DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY
AD HOC HEARING COMMITTEE

In the Matter of:	:	
	:	
JAMES Q. BUTLER,	:	
	:	Board Docket No. 15-BD-050
Petitioner.	:	Bar Docket No. 2015-D135
	:	
A Disbarred Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 490014)	:	

REPORT AND RECOMMENDATION OF THE AD HOC HEARING COMMITTEE

I. INTRODUCTION

This contested reinstatement proceeding follows Petitioner's consent to disbarment pursuant to D.C. Bar R. XI, § 12, which the District of Columbia Court of Appeals (the "Court") granted on November 5, 2009. *In re Butler*, 982 A.2d 1147 (D.C. 2009) (per curiam). The effective date of Petitioner's disbarment for reinstatement purposes is July 31, 2009, the date that Petitioner filed an affidavit in compliance with D.C. Bar R. XI, § 14(g). *Id.* Petitioner consented to disbarment while facing more than *one hundred* complaints of misconduct involving allegations of multiple Rule violations – including the violation of the most serious rules prohibiting fraud, dishonesty, misappropriation, comingling funds, rampant neglect, and a pattern of aggressive marketing to, and taking money from, vulnerable incarcerated clients without providing meaningful services. Following his disbarment, the D.C. Bar Clients' Security Fund paid out over $650,000 to clients harmed by Petitioner's misconduct. To date, Petitioner has made restitution of $300.

Petitioner now seeks reinstatement, and thus has the burden to show by clear and convincing evidence that he is fit to resume the practice of law. D.C. Bar R. XI, § 16(d). Based

upon the evidence presented during the reinstatement hearing, and for the reasons set forth below, the Hearing Committee concludes that Petitioner has not met his burden under Rule XI, § 16(d) and the factors set forth in *In re Roundtree*, 503 A.2d 1215 (D.C. 1985). The Hearing Committee thus recommends that the Petition for Reinstatement to the Bar of the District of Columbia be denied.

II. PROCEDURAL HISTORY

On January 30, 2009, Petitioner and Disciplinary Counsel[1] filed a Petition for Negotiated Discipline agreeing to a one-year suspension with reinstatement conditioned on a showing of fitness, in response to allegations against Petitioner of dishonesty, neglect, lack of communication, and failure to return unspent funds that had been advanced to pay expenses in ten different matters. DCX 3.[2] After an extraordinary outpouring of outrage from his former clients objecting to the leniency of the proposed disposition, the Hearing Committee rejected the disposition as not "justified" under D.C. Bar R. XI, § 12.1(c) and Board Rule 17.5(a)(i)-(iii). *See* Order, *In re Butler*, Bar Docket Nos. 2007-D311, *et al.* (H.C. Rpt. May 1, 2009).

On May 8, 2009, ODC filed a Specification of Charges against Petitioner. DCX 6. The Specification of Charges involved the same ten matters but added other Rule violations and alleged fraud, false and misleading statements, neglect, dishonest advertising, a scheme to obtain money from vulnerable incarcerated clients without providing legal services, commingling and

[1] The Court changed the title of Bar Counsel to Disciplinary Counsel, effective December 19, 2015, after the Petition was filed but prior to the hearing in this matter. We use the current title, "Disciplinary Counsel" and abbreviation "ODC" herein.

[2] Petitioner's exhibits are designated as "PX"; Disciplinary Counsel's Exhibits as "DCX"; the transcript of the hearing as "Tr."; and Petitioner's Reinstatement Questionnaire as "RQ."

misappropriation of funds, and dishonesty to Disciplinary Counsel, clients, and relatives of clients. *Id*.

ODC also moved to temporarily suspend Petitioner's license to practice law based upon "serious harm to the public." *See* D.C. Bar R. XI, § 3(c). On July 8, 2009, the Court granted the interim suspension motion, over Petitioner's objection, ordered Petitioner suspended immediately, and ordered him to file a D.C. Bar R. XI, § 14 affidavit. DCX 5. Petitioner submitted the required § 14 affidavit on July 31, 2009. DCX 8.

On October 9, 2009, Petitioner consented to disbarment and signed an affidavit in which he agreed that the material facts in the previously filed Specification of Charges upon which the allegations of misconduct were predicated were true. DCX 7 at 1-5. On November 5, 2009, the Court accepted Disciplinary Counsel's uncontested motion for consent to disbarment and ordered Petitioner immediately disbarred, *nunc pro tunc* to July 31, 2009. Order, *In re Butler*, No. 09-BG-616 (D.C. Nov. 5, 2009).

On May 4, 2015, Petitioner filed this Petition for Reinstatement, along with a Personal Statement in Support of Reinstatement and his responses to the Reinstatement Questionnaire. PX 1; PX 2; RQ.[3] On May 19, 2015, ODC moved to dismiss the Petition, based upon Petitioner's failure to make meaningful restitution to the Client Security Fund for the over $650,000 it paid to clients harmed by Petitioner's misconduct. Petitioner filed an opposition to the motion on June 4, 2015. On June 16 and August 13, 2015, Petitioner filed Supplemental Responses to the

[3] On November 7, 2016, at the direction of the Hearing Committee Chair, Petitioner filed redacted versions of (1) Exhibits 8, 11, 14, and 16 from the Appendix to his Petition for Reinstatement, (2) his Supplemental Responses to his Reinstatement Questionnaire and Attachment for Question #5, (3) his Second Supplemental Response to his Reinstatement Questionnaire, and (4) his Motion to Supplement the Hearing Record, in order to remove personal identifiers in accordance with Board Rule 19.8(f).

Reinstatement Questionnaire. Petitioner also filed a Supplement to the Petition for Reinstatement on August 13, 2015. On September 9, 2015, the Board denied ODC's motion to dismiss the Petition pursuant to Board Rule 9.4 and directed Disciplinary Counsel to file an Answer to the Petition within twenty days. Disciplinary Counsel filed an Answer on September 28, 2015.

A pre-hearing conference was held on December 4, 2015. During the conference, the Hearing Committee Chair granted ODC two weeks to file a written proffer of unadjudicated acts in compliance with Board Rule 9.8. Pre-hearing Tr. 6-7 (Dec. 4, 2015). Respondent's counsel lodged an objection on the grounds that ODC failed to file the written proffer ten days prior to the pre-hearing conference as required under Board Rule 9.8(b). *Id.* at 7-8. The objection was overruled. *Id.* On December 15, 2015, ODC filed its Proffer as to Unadjudicated Acts of Misconduct by Petitioner, along with supporting exhibits.

The hearing was held on February 16 and 22 and April 19, 2016, before an Ad Hoc Hearing Committee composed of: Matthew Herrington, Esquire, Chair; Joel Kavet, Public Member; and Edward R. Levin, Esquire, Attorney Member. Petitioner was represented by counsel, William D. Wham, Esquire. The Office of Disciplinary Counsel was represented by Deputy Disciplinary Counsel Elizabeth A. Herman, Esquire. Petitioner testified on his own behalf and called witnesses: Brian Jablon, Esquire; Brian G. Johnson, Esquire; James Edward Green; Charles Scott; Christopher A. Grace, Esquire; George Neal; and George Clark, Esquire. Petitioner entered into evidence exhibits PX 1 through 6 and 8. Tr. 545-46, 594. On March 21, 2016, in response to the Hearing Committee's request, Petitioner filed a motion to supplement the hearing record with Mr. Jablon's affidavit, which provided additional details about the terms of Petitioner's association with the firm of Wellens & Jablon, LLC, in the event he is reinstated. Disciplinary Counsel filed an objection on March 23, 2016. The Hearing Committee admitted Mr. Jablon's affidavit as PX

7. Disciplinary Counsel called three of Petitioner's former associates to testify: Nicole Danielle Flippen, Esquire; Maria D. Fiorentino, Esquire; and Crystal Edwards, Esquire. The Hearing Committee ruled that Disciplinary Counsel would not be permitted to present the testimony of Michael Lawler, Esquire, an expert in post-conviction litigation, to describe the seriousness and consequences of incompetent representation in post-conviction relief. Tr. 24-25, 106. Disciplinary Counsel moved exhibits 1 through 25 into evidence. Tr. 546. DCX 23-25 were admitted into evidence at the hearing. Tr. 254-55, 585. Over Petitioner's objections to DCX 10, 11, 17, 18, and 19, the Hearing Committee hereby admits DCX 1-22 into evidence.

On May 6, 2016, Petitioner filed a post-hearing brief ("Pet. Br."), in which he maintained he had proven, by clear and convincing evidence, that he is fit to resume the practice of law. On May 27, 2016, Disciplinary Counsel filed a brief in opposition to the Petition ("ODC Br."), arguing that Petitioner has not demonstrated by clear and convincing evidence that he meets the *Roundtree* factors and has not sustained his burden of establishing his fitness to resume practice. Petitioner filed a reply to Disciplinary Counsel's brief ("Reply Br.") on June 6, 2016.

Also on June 6, 2016, Petitioner also filed a Motion to Supplement the Hearing Record to include a copy of his Attorney Consent to Release Information form executed on November 9, 2015, as well as an email from Petitioner's counsel to Deputy Disciplinary Counsel Herman transmitting the form. Petitioner argues in his reply brief that these documents show that Disciplinary Counsel could have obtained more medical records than those submitted by Petitioner. Reply Br. at 7-8. Disciplinary Counsel filed an opposition to Petitioner's Motion to Supplement the Hearing Record. Disciplinary Counsel argues that because Petitioner bears the burden of proof in this reinstatement proceeding, it was not required to investigate Petitioner's claims. Disciplinary Counsel also argues that the documents relate to the cause of Petitioner's eye problem and length of time which the

condition lasted, both of which are irrelevant and immaterial to the issues before the Hearing Committee. The Hearing Committee hereby grants Petitioner's motion to supplement the record.A review of the record showed that at least one of the documents filed by Petitioner contained personal identifiers that are required to be redacted pursuant to Board Rule 19.8(f). On October 31, 2016, the Hearing Committee ordered Petitioner to review the documents he filed, and make redactions necessary to comply with Board Rule 19.8(f). On November 7, 2016, Respondent filed redacted documents, which have been included in the record. The original, unredacted documents are also included in the record, under seal.

III. LEGAL STANDARD

D.C. Bar Rule XI, § 16(d)(1) sets forth the legal standard for reinstatement. Petitioner must show "by clear and convincing evidence":

> (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.

Clear and convincing evidence is more than a preponderance of the evidence; it is "evidence that will produce in the mind of the 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 identified five factors that should inform the reinstatement determination. These are:

> 1) the nature and circumstances of the misconduct for which the attorney was disciplined;
>
> 2) whether the attorney recognizes the seriousness of the misconduct;
>
> 3) the attorney's post-discipline conduct, including steps taken to remedy past wrongs and prevent future ones;

4) the attorney's present character; and

5) the attorney's present qualifications and competence to practice law.

Id. "[P]rimary emphasis must be placed on the factors most relevant to the grounds upon which the attorney was suspended or disbarred." *Id.*; *see also In re Mba-Jonas*, 118 A.3d 785, 787 (D.C. 2015) (per curiam) (consideration of the petitioner's personal finances was appropriate as it "reflect[ed] the very conduct that led to his . . . suspension").

IV. FINDINGS OF FACT

1. After graduating from the Ohio State University Law School in 2000 and clerking in Ohio, Petitioner moved to D.C. and became a member of the Bar of the District of Columbia Court of Appeals in November 2004. Tr. 258-261; RQ at 4 (Question 7). In mid-2005, shortly after his admission to practice, Petitioner started his own law firm, Butler Legal Group ("BLG"). Tr. 265. From approximately mid-2005, until Petitioner's suspension in July 2009, he was the managing and only partner in the firm. DCX 6 at 1-2.

A. The Nature and Circumstances of Petitioner's Misconduct

2. During extensive disciplinary proceedings, Petitioner signed two affidavits admitting to the material facts and Rule violations alleged in both a Petition for Negotiated Discipline and a Specification of Charges. DCX 3 at 43-52; DCX 7 at 4-5. The admitted misconduct involved multiple violations of the Rules involving numerous clients and reflected the following misconduct: incompetence, lack of communication with clients, intentional failure to seek clients' legal objectives, intentional prejudice to clients, dishonesty, fraud, deceit or misrepresentation, failure to supervise, false advertising, failure to return unearned fees and files, failure to provide a writing stating the rate or basis of the fee, commingling, failure to keep records of trust funds, misappropriation of advance fees, and conduct that seriously interfered with the

administration of justice. DCX 3; DCX 6. In summary, Petitioner repeatedly violated the Rules of Professional Conduct, including all of the most serious ones, *i.e.*, misappropriation, dishonesty, and neglect, in his handling of both criminal and civil cases. DCX 3; DCX 6. Petitioner has claimed that he does not dispute the misconduct that led to his disbarment. Pet. Br. at 5. *But see* pages 26-31, *infra*.

3. The majority – but far from all – of the misconduct complaints arose in connection with Petitioner's and his law firm's representation of clients who were incarcerated as a result of criminal convictions and who wished to pursue potential post-conviction remedies. At some point during 2006 and 2007, Respondent and his firm had relationships with the Christian Civil Liberties Union ("CCLU"), Corrections and Prison Reform International, and Justice4All. DCX 6 at 2. Petitioner held himself out as associated with all of these entities and as the General Counsel for CCLU. All of these entities, with Petitioner's knowledge and participation, distributed false and/or misleading advertising to incarcerated potential clients regarding the legal services Petitioner and/or the organization would provide. *Id.*

4. One of the methods employed by Petitioner was to offer potential clients a "case evaluation" that would include an investigation of the client's case for a fee between $500 and $700. *Id.* at 3. A client who paid the fee for the "case evaluation," received a written document purporting to evaluate the client's legal options. *Id.* However, the "case evaluation" was not client-specific and did not analyze the client's procedural and/or substantive legal issues, or accurately or competently assess the client's legal matter. *Id.* Instead, the "case evaluation" was an ambiguous, generalized, one-size-fits-all form that did not specifically analyze or describe the client's legal options. *Id.* For example, seven of the ten case evaluations included in DCX 13 contained similar language in the "Actual Innocence" section which summarized the actual

innocence standard set forth in a trio of U.S. Supreme Court cases: *Murray v. Carrier*, 477 U.S. 478 (1986), *Kuhlmann v. Wilson*, 477 U.S. 436 (1986), and *Smith v. Murray*, 477 U.S. 527 (1986). *See* DCX 13 at 2-3 (Ronnie Matthews), 8-9 (Maurice Williams), 15-16 (Nakia Davis), 20-21 (Kenneth White), 41-42 (Norris Bernard Ellis), 69-70 (Jody Williams), 77-78 (Roosevelt Broadus). Nine of the ten case evaluations contained the same language in the "Right to Effective Assistance of Counsel" section, which summarized the Sixth Amendment right to assistance of counsel case law, including: *Powell v. Alabama*, 287 U.S. 45 (1932), *Johnson v. Zerbst*, 304 U.S. 458 (1938), and *Gideon v. Wainright*, 372 U.S. 335 (1963). These nine case evaluations also included a discussion of the *Strickland v. Washington*, 466 U.S. 668 (1984) line of cases setting forth the standard for determining ineffective assistance of counsel, but did not apply the standards to the facts of the client's case. *See* DCX 13 at 4-6 (Ronnie Mathews), 10-12 (Maurice Williams), 16-18 (Nakia Davis), 22-24 (Kenneth White), 34-36 (Warren Ivory), 49-51 (Norris Bernard Ellis), 65-67 (Lewis Watson, Jr.), 70-72 (Jody Williams), 78-80 (Roosevelt Broadus). Finally, nine of the ten case evaluations included the exact same language in the "But For Prejudice" and "Components of Ineffectiveness Claims" sections. *See* DCX 13 at 6-7 (Ronnie Matthews), 12-13 (Maurice Williams), 18-19 (Nakia Davis), 24-25 (Kenneth White), 37-38 (Warren Ivory), 58-59 (Norris Bernard Ellis), 67 (Lewis Watson, Jr.), 72-73 (Jody Williams), 81 (Roosevelt Broadus). Only one of the ten case evaluations included in DCX 13 contained a different analysis regarding the client's case, but the case-specific analysis is only two sentences. *See* DCX 13 at 30-31 (Steven Patrick Diffendal). Petitioner admitted that these "case evaluations" were "substandard," used "generic," "boilerplate," or "template" language, and were provided to the clients in order to get them to sign a retainer with the firm. Tr. 280, 466-69; *see also* Tr. 495-96 (Flippen: "They simply

changed out the client's name and maybe some information about who might be touching that case.").

5. In November 2006, the first client complaint, from Mr. Wardrick, was docketed for investigation and sent to Petitioner for a response. DCX 23 (Wardrick). Three more complaints were docketed against Petitioner in 2007. *Id*. (Drummond, Bar Counsel, Durham).

6. On January 31, 2007, Petitioner agreed to a diversion program in the Wardrick case. DCX 24 at 4. This diversion was approved by a Board member on June 6, 2007. *Id.*; *see* Board Rule 8.1(c) (diversion agreements are submitted to a Board member for review and approval). Petitioner was required to take a minimum of four credit hours of Continuing Legal Education, refund part of Mr. Wardrick's retainer fee (based on Mr. Wardrick's agreement that Petitioner had earned $1,000 for visiting him at the correctional institution), and to have his office assessed by the Practice Management Advisory Assistance Program ("PMAAP") of the D.C. Bar. *Id*. at 1-2. Thus, by no later than January 31, 2007, Petitioner was aware of the PMAAP and the services it offered to address practice management issues. The Wardrick complaint and resolution afforded the Petitioner an opportunity to rein in his ambitious expansion of his practice and firm, and focus on the provision of quality legal services within his competence. This wake-up call was not heeded.

7. Despite the diversion, much of Petitioner's misconduct occurred after January 31, 2007. *See* DCX 3. For example, Nicole Flippen, Esquire, who worked for Petitioner from January 2007 until August 2007, and who left the firm without another job offer, testified credibly that she told Petitioner explicitly that she could not "stand behind the practices of the firm and how they were dealing with the clients." Tr. 483, 500 (Flippen). Ms. Flippen expressed her concerns to Petitioner that there was a lack of training and supervision for her assigned criminal cases, that

Petitioner "didn't know what an IOLTA account was," that Petitioner's employee, Tony Andelino, was "representing himself to be James Butler on the phone" when Petitioner was not in the office, and that paychecks were bouncing and employees were paid in cash. Tr. 491-92. Ms. Flippen also performed work on a client's file, Ms. Robins, in which she "put together a full summary" detailing why the client was entitled to a refund because the firm provided the client with a case evaluation stating that the client was eligible for either a writ of habeas corpus or a writ of actual innocence. Tr. 493-95. The client was entitled to neither option because she not only pled guilty, but had "confessed three times" to the murder, "[t]here were no transcripts because it was pled out," and she was not actually innocent. Tr. 494-95. Ms. Flippen also testified that the case evaluations were not helpful to clients because they were copy and pasted documents that were put together without consultation with the client or review of the files. Tr. 495-96.

8. Maria Fiorentino, Esquire, began working for Petitioner after a brief interview in August 2007, but quit the firm after three days when she realized that Petitioner's promises of supervision and assistance were illusory. Tr. 509-511, 516-17. Ms. Fiorentino testified credibly that she told Petitioner during the interview that she had very little criminal law experience and did not have any post-conviction release experience, but he told her that she would be supervised by him and other experienced attorneys in the firm. Tr. 509-511; *see also* Tr. 524. On her first day, Ms. Fiorentino was given a post-conviction motion to read for a hearing that was scheduled in ten days to two weeks, but Petitioner was at an out-of-town deposition and there were no other lawyers in the office to supervise her review. Tr. 511-12. On her third day, Ms. Fiorentino called Petitioner to express her concern that the post-conviction hearing was in a week or two, and asked Petitioner if he was going to handle the hearing while she listened and took notes. Tr. 515, 519-520. Ms. Fiorentino testified that Petitioner laughed and said "You're on your own." Tr. 515-16.

Ms. Fiorentino replied that Petitioner was on his own and that she was leaving the firm effective that day. Tr. 516.

9. Crystal Edwards, Esquire, worked at the firm for one month, from August to September 2008. Tr. 526. Ms. Edwards testified that she told Petitioner that she had a year-and-a-half of criminal defense experience, handling approximately 300 cases. Tr. 527. While working for Petitioner's firm, she split the Maryland criminal cases with another attorney, Lafayette Williams, so that each handled between thirty and thirty-two cases. Tr. 529. She testified credibly that, when her case load increased, she left the firm due to concerns over the firm's disorganized case management. Tr. 533-34. Petitioner met weekly with Ms. Edwards and Mr. Williams regarding the Maryland cases, but did not inform them of upcoming deadlines. Tr. 532. Ms. Edwards also testified credibly that Maryland courts frequently would call the firm because she was missing court dates for clients, but she did not even know that these clients had been assigned to her. Tr. 530-33, 535. After the first call regarding a missed court date, Ms. Edwards requested that Petitioner provide her with a list of all the pending Maryland cases, but she did not receive a complete list. Tr. 533. All of the calls regarding missed Maryland court dates involved post-conviction pre-trial conferences, scheduling conferences, and hearing dates. Tr. 537-38.

10. Additional evidence shows that Petitioner was aware in 2007-2008: (1) of the excessive caseload in his office, (2) that he and his associates were neglecting cases, and (3) that his associates had emphatically expressed their displeasure with how he ran the office and neglected the clients' cases. Tr. 271, Tr. 274, Tr. 424-26 (Petitioner), 498-500 (Flippen); DCX 11 at 1 (letter from Lafayette Williams), 3 (memorandum from Scott Hannon), 5 (email from Christine Greene). Although Petitioner was aware of the problems within his firm, the causes of those problems and how to address the problems, there is no evidence that he altered his behavior

or the firm's practices, or took any meaningful steps in that direction, until forced to shut down. Instead, he ignored the problems and now minimizes the associates' legitimate discontent. Tr. 286 (Petitioner: "[T]hey had [a] little bit too much work."). Client complaints regarding Petitioner's pattern of misconduct continued in 2008. *See* DCX 3 at 38 (listing additional disciplinary complaints docketed in 2008).

11. On January 20, 2009, Petitioner and Disciplinary Counsel filed a Petition for Negotiated Discipline agreeing to a one-year suspension with a fitness requirement for his misconduct in ten matters, and the dismissal of forty-two other docketed cases, without prejudice to Disciplinary Counsel presenting evidence of the unadjudicated alleged misconduct in the event that Petitioner sought reinstatement. DCX 3 at 37-38. Petitioner stipulated to violations of the following District of Columbia Rules of Professional Conduct: 1.1 (lack of competence); 1.3(a), (b)(1), and (b)(2) (lack of zeal, intentional failure to seek lawful objectives, and intentional prejudice to the client); 1.4(a) and (b) (lack of communication); 1.5(b) and (c) (failure to provide a writing setting forth the rate or basis of fee); 1.15(a) and (d) (misappropriation of advances of unearned fees and unincurred costs and commingling); 1.16(a)(1) and (d) (failure to withdraw from representation and failure upon termination of representation to surrender papers and to refund unearned fees); 5.1(a), (b), and (c) (failure to ensure law firm conformed to the Rules of Professional Conduct); 5.3(a), (c)(1), and (c)(2) (failure to supervise staff and attorneys); 8.1(b) (failure to respond to lawful demands for information from a disciplinary authority); 8.4(c) and (d) (dishonesty, fraud, deceit, and/or misrepresentation and serious interference with the administration of justice). *Id.* at 5-37. In the attached Affidavit of Negotiated Disposition, Petitioner acknowledged that he had carefully reviewed the Petition for Negotiated Discipline and affirmed "that the stipulated facts in the accompanying petition and this affidavit are true and

support the stipulated misconduct . . . ." *Id.* at 45 (¶¶ 3-4); *see also* Tr. 209-211 (Clark: testifying that Petitioner reviewed the Affidavit prior to signing and he agreed that the words in the petition for negotiated disposition were accurate).

12. The Petition for Negotiated Discipline, Count III (Ivory, Bar Docket No. 2008-D328) includes the allegation that Petitioner made unauthorized credit card charges. The client's mother, Cassie Griffin, authorized Petitioner to charge her Discover credit card in the amount of $500 on September 5, 2007. "Instead, [Petitioner] charged $5,000 on Ms. Griffin's discovery[sic] card, without Ms. Griffin's knowledge or authorization." DCX 3 at 9 (¶¶ 37-38). "On or about September 19, 2007, [Petitioner] charged an additional $500 on Ms. Griffin's Mastercard, without Ms. Griffin's knowledge or authorization." *Id.* (¶ 39). Petitioner's Affidavit of Negotiated Disposition acknowledges these stipulated facts. *Id.* at 45 (¶¶ 3-4). Despite his signed acknowledgement at the time of the negotiated discipline proceedings, Petitioner denied the misconduct involving unauthorized credit card charges during the reinstatement hearing. After a great deal of back and forth at the hearing, Petitioner testified: "Q: So just so the record is clear, your position today is that the facts alleged in [the Petition] Paragraph 38 are not accurate. Can you respond with a yes or no to that? A: Yes." Tr. 366; *see also* Tr. 358-366.

13. A number of Petitioner's former clients submitted strikingly powerful letters to the Hearing Committee considering the Petition for Negotiated Discipline, describing the mental, emotional, and financial harm Petitioner caused to them and their families by his dishonesty and neglect. DCX 18 at 3 ("dashed out all rays of hope"), 6 ¶ 1 ("suffering"), 19 ¶ 4 ("dark hole"), 20 ¶ 2 ("ruined my life"), 28 ¶ 4 ("lost a great deal of sleep from the stress Mr. Butler caused me"), 32 ¶ 5 ("mental anguish, stress, and financial hardship"), 36 ¶ 3 ("profoundly traumatic effect on

my family and me"), 39 ¶ 4 ("predatory lawyers"), 47 ¶ 5 ("abused his oath"), 49 ¶ 4 ("tarnished my feelings for the justice system"), 58 ("caused me stress, depression and regression").

14. The Hearing Committee rejected the joint petition, concluding that "given the nature and extent of the misconduct . . . a one-year suspension is not justified and that a more severe sanction is warranted." Order, *In re Butler*, Bar Docket Nos. 2007-311, *et al.* at 5 (H.C. Rpt. May 1, 2009).

15. Following the Hearing Committee's rejection of the Petition for Negotiated Discipline, Disciplinary Counsel petitioned the Court to temporarily suspend Petitioner pursuant to D.C. Bar R. XI, § 3(c), on the grounds that he posed a "serious harm to the public." The Court granted the temporary suspension petition on July 8, 2009. DCX 5.

16. Petitioner asserts that after he was temporarily suspended, he chose to consent to disbarment, "[r]ather than taking advantage of available [contested discipline] procedures to argue for a lesser sanction, which would have imposed substantial additional effort and expense on [Disciplinary] Counsel and caused clients affected by the misconduct further anxiety and aggravation . . . ." PX 1 at 10. "On October 9, 2009, he filed an affidavit pursuant to D.C. Bar Rule XI, § 12(a) and Board Rule 16.1 consenting to disbarment." Order, *In re Butler*, No. 09-BG-616 (D.C. Nov. 5, 2009) (per curiam).

17. After the Board recommended that Petitioner's affidavit and Disciplinary Counsel's motion to consent to disbarment be accepted, the Court issued an order disbarring Petitioner by consent on November 5, 2009, with an effective date for purposes of reinstatement of July 31, 2009. *Id.*

Unadjudicated Acts of Misconduct

18. Although the Petition for Negotiated Discipline and the Specification of Charges listed ten client cases, there were one hundred and twenty-nine other complaints filed against Petitioner before and after his disbarment, alleging similar patterns of neglect and misconduct. DCX 23. Disciplinary Counsel submitted evidence of these prior unadjudicated acts of misconduct with a proffer, as required by Board Rule 9.8(a). Petitioner did not submit a response to Disciplinary Counsel's proffer or otherwise contest the evidence of unadjudicated acts. *See* Board Rule 9.8(b).

Petitioner's Failure to Meet Financial Obligations

19. **Federal taxes:** Petitioner settled for $250.00 the approximately $500,000.00 he owed the federal government, but he submitted little documentation about how those deficiencies were calculated or what he submitted to the IRS to convince them to compromise. Supplement to Petition for Reinstatement at Ex 1. Petitioner failed to answer how much he paid the tax work-out firm, Omni, to arrange a settlement with the IRS, only stating that it was $100/month. Tr. 413. Petitioner testified that between 2005 and 2009 or 2010, he filed returns some years, did not file at all during some years, and did not pay personal income tax during some of those years. Tr. 402-03. He then altered his testimony and stated that he paid his personal income taxes between 2005 and 2007, but did not pay taxes in 2008 and 2009. Tr. 403.

20. **D.C. taxes**: The D.C. government imposed a $25,172.31 lien against Petitioner for tax years 2006-2012. DCX 17 at 88. Petitioner testified that he "probably" included in his exhibits the documents he submitted to the D.C. government to further his offer of compromise. Tr. 415-16. However, these documents were not submitted by the Petitioner to the Hearing Committee, and there is no evidence that this lien has been satisfied.

21. **Maryland taxes**: Maryland imposed a $28,149.00 lien against Petitioner for unpaid taxes for October 1, 2006 through December 31, 2008. DCX 17 at 89. There is no evidence that this lien has been satisfied.

22. **Virginia taxes**: The Commonwealth of Virginia accepted an offer in compromise of $100.00 to settle a $19,704.81 liability. PX 8. Virginia also had a $11,131.22 lien against Petitioner for "converted assessments." DCX 17 at 91-92. Petitioner testified that he knew of this outstanding debt before 2015, yet he failed to disclose it in his questionnaire or supplements filed with his petition for reinstatement. *See* RQ at 8 (Question 17); Tr. 591. There is no evidence that this lien has been satisfied.

23. **Other judgments, awards, and financial obligations**: As early as 2007, well before Petitioner was suspended or disbarred, Petitioner failed to pay for services he had requested. DCX 17 at 104-05. Petitioner failed to pay multiple other judgments/awards issued against him. DCX 15 at 7 ($1,025.00), 10 ($5,000.00); DCX 17 at 1 ($1,484.45 and $222.66, plus interest), 4 ($1,000.00, plus interest), 11 ($417.75 and $15.64, plus interest), 16 ($5,000.00, plus interest), 25 ($17,900.00, plus interest), 38, 42 ($5,000.00), 59-62 ($5,500.00), 75, 85 ($5,227.71). These all remain unpaid. Tr. 450, 452-53. There is no evidence that these judgments have been satisfied.

24. **FICA withholding:** While running his law firm, Petitioner was required to withhold Social Security and Medicare taxes from an employee's compensation under the Federal Insurance Contributions Act (FICA). He withheld approximately $100,000 from his employees' wages, but failed to pay this money to the United States Treasury, as required. *See* Tr. 406. Petitioner admitted that he used the funds withheld from his employees under FICA to sustain his business, but attempted to excuse his past unauthorized use of the funds by testifying that it was

like using a credit card. Tr. 407-08. Petitioner did not appear to recognize that this practice constituted theft of funds. *Id.*

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

25. Petitioner asserts that he "accept[s] full and complete responsibility for his misconduct and for the harm and the losses it caused his clients." PX 1 at 11; *see also* Tr. 96-97 (Green); DCX 4 at 24-25. As detailed below, the Hearing Committee did not find these assertions credible when considered against the full weight of the evidence on this point.

C. Petitioner's Post-Discipline Conduct

Restitution

26. The Court did not order that Petitioner's reinstatement be conditioned on restitution. But, after Petitioner was disbarred, the Client Security Fund paid out over $650,000 to clients harmed by his misconduct. DCX 15 at 4-5.

27. In January 2013, Petitioner sent an email to Kathleen E. Lewis, manager of the D.C. Bar's Attorney/Client Relations Program, which included the Clients' Security Trust Fund. Petitioner acknowledged that he owed the Fund in excess of $600,000 and agreed to pay the Client Security Fund $100 per month. *Id.* at 5 (¶ 12). Petitioner further agreed to increase his payments to 10% of his monthly profits, earnings, salary, or draw in the event he receives a salary or realizes business profits. *Id.* Petitioner failed to maintain the payment schedule, testifying unpersuasively that he failed to pay because the Client Security Fund did not accept his payment plan. Tr. 344-46. Petitioner further testified this agreement was "aspiration[al] in nature" and apparently believed he did not have to abide by his offer. Tr. 451.

28. In the seven years since his disbarment, Petitioner has paid only $300 toward restitution. *See* DCX 15 at 5 (¶ 13). During that time period, Petitioner used funds to start two

businesses. *See* PX 1 at 15-18 (Perfecto Coffeehouse and Guardhouse LLC (a technology start-up that helped homeowners develop and safeguard property inventories to document property loss claims). Neither business survived. *Id.*

Financial Irregularities

29. Petitioner stipulated in the disciplinary proceedings that he violated Rule 1.15(a) and (d) by misappropriating unearned advanced fees and unincurred costs. DCX 3 at 43-52; DCX 7 at 4-5. Petitioner also stipulated to commingling entrusted funds in violation of Rule 1.15(a). *Id.*

30. Upon cessation of his law practice, Petitioner set out to commence a new business. He signed a three-year lease for a space in Baltimore, Maryland to run Perfecto Coffeehouse. Tr. 298-99. He paid over $5,000 as an initial deposit, but left that business owing money to his landlord for seven months' rent, utilities, a supplier (Zeke's Coffee), and wages due to the coffee shop manager. Tr. 461; DCX 20 at 2-8, 22-23.

31. Under threat of eviction for failing to pay rent and utilities, Petitioner tried to sell the coffee shop business and sued his former landlord when the sale fell through. Tr. 304; DCX 20 at 2-8. The trial court granted the landlord's summary judgment motion, but not before Petitioner gave deposition testimony in December 2011, in which he repeatedly claimed to have paid rent for the months between December 2009 and April 2011 by check, but could not provide the bank account number or recall whether the checks were returned or bounced. *See* DCX 20 at 9-36.

32. Petitioner denied owing as much as $8,000 in electric bills, which the trial court found was owed. Tr. 460-61 (Petitioner: "rather excessive"). *But see* DCX 20 at 3 ("Plaintiff was also in default by having failed to pay the electric bill of $8,800.87").

33. Petitioner also admits that he used two credit cards to their limit, then did not pay what he owed, and the cards were revoked. Tr. 423; RQ (Question 20); *see also* Tr. 161 (Mr. Neal

testified that "a couple of times, [Petitioner's] credit card was denied because he didn't have proper funds on it").

Volunteer Work

34. Petitioner volunteers one night a week as a tutor for non-English speaking students at the Carlos Rosario Public Charter School in the District of Columbia, where his efforts have been publicly recognized. Tr. 336; Petition for Reinstatement, Exhibit 23.

35. Petitioner is also involved in the Natural Ivy Foundation for the Poor, where he did volunteer work and later joined the Board of Directors. Tr. 337. Pernetha Smith, a founding director of the Natural Ivy Foundation, submitted an affidavit in support of Petitioner describing the organization as "a community of organizers that work together to strengthen the lives of individuals by providing education, social awareness, healthy living, and community support to disadvantaged families" and recounting Petitioner's volunteer work and role as a director of the organization. Petition for Reinstatement, Exhibit 30 (Affidavit of Pernetha Smith).

36. Petitioner has dedicated substantial time to mentoring two students through Best Kids D.C., an organization that arranges for tutors and mentors for young teenagers. Petitioner received an award for having devoted the greatest number of hours to his mentees, with 173 hours of mentoring in 2015 alone. Tr. 338-39, 341; PX 6.

37. Petitioner is also actively volunteering with two other organizations, Capital Food Bank and Bread for the City. Tr. 335-36; PX 1 at 21.

38. Petitioner volunteered with additional organizations including the Whitman-Walker Clinic, the Rotary Club, Lawyers Have Heart Race, and Race Against Child Hunger (a United States Department of Agriculture-funded program for underprivileged families). PX 1 at 20-22.

D. Petitioner's Present Character

39. Petitioner presented evidence from several witnesses, including members of the District of Columbia and Maryland Bars and a former United States Probation Officer, who testified to their view of his positive character and suitability to return to the practice of law. However, none of these witnesses had any detailed knowledge of Petitioner's misconduct. Mr. Jablon, with whom Petitioner has worked for some time and who has made an employment offer to Petitioner, testified that what led to disbarment was that Petitioner had "failed to supervise the attorneys that worked for him," had "relied on other people," and "didn't keep up with deadlines." Tr. 57. Mr. Jablon testified that Petitioner had never used the term "dishonest" to describe his activities, and even after Mr. Butler was asked about fraudulent conduct at a deposition Mr. Jablon defended in connection with the defunct coffee business, he had no discussion with Petitioner about fraudulent or dishonest conduct. Tr. 57-58. Mr. Johnson, Petitioner's law school friend who expressed concerns to Petitioner as his firm was growing (Tr. 81), summarized his understanding as: Petitioner "had a law firm and things just spiraled out of control due to lack of expertise in certain areas, and that's the sum of substance." Tr. 77. Mr. Green testified that he understood the situation as "this is your company . . . the people that are under you, they represent you so you have to account for those things." Tr. 93-94. Mr. Scott similarly testified that Mr. Butler told him "it was his law firm, and he just got too big – things got out of hand basically, and it was his fault." Tr. 121. Mr. Grace recounted that "it was more or less that certain people didn't do the job that he thought were doing, and it's probably more of mismanagement, more than, you know, some type of nefarious malfeasance." Tr. 135. Mr. Neal testified that "he told me that he ran a law firm here in D.C., and that he had negligently accepted clients' money and did not represent them." Tr. 157. Mr. Clark, who represented Petitioner in the initial phase of the original disciplinary proceedings,

testified that "things hadn't been handled properly at his firm, and he came to realize whose fault it was. It was his because he was the guy in charge." Tr. 186.

E. Petitioner's Present Qualifications and Competence to Practice Law

40. Since 2011, Petitioner has worked from time to time in Mr. Jablon's offices as an intern and a paralegal, helping with research and discovery on legal matters for Maryland cases. Tr. 34-39, 41-42, 50. Mr. Jablon testified that based on his direct experience over an extended period of time, Petitioner's legal ability and competence are "very good" and specifically noted Petitioner's "fine attention to detail." Tr. 42. Mr. Jablon has also offered Petitioner a position as a salaried associate in his law firm, if reinstated. *See* PX 7 (Affidavit of Brian S. Jablon, Esq. (Mar. 17, 2016)). Mr. Jablon, who practices in Maryland, expected Petitioner to develop a new personal injury practice as part of his firm in D.C. Tr. 46. Petitioner presented evidence that he attended a single CLE course in 2015. PX 3.

V. LEGAL ANALYSIS

In assessing whether Petitioner met his substantial burden imposed by Rule XI, § 16(d), we focus primarily on five factors: (1) the nature and circumstances of the misconduct for which the attorney was disciplined; (2) the attorney's recognition of the seriousness of the misconduct; (3) the attorney's post-discipline conduct, including steps taken to remedy past wrongs and prevent future ones; (4) the attorney's present character; and (5) the attorney's present qualifications and competence to practice law. *Roundtree*, 503 A.2d at 1217. Petitioner has not presented clear and convincing evidence sufficient to satisfy the appropriately high burden he faces to once again be entrusted with a license to practice law.

A. The Nature and Circumstances of Petitioner's Misconduct

The nature and circumstances of the misconduct for which an attorney was disciplined is a significant factor in the reinstatement determination, "because of their obvious relevance to the attorney's 'moral qualifications . . . for readmission'" and the Court's "duty to insure that readmission 'will not be detrimental to the integrity and standing of the Bar.'" *In re Borders*, 665 A.2d 1381, 1382 (D.C. 1995) (quoting D.C. Bar R. XI, § 16(d)).

In addition to the misconduct that led to Petitioner's disbarment, the Hearing Committee also considers prior unadjudicated acts of misconduct that were dismissed after Petitioner consented to disbarment. *See In re Fogel*, 679 A.2d 1052, 1055 (D.C. 1996). Although the Petition for Negotiated Disposition and the Specification of Charges listed ten client cases, as noted above, there were 129 other complaints filed against Petitioner before and after his disbarment. DCX 23. Disciplinary Counsel submitted evidence of those prior unadjudicated acts of misconduct with a proffer, as required by Board Rule 9.8(a). Petitioner has not submitted a response to ODC's proffer or contested its proffer. *See* Board Rule 9.8(b). Therefore, evidence of the unadjudicated acts of misconduct prior to disbarment are accepted into evidence and considered along with Petitioner's prior adjudicated misconduct.

Considered quantitatively, Petitioner's case is both extreme and severe. Qualitative consideration of the impact his misconduct had on his clients leads to the same conclusion when time limits ran out on clients' limited access to post conviction relief from criminal convictions. In a coda to the outcry in response to the original negotiated discipline in 2009, more than two dozen former clients and family members of former clients submitted letters opposing readmission for Petitioner. DCX 18.

In the original complainant against Petitioner, Mr. Wardrick writes:

> I pray that no other individual ever have to experience an ordeal akin to mine from Mr. James Q. Butler. While I understand and respect the fact that Mr. Butler is now applying for reinstatement to the [B]ar, however, it is my strongest desire and humble request that your office please not allow Mr. Butler to be reinstated. This individual will only cause more harm, and certainly embarss[sic] your very well founded office. Mr. Butler will only continue to mislead his clients and display his unprofessional attitude once his receives his retainer fee.

DCX 18 at 13.

Another former client, Rodman Duram, writes:

> I personally feel that Mr. Butler should not be given a chance to practice law in any fashion. I do believe in second chances and Mr. Butler deserves a second chance in life, but not in law. His behavior and actions during this fiasco was of someone who still would not accept responsibility for his own actions. If Mr. Butler feels that its[sic] OK to steal peoples[sic] money and freedom which is basically there[sic] lives, then he should not have the opportunity to take anyone elses[sic] from them. I believe that Mr. Butler's actions have shown a lack of ethics and integrity that exemplify the very reasons he should not be allowed to practice law again.

DCX 18 at 23.

Although they were unable to appear in person, it would be perverse indeed if the fact that most of Mr. Butler's aggrieved former clients are incarcerated and thus not readily available for testimony meant that their views were not fully heard. We have carefully considered every letter submitted in connection with these proceedings and note both their passion and unanimity. *See, e.g.*, DCX 18 at 3 (Sharoid Wright: "I wouldn't allow [Mr. Butler] the opportunity to destroy any other potential clients' lives by wasting years of their lives and doing nothing."), 21 ¶ 4 (Nathan D. Faust: "Attorney Butler should not be permitted to practice law again."), 27 (Linwood Collins: "I truly do not believe that Mr. Butler should be reinstated"), 29 (Anthony Mills: Mr. Butler should "never have another opportunity to practice law again."), 31 (Carl Emerson-Bey: "To Allow [Mr. Butler] to Practice Law again, will be allowing him to Continue to manipulate the Justice System

and Ruin The Lives of The Ignorant, Desperate and Hopeful[].”), 33 (Charles Pollard: “[Mr. Butler] should not be given the privilege to practice law as he cannot be trusted.”), 36 ¶ 5 (Jesse J. Dean, Jr.: “Mr. Butler should never be allowed to practice law in the DC Bar again.”), 38-39 ¶ 4 (Dwan F. Newman: “I vehemently oppose the reinstatement of Mr. Butler to the Bar or to be allowed to ever practice law again.”), 41 (Morris Niday: “[Mr. Butler] should never be reinstated to practice law anywhere in the U.S.!!!”), 43 (Thomas D. Dixon: “my two cents is this concerning James Butler Being Permitted to Practice law again: ‘Hell no.’”), 49 (William M. Ellison: “I don’t want anyone else to experience what I have experienced.”), 50 (Lewis J. Watson, Jr.: “**strongly against**” reinstatement), 54 (Earl D. Burgess: “Mr. Butler . . . DOES NOT DESERVE TO BE REINSTATED TO THE PROFESSION!!”), 56 (Maurice Williams: “If there [is] anything I can due[sic] to make sure this criminal Mr. Butler practices law no more contact ME!”), 58 (Renard McClain: “Mr. Butler should be banned from any practice of law for life, . . . he is a conman and common crook!”), 59 (Wayne Roberts: “‘He’s a crook’ . . . and should never be given the chance to practice law again.”), 60 ¶ 4 (Albert T. Jones: “[Mr. Butler] should never be permitted to practice any type of law ever again.”), 61 (Joel Caston: “I strongly believe Mr. Butler should not be permitted to practice law again.”), 63 (Corey E. Johnson: “I STRONGLY BELIEVE [Mr. Butler] POSES A SERIOUS HARM TO THE PUBLIC.”), 67 ¶ 4 (Kenny Ray Murray, Jr.: “[Mr. Butler] shouldn’t be allowed to practice law”), 68 ¶ 4 (Ronald Govostis: “MR. BUTLER SHOULD *NEVER* BE ALLOWED TO HAVE AN OPERTUNITY[sic] TO MESS-UP SOMEONES[sic] LIFE LIKE HE HAS DONE TO ME OR BE ABLE TO *PRACTICE LAW* AGAIN.”), 45 ¶ 4 (James Lawrence (writing on behalf of his incarcerated son who was a client of Mr. Butler): “I personally do not think that Mr. James Q. Butler should be reinstated as an Attorney”), 47 (Linda

D. Clark (writing on behalf of her deceased husband, Donald Clark, who was a client of Mr. Butler): "James Q. Butler should not be permitted to practice law again in his lifetime.").

In short, it is difficult to imagine a more complete betrayal of the obligations of the office of attorney than that committed by Petitioner. Petitioner admitted in two affidavits that he lied to, stole from, and abandoned his clients – dozens upon dozens of them. FF 2, 11. Petitioner also admitted that he committed fraud. *Id.* Petitioner not only continued but accelerated his misconduct after the Wardrick complaint came to light. *See* FF 7-10. We have not identified readmission precedent with anything approaching the breadth and depth of misconduct present here. In our judgment, readmission in light of the nature and circumstances of Petitioner's misconduct would require an especially persuasive showing of rehabilitation and require us to apply a heightened scrutiny to Petitioner's efforts to establish his entitlement to return to the Bar. *See Borders*, 665 A.2d at 1382 ("[T]he gravity of the misconduct and the fact that it is so closely bound up with Petitioner's role and responsibilities heightens the seriousness of our scrutiny of the other [*Roundtree*] factors . . . ." (internal quotation and ellipsis omitted)). Petitioner has not made such a showing.

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

Disciplinary Counsel argues that Petitioner has failed to establish that he recognizes the seriousness of his misconduct because he has offered only a generalized explanation of his wrongful conduct, but has not discussed the specific details. Disciplinary Counsel also argues that Petitioner's failure to pay his former clients or the Client Security Fund also shows his failure to recognize the seriousness of his misconduct. The Board recognized in *In re Richardson* that

"substantial restitution" is an important factor in showing rehabilitation, even where the Court has not conditioned reinstatement on payment of full restitution:

> [T]he Board understands fully that attorneys who have been disbarred or suspended may find themselves in precarious financial circumstances, and the Board does not understand the case law to hold that a petitioner must have made repayment in full in order to gain reinstatement. What is required, we believe, is evidence of *(a) an acknowledgment by the petitioner that amends are to be made to the victimized party, and (b) substantial steps towards making such amends.*

Bar Docket No. 289-01 at 8 (BPR July 30, 2004) (emphasis added), *recommendation adopted*, 874 A.2d 361 (D.C. 2005) (reinstatement denied).

Certainly the Petitioner, both in writing and at the hearing, said that he accepted responsibility for his misconduct. It is not clear however that these recitations of this *Roundtree* factor were anything more than carefully scripted words. Nothing in Petitioner's demeanor, bearing, or sentiment conveyed to the Hearing Committee genuine contrition or remorse.

First, Petitioner had virtually no recollection or knowledge of either the nature of the conduct to which he had stipulated or the lives impacted. Speaking of the experience of his former client Mr. Duram, Petitioner could only offer: "I am familiar to the extent that I know he was a client that I consented there was misconduct in his case." Tr. 354. Petitioner went on to excuse his lack of knowledge by pointing to the passage of time and offering the deflection that he did not work on every case handled by the BLG. Tr. 354-55. Mr. Duram was one of the many former clients of the Petitioner to submit evidence, and his recollection is substantially more acute:

> I first hired Mr. Butler after my girlfriend went online and saw a webpage of his proclaiming his services and his affinity for justice. I first spoke with Mr. Butler about 4 days after my girlfriend saw his webpage and informed me of it. When I communicated to Mr. Butler my wishes to have him represent me as my appellate attorney he said he would do just that and that I had to sign some papers, and have my girlfriend bring him $5,000.00 at which time he would go and put his appearance in with the court as my appellate attorney. I fulfilled my end of this agreement by signing the required paperwork, and my girlfriend then took Mr. Butler a check or Money order for $5,000.00. The next time I spoke with Mr. Butler

> after all requirements had been met, he informed me that his investigator would be doing "some ground work on my case," and that I could call him anytime I had any questions (meaning I could call Mr. Butler himself).
>
> I became very dissatisfied with Mr. Butler's service when I received an appellate brief from my court appointed appellate attorney Mr. Hart whom I had believed to have been dismissed from my case once I'd paid Mr. Butler. Upon receiving this brief from Mr. Hart I immediately called Mr. Butler to find out what was happening since we'd been in constant contact since I'd hired him. That's when he told me that Mr. Hart had not turned over my transcripts and had not wanted to give up my case. I asked him if he'd taken legal action about Mr. Hart's lack of cooperation and he said that he didn't want to go that route. I told him that my freedom and life were on the line so I didn't particularly care about what route there was to take, only that my attorney have the necessary tools to defend me with. He said that he would take care of the appellate brief and the entire situation. I then called my girlfriend and asked her to call the courts and find out who my appellate attorney on record was, and after talking to her she informed me that the courts have never had Mr. Butler as my appellate attorney. This was approximately 9 months after I'd paid and retained Mr. Butler and his firm. **He then went on to file motions for me in the wrong court. Mr. Butler was filing motions for me to correct this fraudulent behavior in Superior Court when I had hired him to file my direct appeal** [in the D.C. Court of Appeals].
>
> Mr. Butler's lies, deception, and fraudulent behavior have stripped away my right to due process because Mr. Hart after trying to recuse himself from my case once he learned about my hiring of Mr. Butler (whom he stated he'd never heard from before my girlfriend contacted him and asked him why he was still working on my case) was then told by the appellate court that he would have to still remain my attorney thru my oral arguments. **I was stripped of my chance at my direct appeal in a most disgusting and frustrating manner and now I have no recourse to file what is supposed to be my Constitutional right because of Mr. Butler's fraud and deception.** I am extremely upset that Mr. Butler is even being considered for reinstatement because he threw my second chance away, so why should he get one.

DCX 18 at 22 (emphasis added); *see also* Tr. 357 (Petitioner testifying: "[Mr. Duram] wrote a specific letter regarding this reinstatement hearing? . . . I don't recall seeing that frankly."). Mr. Duram's letter, like other submissions of former BLG clients, speaks of Petitioner's personal, direct, and prejudicial involvement in his clients' cases. *E.g.*, DCX 18 at 8 (Reginald Harris's brother met with Petitioner), 32 (Charles Pollard's cousin met with Petitioner), 44 (Gregory

Lawrence met with Mr. Butler), 46 (civil case; Donald Clark, client, and Linda Clark, client's wife, met with Mr. Butler).

Petitioner's blithe expressions of ignorance, and his failure even to give thoughtful attention to the letters submitted in connection with this proceeding, are inconsistent with any meaningful recognition of the seriousness of his misconduct. Petitioner's testimony was more consistent with a desire to put the past behind him than to demonstrate that he had learned from his experiences: "With no disrespect to those clients that were harmed, I have already acquiesce[d] to this misconduct and I don't dispute that any of the misconduct named in the negotiated discipline occurred." Tr. 355.

Second, in deposition testimony in the Perfecto Coffeehouse case, Petitioner downplayed the circumstances of his disbarment to the point of mischaracterization. Asked what the circumstances of fraud were that underlay the disciplinary action taken against him, Petitioner replied:

> I have absolutely no idea, but I will tell you this. There were – when the disciplinary committee lodges these complaints, they almost, and with all due respect to the committee, throw in somewhat of a cornucopia of adjectives to represent one's conduct; fraud, misrepresentation and so on, to ensure, I believe, that they are covered the gamut, so to speak.

DCX 20 at 17. This testimony was given in 2011. It thus appears that the passage of time does not explain Petitioner's lack of recognition of exactly what he did wrong. And of course when the preface "with all due respect" is used it is often clear, as it is here, that the speaker means exactly the opposite.

Third, none of Petitioner's character witnesses had any detailed knowledge of what havoc had been left in the wake of his time at the Bar and none of these witnesses had an accurate understanding of Mr. Butler's personal role in what went wrong at Butler Law Group. They all

got their understanding from the Petitioner, and there is a consistency among their misimpressions that what was at issue in Mr. Butler's disbarment was some type of "captain of the ship" responsibility for the misdeeds of others. Striking in this regard was Mr. Grace's testimony that "it was more or less that certain people didn't do the job that he thought they were doing, and it's probably more of mismanagement more than, you know, some type of nefarious malfeasance." Tr. 135. That is dead wrong. Fraud, dishonesty, and a business model built on fleecing a vulnerable population are prime examples of nefarious malfeasance. *See* FF 2, 4, 11.

Fourth, the record betrays a pervasive false insinuation that this was all the fault of the mysterious Anthony Andelino, who was affiliated with Petitioner for a time to build the "post-conviction relief practice" and is purported to have impersonated him when dealing with clients. *E.g.*, Tr. 271 ("These cases came from Andelino . . . ."). Petitioner testified that telling the story of his own misconduct without mentioning Mr. Andelino would be like "telling a story about Winnie-the-Pooh without ever mentioning Winnie-the-Pooh's name." Tr. 276. Hardly. Petitioner is the main character in this story and his persistent minimization of his own role is a signal of Petitioner's failure to come to terms with why he was disbarred. Petitioner conceded that Mr. Andelino, whose admission to any Bar has not been demonstrated, was gone from the firm as of mid-2007. Tr. 383. Many of the complaints post-date Mr. Andelino's departure, and recount in-person meetings with Petitioner. *See* DCX 18 at 15 (Reginald Harris retained Petitioner for post-conviction work in "latter part of 2007"), 19 (Phillip E. Haley retained Petitioner for post-conviction work in 2008), 28 (Anthony Mills retained Petitioner for post-conviction work and spoke by phone with Petitioner in 2008).

Fifth, Petitioner now denies one of the concrete acts of theft that he agreed to as part of the disbarment proceeding – the improper processing of a charge card for $5,000 when the client only

authorized $500. FF 12; *see also* DCX 7 at 4-5. Despite all his general statements of accepting responsibility, when confronted with a specific instance of deceitful conduct to which he had specifically admitted in the negotiated resolution that he wants credit for accepting, Petitioner protests that the allegation was wrong. *Compare* Tr. 366 (testifying that paragraph 38 of the Petition is inaccurate), *with* Tr. 355 ("I don't dispute that any of the misconduct named in the negotiated discipline occurred.").

Finally, no evidence was proffered of perhaps the most universal and commonplace indicia of acceptance of responsibility – an apology to those affected by one's misdeeds. Dwan F. Newman, one of Mr. Butler's former clients, writes with considerable persuasive force, that "if Mr. Butler were truly sorry for his conduct, he would have reached out to those he actually harmed instead of only those who can help him return his profession." DCX 18 at 39.

The *expression* of acceptance of responsibility before a Hearing Committee is both easy and cheap. Such expressions are necessary, but far from sufficient, to allow a finding that the second of the *Roundtree* factors supports reinstatement. A relevant consideration is Petitioner's near complete failure to make financial recompense to his victims. *See* pages 31-32, *infra.* Yet more troubling is Petitioner's lack of appreciation for what he actually did. *See In re Sabo*, 49 A.3d 1219, 1227 (D.C. 2012) (reinstatement denied in cases where "the petitioners minimized their misconduct or failed to articulate the reasons for it"); *In re Brown*, 617 A.2d 194, 198 (D.C. 1992) ("'[N]owhere in this record does [Petitioner] provide a thoughtful, reflective recognition of his misconduct . . . .'") (quoting Board Report). In order to meaningfully accept responsibility one must first inventory, understand, and accept the wrongs one has committed. Petitioner does not accept even the very facts to which he consented as part of his disbarment. The Hearing Committee

finds that Petitioner's current attitude towards his admitted misconduct provides no comfort that the past would not be prologue to further misconduct. *See Borders*, 665 A.2d at 1385.

C. Petitioner's Post-Discipline Conduct

Under the third *Roundtree* factor, we must consider a petitioner's "conduct since discipline was imposed, including the steps taken to remedy past wrongs and prevent future ones." 503 A.2d at 1217; *see also Sabo*, 49 A.3d at 1229 (finding rehabilitation where attorney had "made significant positive changes, creating a convincing case of rehabilitation").

Financial Restitution

Petitioner argues that: "Neither Disciplinary Counsel's Uncontested Motion to Accept Consent of Respondent's Disbarment" [DCX 7] nor the Court's November 5, 2009 Order of disbarment made reinstatement contingent on repayment of any specific portion of the restitution amount owed." Pet. Br. at 5 (emphasis omitted). There is also Court precedent for granting reinstatement even where restitution obligations have not been *completely* fulfilled. *See* Order, *In re Beane*, 35 A.3d 1136, 1136 (D.C. 2012) (per curiam) (reinstatement subject to repayment efforts on $29,935.00 due to the Client Security Fund); *In re Courtois*, 931 A.2d 1015, 1016 (D.C. 2007) (per curiam) (reinstatement subject to compliance with IRS Offer in Compromise on approximately $200,000); *In re Turner*, 915 A.2d 351, 357-58 (D.C. 2006) (per curiam) (appended Board Report) (reinstatement subject to compliance with $75 monthly repayment plan with periodic reevaluation of ability to pay); *In re Kerr*, 675 A.2d 59, 66 (D.C. 1996) (per curiam) (appended Board Report) (reinstatement subject to compliance with repayment plan of $10,500 over a period of seven years). Petitioner has proposed that his reinstatement conditions include the requirement that he "make monthly restitution payments, within the first five days of each month, to the Client Security Trust Fund in an amount at least equal to 5% of [his] average monthly

gross income for the preceding year as reported on his federal tax return, but in any event not less than $50 . . . ." Pet. Br. at 28.

While proof of full restitution is not a prerequisite for reinstatement, as discussed above, the Board in *Richardson* recognized that whether a petitioner has made "substantial steps" towards restitution is an important factor in showing rehabilitation, even where the Court's discipline order did not address payment of restitution. Bar Docket No. 289-01 at 7-8 (recommending denial of reinstatement where Petitioner introduced no evidence showing that he had restored any of the $50,000 in excess fees he had taken from a trust), *recommendation adopted*, 874 A.2d at 361.

Financial Irregularities

In cases where the original misconduct involved misappropriation or other financial irregularities, it is appropriate to consider how a petitioner has handled his personal finances, because mismanagement of those finances may be "'behavior reminiscent of actions that led to . . . disbarment.'" *Mba-Jonas*, 118 A.3d at 787 (quoting *In re Robinson*, 705 A.2d 687, 688-89 (D.C. 1998)). The Court has suggested that an attorney disbarred for misappropriation "'must pay scrupulous attention to his financial obligations'" before he seeks reinstatement. *In re Patkus*, 841 A.2d 1268, 1270 (D.C. 2004) (per curiam) (quoting *Robinson*, 705 A.2d at 689). Because a disbarred attorney does not generally handle entrusted funds, his personal finances offer the only measure of how he will handle other people's funds in the future if reinstated. *See Mba-Jonas*, 118 A.3d at 787; *see also Robinson*, 705 A.2d at 689 (post-disbarment conduct showed "'financial irresponsibility and lack of restraint'") (quoting Board Report); *In re Patkus*, Bar Docket No. 275-00 at 21-22 (BPR July 30, 2003) (petitioner's "financial instability" evidenced by numerous overdrafts on three separate accounts), *recommendation adopted*, 841 A.2d at 1270. Unpaid

judgments are likewise relevant in considering whether a petitioner is fit to resume the practice of law. *See, e.g.*, *Patkus*, 841 A.2d at 1269.

Here, Petitioner stipulated in the disciplinary proceedings that he violated Rule 1.15(a) and (d) by misappropriating unearned advanced fees and unincurred costs. DCX 3 at 43-52; DCX 7 at 4-5. Petitioner also stipulated to commingling entrusted funds in violation of Rule 1.15(a). *Id.* Thus, it is appropriate for the Hearing Committee to consider Petitioner's finances during the period of disbarment. Petitioner acknowledges that his "ongoing financial difficulties since his disbarment are relevant to the question of his reinstatement," but only to the extent that they explain his inability to pay restitution to his former clients or the Client Security Fund. Pet. Br. at 23. Disciplinary Counsel argues that Petitioner demonstrates continued recklessness in his post-discipline financial practices, including his federal and state tax issues, bounced checks, revocation of two credit cards, and failure to pay judgments, accounts due, and his coffee shop manager's salary. ODC Br. at 33-35 & n.3.

The Hearing Committee finds that Petitioner has not made substantial steps towards restitution. In Petitioner's case, we have been presented with evidence that rather than seek a regular income post disbarment, Petitioner entered a risky business of operating a coffee shop, which failed, leaving more debts in his wake. In 2011-12, Petitioner worked on a commission basis as an "enrollment counselor" for College Admission Assistance, an educational service organization that provides expert college planning help to students. PX 1 at 16. Petitioner then started Guardhouse LLC, a technology start-up that failed. *Id.* at 17. He then had no regular employment, despite a fine education and obviously persuasive way that could have been exploited in any number of sales or related positions. The Hearing Committee is left with the distinct impression that Petitioner felt an "ordinary job" was not suitable for him. The post-disbarment

fiscal misadventures of the Petitioner are in keeping with the practices that marked the Butler Law Group, but with creditors rather than clients appearing to have borne the brunt of the latest expressions of the Petitioner's ambitions. Petitioner's post-discipline conduct leaves us with no comfort that these same instincts would not manifest in a return to a position of trust over client funds and matters.

D. Petitioner's 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.'" *Sabo*, 49 A.3d at 1232 (quoting *Turner*, 915 A.2d at 356). The Court has "stressed the obvious importance of this factor, and the need for a petitioner to put on live witnesses familiar with the underlying misconduct who can provide credible evidence of a petitioner's present good character." *In re Reynolds*, 867 A.2d 977, 986 (D.C. 2005) (per curiam).

As noted above, the Hearing Committee was unable to conclude that Petitioner had a "full appreciation of the wrongfulness of his conduct." *Sabo*, 49 A.3d at 1232 (quoting *Turner*, 915 A.2d at 356). Likewise, beyond bald assertions by the Petitioner, we find no evidence that Petitioner has a "new determination to adhere to the high standards of integrity and legal competence which the Court requires." *Id.* Taking due account of the commendable volunteer work that has been performed by the Petitioner, in light of the absence of meaningful acceptance of responsibility, the problematical character of Petitioner's post-disciplinary financial and commercial conduct, and the failure to put on any witnesses familiar with the Petitioner's actual

wrongful conduct, we cannot conclude that consideration of the fourth *Roundtree* factor favors reinstatement.

E. Petitioner's Present Qualifications and Competence to Practice Law

"Learning in the law is an important factor in every reinstatement case," and a lawyer seeking reinstatement "should be prepared to demonstrate that he or she has kept up with current developments in the law." *Roundtree*, 503 A.2d at 1218 n.11. "What must be proven in any given case will depend, in part, on the length of the suspension or disbarment and the reasons for it," but in general, "the longer the suspension, the stronger the showing that must be made of the attorney's present competence to practice law." *Id.* Petitioner's disbarment was effective July 31, 2009. Because he has been out of the practice of law for an extended period of time, he must make a stronger showing about his current competence to practice law.

Petitioner argues that his work with Mr. Jablon since 2011 establishes that he is presently qualified and competent to practice law. Disciplinary Counsel argues that Petitioner failed to establish competence. Specifically, Petitioner failed to offer

> proof of recent attendance at any continuing legal education course or other professional educational program. Nor did he present any legal analysis or documents that he created as a paralegal. He failed to present proof of his expertise or trial competence in auto accident cases or EEOC cases, such as he intends to take if reinstated. . . . Petitioner also failed to show that he has kept up with the law by reading law journals, the Daily Washington Law Reporter, or current District of Columbia Court of Appeals opinions.

ODC Br. at 39 (citing *In re Stanback*, 913 A.2d 1270, 1278 (D.C. 2006) (per curiam) ("From 1997 through 2004, Petitioner regularly took the 12 hours of CLE courses required by the Virginia Bar. He also reviewed the District of Columbia Bar's practice manual for new lawyers, which covers the rules of professional conduct. He also took a District of Columbia CLE course on trust accounts. Finally, as part of his reinstatement to the Virginia Bar, petitioner took the Multistate Professional Responsibility Exam and passed.") (citations omitted)).

Petitioner failed to make a meaningful showing of competence.

VI. CONCLUSION

Based on the foregoing, the Hearing Committee concludes that Petitioner has failed to demonstrate by clear and convincing evidence that he is entitled to reinstatement pursuant to D.C. Bar R. XI, § 16(d). The Hearing Committee recommends that the Court deny the Petition for Reinstatement.

AD HOC HEARING COMMITTEE

/MH/
Matthew Herrington, Esquire
Chair

/JK/
Joel Kavet
Public Member

/ERL/
Edward R. Levin, Esquire
Attorney Member

Dated: November 17, 2016