BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

IN THE MATTER OF	:	2362 Disc. Dkt. No. 3
	:	
J. MICHAEL FARRELL	:	No. 34 DB 2017
	:	
	:	Atty. Reg. No. 33803
	:	
PETITION FOR REINSTATEMENT	:	(Philadelphia)

BRIEF OF OFFICE OF DISCIPLINARY COUNSEL TO HEARING COMMITTEE

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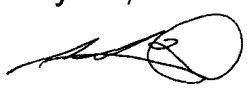
I hereby certify that I have this day served by email and first class mail the within document upon all parties of record in this proceeding in accordance with the requirements of 204 Pa. Code Section 89.22.

May 13, 2024



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pertains to a reinstatement matter, you may need to add "-R" to the end of the four-digit year for the case in the Board Docket Number field.

METHOD OF CITATION

Numbers and letters in parentheses indicate documents and location as follows:

N.T.____ indicates a page or pages of notes of testimony of the November 16, 2023 hearing;

N.T.II___ indicates a page or pages of notes of testimony of the February 21, 2024 hearing;

N.T.III____ indicates a page or pages of notes of testimony of the February 22, 2024 hearing;

ODC-____ represents a (numbered) ODC Exhibit;

P-____ represents a (numbered) Petitioner's Exhibit; and

PFOF ____ refers to a numbered Proposed Finding of Fact in ODC's brief.

I. STATEMENT OF THE CASE

By Order dated December 4, 2019, our Court accepted Petitioner's November 9, 2019 Resignation Statement and disbarred Petitioner. (ODC-7-8) Attached respectively as Exhibits "B," "C," and "D" to the Resignation Statement were an Indictment filed against Petitioner on October 26, 2015, the jury's Verdict Form filed on February 6, 2017, and a Judgment in a Criminal Case filed on July 24, 2017. (ODC-7; Bates Nos. ODC-000145-000177) Petitioner was found guilty of money laundering (6 counts), attempted tampering with official proceedings (2 counts), conspiracy to engage in money laundering, and attempted witness tampering. Petitioner was sentenced to a term of imprisonment of 42 months and upon his release, a term of supervised release for 18 months.

Petitioner's criminal conduct spanned five years (2009-2013). During that period, Petitioner: acted as the lawyer to Matt Nicka ("Nicka") and Nicka's multi-state, multi-million-dollar marijuana drug organization ("Nicka Organization"); participated in a conspiracy to commit money laundering of drug proceeds; engaged in specific acts of laundering drug money by using those funds to pay for legal representation of Nicka Organization members and to provide funds

to those members; concealed his money laundering by falsifying his law firm's financial records or by failing to create client records for cash deposits; impeded a Drug Enforcement Administration ("DEA") forfeiture proceeding by submitting to DEA a fraudulent affidavit on behalf of a drug dealer; and tampered with a witness by advising a drug dealer to withhold relevant information from federal law enforcement authorities.

On July 8, 2022, Petitioner filed a Petition for Reinstatement ("the 2022 Petition") and Reinstatement Questionnaire ("the 2022 Questionnaire"). (ODC-15) Petitioner withdrew the 2022 Petition. (N.T.II 283-285)

On February 14, 2023, Petitioner filed a Petition for Reinstatement ("the 2023 Petition") and Reinstatement Questionnaire ("the 2023 Questionnaire"). (ODC-31)

Following a prehearing conference on September 26, 2023, the Chair issued a Pre-Hearing Order, which, *inter alia*, established deadlines for the parties to: identify proposed witnesses and exchange exhibits (10/16/23); submit objections to proposed witnesses and exhibits (10/23/23); identify any proposed expert witness and exchange expert reports (10/23/23); submit objections to

proposed expert witnesses and expert reports (10/30/23); submit responses to any objections filed to proposed witnesses and exhibits (10/30/23); submit responses to any objections filed to proposed expert witnesses and expert reports (11/6/23); file motions of any nature (10/23/23); and submit responses to any motions filed (10/30/23).

On October 4, 2023, Samuel C. Stretton, Esquire entered his appearance as Petitioner's counsel.

The reinstatement hearing was originally scheduled for November 16 and 17, 2023, but an issue arose with the expert witness Petitioner intended to have testify. Before the hearing convened, the November 17, 2023 hearing date was cancelled and rescheduled to February 1, 2024.

At the November 16, 2023 hearing, Petitioner presented ten witnesses who offered character testimony. Petitioner's counsel informed the Hearing Committee ("Committee") that Petitioner was not introducing 6 of the 50 exhibits (P-1-50) he had circulated to the Committee. (N.T. 33-36; P-17-19, 23(a)-(c)) Before the hearing was adjourned, the Committee decided two additional days of hearing

were necessary. Thereafter, the reinstatement hearing was rescheduled for two days of hearing on February 21 and 22, 2024.

On February 21, 2024, Petitioner called five witnesses and began testifying on his own behalf. Three of the witnesses offered strictly character testimony (N.T.II 12-39, 40-67, 105-134); the other two remaining witnesses offered character and non-character testimony (N.T.II 140-177, 178-213). The parties also stipulated as to the character testimony two other witnesses would have offered. (N.T.II 77-85)

The hearing reconvened on February 22, 2024. Petitioner called Petitioner's wife (who offered character testimony) and an expert witness. Petitioner resumed, and finished, testifying. ODC introduced 61 exhibits. (ODC-1-61) Petitioner introduced 5 additional exhibits and offered a total of 49 exhibits. (P-1-16, 20-22, 24-54, 56)

ODC contends that Petitioner failed to carry his heavy burden for three reasons: 1) Petitioner's misconduct is so grave that his reinstatement at this time would have a damaging impact on the legal profession and the public trust; 2) Petitioner has not engaged in a sufficient period of qualitative rehabilitation; and 3) Petitioner is not morally qualified to resume the practice of law and his resumption of

the practice of law within the Commonwealth would be detrimental to the integrity and standing of the Bar, and subversive of the public interest.

This Brief is submitted pursuant to D.Bd. Rules § 89.162.

II. PROPOSED FINDINGS OF FACT

ODC requests that the Committee find that the evidence, and the reasonable inferences therefrom, support the following Proposed Findings of Fact.

1. On October 26, 2015, a twelve-count Indictment was filed against Petitioner in the United States District Court for the District of Maryland ("the Maryland District Court"), thereby commencing a criminal case captioned ***United States of America v. James Michael Farrell***, Criminal No. RWT-15-0562 ("the criminal case"). (ODC-7, Ex. B; Bates Nos. ODC 000145-000167)

2. On February 6, 2017, after a fourteen-day trial, a jury found Petitioner guilty of the following ten counts:

   a. Count One - alleging that from 2009 to 2013, Petitioner was involved in a money laundering conspiracy that related to proceeds generated from Nicka's multi-state, multi-million-dollar marijuana drug operation, in violation of 18 U.S.C. § 1956(h);

   b. Counts Two, Three, Five, Six, Seven and Twelve – alleging that Petitioner engaged in particular acts of money laundering in violation of 18 U.S.C. §

1956(a)(1)(B)(i), by using drug proceeds received from the Nicka Organization to write checks drawn on Petitioner's law firm account to pay for members of the Nicka Organization to receive legal services and to pay for money orders given to an incarcerated member of the Nicka Organization;

c. Counts Four and Nine – alleging that Petitioner attempted to obstruct a DEA forfeiture proceeding and a prosecution in the Maryland District Court in violation of 18 U.S.C. § 1512(c)(2), by submitting a forged affidavit to DEA on behalf of a Nicka Organization drug dealer, by discussing with another represented Nicka Organization drug dealer the federal investigations and criminal prosecutions, by agreeing to assist with that drug dealer's legal expenses, and by directing that drug dealer to only tell federal law enforcement authorities what they already knew at a proffer interview; and

d. Count Eight – alleging that Petitioner attempted to tamper with a witness in violation of 18 U.S.C. §

1512(b)(3), based on, *inter alia*, the advice Petitioner gave to the Nicka Organization drug dealer to withhold relevant information from federal law enforcement authorities. (ODC-1; ODC-7, Ex. B and C; Bates Nos. ODC-000145-170)

3. ODC and Petitioner filed with the Supreme Court of Pennsylvania a Joint Petition to Temporarily Suspend an Attorney; by Order dated March 10, 2017, Petitioner was placed on temporary suspension status. (ODC-3; Bates No. ODC-000085)

4. On July 17, 2017, the Honorable District Judge Roger W. Titus sentenced Petitioner to a total term of imprisonment of 42 months, 18 months of supervised release, payment of a $15,000 fine, and a special assessment totaling $1,000. (ODC-7, Ex. D; Bates Nos. ODC-000173, 000176)

5. Petitioner appealed his criminal convictions, which were affirmed by the United States Court of Appeals for the Fourth Circuit ("the Fourth Circuit"), in an Opinion dated April 5, 2019 ("the Opinion"). (ODC-1; Bates Nos. ODC-000001-000055; N.T.II 246-247)

6. In November 2019, after Petitioner exhausted his appeals, he executed a Resignation Statement; by Order dated

December 4, 2019, the Supreme Court of Pennsylvania accepted Petitioner's Resignation Statement and disbarred Petitioner ("the Disbarment Order"). (ODC-7-8; Bates Nos. 000139-000180)

7. Petitioner's criminal conduct was egregious and severely damaged the integrity of the legal profession and the public trust. (PFOF 8-11)

8. From 2009 through 2013, while serving as the "'consigliere'" to the Nicka Organization and as Nicka's "'fixer' and adviser," Petitioner:

a. received large sums of cash that he knew came from the Nicka Organization's drug trafficking activities for Petitioner's use in paying for legal representation for the Nicka Organization members;

b. used more than $100,000 in drug proceeds to pay for legal representation for multiple members of the Nicka Organization (Joseph Spain, Amy Mitchell, Adam Constantinides, Jacob Harryman, Michael Phillips, and Ryan Forman) who were issued subpoenas to appear before a federal grand jury investigating the Nicka Organization, and to pay for

money orders deposited into Phillips's jail commissary account;

c. shared with Nicka information that Petitioner obtained from Spain and Forman;

d. kept in contact with indicted Nicka Organization suppliers and dealers and their lawyers in order to "'protect'" the indicted and unindicted conspirators, including Petitioner;

e. encouraged several Nicka Organization members not to cooperate with the federal authorities and/or to remain committed to Petitioner's "'collapsed defense'" strategy (Mitchell, Harryman, and Forman), which included conveying to Harryman a threat of physical harm if Petitioner's advice to conform to the collapsed defense strategy was not followed, and instructing Forman, who was represented by other counsel, to "'only go into a proffer [meeting] prepared enough to give them [federal agents] nothing more than what they already know.'";

f. filed a forged affidavit with the DEA on behalf of Harryman that prevented a forfeiture of Harryman's seized property and instructed Harryman not to disclose that an expensive watch was a gift from a marijuana supplier;

g. prepared on his own initiative a motion to quash a subpoena issued to Mitchell, which he then sent to Mitchell's lawyer; and

h. maintained inadequate records of cash deposits and falsified records to make it appear that he had received payment from Nicka Organization drug dealers, which included Petitioner instructing Forman to write Petitioner a check for $10,000 in exchange for a $10,000 cash payment from Petitioner so that Petitioner could make it appear that Forman had paid Petitioner. (ODC-1, pp. 8, 12-25, 36, 38-39, 49; Bates Nos. ODC-000009, 000013-000026, 000037, 000039-000040, 000050)

9. Petitioner's own words established his intimate knowledge about the Nicka Organization and his status as a willing

co-conspirator; Petitioner disclosed during a taped undercover conversation with Forman that Petitioner knew "'everything'" about the Nicka Organization and considered himself "'at risk'" based on his involvement with the Nicka Organization. (ODC-1, p. 23; Bates No. ODC-000024)

10. Petitioner's indictment and conviction received extensive local media coverage as shown by news articles and the testimony of Petitioner's character witnesses. (N.T. 87-88, 120, 149-150, 207, 240, 262, 288, 338; N.T.II 33, 44-45, 113, 120; ODC-6, 10; Bates Nos. ODC-000113-000138, 000183-000185)

11. Petitioner's character witnesses testified that Petitioner's criminal conduct was either reprehensible, serious, or "awful," and/or negatively impacted the public's perception of the legal profession. (N.T. 124, 132, 182, 207, 244, 262, 288, 309, 338; N.T.II 56, 122)

12. In this reinstatement proceeding, Petitioner has shown that he has not come to terms with the full extent of his criminal conduct because he offered testimony that minimized and contradicted the Fourth Circuit's findings as to the nature and scope of Petitioner's criminal conduct. (PFOF 13-15)

13. Petitioner testified that:

a. during a telephone call with Nicka and Sharpeta he received information from them about Spain's grand jury testimony;

b. Forman asked Petitioner to give Forman $10,000 in cash in return for a $10,000 check that Petitioner had received from Forman as a legal fee payment, and that Petitioner "stupidly" agreed to Forman's request;

c. he did not create a client transaction report showing that he received a $20,000 cash payment from Forman;

d. he did not know that the $200,000 in cash he received from Nicka were proceeds from a criminal activity;

e. he kept records whenever he withdrew from his safety deposit box a portion of the $200,000 in drug proceeds;

f. he was "not really telling [Forman] to lie" to federal law enforcement authorities at a proffer session; and

g. he made "mistakes" in describing his criminal conduct. (N.T.II 232, 255, 260, 263; N.T.III 149-150, 178-181, 204-205, 257-258)

14. In contrast, the Fourth Circuit found that the evidence presented by the federal government proved that:

a. while Sharpeta listened in on a telephone conversation between Petitioner and Nicka, "Farrell gave Nicka information about what Spain had told the grand jury and what Spain was planning to tell the federal authorities" and "Farrell advised Nicka that 'it would be in [Sharpeta's] best interest if [he] took a vacation somewhere.'";

b. "at Farrell's request — Forman wrote Farrell a check for $10,000 and promptly exchanged the check for a $10,000 cash payment from Farrell. Farrell told Forman that the transaction was made '[s]o it could show on the books that [Farrell had] been paid.'";

c. "Farrell's client transaction reports reflected that more than $20,000 in cash was paid by Forman to

Farrell between June 2009 and September 2010. Forman, however, never paid Farrell any money at all.";

d. "Farrell knew that the money he deposited into his firm bank account was derived from the illegal source of drug trafficking, that is, the defense fund.";

e. "Significantly, Farrell also falsified his firm's accounting records concerning the defense funds he received, further proving his guilty knowledge of the illegal source of those funds";

f. "Farrell's instruction to Forman that he should proffer to the authorities only the information that they already knew constitutes an instruction to lie to the federal agents."; and

g. "Farrell performed his roles as consigliere and fixer in multiple ways, including, inter alia, (1) receiving large sums of cash from the defense fund, which he then knew to be derived from and subsidized by marijuana trafficking proceeds; (2) obtaining lawyers for Organization drug dealers by use of defense

fund money at Nicka's behest; and (3) encouraging — even threatening — those drug dealers to be 'stand-up guy[s]' for his 'collapsed defense' of Nicka and the Organization." (ODC-1, pp. 12, 20-22, 36, 38-39, 41, 49, fn. 19; Bates Nos. ODC-000013, 000021-000023, 000037, 000039-000040, 000042, 000050, 000022)

15. Petitioner also downplayed that his criminal conduct at its core benefitted the Nicka Organization and its members, and impeded the federal investigation by testifying that:

a. Mitchell "came to [him] as an attorney for [him] to help her," resulting in Petitioner offering unsolicited legal advice to Mitchell and preparing a motion to quash Mitchell's subpoena that he sent to Mitchell's attorney;

b. he was "the first of equals in developing a team of lawyers to help these young people defend a grand jury investigation";

c. what he "did wrong is done all the time right by especially large law firms that have a criminal

department and they get hired by a hospital who is under investigation for Medicare fraud or, you know, a defense contractor that's under investigation for fraud relative to billing."; and

d. his collapsed defense strategy would result in "everybody to ultimately plea" guilty. (N.T.II 232, 249-250; N.T.III 155-158, 170)

16. Furthermore, Petitioner opined that if he had properly documented that Nicka was the source of the $200,000 in drug proceeds, Petitioner could have lawfully used those proceeds to pay for lawyers to represent Nicka Organization members; however, the Fourth Circuit's opinion in ***United States v. Blair***, 661 F.3d 755, 771-772 (4th Cir. 2011), establishes that Petitioner's opinion is flat-out wrong and such conduct would constitute a crime. (N.T.III 208-209)

17. Petitioner failed to comply with his ethical obligations as a disbarred attorney. (PFOF 18-22)

18. After Petitioner was disbarred, he:

a. failed to comply with Pa.R.D.E. 217(d)(3)(iii),[1] in that

[1] Following Petitioner's disbarment in December 2019, this subsection required Petitioner to promptly "properly disburse or otherwise transfer all client and fiduciary funds in his...possession, custody or control."

Petitioner failed to promptly disburse fiduciary funds he was holding on behalf of five former Pennsylvania clients and three former New Jersey clients;[2]

b. failed to undertake "reasonable efforts" to locate the five former Pennsylvania clients to whom he owed fiduciary funds, as required by RPC 1.15(v)(1);[3]

c. failed to remit to the IOLTA Board the fiduciary funds belonging to the former Pennsylvania clients Petitioner was unable to locate, as required by RPC 1.15(v)(1)[4] (Petitioner instead escheated the funds to the Commonwealth of Pennsylvania, Bureau of

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[2] The former Pennsylvania clients were James Wright, Joseph Sprigg, Oleg Semine, Stephanie Schulz, and Antonio Ricci; the former New Jersey clients were Irene Lee, Donald Barry, and Clifford Bailey. (ODC-50; Bates Nos. ODC-000503-510)

[3] Comment [12] to RPC 1.15(v) provides, in relevant part, that "[r]easonable efforts to locate the owner of funds include periodic correspondence of the type contemplated by the lawyer or law firm's relationship with the client, former client, or third party. Should such correspondence prove unsuccessful, a lawyer or law firm's reasonable efforts include efforts similar to those that would be undertaken when attempting to locate a person for service of process, such as examinations of local telephone directories, courthouse records, voter registration records, local tax records, motor vehicle records, or the use of consolidated online search services that access such records." (ODC-53; Bates No. ODC-000526)

[4] RPC 1.15(v)(1) required Petitioner to "pay" to "the Pennsylvania IOLTA Board" funds held in Petitioner's IOLTA account if Petitioner, after "using reasonable efforts for a minimum of two (2) years," could not "locate the owner of funds...." (ODC-53; Bates No. ODC-000525)

Unclaimed Property, in November 2022);

d. commingled the fiduciary funds he was holding on behalf of eight former Pennsylvania and New Jersey clients in violation of RPC 1.15(b),[5] in that he deposited the fiduciary funds into a savings account that Petitioner and his wife maintained with USAA Federal Savings Bank ("the USAA account");

e. allowed the balance in the USAA account beginning on October 25, 2022, and for several weeks thereafter, to fall below the amount that Petitioner was holding on behalf of the eight former Pennsylvania and New Jersey clients, in violation of RPC 1.15(b)(Petitioner at all times should have held in the USAA account no less than $14,185.27, the total amount he escheated to Pennsylvania and New Jersey);

f. failed to comply with Pa.R.D.E. 217(c)(3)[6] by failing

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[5] RPC 1.15(b) states that a "lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded."

[6] Following Petitioner's disbarment, Petitioner was required to promptly notify "any other tribunal, court, agency or jurisdiction in which [Petitioner was] admitted

to notify the United States District Court for the District of New Jersey ("the NJ District Court"), the United States Court of Appeals for the Third Circuit ("the Third Circuit"), the United States Court of Appeals for the Eight Circuit ("the Eight Circuit"), the United States Court of Appeals for the Federal Circuit ("the Federal Circuit"), and the Supreme Court of the United States ("the Supreme Court") of his disbarment; and

g. failed to comply with Pa.R.D.E. 217(j)(4)(i),[7] in that beginning in February 2020 and continuing until March 2021, Petitioner engaged in law-related activities for Patrick T. Duffy, Esquire, an attorney with whom Petitioner was in a partnership with before Petitioner was temporarily suspended and disbarred. (N.T.II 181-182, 184, 188-192, 264-269,

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to practice" of his disbarment.

7 This subsection prohibited Petitioner from "performing any law-related activity for a law firm, organization or lawyer if the formerly admitted attorney was associated with that law firm, organization or lawyer on or after the date on which the acts which resulted in the disbarment, suspension or temporary suspension occurred, through and including the effective date of disbarment, suspension or temporary suspension."

273-277; N.T.III 213-216, 219, 222-230; ODC-11-13, 49-59; Bates Nos. ODC-000186-000195, 000487-000557; P-2, 10)

19. In addition, the testimony of Don Pak, Esquire, Petitioner's current employer, established that Petitioner failed to comply with Pa.R.D.E. 217(j)(1).[8] (PFOF 20-22)

20. Mr. Pak, whose practice emphasizes federal immigration law, testified that he obtained a Pennsylvania law license sometime in 2023; Mr. Pak has held a New Jersey law license since 1999. (N.T.II 141-142)

21. Beginning in March 2021 and continuing until the present time, Petitioner has worked as an immigration paralegal under the supervision of Mr. Pak. (N.T.II 143-44, 148)

22. From March 2021 until sometime in 2023, during the period that Mr. Pak was not admitted to practice law in Pennsylvania, Petitioner was not in compliance with Pa.R.D.E. 217(j)(1). (N.T.II 141, 143, 145-148; P-2)

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[8] Pa.R.D.E. 217(j)(1) states, in relevant part, that all "law-related activities of the formerly admitted attorney shall be conducted under the supervision of a member in good standing of the Bar of this Commonwealth who shall be responsible for ensuring that the formerly admitted attorney complies with the requirements of this subdivision (j)." ODC discovered Petitioner's lack of compliance with Pa.R.D.E. 217(j)(1) on reviewing Mr. Pak's testimony at the reinstatement hearing.

23. Petitioner's explanations for failing to meet his ethical obligations as a disbarred attorney showed Petitioner was both inattentive toward, and ignorant of, his ethical responsibilities. (PFOF 24-30)

24. In December 2020, Petitioner failed to resume efforts to locate former clients when Petitioner's New Jersey IOLTA account was closed and he transferred the fiduciary funds in that account (which consisted of funds belonging to both former Pennsylvania and New Jersey clients) to the USAA account because he "didn't think of it" and he "lost track of it...." (N.T.III 219-221, 227-228)

25. ODC's inquiries about Petitioner's taxes in connection with the investigation of the 2022 Petition resulted in Petitioner realizing that he was holding fiduciary funds belonging to former Pennsylvania and New Jersey clients that he had yet to disburse. (N.T.III 217-218)

26. Petitioner had "no excuse" for:

a. not determining if he was holding fiduciary funds on behalf of clients that had to be disbursed when he completed and filed with the Disciplinary Board a January 2020 Statement of Compliance, which

document represented that Petitioner had complied with Pa.R.D.E. 217;

b. not opening a new account so he could deposit the fiduciary funds into an account that only held those funds rather than depositing the fiduciary funds held in the New Jersey IOLTA account into the USAA account belonging to Petitioner and his wife; and

c. not notifying the NJ District Court, the Third Circuit, the Eighth Circuit, the Federal Circuit, and the Supreme Court of Petitioner' disbarment before Petitioner filed the 2023 Petition and the 2023 Questionnaire. when ODC had alerted Petitioner that he had not notified those courts of his disbarment in connection with the 2022 Petition and the 2022 Questionnaire. (N.T.III 221-222, 226-227, 231-232)

27. Petitioner "mistakenly" failed to review RPC 1.15(v) before escheating to the Commonwealth of Pennsylvania the fiduciary funds belonging to Petitioner's former Pennsylvania clients. (N.T.III 223- 224)

28. In connection with the 2022 Petition, ODC sent an August 24, 2022 letter to Petitioner inquiring whether Petitioner had notified the NJ District Court, the Third Circuit, the Eighth Circuit, the Federal Circuit, and the Supreme Court of his disbarment, yet Petitioner only sent the required notifications after filing the 2023 Petition and the 2023 Questionnaire, and following ODC's written request to do so. (ODC-29-30, 34-36; Bates Nos. ODC-000367-000368, 000373-000374, 000415-000416, 000419-000420; P-11)

29. Petitioner was "wrong" in his interpretation of Pa.R.D.E. 217(j)(4)(i) and he "misadvised Mr. Duffy" that Petitioner could work from home for Mr. Duffy. (N.T.II 276-277)

30. Also, Petitioner incorrectly testified that he had complied with the various subsections of Pa.R.D.E. 217(j) during his employment as a paralegal with Mr. Pak because as discussed above, Petitioner had failed to comply with Pa.R.D.E. 217(j)(1). (N.T.II 278; PFOF 19-22)

31. Petitioner's carelessness resulted in omissions and inaccurate information on the 2022 Questionnaire and 2023 Questionnaire, which shows that Petitioner has not met his burden of proving that he is fit to resume the practice of law. (PFOF 32-43)

32. In completing the 2022 Questionnaire, Petitioner:

a. failed to list and provide docket reports for three civil cases in the Philadelphia Court of Common Pleas, two civil cases filed in the United States District Court for the Eastern District of Pennsylvania, one civil case filed in the United States District Court for the District of New Jersey, one civil case filed in the United States District Court for the Southern District of New York, and one landlord-tenant case filed in Philadelphia Municipal Court, in response to Question 12(a) on the 2022 Questionnaire, Part I, which inquired if Petitioner had appeared as a party or as one who claimed an interest in any civil action. (N.T.III 233-234; ODC-15-24; Bates Nos. ODC-000219, 000225-000348)

33. Although Petitioner offered an explanation for the omission of the civil cases on the 2022 Questionnaire, his explanation illustrates that he was careless in providing a complete response. (PFOF 34-35)

34. Petitioner testified that he omitted the eight civil cases on

the 2022 Questionnaire because:

a. he only conducted a search using his name in state courts;

b. he limited his search to cases in which he appeared as a defendant; and

c. he relied on "an assistant" and the "search was inadequate." (N.T.III 234-235)

35. Petitioner's explanation for the omission of the eight civil cases is unsatisfactory because:

a. Petitioner did not carefully review Question 12(a), which inquired if Petitioner had "ever been involved in a civil action (including a bankruptcy proceeding) as a party or as one who claimed an interest?"; and

b. Petitioner did not act to verify the completeness and accuracy of the search results obtained by his assistant. (N.T.III 234-235; ODC-15; Bates Nos. ODC-000219)

36. In completing the 2022 Questionnaire and the 2023 Questionnaire, Part II, Petitioner:

a. incorrectly answered "No" in response to Question

5(d), which inquired if Petitioner has "any debts which are currently 90 or more days past due." (N.T.III 236-241; ODC-25-29, 33, 39; Bates Nos. ODC-000353, 000356-369, 000412, 000435)

37. When Petitioner submitted the 2022 Questionnaire and the 2023 Questionnaire, he had:

a. an unsatisfied gas service judgment in the amount of $720.90 that was owed to the City of Philadelphia; and

b. unsatisfied fines in connection with two traffic violation cases that were filed against Petitioner in Camden County, New Jersey, in 2004 and 2008. (ODC-26-28, 39; Bates Nos. ODC-000356-000364, 000434-000435)

38. During ODC's investigation of the 2022 Petition, ODC sent an August 24, 2022 letter to Petitioner that, *inter alia*, questioned Petitioner about the gas service judgment and the New Jersey traffic violations. (ODC-29; Bates Nos. ODC-000366-000367, 000369)

39. When Petitioner filed the 2023 Petition and the 2023 Questionnaire, he again answered "No" in response to Question 5(d)

on the 2023 Questionnaire, Part II. (ODC-33; Bates No. ODC-000412)

40. In connection with ODC's investigation of the 2023 Petition, ODC sent a February 17, 2023 letter to Petitioner that again inquired about the gas service judgment and the two New Jersey traffic violation cases. (ODC-34; Bates Nos. ODC-000414-000416)

41. Petitioner satisfied the fines in the New Jersey traffic violation cases on March 8, 2023, and the gas service judgment on June 3, 2023. (ODC-26, 38-39; Bates Nos. ODC-000356-000358, 000432-000435)

42. Petitioner testified that he incorrectly answered "No" in response to Question 5(d) on the 2023 Questionnaire, Part II, because he "was doing it [him]self with the assistance of someone that [he] relied upon" and he "was wrong" and "should have done right" in completing the 2023 Questionnaire. (N.T.III 242-243)

43. Petitioner offered an inadequate explanation for the inaccurate response to Question (5)(d) on the 2023 Questionnaire, Part II, because:

a. despite notice from ODC in 2022 of the three debts, Petitioner still provided an incorrect response to the

same question on the 2023 Questionnaire; and

b. Petitioner's explanation indicates he did not properly oversee the accuracy of work done on his behalf by an assistant. (N.T.III 235-241; PFOF 37-42)

III. PROPOSED CONCLUSIONS OF LAW

1. Considering the severe criminal conduct underlying Petitioner's disbarment, Petitioner has failed to demonstrate by clear and convincing evidence that his present resumption of the practice of law will not have a detrimental effect upon the integrity and standing of the bar, the administration of justice, or the public interest.

2. Petitioner has failed to prove by clear and convincing evidence that he has engaged in a sufficient period of qualitative rehabilitation during his disbarment.

3. Petitioner has failed to show by clear and convincing evidence that he has the moral qualifications for reinstatement to the Bar, and that his resumption of the practice of law within the Commonwealth will be neither detrimental to the integrity and standing of the Bar or the administration of justice nor subversive of the public interest. Pa.R.D.E. 218(c)(3).

IV. ARGUMENT

A. AN INSUFFICIENT PERIOD OF TIME HAS ELAPSED TO DISSIPATE THE TAINT OF PETITIONER'S GRAVE CRIMINAL CONDUCT.

In every case involving a disbarred attorney seeking reinstatement, the Disciplinary Board and the Court must examine whether the magnitude of the breach of trust—the underlying misconduct—was so egregious as to preclude further reconsideration of the petition for reinstatement. ***Office of Disciplinary Counsel v. Keller***, 506 A.2d 872, 975 (Pa. 1986); ***In the Matter of Verlin,*** 731 A.2d 600, 601 (Pa. 1999). This is known as the "first prong" of the ***Keller*** threshold test for reinstatement from disbarment. ODC concedes that Petitioner's criminal conduct is not so egregious as to forever bar Petitioner from being reinstated.

The next level of analysis under ***Keller***, commonly referred to as the "second prong," inquires whether the disbarred attorney has proven that the "current resumption" of the practice of law would not be detrimental to the profession, the courts, or the public. ***In the Matter of Perrone***, 777 A.2d 413, 416 (Pa. 2001). This analysis requires that the Committee conduct two separate and distinct inquiries.

The first inquiry applies an objective test, where "[t]he operative question is, if the public knew of petitioner's transgressions, would the fact that he was able to resume practicing law after a mere [the actual number of] years of disbarment adversely affect the public's perception of the legal profession?" ***In the Matter of Greenberg***, 749 A.2d 434, 437 (Pa. 2000); *id.* 436, 437 ("no independent evidence is necessary to appreciate that reinstatement at this time would be detrimental to the integrity and standing of the bar, the administration of justice and the public interest"; "[g]iven the severity of petitioner's misdeeds, to reinstate him after eight years of disbarment would reinforce the public's perception that lawyers are greedy and dishonest"). *Accord* ***Perrone***, 777 A.2d at 417.

A second inquiry is the determination of whether a sufficient period of time has elapsed since a petitioner's misconduct during which he engaged in qualitative rehabilitation. ***In the Matter of Mark Allan Kovler***, No. 172 DB 2002 (D.Bd. Rpt. 5/15/2009, p. 9)(S. Ct. Order 7/24/2009); *accord* ***Perrone***, 777 A.2d at 416. It is not enough, however, to be "on the road to rehabilitation." ***Greenberg***, 749 A.2d at 437. In ***In the Matter of Anonymous (Eugene A. Steger, Jr.),*** No. 25 DB 85 (D.Bd. Rpt. 10/29/1998, p. 8)(S. Ct. Order 12/22/1998),

the Board stated that "[o]ften times a longer absence from the practice of law suggests that a petitioner had an increased opportunity for meaningful rehabilitation, and a better chance of successfully demonstrating that he or she gained insight into the misconduct and an understanding about how to avoid it in the future."

In sum, the second prong of ***Keller*** first requires the Committee to evaluate the misconduct in relation to the number of years of disbarment to determine whether "a sufficient amount of time has passed to dissipate the detrimental impact of [a petitioner's] misconduct on the public trust." ***Perrone***, 777 A.2d at 416. If the Committee finds that objectively a sufficient period of disbarment has passed to dissipate the taint of the initial breach, the Committee must then balance the term of disbarment with the rehabilitative effort while giving due consideration to the initial misconduct.

The magnitude of Petitioner's criminal conduct and the relatively brief period of disbarment alone preclude reinstatement at this time. Petitioner engaged in egregious criminal conduct that was detrimental to the integrity and standing of the bar and the administration of justice, and that subverted the public interest. The Fourth Circuit determined that from 2009 through 2013, while

Petitioner served as the "consigliere," "fixer," and "adviser" to Nicka and the Nicka Organization, Petitioner:

- received thousands of dollars in cash that he knew were generated from the illegal drug trafficking activities of the Nicka Organization;
- laundered drug proceeds by paying for lawyers to represent multiple members of the Nicka Organization who were subpoenaed to appear for a federal grand jury investigation and by paying for money orders that were deposited into the commissary account for Phillips;
- directed Forman to lie to federal agents in a proffer interview by only telling the agents what they already knew;
- advised Harryman not to disclose to the DEA that an expensive watch was from a drug dealer;
- submitted a fraudulent affidavit to the DEA on behalf of Harryman, thereby impeding a DEA forfeiture proceeding;

- threatened Harryman by telling Harryman that if he did not conform to the collapsed defense strategy "someone" would visit him;
- requested that Forman give Petitioner a $10,000 check in return for $10,000 in cash from Petitioner so that Petitioner's records showed that Harryman had paid Petitioner; and
- falsified his law firm's financial records and failed to create client records for cash deposits in order to conceal his laundering of drug proceeds. (PFOF 2, 8-9)

The Fourth Circuit concluded that the "evidence proved that Farrell was intimately involved in the unlawful activity of Nicka and the Organization...." (ODC-1, p. 33; Bates No. ODC-000034) The recorded undercover conversations highlighted the depth of Petitioner's involvement, as Petitioner was caught stating that he knew "everything" about the Nicka Organization, he was responsible for "protect[ing] the family, the group of us," and he was "at risk" of criminal liability. (ODC-1, p. 23; Bates No. ODC-000024)

There are four reinstatement cases in which the Board and our Court determined that an insufficient period of time had elapsed to dissipate the taint of the initial breach. *See* ***Perrone***, 777 A.2d 413; ***Greenberg***, 749 A.2d 434; ***In the Matter of Milton E. Raiford***, No. 50 DB 1994 (D.Bd. Rpt. 12/7/2001)(S.Ct. Order 1/31/2002); ***In the Matter of Anthony C. Cappuccio***, No. 79 DB 2009 (D.Bd. Rpt. 11/27/2017)(S.Ct. Order 1/22/2018). What these four reinstatement cases have in common with Petitioner's matter is that the underlying misconduct resulting in disbarments were so grave that granting reinstatement to those petitioners after what amounted to eight or fewer years of disbarment would result in a detrimental impact to the integrity and standing of the bar and the administration of justice, and would subvert the public interest. These reinstatement cases warrant the conclusion that Petitioner has not overcome the second prong of ***Keller***.

Perrone submitted false fee petitions with the City of Philadelphia over a period of three years, receiving a total of approximately $345,000. The misconduct was discovered by a newspaper investigation. Perrone pled guilty to theft by deception, tampering with public records or information, securing execution of

documents by deception, and unsworn falsification to authorities. Perrone was sentenced to five years of probation and ordered to pay restitution. When the Court issued its Opinion, Perrone had been disbarred for close to eight years. The Court noted that Perrone had completed his probation, paid restitution, volunteered with charitable organizations, had been gainfully employed, had presented eight character witnesses (some of whom were attorneys), submitted twenty-four "character reference" letters, and expressed remorse, but nevertheless denied his reinstatement. The Court observed that Perrone's conduct was "both deliberate and committed solely for his own personal profit." ***Perrone***, 777 A.2d at 416. Moreover, the misconduct was longstanding, having "continued for three years until it was discovered by the Philadelphia Inquirer," and that Perrone "'would not have come forward on his own to report his conduct had he not been directly and indisputably confronted with it.'" *Id.* at 417.

These factors, including Perrone's false swearing in court filings, moved the Court to state that "[g]iven the severity of Perrone's misdeeds, allowing him to be reinstated after less than eight years of disbarment would only reinforce the public's perception that lawyers are greedy and deceitful." *Id.* Consequently, the petition for

reinstatement was denied, as the Court "believe[d] that allowing Perrone to resume the practice of law at the present time would have a detrimental effect upon the integrity and standing of the bar and on the administration of justice and would subvert the public interest." *Id.* Perrone was reinstated five years later. ***In the Matter of Perrone ("Perrone II")***, 899 A.2d 1108 (Pa. 2006).

Greenberg's misconduct occurred over a four-year period and consisted of fraudulent financial transfers that resulted in the misappropriation of 2 million dollars from a corporation and the filing of false documents in bankruptcy court to conceal his criminal conduct. Greenberg pled guilty to conspiracy and bank fraud and was sentenced, *inter alia*, to five years imprisonment and restitution in the amount of 1.7 million dollars. The Court noted that Greenberg's "misdeeds may never have come to light," but for the "diligence" of federal law enforcement authorities, and that Greenberg's actions "brought great dishonor upon the legal profession." ***Greenberg***, 749 A.2d at 437, 438. Despite Greenberg offering 42 character letters and evidence establishing that he was "on the road to rehabilitation," the Court declined Greenberg's reinstatement, stating that to "reinstate [Greenberg's] license to practice law after eight years of

disbarment would only tarnish the image of the legal profession further." ***Greenberg***, 749 A.2d at 437, 438. Greenberg was reinstated seven years later. ***In the Matter of Lawrence D. Greenberg (Greenberg II)***, No. 93 DB 1990 (D.Bd. Rpt. 5/11/2007)(S.Ct. Order 6/18/2007).

Raiford was convicted of obstruction of administration of law or other governmental function, unsworn falsification to authorities, and tampering with public records or other information, for having one client portray a second client throughout the course of criminal proceedings. D.Bd. Rpt. at 2-3. Raiford's criminal conduct was uncovered when the second client discovered that she had a criminal record after applying for a job; according to the Board, it was questionable whether Raiford would have revealed his criminal conduct without being compelled to do so by outside events. *Id.* at 6. Raiford was sentenced to three years of probation and 250 hours of community service. Raiford had been disbarred for seven years and eight months when the Court denied Raiford's petition for reinstatement. At the reinstatement hearing, Raiford established that he: had become headmaster of a Christian school since 1995; was a licensed Baptist minister who counseled parents and parishioners

and was involved in his church; had performed some legal work for attorneys; was remorseful; and had good character, having presented six character witnesses, some of whom were attorneys. *Id.* at 7-8. In recommending denial of Raiford's petition for reinstatement, the Board stated the following:

> While [the] evidence suggests that Petitioner is working to rehabilitate himself, the Board is of the opinion that Petitioner is not ready for reinstatement. The misconduct committed by Petitioner showed an egregious disregard for the integrity of the judicial system and damaged the public trust in the legal system. Given the nature of Petitioner's acts, the Board believes that permitting him readmission to the bar after only seven years of disbarment would do further damage to the public trust in the legal system. *Id.* at 8.

Raiford was reinstated eight years later. ***In the Matter of Milton E. Raiford ("Raiford II")***, No. 50 DB 1994 (D.Bd. Rpt. 2/16/2010)(S.Ct. Order 4/16/2010).

During an eighteen-month period, Cappuccio furnished alcohol and smoked marijuana with three minors, and engaged in sexual relations with a 16-year-old boy on approximately 12 occasions. D.Bd. Rpt. at 4-6, 22. When Cappuccio committed his criminal conduct, he was a Youth Fellowship Group leader for his church and the Chief Deputy District Attorney for a county prosecutor's office.

D.Bd. Rpt. at 4. A criminal investigation began against Cappuccio after he was found in a vehicle partially clothed engaging in sexual activity with the 16-year-old minor. D.Bd. Rpt. at 7-8. Cappuccio pled guilty to three counts of endangering the welfare of children, three counts of corruption of minors, and two other criminal charges; he was sentenced to a term of imprisonment of 6 to 23 months and a total term of 7 years of probation. D.Bd. Rpt. at 8-9.

Although the Board found that Cappuccio demonstrated qualitative rehabilitation, it determined that "[n]otwithstanding these rehabilitative efforts, it is clear to the Board that less than eight years of disbarment is wholly insufficient to dissipate the detrimental impact of Petitioner's misconduct on the public trust." D.Bd. Rpt. at 23-24. The Board observed that Cappuccio's own witnesses offered testimony that recognized the severity of Cappuccio's misconduct and that Cappuccio himself acknowledged he betrayed the trust of many people. D.Bd. Rpt. 24. The Board found similarities with Cappuccio's matter and ***Perrone*** and ***Greenberg***, remarking that like Perrone and Greenberg, Cappuccio's "breach of trust was extreme and brought dishonor to the legal profession," his "actions were deliberate," and his "misconduct occurred over a long period of time

and would have continued even longer had he not been discovered by the police." D.Bd. Rpt. 27. Our Court denied Cappuccio's reinstatement.

The totality and pattern of Petitioner's criminal conduct at minimum equals, if not eclipses, the misconduct of Perrone, Greenberg, Raiford, and Cappuccio, and shares similar facets; consequently, those reinstatement cases compel the denial of Petitioner's reinstatement. Petitioner's criminal conduct was grave, as over a five-year period he served as the "consigliere" to the Nicka Organization and in that role, he: conspired to launder drug proceeds; laundered drug proceeds on multiple occasions; advised Forman to lie to federal agents; impeded a DEA forfeiture proceeding involving Harryman and counseled Harryman not to disclose he received an expensive watch from a drug supplier; conveyed a threat to Harryman to bring him in line with Petitioner's collapsed defense strategy; concealed his laundering of drug proceeds by falsifying his law firm records and by failing to maintain proper records of cash deposits; and ensured he maintained contact with indicted Nicka Organization members and their lawyers so he could "protect the family, the group of us." (ODC-1, p. 21; Bates No. ODC-000022;

PFOF 2, 8-9) Petitioner's criminal conduct showed every indication of continuing had it not been uncovered by a federal investigation. Moreover, the Fourth Circuit found that the undercover recordings showed that Petitioner "sought to obstruct the federal investigations and prosecutions of Organization drug dealers by forging and filing affidavits and by attempting to persuade the Organization's members and drug dealers to withhold relevant information from the federal authorities"; this criminal conduct is similar to Perrone and Raiford, who also acted in a manner to subvert the truth-determining process. (ODC-1, p. 9; Bates No. ODC-000010)

Reinstating Petitioner at this time (i.e., after a term of disbarment of seven years) would detrimentally impact the public's perception of the courts and the legal profession. Although it is self-evident that Petitioner's criminal conduct was a massive breach of trust, the testimony of Petitioner's witnesses (and Petitioner) removes any doubt that Petitioner's criminal conduct severely damaged the legal profession and the public's trust in the legal system. (N.T.II 305; PFOF 11) The news articles reporting on Petitioner's criminal indictment, conviction, and disbarment amplified the harm to the legal

profession and the public trust. (ODC-6, 10; Bates Nos. 000113-000138, 000183-000185; PFOF 10)

B. PETITIONER'S HEARING TESTIMONY THAT MINIMIZED HIS CRIMINAL CONDUCT, HIS FAILURE TO COMPLY WITH HIS POST-DISBARMENT OBLIGATIONS, AND HIS ERRORS AND OMISSIONS ON REINSTATEMENT PAPERWORK SHOW THAT PETITIONER HAS NOT ENGAGED IN A SUFFICIENT PERIOD OF QUALITATIVE REHABILIATION.

Petitioner minimized his criminal conduct at the reinstatement hearing, which circumstance standing alone prevents Petitioner from demonstrating qualitative rehabilitation. At the hearing Petitioner testified that:

- he received information from Nicka and Sharpeta about Spain's grand jury testimony (Fourth Circuit stated that Petitioner shared with Nicka and Sharpeta what Petitioner learned from Spain about Spain's grand jury testimony);
- he agreed to Forman's request to give Forman $10,000 in cash in return for Forman's $10,000 check (Fourth Circuit recounted that Petitioner requested from Forman a $10,000 check and

offered to give Forman $10,000 in cash so Petitioner "could show on the books" that Petitioner had been paid);

- he had not created records making it appear that Forman had made cash payments to Petitioner (Fourth Circuit observed in a footnote that Petitioner's client transaction reports showed that Forman paid Petitioner more than $20,000 in cash);
- he did not know that the $200,000 in cash he received from Nicka were proceeds from a criminal activity (the Fourth Circuit concluded that "the evidence proved beyond peradventure Farrell's actual subjective knowledge that he had received and distributed defense fund proceeds from the Nicka Organization's unlawful drug trafficking activities";
- he kept appropriate records whenever he used the $200,000 in drug proceeds (Fourth Circuit determined that Petitioner "falsified" records related to "the defense funds he received");

- he had not directed Forman to lie to federal law enforcement authorities at a proffer session (Fourth Circuit found that Farrell instructed Forman "to lie to the federal agents."); and
- he had made "mistakes" in describing his criminal conduct (Fourth Circuit viewed Petitioner as knowingly engaging in multiple forms of criminal conduct in performing his roles as "consigliere" and "fixer.")(emphasis added to quotations from the Opinion and Petitioner's testimony)(ODC-1, pp. 36-37, 49; Bates No. ODC-000037-000038, 000050; PFOF 13-14)

Petitioner also painted his criminal conduct in a noble and positive light that was at odds with the Fourth Circuit's perspective of Petitioner as someone who "became 'part of' the Nicka Organization itself, as its consigliere and fixer." (ODC-1, p. 36; Bates No. ODC 000037; PFOF 9, 14-15) For example, Petitioner described himself as "the first of equals in developing a team of lawyers to help these young people defend a grand jury investigation." (N.T.II 232) Or consider that Petitioner maintained that what he "did wrong is done all

the time right by especially large law firms that have a criminal department" representing organizational clients. (N.T.II 249-250) Petitioner's myopia with respect to the nature of his criminal conduct shows he fails to appreciate its gravity.

Our Court has previously denied reinstatement petitions when petitioners have offered testimony that minimized their misconduct because such testimony shows that there has not been an acknowledgement of wrongdoing, which is necessary to demonstrate sincere remorse. In these circumstances, a disbarred attorney will be unable to show the qualitative rehabilitation necessary to resume the practice of law. *See*, *e.g.*, ***In the Matter of Paul Joseph Staub, Jr.***, No. 36 DB 2010 (D.Bd. Rpt. 1/9/2018, p. 14)(Staub had "described his thefts merely as an example of 'bad choices'" on the Questionnaire and he had not "fully acknowledged that his actions harmed others and damaged the integrity of the legal system," which led to the Board's finding that he had "failed to express genuine remorse or apologize for his actions.")(S.Ct. Order 3/1/2018); ***In the Matter of William Jay Gregg*** No. 210 DB 2009, (D.Bd. Rpt. 12/5/2017, Finding of Fact 27 & pp. 6, 11)(Gregg did not demonstrate genuine remorse for his financial misconduct because he "explained

his misconduct as 'mistakes' and emphasized that he did not have a bookkeeper at the time.")(S.Ct. Order 2/5/2018); ***In the Matter of Howard J. Casper*** No. 44 DB 1992, (D.Bd. Rpt. 1/25/2007, pp. 16-17)(Casper, *inter alia*, did not "fully recognize and acknowledge" his misconduct because Casper used "the word 'borrowed' to describe his misappropriation of client funds, and quite reluctantly admitted that injury occurred to clients by his actions"; the Board stated that Casper's "ability to practice in the future will hinge on his willingness to be candid" to the Board and our Court)(S.Ct. Order 4/20/2007); ***In the Matter of Gail Fuller*** No. 55 DB 1993, (D.Bd. Rpt. 1/31/2003, p. 9)(Fuller, *inter alia*, attempted to "minimize her criminal activity" and failed to "accept full responsibility for her own conduct"; the Board concluded that Fuller had "not come to terms with her actions" and had "not demonstrated sincere remorse for them.")(S.Ct. Order 4/29/2003); ***In the Matter of Anonymous (Valerie J. Glover),*** No. 141 DB 91, (D.Bd. Rpt. 5/21/1999, p. 11-13)(Glover did not show remorse because she testified that she believed that her bribery conviction was due to entrapment and she provided a response to Question 20 on the Questionnaire that raised concerns about the government's conduct toward her; the Board also found she was "not

totally forthright in her testimony" on several points that related to the criminal scheme)(S.Ct. Order 7/23/99).

Although Petitioner's character witnesses testified that Petitioner was remorseful, precedent dictates that Petitioner cannot rely on their testimony to substitute for the inadequacies in his testimony at the reinstatement hearing. In ***Staub,*** *supra*, at 16, the Board stated that Staub's character evidence could not "overcome the observed deficiencies in Petitioner's testimony before the Hearing Committee." Also, Petitioner's counsel acknowledged that if the Committee determined that Petitioner's testimony showed that Petitioner was not fit to resume the practice of law, Petitioner's character testimony would not salvage his reinstatement prospects. (N.T.II 79)

Petitioner's present-day faulty analysis as to the permissible use he could have made of the drug proceeds under a hypothetical set of facts bolsters the case that Petitioner has not engaged in qualitative rehabilitation. Petitioner opined that if he had properly documented his receipt of the drug proceeds from Nicka, he could have lawfully used those proceeds to pay for other lawyers to represent Nicka Organization members. (N.T.III 208-209) In ***United***

States v. Blair, 661 F.3d 755 (4th Cir. 2011), Blair, an attorney, *inter alia*, challenged his conviction under 18 U.S.C. § 1957, which prohibits an individual from knowingly engaging in a monetary transaction with criminally derived property of a value greater than $10,000. *Id.* at 770-771. Blair used drug proceeds to purchase two cashier's checks for $10,000 each, which he then used to obtain counsel for two individuals who were involved in a marijuana distribution ring in Virginia. *Id.* at 759, 771. Blair contended that the use of drug money for the payment of counsel fees fell within the safe harbor provision of § 1957(f)(1), which exempts a "'transaction necessary to preserve a person's right to representation as guaranteed by the sixth amendment to the Constitution.'" *Id.* at 771. The Fourth Circuit rejected Blair's argument, concluding that based on the language of the statute and prior opinions issued by the United States Supreme Court interpreting the Sixth Amendment, Blair's knowing use of someone's else's drug proceeds to pay for counsel for others fell outside the safe harbor provision of § 1957(f)(1). *Id.* at 771-772. ***Blair*** undercuts Petitioner's testimony that he could have knowingly used the $200,000 in drug proceeds he received from

Nicka to pay for lawyers to represent Nicka Organization members if Petitioner had properly documented his receipt of the drug proceeds.

Petitioner's failure to satisfy his ethical obligations as a disbarred attorney exposed additional inadequacies in Petitioner's rehabilitative efforts. It is indisputable that Petitioner failed to comply with three ethics rules—Pa.R.D.E. 217(d)(3)(iii), RPC 1.15(b), and RPC 1.15(v)(1)(this ethics rule only applied to funds held in Petitioner's Pennsylvania IOLTA account on behalf of five former Pennsylvania clients: James Wright, Joseph Sprigg, Oleg Semine, Stephanie Schulz, and Antonio Ricci)—by not promptly acting to distribute fiduciary funds he was holding on behalf of eight former Pennsylvania and New Jersey clients following his disbarment, by not undertaking "reasonable efforts" to locate his former Pennsylvania clients, by commingling fiduciary funds with funds belonging to him and his wife in the USAA account, by failing to ensure that the balance in the USAA account never fell below the amount of funds he owed to his eight former clients, and by escheating to Pennsylvania the funds belonging to unlocatable Pennsylvania clients instead of remitting the funds to the IOLTA Board. (PFOF 18) Petitioner violated two more ethics rules—Pa.R.D.E. 217(j)(1) and Pa.R.D.E.

217(j)(4)(i)—by working as a paralegal for, and being supervised by, Mr. Pak for over two years when Mr. Pak was not a licensed Pennsylvania attorney, and by engaging in law-related activities for Mr. Duffy when Petitioner was in a partnership with Mr. Duffy before he was disbarred. (PFOF 18-22) Lastly, Petitioner violated Pa.R.D.E. 217(c)(3) by failing to notify the NJ District Court, the Third Circuit, the Eighth Circuit, the Federal Circuit, and the Supreme Court of the Disbarment Order. (PFOF 18)

Petitioner's testimony revealed that he was either lax or uninformed about his post-disbarment ethical obligations (PFOF 24-30), which is unacceptable behavior for someone seeking to resume the practice of law. In ***In the Matter of Craig B. Sokolow***, No. 83 DB 2018 (D.Bd. Rpt. 8/2/2023, p. 22)(S.Ct. Order 9/28/2023)(reinstatement denied), the Board found that Sokolow's failure to comply with his post-suspension obligations under Pa.R.D.E. 217, combined with other conduct, exemplified "the antithesis of rehabilitative efforts" and showed a lack of fitness "to resume the practice of law." *Accord*, ***Gregg,*** *supra*, at 10 (Gregg had failed to close two escrow accounts and was continuing to use his PNC IOLTA account for ten months after he was disbarred).

Petitioner did not demonstrate thoroughness in preparing the 2022 Questionnaire and the 2023 Questionnaire, which resulted in Petitioner providing inaccurate information and making omissions. Petitioner provided unsatisfactory explanations for the errors and omissions.

On the 2022 Questionnaire, Petitioner omitted eight civil lawsuits in which he appeared as either a plaintiff or defendant. (PFOF 32) Petitioner explained the omissions by testifying that the search for civil cases was limited to state court matters in which he appeared as a defendant and that he relied on "an assistant" in responding to Question 12(a). (N.T.III 234-235) Petitioner's explanation underscores he was sloppy in reviewing Question 12(a) (which did not restrict the identification of civil cases to state court matters only or to the status of party-defendant) and in verifying the search results generated by an assistant fully addressed that question. (PFOF 35)

On both the 2022 Questionnaire and the 2023 Questionnaire, Part II, Petitioner incorrectly answered "No" to Question 5(d) and failed to list three debts that were 90 days past due, a gas service judgment and fines owed in two New Jersey traffic violation cases.

(PFOF 36-37) On being questioned about his incorrect answer to Question 5(d) on the 2023 Questionnaire after ODC had previously inquired about the accuracy of his answer to that same question on the 2022 Questionnaire, Petitioner appeared to attribute the error to an assistant "he relied upon" and admitted he "was wrong." (PFOF 38-39, 41-42) Petitioner's explanation leads to the conclusion that Petitioner lacks the fitness to resume the practice of law because he cannot be depended upon either to properly supervise an assistant doing work on his behalf or to independently act with the care and precision expected of a lawyer.

Petitioner's omissions and errors on the 2022 Questionnaire and the 2023 Questionnaire establish that he is not fit to resume the practice of law. *See*, *e.g.*, ***Staub,*** *supra*, at 15 ("The errors and omissions on Petitioner's Reinstatement Questionnaire bolster our conclusion that Petitioner is not fully prepared for readmission to the practice of law."); ***In the Matter of John J. Mogck, III***, No. 78 DB 1992 (D.Bd. Rpt. 6/22/2004, p. 8) (Questionnaire contained errors and omissions regarding restitution, Mogck's work history, and his IRS liability; these "errors and omissions show carelessness and an inattention to detail that is bewildering for an individual interested in

resuming his professional licensure.")(S.Ct. Order 9/28/2004) (reinstatement denied).

In conclusion, Petitioner has not shown by clear and convincing evidence that he has engaged in a period of qualitative rehabilitation.

C. PETITIONER FAILED TO PROVE BY CLEAR AND CONVINCING EVIDENCE THAT HE HAS MET HIS BURDEN OF PROOF UNDER Pa.R.D.E. 218(c)(3).

Determining whether Petitioner is currently fit to resume the practice of law requires consideration of the four criteria for reinstatement identified in Pa.R.D.E. 218(c)(3): 1) moral qualifications; 2) competency; 3) learning in the law; and 4) whether the resumption of the practice of law within the Commonwealth will be neither detrimental to the integrity and standing of the Bar or the administration of justice nor subversive of the public interest.

Relying on Section B, *supra*, ODC submits that Petitioner has not shown by clear and convincing evidence that: he is morally qualified to resume the practice of law; and his resumption of the practice of law within the Commonwealth will be neither detrimental to the integrity and standing of the Bar or the administration of justice nor subversive of the public interest. *See*, *e.g.*, ***Perrone***, 777 A.2d at 416; ***Cappuccio***, *supra*, at 20-21; ***Gregg***, *supra*, at 9-10.

In the final analysis, ODC maintains that when the totality of the evidence is considered, Petitioner has failed to prove that he has met his heavy burden under ***Keller*** and its progeny, and Pa.R.D.E. 218(c)(3). Therefore, ODC requests that the Committee recommend the denial of Petitioner's reinstatement. ***Mogck***, *supra*, at 9 ("The Board finds that the record as a whole is insufficient to support the granting of the petition for reinstatement.")

V. CONCLUSION

For the foregoing reasons, ODC requests that this Committee recommend to the Board that the Petition be denied.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

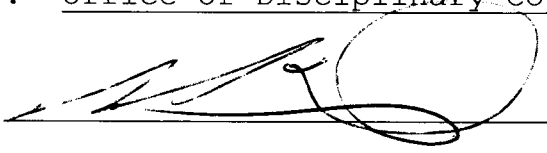
Thomas J. Farrell
Chief Disciplinary Counsel

By 
Richard Hernandez
Disciplinary Counsel

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania*: *Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Office of Disciplinary Counsel

Signature: 

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