

**BEFORE THE BOARD OF PROFESSIONAL CONDUCT
OF THE SUPREME COURT OF OHIO**

In re:

Reinstatement of

Board Case No. 2009-023

**Percy Squire
Attorney Reg. No. 0022010**

SCO Case No. 2010-2021

Petitioner

**Findings of Fact
and Recommendation of the
Board of Professional Conduct
of the Supreme Court of Ohio**

Disciplinary Counsel

Relator

ON PETITION FOR REINSTATEMENT TO THE PRACTICE OF LAW

{¶1} This matter was heard on November 21, 2014 in Cleveland and January 20, 2015 in Columbus, upon the petition of Percy Squire for reinstatement to the practice of law pursuant to Gov. Bar R. V, Section 25. The panel consisted of Alvin R. Bell, Sanford E. Watson, and Roger S. Gates, chair. None of the panel members resides in the district in which Petitioner now resides or resided at the time of his suspension.

{¶2} Petitioner appeared *pro se*. Scott J. Drexel appeared on behalf of Relator.

{¶3} There are three issues raised by the petition for reinstatement. The first issue is what constitutes clear and convincing evidence of an accounting in a case involving commingling and misappropriation of trust funds. Because Petitioner accounted for every expenditure made in connection with his representation of Mark Lay, the majority of the panel finds that Petitioner proved by clear and convincing evidence that he provided the accounting required by the Court.

{¶4} The second issue is whether restitution should be ordered for a loan Petitioner took from a client where an order of repayment of that loan was not part of the original suspension. Because the proceeds were not in any way misappropriated, restitution is not required.

{¶5} The third issue is whether Petitioner who admits to all of the factual allegations against him, and acknowledges the wrongful nature of his conduct is a proper person for reinstatement, notwithstanding the fact that he takes issue with certain findings of Court. The evidence here is that Petitioner, without, reservation admitted to commingling funds, borrowing money from clients held in trust, completely violating the ethical rules governing trust accounts, and using those trust funds “like a slush fund.” And so while Petitioner admitted to all of his wrongful conduct, the fact that he denies any intention to steal from clients is not a denial of the wrongful nature of his conduct.

{¶6} Accordingly, for the reasons set forth below, the majority of the panel (Commissioners Watson and Bell) recommends that Petitioner be reinstated to the practice of law.

PETITIONER’S PRIOR DISCIPLINARY CASE

{¶7} On November 3, 2011, Petitioner was indefinitely suspended based on numerous violations contained in a five-count complaint brought by Relator. *Disciplinary Counsel v. Squire*, 130 Ohio St.3d 368, 2011-Ohio-5578. In the disciplinary hearing, Petitioner appeared *pro se*.

Count One—Riley Representation

{¶8} Petitioner agreed to represent Mike Riley in exchange for a \$100,000 “flat fee.” Shortly after making an initial payment of \$25,000, Riley advised Petitioner that he would not need his services and requested return of the initial payment. Petitioner advised Riley that he had already spent the money and was unable to return it. Petitioner instead provided Riley a promissory note. After failing to timely satisfy the promissory note, Petitioner gave Riley a check that was dishonored. Petitioner then provided Riley with a cashier’s check for the full amount. The Supreme Court held that Petitioner violated Prof. Cond. R. 1.15(a) [requiring a lawyer to hold property of clients separate from the lawyer’s own property], Prof. Cond. R. 1.15(c) [requiring a

lawyer to deposit into a client trust account legal fees and expenses that have been paid in advance and to withdraw them only as fees are earned or expenses incurred], Prof. Cond. R. 1.16(e) [requiring a lawyer to promptly refund any unearned fee upon the lawyer's withdrawal from employment], and Prof. Cond. R. 8.4(h) [conduct that adversely reflects on the lawyer's fitness to practice law]. Alleged violations of Prof. Cond. R. 1.7(a)(2), Prof. Cond. R. 1.7(b)(2), Prof. Cond. R. 1.8(a), and Prof. Cond. R. 8.4(c) were dismissed because they were not supported by clear and convincing evidence.

Count Two—Jewell Loan

{¶9} In order to obtain funds to satisfy his obligation to Riley, Petitioner borrowed \$30,000 from his friend and client Curtis Jewell. Petitioner provided Jewell with a promissory note agreeing to repay the loan within six days. Petitioner failed to advise Jewell in writing that he should seek the advice of independent counsel, nor did he obtain Jewell's informed consent in writing to the essential terms of the transaction and Petitioner's role in the transaction, and Petitioner did not disclose whether he was representing the client in the transaction. Although Petitioner timely satisfied the note to Jewell, the Supreme Court held that Petitioner violated Prof. Cond. R. 1.8(a) [conflict of interest], but dismissed the alleged violation of Prof. Cond. R. 8.4(h).

Count Three—Bishop Wagner and Mark Lay

The Bishop Wagner Loan

{¶10} On March 17, 2008 and two days before his loan from Jewell was due, Petitioner borrowed \$100,000 from Bishop Norman Wagner, who had borrowed the money from Huntington National Bank. Petitioner signed a promissory note to Wagner agreeing to repay \$75,000 in a year, to pay Wagner for all of the interest payments on the Huntington loan, and to indemnify and hold Wagner harmless in the event of a default on the Huntington loan. Petitioner also executed a

security agreement providing Wagner with a security interest in the accounts receivable and other intangibles connected with Percy Squire Co., LLC. The moneys were deposited in Petitioner's client trust account.

{¶11} Within five weeks after receiving the \$100,000 from the Wagner loan, Petitioner made nineteen withdrawals from his client trust fund to pay Petitioner's personal and business expenses.

{¶12} In response to Relator's inquiries concerning the Riley and Jewell transactions, Petitioner informed Relator that he had obtained the money to repay Jewell from his client trust fund. When asked to identify the source of the money in his client trust fund which was used to repay Jewell, Petitioner made misrepresentations to Relator's investigator before finally disclosing information about the Wagner loan. Although Petitioner testified at his disciplinary hearing that his incorrect statements resulted from "an honest mistake of memory," the original hearing panel did not find his testimony credible. At the time of his hearing in the disciplinary case, the principal due on the Wagner note had not been repaid.

{¶13} The Supreme Court held that Petitioner violated Prof. Cond. R. 1.15(a), Prof. Cond. R. 1.15(c), Prof. Cond. R. 8.1(a) [prohibiting knowingly making a false statement of material fact in connection with a disciplinary matter], Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation], and Prof. Cond. R. 8.4(h). At the Board's recommendation, the Court dismissed alleged violations of Prof. Cond. R. 1.6, Prof. Cond. R. 1.7(a), and Prof. Cond. R. 1.7(b).

The Lay Matter--\$113, 228.18 Lay Insurance Proceeds

{¶14} On April 24, 2008, the law firm of Shearman & Sterling, LLP wired \$113,228.18 on behalf of Petitioner's client, Mark Lay, to Petitioner's trust account. Petitioner wrote checks

against the trust account to cover his own expenses and legal fees. Petitioner claims that he withdrew money in part to cover legal fees was prior to testimony that he had been paid in full in 2007 for his work in handling Lay's criminal matter. By June 10, 2008, the balance in Petitioner's client trust fund was only \$193.61. At the hearing, Petitioner testified that every expenditure had been approved by Lay or Antoine Smalls, the former vice president of operations for Lay's company, MDL Capital Management. Smalls, however, testified that he had no recollection of the \$113,228.18. Lay testified at deposition that he and Petitioner did not discuss specific details regarding fees and expenditures but agreed to settle at a later time. Petitioner produced some records, including canceled checks and summaries of expenditures, but not sufficient to satisfy the Board or the Court.

The Mark D. Lay Legal Defense and Welfare Fund

{¶15} In June 2008, Petitioner was appointed the sole trustee of the Lay defense fund, and Smalls sent him \$280,000 in contributions received on behalf of the fund. Petitioner deposited the money into his client trust account and began issuing checks to Lay and his creditors, himself, his own creditors, and to pay expenses related to his representation of other clients from the defense fund. The Board also found scores of checks made payable to Petitioner's courier, Wesley Walker. Petitioner testified that he used the courier to get cash to pay client expenses, staff, himself, and his own creditors. Petitioner, however, produced no documentation to support this testimony.

{¶16} With the exception of a \$150,000 flat fee arrangement, Petitioner did not have a specific agreement with Lay regarding the fee for services. Instead, they had a very loose understanding that Petitioner's fees would be determined at a later date. Petitioner borrowed money from the fund and paid it back with money he borrowed from others. Lay was not aware

of the day-to-day expenditures. Small recalled that he knew that Petitioner was taking loans from the funds held in trust.

{¶17} The Supreme Court held that Petitioner violated Prof. Cond. R. 1.5(b) [fees and expenses], Prof. Cond. R. 1.15(a), Prof. Cond. R. 1.15(c), Prof. Cond. R. 8.4(c), and Prof. Cond. R. 8.4(h).

{¶18} Relator objected to the Board's findings with respect to Count Three seeking a specific finding that Petitioner misappropriated funds in violation of Prof. Cond. R. 8.4(c). In reconciling the objection with the evidence, the Court sustained the objection with respect to the Lay insurance proceeds, but overruled it with respect to the Lay defense fund.

Count Four

{¶19} Petitioner represented the fiduciary of the Estate of Bishop Wagner's nephew, Norman Wallace on a contingent fee basis. Petitioner failed to get approval for the contingent fee agreement as required by the probate court. Petitioner also claimed to charge a \$25,000 fee for the representation and later changed his story when he testified that the \$25,000 represented a loan from Bishop Wagner. The Supreme Court held that Petitioner violated Prof. Cond. R. 8.4(h), but alleged violations of Prof. Cond. R. 1.5(a), Prof. Cond. R. 1.5(e), and Prof. Cond. R. 8.4(c) were dismissed.

Count Five

{¶20} Petitioner represented Patrick Prout in a civil action. During the course of that representation, Petitioner borrowed money from the Prout Group, a company for which Prout served as president and CEO. Petitioner did not advise Prout to seek the advice of independent counsel regarding the loan. In the absence of additional evidence, alleged violations of Prof. Cond. R. 1.8(a) and Prof. Cond. R. 8.4(h) were dismissed.

Disciplinary Sanction

{¶21} The Court engaged in extensive analysis as to what would be the appropriate sanction for this misappropriation of funds case, weighing both the aggravating and mitigating factors. The aggravating factors here were many: (1) acting with a dishonest or selfish motive; (2) engaging in a pattern of misconduct involving multiple offenses; (3) submitted false evidence and false statements or engaged in other deceptive practices during the disciplinary proceeding; (4) refusal to acknowledge the wrongful nature of his conduct; (5) potential harm to clients; and (6) the failure to make restitution to Lay. The mitigating factors included the lack of a prior disciplinary record and evidence of good character and reputation.

{¶22} The Board's decision not to find that Petitioner misappropriated or converted client funds served as the basis for its recommendation of a two-year suspension, with 12 months stayed. Petitioner argued for a fully stayed suspension. Relator objected to the Board's report and recommended an indefinite suspension. In sustaining Relator's objection, the Court recognized that disbarment is the presumptive sanction for misappropriation but may be "tempered with sufficient evidence of mitigating or extenuating circumstances." Ultimately, a majority of the Court concluded that the appropriate sanction for Petitioner's misconduct was an indefinite suspension with conditions placed on his reinstatement. See *Squire, supra*. Three members of the Court dissented and would have imposed the Board recommended sanction of a two-year suspension, with one year stayed on conditions.

{¶23} On July 9, 2014, Petitioner filed his verified petition for reinstatement, and after a period of discovery, the case proceeded to hearing.

FINDINGS OF FACT

{¶24} Gov. Bar R. V, Sec. 25(D)(1)¹ establishes the requirement for reinstatement from an indefinite suspension by stating, in relevant part:

The petitioner shall not be reinstated unless he or she establishes all of the following by clear and convincing evidence to the satisfaction of the panel hearing the petition for reinstatement:

- (a) That the petitioner has made appropriate restitution to the persons who were harmed by his or her misconduct;
- (b) That the petitioner possesses all of the mental, educational, and moral qualifications that were required of an applicant for admission to the practice of law in Ohio at the time of his or her original admission;
- (c) That the petitioner has complied with the order of suspension;
- (d) That the petitioner has complied with the continuing legal education requirements of Gov. Bar R. X;

* * *

- (f) That the petitioner is now a proper person to be readmitted to the practice of law in Ohio, notwithstanding the previous disciplinary action.

{¶25} The suspension order issued by the Supreme Court set forth the following additional conditions that Petitioner must satisfy prior to reinstatement:

- Any future petition for Squire's reinstatement shall be conditioned upon Squire's providing, within 30 days of the date of our order, a full accounting to Mark Lay, the court, and any related party in interest for his withdrawals from, and deposits to, the \$113,228.18 insurance proceeds and the \$280,000 Mark Lay Defense and Welfare Fund during Squire's involvement with those funds. The accountings should set forth all payments to Squire made either directly or through an intermediary and include documentation of all fees, loans to Squire or third parties, and expenses paid on behalf of Mark Lay.

¹ Although the reinstatement petition was filed, and the hearing was commenced, in this matter prior to the January 1, 2015 effective date of the amendments to Gov. Bar R. V, current Gov. Bar R. V, Section 27(C) provides that the amendments shall apply to all pending complaints to the extent practicable. The hearing in this matter was completed after the effective date of the amendments, and neither party has argued that application of the amendments to this case is not practicable.

- As an additional condition for reinstatement, Squire shall submit proof, to be verified by relator, that he has paid restitution to the Mark D. Lay Legal Defense and Welfare Fund and the insurance fund of any unverified fees, loans, or expenses, with interest at the statutory rate.

Accounting to Mark Lay

{¶26} There is no dispute that Petitioner filed an accounting with the Court in a timely manner. The issue is whether that accounting constitutes a “full accounting to Mark Lay, the Court, and any related party in interest for withdrawals” from the two Lay trust funds. The majority of the panel believes that Petitioner did provide a full accounting to both Lay and the Court. The majority will address the accountings separately.

{¶27} The testimony of Petitioner that he prepared a full accounting of all expenditures from both trust funds, reviewed it with Lay, and Lay approved the accounting is unrefuted. Petitioner further testified that Lay approved the findings of the accounting that there was no restitution required. Furthermore, Smalls, who was vice-president of operations for MDL Capital Management, an investment management firm, for which Lay was the principal, testified, “One thing I am sure of is that myself and Mr. Lay had no issues with the way the trust accounting was done in conjunction with Mr. Squire.” November 21, 2014 Hearing Tr. 71. Given this testimony, there can be no dispute that Lay was satisfied with the accounting and is not seeking restitution.

Accounting to the Court

{¶28} Petitioner clearly complied with the accounting requirements set forth by the Court in its order. The Court required that the accounting set forth “all payments to Squire made either directly or through an intermediary and include documentation of all fees, loans to Squire or third parties, and expenses paid on behalf of Mark Lay.” In response to the accounting requirements of the Court, Petitioner provided summary statements detailing transactions from those accounts, and each of those transactions he provided supporting documents in the form of cancelled checks

and/or transaction records from the financial institutions in which the trust accounts were held. These documents were filed with the Court on December 5, 2011 as required by the order of suspension, and subsequently admitted in the reinstatement hearing. Petitioner's Ex. F and G.

{¶29} Relator argues that Petitioner's accounting was insufficient by using the same evidence that formed the basis of the Court's finding that he misappropriated funds. Relator engaged in a very rigorous cross-examination of Petitioner, most of which was centered on the events of 2008 and 2009—the factual basis for the indefinite suspension. What was in place (or not in place) in 2008 and 2009 in the way of documentation should not be relitigated here.

{¶30} The focus of this inquiry should be whether the accounting submitted by Petitioner on December 5, 2011 satisfied the Court's order. The best guidance we have for determining what should be included in an appropriate accounting is Prof. Cond. R. 1.15(a). Under the rule, a lawyer is required to:

- maintain a copy of any fee agreement with each client [division (a)(1)];
- maintain a record of client funds for each client [division (a)(2)];
- maintain a record of each bank account [division (a)(3)];
- maintain all bank statements, deposit slips, and cancelled checks, if provided by the bank, for each bank account [division (a)(4)]; and
- perform and retain a monthly reconciliation [division (a)(5)].

{¶31} In viewing the accounting provided by Petitioner it is clear he substantially complied with the documentation required of lawyers holding client funds. The documentation provided by Petitioner provided a record of client funds, information regarding each of the two bank accounts, deposit slips, cancelled checks, and other records of transactions provided by the banks. And he prepared summaries of each of the two trust accounts in an attempt to reconcile expenditures. The summaries included dates, amounts, and payees for each transaction.

{¶32} The documentation did not include copies of "any fee agreement" simply because there was no written fee agreement regarding Petitioner's representation of Lay or detailing how

these accounts should be managed. Lay testified in his April 21, 2010 deposition that there was no written agreement but he had an understanding with Petitioner that they would at some later point figure what attorney fees were owed. Lay was also aware that Petitioner borrowed money from these funds, although he did not approve every transaction.

{¶33} Relator further argues that the accounting is deficient because it did not identify any of the disbursements as loans. The fact that some of the amounts characterized as legal fees in the accounting were originally loans taken by Petitioner and later reconciled as legal fees was no secret to the Court or anyone else. This evidence was originally admitted in the disciplinary hearing and should not be relitigated here.

{¶34} In preparation for the hearing, Petitioner turned to his computer to review all of the legal work he performed for Lay. As a result of that review, he created legal invoices to further account for the services he performed. Relator attempted to argue that those invoices should have been produced in the original accounting, but stipulated to their admission. Petitioner explained that these invoices were not contemporaneous records and were created to help explain the accounting already provided.

{¶35} Relator cross-examined Plaintiff about checks that were not specifically listed in Petitioner's summary of his accounting. Petitioner explained that these checks were included in his total for legal fees. Petitioner readily admitted he borrowed money from the trust funds to pay his staff and himself. Those checks represented part of what he had calculated were part of legal fees. There is no question that the loans were improper but they were ultimately reconciled to the satisfaction of the client to cover earned legal fees. To relitigate the underlying issue of whether they were loan and/or legal fees now is inappropriate—so long as Petitioner gave account (and he did) for those expenditures.

{¶36} Finally during the hearing, there was some confusion as to whether Relator was required to verify the accounting performed by Petitioner. We note that there is no such requirement in the Court's order, nor did Relator ever attempt to verify the accounting. The Court's order only requires a verification of restitution.

{¶37} For all of the foregoing, we find that Petitioner presented clear and convincing evidence that he provided a full accounting to Lay and the Court as required under and in compliance with the order of suspension.

Restitution

{¶38} The Court's order, as an additional condition of reinstatement, specifically required restitution to the Mark D. Lay Legal Defense and Welfare Fund and the insurance fund. Because there is clear and convincing evidence that no restitution was required or claimed by the client, the issue of restitution to these two funds is moot.

{¶39} Relator's argument that Petitioner should "atone" for misconduct by repaying an outstanding loan of \$100,000 to the Estate of Bishop Wagner is misplaced. First and foremost, repayment of this loan was not a requirement of the Court's order. Secondly, while the loan proceeds were the subject of commingling funds, there was no allegation that these funds were in any way misappropriated. Therefore, the fact that Petitioner had an outstanding loan to a client is not in and of itself a measure of restitution. The best evidence of this is the fact the Court did not order restitution of this loan in its original order.

{¶40} Relator now seeks to impose an additional condition for reinstatement upon the Petitioner that was not required by the Court in its order because he wants the Petitioner to "atone for his misconduct." The whole notion of "atonement" is something that takes on a religious

connotation that has no place in this proceeding. We agree that Petitioner should acknowledge the wrongful nature of his conduct as required by rule, but “atonement” is something entirely different.

{¶41} Furthermore, Relater’s argument that Petitioner needs to “atone” by repaying this loan suggests that Petitioner is attempting to shirk his responsibility to repay this debt. The evidence does not support this argument. When Petitioner found he was unable to repay the loan on schedule, he entered into an agreed judgment acknowledging the debt. In that agreed judgment, Petitioner also filed a Chapter 11 bankruptcy, not for the purpose of avoiding the debt, but to reorganize his finances so that he could pay-off his creditors including the Estate of Bishop Wagner.

{¶42} Also, the suggestion that the amount of the debt owed to Bishop Wagner’s estate was a subject of the accounting is a clear mistake. There is no dispute that the original loan was \$100,000, and at the time of the reinstatement hearing, Petitioner owed \$172,000. The Court did not order an accounting on behalf of Bishop Wagner because it did not need one to know how much was owed. Therefore, had it wanted to, the Court could have ordered repayment of the loan in its original order. This is not now, nor should be retroactively treated as, a measure of restitution.

{¶43} Matthew Blair, Bishop Wagner’s former attorney, testified that Petitioner and Bishop Wagner had a very close friendship, “almost a father son arrangement between the two of them.” He also indicated that Bishop Wagner’s widow was supporting Petitioner’s effort to get his license back. At the time of hearing, Bishop Wagner’s estate was not seeking restitution for the outstanding loan balance. To now require repayment of this loan as a condition of reinstatement is yet another attempt to relitigate the underlying discipline.

{¶44} Furthermore, the Wagner loan was not the only outstanding loan. Petitioner also borrowed money from Charles M. Freiburger that was not paid back at the time of the

reinstatement hearing. It is not unusual or in and of itself inappropriate for lawyers to borrow money to pay off debts. The fact a lawyer's use of loan proceeds becomes the subject of discipline does not necessarily make the underlying loan a debt that requires immediate restitution.

{¶45} For the foregoing reasons, the majority finds by clear and convincing evidence that no restitution is required prior to reinstatement.

Petitioner's Mental, Educational, and Moral Qualifications

{¶46} The question of whether Petitioner possesses the mental, educational, and moral fitness to practice law is clearly a question of credibility given that there is competent, credible evidence to support it. The Supreme Court of Ohio has deferred to the panel's credibility determinations where the record does not weigh heavily against those findings. See *Akron Bar Assn v. Shenise*, 143 Ohio St.3d 134, 2015-Ohio-1548, ¶12; *Disciplinary Counsel v. Heiland*, 116 Ohio St.3d 521, 2008-Ohio-91, ¶39; *Cincinnati Bar Assn. v. Statzer*, 101 Ohio St.3d 14, 2003-Ohio-6649, ¶8.

{¶47} Here Petitioner presented competent, credible, and contemporaneous evidence in the form of five character witnesses, Attorney George L. Forbes, Thomas D. Lambros, retired and former chief judge of the United States District Court for the Northern District of Ohio, Attorney Charles M. Freiburger, Attorney Leo P. Ross, and James Cobbin who testified on his behalf. And although many of them were longtime friends, they did offer testimony regarding recent (post-suspension) interactions with Petitioner.

{¶48} The most compelling of these witnesses was Judge Lambros. Judge Lambros met Petitioner in 1984. Petitioner served as the judge's law clerk for two years in 1984 and 1985, and they have maintained a friendship since that time. Judge Lambros and Petitioner met to discuss Petitioner's discipline. Judge Lambros gave him a "probing inquiry, more intensive than [he] ever

had in [his] life.” November 21, 2014 Hearing Tr. 87. The judge’s primary concern was whether or not Petitioner accepted responsibility for his conduct. And at the end of the probing, he was satisfied that Petitioner had accepted responsibility for his conduct. Judge Lambros recalled to Petitioner that “you said you deserved it and I agreed with you.” *Id.* at 89. Judge Lambros reiterated more than once that he believed that Petitioner acknowledged, admitted, accepted responsibility and Petitioner acknowledged more than once that he “got what he deserved.” *Id.* at 90.

{¶49} Mr. Forbes testified that he has known Petitioner for 25 to 30 years and had hired Petitioner in the past. On cross-examination, he testified without reservation that notwithstanding the prior decision against Petitioner included misappropriation of funds, he would hire Petitioner to represent him again. On redirect examination, he further indicated that “Since I answered the question to him [Relator] by saying that I would hire you again to represent me I think that indicates that I trust you.” *Id.* at 40.

{¶50} Mr. Freiburger met Petitioner when he was a partner at Bricker & Eckler and Petitioner was one of his associates. Freiburger testified that he believed that Petitioner currently possesses the mental, educational, and moral qualifications to be a lawyer.

{¶51} Mr. Ross obtained approval from Relator and hired Petitioner as his law clerk after Petitioner was indefinitely suspended. Ross testified that he believed that Petitioner currently possesses the mental, education, and moral qualifications to be a lawyer. Ross further testified that he went over the decision with Petitioner “point by point” and that Petitioner admitted to commingling funds but was adamant that he never stole any money from clients.

{¶52} Mr. Cobbin also hired Petitioner after his suspension. Cobbin owns a company called C.C.S. Transportation and his company operates W.J. Cobbin Office Tower. He employed

Petitioner to help him refinance the debt on his office building. He was well aware of Petitioner's suspension from the practice of law. He said he was impressed that Petitioner was forthcoming about the suspension and told him everything "up front, whether it's embarrassing or not." *Id.* at 157.

{¶53} Given the testimony of these witnesses, if believed, there is clear and convincing evidence that Petitioner meets the mental, educational, and moral qualifications for reinstatement to the practice of law.

Compliance with CLE Requirements of Gov. Bar R. X

{¶54} At the commencement of the hearing on November 21, 2014, Petitioner admitted that he had miscalculated the amount of CLE required of a suspended attorney under Gov. Bar R. X. However by the resumption of the hearing on January 20, 2015, Petitioner had completed enough additional CLE hours to meet the requirement. The parties stipulated and the panel unanimously concludes that, as of the second day of the hearing, Petitioner had established his compliance with the CLE requirement.

{¶55} Notwithstanding, an agreement that Petitioner completed the required CLE hours, Relator makes this spurious argument that because Petitioner originally miscalculated the number of CLE hours required, he is not a proper person for reinstatement. There are many Ohio lawyers who find they have miscalculated CLE hours and act correct it. To suggest that the miscalculation of CLE hours makes Petitioner unfit to practice violates both the stipulation as well the spirit in which it was entered.

{¶56} Relator also played a memory test with Petitioner during cross-examination asking that he recite all of the requirements in the rule for maintain a trust account. Petitioner could not remember every requirement, however, not passing that test does not preclude him from being able

to open the rule book and refer to it from time to time, as we all do. For the foregoing reasons, we do not believe that Relator's memory test is evidence that Petitioner is not mentally, educationally, or morally fit to practice law.

Petitioner is a "Proper Person" for Reinstatement

{¶57} The determination that Petitioner is a proper person for reinstatement to the practice of law turns on whether he acknowledges the wrongful nature of his conduct. Petitioner fully acknowledges the wrongful nature of his conduct and accepts all of the factual allegations, but takes issue with two of the Court's findings. We must answer the question of whether his admitting to the facts and his acknowledgement is enough to make him a proper person for reinstatement.

{¶58} Understanding the circumstances under which Petitioner disputed certain charges is important to our analysis. The disciplinary hearing was a highly contested proceeding. At hearing, Petitioner faced 29 separate rule violations. Only 16 of those 29 alleged violations (55 percent) were sustained. The other 13 alleged violations (45 percent) were dismissed. Given these percentages, it was not unreasonable for Petitioner to contest many of the charges he faced.

{¶59} It was also not unreasonable under the circumstances for Petitioner to take issue with the allegation that he misappropriated client funds. Petitioner readily admits to commingling funds, but does not believe his conduct rose to the level of misappropriation. He was not alone in this assessment—the panel and the Board in the underlying disciplinary proceeding did not make a finding of misappropriation. The misappropriation finding was made by the Court in a 4-3 decision when it sustained Relator's objection. The Court's misappropriation finding and the finding that he "lacked candor" with respect to his dealings with Bishop Wagner are not in dispute. The question is whether Petitioner also has to agree with the findings when he already acknowledges the wrongful nature of his conduct.

{¶60} Furthermore, the argument that Petitioner attempted to relitigate the underlying discipline mischaracterizes his testimony and the context in which it was offered. Petitioner presented his case and called seven witnesses and introduced his hearing exhibits. Not once during that case did he attempt to relitigate the underlying decision. The issue of whether he agreed with all the Court’s findings did not come up until Relator called Petitioner on cross-examination. The testimony that Petitioner offered was in response to Relator’s questions on cross-examination, and to further offer rebuttal to those questions during redirect examination. If anyone attempted to relitigate the underlying discipline, it was Relator.

{¶61} Petitioner’s decision to litigate this matter *pro se* is a factor that should be considered, not as an excuse, but for the purpose of understanding the context in which his testimony was given or not given. Petitioner made the tactical decision not to offer a direct examination during his case in chief. This is not a decision hired counsel would have likely made under the circumstances. As a result of this decision, he was precluded by the panel chair from re-opening his case to further explain his behavior. While this factor alone may not influence the decision here, it provides further context for understanding how an argument could be made that Petitioner was trying to relitigate the underlying offense.

{¶62} From a factual perspective, there can be no dispute that Petitioner acknowledged the wrongful nature of his conduct. He readily admitted that he (1) commingled funds, (2) failed to manage his trust account properly, (3) was not keeping track of the trust accounts daily or keeping contemporaneous records, (4) took money out of Lay’s trust account that had no relation to Lay, (5) borrowed money from trust accounts without documentation, (6) took money from trust accounts where he thought he was entitled to legal fees, again without any proper documentation, (7) took money from trust accounts with the idea that he would “settle-up” with Lay later, (8) that

his overall management of the trust account was “totally contrary to the rules,” and (9) “totally contrary” to his ethical responsibilities, (10) described his use of the trust accounts as “like a slush fund,” (11) and acknowledged that when he borrowed money from Bishop Wagner that he failed to disclose the potential conflict of interest as required by the rules. While there were some conflicts between the testimony offered by Petitioner and the documents he produced, he never denies the underlying facts or the overall nature of his wrongful conduct.

{¶63} Finally, reliance on *Office of Disciplinary Counsel v. Bell*, (1988), 39 Ohio St.3d 276 is misplaced. In *Bell*, the Court denied the petitioner reinstatement because “the gravity of his misconduct continues to persuade us that he is unworthy of the public’s trust.” *Id.* at 277 (where Bell had engaged in trafficking of babies for adoption). Petitioner’s conduct here is no way similar or as extreme as trafficking in babies. According, it would be improper to depart from the standard set forth in the rules. We as a panel, are required to assess Petitioner “notwithstanding the previous disciplinary action.” Gov. Bar R. V, Section 25(D)(1)(f).

MAJORITY PANEL RECOMMENDATION

{¶64} A majority of the panel concludes, by clear and convincing evidence, that Petitioner has satisfied all of the requirements for reinstatement mandated by Gov. Bar R. V, Section 25(D)(1) as to restitution; the mental, educational, and moral qualifications; the CLE compliance; and he is a proper person for readmission. The majority further finds, by clear and convincing evidence, that Petitioner has satisfied all of the specific requirements for reinstatement set forth in the Supreme Court’s suspension order of November 3, 2011.

{¶65} For the reasons set forth above, a majority of the panel recommends that Petitioner be reinstated to the practice of law.

DISSENT BY COMMISSIONER GATES

{¶66} I conclude that Petitioner has failed to prove by clear and convincing evidence that he has complied with the Court's order of suspension, that he has made appropriate restitution, that he possesses the moral character required for admission, and that he is now a proper person for reinstatement. Therefore, I dissent from the conclusions of the majority of the panel and recommend that the petition be denied.

Restitution to Persons Harmed by Petitioner's Misconduct

{¶67} While I agree with the majority that the Court ordered Petitioner to pay restitution only "to the Mark D. Lay Legal Defense and Welfare Fund and the insurance fund," a condition of Petitioner's reinstatement was that he provide "a full accounting to Mark Lay, the court, and any related party in interest for his withdrawals from, and deposits to, the \$113,228.18 insurance proceeds and the \$280,000 Mark Lay Defense and Welfare Fund during Squire's involvement with those funds." *Disciplinary Counsel v. Squire*, 2011-Ohio-5578, ¶71. Additionally, for purposes of the instant proceeding, Petitioner is required to prove, by clear and convincing evidence, that he "has made appropriate restitution to the persons who were harmed by his or her misconduct." Gov. Bar R. V, Section 25(D)(1)(a).

{¶68} Although the majority concludes there is no doubt that Lay was satisfied with Petitioner's accounting and is not seeking restitution, there is no evidence from Lay himself concerning Petitioner's handling of the insurance proceeds and the defense trust fund. The only evidence in this record from Lay is the testimony he provided in his deposition taken on April 21, 2010 for purposes of Petitioner's disciplinary hearing.² In its decision, the Court found that Lay

² Antoine Smalls testified that both he (as co-trustee with Petitioner of the defense fund) and Lay were aware of and approved each expenditure Petitioner made from the trust fund, including loans that Petitioner advanced to himself. Smalls also claims to have reviewed invoices for legal fees which Petitioner paid to himself even though Petitioner admitted to this panel that he did not prepare invoices until after the Court's decision. In the disciplinary

did not authorize Petitioner's expenditures and never had an agreement with Petitioner concerning attorney fees. The Court also noted the Board's conclusion that 'Petitioner's "failure to maintain adequate records may have concealed any actual harm." *Id.* at ¶61. From these findings, the Court concluded that Petitioner had misappropriated money belonging to Lay and ordered Petitioner to make a full accounting and make restitution verified by Relator. Because of the inadequate records presented at the disciplinary hearing, the Court made no specific finding in its order of suspension as to an amount of any restitution which Petitioner was required to make to Lay.

{¶69} Based on the evidence Petitioner presented at the hearing on his petition for reinstatement, my conclusion is that the Estate of Bishop Norman Wagner was harmed by Petitioner's misconduct. Therefore, Petitioner should be required to make restitution by satisfying the judgment against him in favor of the Estate of Bishop Wagner or his heirs.

{¶70} Petitioner commingled in his client trust account the money he borrowed from Bishop Wagner with money he received from or on behalf of Lay and other clients and from the operation of his practice. Petitioner used the Wagner loan proceeds to pay his personal debts and expenses including the money he borrowed from Jewell which had been used to repay Riley. Based upon the manner in which Petitioner handled the Wagner loan proceeds, the Court

hearing, Petitioner made a similar claim of authority to take loans from the defense fund. However, the Court found that Lay testified that he did not recall giving Petitioner any directions concerning the use of the defense fund.

In its decision, the Court also discussed Petitioner's quite similar testimony concerning his handling of the insurance proceeds:

Petitioner testified that every dollar of the \$113,228.18 he spent was discussed with Lay and approved by Smalls, the former vice president of operations for Lay's company, MDL Capital Management. Lay, however, testified that he had no recollection of the \$113,228.18. Smalls testified that he was not involved in authorizing payments on Lay's behalf until he established the Mark D. Lay Legal Defense and Welfare Fund ("Lay defense fund") after Lay went to prison—more than two months after Petitioner received the \$113,228.18 and began spending it. *Id.* at ¶26.

In short, the Court rejected Petitioner's claims of authority to use the insurance proceeds and concluded that he had misappropriated those proceeds.

concluded that Petitioner had engaged in misconduct in violation of Prof. Cond. R. 1.15(a) and Prof. Cond. R. 1.15(c).

{¶71} On April 13, 2012 (subsequent to Petitioner’s suspension), Rita H. Wagner as the administratrix of the Estate of Bishop Norman L. Wagner obtained a judgment against Petitioner in the amount of \$100,000, plus interest at the rate of \$49.32 per diem from November 3, 2010. Relator’s Ex. 7. Because the evidence establishes the balance due on this unsatisfied judgment now exceeds \$172,000, I conclude that Petitioner has failed to prove, by clear and convincing evidence, that he has made appropriate restitution to the person(s) harmed by his misconduct.

Accounting for Misappropriated Funds

{¶72} I am also unable to agree with the majority’s conclusion that Petitioner has provided “a full accounting to Mark Lay, the court, and any related party in interest” for the amounts he misappropriated from the insurance proceeds and the defense fund. On December 9, 2011, Petitioner filed an affidavit of compliance with the Court that he intended to be the accounting required by the Court. Relator’s Ex. 17. While Relator raised no issue prior to the commencement of the reinstatement hearing concerning any of the expenditures listed in Relator’s Exhibit 17, Relator has not “verified” any of those expenditures.

- On March 17, 2008 (two days before his loan from Jewell was due), Petitioner borrowed \$100,000 from Bishop Norman Wagner. The moneys were deposited in Petitioner’s client trust account. Within five weeks after receiving the \$100,000 from the Wagner loan, Petitioner made nineteen withdrawals from his client trust fund to pay Petitioner’s personal and business expenses.
- On April 24, 2008, Petitioner received a wire transfer to his client trust fund in the amount of \$113,228.18 for the insurance proceeds, which brought the balance in his client trust fund to \$119,707.24. Relator’s Ex. 18, pp. 10-12. By June 10, 2008, the balance in his client trust fund was \$198.61. *Id.* During that same period, Petitioner claimed in Relator’s Exhibit 17 to have made expenditures from the insurance proceeds totaling \$114,014.63; \$82,935.53 to other people on Lay’s behalf, and eight expenditures totaling \$31,079.10 to himself for attorney fees.

- On June 23, 2008, Petitioner received a wire transfer to his client trust fund in the amount of \$280,000 to establish the Lay Defense Fund. Relator's Ex. 18, pp. 13-20. After that deposit, the balance in Petitioner's client trust account was \$280,193.61. *Id.* By October 14, 2008, the actual balance in Petitioner's client trust fund was \$289.32. *Id.* During that same period, Petitioner claimed in Relator's Exhibit 17 to have made expenditures from the Lay Defense Fund totaling \$291,454.39; \$220,540.12 to other people on Lay's behalf, and 24 expenditures totaling \$70,914.27 to himself for attorney fees.³

{¶73} My conclusion is that Relator's Exhibit 17 provides incomplete information to establish why the payments, which Petitioner claims to have made to third parties on Lay's behalf, actually relate to Lay. Since the insurance proceeds and the Lay Defense Fund were commingled with money received from the Bishop Wagner Loan and money received from other loans, clients, and business operations, Relator's Exhibit 17 also fails to establish the actual source of the listed expenditures. At most, Relator's Exhibit 17 shows that Petitioner expended money from his client trust account to pay some bills or expenses that he claims are related to Lay.

{¶74} Petitioner has also failed to prove, by clear and convincing evidence, that a correlation exists between the money he claims to have taken from his client trust fund for attorney fees and the legal services he claims to have performed on Lay's behalf. Relator disputes the legitimacy of these amounts because Relator's Exhibit 17 lacks any documentation as to the tasks performed, the hours worked, or the rate charged for Petitioner's legal services.

- On January 15, 2015, Petitioner provided Relator and the panel with a series of "Invoices" for legal services which he claims to have performed on behalf of Lay. Petitioner's Ex. OO.
- Although these "Invoices" total \$158,062, Petitioner admits that he had no contemporaneous time records and that he had no agreement with Lay regarding the fees he would be charging for his services.

³ Petitioner also claims that he made payments to the Lay Defense Fund on September 3, 2008 and on April 9, 2009 in the amount of \$25,000 each, \$50,000 total. Petitioner characterizes these payments as a return of fees he previously received and therefore reduces the fees he received from the Lay Defense Fund to \$20,914.27. However, Petitioner provided no evidence as to the source of these two payments.

- Instead, Petitioner testified that he constructed these “Invoices” after he was suspended based on a review of court dockets for cases in which he participated on behalf of Lay and his estimate of the work he performed in each case.
- Petitioner made no effort in Petitioner’s Exhibit OO to distinguish the services to which payments made from the insurance proceeds relate as opposed to those made from the Lay Defense Fund.
- Petitioner failed to show that the money he took from Lay for attorney fees was actually for fees he earned during the time period in which he received the payments.
- While Petitioner informed the Court in Relator’s Exhibit 17 that he paid himself a total of \$101,273.37 for attorney fees from the insurance proceeds and the Lay Defense Fund between April 24, 2008 and October 14, 2008, Petitioner’s Exhibit OO shows only \$61,375 for legal services allegedly performed on Lay’s behalf during that same period.⁴
- After Smalls had replaced Petitioner as the trustee for the Lay Defense Fund, Petitioner wrote to Smalls on December 19, 2008 describing unpaid expenses due to other lawyers working on Lay’s appeal from his conviction and stated [Relator’s Ex. 19]:

* * * I have not submitted a bill or been paid since July 11, 2008, despite performing work through the present.

You are aware of the amounts that you have been instructed me to pay out. None of the payments have been for legal fees.

{¶75} However, Petitioner reported in Relator’s Exhibit 17 that between July 11, 2008 and September 27, 2008 he received 12 payments for legal fees from the Lay Defense Fund totaling \$17,016.81.

- Petitioner’s Exhibit OO actually proves that much of the work described in the “Invoices” was performed after Petitioner received the fee payments listed in Relator’s Exhibit 17.
- In the reinstatement hearing, Petitioner further testified that, in any event, the fair value of legal services he performed on Lay’s behalf far exceeded the amount of Lay’s money which Petitioner expended on his personal and business

⁴ This amount is the total of the following based on Petitioner’s Exhibit OO: *U.S. v. Lay* (criminal case), post-trial \$28,125, appeal \$5,187.50; Tower of Chatham \$812.50; Federal Insurance \$2,062.50; Mark Lay General \$10,500; Merrill Lynch \$625; SEC \$1,187.50; and OBWC \$12,437.50.

expenses. Although not clearly articulated by Petitioner, this assertion seems to be an effort to establish either that Lay was not “harmed” by Petitioner’s misconduct, or that Petitioner made appropriate restitution to Lay by subsequently performing legal services for which he was not otherwise compensated. However, the Court repeatedly emphasized in its decision that Petitioner had no fee agreement with Lay. Petitioner offered no evidence that he ever sent the “Invoices” contained in Petitioner’s Exhibit OO to Lay, that Lay ever approved the fees reflected in the “Invoices,” or that the fees described in the “Invoices” were reasonable within the standard of Prof. Cond. R. 1.5.⁵

{¶76} Therefore, I conclude that Petitioner has failed to prove, by clear and convincing evidence, that he complied with the order of suspension and that he has made appropriate restitution to the person(s) harmed by his misconduct.

Petitioner’s Moral Qualifications

{¶77} Petitioner has also failed to meet his burden of proving, by clear and convincing evidence, that he has the moral qualifications required of an applicant for admission to the practice of law and that he is a proper person to be readmitted to the practice of law.

{¶78} Although Gov. Bar R. V, Section 10, fails to contain any specific standards regarding these issues, Gov. Bar R. I, Section 11(D)(3) delineates a nonexclusive list of factors which a local bar admissions committee shall carefully consider before making a recommendation about the character, fitness, and moral qualifications of an applicant for admission to the bar; that list includes “false statements, including omissions,” “acts involving dishonesty, fraud, deceit, or misrepresentation,” and “neglect of financial responsibilities.”

{¶79} Gov. Bar R. I, Section 11(D)(4) further requires the local committee to consider a list of factors in assigning weight and significance to the applicant’s prior conduct when determining whether the present character, fitness, and moral qualifications of an applicant qualify

⁵ While the Court noted that Petitioner performed legal services in connection with Lay’s criminal trial on a “flat fee basis,” the Court expressly found that Petitioner had violated Prof. Cond. R. 1.5(c) by failing to discuss with Lay the basis or rate for legal services he claims to have performed after the criminal trial. *Id.* at ¶36.

the applicant for admission to the practice of law. These factors include the recency and seriousness of the conduct, the factors underlying the conduct, and the cumulative effect of the conduct. Evidence of the applicant's rehabilitation and positive social contributions since occurrence of the conduct is also to be considered.

{¶80} In addition to the express directives delineated in Gov. Bar R. I, Section 11(D) for determining the character, fitness, and moral qualifications of an applicant for admission to the bar, the Court has held that “the gravity of the misconduct” that led to an indefinite suspension is an appropriate factor to be considered when deciding whether to grant a petition for reinstatement. In the Court's decision in *Office of Disciplinary Counsel v. Bell* (1988), 39 Ohio St.3d 276, the petitioner was denied reinstatement following his indefinite suspension due to his falsification of filings with the probate court to hide improper payments to the birth mother in two adoption cases. The petitioner supplied evidence concerning his remorse, his respect for the legal profession, his continuing legal education, his redeeming personal qualities, and his involvement in community activities. Reinstatement was opposed by the relator and by the probate court judge. The Court concluded that, although the petitioner had already been suspended for four years, “the gravity of his misconduct continues to persuade us that he is unworthy of the public's trust.” *Id.* at 277.

{¶81} In its decision in *Office of Disciplinary Counsel v. Woods* (1990), 50 Ohio St.3d 72, the Court granted reinstatement from an indefinite suspension that had been based upon the petitioner's conviction for theft and forgery in connection with his conversion of \$70,000 belonging to a friend and client. Although recognizing that the conduct in the *Bell* decision demonstrated a serious character defect and enduring offense against justice which could not be quickly or easily corrected or atoned for, the Court distinguished that decision based on the entire

record concluding that the criminal and disciplinary sanctions that had already been meted out were appropriate to the gravity of the misconduct. *Id.* at 74.

{¶82} Petitioner’s misconduct was extremely serious. The Court stated that Petitioner had repeatedly violated his professional duties and responsibilities. *Squire, supra* at ¶70. The Court found that Petitioner had:

- “[F]lagrantly violated the Rules of Professional Conduct that require attorneys to hold client property separate from their own property and to maintain detailed records of the money held and disbursed on behalf of those clients.” *Id.* at ¶35.
- Misappropriated his client’s property. *Id.* at ¶47.
- Engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation by knowingly making false statements of material fact during the course of the disciplinary investigation. *Id.* at ¶37.

{¶83} The Board also found as an aggravating factor that Petitioner had “submitted false evidence and false statements or had engaged in other deceptive practices during the disciplinary proceeding.” *Id.* at ¶59.

{¶84} The evidence fails to demonstrate any significant rehabilitation of Petitioner from his serious misconduct. Although Petitioner testified that he accepts that the Supreme Court concluded that he engaged in misconduct, he failed to acknowledge that his misconduct was a violation of the public trust. Instead, throughout the reinstatement hearing, Petitioner attempted to essentially rebut the Court’s conclusion concerning his misappropriation and dishonesty. As he did in the disciplinary hearing, Petitioner argued that his improper management of his client trust account was simply based on his lack of understanding of his obligations to separately hold and account for client funds and his failure to pay proper attention to office procedures. He testified that he always believed that he was spending his own money, not his client’s money, despite the fact that the balance in his client trust account fell far below the money he had received on Lay’s

account. In many respects, Petitioner appeared throughout the reinstatement process to simply be relitigating the Court's findings concerning his dishonest misconduct.

{¶85} In short, I conclude that considerable weight and significance should be assigned to Petitioner's prior misconduct when determining whether he now possesses the moral qualifications for admission to the practice of law and whether he is now a proper person to be admitted to the practice of law. Petitioner has failed to establish, by clear and convincing evidence, that he accepts the wrongfulness of his actions and that he now possesses the moral character of a person who desires to be licensed to practice law.

{¶86} Relator also argues that Petitioner's failure to pay any portion of the judgment against him arising from the Bishop Wagner loan militates against his reinstatement. Financial irresponsibility alone may be enough to disapprove bar candidacy or bar exam application, *In re Application of Stewart*, 112 Ohio St.3d 415, 2006-Ohio-6579, ¶ 19; see also, *In re Application of Wiseman*, 135 Ohio St.3d 267, 2013-Ohio-763 (applicant denied permission to take bar exam based upon prior criminal conduct, financial irresponsibility, misappropriation of funds while serving in a fiduciary capacity, and a pervasive pattern of lies and omissions throughout this admissions process in an effort to conceal his past conduct); *In re Application of Acton*, 121 Ohio St.3d 154, 2009-Ohio-499 (applicant denied permission to take bar exam based on his continued pattern of disregard of the traffic laws, failure to provide complete and accurate information concerning his past, nondisclosure of pertinent information, apathy or inability to appreciate and/or neglect of his financial responsibilities, and evidence of mental disorder, which untreated could affect the applicant's ability to practice law); *In re Application of Kline*, 116 Ohio St.3d 185, 2007-Ohio-6037 (applicant denied permission to take bar exam due to his persistent failure to address relatively small debts); and *In re Application of Manayan*, 102 Ohio St.3d 109, 2004-Ohio-1804

(applicants for admission to the Ohio bar and bar members are expected to scrupulously honor all financial commitments). “An applicant’s tendency toward financial irresponsibility makes him a poor risk to entrust with the duties owed clients, adversaries and others in the practice of law.” *Stewart* at ¶18; *In re Application of Ford*, 110 Ohio St.3d 503, 2006-Ohio-4967.

{¶87} Finally, the character evidence presented by Petitioner during the reinstatement hearing is similar in nature to the character evidence he presented during his disciplinary hearing. As was the case in his disciplinary hearing, most of the character testimony relates to the early part of Petitioner’s career. See, *Squire* at ¶70. Retired federal judge Thomas D. Lambros once again testified with obvious affection and high praise for Petitioner. See, *Id.* at ¶62. Leo P. Ross, an attorney with whom Petitioner now works, testified that he read the Court’s decision suspending Petitioner and that, when interviewed by Ross, Petitioner admitted commingling client money with his personal money but assured Ross that he had never taken any money from anyone. Because the evidence of Petitioner’s character fails to support a conclusion that Petitioner has been rehabilitated from his prior misconduct, I am unable to conclude that Petitioner has proven, by clear and convincing evidence, that he now possesses the moral character necessary for reinstatement to the practice of law.

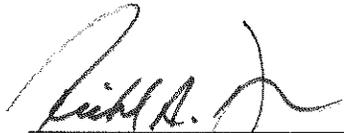
Conclusion

{¶88} Based upon the entire record, Petitioner has, in my opinion, failed to prove, by clear and convincing evidence, that he currently possesses all the mental, educational, and moral qualifications that were required at the time of his original admission and that he is now a proper person to be readmitted notwithstanding the previous disciplinary action. Therefore, I respectfully dissent from the majority’s recommendation and would recommend denial of the petition.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 25, the Board of Professional Conduct of the Supreme Court of Ohio considered this matter on October 2, 2015. After discussion, the Board adopted the findings and recommendation as set forth in the dissenting report of Commissioner Gates and recommends that the reinstatement petition of Percy Squire be denied. The Board further recommends that the cost of these proceedings be taxed to Petitioner.

Pursuant to the order of the Board of Professional Conduct of the Supreme Court of Ohio, I hereby certify the foregoing findings of fact and recommendation as those of the Board.



RICHARD A. DOVE, Director