In re Jason William Smiekel
Petitioner

Supreme Court No. M.R. 30690
Commission No. 2021PR00008

Synopsis of Hearing Board Report and Recommendation
(July 2022)

Petitioner was disbarred on consent in 2013, after he sought to hire someone to murder a former client. He now seeks reinstatement. The Hearing Board found that most of the reinstatement factors weighed against Petitioner. His misconduct was extremely serious and was not attributable to age or inexperience. He failed to demonstrate that he fully acknowledges the nature and seriousness of both his criminal conduct and his inappropriate relationship with an opposing party. In addition, he did not meet his burden of establishing that his conduct since discipline was imposed supports reinstatement, was not fully candid in his testimony, and did not present a plan for returning to practice that would protect the public and the profession. For these reasons, the Hearing Board recommended that the petition for reinstatement be denied.

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

In the Matter of:	
JASON WILLIAM SMIEKEL,	Supreme Court No. M.R. 30690
Petitioner,	Commission No. 2021PR00008
No. 6290782.	

REPORT AND RECOMMENDATION OF THE HEARING BOARD

SUMMARY OF THE REPORT

Petitioner was disbarred on consent in 2013, after he was convicted of using a facility of interstate commerce during the commission of a murder for hire. The person Petitioner sought to have killed was a former client. Petitioner now seeks reinstatement. We find he did not satisfy his burden of establishing by clear and convincing evidence that he meets the requirements for reinstatement. Consequently, we recommend that his petition for reinstatement be denied.

INTRODUCTION

The hearing in this matter was held by video conference on February 28 and March 1, 2022, before a Panel of the Hearing Board consisting of Carl E. Poli, Chair, Nicole C. Mueller, and John Burns. Albert S. Krawczyk represented the Administrator. Petitioner appeared at the hearing and was represented by Sari W. Montgomery and Mary Robinson.

PETITION AND OBJECTIONS

Petitioner was licensed to practice law in Illinois on November 9, 2006. Following a 2012 federal conviction for using a facility of interstate commerce during the commission of a murder for hire, the Court granted Petitioner's motion to strike his name from the Roll of Attorneys. In re

Smiekel, 2013PR00082, M.R. 26214 (Sept. 25, 2013). Petitioner filed a petition for reinstatement on February 5, 2021. The Administrator filed objections on January 14, 2022.

EVIDENCE

The parties jointly stipulated to some facts and to the genuineness and admissibility of certain documents. Petitioner testified on his own behalf and presented testimony from six character witnesses. Petitioner's Exhibits 1-24 were admitted into evidence. (Tr. 590). The Administrator called Petitioner as an adverse witness and presented testimony from one additional witness. Administrator's Exhibits 1-28 and 30 were admitted into evidence. (Tr. 591).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

An attorney seeking reinstatement to the practice of law bears the burden of proving by clear and convincing evidence that he or she meets the requirements for reinstatement. In re Richman, 191 Ill. 2d 238 (2000). While less stringent than the criminal standard of proof beyond a reasonable doubt, clear and convincing evidence requires a high degree of certainty, and 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).

There is no presumption in favor of reinstatement, and the mere passage of time is not a sufficient basis for granting the petition. Richman, 191 Ill. 2d at 247-48. The objectives in a reinstatement matter are 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).

The focus of this proceeding is on 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 whether reinstatement is warranted, we

consider the following factors as well as any additional factors we deem appropriate: 1) the nature of the misconduct for which Petitioner was disciplined; 2) Petitioner's maturity and experience at the time discipline was imposed; 3) whether Petitioner recognizes the nature and seriousness of the misconduct; 4) when applicable, whether Petitioner has made restitution; 5) Petitioner's conduct since discipline was imposed; and 6) Petitioner's candor and forthrightness in presenting evidence in support of the petition. Ill. S.Ct. R. 767(f).

Background Information

Petitioner was raised by a single mother and had a "tumultuous" relationship with his father. (Tr. 43, 46). Petitioner married his former wife, Michelle, in 2006. They had one son, Lucas, who was born in March 2010. Petitioner and Michelle separated in August 2010, and their divorce became final in February 2011. Petitioner had joint custody of Lucas under the terms of the dissolution agreement, but he relinquished custody in July 2011. (Tr. 62-64, 81).

At the time of his arrest, Petitioner was a named partner in the law firm of Mohr, Hill & Smiekel, P.C., in Algonquin. His practice was concentrated in matrimonial and family law. (Stip. at 9).

I. The egregious nature of Petitioner's murder for hire scheme weighs heavily against reinstatement.

A. Evidence Considered

Between 2008 and 2011, Petitioner and his firm represented Brian Hegg in a parentage matter and a subsequent custody matter involving Hegg's child with his former girlfriend, Megan Wangall. Petitioner and Wangall became romantically involved while the custody matter was pending. On February 10, 2011, Petitioner informed his colleague, Terry Mohr, of his involvement with Wangall. Mohr advised him to immediately withdraw from representing Hegg. Petioner then

informed Hegg he would withdraw as his counsel because of his involvement with Wangall. Petitioner filed a motion for leave to withdraw, which the Court granted in March 2011. (Stip. 9).

Wangall and her child moved in with Petitioner in April or May 2011, and she and Petitioner became engaged around the same time. (Tr. 71).

Petitioner testified that he started drinking heavily when he and Michelle separated. (Tr. 65-66). After he began his relationship with Wangall, he started experiencing extreme anxiety and paranoia. He believed Hegg was harassing him by driving by his home and calling him at odd hours of the night. (Tr. 73-75). Petitioner's mother, Jan Dahlberg, testified that Petitioner began acting nervous in the spring of 2011 and felt his neighbors were spying on him. (Tr. 305).Petitioner testified that, in hindsight, Hegg never threatened him with bodily harm but Petitioner believed he did. (Tr. 513-14).

In March 2011, Petitioner had a panic attack and was taken to the hospital. He was advised to follow up with his physician, but he did not seek further treatment. (Tr. 76-77). Petitioner testified his fears intensified during the summer of 2011, but he did not recognize at the time that they were irrational. (Tr. 83-84).

Petitioner made multiple attempts in 2011 to hire someone to murder Hegg. Some of the facts related to his efforts are not entirely clear. Initially, he asked a high school acquaintance to confront and "intimidate" Hegg. According to Petitioner, the acquaintance and another person then made vague threats against Petitioner and demanded $10,000 to leave Petitioner alone. Petition obtained $10,000 from his mother and made the payment. He denies that the payment was in exchange for hurting Hegg. (Tr. 86-90). Petitioner testified that his contact with the high school acquaintance occurred in mid-July 2011. However, Petitioner made statements to at least two individuals, some of which were recorded, indicating that he paid two people in February 2011 to

kill Hegg, but they took his money and did not complete the murder. (Adm. Ex. 15). Petitioner testified here that these statements were not true, and he made them because he was trying not to look scared. (Tr. 94-95).[1]

Jan Dahlberg testified that, during the spring or summer of 2011, Petitioner asked to borrow $10,000 because he had asked some acquaintances to beat up Hegg and they threatened to report Petitioner to the ARDC. Dahlberg's understanding was that the acquaintances would not report Petitioner if he paid them. (Tr. 307-309). Petitioner denied telling his mother that he was paying off someone to prevent a report to the ARDC. According to Petitioner, he told his mother he had "gotten in trouble by speaking to this guy" who had turned on him and threatened to hurt him. (Tr. 515-16).

In July 2011, Hegg submitted a request to the ARDC to investigate Petitioner's conduct related to Wangall. On July 27, 2011, the Administrator sent Petitioner a letter asking him to respond to Hegg's request for investigation. (Adm. Ex. 6).

In late July 2011, Petitioner asked a neighbor if he could help him "get rid of" Hegg in exchange for $25,000. Petitioner told the neighbor he wanted to prevent Hegg from giving damaging testimony in an upcoming proceeding. He also told the neighbor he had hired people in February of 2011 to hurt Hegg. Petitioner testified he made up these stories to try to move things along and not appear scared. Petitioner gave the neighbor Hegg's name, address, and place of employment. (Tr. 91-93).

Unbeknownst to Petitioner, the neighbor contacted law enforcement. The neighbor then gave Petitioner the name and phone number of an individual who would, purportedly, do the murder but who was, in fact, an undercover agent, "Chris." Petitioner arranged to meet Chris on

August 1, 2011. Whenever he called Chris, he used a prepaid or "burner" phone that was not traceable to Petitioner. (Tr. 498-99).

At their first meeting, Petitioner agreed to pay Chris $20,000 to kill Hegg. Petitioner was recorded telling Chris that Hegg was bothering him and his family and had "dirt" on him that could ruin his career. Petitioner stated he had gone to someone else six months ago to do the job but had been "ripped off." He agreed to pay Chris $1,500 up front and provided a description of Hegg.

On August 2, 2011, Petitioner met with Chris again and paid him $1,500. They discussed how and when the remaining payments would be made. At this meeting, which was audio and video recorded, Chris told Petitioner he had put things in motion and would make the murder look like a robbery. Petitioner told Chris he would be at a fair to give himself an alibi. (Tr. 499-505).

On August 4, 2011, Petitioner met Chris again and paid him $7,000 in cash, which he had obtained from his grandmother. (Tr. 105). Petitioner was arrested immediately thereafter. (Tr. 103).

Petitioner denied that Hegg's ARDC complaint had any influence on his actions. He testified he had consulted with an attorney who advised him his license was not in jeopardy. (Tr. 506). Petitioner further testified that he did not feel in his heart that the undercover agent would go through with the murder. (Tr. 511-12).

On August 16, 2011, a grand jury in the Northern District of Illinois returned a seven-count indictment, charging Petitioner with using a facility of interstate commerce during the commission of a murder for hire in violation of 18 U.S.C. §1958. The Court suspended Petitioner on an interim basis on November 15, 2011. In re Smiekel, 2011PR00110, M.R. 24880 (2011). On April 12, 2012, Petitioner pleaded guilty to Count 3 of the indictment. (Stip. 24).

On December 4, 2012, Petitioner was sentenced to 102 months in prison and 3 years of supervised release, and was ordered to undergo a mental health evaluation, participate in substance abuse/alcohol counseling, and pay an assessment and fine totaling $2,100. (Stips. 1-7). In considering all of the evidence presented regarding Petitioner's mental state, Judge Frederick Kapala found that Petitioner had the mental capacity to understand the wrongfulness and potential consequences of his conduct, despite stressors in his life and an anxiety disorder that may have contributed to his poor decision-making. (Adm. Ex. 16 at 46). Judge Kapala further noted that Petitioner "acted in a very matter of fact, composed, and calculated way" and attempted to avoid detection by law enforcement. (Adm. Ex. 6 at 48, 51, 52). In Petitioner's favor, he expressed great sorrow and remorse and waived his right to appeal his conviction and sentence. (Adm. Ex. 6 at 57).

Terry Mohr testified that, as a result of Petitioner's arrest, his firm received a significant amount of negative publicity and a couple of clients refused to pay their bills. In 2013, Hegg filed a malpractice action against Petitioner, Mohr, and Mohr's firm. Mohr's malpractice insurer paid approximately $99,000 to settle the matter, which resulted in an increase of $12,500 in Mohr's insurance premiums. (Stip. 36; Tr. 429-30; Adm. Exs. 19, 20). Petitioner has not spoken to Mohr since his arrest. (Tr. 513).

B. Analysis and Conclusions

The Court has stated that some infractions are so serious as to forever bar reinstatement but has not specified what misconduct falls in this category. In re Rothenberg, 108 Ill. 2d 313, 326 (1985). Absent direction from the Court, we decline to make the harsh determination that Petitioner's misconduct should forever preclude him from practicing law. That said, his crime was one of the most serious a person can commit, and the connections between that crime and Petitoner's practice of law make the misconduct even more troubling. Petitioner's conduct was so

reprehensible that it creates an extraordinarily heavy burden to overcome. See Rothenberg, 108 Ill. 2d at 326; In re Voltl, 2019PR00051, M.R. 29943 (2021) (Review Bd. at 5).

Petitioner recognizes his conduct was very serious but argues that other attorneys, both in Illinois and other states, have been reinstated after committing serious crimes, citing In re Martinez-Fraticelli, 221 Ill. 2d 255, 263-65 (2006) (participation in a ghost payrolling scheme); In re diTrapano, 240 W.Va. 612, 814 S.E.2d 275 (2018) (possession of cocaine, unlawful possession of firearms, making a false statement to a licensed firearms dealer about his dependence on a controlled substance); In re Drake, 242 W.Va.65, 829 S.E.2d 267 (2019) (felony embezzlement). We believe that Petitioner's efforts to have a former client killed are significantly more egregious than the offenses in his cited cases, none of which involved harming another person. Consequently, we do not find Petitioner's case law persuasive.

Contrary to the cases allowing reinstatement after criminal convictions, we note the Court's denials of reinstatement in the following cases. In these cases, the Court denied the petitions for reinstatement despite recommendations from the Hearing Board, Review Board, or both, that they be granted. In In re Tatar, 06 RT 3007, M.R. 21375 (Nov. 12, 2010), the attorney was convicted of one count of child enticement after communicating with a person he thought was a 13-year-old girl, but was actually an undercover agent, and traveling to meet for the purpose of engaging in oral sex. He presented evidence that he had undergone psychiatric treatment for the issues that led to his criminal conduct and had a minimal risk of relapse. Both the Hearing and Review Boards recommended that Tatar be reinstated with conditions. The Court, however, denied his petition.

The Court also denied two reinstatement petitions filed by Robert Voltl, who was convicted of wire fraud and mail fraud in connection with an extensive mortgage fraud scheme that caused losses of $4.4 million to lenders. Voltl petitioned for reinstatement three times. He withdrew the

first petition after the Hearing Board recommended that it be denied. In re Voltl, 07 RT 3007. The Hearing Board also recommended that his second petition be denied, but the Review Board recommended that it be granted with conditions. The Court denied the petition. In re Voltl, 2013PR00006, M.R. 25827 (Sept. 21, 2015). Most recently, the Hearing Board recommended that Voltl's third petition be granted, finding that his misconduct was extremely serious but did not preclude reinstatement. The Review Board recommended that the petition be denied, in part because Voltl's conduct was so egregious that "the other factors must tilt the scale extraordinarily in favor of rehabilitation," and they did not. Voltl, 2019PR00051 (Review Bd. at 5). The Court subsequently denied Voltl's petition. Voltl, M.R. 029943 (March 25, 2022).

In our view, Petitioner's misconduct was even more serious than the offenses in Tatar and Voltl. It was a most severe form of moral turpitude and caused serious damage to the legal profession. In consideration of our obligations to safeguard the public, maintain the integrity of the profession, and protect the administration of justice from reproach, we find that this factor weighs heavily against reinstatement.

Petitioner asks us to consider as mitigation that he was suffering from anxiety and other psychological issues at the time of his criminal conduct. We have considered the evidence presented on this issue. We accept Judge Kapala's finding that Petitioner had the mental capacity to understand the wrongfulness and consequences of his actions, despite the fact that his anxiety contributed to his poor decision-making. Accordingly, we do not find that Petitioner's mental health diagnoses have a significant mitigating effect on his extremely grave misconduct.

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

A. Evidence Considered

Petitioner was 29 years old and had been practicing law for close to 5 years at the time of his misconduct. (Stip. 1).

B. Analysis and Conclusions

Although Petitioner was a young attorney at the time of his misconduct, neither age nor experience was necessary to appreciate the wrongfulness of soliciting the murder of another person. See Gonzales, 2013PR00003. Accordingly, this factor weighs against reinstatement.

III. Petitioner did not demonstrate by clear and convincing evidence that he fully accepts the nature and seriousness of his misconduct.

A. Evidence Considered

We consider the evidence set forth in Section I, in addition to the following evidence.

Petitioner testified that his actions were reprehensible, and he is "beyond sorry" for them. He recognizes that he hurt many people and the legal profession. He is seeking reinstatement because he wants to do all he can to be a good person. He assured the Panel he would never repeat his crimes and has a good support system in place. (Tr. 185-87).

Petitioner's mother, fiancée, and two attorneys who have known Petitioner for a long time testified that he is remorseful and takes responsibility for his actions. Petitioner's therapist, Scott Burgess, and his forensic psychiatric expert, Henry Conroe, M.D., testified that Petitioner expressed his remorse for the negative impact of his actions on others. (Tr. 228, 273).

According to Burgess's notes, when Petitioner told Burgess he lost his law license following his conviction for a murder for hire plan, he "did not elaborate on the charge, stating 'it was all loud noise.'" Burgess did not ask about the details of Petitioner's criminal acts because that was not the purpose of the visits. Petitioner also described his criminal conduct to Burgess as "stupid talking." (Adm. Ex. 22). Burgess did not feel Petitioner was trying to minimize his wrongdoing, but could not say specifically what Petitioner meant by these statements. (Tr. 260-61, 283).

B. Analysis and Conclusions

Whether a petitioner recognizes the nature and seriousness of past misconduct is an important factor in assessing whether reinstatement is warranted. In re Sosman, 2012PR00150, M.R. 25693 (Sept. 12, 2014). Expressions of remorse and acknowledgements of wrongdoing may establish this factor. In re Wexler, 2017PR00071, M.R. 28878 (Mar. 16, 2021). On the other hand, a failure to recognize or acknowledge the wrongful nature of one's misconduct raises significant concerns as to a petitioner's future ability to adhere to ethical norms. Sosman, 2012PR00150 (Hearing Bd. at 32).

Petitioner expressed multiple times that he is remorseful and takes responsibility for his criminal conduct. However, we are concerned by his recent descriptions of his wrongful acts to Rick Burgess as "loud noise" and "stupid talking." Equally concerning is his testimony to this Panel that he "did not believe in his heart" that the undercover agent would go through with killing Hegg, even after Petitioner paid $8,500 and made detailed plans for Hegg's murder. We do not doubt that Petitioner is sorry for the harm he caused Hegg and others. However, his statements to Burgess and testimony here leave us with the impression that he does not fully admit or accept that he sought to end Hegg's life.

We also have significant concerns about Petitioner's poor judgment and disregard of ethical boundaries with respect to his relationship with Megan Wangall. Petitioner's conduct overall is relevant in determining whether he should be reinstated. Wexler, 2017PR00071 (Hearing Bd. at 10). For entirely selfish reasons, Petitioner chose to disregard his duties to Hegg by becoming involved with Wangall while she was an opposing party. We did not hear testimony from Petitioner that he understands his conduct with Wangall was unethical and realizes the importance of his duties of loyalty to clients. We must consider not only whether Petitioner will refrain from criminal conduct, but whether he will scrupulously abide by the rules of ethics. The

evidence presented is not sufficient to convince us of the latter. Accordingly, this factor weighs against Petitioner.

IV. Petitioner has made all required restitution.

A. Admitted Facts and Evidence Considered

Petitioner has paid the penalty and fine ordered by the district court as part of his sentence.

B. Analysis and Conclusions

Petitioner has satisfied this requirement.

V. Petitioner did not meet his burden of establishing that his conduct since discipline was imposed supports reinstatement.

A. Evidence Considered

We consider the evidence set forth in previous sections in addition to the following evidence.

Criminal Proceeding and Incarceration

Petitioner entered a guilty plea in his criminal case and agreed not to appeal his conviction or sentence. Judge Kapala noted that he apologized to Hegg and was remorseful. (Adm. Ex. 5).

While in prison, Petitioner worked as a patent processor and completed a drug abuse program. (Tr. 117-18). He had no disciplinary issues and earned an early release in August 2018. Until December 2018, he lived in a halfway house, where his conduct was excellent. (Tr. 133-34). His supervised release was terminated early, on March 6, 2020. (Tr. 137).

Employment and Finances

After Petitioner was released from prison, he needed financial assistance from his mother. She has provided him $2,000 per month as an advance on his inheritance. (Tr. 161).

Petitioner applied for numerous jobs following his release. He did not list his legal degree or employment on certain applications because he did not want to appear overqualified. He always disclosed his criminal history. (Tr. 140).

From October 2018 through March 2020, Petitioner worked for a landscaping company doing clerical work and snow removal. (Tr. 134, 137). In the summer of 2020, he was hired by the Small Business Administration (SBA) to process COVID relief loans. (Tr. 142). He disclosed his criminal background by sending an email to the human resources contact, which stated that he was an attorney and had "a felony conviction that resulted from a nervous breakdown and associating with bad persons." (Tr. 144). He subsequently filed a form that disclosed the nature of the criminal charges. (Tr. 145).

On October 28, 2020, the SBA notified him that he was being terminated for criminal and dishonest conduct, due to his failure to disclose that he was on supervised release. After Petitioner advised the SBA that his supervised release had ended, he was permitted to resign rather than being terminated. (Tr. 147-50).

Petitioner began working for FedEx Express in 2021. Based on his good performance, he has received two promotions and three awards and is involved in a management training program. (Tr. 154-159; Pet. Exs. 12-15, 22).

Currently, Petitioner is financially stable, but his mother still provides him $2,000 per month. Petitioner supports his fiancée, Jennifer Funk, and her son. (Tr. 163). He does not have a child support obligation for his son, Lucas, but provides funds when his ex-wife requests them. (Tr. 176-77).

Mental Health and Substance Use

Petitioner presented Henry G. Conroe, M.D. as an expert in forensic and general psychiatry. (Tr. 196). Dr. Conroe interviewed petitioner on August 26, 2020 and September 9,

2021. He found Petitioner to be forthright and without significant anxiety or any indication of alcohol or substance abuse. (Tr. 215, 220). In Dr. Conroe's opinion, Petitioner's misconduct was an aberration that resulted from a "perfect storm" of stressors. (Tr. 227). Petitioner does not currently have a mental illness that would prevent him from competently practicing law. Dr. Conroe further believes that Petitioner has a strong support system and has shown the ability to deal with stress. In his opinion, there is a very low risk that Petitioner would repeat his misconduct. (Tr. 216-19).

Scott Burgess is an outpatient behavioral therapist who has been seeing Petitioner on a monthly basis since July 2020. (Tr. 257-58). The purpose of their visits is to address ongoing and potential future anxiety. (Tr. 260-61). Petitioner's treatment plan includes cognitive behavioral therapy and education about his emotions and how to reframe them. (Tr. 262-63). Burgess believes Petitioner's ability to use the tools they discuss is above average. (Tr. 268). He has observed that Petitioner is able to handle stressful situations, including the loss of his job with the SBA and preparing for this proceeding. (Tr. 271). He and Petitioner plan to continue meeting in the future.

Petitioner testified that he has a glass of wine or a beer once a month. He does not binge drink like he did in the past. (Tr. 169).

Volunteer Activities

Petitioner testified he volunteered at the Animal Care League from summer 2019 until early 2020, when access was restricted due to the pandemic. (Tr. 169-170). He volunteered with a food pantry in Oak Park from the summer of 2021 through November 2021, when FedEx peak season began. (Tr. 170). He submitted a document showing 6.75 volunteer hours in July and August 2021. (Pet. Ex. 7). Petitioner further testified that he attends church regularly. (Tr. 171).

Character Testimony

Petitioner's mother, Jan Dahlberg, testified that Petitioner has returned to being honest, trustworthy, and a hard worker. (Tr. 315-17).

Jennifer Funk, Petitioner's fiancée, met Petitioner in May 2019 through an online dating service. Petitioner told her about his criminal conviction on their second date. (Tr. 335). Funk testified that Petitioner is willing to talk about his past, but she does not want to know the details of what took place. She described Petitioner as calm, loving, loyal, trustworthy, and dependable. (Tr. 337).

Attorneys John Martoccio and Ross Schreiter have known Petitioner since 2001, when their firm, Martoccio & Martoccio, represented Petitioner after he was injured by being hit in the head with a golf club. Petitioner began working at the firm as a teenager and joined the firm as an associate after he passed the bar exam. (Tr. 376-77). He left the firm after about six months. Martoccio and Schreiter remained friends with Petitioner and have stayed in touch with him. (Tr. 380-81, 385-86).

Schreiter described Petitioner as honest, hardworking, and a talented lawyer. (Tr. 381-82). He believes Petitioner's criminal conduct was an anomaly, and he continues to have a good opinion of Petitioner's honesty. (Tr. 387-92). In his view, Petitioner is a model of rehabilitation and could return to the practice of law without difficulty. (Tr. 389-90). He acknowledged that Petitioner's involvement with Wangall was not consistent with the conduct of a good lawyer, nor was Petitioner's attempt to solicit the murder of his former client. (Tr. 394). In Martoccio's opinion, Petitioner's character is excellent, and his honesty is "great." (Tr. 486).

Terry Mohr, who employed Petitioner at the time of his arrest, testified that Petitioner was an excellent attorney but his reputation is tarnished. Mohr would not consider practicing law with him in the future. (Tr. 433, 435).

B. Analysis and Conclusions

Rehabilitation involves a return to a beneficial, constructive and trustworthy role in society. In re Wigoda, 77 Ill. 2d 154, 159 (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. While Petitioner presented some positive evidence as to his employment and volunteer activities, it was not sufficient to meet the high burden of establishing his return to a beneficial, constructive, and trustworthy role by clear and convincing evidence.

It is undisputed that Petitioner's conduct while in prison and on supervised release was positive. He has been diligent in his employment efforts and has achieved financial stability. However, we did not hear testimony from anyone who has worked with Petitioner since his release from prison, who could provide insight as to his current reputation and workplace conduct. Whether Petitioner currently possesses the ability to conduct himself in an ethical and professional manner in the workplace while dealing with stressors is an important consideration, especially given his poor judgment in the past.

The evidence related to Petitioner's volunteer work is similarly lacking in substance. Petitioner provided only very general evidence on this issue and did not present testimony from anyone associated with the organizations where he has volunteered. The only documented evidence of volunteer service was 6.75 hours in July and August of 2021. We recognize that the pandemic reduced volunteer opportunities, but note that attorneys who succeed in being reinstated

typically present more substantial evidence of community or charitable activities. See, e.g., In re Smith, 2017PR00105, M.R. 02893 (Sept. 21, 2020). Such evidence is lacking here.

In addition, we find Petitioner was not forthright in his job applications. He admittedly omitted information about his legal background in some applications, and we find his description of his conviction to the SBA as resulting from a "nervous breakdown and associating with bad persons" was misleading. This conduct raises concerns about Petitioner's ability to be truthful and candid. See In re Jones, 02 RT 3005, M.R. 18298 (March 12, 2004) (Hearing Bd. at 22-23).

In weighing all the evidence before us, we find it is not sufficient to meet the high burden of proving that Petitioner's conduct since discipline was imposed supports reinstatement.

VI. Petitioner did not meet his obligation of complete candor and forthrightness in presenting his petition.

A. Admitted Facts and Evidence Considered

We consider the evidence set forth in the previous sections.

B. Analysis and Conclusions

In presenting a petition for reinstatement, an attorney is expected to act with a high level of care, candor, and judgment. In re Howard, 2010PR00067, M.R. 23910 (Sept. 25, 2013). This obligation encompasses both the written petition and the petitioner's testimony. See In re Salem, 2019PR00035, M.R. 029861 (Sept. 23, 2021) (Hearing Bd. at 26).

We find Petitioner was not truthful when he denied that potential harm to his career was one of the reasons he sought to have Hegg killed. Petitioner told his neighbor and the undercover agent, that he was taking action against Hegg because Hegg had information that would damage his career. His explanation that he made the statements because he wanted to look "tough" is simply not believable. In our role as triers of fact, we need not accept testimony that is inherently incredible or improbable, nor are we required to be naïve or impractical in evaluating the evidence.

In re Peek, 93 SH 357, M.R. 9461 (Dec. 29, 1995). The damaging information Hegg possessed, and his complaint to the ARDC, were clearly on Petitioner's mind because he mentioned it to multiple people and had contacted an attorney about Hegg's request for investigation to the ARDC. It appears to us that Petitioner's testimony was an attempt to minimize the connection between his crimes and his practice of law.

Similarly, we find Petitioner's testimony that he did not believe the undercover agent would go through with the murder to be lacking in candor. This testimony is completely inconsistent with Petitioner's conduct at the time. He was determined to find someone to kill Hegg and paid thousands of dollars in an effort to make that happen. He proceeded in a calculated manner, used an untraceable phone, and made plans to give himself an alibi. These were not the actions of a person who did not believe his plan would be carried out. However difficult it may be for Petitioner to come to terms with his past conduct, we cannot in good conscience recommend reinstatement when we do not believe he has been open and honest about that conduct. Based on our findings that Petitioner was not completely candid, this factor weighs against reinstatement.

VII. The possibility of Petitioner returning to the practice of family law raises concerns.

A. Evidence Considered

While in prison, Petitioner read about legal issues on Lexis-Nexis. Since his release, he has completed numerous hours of continuing legal education and discussed changes in family law with John Martoccio. (Tr. 174; Pet. Ex. 6). If he regains his license, he would like to work with Martoccio in his family law practice. Martoccio testified he would offer Petitioner a job if he were reinstated. (Tr. 487). Petitioner does not know if he would like to practice family law for the long term. He also has an interest in federal criminal defense work. (Tr. 189).

B. Analysis and Conclusions

Petitioner has made efforts to keep abreast of the law, including completing continuing legal education. We do not have concerns on that issue. However, we do have concerns about the possibility of his return to practicing matrimonial and family law.

Pursuant to Supreme Court Rule 767(f), we may consider other factors we deem appropriate. Petitioner's intention to return to the same area of practice that gave rise to his misconduct is problematic. See Richman, 191 Ill. 2d at 247. Petitioner made a grave lapse in judgment when he became involved with Wangall, which then led to increasingly worse decisions and conduct. Family law often involves highly emotional and stressful situations, with clients who may be in vulnerable states. Petitioner allowed himself to become embroiled in precisely this type of situation. He did not present to us a realistic plan for returning to his former area of practice in a way that would assure the public's protection. This factor weighs against reinstatement.

RECOMMENDATION

The ability to practice law is a privilege, not a right. See In re Jafree, 93 Ill. 2d 450, 462 (1982). The evidence before us did not establish that the public and the profession would be served by allowing Petitioner to return to practice at this time.

Our main concerns are the reprehensible nature of the misconduct and Petitioner's lack of candor. Petitioner has made commendable progress toward returning to a constructive role in society, but those strides are not yet sufficient to overcome the very high burden posed by his criminal acts. Moreover, because the misconduct was intertwined with his law practice, it is particularly important that Petitioner be forthcoming in order to satisfy us that he would be able to practice in an ethical manner if reinstated. He fell short in this regard. Petitioner also failed to present a realistic plan for returning to practice in a manner that will safeguard the public and the profession.

Accordingly, having carefully considered the relevant evidence and the factors set forth in Rule 767, we recommend that the petition of Jason William Smiekel for reinstatement to the practice of law be denied.

Respectfully submitted,

Carl E. Poli
Nicole C. Mueller
John Burns

CERTIFICATION

I, Michelle M. Thome, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Hearing Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on July 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] Filings in Petitioner's criminal case, including the district court's order of August 11, 2011, refer to alleged efforts by Petitioner in late April and early May 2011 to coerce a client who owed him fees to find a hit man in exchange for releasing liens Petitioner's firm held on the client's property. The client refused but Petitioner allegedly continued to press him to commit the murder or find someone who would do so. These allegations were not addressed in this proceeding, so we do not rely on them in making our recommendation. If true, however, they would weigh against Petitioner.