

**IN THE SUPREME COURT OF OHIO**

<b>Disciplinary Counsel,</b>	:	<b>CASE NO. 2010-2021</b>
	:	
<b>Relator,</b>	:	<b>Board Case No. 09-023</b>
	:	
<b>v.</b>	:	<b>RELATOR'S ANSWER TO</b>
	:	<b>PETITIONER'S OBJECTIONS TO</b>
<b>Percy Squire</b>	:	<b>BOARD OF PROFESSIONAL</b>
	:	<b>CONDUCT'S REPORT AND</b>
<b>Respondent.</b>	:	<b>RECOMMENDATION</b>
	:	

---

**RELATOR'S ANSWER TO PETITIONER'S OBJECTIONS  
TO BOARD OF PROFESSIONAL CONDUCT'S  
REPORT AND RECOMMENDATION**

---

**Scott J. Drexel (#0091467)**  
**Disciplinary Counsel**  
**250 Civic Center Drive, Suite 250**  
**Columbus, Ohio 43215-7411**  
**(614) 461-0256**  
**(614) 461-7205 (fax)**  
**scott.drexel@sc.ohio.gov**

**Percy Squire (#0022010)**  
**341 S. Third Street, Suite 10**  
**Columbus, Ohio 43215**  
**(614) 224-6528**  
**(614) 224-6529 (fax)**  
**percysquire@gmail.com**

## TABLE OF CONTENTS

	<u>Pages</u>
<b>I. THE BOARD'S FINDINGS AND RECOMMENDATION</b>	1-2
<b>II. PETITIONER'S OBJECTIONS TO BOARD FINDINGS</b>	2-4
<b>III. THE SHOWING REQUIRED OF PETITIONER TO WARRANT HIS REINSTATEMENT TO THE PRACTICE OF LAW</b>	4-5
<b>IV. PETITIONER HAS FAILED TO DEMONSTRATE, BY CLEAR AND CONVINCING EVIDENCE, THAT HE SATISFIES THE REQUIREMENTS FOR REINSTATEMENT TO THE PRACTICE OF LAW</b>	5-26
<b>A. Petitioner Refuses to Fully Acknowledge His Misconduct In the Underlying Disciplinary Proceeding or to Appreciate The Risks Posed By His Financial Transactions with Clients</b>	5-10
<b>B. Petitioner Has Failed to Take Any Meaningful Step to Atone For His Misconduct by Repaying Any Portion of the \$100,000 Loan He Received from Bishop Wagner in March 2008</b>	10-15
<b>C. The Character Testimony Presented by Petitioner's Witnesses Are Insufficient to Demonstrate that Petitioner Possesses the Mental, Educational and Moral Qualifications For Reinstatement</b>	15-20
<b>D. Petitioner Has Failed to Establish, Through His Own Testimony and Conduct, that He Meets the Mental, Educational and Moral Qualifications for Reinstatement To the Practice of Law</b>	20-22
<b>E. The "Accounting" Submitted by Petitioner Pursuant to the Supreme Court's November 3, 2011 Final Disciplinary Order Is Manifestly Inadequate and Fails to Comply with the Requirements of the Court's Order, Thereby Mandating The Denial of the Petition for Reinstatement</b>	22-26

**TABLE OF CONTENTS**  
**(Continued)**

	<b><u>Pages</u></b>
<b>V. RELATOR'S RESPONSE TO PETITIONER'S OTHER CONTENTIONS</b>	27-29
<b>A. Petitioner's Claim That He is Entitled to Reinstatement Because a Majority of the Hearing Panel Found That He Meets the Requirements for Reinstatement</b>	27
<b>B. Relator's Alleged Failure to Advise Petitioner's Former Clients in the Underlying Disciplinary Proceeding of Their Right to Assert the Attorney-Client Privilege</b>	27-28
<b>C. Commissioner Gates' Alleged "Disparagement" of Petitioner's Background</b>	28-29
<b>VI. CONCLUSION</b>	30
<b>CERTIFICATE OF SERVICE</b>	31

## TABLE OF AUTHORITIES

<u>Cases</u>	<u>Pages</u>
<i>Disciplinary Counsel v. Squire</i> , 130 Ohio St.3d 368	6-8, 10

  

<u>Professional Conduct Rules</u>	<u>Pages</u>
Prof. Cond. R. 1.5(b)	7
Prof. Cond. R. 1.8(a)	6, 9
Prof. Cond. R. 1.15(a)	6-7
Prof. Cond. R. 1.15(c)	6-7
Prof. Cond. R. 1.16(e)	6
Prof. Cond. R. 8.1(a)	7
Prof. Cond. R. 8.4(c)	7
Prof. Cond. R. 8.4(h)	6-7

  

<u>Rules for Government of Bar of Ohio</u>	<u>Pages</u>
Gov. Bar R. I(11)(D)(4)	28
Gov. Bar R. V(25)(B)	4
Gov. Bar R. V(25)(D)(1)	3, 5, 14, 27-30
Gov. Bar R. V(25)(F)(4)	27

**IN THE SUPREME COURT OF OHIO**

<b>Disciplinary Counsel,</b>	:	<b>CASE NO. 2010-2021</b>
	:	
<b>Relator,</b>	:	<b>Board Case No. 09-023</b>
	:	
v.	:	<b>RELATOR'S ANSWER TO</b>
	:	<b>PETITIONER'S OBJECTIONS TO</b>
<b>Percy Squire</b>	:	<b>BOARD OF PROFESSIONAL</b>
	:	<b>CONDUCT'S REPORT AND</b>
<b>Respondent.</b>	:	<b>RECOMMENDATION</b>
	:	

---

**RELATOR'S ANSWER TO PETITIONER'S OBJECTIONS  
TO BOARD OF PROFESSIONAL CONDUCT'S  
REPORT AND RECOMMENDATION**

---

**I. THE BOARD'S FINDINGS AND RECOMMENDATION**

On October 6, 2015, the Board of Professional Conduct ("the Board") filed its Findings of Fact and Recommendation ("Board Report") with this Honorable Court recommending that the petition for reinstatement to the practice of law filed by Percy Squire on July 9, 2014 be denied and that the cost of the reinstatement proceedings be taxed to petitioner.

In making its recommendation, the Board adopted the findings and recommendation set forth in the dissenting report of Commissioner Robert Gates. See Board Report, at p. 30. In his dissent, Commissioner Gates made the following significant findings of fact and conclusions of law, among others:

1. The Estate of Bishop Norman Wagner was harmed by petitioner's misconduct in the underlying disciplinary proceeding, that he should be required to make restitution by satisfying the judgment against him in favor of the Estate of Bishop Wagner or his heirs and that, by failing to do so, petitioner has failed to prove, by clear and convincing evidence, that he has made appropriate restitution to the persons harmed by his misconduct as required by Rule V(25)(D)(1)(a) of the Supreme Court Rules for the Government of the Bar of Ohio ("Gov. Bar R."). Board Report, at ¶¶ 67-71.
2. Petitioner failed to provide the "full accounting to Mark Lay, the court, and any related party in interest" for the amounts of money he misappropriated from Lay's \$113,228.18 of insurance proceeds and the Mark Lay Legal Defense and Welfare Fund as ordered by the Supreme Court in its November 3, 2011 indefinite suspension order in this matter or that he has made appropriate restitution to the persons harmed by his misconduct in the Lay Matter. Board Report, at ¶¶ 72-76.
3. The evidence fails to demonstrate any significant rehabilitation of petitioner from his serious misconduct. He 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. Board Report, at ¶¶ 84-85.
4. Petitioner's failure to pay any portion of the judgment against him arising from the Bishop Wagner loan demonstrates financial irresponsibility that makes him a poor risk to entrust with the duties owed clients, adversaries and others in the practice of law. Board Report, at ¶ 86.
5. The character evidence presented by petitioner in this reinstatement hearing is similar in nature to the character evidence he presented during his disciplinary hearing and mostly related to the early part of his career. The evidence fails to support a conclusion that petitioner has been rehabilitated from his prior misconduct. Board Report, at ¶ 87.

## **II. PETITIONER'S OBJECTIONS TO THE BOARD'S FINDINGS**

In his objections to the Board's Report, petitioner argues that (a) he rendered a full accounting to the Hearing Panel of his expenditures from both the \$113,000 insurance proceeds and from the Mark Lay Legal Defense and Welfare Fund (Petitioner's Objections, at pp. 7-8, 12-14); (b) that he has made satisfactory arrangements with the Estate of Bishop Wagner to resolve the debt between them and that this debt was not cited in the Supreme Court's November 3, 2011 indefinite suspension order (Petitioner's Objections, at pp. 8, 10-12); (c) that he has completed all CLE requirements (Petitioner's Objections, at p. 9); (d) that he paid all costs ordered by the

Supreme Court in its November 3, 2011 suspension order, but has now been “double billed” by the Board’s recommendation that he be taxed for the cost of this reinstatement proceeding (Petitioner’s Objections, at p. 9); and (e) he presented the testimony of five witnesses who attested to his mental, educational and moral qualifications for readmission to the practice of law (Petitioner’s Objections, at p. 9).

In addition, petitioner appears to object that he is entitled to be reinstated to the practice of law because Gov. Bar R. V(25)(D)(1)(a) only requires a finding by the hearing panel – as opposed to the Board -- that he has met the requirements for reinstatement and that, in this case, a 2-1 majority of the hearing panel found that he met the requirements for reinstatement. (Petitioner’s Objections, at pp. 9-10.)

Petitioner also objects that, in the investigation and discovery process in the underlying disciplinary proceeding, counsel for relator obtained evidence from his former clients (i.e., Mark Lay, Bishop Wagner and Pat Prout) without advising them of their right to assert the attorney-client privilege.<sup>1</sup> (Petitioner’s Objections, at pp. 14-18.) It is unclear whether petitioner is also arguing that the information provided by these individuals should not have been considered in connection with the underlying disciplinary proceeding and/or in connection with this reinstatement proceeding.

Finally, petitioner argues that the dissent prepared by Commissioner Gates and adopted by the Board unfairly “disparages” the quality of his accomplishments during the early part of his career. Moreover, petitioner notes that he presented the character testimony of only one witness (i.e., Judge Lambros) during the underlying disciplinary proceeding whereas he

---

<sup>1</sup> Petitioner implies, without expressly stating, that relator’s deposition of Mark Lay and/or its interviews with Bishop Wagner and/or Pat Prout during the investigation of the underlying disciplinary proceeding constitute violations of Prof. Cond. R. 4.2. (Petitioner’s Objections, at pp. 14-15.)

presented the testimony of five character witnesses during the reinstatement proceeding.

(Petitioner's Objections, at pp. 18-20.)

### **III. THE SHOWING REQUIRED OF PETITIONER TO WARRANT HIS REINSTATEMENT TO THE PRACTICE OF LAW**

Gov. Bar R. V(25)(B) provides that a 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 educational requirements of Gov. Bar R. X;
- (e) That the petitioner has completed a term of probation, community control, intervention in lieu of conviction, or any sanction imposed as part of a sentence for a felony conviction;
- (f) That the petitioner is now a proper person to be readmitted to the practice of law in Ohio, notwithstanding the previous disciplinary action.

In its final disciplinary order filed November 3, 2011, this Court imposed numerous additional requirements upon petitioner as a condition precedent to his reinstatement to the practice of law. The requirements imposed by this Court included (a) that petitioner pay the costs of the disciplinary proceeding in the amount of \$3,995.77 within 90 days from the date of the Court's order; (b) that petitioner complete one credit hour of continuing legal education for each month, or portion of a month, of the suspension and that, as part of the total credit hours, that he complete one credit hour of instruction related to professional conduct for each six

months or portion of six months of the suspension; (c) that petitioner reimburse any amounts that have been awarded against him by the Clients' Security Fund within 90 days from the date of the Court's final disciplinary order; and (d) that petitioner do all of the following:

*"It is further ordered that any future petition for respondent's reinstatement shall be conditioned upon respondent filing, within 30 days of the date of this 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 fund and the \$280,000 Mark Lay Defense and Welfare fund during respondent's involvement with those funds. It is further ordered that the accountings should set forth all payments to respondent that were made either directly or through an intermediary and should include the documentation of all fees, loans to respondent or third parties, and expenses paid on behalf of Mark Lay. It is further ordered that as an additional condition for reinstatement, respondent shall submit proof to this court, verified by realtor, 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." (Emphasis added.)*

As set forth below, and as expressly found by the Board in its Report and Recommendation, petitioner has wholly failed to sustain his burden of demonstrating that he meets – by clear and convincing evidence – the requirements for reinstatement imposed by Gov. Bar R. V(25)(D) and by this Court in its November 3, 2011 disciplinary order in this proceeding.

As a result, this Court should affirm the Board's denial of petition for reinstatement without the necessity of oral argument.

**IV. PETITIONER HAS FAILED TO DEMONSTRATE, BY CLEAR AND CONVINCING EVIDENCE, THAT HE SATISFIES THE REQUIREMENTS FOR REINSTATEMENT TO THE PRACTICE OF LAW**

**A. Petitioner Refuses to Fully Acknowledge His Misconduct in the Underlying Disciplinary Proceeding or to Appreciate the Risks Posed by His Financial Transactions with Clients**

An important measure in demonstrating that a petitioner for reinstatement is a proper person to be readmitted to the practice of law in Ohio, notwithstanding the previous disciplinary

action against him, is the petitioner's insight into and his acknowledgement of the wrongfulness of the conduct that led to the prior disciplinary and his remorse for that conduct.

Although petitioner has acknowledged that he commingled in his client trust account personal funds and entrusted funds held for the benefit of clients and that he violated the Rules of Professional Conduct relating to the handling of such client trust accounts, he has failed, in this reinstatement proceeding, to admit or acknowledge the vast majority of his misconduct. Moreover, he clearly lacks insight into the gravity of his conduct and of the fiduciary nature of his relationship with clients.

In its opinion in *Disciplinary Counsel v. Percy Squire*, 130 Ohio St.3d 368, this Court found that petitioner engaged in serious misconduct in multiple matters. The Court found, in the Riley Matter, that petitioner violated Prof. Cond. R. 1.15(a), 1.15(c), 1.16(e) and 8.4(h) by failing to deposit a \$25,000 retainer fee from his client into his client trust account, by expending virtually all of the unearned retainer funds on personal expenses within three days of its receipt and by failing, for a period of more than three months, to refund those unearned fees to his client. (*Id.*, at ¶¶ 6-9.)

In a second matter (the Jewell Matter), the Supreme Court found that petitioner violated Prof. Cond. R. 1.8(a) by borrowing \$30,000 from his client, Mr. Jewell, for the purpose of refunding the unearned fees owed to another client, Mr. Riley, without notifying Jewell in writing to seek the advice of independent counsel, without obtaining Jewell's informed consent in writing to the essential terms of the transaction and without disclosing whether he was representing the client in the transaction. (*Id.*, at ¶¶ 12-15.)

In a third matter (the Bishop Wagner Matter), the Supreme Court found that petitioner violated Prof. Cond. R. 1.15(a), 1.15(c), 8.1(a), 8.4(c) and 8.4(h) by borrowing \$100,000 from Bishop Wagner in order to repay the loan that he had obtained from his client, Mr. Jewell, and to use the balance for his own personal and business expenses. The Supreme Court found that petitioner improperly deposited the funds from Bishop Wagner into his client trust account and thereafter made 19 withdrawals from his client trust account for the payment of personal and business expenses. The Supreme Court also found that petitioner had knowingly made false statements about this transaction during both the investigation and the trial of the disciplinary proceeding. (*Id.*, at ¶¶ 16-20.)

Finally, in a fourth matter (the Lay Matter), the Supreme Court found that petitioner had violated Prof. Cond. R. 1.5(b), 1.15(a), 1.15(c), 8.4(c) and 8.4(h) in connection with his representation of Mark Lay in numerous matters and his handling of entrusted funds relating to \$113,228.18 of insurance proceeds received on Lay's behalf and relating to the Mark D. Lay Legal Defense and Welfare Fund. The Supreme Court specifically found that petitioner had given conflicting accounts regarding his use of the Lay funds, that his use of the insurance proceeds to pay his personal expenses and his own attorney fees was not authorized and that, therefore, he had misappropriated funds from those proceeds. However, in light of the equivocal testimony of Lay and Antoine Smalls, the co-trustee of the Mark D. Lay Defense and Welfare Fund, the Supreme Court left open the possibility that petitioner's use of monies from the Defense and Welfare Fund had been authorized although the Court severely criticized petitioner's handling of those funds, stating that "Squire's handling of his client's funds, including his failure to maintain or provide documentation of the date, amount, payee, and purpose of each disbursement made on behalf of his clients, his practice of having his courier

negotiate checks, and his borrowing of client funds held in his attorney trust account raise grave concerns.” (*Id.*, at ¶¶ 23-32.)

In his deposition in this reinstatement proceeding, petitioner testified that he agreed with the findings of fact and conclusions of law adopted by the Supreme Court in his underlying disciplinary proceeding, with two exceptions, i.e., that (a) he had misappropriated funds from Lay’s \$113,228.18 insurance fund; and (b) that he had lied with respect to the funds that he had received from Bishop Wagner. However, in his testimony before the Hearing Panel in the reinstatement proceeding, petitioner refused to acknowledge the truth or accuracy of *any* of the Supreme Court’s factual or legal findings, stating only that he “accepted” them. In that regard, petitioner’s testimony was as follows (Reporter’s Transcript (“RT”) [Jan. 20, 2015], at pp. 224-225):

Q. “In your deposition testimony on October 1st, you testified that you basically agreed with all the findings of fact and conclusions of law in your underlying matter –

A. That’s correct.

Q. -- with two exceptions, is that correct?

A. That’s correct.

Q. The first being that you deny that you misappropriated any money from Mr. Lay.

A. Correct.

Q. And, secondly, that you lacked candor with respect to your testimony about the funds from Mr. Wagner, correct?

A. This is correct.

Q. *But, otherwise, that you agree with all the findings of fact and the conclusions of law made by the Supreme Court?*

A. *I accept them.*

**Q. Well, that's – that's different then agreeing with them.**

**A. Right.**

**Q. And so you don't agree that they're true?**

**A. But I accept the fact that those findings are made and they're conclusive and it's res judicata, so . . .**

**Q. Well, aren't – isn't the finding that you misappropriated funds and that you lacked candor with respect to your transaction with Bishop Wagner, aren't those res judicata, as well?**

**A. Yes, sir, they are.”** (Emphasis added.)

Moreover, in responding to questions from the Panel Chair about whether he has learned anything about his obligations relating to financial transactions with clients, it is significant and instructive that petitioner expressed neither concern about the risks to the client caused by such financial transactions nor recognition that the rule (i.e., Prof. Cond. R. 1.8(a)) generally prohibits such transactions except under specified circumstances. Rather, petitioner essentially acknowledged that, if he is reinstated to practice, he intends to continue to engage in financial transactions with his clients that are unrelated to the matters in which he is representing them. In that regard, petitioner stated as follows (RT [Jan. 20, 2015], at pp. 300-301):

**Q. Have you also learned anything about your obligations if you engage in financial transactions with your clients, such as borrowing money from them?**

**A. The – yes, I have. The disclosures that the rules require with respect to loans from clients where there is a possibility of a conflict of interest are pretty well spelled out in the rules. So to the extent – and I have had, for instance in the case of Bishop Wagner, a business relationship as well as an attorney-client relationship with certain of my clients. They're longtime personal friends of mine.**

And when I prepared those notes in the past, the proper language was not in those notes. The opportunity for them to seek counsel, for them to give informed consent in writing, everything that's required under the rule was not set forth within those notes.

Well, to the extent that, in the future, if I am fortunate enough to be reinstated and I am doing business with certain personal friends that are also clients of mine, I will assure that they have the opportunity to consult with other counsel, and so forth.

***Because it's not my understanding that doing business with clients is prohibited by the rules, but that the rules require you to make these disclosures. And so I certainly have learned that – that it's mandatory to include that language.***” (Emphasis added.)

The misconduct found by the Supreme Court in petitioner's prior disciplinary proceeding emanates from his fundamental failure to understand, appreciate and comply with the requirements of the Rules of Professional Conduct relating to his fiduciary obligations to clients, his handling of entrusted funds and his financial transactions with clients. His misconduct also demonstrates his willingness to put his own financial needs and desires ahead of his obligations to clients. Petitioner's refusal or inability in this reinstatement proceeding to fully appreciate or admit to his prior misconduct and his lack of insight into the underlying purpose of the client trust account and conflict of interest rules demonstrates that, if he is reinstated to the practice of law, he will continue to pose a real danger and threat to future clients.

**B. Petitioner Has Failed to Take Any Meaningful Step to Atone for His Misconduct by Repaying Any Portion of the \$100,000 Loan He Received from Bishop Norman Wagner in March 2008**

As discussed in significant detail in the underlying disciplinary proceeding against him (*Disciplinary Counsel v. Squire*, 130 Ohio St.3d, at ¶¶ 16-20), on May 17, 2008, petitioner borrowed \$100,000 from Bishop Norman Wagner. Petitioner used a portion of the proceeds from this loan to repay the \$30,000 loan that he had obtained from his client, Curtis Jewell. Petitioner used the remainder of the funds borrowed from Bishop Wagner to pay his own personal and business expenses.

Bishop Wagner had to borrow the money that he loaned to petitioner from Huntington National Bank. Although he borrowed \$100,000 from Bishop Wagner, petitioner signed a promissory note in which he promised to repay \$75,000 to Bishop Wagner on or before March 19, 2009. Petitioner also promised to make all interest payments on Bishop Wagner's loan from Huntington Bank and to hold Bishop Wagner harmless in the event of a default on the loan. The promissory note also provided that "overdue installations [sic] of interest and principal shall bear interest at the rate of 12% per annum payable immediately" and that "overdue penalties will accrue at a rate of 18% commencing March 19, 2009." (Relator's Exhibit 6, at p. 1; see also, RT [Nov. 21, 2014], at p. 141.)

Thereafter, petitioner signed an Amended Promissory Note dated November 4, 2009 reflecting a promise to repay Bishop Wagner the full amount of \$100,000 loan on or before November 1, 2010. The Amended Promissory Note also delayed the commencement of the accrual of interest from the previous promissory note due date of March 19, 2009 to a new due date of November 1, 2010, more than one and one-half years later. (Relator's Exhibit, at pp. 6-7; see also, RT [Nov. 21, 2014], at pp. 143-144.) Thus, in preparing and executing the Amended Promissory Note, petitioner absolved himself from any liability to pay interest on the \$100,000 loan from March 2009 to November 2010.

One of petitioner's witnesses in this proceeding, Matthew Blair, testified that he had represented Bishop Wagner's church, Mt. Carmel Pentecostal Church in Youngstown, Ohio, for a period of approximately five years prior to Bishop Wagner's death in January 2010. (RT [Nov. 21, 2014], at pp. 131-132.) Since Bishop Wagner's death on January 30, 2010, Blair has been the primary legal counsel for the Bishop's widow, Rita Wagner. (RT [Nov. 21, 2014], at p. 133.)

Sometime after Bishop Wagner's death, Mrs. Wagner brought the issue of the promissory note and the Huntington Bank loan to Blair's attention. Mrs. Wagner had not previously been aware of either the promissory note or the Huntington Bank loan. Blair was not aware of the terms of the loan, including the rate of interest charged on the loan. At the time of Bishop Wagner's death, the amount owed to Huntington Bank remained at \$100,000. Blair testified that additional amounts may also have been owed for interest. (RT [Nov. 21, at pp. 138-139.]

On March 14, 2012, J. Terrence Dull, the attorney for plaintiff Rita Wagner, as Administratrix of the Estate of Bishop Norman L. Wagner, filed a complaint for money owed, naming both petitioner and Percy Squire Company, LLC as defendants. The complaint alleged, in relevant part, that despite the demands of plaintiff's counsel, the defendants had not repaid the debt. (Relator's Exhibit 7, at pp. 3-5.)

Blair subsequently contacted petitioner regarding the monies that were owed and petitioner agreed to be personally responsible for the amount that was owed even though the promissory notes were in the name of Percy Squire Company, LLC. (RT [Nov. 21, 2014], at pp. 134, 141-142.) Thereafter, Blair referred the matter to Mr. Dull for preparation of a proposed agreed judgment. (RT [Nov. 21, 2014], at pp. 133-136.)

The Agreed Judgment Entry, which was signed by the parties and approved by the Mahoning Court of Common Pleas on April 13, 2012, granted a judgment against both petitioner individually and against Percy Squire Company, LLC in the amount of \$100,000, plus interest at the rate of \$49.32 per diem from November 3, 2010 until the date of satisfaction of the judgment. (Relator's Exhibit 7, at pp. 1-2.)

As of the date of the hearing of Blair's testimony in the reinstatement proceeding (i.e., November 21, 2014), the amount of the judgment with accrued interest amounted to approximately \$172,000. (RT [Nov. 21, 2014], at p. 144.)

Petitioner acknowledged that, as of the date of the second day of hearing in this reinstatement proceeding (i.e., January 20, 2015), he has not paid *any* portion of the agreed judgment. (RT [Jan. 20, 2015], at pp. 259-260.)

Relator respectfully submits that petitioner's actions relating to the repayment of his debt to Bishop Wagner and to Bishop Wagner's Estate demonstrate his lack of atonement for his misconduct and his lack any effort to ameliorate the harm that his misconduct has caused. Despite the passage of nearly seven (7) years from the date of his receipt of the \$100,000 loan from Bishop Wagner, petitioner has not repaid any portion of the loan or of the interest that he promised to pay in the promissory notes and, subsequently, in the agreed judgment. Moreover, as previously indicated, in executing the Amended Promissory Note in November 2010, petitioner extended the due date for his repayment of the loan by one and one-half years (i.e., from the original due date of March 19, 2009 to November 2, 2010) and relieved himself from the previously-agreed 12% interest that he had agreed in the original promissory note would commence on March 19, 2009. Significantly, in executing the amended promissory note on November 4, 2010, petitioner also absolved himself of the obligation to reimburse Bishop Wagner for his interest payments on the loan from Huntington Bank. (Compare Relator's Exhibit 6, at p. 1; Relator's Exhibit 7, at p. 6.)

Moreover, the Board's finding that the Estate of Bishop Wagner and his heirs are persons who were harmed by petitioner's misconduct is fully supported by the record in this proceeding. Petitioner emphasizes in his Objections that this Court did not, in its November 3, 2011

indefinite suspension order, impose a specific requirement that he pay the outstanding loan to Bishop Wagner or his estate. (Petitioner's Objections, at p. 8.) However, Gov. Bar R. V(25)(D)(1)(a) specifically prohibits a petitioner from being reinstated to the practice of law unless "the petitioner has made appropriate restitution *to the persons who were harmed by his or her misconduct.*" (Emphasis added.) There is no doubt that petitioner engaged in misconduct with respect to the loan from Bishop Wagner. Among other things, in order to accede to petitioner's request to borrow \$100,000 from him, Bishop Wagner was compelled to borrow that money from Huntington National Bank. Although petitioner borrowed \$100,000, the promissory note signed by petitioner in favor of Bishop Wagner in March 2008 was for only \$75,000.<sup>2</sup> Petitioner then failed to repay the promissory note on or before March 19, 2009 as promised. Moreover, although original promissory note provided that petitioner would pay interest of 12% per annum on the note after March 2009, petitioner then signed an "amended promissory note" in November 2010 which, while correcting the amount owed from \$75,000 to \$100,000, absolved him from any responsibility to pay interest on the promissory note from the original due date of March 19, 2009 to November 2, 2010. Finally, not only was the Estate of Bishop Wagner forced to sue petitioner for the unpaid loan, obtaining a stipulated judgment in April 2012, despite the passage of more than three years from the entry of that judgment, petitioner has still not paid any portion of the judgment, which at the time of the hearing on January 20, 2015, amounted to more

---

<sup>2</sup> Both the Board and the Court found that petitioner lied about the discrepancy between the \$100,000 loan and the \$75,000 promissory note. Petitioner initially told relator that he had only received \$75,000 from Bishop Wagner. He subsequently acknowledged having received \$100,000 from Bishop Wagner but claimed that \$25,000 was not included in the promissory note because it represented payment for work he had performed in a wrongful death case filed on behalf of the estate of Bishop Wagner's nephew. However, when he was reminded that he had taken the wrongful death case on a contingency fee basis, petitioner then claimed that his prior statement was simply an honest mistake of memory. *Disciplinary Counsel v. Squire*, at ¶¶ 16, 19.

than \$172,000. Clearly, the Estate of Bishop Wagner and his heirs were harmed by petitioner's conduct.

Relator respectfully submits that petitioner's failure to take any meaningful steps to at least commence the repayment of his debt to Bishop Wagner reflects adversely on his moral character and his rehabilitation from his prior acts of misconduct. Petitioner should not be granted reinstatement until such time as he has either repaid his obligation to Bishop Wagner's Estate or, at a minimum, he has made a sustained and meaningful effort at such repayment over a significant period of time.

**C. The Character Testimony Presented by Petitioner's Witnesses  
Are Insufficient to Demonstrate that Petitioner Possesses the  
Mental, Educational and Moral Qualifications for Reinstatement**

Petitioner introduced the testimony of four witnesses to attest to his good moral character and to his possession of the mental, educational and moral qualifications required for reinstatement. However, the testimony of these character witnesses is not worthy of consideration because they were completely unaware of the nature and extent of petitioner's serious misconduct in the underlying proceeding and, therefore, neither addressed nor explained the extent, if any, to which petitioner has been rehabilitated from his prior acts of misconduct.

George Forbes testified that he has known petitioner for 25-30 years and that he believes petitioner is "the type of person that represents the best in the practice." (RT [Nov. 21, 2014], at pp. 29, 31-32.) However, Mr. Forbes acknowledged that he has only spoken with petitioner on two or three occasions since petitioner was disciplined in November 2011 (RT [Nov. 21, 2014], at pp. 34-35.) Additionally, when asked to describe the extent of his knowledge or understanding of petitioner's underlying disciplinary proceeding, Mr. Forbes admitted that "I do not know the particulars." (RT [Nov. 21, 2014], at p. 36.) He was not aware that the Supreme

Court had concluded that petitioner had misappropriated monies from a trust fund, that he had obtained loans from clients without notifying them of the conflict of interest or complying with the Rules of Professional Conduct relating to such transactions. (RT [Nov. 21, 2014], at pp. 36-37.) Finally, Mr. Forbes acknowledged that he was not aware that petitioner had placed his personal funds in his IOLTA account in order to conceal those funds from creditors, which Mr. Forbes agreed was improper. (RT [Nov. 21, 2014], at pp. 37-39.)

Retired U.S. District Court Judge Thomas D. Lambros testified that he has known petitioner since 1984 when petitioner served as his law clerk for two years. (RT [Nov. 21, 2014], at pp. 82-83.) Judge Lambros testified that he believes that petitioner has the educational and moral qualifications for reinstatement to the practice of law. (RT [Nov. 21, 2014], at pp. 90-91.) However, Judge Lambros acknowledged that he has never read the Supreme Court's opinion in petitioner's underlying disciplinary proceeding (RT [Nov. 21, 2014], at p. 96) and that he has not engaged in any conversation with petitioner about the evidence in that proceeding or the misconduct in which he was involved. In that regard, Judge Lambros stated as follows (RT [Nov. 21, 2014], at pp. 83-84):

- Q.** Your Honor, are you aware of my current status in relationship to my authority to practice law?
- A.** I am aware that you have been suspended from the practice of law. With respect to the specifications or the particulars or the evidence, I'm not aware of other than it involved generally a matter of great importance; that is the trust accounts, trust funds.
- Q.** And isn't it a fact, your Honor, I have not divulged or discussed with you in detail the nature of my misconduct but I've only indicated to you that I did engage in misconduct; isn't that correct?
- A.** That's right. I have not engaged in any conversation with you with respect to the evidence or what you were involved in other than I was shocked at what occurred to you.

Judge Lambros acknowledged that the extent of his knowledge of the specifics relating to petitioner's misconduct was that it involved trust funds and some clients. (RT [Nov. 21, 2014], at p. 98.) Petitioner did not explain to Judge Lambros how he came to have committed the misconduct or what caused the misconduct (RT [Nov. 21, 2014], at pp. 99-100) and they never discussed the specific misconduct that the Supreme Court found petitioner had committed (RT [Nov. 21, 2014], at pp. 101-103.) Significantly, Judge Lambros further testified that petitioner never told him about what efforts he had made to rehabilitate himself or to "undo" some of the harm that he caused. In that regard, Judge Lambros testified as follows (RT [Nov. 21, 2014], at p. 103):

- Q.** And did Mr. Squire explain to you, either in your meeting in October or or at any other time, what acts or efforts he has made to rehabilitate himself from his prior misconduct other than the fact that he now understands that what he did was wrong? Has he told you about any efforts he's made to undue [sic] some of the harm that he might have done to clients and other people?
- A.** I was satisfied from – no, there was no discussion with respect to that. No discussion with respect to what he'd done, to undo it. He has himself come to grips with and accepting the responsibility. And that has made a great stride in undoing the harm.

Charles M. Freiburger testified that he has known petitioner since 1985, when petitioner was an associate at the law firm of Bricker & Eckler. Mr. Freiburger testified that, in his opinion, petitioner possesses the mental and educational qualifications for reinstatement to the practice of law. (RT [Nov. 21, 2014], at pp. 107-108.) In addressing petitioner's moral qualifications for reinstatement, Mr. Freiburger testified that, in his opinion, petitioner is very honest and truthful and is moral. He noted that petitioner is "a quality person with great morals." (RT [Nov. 21, 2014], at p. 108.) In response to a question from petitioner about his understanding of the reasons for petitioner's suspension, Mr. Freiburger stated that "[m]y

memory is that it was for use of funds out of your trust account and the funds should have been in your operating account and should have been – or maybe should have been in your trust account. It was inappropriate use of funds.” (RT [Nov. 21, 2014], at pp. 109-110.)

On cross-examination, however, Mr. Freiburger acknowledged that he has never read the Supreme Court’s opinion in petitioner’s disciplinary case and he is not aware of what misconduct the Supreme Court found had been committed by petitioner. He was not aware that the Supreme Court had found that petitioner had misappropriated funds from a trust account over which he was the sole trustee but he was aware that the Disciplinary Counsel had alleged such a misappropriation. (RT [Nov. 21, 2014], at pp. 111-112.) Likewise, Mr. Freiburger is not aware that the Supreme Court found that petitioner had obtained personal loans from clients without complying with the disclosure and consent requirements of the Rules of Professional Conduct and that petitioner had placed his own money in his client trust account in order to hide those funds from creditors. (RT [Nov. 21, 2014], at p. 113.) In explaining why these findings by the Supreme Court did not change his opinion of petitioner’s moral character or his moral qualifications for reinstatement, Mr. Frieburger stated that “I know nothing about trust account just because I don’t handle any of them. But I thought I could make this mistake. And I assumed it was a mistake, not an intentional act.” (RT [Nov. 21, 2014], at p. 114.)

Mr. Freiburger testified that he has made multiple loans to petitioner between February 2007 and the present time. According to Mr. Freiburger, his most recent loan to petitioner was in the amount of \$40,000 sometime after April 2014 for the purpose of petitioner’s purchase of radio station antenna installation and to fund other radio-related expenses. The total amount of petitioner’s indebtedness to Mr. Freiburger as of November 2014 was “in the neighborhood of \$525,000.” (RT [Nov. 21, 2014], at pp. 122-124.)

Finally, attorney Leo P. Ross testified that he has known petitioner for approximately 30 years. (RT [Nov. 21, 2014], at p. 178.) Mr. Ross acknowledged that he hired petitioner as a legal assistant after petitioner was suspended from the practice of law and that he obtained the approval of the Office of Disciplinary Counsel as required by Gov. Bar R. V. (RT [Nov. 21, 2014], at pp. 178-179.) Mr. Ross testified that he read the Supreme Court's opinion in petitioner's underlying disciplinary case in 2011, shortly after it was filed and he was generally aware that petitioner had been found culpable of commingling funds, soliciting and of obtaining loans from clients without complying with the disclosure and consent requirements of the Rules of Professional Conduct. Mr. Ross further testified that petitioner was "quite adamant that he never took any money from anybody." Mr. Ross was also aware that the Supreme Court had found that petitioner was not candid in his testimony at the disciplinary hearing but Mr. Ross asserted that he has never worried about petitioner's veracity. (RT [Nov. 21, 2014], pp. 184-188.) However, Mr. Ross stated that he was "surprised" that petitioner had been a sole practitioner for a significant period of time and that he didn't understand his obligations under the IOLTA rules. (RT [Nov. 21, 2014], at pp. 188-189.) Nevertheless, Mr. Ross testified that he was "impressed with [petitioner's] sense of ethics" and believed that he possesses the mental, educational and moral qualifications for reinstatement to the practice of law. (RT [Nov. 21, 2014], at pp. 179-180.)

As previously indicated, relator respectfully submits that the character testimony of petitioner's character witnesses is entitled to little, if any, weight in light of their nearly complete lack of knowledge (with the exception of Leo P. Ross) of the nature and extent of petitioner's underlying misconduct. Moreover, as previously indicated, George Forbes has only spoken with petitioner on two or three occasions since petitioner was suspended from the practice of law and

Judge Lambros has both had limited contact with petitioner since 2011 and has never discussed what efforts, if any, petitioner has made towards rehabilitation or atonement for his misconduct. Significantly, Mr. Freiburger's testimony establishes that petitioner has continued to borrow money from friends and associates to further his own personal financial desires and goals and without significant regard for his ability to repay those loans within any realistic time period.

Thus, these witnesses have failed to establish that petitioner possesses the mental, educational and moral qualifications for reinstatement to the practice of law.

**D. Petitioner Has Failed to Establish, Through His Own Testimony And Conduct, That He Meets the Mental, Educational and Moral Qualifications for Reinstatement to the Practice of Law**

Although he has the burden of proof in this proceeding, petitioner elected not to testify on his own behalf in this reinstatement proceeding except upon cross-examination. Even more significantly, petitioner failed to address his mental and moral qualifications for reinstatement to the practice of law.

In terms of petitioner's mental qualifications for reinstatement to the practice of law, it is highly significant that, in preparing for and attempting to meet the requirements for reinstatement, petitioner failed to comprehend the amount of continuing legal education (CLE) credits in the area of legal ethics or professional conduct that was required by the Supreme Court's final disciplinary order. Despite the passage of nearly three years from the date of his suspension (November 3, 2011) and the date he filed his verified petition for reinstatement in this proceeding (July 9, 2014), petitioner completed only two hours of CLE credits in the area of legal ethics or professional conduct when the minimum number of CLE credits should have been seven. Petitioner's explanation was as follows (RT [Nov. 21, 2014], at pp. 21-22):

“And I am at fault. My reading of what the CLE requirement was was that I had to comply by doing a month of CLE – I mean an hour for each month of my suspension. This additional hour of professionalism for every six months I did not absorb and I haven’t done that . . . I did not fully comprehend that that was a requirement and I don’t blame anybody for that. That’s my mistake. If I had recognized that I had to have a certain number of hours of professionalism I would not have filed this petition before having completed that.”

Additionally, although petitioner claimed that he had prepared billing invoices for the legal services that he provided to his client, Mark D. Lay, on or about November 3, 2011, the same date that the Supreme Court filed its final disciplinary order in his underlying disciplinary proceeding, petitioner did not include those invoices with the accounting that he was ordered to provide to the Supreme Court and others within 30 days after the Court’s final disciplinary order was filed. Petitioner did not submit these “billing invoices” to the Supreme Court until November 26, 2014, more than three years later and only **after** the inadequacy of petitioner’s accounting had been raised and discussed at the first hearing in this reinstatement proceeding on November 21, 2014.

Petitioner’s inattention and failure to timely comply with the obligations imposed by the Supreme Court reflects adversely upon his mental qualifications and fitness to practice law as well as to the obligations imposed upon him.

It is likewise very significant that, despite the Supreme Court’s extensive findings of fact and conclusions of law regarding his serious violations of the Rules of Professional Conduct in multiple matters and petitioner’s own admission that he was unaware of his client trust account obligations under the Rules of Professional Conduct, he nevertheless took only two (2) hours of CLE courses in the area of legal ethics and professional conduct, neither of which related to the proper handling of IOLTA accounts or the dangers of and requirements for engaging in financial transactions with clients.

Finally, petitioner has presented no testimony or evidence demonstrating his insight into the nature and extent of his misconduct in the underlying proceeding or his efforts, if any, to rehabilitate himself and to ameliorate the harm caused by that misconduct. Instead, he has continued to pursue his own personal goals and desires without regard to his obligations to those harmed by his misconduct, especially to Bishop Wagner's widow and the Estate of Bishop Norman L. Wagner.

By failing to even address these issues, petitioner has clearly failed to establish, by clear and convincing evidence, that he possesses the mental, educational and moral qualifications for reinstatement to the practice of law.

**E. The "Accounting" Submitted by Petitioner Pursuant to the Supreme Court's November 3, 2011 Final Disciplinary Order is Manifestly Inadequate and Fails to Comply with the Requirements of the Court's Order, Thereby Mandating the Denial of the Petition for Reinstatement**

As previously indicated, in its final disciplinary order in petitioner's underlying disciplinary proceeding, this Court imposed upon petitioner the following requirement upon him:

"It is further ordered that any future petition for respondent's reinstatement shall be conditioned upon respondent filing, within 30 days of the date of this order, a full accounting to Mark Lay, the court, and any related party in interest for his withdrawals from, and deposits to, the \$113,227.18 insurance proceeds fund and the \$280,000 Mark Lay Defense and Welfare fund during respondent's involvement with those funds. It is further ordered that the accountings should set forth all payments to respondent that were made either directly or through an intermediary and should include documentation of all fees, loans to respondent or third parties, and expenses paid on behalf of Mark Lay. It is further ordered that as an additional condition for reinstatement, respondent shall submit proof to this court, 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."

The accounting submitted by petitioner to the Supreme Court of Ohio on December 5, 2011, was wholly inadequate to meet the requirements imposed by the Supreme Court. The

discrepancies between petitioner's "accounting" and the other evidence and testimony in this proceeding (including the Agreed Stipulations in the underlying proceeding that were admitted into evidence as Relator's Exhibit 18 in this proceeding) are too numerous to set forth exhaustively in this Answer to Petitioner's Objections. However, a few examples will suffice to demonstrate the manifest deficiencies of petitioner's "accounting."

Although the Supreme Court's order required petitioner to "include documentation of all fees [and] loans to respondent or third parties," petitioner's accounting did not identify *any* of the disbursements from the trust funds as loans to petitioner and did not identify either the amounts of those loans, the agreed upon terms of the loans or the date(s), if any, upon which those loans were repaid. Instead, petitioner characterized all disbursements that were not made directly on his client's (Mark D. Lay's) behalf as "Legal Fees" or "Gross Legal Fees." (See Petitioner's Exhibit F, at p. 1; Petitioner's Exhibit G, at pp. 1-2.)

However, petitioner repeatedly acknowledged during cross-examination in this proceeding, that he "borrowed" funds from the trust funds, although he claimed that he always had permission to borrow those funds. For instance, petitioner testified in part as follows (RT [Jan. 20, 2015], at pp. 237-238):

Q. So I just want to try to clarify with you –

A. Yeah.

Q. – if you can, whether you believe that that payment to Huntington Bank on June the 2nd, if that – if you were making that payment from what you believed were your own funds, or whether you were making it from fees that you believed you'd earned from – from Mr. Lay, or what you believed to be the source of those funds at the time you made the payment.

A. My testimony is that my trust account was not being handled by me properly. That *I was paying things from the trust account from money that I believed either were fees that I was owed for work that I had done, or that I had permission to use, to borrow from him.*

*So I made payments to Huntington Bank, I made payments to other people at points when I may have had no money in the trust account of my own personal funds, but money that I felt I was entitled to because of work I was doing or because I had an agreement with him that I could use the funds.*

Q. Did you keep contemporaneous records of the amount of time that you were putting in?

A. No.

Q. So how could you determine what monies you had earned or not? Was it just an estimate?

A. It was just an estimate.

Q. *And you talked about borrowing money from Mr. Lay. You didn't have any written agreements with Mr. Lay about borrowing money, did you?*

A. *I did not.*" (Emphasis added.)

Moreover, in a very revealing testimonial exchange, petitioner acknowledged that he was "almost using the trust account like a slush fund." In that regard, petitioner testified as follows (RT [Jan. 20, 2015], at pp. 290-291):

A. The idea was, was that I was holding this money for Mr. Lay. I was not billing him on a weekly or monthly basis because we were trying to preserve money from him. *I had a need for money for my personal use and for the running of my office. So I had an agreement with him that, if I used some of the money from the trust account, that I needed to pay it back. And that's what I was doing . . .*

So the idea at that point was to work with him. I had an agreement with Mr. Lay which was totally contrary to the rules, which was unworkable, which was a violation of how I was supposed to use my trust account. *Basically, what it boils down to was almost using the trust account like a slush fund. But to the extent that I took money out of that trust account, he knew it and he approved it. The only question was whether I had to pay it back.*" (Emphasis added.)

Petitioner's claim that his client, Mark Lay, knew about and approved petitioner's borrowing and expenditure of funds is contradicted by Lay's testimony in a deposition taken in

connection with the underlying disciplinary proceeding, which was admitted into evidence in this proceeding as Relator's Exhibit 14. Lay testified in that deposition that he does not recall ever instructing petitioner about what he should do with the \$113,000 insurance fund and that he did not recall ever receiving a letter from petitioner informing him how he had expended – or intended to expend – the money. (Relator's Exhibit 14, at pp. 22-23.) Additionally, Lay testified that he never told petitioner that he was free to use the \$113,000 insurance fund as he saw fit. (Relator's Exhibit 14, at pp. 31-32.)

What is uncontested, however, is that *none* of the loans that petitioner made to himself are documented in his "accounting."

Even if this Court were to consider the billing invoices that petitioner submitted nearly three years after they were due, those billing invoices fail to adequately document or support the trust monies belonging to his client, Mark Lay, that petitioner removed from his client trust account, as earned fees.

According to the accounting that petitioner filed with this Court on December 5, 2011, he took legal fees from the \$280,000 Mark D. Lay Defense and Welfare Fund in the total amount of \$70,914.27. (Petitioner's Exhibit G, at pp. 1-2.) Petitioner's IOLTA records reflect that the \$280,000 in trust funds were deposited into his IOLTA on June 23, 2008 and that, by October 24, 2008, only four months later, the balance in petitioner's IOLTA was only \$289.32. (Relator's Exhibit 18, at pp. 13-20.)

In examining the billing invoices that petitioner presented to the Hearing Panel at the hearing on January 20, 2015, the legal services provided by petitioner on behalf on his client, Mark D. Lay, prior to the depletion of the \$280,000 in trust funds on October 24, 2008,

amounted to \$30,000.00.<sup>3</sup> Thus, the amount of the attorney fees taken by petitioner from the \$280,000 Mark D. Lay Defense and Welfare Fund (i.e., \$70,914.27) vastly exceeded the amount of fees that petitioner claimed in his own billing invoices that he had earned.

Finally, petitioner was unable to explain in this reinstatement proceeding the discrepancy posed by his December 19, 2008 letter to Antoine Smalls, the co-trustee of the Mark D. Lay Defense and Welfare Fund and the monies that petitioner unilaterally removed from that Fund as claimed attorney fees. In his December 19, 2008 letter to Smalls, petitioner stated, in relevant part, that “I have not submitted a bill or been paid since July 11, 2008, despite performing work through the present.” (Relator’s Exhibit 19, at p. 1.)

However, the “accounting” prepared by petitioner for the Mark D. Lay Defense and Welfare Fund reflects that, between July 11, 2008 and December 19, 2008, petitioner paid himself \$17,766.81 in attorney fees. (See Petitioner’s Exhibit G, at pp. 1-2.)

Clearly, as found by the Board, petitioner’s accounting is – by any objective measure -- deficient and neither reflects, documents nor adequately explains his personal loans, his claimed attorney fees and his expenditures on his client’s, Mark Lay’s, behalf.

On this basis alone, petitioner has failed to comply with the terms of this Court’s November 3, 2011 order and his petition for reinstatement should be denied.

---

<sup>3</sup> Relator attributed amounts billed by petitioner in his billing invoices between the dates of April 24, 2008 and June 10, 2008 to the \$113,000 insurance fund. On June 10, 2008, that fund was reduced to only \$19361. The \$30,000 fee that petitioner claimed to have earned from the Mark D. Lay Defense and Welfare Fund related to services that petitioner claimed to have performed between June 11, 2008 and October 24, 2008, when that fund was reduced to only \$239.32.

**V. RELATOR'S RESPONSE TO PETITIONER'S OTHER CONTENTIONS**

**A. Petitioner's Claim that He is Entitled to Reinstatement Because a Majority of the Hearing Panel Found that He Meets the Requirements for Reinstatement**

Relying solely upon the language of Gov. Bar R. V(25)(D)(1), petitioner essentially argues that, because a 2-1 majority of the hearing panel found that he meets the requirements for reinstatement to the practice of law, the Board cannot reach a different conclusion. In making this argument, petitioner quotes the preamble to Gov. Bar R. V(25)(D)(1) as follows:

“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 . . .*” (Emphasis added.)

Petitioner misapprehends the meaning of the aforementioned subdivision and has misunderstood or ignored the significance of Gov. Bar R. V(25)(F)(4). That section provides that the hearing panel shall make and certify a report to the Board, including its findings and recommendations. Moreover, the section authorizes the Board to adopt findings and recommendations, based upon the record, that are different from the findings and recommendation of the hearing panel.

**B. Relator's Alleged Failure to Advise Petitioner's Former Clients In the Underlying Disciplinary Proceeding of Their Right to Assert the Attorney-Client Privilege**

Although it is unclear from petitioner's objections whether he is claiming that relator should be precluded from referring in this reinstatement proceeding to the testimony or evidence produced by Mark Lay or Bishop Wagner, he asserts in his objections that relator failed to notify Lay or Bishop Wagner at the time they were interviewed during the investigation of the underlying disciplinary proceeding that they had the right to assert the attorney-client privilege. (See Petitioner's Objections, at pp. 14-18.)

Petitioner's claims are wholly without merit. In the first place, petitioner has failed to demonstrate that any information provided to relator by Mr. Lay and/or Bishop Wagner was information that was protected by the attorney-client privilege. Second, petitioner has failed to identify any legal authority for the proposition that relator had a legal obligation to warn Mr. Lay or Bishop Wagner that any information that may be requested might be protected by the attorney-client privilege. Third, as petitioner correctly notes, the attorney-client privilege is held by the client, not by the attorney. Petitioner has failed to show that either Mr. Lay or Bishop Wagner object to the use of the information they provided either in the course of the underlying disciplinary proceeding or in this reinstatement proceeding. Finally, to the extent that petitioner has standing to object to the use of the information disclosed to relator by his former clients, Mr. Lay and/or Bishop Wagner, petitioner has waived those objections by failing to raise them at the time the evidence was submitted to the hearing panel in the underlying disciplinary proceeding.

### **C. Commissioner Gates' Alleged "Disparagement" of Petitioner's Background**

Finally, petitioner complains that, in his dissenting opinion, which was subsequently adopted by the Board, Commissioner Gates unfairly disparaged and/or trivialized his military service and thirty years of legal practice. (Petitioner's Objections, at p. 18.)

Clearly, petitioner fundamentally fails to appreciate that nature and extent his burden of proof in this proceeding. Gov. Bar R. V(25)(D)(1)(b) requires petitioner to demonstrate that he possesses "all of the mental, educational, and moral qualifications that were required of an applicant for admission to the practice of law . . ."

Gov. Bar R. I(11)(D)(4), relating to admissions committee's determination of the present character, fitness and moral qualifications of an applicant, requires the committee to consider, among other things, the following factors relating to an applicant's prior conduct:

- (a) Age of the applicant at the time of the conduct;
  - (b) Recency of the conduct;
  - (c) Reliability of the information concerning the conduct;
  - (d) Seriousness of the conduct;
  - (e) Factors underlying the conduct;
  - (f) Cumulative effect of the conduct;
  - (g) **Evidence of rehabilitation;**
  - (h) **Positive social contributions of the applicant since the conduct;**
  - (i) Candor of the applicant in the admissions process;
  - (j) Materiality of any omissions or misrepresentations.
- (Emphasis added.)

In order to be reinstated to the practice of law following an indefinite suspension, petitioner must demonstrate that he is **NOW** a proper person to be readmitted to the practice of law in Ohio. (See Gov. Bar R. V(25)(D)(1)(f).) An integral part of that showing are the objective steps that petitioner has taken to rehabilitate himself from his prior misconduct, to acknowledge his prior misconduct and to demonstrate candor about his prior misconduct.

In his opinion, Commissioner Gates notes that petitioner's accomplishments in the early portion of his career and the positive opinions of character witnesses based upon events that occurred prior to the discovery of petitioner's misconduct are of little – if any – value in determining the extent of petitioner's rehabilitation or his **current** fitness to be readmitted to the practice of law.

Commissioner Gates and the Board correctly concluded that petitioner wholly failed to demonstrate, by clear and convincing evidence, that he has been rehabilitated from his prior serious acts of misconduct or that he is currently fit to be readmitted to the practice of law in Ohio.

## VI. CONCLUSION

For all of the reasons set forth herein, relator respectfully submits that petitioner has failed to sustain his burden of demonstrating, by clear and convincing evidence, that he meets the requirements for reinstatement to the practice of law in Ohio as specified in Gov. Bar R.

V(25)(D)(1).

As a result, relator respectfully submits that this Honorable Court should adopt the findings and recommendation of the Board and deny petitioner's reinstatement to the practice of law without the necessity of oral argument.

Respectfully submitted,



---

Scott J. Drexel (0091467)  
Disciplinary Counsel  
250 Civic Center Drive, Suite 325  
Columbus, Ohio 43215-7411  
(614) 461-0256  
(614) 461-7205 - fax  
scott.drexel@sc.ohio.gov

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Relator's Answer to Petitioner's Objections to the Board of Professional Conduct's Report and Recommendation was served by electronic mail upon Richard A. Dove, Director, Board of Professional Conduct and by both first-class mail and electronic mail upon petitioner at the following address:

Percy Squire (#0022010)  
341 S. Third Street, Suite 10  
Columbus, Ohio 43215  
percysquire@gmail.com

Service on the above-referenced individuals was made on this 16<sup>th</sup> day of November, 2015.



---

Scott J. Drexel (#0091476)  
Counsel for Relator