a) into a nullity to forgive or correct its errors.

E. Evidence of Unadjudicated Acts Not Known By Disciplinary Counsel

There was, however, another category of evidence offered by Disciplinary Counsel: evidence that Petitioner failed to notify his employers of his criminal conviction as required by his probation. We find that this evidence was not known by Disciplinary Counsel at the time Petitioner consented to disbarment.

We do not read Rule 9.8(a) to prohibit Disciplinary Counsel from introducing evidence it failed to give notice of because it did not know that the evidence existed. Accordingly, this evidence was properly before the Hearing Committee.[3]

III. REINSTATEMENT

After a hearing, the Hearing Committee recommended reinstatement. We disagree with the Hearing Committee that this record supports a conclusion that Petitioner should be reinstated.

D.C. Bar R. XI, § 16(d)(1) sets forth the legal standard for reinstatement. The petitioner in a contested reinstatement proceeding has the burden to prove by clear and convincing evidence:

[3] Petitioner argues that he was not obligated to make these disclosures. There is no evidence in the record to support this argument.

> (a) That the attorney has the moral qualifications, competency, and learning in law required for readmission; and
>
> (b) That the resumption of the practice of law by the attorney will not be detrimental to the integrity and standing of the Bar, or to the administration of justice, or subversive to the public interest.

D.C. Bar R. XI, § 16(d)(1); *see also* Board Rule 11.6 ("In reinstatement proceedings, the petitioning attorney shall be required to establish petitioner's fitness to resume the practice of law by clear and convincing evidence.").

Clear and convincing evidence is more than a preponderance of the evidence; it is "evidence that will produce in the mind of a trier of fact a firm belief or conviction as to the facts sought to be established." *In re Cater*, 887 A.2d 1, 24 (D.C. 2005) (internal quotation omitted).

In *Roundtree*, 503 A.2d at 1217, the Court described five factors to be considered in determining whether the required burden of proof has been met:

> 1. The nature and circumstances of the misconduct for which the attorney was disciplined;
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> 2. the attorney's recognition of the seriousness of the misconduct;
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> 3. the attorney's post-discipline conduct, including steps taken to remedy past wrongs and prevent future ones;
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> 4. the attorney's present character; and
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> 5. the attorney's present qualifications and competence to practice law.

We discuss each of these factors in turn.

1. Nature and Circumstances of the Misconduct

In considering a petition for reinstatement, "the nature and circumstances of the misconduct for which the attorney was disciplined" is a significant factor. *Roundtree*, 503 A.2d at 1217. The Board and the Court also consider (1) unadjudicated acts of misconduct occurring prior to the Court's order of disbarment or suspension with a fitness requirement, pursuant to Board Rule 9.8(a), and (2) conduct since discipline was imposed, admissible under *Roundtree*. *See* Board Rule 9.8(a), (d); *In re Roxborough*, 775 A.2d 1063, 1076 (D.C. 2001) (per curiam) (appended Board Report) ("Unadjudicated acts of misconduct should be considered" since "[a] reinstatement proceeding is like an admission proceeding, in which the Court is aided by any and all pertinent information about how Petitioner would conduct himself if reinstated to the bar.").

Petitioner's misconduct was serious. He made a knowingly false statement in the course of representing a client. Honesty is essential to the fitness and conduct of a lawyer. *See, e.g.*, Rule 3.3; Rule 4.1; Rule 8.4(c). His misconduct was so serious that he was convicted of a felony and served time in a federal prison.

While the Hearing Committee correctly noted that a serious felony is not an absolute bar to reinstatement, *see* H.C. Report at 22-23 (collecting cases), nonetheless, this *Roundtree* factor weighs heavily against Petitioner.

Moreover, while we agree that the Hearing Committee properly excluded from consideration certain evidence that was unadjudicated at the time of Petitioner's disbarment, other evidence should be considered here. Petitioner appears to have violated his terms of supervised release and certain provisions of his plea agreement by not notifying his employers of his prior conviction. FF ¶¶ 11-12. As discussed above, this evidence was not known and not contained in the draft Specification of Charges that led Petitioner to agree to disbarment. We find that this evidence is categorically different from evidence relating to the allegations in the draft Specification of Charges, and our consideration of this evidence is not barred by Rule 9.8, for the reasons discussed above.

While we have sympathy for the difficult position Petitioner must have been in as he looked for work after his conviction, this additional conduct gives us great pause. Most troubling about the fact that Petitioner failed to notify his employers about his conviction is that it appears of a piece with his criminal conduct. Petitioner had an obligation to be upfront. He was not. While failing to talk when a person has a duty to speak is different than speaking falsely, at root, they are both related to deception.

Accordingly, this *Roundtree* factor weighs heavily against reinstatement.

2. Petitioner's Recognition of the Seriousness of the Misconduct

Disciplinary Counsel stipulated that Petitioner recognized his misconduct. Stipulations ¶ 16. Disciplinary Counsel has argued that this stipulation was taken out of context. Regardless, the Hearing Committee observed Petitioner explaining his own recognition of his misconduct and credited it. We do not see any reason to doubt the Hearing Committee's assessment.

Accordingly, this *Roundtree* factor weighs in favor of reinstatement.

3. Petitioner's Current Character and Ability to Practice Law

The last three *Roundtree* factors address Petitioner's current character, his ability to practice law now, and what he has done to make sure he does not engage in misconduct again. Because the evidence relating to these three factors is the same, and the factors are closely related, we discuss them together.

a. Post-Discipline Conduct

The third *Roundtree* factor requires consideration of "the attorney's conduct since discipline was imposed, including the steps taken to remedy past wrongs and prevent future ones." *Roundtree*, 503 A.2d at 1217.

b. Present Character

"Under the fourth *Roundtree* factor, a petitioner is required to prove that those traits that led to disbarment 'no longer exist, and indeed, that he is a changed

individual having full appreciation of the wrongfulness of his conduct and a new determination to adhere to the high standards of integrity and legal competence which the Court requires.'" *In re Sabo*, 49 A.3d 1219, 1232 (D.C. 2012) (quoting *In re Turner*, 915 A.2d 351, 356 (D.C. 2006) (per curiam) (appended Board Report)). To establish this factor, a petitioner generally should offer witnesses "familiar with the underlying misconduct" who can provide evidence of the petitioner's good character. *Id.* (quoting *In re Reynolds*, 867 A.2d 977, 986 (D.C. 2005) (per curiam) (appended Board Report)).

c. Present Qualifications and Competence to Practice Law

The fifth *Roundtree* factor requires that "'[a] lawyer seeking reinstatement after a period of suspension . . . be prepared to demonstrate that he or she has kept up with current developments in the law.'" *See Turner*, 915 A.2d at 356 (appended Board Report) (quoting *Roundtree*, 503 A.2d at 1218 n.11).

d. Consideration of These Three Factors

In addressing these three *Roundtree* factors, the Petitioner offered evidence of a few different kinds.

- Disciplinary Counsel recommended to Petitioner that he take a "Basic Training and Beyond" course offered by the D.C. Bar, and Petitioner did so. FF ¶ 61. Petitioner has not taken any other legal ethics training recently. FF ¶ 61.

- He has worked as a law clerk and as a translator so that he can stay involved in legal issues and law practice. FF ¶¶ 35-36.

- Petitioner offered testimony from his sister and a former colleague. He offered letters from his wife, a former employer, his sister, and a friend. However, as the Hearing Committee found, these character references showed very little familiarity with Petitioner's misconduct. FF ¶¶ 16, 50, 53, 55, 57, 59.

- There is no evidence Petitioner engaged in any additional misconduct. FF ¶¶ 31-33.

- The Hearing Committee found that Petitioner represented himself competently in the reinstatement proceedings. H.C. Report at 32.

- Petitioner attends church regularly and volunteers at his son's school. FF ¶ 79.

- Petitioner testified that he is a "changed" person, and the Hearing Committee credited that testimony. H.C. Report at 30.

There is much about Petitioner that is commendable. However, on this record, we cannot conclude that the above facts are sufficient to establish that Petitioner has met his burden on the final three *Roundtree* factors.

Further, with respect to the third *Roundtree* factor, Petitioner failed to establish that he had taken proactive measures necessary to address the deficiencies in his practice that led to his misconduct. *See In re Mba-Jonas*, Board Docket No. 11-BD-019, at 29-30 (H.C. Rpt. May 29, 2014) (proof of training alone is insufficient to establish that post-discipline conduct supports reinstatement), *recommendation adopted*, 118 A.3d 785 (D.C. 2015) (per curiam) (denying reinstatement petition). Petitioner acknowledges that his conviction arose from his willful blindness to the accuracy of documents submitted in support of applications

to the Immigration and Naturalization Service. Petition at 1; *see also* DX 6 ¶¶ 2-3. Petitioner testified that his arrogance caused him to take short cuts in filing documents. FF ¶¶ 40-41. But he also testified that his willful blindness resulted from the competing demands of running a small, busy practice. Tr. 87-88. However, other than attending the two-day training course, Petitioner did not offer evidence or testimony on what practice management steps, tools, or systems he would utilize to prevent future misconduct from occurring in similar circumstances. *See* H.C. Report at 29-30; *see also* FF ¶ 54 (Mr. Yi was not aware of any steps Petitioner has taken to avoid similar misconduct in the future. Tr. 44:7-9); Tr. 65-66 (Ms. Osnos testifying that only steps taken were some unspecified courses).

For the fourth *Roundtree* factor, Petitioner failed to "present witnesses who were familiar with his misconduct who could testify that the traits that led to [his disbarment] no longer exist." *Mba-Jonas*, Board Docket No. 11-BD-019, at 31. Neither of Petitioner's witnesses were familiar with the details of the misconduct, despite their close personal relationships with Petitioner, and thus could not credibly testify that the traits leading to his disbarment had been addressed or corrected. FF ¶ 50-53 (Mr. Yi "did not know the details of Petitioner's misconduct or his criminal conviction," despite being a law school friend who shared office space with Petitioner, consulted with him on litigation and business transactions

prior to his conviction, and remained in contact with Petitioner after his release from prison); FF ¶¶ 55-58 (Ms. Osnos, Petitioner's sister who also worked with him, "did not know the details of Petitioner's misconduct or the criminal charge.").

For the fifth *Roundtree* factor, Petitioner testified that he worked as a law clerk from 2007 until 2011, and afterwards as a freelance translator, legal interpreter, and a document reviewer. FF ¶¶ 34-35, 37. However, Petitioner failed to clearly explain whether this work required legal analysis and how it caused him to remain current with legal developments. Petitioner also failed to present character witnesses to support his assertion that he remained current in the law. *Cf. In re Mance*, 171 A.3d 1133, 1139-40, 1144 (D.C. 2017) (granting reinstatement subject to conditions where petitioner established his learning in the law through evidence of his participation in several practical and ethical training courses, his research and discussions through his part-time work in a law office, and credible testimony from a practicing attorney regarding the competence of the legal research produced).

This case is not *Mance*. There, the Court reinstated a lawyer who had engaged in a pattern of neglect in a number of cases, yet was readmitted because he had acknowledged his wrongdoing, had taken remedial steps to cure the problems that led to the neglect of his cases, and recognized the seriousness of his prior conduct. *Id.* at 1138-40, 1143.

While there are some similarities with *Mance* – namely that the petitioner in each case recognized the wrongfulness of his conduct, each petitioner took the D.C. Bar's "Basic Training and Beyond" course, and each had a character witness testify to his changed character – we find the differences more striking. In *Mance*, the Court noted that that petitioner's "misdeeds . . . do not implicate his moral character or integrity." *Id.* at 1139. Not so here. In *Mance*, the petitioner's character witness demonstrated that they knew the details of the prior misconduct. *Id.* Here, Petitioner's witnesses did not demonstrate knowledge of his misconduct.

More importantly, the "root problem" in Mr. Mance's prior conduct was that he "fell into the pattern of taking on too many cases," such that he was committed to doing more than he was able. *Id.* at 1142. By taking courses on practice management, and by demonstrating that he understood how and why this was a problem, the Court could conclude that he had a "plan for assuring that his misconduct will not repeat itself if he is reinstated." *Id.* In short, in *Mance*, there was a clear diagnosis of the problem which led to the misconduct and the remedial actions the petitioner took were tailored to fixing that problem.

Petitioner here is in a different situation. While he did assert that his criminal conduct stemmed from taking too many cases, more fundamentally it arose from a failure to be honest. While taking a continuing legal education course in ethics or practice management is, of course, good, it is unlikely that what caused

Petitioner's misconduct was a failure of knowledge. It is not clear that providing him with additional knowledge will address that problem. As a result, showing that Petitioner has resolved the underlying problem that led to his misconduct may be a more difficult task than was faced by the petitioner in *Mance*.

IV. CONCLUSION

Accordingly, we recommend that the Court determine that because Disciplinary Counsel failed to comply with Board Rule 9.8(a), it should not be allowed to use evidence of prior unadjudicated acts of misconduct that it knew at the time a petitioner consented to disbarment. Where Disciplinary Counsel did not know of the evidence of the prior unadjudicated acts at the time a petitioner consented to disbarment, the Hearing Committee could consider the evidence.

Here, we recommend that the Court find that Disciplinary Counsel's failure to comply with Board Rule 9.8(a) with respect to the unadjudicated acts related to Petitioner's conviction and failure to notify other Bars of the conviction, which Disciplinary Counsel knew of at the time of the consent disbarment was filed, precludes Disciplinary Counsel from offering evidence as to those unadjudicated acts. But, because Disciplinary Counsel did not know about Petitioner's failure to notify his employers of his criminal conviction as required by his probation at the time the consent disbarment was filed, Disciplinary Counsel was permitted to introduce evidence of this act of misconduct.

Finally, we recommend that Petitioner's petition be denied on the record before us on the ground that the seriousness of Petitioner's misconduct, compounded by the relative weakness of his evidence on the last three *Roundtree* factors, is not sufficient for Petitioner to meet his burden.

BOARD ON PROFESSIONAL RESPONSIBILITY

/MK/
Matthew G. Kaiser

All members of the Board concur in this Report and Recommendation except for Mr. Carter, who is recused.