

In re Manny A. Aguja
Petitioner

Supreme Court No. M.R. 30705
Commission No. 2021PR00010

Synopsis of Hearing Board Report and Recommendation
(January 2022)

Petitioner sought reinstatement after being disbarred on consent based on his participation in a conspiracy involving sham marriages arranged to circumvent immigration laws. Petitioner's role entailed preparing and submitting false documents to immigration authorities and advising the couples how to make their marriages appear legitimate when interviewed by immigration officials. Petitioner engaged in additional, unrelated misconduct involving neglect of client matters and failure to refund unearned fees. He also failed to properly notify clients when he was disbarred. Despite his otherwise good conduct since disbarment, the Hearing Board concluded that Petitioner did not prove he should be reinstated and recommended that reinstatement be denied.

**BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION**

In the Matter of:

MANNY A. AGUJA,

Petitioner,

No. 6220497.

Supreme Court No. M.R. 30705

Commission No. 2021PR00010

REPORT AND RECOMMENDATION OF THE HEARING BOARD

SUMMARY OF THE REPORT

Petitioner sought reinstatement after being disbarred on consent based on his participation in a conspiracy involving sham marriages arranged to circumvent immigration laws. Petitioner's role entailed preparing and submitting false documents to immigration authorities and advising the couples how to make their marriages appear legitimate when interviewed by immigration officials. Petitioner engaged in additional, unrelated misconduct involving neglect of client matters and failure to refund unearned fees. He also failed to properly notify clients when he was disbarred. Despite his otherwise good conduct since disbarment, the Hearing Board concluded that Petitioner did not prove that he should be reinstated and recommended that reinstatement be denied.

INTRODUCTION

The hearing in this matter was held on October 4, 2021, by video conference, before a Panel of the Hearing Board consisting of Lon M. Richey, Chair, Michael L. Hahn and Elizabeth Delheimer. Peter L. Rotskoff represented the Administrator. Petitioner appeared at the hearing and was represented by Samantha N. Ditore and John C. Ellis.

FILED

January 19, 2022

ARDC CLERK

PLEADINGS

Petitioner was disbarred on consent on March 19, 2012. Petitioner filed a petition for reinstatement on February 17, 2021 and supplemented that petition on March 23, 2021. The Administrator filed a response on August 24, 2021.

EVIDENCE

Petitioner testified on his own behalf and presented testimony from three other witnesses. Petitioner's Exhibits 1 through 6 were admitted into evidence. The Administrator did not present any witnesses. Administrator's Exhibits 1 through 5 were admitted into evidence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A disbarred attorney seeking to be reinstated to the practice of law bears the burden of proving that he or she should be reinstated, by clear and convincing evidence. In re Richman, 191 Ill. 2d 238, 244, 730 N.E.2d 45 (2000). There is no presumption in favor of reinstatement, and the mere passage of time is not sufficient grounds for reinstatement. Richman, 191 Ill. 2d at 247-48. The overriding objective in a reinstatement case is to safeguard the public, maintain the integrity of the profession and protect the administration of justice from reproach. In re Gonzales, 2013PR00003, M.R. 25825 (Mar. 12, 2015).

In a reinstatement proceeding, the focus is on the petitioner's rehabilitation, good character and current knowledge of the law, with rehabilitation being the most important consideration. In re Hayes, 2018PR00090, M.R. 29589 (Nov. 19, 2019). In assessing those issues, the Panel considers certain specific factors and any other factors the Panel deems appropriate. Ill. S.Ct. R. 767(f). The specific factors are: 1) the nature of the misconduct for which the petitioner was disciplined; 2) the petitioner's maturity and experience at the time discipline was imposed; 3) whether the petitioner recognizes the nature and seriousness of the misconduct; 4) when

applicable, whether the petitioner has made restitution; 5) the petitioner's conduct since discipline was imposed; and 6) the petitioner's candor and forthrightness in presenting evidence in support of the petition. S.Ct. R. 767(f). Each case is unique and must be decided based on its own circumstances. In re Martinez-Fraticelli, 221 Ill. 2d 255, 271, 850 N.E.2d 155 (2006).

I. Petitioner was disbarred due to serious criminal conduct, stemming from his participation in a conspiracy to commit marriage fraud.

A. Evidence Considered

Under federal law, a foreign national who marries a United States citizen can obtain legal permanent resident status based on the marriage provided that the marriage was entered into in good faith and not in exchange for something of value or to procure the foreign national's admission to this country. On November 18, 2009, Petitioner and nine co-defendants were indicted for allegedly participating in a conspiracy to violate these provisions. (Adm. Ex. 1 at 11-44). On April 25, 2011, Petitioner pled guilty to one count of the indictment, admitting that he participated in the conspiracy between July 2003 and October 2009, and the court entered judgment on that plea. (Adm. Ex. 1 at 8; Pet. Ex. 1 at 1-14).

In his plea agreement, Petitioner admitted that the conspiracy involved fictitious marriages, arranged between U. S. citizens, who received a payment, and foreign nationals, who received an immigration benefit. Petitioner knew the marriages were shams but assisted the couples in making their marriages appear valid to the United States Citizenship and Immigration Services (USCIS). Acting in his capacity as an attorney, Petitioner completed and filed documents on behalf of the couples with USCIS, knowing the documents contained false statements. Petitioner also met with individuals in fraudulent marriages and advised the couples how to make their marriages appear legitimate when interviewed by USCIS. Two of Petitioner's employees were also indicted, for

engaging in the same type of conduct while working for Petitioner. (Tr. 78-80, 109-112; Pet. Ex. 1 at 1-6).¹

Petitioner dealt with ten separate couples and received \$500 per couple. Based on Petitioner's testimony, money was not his primary motivation. Rather, he was seeking to help Filipino women, trying to support families at home, who lacked proper documentation to work. Petitioner is originally from the Philippines, as were most, if not all, the foreign nationals involved in these marriages. (Tr. 69-70, 79-80, 109; Pet. Ex. 1 at 4-5).

On February 15, 2012, the court sentenced Petitioner to twenty-four months imprisonment, followed by supervised release for two years, and monetary penalties totaling \$10,100. At that time, the court directed Petitioner to surrender to begin serving his sentence on May 1, 2012. (Adm. Ex. 1 at 9-10).

On January 30, 2012, Petitioner filed a motion to have his name stricken from the roll of attorneys licensed to practice law, based on his admitted criminal conduct. The Illinois Supreme Court granted that motion on March 19, 2012. (Adm. Ex. 2).

B. Analysis and Conclusions

The seriousness of the misconduct leading to discipline is an important factor in a reinstatement case. Richman, 191 Ill. 2d at 245. This element involves considering the underlying misconduct and its severity and whether such misconduct would absolutely bar reinstatement. See In re Cirignani, 2015PR00029, M.R. 27370 (Sept. 22, 2017).

The misconduct that led to Petitioner's disbarment was egregious. Not only did Petitioner participate in a fraudulent scheme to evade the immigration laws, but he used his law license to facilitate that scheme. Petitioner acted knowingly, as he knew from the outset that these marriages were shams. Petitioner's conduct was not a one-time occurrence, but involved multiple acts over time. Petitioner prepared documents that contained false statements, filed the false documents

with USCIS, and coached couples how to respond during USCIS interviews. This was done to circumvent the immigration laws, by misleading USCIS into believing that the fraudulent marriages were legitimate. The conspiracy continued into October 2009, stopping only once the indictment was filed. While money may not have been Petitioner's primary motivation, Petitioner benefitted from his participation in the conspiracy, as he received payment for each of the matters in which he acted. Petitioner's behavior shows that he put his own interests and assessment of the equities ahead of his clients' legitimate interests and the law itself.

Some misconduct is so serious as to forever bar reinstatement. In re Rothenberg, 108 Ill. 2d 313, 326, 484 N.E.2d 289 (1985). That said, other attorneys who were disbarred based on prolonged and repeated criminal acts have been reinstated. E.g. Martinez-Fraticelli, 221 Ill. 2d at 263-65. The seriousness of Petitioner's misconduct does not preclude reinstatement, but weighs heavily against reinstatement.

II. Petitioner's misconduct did not result from inexperience or immaturity.

A. Evidence Considered

We consider the evidence in Section I A, as well as the following evidence.

Petitioner's misconduct began in July 2003. (Pet. Ex. 1 at 2). At that time, Petitioner was forty-six years old and had been practicing law for nine years. (Tr. 74, 101).

Before attending law school, Petitioner had received two bachelor's degrees and worked as an insurance claims adjuster. While in law school, Petitioner worked for a personal injury lawyer. After receiving his law license, Petitioner was an assistant public defender for three or four years. In January 1998, Petitioner began his own practice, concentrating on real estate, immigration, family law and bankruptcy. (Tr. 69-76).

B. Analysis and Conclusions

Maturity and experience are considered in determining whether, and to what extent, the petitioner should have been expected to recognize that the conduct which led to discipline was wrong. In re Howard, 05 RT 3006, M.R. 20173 (Sept. 18, 2007). Petitioner was a mature adult with significant life experience at the time his misconduct began. While he had not been a lawyer for a prolonged period, he was not new to the practice of law. Further, the nature of the scheme in which Petitioner participated and his own conduct in furtherance of that scheme was such that any attorney should have recognized the conduct was wrong.

Petitioner does not contend that inexperience or immaturity contributed to his misconduct. We agree. Petitioner's maturity and experience weigh against, but do not preclude, reinstatement. See generally In re Alexander, 97 RT 3002, M.R. 13340 (Mar. 23, 1999).

III. Petitioner did not display a genuine understanding of the nature and seriousness of his misconduct.

A. Evidence Considered

We consider the evidence in Sections I A and II A, as well as the following evidence.

In the criminal case, the government acknowledged that Petitioner recognized and accepted personal responsibility for his criminal conduct. (Pet. Ex. 1 at 6).

In these proceedings, three witnesses testified in addition to Petitioner. Zayda Dawis Encarnacion met Petitioner in the late 1980's, through church and socially. They are close friends. (Tr. 19-22). From speaking with Petitioner since his release from prison, Encarnacion believed that Petitioner genuinely regrets his conduct, has taken responsibility and desires to make amends. She saw Petitioner's remorse reflected in his extensive volunteer work since his release. (Tr. 27, 30-31). Another good friend, Ewa Drzalowski, has rented an apartment in a building Petitioner manages for seventeen years. They also attend the same church. Drzalowski believed that

Petitioner completely regrets his conduct, based on their conversations since Petitioner's release. (Tr. 34-43). Petitioner's former pastor, Fr. Joseph P. Tito, has known Petitioner since 2002. Fr. Tito provided Petitioner with pastoral support during the criminal proceedings and has communicated with Petitioner while he was in custody and since his release. Based on their conversations, Fr. Tito believes Petitioner regrets his actions, for the harm those actions caused others, as well as the impact on Petitioner himself. Fr. Tito believes Petitioner's experience left him with a stronger faith, a greater desire to serve others and an understanding of the need to change, to ensure that he does not repeat his misconduct. (Tr. 46-48, 53-61).

In his own testimony, Petitioner acknowledged that his criminal conduct was wrong, accepted full responsibility for it and expressed regret. Petitioner testified that he acted out of a false sense of compassion, by attempting to "help" immigrants through criminal acts. Petitioner described having come to a deeper understanding of the value and purpose of the law, the need to follow the law, and the importance of his law license. He stated that he understood that his conduct created inequity for other people waiting to resolve their immigration status. Petitioner expressed remorse for involving his brother and secretary in the scheme and encouraging others to disobey the law. He articulated a commitment to avoiding any future behavior that was outside the law. (Tr. 72, 79-82, 89, 95-99, 102-103, 106-11, 114-15).

Petitioner has engaged in significant volunteer work, before and after his conviction. (Tr. 22-23, 49, 67, 87-90). Based on Petitioner's testimony, his volunteer efforts since his conviction were motivated in part by a desire to make amends for his misconduct. (Tr. 92-94).

After Petitioner was disbarred, Petitioner stated that he verbally notified clients of his discipline. Even though he was aware of its requirements, Petitioner did not comply with Supreme

Court Rule 764, particularly its requirement that he give written notice of his discipline to all his current clients. (Tr. 83, 115).

Petitioner testified that he did not comply with Rule 764 because he was overwhelmed by the many tasks he had to deal with during the time between the date he was disbarred and the date he reported to prison. Petitioner also testified that anxiety over the prospect of incarceration interfered with his judgment. Petitioner acknowledged that these were not acceptable reasons for failing to comply with Rule 764. He also acknowledged that his failure to follow Rule 764 resulted in harm to four clients. (Tr. 83-84, 115).

Pedro Mendoza retained Petitioner to represent him in seeking asylum. The record does not indicate when this occurred. Petitioner did not file an asylum petition for Mendoza or return the \$600 Mendoza paid him for the representation. (Tr. 85-86).

In March 2009, Angel Cuenca retained Petitioner to represent him in seeking to modify a mortgage loan. Thereafter, Cuenca had difficulty contacting Petitioner. Petitioner took limited, if any, action for Cuenca behalf and did not return the \$1,000 Cuenca paid him. Petitioner did not inform Cuenca in writing that Petitioner was closing his practice. (Tr. 86, 117-20; Adm. Ex. 3).

In July 2010, Alejandro Prats retained Petitioner to represent him in a bankruptcy case and paid Petitioner \$1,300. Thereafter, Prats was not able to contact Petitioner. His calls to Petitioner's office went unanswered, and Prats was unable to leave messages. When Prats later went to Petitioner's office, it was empty. Petitioner never filed a bankruptcy petition or provided any services to Prats. Petitioner did not notify Prats of his disbarment. (Tr. 84-85, 122-25; Adm. Ex. 5).

In August 2011, Orlan Johnson retained Petitioner to handle an immigration matter. Initially when Johnson would call, Petitioner told Johnson he would investigate the matter. Later,

Johnson's calls to Petitioner's office went unanswered. Petitioner did not provide any services to Johnson and did not refund the \$600 Johnson paid him. Petitioner did not notify Johnson that he had been sentenced to prison. (Tr. 85, 120-22; Adm. Ex. 4).

Cuenca, Prats and Johnson filed claims with the ARDC Client Protection Program and received back the amounts they paid Petitioner. (Adm. Exs. 3, 4, 5). Petitioner reimbursed the ARDC for those payments. (Tr. 86, 120, 122, 125).²

Petitioner acknowledged that he neglected his responsibilities to clients between the time he was indicted and the time he was convicted. Petitioner attributed this to a significant reduction in his practice after the criminal charges against him were publicized. At times, though, Petitioner was not going to his office regularly or responding to client inquiries. (Tr. 112-13). Petitioner was preoccupied with his own problems and ultimately abandoned his practice. In the meantime, Petitioner continued to accept cases. (Tr. 124-25). In hindsight, Petitioner recognized that he should have anticipated the need to close his practice and made provisions for his clients. (Tr. 116).

When asked what would happen if he had difficulty in the future, Petitioner stated he would give his clients' interests priority over his own. Petitioner testified that, since his disbarment, he has come to appreciate the importance of his obligations to his clients. (Tr. 113-15).

Petitioner expressed regret for the harm he caused his clients and for not letting his clients know of his discipline. He assured the panel that he was genuinely sorry and would not repeat his misconduct. If reinstated, Petitioner would implement a case management system and ensure that he communicated with clients. (Tr. 83-84, 115, 121-22, 127-30).

B. Analysis and Conclusions

Whether a petitioner recognizes the nature and seriousness of his or her misconduct is an important factor in a reinstatement proceeding. In re Sosman, 2012PR00150, M.R. 25693 (Sept.

12, 2014). Expressions of remorse and acknowledgements of wrongdoing can indicate that a person recognizes the nature and seriousness of his or her past misconduct. In re Wexler, 2017PR00071, M.R. 28878 (Mar. 16, 2021). In contrast, a failure to recognize or acknowledge the wrongful nature of one's past misconduct raises significant concerns regarding the person's future ability to adhere to ethical norms. Sosman, 2012PR00150 (Hearing Bd. at 32).

Petitioner expressed regret. Encarnacion, Drzalowski and Fr. Tito supported that testimony, insofar as it related to Petitioner's criminal conduct. While we found all the witnesses sincere, we question whether Petitioner fully and genuinely understands the nature and extent of his misconduct as a whole.

Petitioner testified that he participated in the conspiracy out of a desire to help immigrants seeking to work in the United States, yet he did not acknowledge the harm those same individuals would have faced from attempting to achieve their goals illegally. While noting that his conduct caused inequity to other persons seeking immigration relief, Petitioner did not address the harm his conduct would have caused the immigration system. Petitioner also gave limited recognition to the fact that he benefitted financially from the fraudulent scheme. All of this caused us concern as to the depth of Petitioner's understanding of that part of his misconduct.

More fundamentally, we had serious doubt as to Petitioner's recognition of the severity of the other aspects of his misconduct. While not part of the misconduct leading to disbarment, Petitioner's conduct overall is relevant in determining whether he should be reinstated. See generally Wexler, 2017PR00071 (Hearing Bd. at 10).

Petitioner neglected four client matters and kept the unearned fees he received from those clients. Petitioner also did not respond to inquiries from at least three of those clients. Ultimately, Petitioner left his office empty, with no calls being answered or returned, and took no steps to

protect his clients' interests in his absence. Even though he knew he would not be able to continue practicing, Petitioner did not properly notify his clients of his discipline.

Petitioner attributed his lack of diligence and proper communication to stress and preoccupation with his pending criminal matter. We found that explanation untenable, especially in light of Petitioner's behavior at the time. Petitioner agreed to represent Cuenca several months before he was indicted. Further, Petitioner continued accepting new clients while the criminal proceedings were pending. In fact, Petitioner accepted Johnson's case four months after filing his plea agreement. The contradiction between Petitioner's behavior and his statements at hearing left us unconvinced that Petitioner truly understands the significance of his neglect of these clients.

Petitioner's failure to comply with Rule 764 is also significant. See In re Schnibben, 2010PR00081, M.R. 23961 (Mar. 21, 2012) (petition withdrawn). Petitioner sought to explain that failure by noting the brevity of the time between his disbarment and incarceration. This explanation was likewise untenable. Rule 764's requirements may not have been triggered until Petitioner actually was disbarred, but his disbarment, and the need to notify his clients of it, should have come as no surprise. As early as April 2011, when the court entered judgment on his plea agreement, Petitioner knew that he had been found guilty of a serious crime. The disbarment order effectuated discipline to which Petitioner had agreed in the motion for disbarment on consent, filed on January 30, 2012. By February 15, 2012, Petitioner knew of his sentence and surrender date. Given these circumstances, Petitioner had ample time to anticipate that he would be disciplined and to begin taking steps to protect the interests of any clients who remained with him by the time discipline was imposed.

In our role as the trier of fact, we assess the evidence, including the extent to which Petitioner understands the nature and seriousness of his past misconduct. See In re Scroggins, 94

SH 638, M.R. 10561 (Sept. 24, 1996). Petitioner did not demonstrate that he recognizes the nature and seriousness of his misconduct as a whole. This factor weighs heavily against reinstatement.

IV. Petitioner has made all required restitution.

A. Admitted Facts and Evidence Considered

We consider the following evidence, in addition to that in Sections I A, II A and III A.

Petitioner has paid all penalties and fines and reimbursed the ARDC Client Protection Fund for all the claims which it paid. (Tr. 136).

B. Analysis and Conclusions

Restitution is an important factor in determining whether an attorney should be reinstated. In re Madsen, 08 RT 3002, M.R. 22475 (Sept. 20, 2011). Petitioner has made restitution. This factor weighs in favor of reinstatement.

V. Despite many positive aspects of his conduct since disbarment, Petitioner engaged in similar activity before his crime and failed to take proper steps to protect his clients' interests after he was disbarred.

A. Evidence Considered

We consider the following evidence, as well as that in Sections I A through IV A.

In prison, Petitioner had no disciplinary issues and engaged in positive activity, thereby earning an early release. Petitioner devoted 259 hours to a Lions Club program which provides eyeglasses to impoverished communities. Petitioner tutored inmates seeking to improve their English language skills. He participated regularly in religious services. (Tr. 87-90; Pet. Ex. 1 at 16-22).

After his release, Petitioner reported to a halfway house, where his conduct was excellent. He was discharged from the halfway house in January 2014. Within the next year, Petitioner had fulfilled all the terms of his supervised release. As a result, and without objection, the court granted Petitioner an early termination of supervised release. (Tr. 89-92; Pet. Ex. 1 at 16-23).

Petitioner has been consistently employed since his release from prison. Initially, he worked as a filing clerk. Shortly thereafter, Petitioner became the property manager for apartments owned by his brother. He has continued in that capacity ever since. As property manager, Petitioner collects rent and is responsible for ensuring that the buildings are safe, clean and comply with applicable regulations. Petitioner makes needed repairs, addresses tenant complaints and does landscaping and snow removal. (Tr. 65-66, 91-92, 111). Based on her experience as his tenant, Drzalowski testified that Petitioner took very good care of her building and was very good to the tenants. (Tr. 36-39).

Petitioner is very active in his church. He attends church services daily. Petitioner volunteers as a lector, cantor and catechism teacher. He is a leader in the local Filipino community, arranges pilgrimages and raises funds for charity. Petitioner also volunteers outside the church, through an organization assisting homeless persons. He contributes funds each month to support a child in Peru. (Tr. 22-25, 67, 93).

Fr. Tito testified that Petitioner was a consistent and frequent parish volunteer. Fr. Tito described Petitioner as a good person, caring, well respected, a leader in the parish and the community. (Tr. 48-52). Given his impressions of Petitioner, Fr. Tito had referred clients to him and trusted him to be honest with them. (Tr. 59).

Fr. Tito and Encarnacion each considered Petitioner honest and trustworthy, before and after his conviction. (Tr. 28-31, 57-59, 62). Drzalowski's favorable impression of Petitioner as a building manager likewise applied before and after Petitioner went to prison. (Tr. 41).

The Administrator's investigation did not disclose any improper conduct after Petitioner was disbarred, other than the failure to comply with Rule 764. In particular, after his disbarment, Petitioner never represented that he was a licensed attorney. (Tr. 12, 101-102).

Petitioner has completed over fifty hours of continuing legal education, primarily in ethics, immigration and bankruptcy. Petitioner also regularly listens to legal podcasts. (Tr. 94-98, 126).

B. Analysis and Conclusions

Rehabilitation is a critical issue in a reinstatement proceeding. In re Polito, 132 Ill. 2d 294, 300, 547 N.E.2d 465 (1989). Rehabilitation involves a return to a beneficial, constructive and trustworthy role in society. In re Wigoda, 77 Ill. 2d 154, 159, 395 N.E.2d 571 (1979). The petitioner's activity since discipline was imposed, including matters such as employment, charitable or volunteer work and overall responsibility, provides insight into these issues. Wexler, 2017PR00071 (Hearing Bd. at 16). Character evidence is also relevant. Id.

Petitioner's conduct while in prison and on supervised release obviously was positive. Since his release, Petitioner has behaved responsibly. He has been steadily employed and takes his job responsibilities seriously. He has demonstrated a commitment to volunteering. Individuals who have known Petitioner over time testified favorably about his character.

However, Petitioner was active in his church and volunteer work before he engaged in the dishonest, illegal acts that led to his conviction and disbarment. This caused us to place less significance on Petitioner's current religious involvement and volunteer efforts as a reflection of rehabilitation. The same is true of Petitioner's diligent job performance. Petitioner took good care of the buildings he managed, before and after he was convicted.

While we accepted the testimony of Petitioner's witnesses about their observations of Petitioner, these witnesses also considered Petitioner honest before his involvement in the conspiracy. That led us to question the extent of their knowledge of Petitioner's character as a whole, particularly outside the settings in which they normally interacted with him. For example, Fr. Tito's experience with Petitioner led him to feel confident referring clients to Petitioner. However, Fr. Tito did not have the complete picture. As the evidence here demonstrated, in and

after 2009, Petitioner neglected client matters and ultimately abandoned his practice. Petitioner also continued accepting new clients at a time when he, admittedly, was not properly attending to his clients' cases.

Petitioner also failed to comply with Supreme Court Rule 764. The notice provisions of Rule 764 afforded one last, relatively simple method of attempting to protect client interests, by notifying Petitioner's clients of his inability to continue representing them and of their need to make other arrangements. Petitioner did not take that step, instead placing preoccupation with his own concerns ahead of his clients' interests. That fact left us with serious reservations about Petitioner's genuine commitment to client well-being.

Ultimately, Petitioner did not demonstrate that he has identified and sufficiently addressed whatever issues led him to violate the law and abandon his clients. See, e.g., In re Magafas, 2019PR00063, M.R. 029993 (Sept. 23, 2021) (Hearing Bd. at 13-14). His very general testimony that he now appreciates his law license and realizes the importance of his responsibilities to clients is not enough to persuade us that he possesses the self-awareness and good judgment necessary to return to the practice of law. Petitioner's conduct since disbarment includes many positive factors. However, given the concerns expressed above, we find that this factor does not favor reinstatement.

VI. Petitioner has been cooperative and candid in these proceedings.

A. Admitted Facts and Evidence Considered

We consider the following evidence, as well as that in Sections I A through V A.

As the Administrator acknowledged, Petitioner attempted to be fully cooperative and candid with the ARDC in relation to his reinstatement matter. (Tr. 101, 136, 153).

B. Analysis and Conclusions

The petitioner's candor is one of the elements considered in assessing a reinstatement petition. S.Ct. R. 767(f). This flows from the importance of honesty as an element of good moral character and general fitness to practice law. See Polito, 132 Ill. 2d at 303.

Petitioner cooperated and was candid with the ARDC during the prehearing stage of these proceedings. His testimony seemed sincere. These factors weigh in favor of reinstatement.

VII. Petitioner's intent to resume a similar practice raises concern, particularly given the reasons he stated for participating in the conspiracy.

A. Evidence Considered

We consider the following evidence, as well as that in Sections I A through VI A.

Petitioner testified that, if reinstated, he would practice ethically and ensure the same from his staff, if he had one. He knew other attorneys from whom he thought he could seek assistance in reestablishing himself and handling any novel matters. (Tr. 95-98, 126-27, 131-32).

Petitioner hoped to work in the areas of family law, bankruptcy and immigration. In particular, Petitioner wanted to assist undocumented immigrants obtain citizenship and legal residency, especially persons immigrating for employment. Petitioner has a special interest in working with nurses coming to the United States from the Philippines. (Tr. 95-98, 100).

B. Analysis and Conclusions

The panel may consider other factors it deems appropriate. S.Ct. R. 767(f). In that context, we considered Petitioner's statements about his plans if reinstated.

Petitioner intends to resume handling immigration matters, the same area of the law in which his prior misconduct occurred. This can be a significant concern, in and of itself. See Richman, 191 Ill. 2d at 247. Moreover, Petitioner hopes to assist persons, especially Filipino nurses, seeking employment in the United States. This raises special concerns given the reasons

Petitioner identified for his participation in the conspiracy, i.e. to help Filipino immigrants seeking to support family at home. Petitioner plans to work with a very similar population, seeking essentially the same goals. It also appears that Petitioner, though willing to seek help from other attorneys, intends to practice on his own. Petitioner's plan does not inspire confidence that the public would be protected if reinstatement were allowed. This favor weighs against reinstatement.

RECOMMENDATION

The ability to practice law is a privilege, not a right. See In re Jafree, 93 Ill. 2d 450, 462, 444 N.E.2d 143 (1982). A disbarred attorney seeking to be allowed to resume practice has the burden to prove reinstatement is warranted, by clear and convincing evidence. In re Richman, 191 Ill. 2d 238, 244, 730 N.E.2d 45 (2000). In determining whether that burden has been met, we consider the petitioner's rehabilitation, present good character and current knowledge of the law. In re Hayes, 2018PR00090, M.R. 29589 (Nov. 19, 2019). We also consider whether the public will be protected if the petitioner is reinstated. In re Howard, 05 RT 3006, M.R. 20173 (Sept. 18, 2007).

While less stringent than the criminal standard of proof beyond a reasonable doubt, clear and convincing evidence requires more than a preponderance of the evidence. In re Santilli, 2012PR00029, M.R. 26572 (May 16, 2014). Clear and convincing evidence requires a high degree of certainty, a firm and abiding belief that it is highly probable that the proposition at issue is true. In re Czarnik, 2016PR00131, M.R. 29949 (Sept. 16, 2019). We are not convinced to the requisite high degree of certainty that Petitioner fully recognizes the seriousness of his misconduct and has identified and resolved the issues that led to his disbarment. In addition, we are not satisfied that he has a realistic plan for returning to practice in a manner that will safeguard the public and the

profession. It is not our position that Petitioner should never be reinstated, but he did not meet his burden of proving he should be reinstated at this time.

Therefore, we recommend that the petition of Manny A. Aguja for reinstatement to the practice of law be denied.

Respectfully submitted,

Lon M. Richey
Michael L. Hahn
Elizabeth Delheimer

CERTIFICATION

I, Michelle M. Thome, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, certify that the foregoing is a true copy of the order, approved by the Hearing Board Chair, entered in the above entitled cause of record filed in my office on January 19, 2022.

/s/ Michelle M. Thome
Michelle M. Thome,
Clerk of the Attorney Registration and
Disciplinary Commission of the
Supreme Court of Illinois

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¹ One of those employees was Petitioner's brother. He also was convicted and went to prison. The record does not reveal what happened with Petitioner's other employee. (Tr. 109-112).

² While Mendoza apparently did not file a claim with the Client Protection Program, the parties stipulated that there is no issue as to any unpaid restitution. (Tr. 136).