LAWYERS PROFESSIONAL RESPONSIBILITY BOARD
PUBLIC MEETING AGENDA

May 16, 2025 – 12:30pm (in person and via Zoom) –
Minnesota Judicial Center
Lunch provided for Board members 12:00pm

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1. Approval of minutes of January 20, 2025, meeting (attachment 1).

2. Personnel – Introduction of new Board members.

3. Action Item: Draft changes to Executive Committee Policy & Procedure #1 regarding late complainant appeals (attachment 2).

4. Caselaw update: *In re Reinstatement of Selmer* (attachments 3 and 3a).

BREAK

5. Working group updates:

    a. OLPR standard language for summary dismissals.
    b. LPRB website.

6. Petitions and public hearings update.

7. Director's report (attachment 4).

8. Discussion with Board administrative assistant and complainant-appeal statistics (attachment 5).

9. Open discussion.

10. Adjournment.

LAWYERS PROFESSIONAL RESPONSIBILITY BOARD
PUBLIC MEETING

OPEN MEETING MINUTES
January 24, 2025 12:30 pm (In-person and via Zoom) – Minnesota Judicial Center

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Board member attendance:

- Landon Ascheman
- Katherine Brown Holmen
- Ben Butler, Chair
- Dan Cragg
- Michael Friedman
- Tom Gorowsky
- Jordan Hart
- Tommy Krause
- Paul Lehman
- Frank Leo
- Melissa Manderschied
- Jill Nitke-Scott
- Kristi Paulson, Vice Chair
- William Pentelovitch
- Jill Prohofsky
- Wendy Sturm
- Carol Washington
- John Zwier

Other attendees:

- Minnesota Supreme Court liaison Justice Gordon Moore
- Susan Humiston, Director of the Office of Lawyers Professional Responsibility
- Members of the OLPR staff
- Members of the public

Approval of prior meeting minutes:
The first meeting of the Lawyer's Professional Responsibility Board in 2025 was called to session at 12:33 by Chair Ben Butler. Chair Butler began the meeting calling for review and approval of the December 2024 meeting minutes. Dan Cragg had a small correction, from ABA 511 to ABA 511R. Chair Butler stated he would make this change and Landon Ascheman called for the fixed minutes to be approved. This motion was seconded by Tom Gorowsky and passed unanimously.

Personnel Updates:
As discussed at the previous meeting, the Board has 5 members whose terms are ending.

First the board recognized Katherine Brown Holmen who had been a board member since 2019. The board thanked Brown Holmen for her time as a panel chair, her near perfect meeting attendance and her mentoring of new members, including Chair Ben Butler.

Next the board honored Landon Ascheman, who has also been a board member since 2019. Ascheman was a part of the training committee, the board thanked him for his invaluable work training new board members. Vice-Chair Kristi Paulson also thanked Landon Ascheman for his final mission 6 appeals (9 originally sent in) due before February 1st, which Ascheman finished in 4 days. Chair Butler stated the board would miss seeing which Landon thanked the board for having him, calling it his favorite extracurricular.

The board honored Tommy Krause who began service in April of 2019. Mr. Krause is a public member as well as an iron ranger and law enforcement member. Chair Butler complimented his sense of justice and right and wrong. Tommy is probably the only member of the board to have been cross-examined by another member of the board.

Dr. Jordan Hart joined in 2021, quickly establishing herself as a voice of reason, authority, and compassion. Chair Butler recognized her incredible writing skills, with decisions made that are clear for anyone who may read them.

Justice Moore thanked the retiring members for their service to the committee, restated how important these volunteer roles are for the justice of the public and the good of the profession.

New members will be appointed February 1st, 2025.

Rules and Opinion Committee Update:

a. Board opinion regarding ABA Opinion 511 on Listservs and Rule1.6, Minnesota Rules of Professional Conduct (attachments 2-3).

Rules Committee chair Dan Cragg brought back from committee Rule 511R. Cragg stated they had made the changes from last month's discussion, including removing the words "client" and "privilege" from the first sentence. Chair Butler called for discussion on the changes and when none were heard, Dan Cragg moved to adopt with Tom Gorowsky seconding, the motion passed unanimously.

Board/OLPR petition regarding Rules 1.8 and 3.8 (attachment 3).
After a significant amount of time last year spent discussing these sets of proposed amendments, the Board and the Director are pleased to make a unified joint petition to the Court. The petition was filed and has been accepted. Chair Butler wanted to thank the rules committee and particularly Michael Friedman who volunteered to chair an ad hoc working group. The Board is excited about the change this petition could bring and have heard a good deal of positive buzz around the change.

Justice Moore discussed the Court's timeline for looking at the petition, currently the Court is swamped with some unexpected circumstances, so a March or late February timeline is more likely. Justice Moore promised this would get careful consideration, stated comments had been filed on the report from the committee is moving forward with glacial pace as they work to consider many different workloads.

5. Board letter to Justice Thissen regarding aggravating factors (attachment 4).

Last meeting the board discussed a letter Chair Butler had written in response to comment made by Justice Thissen asking about aggravating factors and non-compliance. The Board's stance on this was deference to the Director in these matters. Justice Thissen wrote back a nice note thanking the board for their time and attention.

6. Late complainant appeals – update on process.

Last meeting Chair Butler said he would have something in writing regarding the new late appeals policy. He was not able to draft the policy in time but will have something for the Board's consideration for the spring meeting. For now, the informal process will be to assume any complaint that makes it to a board member is timely or has been considered by the executive board and consider to be an extenuating circumstance. Members asked if they should continue to comment on the timeliness of the appeal. The executive team had no specific recommendation on this but said transparency is always good.

7. Director's Report

Director Humiston reported the OLPR finished the year out strong, there was never the lull in cases they thought they would get in December and claims are now up 36% over the last 3 years. This also comes with an uptick of notable cases and complaints regarding criminal charges. Director Humiston says these higher levels of complaints are consistent with what she is hearing from other state level organizations although not universal as Illinois has notably had to downsize their professional responsibility board due to lack of complaints.

The OLPR was able to close a significant number of old cases last year, however Director Humiston stated the work was a little Sisyphisian, while they continue to try and close cases from 2021, more cases continue to come in. While they continue to prioritize closing these old files, there is a balancing game with managing the newer cases as well.

Justice Moore visited the office in December, helped judge the office's tree decorating contest. Director Humiston wanted to thank Justice Moore for his time and express how much it meant to the staff.

The OLPR officially plans to move to Minnesota Judicial Center, the move will take place mid-June of 2025. They are still working on lease cancellation, they had no major updates from December, but the plan forward has begun to solidify.

The 2025 Lawyers Professional Responsibility Seminar has been planned for Friday, October 3rd. It will be held in the same space as last year, the Wilder Center and Director Humiston discussed current speakers and offered space to the Board. Chair Butler said the Board would like to present

something and Director Humiston assured she would pencil them in. Chair Butler asked the board members to reach out to him if they had anything they wished to present on.

Finally, Director Humiston had 3 things she would like to engage the board with this year. Firstly, the Director asked for assistance with the new OLPR and LPRB website, both should be finishing up soon and opinions from the board would be greatly appreciated.

Second on the Director's list of requests was Rule 18 of the Minnesota Rules on Lawyers Professional Responsibility on reinstatements. Director Humiston is hoping for new questionnaires for lawyers seeking reinstatement, which means the Director would like to know what information the board considers useful when looking at reinstatements. She also welcomed respondent's councils' opinions on the topic.

Director Humiston final request was a suggested changing of the Director's Determination template which has been the same since the 1980s. Currently writing up the DNWs take a significant amount of time and they have been trying to condense but the OLPR still gives a lot of information and time to each case. Humiston wondered if the Board would be agreeable to these changes and opinions were split. Some members believed it was to save the OLPR time especially with the time constraints they have already been talking about. Other members thought the DNWs current level of detail was integral for their understanding. The detail in the director's determination also keeps the number of decisions appealed down, Director Humiston claims the board sees only 10% of all the cases received.

8. 2024 statistics

The Board finished the year with an average of 23 days between DNW Investigation/Non-Investigation and Admonition Appeals. In total 103 DNW No Investigations were assigned, with only 5 being pushed into further investigation. There were 6 admission appeals heard by the board in 2024 and 42 DNWs with investigation.

9. Open discussion.

Chair Butler called for open discussion, Landon Ascheman thanked the board for an incredible 6 years and offered two potential changes, maybe cap the number of pages an appeal can be at around 750, and maybe try and ensure board members are not receiving multiple duplicates. The board discussed this briefly, but Director Humiston stated they just get the whole file, and OLPR lacks the manpower to sort those files before it goes to the Board. It's also better to have duplicates of something versus the file missing something.

Hearing no more discussion, Chair Ben Butler motioned to adjourn, the motion was seconded by Landon Ascheman and passed unanimously.

LAWYERS PROFESSIONAL RESPONSIBILITY BOARD
EXECUTIVE COMMITTEE
POLICY AND PROCEDURE NO. 1

COMPLAINANT APPEALS

Background:

Board members must hear and decide appeals from complainants dissatisfied with the Director's disposition of a complaint under Rule 8(d)(1) determination that discipline is not warranted, (2) OLPR-issued private admonition, or (3) stipulated probation. When deciding such an appeal, the Board member may:

(1) Approve the Director's disposition;

(2) Direct that further investigation be undertaken;

(3) If a district ethics committee recommended discipline, but the Director determined that discipline is not warranted, the Board member may instruct the Director to issue an admonition; or

(4) In any case that has been investigated, if the Board member concludes that public discipline is warranted, the Board member may instruct the Director to issue charges of unprofessional conduct for submission to a Panel other than the Board member's own.

Minn. Rules Lawyers Prof. Resp. 8(e). The reviewing Board member must set forth an explanation for the Board member's action. *Id.*

Assignment:

Rule 8(e) provides that if a complainant is not satisfied with the Director's disposition, then "the complainant may appeal the matter by notifying the Director in writing within 14 days." The Director must promptly refer all complainant appeals to the Board ~~for assignment~~. The Board Chair or the Board Chair's designee will assign timely Complainant Appeals in a random and equitable manner. This process is designed to be blind to the Director's Office. The Chair or Chair's designee has discretion to modify assignments to accommodate personal and professional conflicts, Board member availability, expertise, and competence in a particular subject matter, and other relevant considerations.

The Board views the 14-day deadline as one akin to a claim-processing rule rather than a jurisdictional rule. *See Rued v. Comm'r of Human Services*, 13 N.W.3d 42, 47-50 (Minn. 2024) (explaining differences between claim-processing and jurisdictional rules). If a complaint is submitted after the 14-day period has elapsed, then the Chair or the Chair's designee, after

consulting with the Executive Committee, must determine whether good cause exists to accept the complaint and assign it to a Board member. The Chair or designee must consider all relevant facts, including but not limited to the length of the delay, the reasons for the delay, the potential unfair prejudice to the respondent or the Director from accepting the complaint, and the potential unfair prejudice to the complainant from rejecting the complaint. The Chair or designee's decision on the timeliness of the appeal is final.

Timeliness *of Board Member Decision*:

Board members are expected to render their decisions expeditiously and no more than 30 days from receipt of the appeal. If an appeal is pending more than 30 days, the Vice-Chair of the Board will contact the Board member to inquire as to the status of the matter. If the appeal is still pending after an additional 30 days, then the Board Chair may reassign the appeal to a new Board member. The complainant and the respondent shall be informed in writing of any such reassignment.

Scope of Review:

The record on appeal consists of the facts, allegations, and other information submitted to or considered by the Director. If the Director explains that the OLPR has considered publicly available information from a court or other source, then the reviewing Board member may consider the same or similar information.

Standard of Review:

The standard of review depends upon the type of matter at issue. The Director's determination, following investigation, that discipline is not warranted should be reviewed for abuse-of-discretion. An abuse of discretion occurs only when the decision "is based on an erroneous view of the law or is inconsistent with the facts in the record." *Hudson v. Trillium Staffing*, 896 N.W.2d 536, 540 (Minn. 2017) (citation omitted). This "very deferential standard" recognizes that the Director is best suited to determine the scope of an investigation in any particular case and that the Director's conclusions following an investigation should be given considerable weight. *Teffeteller v. Univ. of Minnesota*, 645 N.W.2d 420, 427 (Minn. 2002). But while the Director's decisions should rarely be overturned, "rarely is not never." *State v. Soto*, 855 N.W.2d 303, 305 (Minn. 2014). If the Director makes findings that are unsupported by the evidence, misapplies the law, or delivers a decision that is "against logic and the facts on record," *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022), then the reviewing Board member may take one of the other actions authorized by Rule 8(e).

If the Director determines that discipline is not warranted without investigating the complaint, then the Board member's review is *de novo*, meaning that the Board member need not defer to the Director's determination, but may recognize the Director's discretion not to investigate. This standard is appropriate because a determination without investigation that discipline is not warranted is akin to the granting of a motion to dismiss for failure to state a claim under Minn.

R. Civ. P. 12. Such decisions are reviewed *de novo*. *Krueger v. Zemen Const. Co.*, 781 N.W.2d 858, 861 (Minn. 2010). In such a case, both the OLPR and the reviewing Board member must "accept the facts alleged in the complaint as true and give the [complainant] the benefit of all favorable inferences." *Id.* A complaint should be dismissed without investigation only if the complaint does not assert facts "which would support granting the relief demanded." *Halva v. Minn. St. Colleges and Univs.*, 953 N.W.2d 496, 501 (Minn. 2021).

Directing Further Investigation Based Upon New Information:

If new information relevant to a complaint is provided to the reviewing Board member, and the member determines that the new information merits further investigation of the complaint, then the Board member should direct further investigation pursuant to Rule 8(e)(2). The Board member may not undertake such an investigation or seek out information that was not submitted to the Director and/or the Director did not consider. For example, if the Director did not state that the OLPR considered certain publicly available information, then the Board member may not seek that information out.

Reporting:

The Board Chair or designee shall maintain records of all Complainant Appeal assignments and report the data quarterly to the Board. The process and records regarding assignments shall be transferred to Board Chair successor and Board Chair's successor designee upon completion of Chair term.

Dated:

LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD

By: Benjamin J. Butler
Chair

STATE OF MINNESOTA

IN SUPREME COURT

A23-0265

Original Jurisdiction

Per Curiam
Took no part, Procaccini, J.

In re Petition for Reinstatement of
Scott Selmer, a Minnesota Attorney,
Registration No. 156024.

Filed: April 16, 2025
Office of Appellate Courts

James C. Selmer, J. Selmer Law, P.A., Minneapolis, Minnesota, for petitioner.

Susan M. Humiston, Director, Office of Lawyers Professional Responsibility, Saint Paul, Minnesota, for respondent.

S Y L L A B U S

1. The findings of the Lawyers Professional Responsibility Board panel are not clearly erroneous or inconsistent with our case law.

2. Based on our independent review of the record, the petitioner has not met his burden of proving moral change or competence to practice law as required for reinstatement.

Petition denied.

O P I N I O N

PER CURIAM.

In 2015, we indefinitely suspended petitioner Scott Selmer from the practice of law. Selmer petitioned for reinstatement in February 2023. Following a hearing, a divided panel

of the Lawyers Professional Responsibility Board recommended against reinstatement, determining that Selmer failed to prove by clear and convincing evidence that he had undergone moral change and was competent to practice law. The dissenting member of the panel found that Selmer had proven his moral change and that he "can be relied on." The Director of the Office of Lawyers Professional Responsibility (the Director) agrees with the recommendation of the panel to deny reinstatement. Selmer contests the panel's findings, conclusions, and recommendation to deny reinstatement.

We determine that the panel's findings are not clearly erroneous or inconsistent with our case law. Based on our independent review of the record, we conclude that Selmer has failed to prove by clear and convincing evidence that he has satisfied the requirements for reinstatement. We therefore deny his petition for reinstatement.

FACTS

Selmer was admitted to the Wisconsin Bar in 1978 and the Minnesota Bar in 1984. Since his admission to practice, Selmer has had a lengthy disciplinary history.

Prior Discipline

Selmer was first disciplined in 1990, when the Wisconsin Supreme Court privately reprimanded him for practicing law with a suspended license.

Five years later, in 1995, we publicly reprimanded Selmer and placed him on two years' probation for several violations of the Minnesota Rules of Professional Conduct, including abusing the discovery process and misusing litigation "to harass his client." *In re Selmer* (*Selmer I*), 529 N.W.2d 684, 685–88 (Minn. 1995). The Wisconsin Supreme Court publicly reprimanded Selmer and required that he furnish the Board of Attorneys

Professional Responsibility a copy of his trust records quarterly. *In re Selmer*, 538 N.W.2d 252, 253–55 (Wis. 1995).

In 1997, we revoked Selmer's probation for new disciplinary violations. *See In re Selmer* (*Selmer II*), 568 N.W.2d 702, 705 (Minn. 1997). These violations included asserting frivolous claims of racial discrimination against creditors to avoid paying his debts, knowingly making false and misleading statements to support these claims, and failing to respond to discovery requests. *Id.* at 704–05. As discipline for the new violations, we suspended Selmer from the practice of law for 12 months and provided that, if reinstated, he would be placed on supervised probation for five years. *Id.* at 705. The Wisconsin Supreme Court also suspended Selmer from the practice of law for 12 months as reciprocal discipline. *In re Selmer*, 595 N.W.2d 373, 374–75 (Wis. 1999).

Three years after we suspended Selmer, he filed a petition for reinstatement. *In re Selmer* (*Selmer III*), 636 N.W.2d 308, 308 (Minn. 2001). In 2001, we granted the petition, reinstating Selmer to the practice of law and placing him on probation for five years. *Id.* at 309. The conditions of Selmer's probation required him to respond in a timely manner to the Director's communications and requests, make a good-faith effort to satisfy outstanding tax liens and civil judgments, and satisfy a Wisconsin disciplinary judgment. *Id.* at 308–09. Just before Selmer's probation ended, the Director filed a petition to revoke Selmer's probation and impose further discipline. *See In re Selmer* (*Selmer IV*), 749 N.W.2d 30, 33 (Minn. 2008). The petition alleged that Selmer failed to comply with the terms of probation, failed to timely file individual income tax returns, and was convicted of fifth-degree assault in violation of Minn. R. Prof. Conduct 8.4(b). *Id.* A

referee held a disciplinary hearing and recommended that we publicly reprimand Selmer and release him from probation. *Id.* at 35. We concluded that the recommendation that Selmer receive a public reprimand was appropriate; however, we rejected the referee's recommendation that Selmer be released from probation because Selmer had not fulfilled all of the probationary conditions we had imposed. *Id.* at 36–37. Consequently, in addition to the public reprimand, we placed Selmer on unsupervised probation. *Id.* at 41. The Wisconsin Supreme Court reciprocally disciplined Selmer by publicly reprimanding him. *In re Selmer*, 761 N.W.2d 6, 7 (Wis. 2009).

Selmer's next disciplinary matter—which resulted in his current suspension—occurred seven years later.

Current Suspension

In 2015, we indefinitely suspended Selmer, with no right to petition for reinstatement for a minimum of 12 months, based on his conduct in several lawsuits stemming from the suspension of operations of an organization where Selmer served as president and CEO from 2008 to 2011. *In re Selmer* (*Selmer V*), 866 N.W.2d 893, 900–01 (Minn. 2015). His conduct included a pattern of harassing and frivolous litigation, failure to abide by court orders, and refusal to comply with discovery requests. *Id.* at 894–95. We observed that Selmer's dispute with the organization "spanned a significant number of court files at the state district, federal district, and state appellate levels, all of which were dismissed based either on the frivolity of Selmer's arguments or because Selmer failed to comply with court rules." *Id.* at 900. And we concluded that Selmer's abuse of the litigation process constituted "serious" misconduct and emphasized that it

formed a pattern of misconduct occurring over several years. *Id.* The Wisconsin Supreme Court reciprocally disciplined Selmer by suspending him from the practice of law for 12 months. *In re Selmer*, 882 N.W.2d 815, 820 (Wis. 2016).

Our 2015 decision provided that Selmer could petition for reinstatement following the 12-month suspension if he satisfied the following conditions: (1) made a good-faith effort to satisfy $11,312 in court-ordered sanctions and costs resulting from the organizational litigation; (2) provided the Director with a payment plan for satisfying the judgments against him; and (3) complied with the requirements of Rule 18, Minnesota Rules on Lawyers Professional Responsibility (RLPR), including successfully completing the professional responsibility portion of the state bar examination and satisfying continuing legal education (CLE) requirements, pursuant to Rule 18(e), RLPR. *Id.* at 901. Our decision also required Selmer to pay $900 in costs, pursuant to Rule 24, RLPR, and to comply with Rule 26, RLPR, which requires notice of suspension to clients, opposing counsel, and tribunals.

Since his suspension in 2015, Selmer has petitioned for reinstatement in Minnesota three times: in 2018, 2019, and 2023. We dismissed Selmer's 2018 petition for failure to pay the filing fee. Selmer withdrew his 2019 petition after he failed the professional responsibility examination. Selmer's 2023 petition is at issue here.

Current Reinstatement Proceedings

Selmer filed his current petition for reinstatement in February 2023. In July 2023, he appeared before a panel of the Lawyers Professional Responsibility Board for a hearing and was represented by counsel. During that hearing, Selmer's counsel planned to argue

that some of the conduct that gave rise to Selmer's 2015 suspension was not misconduct. The panel chair explained that a reinstatement hearing was not the proper venue for contesting the 2015 suspension and advised Selmer of the requirements for reinstatement, including proving moral change and competence to practice law. Selmer requested a continuance because his attorney was unprepared to address those requirements.

In March 2024, represented by new counsel, Selmer again appeared before the panel for a hearing held over two days. At the hearing, Selmer testified about his moral change and competence to practice law.

Selmer testified that he began to view his behavior differently in May 2023 when he started therapy. He later clarified that he experienced this change closer to September 2023, when he commenced therapy with his current therapist, whom he continues to see. Selmer explained that he used to blame "the system" for the consequences of his actions, but that his current therapist helped him realize that he is solely responsible. He acknowledged that he had "repeatedly" harmed himself, his family, the court system, taxpayers, and opposing counsel by engaging in a "pattern" of wasteful litigation. Although Selmer could not identify the specific ethical rules he had violated, he agreed that his misconduct involved "frivolous litigation," "failing to diligently and competently handle cases," "[n]oncompliance with discovery rules and orders," and "[d]isobeying court orders." Regarding his plan for returning to the ethical practice of law, Selmer testified that he would reenter the legal field as a public defender and work toward becoming a civil litigator. Selmer admitted that he did not have any written office procedures to facilitate

his return to the ethical practice of law, but he stated that he would take more CLE seminars and "start slowly and carefully rebuilding" his legal network.

Selmer also testified about his work history following his 2015 suspension. He initially obtained a master's degree in journalism from Columbia University but never worked as a paid journalist. Then he held several temporary jobs, including one job as a substitute teacher. But Selmer stopped teaching after his license expired.[1]

Selmer filed a petition to be reinstated in Wisconsin in 2020. During his Wisconsin reinstatement hearing, which was held in November 2020, Selmer testified that he had problems only when he represented himself and that he "[did not] intend to put [himself] in those positions." The Wisconsin Supreme Court reinstated Selmer to the practice of law on two conditions, that he: (1) enter into a payment plan with the Wisconsin Office of Lawyer Regulation (WI-OLR) to pay his outstanding judgments and (2) obtain an attorney mentor.

During his reinstatement hearing in Minnesota, Selmer testified that, following his reinstatement in Wisconsin, he worked as a public defender with the Office of the

[1] The disciplinary committee of the Minnesota Board of Teaching recommended that the board revoke Selmer's teaching license based on his failure to report to the board his 2015 suspension from the practice of law. Selmer demanded a contested hearing but failed to appear for multiple prehearing conferences. Selmer's license expired before the board could hear his case. The board dismissed the matter as moot but determined that it had the authority to revoke Selmer's license based on immoral character or conduct. Selmer appealed this determination to the Minnesota Court of Appeals, and the court of appeals affirmed. *In re Selmer*, No. A16-1362, 2017 WL 3222321, at *1, *4 (Minn. App. July 31, 2017).

Wisconsin Public Defender for approximately two years. He was a full-time public defender from August 2021 until February 2022, but he resigned in lieu of termination due to a conflict with his supervisor. Selmer then worked as a contract public defender from February 2022 until September 2023, when he stopped representing clients due to an illness. According to Selmer, during his time as a Wisconsin public defender, he worked on hundreds of cases, complied with all court orders, did not receive any ethical complaints, and did not miss any court hearings. Selmer also testified that he handled a few civil matters after his reinstatement in Wisconsin, including some estate planning matters and a business advising matter. The Director did not rebut Selmer's testimony regarding his post-reinstatement employment.

In addition to his own testimony, Selmer called four witnesses at the hearing: (1) his life partner, (2) his friend and former attorney,[2] (3) his Wisconsin attorney mentor, and (4) an ethics professor at the University of Minnesota Law School.

Selmer's life partner testified that she had known Selmer for about 20 years and considered him to be a person "of high integrity." She also testified that Selmer was calmer and more deliberate since he began therapy and that he no longer blamed others for his misconduct. Selmer's life partner did not provide testimony about Selmer's competence to practice law.

Selmer's friend and former attorney testified that he had known Selmer since around 1980 and was once "jealous" of "how good [Selmer] was" at the practice of law. The

[2] This is the same individual who represented Selmer at the July 2023 hearing on Selmer's reinstatement petition.

friend testified that therapy had made Selmer more "present" and "relaxed" and had equipped him with the skills to respond to challenges "rationally and analytically" instead of from a place of trauma. Regarding Selmer's competence to practice law, Selmer's friend testified that Selmer was "perfectly competent intellectually and functionally," as evidenced by his ability to "get a master's degree from Columbia University." Selmer's friend further testified that Selmer "knows how to analyze things" and "is very creative and innovative in his approach to things." But Selmer's friend did not testify about Selmer's specific competence to practice *law*.

Selmer's Wisconsin attorney mentor testified that he met Selmer around 1973, when he and Selmer were attending the University of Wisconsin Law School, and that they reconnected when Selmer asked him to serve as his Wisconsin attorney mentor. The attorney mentor testified that, as Selmer's mentor, he corresponded with Selmer over the phone and via email and submitted quarterly reports to WI-OLR. Although Selmer's mentor testified that Selmer was "highly competent to practice" law, he admitted that this opinion was not based on direct observation but on his "recollections of [Selmer's] communications and work over previous years."

Finally, the law school ethics professor testified that he met Selmer around 2018, when Selmer approached him to discuss the 2015 suspension. The professor testified that Selmer "is an honest man" who has "made some serious mistakes" that he "acknowledges" and "understands." The professor further testified that Selmer was competent to practice law because he is "honest" and "hardworking." But he admitted that he was not particularly

familiar with the conduct leading to Selmer's suspension and that he had never worked with Selmer or reviewed his work product.

Following the testimony of Selmer's witnesses, the panel chair told Selmer and his counsel that, given the recency of Selmer's experience in therapy, which Selmer credited for his moral change, it would be helpful for the panel to hear from Selmer's therapist. Selmer declined to call his therapist as a witness.

The Director, who opposed Selmer's petition, submitted a report to the panel containing 83 exhibits. In her report, the Director argued that Selmer should not be reinstated to the practice of law in Minnesota for several reasons. The Director focused on Selmer's recent self-representation in several matters, despite his testimony during his November 2020 Wisconsin reinstatement hearing that he no longer intended to represent himself in legal matters. These matters included two conciliation court actions that were brought against Selmer in January and February of 2020; a personal injury case that Selmer brought against two individuals in August 2020; and a defamation case that Selmer brought against four financial institutions in June 2022. The Director's exhibits showed that Selmer engaged in the same conduct in these more recent matters as he did in the litigation that gave rise to his suspension. In the conciliation court actions, Selmer failed to file appearances, resulting in judgments against him. Selmer failed to comply with court orders and discovery requests in the personal injury case. His discovery violations included failing to provide required disclosures, failing to provide an itemization of damages, and failing to respond to interrogatories and requests for information. Finally, in the financial institution litigation, Selmer failed to file affidavits of service; communicate with the court

and the defendants; and appear at court hearings, including hearings on the defendants' motions to dismiss. In that matter, the district court eventually dismissed Selmer's claims, concluding they were preempted by federal law.

The Director also submitted a screenshot of Selmer's professional website. According to the Director, the website was misleading in that it suggested to the public that Selmer was licensed to practice law in Minnesota. The website front page stated, "Scott Selmer Law, LLC, Trial Lawyers," and it instructed visitors to "Contact Us for Criminal Defense and Civil Litigation." It listed a Minneapolis address and a Minnesota phone number, but it did not provide any information about where Selmer was licensed to practice or refer to a Wisconsin practice.

Finally, the Director noted that Selmer had failed to satisfy the financial conditions of his reinstatement, which required him to set up a payment plan to satisfy his outstanding sanctions and judgments and to make a good-faith effort to pay them. Selmer explained that he made some payments to satisfy his outstanding sanctions but that he did not have the income to make additional payments.

After the hearing, the panel issued findings of fact, conclusions of law, and a recommendation. Two panel members recommended denial of Selmer's reinstatement petition. A dissenting member of the panel disagreed with the recommendation.

In a detailed 54-page decision, the majority panel members found that Selmer had failed to prove by clear and convincing evidence that he had undergone moral change. The panel's primary concern was the recency of Selmer's reported moral change. Additionally, the panel found that Selmer had failed to prove by clear and convincing evidence that he

was competent to practice law. The panel cited multiple facts to support this finding, including the lack of "first-hand knowledge" about Selmer's work performance and work product.[3]

The dissenting panel member disagreed with the panel's finding that Selmer had failed to prove his moral change by clear and convincing evidence. According to the dissenter, the panel applied the wrong standard, imposing a higher burden on Selmer than our case law requires. The dissenter found that Selmer proved his moral change by showing that "through meaningful mental health care, [he] improved his moral position." Although the dissenter did not directly address Selmer's competence to practice law, the dissent noted that Selmer's "discipline[-]free time" practicing in Wisconsin showed that Selmer "can be relied on." The dissenter recommended reinstatement, subject to several conditions set out by the majority panel members.[4]

Selmer ordered a transcript and now challenges many of the panel's findings of fact and conclusions of law. He asks us to reinstate him to the practice of law in Minnesota.

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[3] The panel also observed that, although Selmer had satisfied some of the conditions for reinstatement, he had not paid all outstanding sanctions and judgments or set up a payment plan to do so. Nonetheless, the panel recommended that we consider waiving the financial conditions if we determine that Selmer has satisfied the other conditions for reinstatement.

[4] These conditions would require Selmer to: (1) enter into strict payment plans to satisfy his financial obligations, (2) abstain from representing himself and his relatives in legal matters, (3) meet all court deadlines and comply with all court orders, (4) submit to an annual audit by the Director, and (5) remain on probation for the rest of his legal career.

ANALYSIS

The aim of attorney discipline "is not to punish the attorney, but rather to protect the public, safeguard the judicial system, and deter future misconduct by the disciplined attorney and other attorneys." *In re Severson* (*Severson I*), 860 N.W.2d 658, 671 (Minn. 2015). When a suspended attorney petitions for reinstatement, we conduct an independent review of the record before determining whether to reinstate the attorney. *In re Kadrie*, 602 N.W.2d 868, 870 (Minn. 1999). Although we consider a panel's recommendation regarding reinstatement, it is not binding; we are responsible for determining whether an attorney will be reinstated. *Id.*

A significant concern in deciding whether to reinstate an attorney is whether the attorney will again commit misconduct. *See In re Mose* (*Mose II*), 843 N.W.2d 570, 575 (Minn. 2014). In considering whether to reinstate an attorney, therefore, we look for "a change in the lawyer's conduct . . . that corrects the underlying misconduct that led to the suspension." *Id.* Stated otherwise, we consider whether the attorney has experienced "moral change." *In re Mose* (*Mose III*), 993 N.W.2d 251, 257 (Minn. 2023).

"[M]oral change is the most important factor" in determining whether to reinstate an attorney. *In re Stockman*, 896 N.W.2d 851, 857 (Minn. 2017). An attorney seeking reinstatement must prove moral change by clear and convincing evidence. *In re Tigue*, 960 N.W.2d 694, 700 (Minn. 2021). The attorney must generally "show remorse and acceptance of responsibility for the misconduct, a change in the lawyer's conduct and state of mind that corrects the underlying misconduct that led to the suspension, and a renewed commitment to the ethical practice of law." *Mose II*, 843 N.W.2d at 575. Evidence of

moral change must come not only from "an observed record of appropriate conduct," but from "the [attorney's] own state of mind and his . . . values." *Stockman*, 896 N.W.2d at 857 (citation omitted) (internal quotation marks omitted).

Moreover, to be reinstated, an attorney must prove by clear and convincing evidence that the attorney is competent to practice law. *Mose III*, 993 N.W.2d at 260. Our case law has often referred to this requirement as "*intellectual* competency to practice law." *See, e.g.*, *id.* (emphasis added) (citation omitted) (internal quotation marks omitted). In the interest of clarity, from this point forward we refer to this element as "competence to practice law."

In addition to proving moral change and competence to practice law, an attorney seeking reinstatement must prove compliance with both the conditions of suspension and the requirements of Rule 18, RLPR.[5] *Id.* at 261 n.5. Our case law has also articulated additional factors that we consider when evaluating a petition for reinstatement: "the attorney's recognition that the conduct was wrong, the length of time since the misconduct and suspension, the seriousness of the misconduct, [and] any physical or mental pressures susceptible to correction." *Stockman*, 896 N.W.2d at 856 (citation omitted) (internal quotation marks omitted).

[5] Rule 18, RLPR, sets forth the procedures and requirements for reinstatement to the practice of law in Minnesota. To be reinstated, a suspended attorney must serve a copy of the petition on the Director, file a petition for reinstatement with this court, and pay a filing fee. Rule 18(a), RLPR. The attorney must also pass the bar examination, the professional responsibility portion of the bar examination, and comply with state CLE requirements. Rule 18(e), RLPR.

When an attorney petitions for reinstatement, a panel of the Lawyers Professional Responsibility Board makes factual findings, conclusions, and a recommendation regarding the petition. Rule 18(c), RLPR. However, either the Director or the attorney may challenge the panel's recommendation. *Id.* Based on our independent review, we may agree with the panel's recommendation or make our own determination as to whether an attorney's petition for reinstatement should be granted. *See Kadrie*, 602 N.W.2d at 870 ("The responsibility for determining whether a petitioner will be reinstated rests with this court."); *see also Tigue*, 960 N.W.2d at 699 (explaining that we are not bound by a panel's recommendation).

Where, as here, a transcript has been ordered, we will "uphold the panel's factual findings if they have evidentiary support in the record and are not clearly erroneous." *Stockman*, 896 N.W.2d at 856. Factual findings are clearly erroneous if, based on our review of the record, we have a "definite and firm conviction that a mistake has been made." *In re Lyons*, 780 N.W.2d 629, 635 (Minn. 2010) (citation omitted) (internal quotation marks omitted).

Against this legal backdrop, we now consider Selmer's petition for reinstatement. Selmer challenges the panel's decision, arguing that the panel made clearly erroneous factual findings and that it committed errors of law. He also asks us to independently review the record and to conclude that he should be reinstated to the practice of law.

I.

We first consider Selmer's challenges to the panel's decision. These challenges fall into two categories. First, Selmer challenges several factual findings as clearly erroneous.

Second, citing our decision in *In re Trombley*, 947 N.W.2d 242 (Minn. 2020), Selmer alleges that the panel committed errors of law.

A.

As noted, when a party orders a transcript of the panel hearing, we apply clear error review in considering the panel's factual findings. *Stockman*, 896 N.W.2d at 856. We will uphold factual findings if the record supports them and they are not clearly erroneous. *Id.*

Selmer contends that the panel clearly erred by: (1) finding that the "evidence of [Selmer's] acceptance of responsibility is mixed"; (2) finding that Selmer's website misled the public into believing that Selmer was licensed to practice law in Minnesota; (3) improperly considering Selmer's self-representation between 2020 and 2023, which occurred *before* he began therapy; (4) finding that Selmer was untruthful when he testified at his Wisconsin reinstatement hearing that he would no longer represent himself in legal proceedings; (5) "disregard[ing]" testimony about Selmer's competence to practice law; and (6) failing to sufficiently credit Selmer's testimony regarding his recent practice as a public defender in Wisconsin. We consider each of these alleged errors below.

1.

The panel found that Selmer's "evidence of acceptance of responsibility [is] mixed." Selmer argues that this finding is clearly erroneous because he testified that he understood "the particulars of his mistakes," he was "embarrassed" by his past conduct, and he "unequivocally acknowledged" that his 2015 suspension resulted from his own misconduct.

The record supports the panel's finding. Selmer correctly notes that he testified during the reinstatement hearing that he had accepted responsibility for his actions. But there was also evidence from which the panel could infer that Selmer's acceptance of responsibility was mixed. Between 2020 and 2023, Selmer engaged in the same behavior that resulted in his 2015 suspension, including failing to comply with court orders and court rules, failing to respond to discovery requests, and filing frivolous actions. Selmer did not satisfy his outstanding sanctions and judgments or work with the Director to create a payment plan before seeking reinstatement. He did not comply with the payment plan established in Wisconsin when he was reinstated there. When he petitioned for reinstatement in Minnesota, Selmer refused to be interviewed by the Director's office, and his attorney at the time referred to the Director's investigation as a "charade." Selmer served the Director with "requests for admission" regarding his underlying discipline going back to 1995, and when the Director objected to responding, he moved to have his requests for admissions admitted at the first scheduled reinstatement hearing. The panel denied this motion because requests for admissions are not a tool provided for by Rule 18, RLPR. And Selmer attended the first scheduled hearing in this matter planning to relitigate some of the conduct underlying his suspension. Given this evidence in the record, the panel did not clearly err in finding that Selmer's acceptance of responsibility was "mixed."

2.

The panel found that, for much of his suspension, Selmer "has maintained a website that makes it appear as if he [is] a lawyer practicing law in Minnesota, which [is] a violation

of the Rules of Professional Conduct since he [is] under suspension."[6] Selmer contends that his website did not mislead the public into believing that he was licensed to practice law in Minnesota because it included true facts—that he had a Minnesota address and phone number—and it did not explicitly state that he was licensed to practice in Minnesota.

We disagree. According to the record evidence, the website was titled, "Scott Selmer Law, LLC, Trial Lawyers," and it instructed visitors to "Contact Us for Criminal Defense and Civil Litigation." The only contact information the website provided was a Minneapolis address, a Minnesota phone number, and Selmer's email address. The website did not contain any other information about Selmer or make any reference to Wisconsin. Based on the information on Selmer's website, an unwitting member of the public would believe that Selmer was licensed to practice law in Minnesota when he was not. Therefore, the panel did not clearly err in finding that Selmer's website was misleading.

3.

Regarding Selmer's period of self-representation between 2020 and 2023, the panel stated:

> In assessing the genuineness of [Selmer's] moral change, the Panel cannot ignore the fact that from 2020-2023, [Selmer] filed lawsuits in personal

[6] The Minnesota Rules of Professional Conduct prohibit "[a] lawyer who is not admitted to practice in Minnesota" from "hold[ing] out to the public or otherwise represent[ing] that the lawyer is admitted to practice Minnesota law." Minn. R. Prof. Conduct 5.5(b)(2). Additionally, the rules prohibit a lawyer from "mak[ing] . . . false or misleading communications[s] about the . . . lawyer's services." Minn. R. Prof. Conduct 7.1. "A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading." *Id.*

> matters without following court rules or procedures, failed to respond to discovery or attend hearings or conferences in those matters, and filed a defamation claim which was preempted by federal law, many of the same types of conduct that led to his 2015 suspension.

Selmer argues that the panel clearly erred in considering his self-representation during this period because it occurred *before* he started therapy.

To the extent that Selmer is arguing that the panel committed an error of law in considering his conduct between 2020 and 2023, we are not persuaded. Determining whether an attorney petitioning for reinstatement has proven moral change requires a holistic assessment, *see In re Severson* (*Severson II*), 923 N.W.2d 23, 30 (Minn. 2019), of the attorney's conduct during "the time period near the reinstatement hearing," *Trombley*, 947 N.W.2d at 248. We have never defined this time period in months or years. But under the circumstances here—where Selmer was suspended in 2015 and petitioned for reinstatement in early 2023—the panel would have been remiss if it had ignored Selmer's pattern of concerning litigation conduct between 2020 and 2023. Evidence of moral change must come from "an observed record of appropriate conduct" in addition to "the [attorney's] own state of mind and his . . . values." *Stockman*, 896 N.W.2d at 857 (citation omitted) (internal quotation marks omitted).

Moreover, the panel fully acknowledged that Selmer did not represent himself in any legal matters after commencing therapy. The panel stated, "[Selmer] has not filed any complaints on his own behalf since he began therapy in May of 2023." It also acknowledged Selmer's testimony that he has learned from his therapy "to defer to legal

counsel and to listen to other people" because he can "be emotional when directly involved in some things."

Under the circumstances here, we discern no error in the panel's consideration of Selmer's conduct both before and after he began therapy. And because the record supports the panel's factual findings, they are not clearly erroneous.

4.

The panel found that Selmer's period of self-representation between 2020 and 2023 was "particularly concerning" because Selmer testified in the Wisconsin reinstatement proceeding "that he did not intend to represent himself any longer, even though he was at the time representing himself in a frivolous matter and subsequently commenced another frivolous matter in which he represented himself." Selmer challenges this finding as clearly erroneous because the self-representation occurred before he began therapy in May 2023.

We disagree. In November 2020, Selmer testified at the Wisconsin reinstatement hearing that he would avoid representing himself in the future. Selmer stated that he had problems only when he represented himself and that he "[did not] intend to put [himself] in those positions." However, in August 2020, three months *before* the Wisconsin reinstatement hearing, Selmer filed a personal injury action for injuries he allegedly sustained during a car accident in August 2014. Selmer did not mention this litigation during his Wisconsin reinstatement hearing. Moreover, in June 2022—*after* the Wisconsin reinstatement hearing—Selmer filed another action against four financial institutions for reporting his debts to credit reporting agencies (as they are required to do under the Fair

Credit Reporting Act, 15 U.S.C. § 1681s-2(a)(5)). Because Selmer testified that he would avoid representing himself *while he was representing himself* in the personal injury matter, and because Selmer represented himself again just two years later in the financial institution litigation, the panel did not clearly err in finding that Selmer's testimony that he would avoid representing himself in the future was concerning.

5.

Selmer argues that the panel improperly "disregarded" the testimony of his witnesses regarding his competence to practice law. Of Selmer's four witnesses, three addressed his competence: (1) Selmer's friend and former counsel, (2) Selmer's Wisconsin attorney mentor, and (3) the legal ethics professor. Selmer's friend testified that Selmer was once a formidable attorney. The Wisconsin attorney mentor testified that he had a general sense that Selmer was competent to practice law based on his memory of Selmer's previous work, but he acknowledged that he was not familiar with Selmer's current work. And the ethics professor testified that Selmer had the skills necessary to practice law but admitted that he did not know Selmer's work.

Contrary to Selmer's assertion, the panel did not "disregard[]" the testimony of these witnesses. The panel detailed the testimony of each witness and summarized its view of the testimony. As to Selmer's friend, the panel found that he was a sincere and credible witness, but that his testimony was not helpful in assessing whether Selmer was currently competent to practice law because he did not provide specific insight into Selmer's current ability to practice. Selmer's Wisconsin attorney mentor testified that Selmer was competent, but he admitted that he did not have the expertise to offer an opinion about the

public defender work that Selmer had performed in Wisconsin and that he had not reviewed any of that work. The panel found the attorney mentor to be sincere. But it concluded that the attorney mentor did not have firsthand knowledge regarding Selmer's competence. Finally, the panel found that because the ethics professor had not seen any of Selmer's work, his testimony about Selmer's competence lacked sufficient foundation and factual basis and was therefore not useful.

The panel also addressed the impact of the witnesses' testimony on its conclusion that Selmer had failed to establish his competence by clear and convincing evidence. It stated, "[Selmer's] character witnesses did not assist in satisfying his burden of proof because none of them were able to testify about any specific legal work [Selmer] has engaged in since 2015, nor did anyone testify to how any insights [Selmer] has gained in therapy will likely transfer to his legal practice."

Based on our review of the panel's decision, we reject Selmer's argument that the panel "disregarded" the testimony of Selmer's witnesses regarding his competence. The panel considered the testimony of each witness. And the panel expressly factored the witnesses' testimony into its conclusion that Selmer had failed to satisfy his burden of proof as to his competence to practice law.

6.

Relatedly, Selmer argues that, in considering his competence to practice law, the panel failed to sufficiently credit his testimony about his recent work as a public defender in Wisconsin. He contends that the panel did not give enough weight to his testimony that he received no ethical complaints during this period. And, according to Selmer, the panel

held him to an impossibly high standard when it faulted him for not producing corroborating evidence regarding his Wisconsin public defender work.

The panel made multiple factual findings regarding Selmer's work as a public defender in Wisconsin, which Selmer does not challenge. It found that Selmer worked as a public defender in Hudson, Wisconsin from August 2021 until February 2022 when he "chose to resign his position . . . in lieu of termination," he worked as a contract public defender until September 2023, and he handled "up to 250 cases" between February 2022 and September 2023. Moreover, the panel found that Selmer has not been disciplined in Wisconsin since his reinstatement. It also noted Selmer's testimony that he had received no complaints from judges or clients while working as a public defender in Wisconsin. Indeed, the panel stated that it credited Selmer's testimony "on these subjects as true and accurate."

However, ultimately the panel was not convinced that Selmer's testimony about his work as a Wisconsin public defender was clear and convincing evidence of his competence to practice law. In support of this conclusion, the panel cited other factual findings:

> [Selmer] presented no evidence of the type of legal work he did, such as writing briefs, arguing motions, or trying bench or jury trials. Nor did [Selmer] offer examples of his written work product or court orders resulting from his advocacy from which the Panel could assess the quality of his work in order to determine his intellectual competence. The Panel does not know whether the 250 cases [Selmer] handled in Wisconsin were all plea bargains negotiated at a first appearance, or whether they represented efforts by [Selmer] in complex cases with legal issues requiring extensive legal analysis or whether they fell across a spectrum of legal difficulty.

Selmer does not challenge any of the panel's factual findings regarding his work as a Wisconsin public defender. Because the record supports these factual findings, they are

not clearly erroneous. Moreover, to the extent that Selmer is challenging the panel's ultimate conclusion that he is not competent to practice law, we are not bound by that conclusion. *See Tigue*, 960 N.W.2d at 699. We consider Selmer's competence to practice law as part of our independent review of his petition for reinstatement. *See infra* Part II.

B.

In his second category of challenges to the panel's decision, Selmer relies on our decision in *Trombley* to argue that the panel committed errors of law. Before turning to Selmer's specific arguments, we summarize the *Trombley* decision.

In 2018, we indefinitely suspended attorney Trombley from the practice of law, with no right to petition for reinstatement for at least six months, for converting funds that belonged to her stepfather while exercising power of attorney on behalf of her mother. *Trombley*, 947 N.W.2d at 244–45. When Trombley's mother became ill, Trombley transferred $95,000 from her mother and stepfather's joint bank accounts to her personal bank account. *Id.* at 245. Following her mother's death, Trombley did not return the funds, even though they belonged to her stepfather, and she used a portion of the funds for herself. *Id.* When an investigation into the missing funds began, Trombley returned the funds on her own initiative. *Id.* We suspended Trombley for this misconduct. *Id.*

While she was suspended, Trombley continued to work for her employer in the non-legal role of project manager. *Id.* at 244. Approximately seven months after her suspension, she petitioned for reinstatement to the practice of law. *Id.* at 244–45. During her reinstatement hearing, Trombley testified that she sought therapy after her suspension and that her therapist helped her understand and accept responsibility for her misconduct.

Id. at 248. Trombley's husband also testified at the hearing. *Id.* at 245. According to Trombley's husband, Trombley recognized her conduct as dishonest only "within these past five months." *Id.* at 247 (internal quotation marks omitted). Based on the evidence presented at the hearing, the panel concluded that Trombley had not met her burden of proving moral change, and it recommended denying reinstatement. *Id.* at 245. The Director agreed with the panel's recommendation. *Id.*

We reversed, determining that the panel erred in finding that Trombley had failed to prove moral change. *Id.* at 246. Specifically, we held that the panel had improperly focused on Trombley's mental state at the time of the misconduct rather than at the time of the reinstatement hearing, which is the relevant time period under our case law. *Id.* at 247–48; *see also In re Dedefo*, 781 N.W.2d 1, 9 (Minn. 2010) ("[W]e examine a petitioner's conduct up to the time of the reinstatement hearing and his or her mental state and values at that time."). Because the panel applied the incorrect law, we determined that its conclusion that Trombley had failed to clearly and convincingly show that she was remorseful and had accepted responsibility was clearly erroneous. *Trombley*, 947 N.W.2d at 248–49. Then, based on our independent review of the record, we concluded that Trombley had proven by clear and convincing evidence that she had undergone moral change and had satisfied the other requirements for reinstatement. *Id.* at 250.

Throughout Selmer's brief, he argues that the circumstances in his case are substantially similar to those in *Trombley* because, like Trombley, he experienced moral change within a relatively short period of time after commencing therapy. He suggests that our decision in *Trombley* proves that the panel erred as a matter of law in recommending

denial of his reinstatement petition. However, we reject Selmer's general comparison of *Trombley* to the circumstances here. Trombley engaged in one instance of misconduct immediately followed by a period of therapy and change. On the other hand, Selmer has had an extensive disciplinary history spanning several decades and two states. He has been suspended from the practice of law since 2015. And up until—and even during—the reinstatement proceedings, Selmer continued to engage in questionable conduct, including a pattern of irresponsible behavior in his *pro se* litigation; communicating, through counsel, that the Director's investigation was a "charade"; and planning to relitigate the conduct underlying his 2015 suspension at the first hearing on his reinstatement petition. We therefore disagree with Selmer that the panel's recommendation to deny his petition for reinstatement directly contravenes our decision in *Trombley.*

Based on our decision in *Trombley*, Selmer further contends that the panel erred in (1) suggesting that he call his therapist as a witness regarding his moral change and then drawing a negative inference from his decision not to call the therapist, (2) incorrectly weighing the evidence that he presented regarding his moral change, and (3) improperly focusing on the recency of his asserted moral change. We next consider each of these challenges.

1.

Selmer argues that the panel improperly suggested that he should call his therapist as a witness at the reinstatement hearing to prove his moral change. He further contends that the panel drew a "negative" and "unfounded" inference from his decision not to call the therapist.

As Selmer notes, we have never required a petitioner to present corroborating testimony of moral change to be reinstated. *See In re Sand*, 951 N.W.2d 918, 923 (Minn. 2020). Our case law confirms that a petitioner can prove moral change and be reinstated without such testimony. *See id.*; *see also Trombley*, 947 N.W.2d at 246–50 (concluding that the petitioner proved moral change based largely on petitioner's testimony).

On its face, the panel chair's suggestion for Selmer to call the therapist was not unlawful or inappropriate. Our case law does not prohibit such a request. Likewise, we are not convinced that the panel made any *improper* inference from Selmer's decision not to call his therapist. Although the two panel members in the majority found it "concerning" that Selmer was unwilling to call his therapist as a witness, this concern was one of many that the panel identified regarding Selmer's evidence of moral change.

Selmer argues that our decision in *Trombley* highlights the panel's error in asking him to call the therapist as a witness. He points out that, in *Trombley*, we determined that moral change can be recent and based on less evidence than he presented. *See Trombley*, 947 N.W.2d at 248–49.

Although we did determine in *Trombley* that moral change can be recent and that evidence from a single character witness may be sufficient to prove moral change, our decision in *Trombley* is based on the factual circumstances presented there. Nothing in *Trombley* suggests that certain evidence will *always* be sufficient to satisfy a petitioner's burden of proof. *See id.* at 246–50 (discussing moral change). Nor does *Trombley* hold that a panel cannot request additional evidence of moral change during a hearing. *See id.*

We discern no error in the panel's suggestion at the reinstatement hearing that testimony from Selmer's therapist would be helpful. Moreover, because the panel's findings and legal conclusions do not support Selmer's related argument that the panel drew an improper inference from his decision not to call the therapist, we likewise reject that argument.

2.

Selmer contends that the panel erred in rejecting the testimony of his character witnesses regarding his moral change. He again relies on *Trombley*, arguing that he provided more evidence of moral change than the petitioner in that case by calling more character witnesses.

We did not hold in *Trombley*, however, that a panel must always find moral change based on a particular quantum of evidence. To the contrary, a panel must evaluate each case based on the evidence presented. *See* Rule 18(c), RLPR (providing that a panel may conduct a hearing and shall make findings of fact, conclusions, and recommendations to this court); *cf. Stockman*, 896 N.W.2d at 856 ("[W]e uphold the panel's factual findings if they have evidentiary support in the record and are not clearly erroneous.").[7]

[7] For the same reason, we reject Selmer's argument that our decision in *In re Sanchez* shows that Selmer had undergone moral change. 985 N.W.2d 352, 354 (Minn. 2023). Sanchez petitioned for reinstatement after being indefinitely suspended from the practice of law in Minnesota as reciprocal discipline for misconduct that occurred in Nevada. *Id.* at 352–53. At the reinstatement hearing, Sanchez testified on his own behalf and presented the testimony of two family members, who testified that Sanchez was remorseful and had significantly changed his behavior since his suspension. *Id.* at 353–54. The panel credited the witnesses' testimony, found that Sanchez had proven moral change by clear and convincing evidence, and recommended that Sanchez be reinstated and placed on

In any event, we are not bound by the panel's ultimate conclusion regarding moral change. *See Tigue*, 960 N.W.2d at 699. We consider whether Selmer proved moral change by clear and convincing evidence as part of our independent review of his petition for reinstatement. *See infra* Part II.

3.

Again citing *Trombley*, Selmer argues that the panel erred in attempting "to pinpoint an exact time when" his moral change occurred. He contends that the panel "placed undue emphasis and speculation on the exact time when [he] underwent moral change." Although Selmer's argument is unclear, we construe it as a challenge to the panel's concern that Selmer's moral change was too recent to be genuine.

In *Trombley*, we determined that the panel had improperly focused on Trombley's mental state at the time of her misconduct rather than at the time of her reinstatement hearing. 947 N.W.2d at 247–48. We further determined, based on the facts presented there, that Trombley had undergone moral change during the period before her reinstatement hearing. *Id.* at 250.

Selmer seems to argue that *Trombley*—where the attorney's moral change occurred within a relatively short period of time—created a rule of law that the timing of moral change is irrelevant. And based on that premise, he suggests that the panel erred as a matter of law in focusing on the timing of his purported moral change.

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probation. *Id.* at 353. We agreed that Sanchez had met his burden of proving moral change, and we reinstated him to the practice of law in Minnesota, subject to several conditions. *Id.* at 354. Our decision in *Sanchez* is based on the particular factual circumstances in that case.

We do not accept Selmer's premise. Our case law is clear that whether an attorney has experienced moral change is a fact-intensive and case-specific inquiry. *See Severson II*, 923 N.W.2d at 30. And, as noted, the facts in *Trombley* are vastly different from the facts before us here. Accordingly, the panel did not err as a matter of law in considering the recency of Selmer's moral change among the other facts in evidence.

* * *

In sum, we reject Selmer's challenges to the panel's decision. The panel's factual findings are supported by the record and are not clearly erroneous. Moreover, the panel's decision did not misapply our case law.

II.

Selmer asks us to determine, based on our independent review, that he met his burden of proving by clear and convincing evidence that he should be reinstated to the practice of law in Minnesota. To be reinstated to the practice of law in our state, an attorney must prove: "(1) moral change; (2) the . . . competence to practice law; (3) compliance with the conditions of suspension; and (4) compliance with the requirements of Rule 18, RLPR." *Mose III*, 993 N.W.2d at 261 n.5. We also consider four other factors when determining whether to reinstate an attorney: "the attorney's recognition that the conduct was wrong, the length of time since the misconduct and suspension, the seriousness of the misconduct, and any physical or mental pressures susceptible to correction." *Id.* We now consider whether Selmer has satisfied the requirements for reinstatement.

A.

We first address whether Selmer has proven by clear and convincing evidence that he has undergone moral change. We independently consider this question, deferring to the panel's underlying factual findings and credibility determinations if they have evidentiary support but not to its ultimate recommendation as to whether the lawyer proved moral change. *See Tigue*, 960 N.W.2d at 699. When evaluating moral change, "we examine a petitioner's conduct up to the time of the reinstatement hearing and his or her mental state and values at that time." *Dedefo*, 781 N.W.2d at 9. We also defer to a panel's determination that a petitioner's testimony regarding moral change is or is not credible. *Id.*

Although Selmer testified at his reinstatement hearing that he regretted his past conduct, we conclude that he has not met his burden of proving moral change.

Generally, to prove moral change, an attorney must show "remorse and acceptance of responsibility for the misconduct." *Mose II*, 843 N.W.2d at 575. An attorney shows remorse and acceptance of responsibility when the attorney expresses "genuine regret and moral anguish for his or her conduct and the effect it had on others." *Severson I*, 860 N.W.2d at 670. Genuine remorse exists when an attorney "has gradually come to realize the wrongfulness of his conduct and . . . has ceased blaming others and taken full responsibility for his actions." *Trombley*, 947 N.W.2d at 247 (quoting *Dedefo*, 781 N.W.2d at 9) (alteration in *Trombley*). But mere regret about the effect of the misconduct on the attorney is not sufficient. *See Severson I*, 860 N.W.2d at 670; *In re Aitken*, 787 N.W.2d 152, 163 (Minn. 2010).

Selmer did express remorse and accept responsibility for his misconduct during his reinstatement hearing. However, given Selmer's history—including the pattern of conduct that resulted in the 2015 suspension, Selmer's representation during the Wisconsin reinstatement proceeding that he would not represent himself in the future and his failure to keep that promise, his conduct during his recent self-representation, his plan at the first reinstatement hearing to contest one of the incidents underlying the 2015 suspension, and the recency of his expressed moral change—we are concerned about the genuineness of Selmer's remorse and acceptance of responsibility.

Based on these same facts, we also question whether Selmer has experienced a change in his state of mind that corrects the misconduct leading to his suspension. *See Mose II*, 843 N.W.2d at 575. Selmer's conduct during the 2020 collection actions, the 2020 personal injury action, and the 2022 financial institution litigation resembled the misconduct that resulted in his 2015 suspension. During his recent litigation, he failed to file appearances, comply with court orders, respond to discovery requests, and communicate with opposing counsel. Selmer also maintained a misleading website that suggested he was licensed to practice law in Minnesota until at least June 2024, even after the Director asked Selmer questions about the website and whether it "fully convey[ed] to the public his practice/licensure status in Minnesota." And Selmer never set up a payment plan with the Office of Lawyers Professional Responsibility to satisfy his outstanding sanctions and judgments in Minnesota, a large portion of which still has not been paid. Selmer's recent conduct, which is similar to his long history of misconduct, suggests that his state of mind has not changed. Although Selmer's participation in therapy and

expressions of regret about his past conduct are hopeful signs that he will undergo a true change in his state of mind in the future, the evidence does not clearly and convincingly show that this change has yet occurred.

Selmer likens his circumstances to those in *Trombley*, where we held—based solely on the testimony of the attorney and her husband—that the attorney had experienced a change in her state of mind soon before her reinstatement hearing. *Trombley*, 947 N.W.2d at 249. Selmer argues that his moral change is likewise recent but genuine. He also points out that several witnesses corroborated his testimony about his changed mindset.

However, as discussed, the evidence in *Trombley* and the factual circumstances here are divergent. Trombley engaged in a single instance of misconduct, immediately followed by a period of therapy and change. Selmer has an extensive disciplinary history, which spans decades and two states. His 2015 suspension resulted from a pattern of misconduct that occurred over several years. Selmer continued to engage in similar conduct after his 2015 suspension and until recently. And Selmer appeared to deny the wrongfulness of some of the conduct that resulted in his suspension up until the first hearing held on his current reinstatement petition. Given the substantial differences between the facts of the two cases, Selmer's comparison to *Trombley* is misplaced.

As Selmer's brief acknowledges, our case law shows that there is no single formula for proving moral change. *See Sand*, 951 N.W.2d at 923 (explaining that we have never required a petitioner to produce "a *specific type* of evidence" to prove moral change but rather have "considered the *quality* of a petitioner's evidence"). Whether a petitioner has presented clear and convincing evidence of moral change is a holistic and case-specific

inquiry. *See Severson II*, 923 N.W.2d at 30 ("The proper inquiry is whether, based on the entire record, the attorney has met his or her burden of proving moral change by clear and convincing evidence."). While one attorney may be able to establish moral change based solely on his own testimony, another may not. Likewise, while one attorney may be able to prove moral change through his testimony and the testimony of one or more family members, another may fall short.

Finally, we are not convinced that Selmer has demonstrated a renewed commitment to the ethical practice of law. "We do not require that an attorney show an airtight plan to return to the practice of law." *In re Klotz*, 996 N.W.2d 165, 172 (Minn. 2023). But "an attorney's plan to return to the practice of law or implement systems to avoid future misconduct are factors that may be relevant to whether an attorney has shown a renewed commitment to the ethical practice of law." *Severson II*, 923 N.W.2d at 32. When an attorney's plan to return to the practice of law is "vague and undefined," we may conclude that it does not demonstrate a renewed commitment to ethical practice. *See Klotz*, 996 N.W.2d at 172–73 (determining that the attorney's plan to return to practice after an indefinite suspension, which included seeking mentoring and building a professional network, was "too vague and undefined" to show a renewed commitment to the ethical practice of law).

Selmer testified that he would start practicing as a public defender and work toward becoming a civil litigator. He told the panel that he would use CLE materials to learn "how to manage law offices," but he presented no formal plan. Selmer testified that he would start rebuilding his legal network and lean on his brother and other attorneys for support.

He did not testify about specific plans to ethically manage his practice if he were to be reinstated. We conclude that Selmer's nonspecific ideas did not sufficiently demonstrate his renewed commitment to the ethical practice of law.

We laud Selmer's participation in therapy and his work to gain insight into his conduct. But based on our independent review of the entire record, we conclude that Selmer has not met his "heavy burden" of proving moral change by clear and convincing evidence. *Id.* at 173. Stated otherwise, we are not convinced, based on the evidence in the record, that there is a high probability that Selmer has experienced moral change. *See In re Houge*, 764 N.W.2d 328, 335 (Minn. 2009).[8]

B.

We next address whether Selmer has proven by clear and convincing evidence that he is competent to practice law. As with moral change, we conclude that Selmer has not met this burden.

An attorney petitioning for reinstatement must prove by clear and convincing evidence that the attorney is competent to practice law. *Mose III*, 993 N.W.2d at 260. We

[8] The dissenting panel member expressed concern about the panel majority's use of the clear and convincing evidence standard that we articulated in *Gassler v. State*, 787 N.W.2d 575 (Minn. 2010). In *Gassler*, we stated that "to prove a claim by clear and convincing evidence, a party's evidence should be unequivocal, intrinsically probable and credible, and free from frailties." *Id.* at 583 (citing *Kavanagh v. The Golden Rule*, 33 N.W.2d 697, 700 (Minn. 1948)). While the panel's use of the *Gassler* standard was not plainly erroneous, we encourage the use of a simpler definition: clear and convincing evidence "requires a high probability that the facts are true." *Houge*, 764 N.W.2d at 334. The standard is higher than a preponderance of the evidence but lower than proof beyond a reasonable doubt. *Lyons*, 780 N.W.2d at 635.

impose this requirement on petitioning attorneys "to protect the public, protect the judicial system, and deter future misconduct." *Id.* at 260 n.4 (citation omitted) (internal quotation marks omitted). Although we have no fixed standard for determining a petitioner's competence to practice law, "[w]e generally consider the extent to which petitioner has remained acquainted with legal matters." *Stockman*, 896 N.W.2d at 863 (citation omitted) (internal quotation marks omitted); *see also In re Jellinger*, 728 N.W.2d 917, 922 (Minn. 2007) (concluding that the petitioner had "current legal skills and knowledge, demonstrated by his successful completion of the professional responsibility exam, satisfaction of his CLE requirements, and his work as a paralegal"); *Kadrie*, 602 N.W.2d at 873 (completion of CLE credits and work arranging contracts and assigning legal matters to counsel was sufficient); *In re Trygstad*, 472 N.W.2d 137, 139 (Minn. 1991) (completion of CLE credits and work as a paralegal was sufficient). "[W]ork experience that requires legal reasoning and case management is one way to show competence to practice law." *Mose II*, 843 N.W.2d at 576. However, "[w]hen an attorney is suspended for incompetence and lack of diligence, and has not practiced law for an extended period of time, the attorney must not only pass the bar examination, but also demonstrate legal reasoning and case management skills through paid- or volunteer-work experience." *Id.* at 577; *see also In re Hanson*, 454 N.W.2d 924, 926 (Minn. 1990) (CLE credits and work as personal representative was not sufficient, in part, because petitioner had not practiced law for 35 years).

Selmer was admitted to practice law in Minnesota in 1984. After a long history of misconduct, we suspended Selmer from the practice of law in 2015 due to a pattern of misconduct related to his work as an attorney. Following his suspension, Selmer did not practice law for approximately five years. Selmer was reinstated in Wisconsin in 2021, and according to his testimony at the hearing, he practiced in Wisconsin for a couple of years before seeking reinstatement here.[9]

Notwithstanding Selmer's testimony that his recent practice in Wisconsin demonstrates his competence to practice, we have significant concerns. None of Selmer's witnesses were able to provide firsthand information regarding Selmer's current competence. Selmer's testimony was the only evidence of competence to practice law. He testified that since his reinstatement in Wisconsin, he had handled hundreds of cases while working as a public defender and a few civil matters, including some estate planning matters and a business advising matter. But Selmer did not provide any specific information about the type of work that he performed while working as a public defender. He also acknowledged resigning his public defender position in lieu of termination. Additionally, Selmer's conduct during the 2020 collection actions, 2020 personal injury action, and 2022 financial institution litigation calls his competence into question. Given these circumstances and based on our independent review of the record, we conclude that Selmer has not met his burden of proving by clear and convincing evidence that he is competent to practice law.

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[9] We have not required Selmer to pass a full bar examination to be readmitted.

* * *

Because Selmer did not prove by clear and convincing evidence his moral change or competence to practice law,[10] we conclude that Selmer has not met his burden of proving that he is entitled to reinstatement.

Petition denied.

PROCACCINI, J., took no part in the consideration or decision of this case.

[10] Given our determination that Selmer failed to prove his moral change or competence to practice law by clear and convincing evidence, we do not consider the four additional factors for reinstatement identified in our case law. *See Mose III*, 993 N.W.2d at 260.

FILE NO. A23-0265

STATE OF MINNESOTA

IN SUPREME COURT

In Re the Petition for Reinstatement
to the Practice of Law of
SCOTT SELMER,
a Minnesota Attorney,
Registration No. 0156024.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION

INTRODUCTION

This matter is before Panel No. 2 of the Lawyers Professional Responsibility Board on the February 13, 2023, petition of Scott Selmer ("Petitioner") for reinstatement to the practice of law. The Panel Chair is William Z. Pentelovitch and the Public Member of the Panel is Paul Lehman. The third original Panel member, Wendy Sturm, a Lawyer Member of the Panel, was reassigned to a different panel after the July 18, 2023, evidentiary hearing and before the March 2024, evidentiary hearing. Ms. Sturm was replaced by John Zwier, a Lawyer Member of the Panel.

This matter was initially scheduled for an evidentiary hearing on July 18, 2023. At that hearing, following the opening statement by Petitioner's then counsel Alan Gibas, a recess was taken to consider various issues. Among other things, the Panel was concerned, based on the written submissions and opening statement by Mr. Gibas on behalf of Petitioner, that Petitioner and his counsel did not understand what their

burden of proof was for Petitioner to succeed on his reinstatement petition, and that they were planning to pursue theories that were irrelevant, beyond the jurisdiction of the Panel, or both.

Following the recess, the Panel ruled on various issues and advised the parties of their concern that the Petitioner and his counsel did not understand what they were required to prove. The Panel Chair then read into the record the well-established elements the Supreme Court required Petitioner to prove in order to be reinstated, emphasizing the need to prove certain of those elements by clear and convincing evidence. At the request of Mr. Gibas, an additional recess was taken to enable Petitioner and Mr. Gibas to consult. Following this recess, Mr. Gibas advised the Panel that he was not prepared to continue representing Petitioner in the evidentiary hearing and requested a continuance. The request for a continuance was granted by the Panel.

On July 26, 2023, the Panel issued an Order reflecting the actions taken at the July 18 hearing; and, as reflected in the transcripts of the evidentiary hearing in July 2023 and March 2024, the Panel denied, among other requests for relief, petitioner's request to adopt the findings of the Wisconsin Supreme Court on Petitioner's reinstatement following reciprocal discipline as conclusive pursuant to Rule 19(b)(3), RLPR. (Tr. 81: 18-23; Order at 4.) The Panel also limited evidence and testimony to the period from the date of petitioner's suspension on July 15, 2015, through the end of the present evidentiary hearing. (Tr. 105: 16-22; Order at 6.) Further, the Panel determined that the

greatest weight would be placed on evidence closest in time to the date of the March, 2024, hearing and the least weight placed on evidence from eight years previously. (Tr. 106: 1-3; Order at 4.)

Subsequent to issuance of the Order, Mr. Gibas withdrew as counsel for Petitioner, and Petitioner then proceeded pro se until shortly before the rescheduled evidentiary hearing. Petitioner then secured new counsel, James Selmer. At the request of James Selmer, the evidentiary hearing was rescheduled several additional times.

Eventually, pursuant to Rule 18(c), Rules on Lawyers Professional Responsibility (RLPR), an evidentiary hearing was held on March 21 and 22, 2024, before Panel 2 members Pentelovitch, Lehman, and Zwier.

Petitioner appeared personally and was represented by James Selmer.

Susan Humiston appeared in her capacity as Director of the Office of Lawyers Professional Responsibility.

Petitioner testified on his own behalf and presented the testimony of four additional witnesses: Dr. Susan Moore, Scott Herrick (by phone), Richard Painter, and Alan Gibas.

The Director presented, and the Panel received into evidence, Exhibits 1-6, 17-25, 28-33, 39-65, 66A (excluding pp. 211-225), 70, 72-73, and 76-83.

Petitioner presented, and the Panel received into evidence, Exhibits 100-103, 105-109, and 111-114.

The Director also provided to the Panel and Petitioner in advance of the hearing an Amended Director's Report dated March 13, 2024, with exhibits, summarizing the results of the Director's investigation as required by Rule 18(b)(2), RLPR. Because the Amended Director's Report contains hearsay and other inadmissible evidence, the Panel declined to receive the report into evidence, and the Panel places no reliance upon the Amended Director's Report. However, the Amended Director's Report was placed into the record for consideration by the Supreme Court as contemplated by Rule 18(b)(2).

Based upon all the files, records and proceedings herein, the Panel being duly advised in the premises, present the following as its

FINDINGS OF FACT

1. Petitioner was admitted to practice law in Wisconsin in 1978. (Ex. 6 at 3.)

2. Petitioner was admitted to the practice of law in Minnesota on May 11, 1984. (Ex. 1 at 2.)

3. On July 15, 2015, Petitioner was indefinitely suspended by the Minnesota Supreme Court ("Court") with no right to petition for reinstatement for a minimum of 12 months. (Ex. 1 at 16.)

4. The Court ruled Petitioner violated Rules 1.1, 3.1, 3.4(c), 3.4(d), and 8.4(d), Minnesota Rules of Professional Conduct (MRPC), by engaging in a pattern of frivolous

and harassing litigation, failing to obey court orders, and refusing to comply with discovery requests. (Ex. 1 at 12-13.)

5. The Court found Petitioner's misconduct was serious, that Petitioner's misconduct harmed the public and legal profession, that Petitioner expressed no remorse, and that Petitioner failed to acknowledge his wrongdoing. The Court also noted Petitioner had been publicly disciplined on four prior occasions since being admitted to the practice of law in Minnesota. (Ex. 1 at 14-16.)

6. Prior to his first suspension from the practice of law in Minnesota in 1997, Petitioner headed his own law firm, which employed seven full-time lawyers and eight support staff. Petitioner's firm represented Fortune 100 and 500 companies and did so without ever receiving any performance complaints from clients. [Hearing Transcript page 236, line15 – page 237, line 2.]

7. In none of the cases in which Petitioner was disciplined did the conduct by Petitioner involve dishonesty or deceit. [Hearing Transcript page 414, line 24 - page 415, line 1.]

8. In 2015, the Court conditioned Petitioner's reinstatement to the practice of law on the following: (1) payment of costs in the amount of $900 pursuant to Rule 24(d), RLPR; (2) compliance with Rule 26, RLPR; (3) proof of successful completion of the professional responsibility examination; and (4) satisfaction of continuing legal education requirements. (Ex. 1 at 16-17.)

9. The Court also ordered that "[p]rior to petitioning for reinstatement, [Petitioner] shall make a good faith effort to satisfy the outstanding $11,312 in court-ordered sanctions and costs in the *Selmer v. Wilson* and *Wilson v. Selmer* matters. "[Petitioner] shall provide the Director with a payment plan for satisfying the judgments against him." (Ex. 1 at 17.)

10. On July 15, 2016, the Wisconsin Supreme Court reciprocally disciplined Petitioner based on the July 15, 2015, Minnesota discipline order. (Ex. 6 at 10.)

11. At the time of his July 15, 2015, Minnesota suspension, Petitioner was working as an interim, short-call, substitute-teacher. (Ex. 32 at 38: 7-15; Tr. 258: 6-19.)

12. Petitioner testified at both his Wisconsin and Minnesota reinstatement hearings that the Minnesota Teaching Board automatically revoked his substitute teacher's license due to his suspension. (*Id.*)

13. Petitioner's testimony did not acknowledge that part of the reason his license was revoked was that Petitioner failed to advise the Teaching Board of the Court's decision on his law license, and that Petitioner was given many opportunities to dispute the position of the Teaching Board but failed to attend scheduled hearings. (Ex. 63 at 2, 3.)

14. On July 31, 2017, the Minnesota Court of Appeals affirmed the Teaching Board's revocation of Petitioner's teaching license. (Ex. 63 at 8.) During the appellate process, Petitioner filed documents that were rejected by the clerk of the appellate court

as non-compliant with court rules, including Petitioner's attempted appeal to the Minnesota Supreme Court. (Ex. 64.)

15. Petitioner's work history following his 2015 suspension includes working at Amazon as a stocker, stocking shoes at Macy's, and janitorial work at an archdiocese and a newspaper. Petitioner worked for a short time at Thomson Reuters, but was involuntarily terminated. (Tr. 256:19-25; 257: 2-3; Ex. 66A at 3.)

16. In August, 2015, Petitioner entered a one year master's degree program in journalism at Columbia University in New York City, and obtained his degree in 2016. (Tr. 374: 17-20; 375: 2-3.) Petitioner has not obtained any work as a paid journalist. (Tr. 392: 2-7.)

17. Petitioner became eligible to petition for reinstatement to practice law in Minnesota on July 16, 2016.

18. Petitioner did not initially petition for reinstatement until nearly two years after he became eligible to do so. On March 22, 2018, Petitioner petitioned the Minnesota Supreme Court for reinstatement, but failed to pay the $500 filing fee required by Rule 18(a), RLPR. On June 11, 2018, the petition was dismissed by the Court. (Ex. 26.)

19. Petitioner petitioned for reinstatement again in 2018 as well as in 2019. (Ex. 32 at 17: 5-18; Ex. 31.)

20. A panel hearing was held on Petitioner's 2019 petition for reinstatement; however, Petitioner voluntarily dismissed his petition after the panel hearing, but before a panel recommendation was issued. (Ex. 31.) There is no evidence in the record as to what the panel would have recommended.

21. Petitioner had not taken the MPRE before petitioning for reinstatement in 2019, and when he did so, he did not pass. (Ex. 32 at 17: 6-14.)

22. On April 8, 2020, Petitioner filed a petition for reinstatement with the Wisconsin Supreme Court. (Ex. 5 at 3.) In accordance with Wisconsin procedures, a referee hearing was held.

23. At the Wisconsin referee hearing on November 19, 2020, Petitioner testified that he has only had disciplinary issues when he represents himself, and his plan going forward was to avoid such situations: "I have only had problems where I have represented myself in situations where I didn't have the money to hire an attorney to represent me. I don't intend to put myself in those positions." (Ex. 32 at 42: 15-19.)

24. The referee recommended Petitioner be reinstated in Wisconsin, subject to two conditions—entering a payment plan for outstanding unpaid costs and mentoring by another attorney. (Ex. 5 at 6-7.)

25. Petitioner did not oppose the payment plan condition but "expressed strong reservations about supervision by a mentor." (Ex. 5 at 6.)

26. On March 3, 2021, the Wisconsin Supreme Court reinstated Petitioner, concluding Petitioner had met the conditions for reinstatement in Wisconsin. The Wisconsin Supreme Court also concluded that petitioner's disciplinary record supported that a payment plan be required, and that a mentor be appointed. (Ex. 5 at 9.)

27. The Wisconsin Supreme Court's legal standards for reinstatement following suspension differ in material respects from the Minnesota Supreme Court's conditions for reinstatement. Among other things, Wisconsin requires the petitioning attorney to establish moral character, while Minnesota requires moral change. *See, e.g., In the Matter of Disciplinary Proceedings Against Hyndman,* 638 .W. 2d 293 (Wis. 2002)("A petitioner for reinstatement has the burden of demonstrating by clear and convincing evidence that he or she possesses the requisite moral character to practice law in Wisconsin and that resumption of practice will not be detrimental to the integrity and standing of the bar or the administration of justice or be subversive of the public interest.")

28. On April 22, 2021, Petitioner agreed to pay $20 per month to the Wisconsin OLR, which amount would be reassessed in six months based upon petitioner's ability to pay. (Ex. 33.)

29. Petitioner has not paid the Wisconsin OLR as he agreed to do, but instead made periodic payments of varying amounts when he had some money. He stopped

making payments when he and his son both became sick in 2023. (Tr. 287: 3-8, 13-14.) Petitioner has not kept track of his payments and does not know the total amount he has paid. (Tr. 286: 14-24.)

30. Petitioner does not appear compliant with the agreement he was required to enter as part of his reinstatement in Wisconsin (Tr. 283: 4-18.), but this Panel is unaware of any action taken in Wisconsin to enforce the agreement. The Panel does not know how the state of Wisconsin views the inability to pay.

31. In connection with the petition now under consideration, Petitioner stated in April 2023 to the Director's Office that he "has not entered into an agreement with [Wisconsin] OLR because it has not been requested." (Ex. 66A at 19.)

32. In August 2021, Petitioner was hired as a public defender in Hudson, Wisconsin. (Tr. 288: 17-22.)

33. Petitioner chose to resign his position as a public defender in Hudson, Wisconsin in lieu of termination in February 2022. (Tr. 337: 1-4.)

34. Thereafter, Petitioner served as a contract public defender in Wisconsin, accepting assignments until approximately September 2023. (Tr. 288: 2-3; 289: 1.)

35. Due to health issues beginning in early 2023, Petitioner started declining referrals and withdrawing as he could through the summer of 2023. (Tr. 292: 20-21.)

36. Petitioner testified that since his reinstatement, no complaints have been made against Petitioner in Wisconsin while practicing criminal law there, including any

complaints by a judge or a client. [Hearing Transcript page 349, line 25 – page 350, line 1.]

37. There is no evidence in the record that Petitioner has been disciplined in Wisconsin since his reinstatement in that state.

38. Petitioner testified that during the two years Petitioner represented Public Defender clients in Wisconsin, there was not a single instance of him failing to show up or failing to respond to a judge. [Hearing Transcript page 399, lines 1–6.]

39. Petitioner testified that since his reinstatement in Wisconsin, "I have not missed one single appearance in Wisconsin when I was on my own after I was fired." [Hearing Transcript page 399, lines 12 -14.]

40. Petitioner testified that he has represented clients in "up to 250 cases" since leaving the Public Defender's Office in February 2022 [Hearing Transcript page 198, line 22 – page 199, line 4], which included hundreds of criminal cases [Hearing Transcript page 400, line15]. Petitioner testified that he did not receive a single complaint about the quality of his representation of any of those clients. There is no evidence in the record as to what any of such representations entailed, such as brief writing, motion practice or bench or jury trials.

41. Petitioner testified that the only court appearance Petitioner missed throughout more than a three-year period representing criminal defendants occurred while serving as a staff member of the Hudson Office of the Wisconsin Public Defender

with respect to an in-take, when he was prohibited from leaving a different courtroom in the St. Croix County Courthouse by Judge Vlack in order to secure the release of a juvenile held in Pierce County. [Hearing Transcript page 399, lines 20-25 and page 400, lines 1-5.]

42. Petitioner testified that from mid-2023, until the reinstatement hearing in March 2024, petitioner handled a few civil matters using his Wisconsin license, such as a couple estate planning matters and a business advising matter. (Tr. 293: 18-25 – 294: 1-10.)

43. No documentary evidence was offered, nor did any witnesses other than Petitioner testify, in support of Petitioner's claims regarding the number of cases he has handled in Wisconsin since reinstatement, nor in support of his claims that he has not received any complaints regarding his representation of clients in those matters. The Director offered no evidence to rebut Petitioner's testimony in these regards. The Panel, therefore, credits Petitioner's testimony on these subjects as true and accurate.

44. Petitioner's Wisconsin mentor, Scott Herrick, who mentored petitioner for 18 months following his reinstatement in Wisconsin, did not mentor respondent's public defender work as he felt he was not qualified to do so. (Tr. 167: 16-20.)

45. Although a licensed Wisconsin lawyer, Mr. Herrick retired from practice in 2019, and lives in New Mexico. Mr. Herrick was retired and living in New Mexico during the entire time he was Petitioner's mentor pursuant to the ruling of the

Wisconsin Supreme Court. (Tr. 158: 1-8.) It does not appear from the record that Mr. Herrick was still mentoring Petitioner at the time of the non-criminal matters that Petitioner handled in Wisconsin described in paragraph 43 above.

46. Neither prior to agreeing to mentor Petitioner, nor at any time since, did Mr. Herrick review the Minnesota Supreme Court's 2015, suspension order, nor did Mr. Herrick ever review the 2016 Wisconsin Supreme Court order imposing reciprocal discipline. (Tr. 186: 7-18.)

47. Mr. Herrick did not discuss with Petitioner the conduct that led to his suspension in any depth. (Tr. 187: 10-22.)

48. Mr. Herrick did not discuss with Petitioner any insights petitioner had gained since his suspension. (Tr. 188: 16-25 – 189: 1-14.)

49. During the period of mentorship, Mr. Herrick did not have occasion to observe Petitioner in court, did not review any work product created by Petitioner, did not talk to anyone at the Wisconsin Public Defender's Office regarding Petitioner's work, and did not speak with any judges or opposing counsel regarding Petitioner. (Tr. 224: 6-25 – 225: 1-18.)

50. Mr. Herrick, however, based on his knowledge of Petitioner from decades earlier, and from telephone conversations with him during the mentorship, testified that he believes that petitioner is competent to practice law. (Tr. 226: 3-16.)

51. Mr. Herrick testified "I'm pleased to share my opinion that Scott Selmer is highly competent to practice…I over the years have been aware of his practices, and I have got very high regard for his competence. His general intelligence, alertness, all that goes into competence, my opinion is very positive" [Hearing Transcript page 177, lines1-9]. Mr. Herrick added "He has always demonstrated a very high degree or example of honesty and good character." [Hearing Transcript page 177, line 18.]

52. Mr. Herrick also testified:

> "Well, I certainly believe, in fact, that Scott Selmer has grown and settled down a bit and developed a serious renewed approach to how he wants to practice law. I don't think that James Selmer has called me as a witness primarily for that purpose. But that is my personal view. I think that Scott Selmer has grown a lot in the last couple, three years. I really hesitate to think -- not to be overly modest, but I hesitate to think that the mentorship as such contributed very much to that."

[Hearing Transcript page 210, lines 15-25.]

53. While the Panel does not doubt the sincerity of Mr. Herrick's testimony, the Panel finds that Mr. Herrick's testimony lacks sufficient first-hand factual knowledge, foundation or basis to be credible with respect to either Petitioner's intellectual competence to practice law as of the time of the evidentiary hearing or his claim of moral change as of the time of the evidentiary hearing.

54. In August 2020, Petitioner served a personal injury action on his own behalf in Minnesota. (Ex. 48.) Petitioner did not mention the pendency of this matter during his Wisconsin reinstatement referee hearing. (Ex. 32 at 26: 7-14.)

55. The filing of a personal injury action on his own behalf was inconsistent with Petitioner's testimony in the Wisconsin referee hearing in November 2020, that Petitioner did not intend to put himself in the position of representing himself again, as described in paragraph 23 above.

56. On April 1, 2021, defendants' counsel filed their answer to Petitioner's complaint. (Ex. 48.)

57. In July 2021, Petitioner filed an IFP application, which was denied due to Petitioner's failure to provide the court with information of his indigency and his failure to provide a basis to assess whether the claim was frivolous. (Ex. 49.)

58. The court eventually granted Petitioner IFP status and, on August 18, 2021, filed a scheduling order and referral to mediation. (Ex. 50.)

59. Petitioner failed to provide mandatory initial disclosures pursuant to Minn. R. Civ. P. 26.01(a)(1). (Ex. 51.) Petitioner failed to provide defendant's counsel with answers to interrogatories pertaining to damages or witnesses. (*Id*.) Petitioner's Zoom deposition was to take place on August 18, 2021, but the day before, Petitioner cancelled stating he was out of town. (*Id*.)

60. An informal telephone conference was set, but the court could not reach Petitioner by telephone, so the court scheduled another discovery conference to take place on November 9, 2021. (Ex. 52.)

61. On November 2, 2021, Petitioner obtained representation and the matter settled on July 26, 2022. (Exs. 53, 54.)

62. On January 16, 2020, Capital One Bank filed a collection action against Petitioner in the amount of $2,324.96. (Ex. 55.) The conciliation court heard the matter on September 30, 2020. Petitioner failed to appear, and judgment was awarded to Capital One Bank. (Ex. 56.)

63. On October 26, 2020, Petitioner filed a request to vacate the order for judgment and for a new trial. Petitioner's request stated the reason he did not attend the hearing was, "I inadvertently entered the wrong date in my calendar for the hearing." (Ex. 57.) The court vacated its order and, on December 18, 2020, Petitioner and Capital One Bank settled the matter with Petitioner agreeing to pay $480 on the original $2,324.96 debt. (Ex. 58.)

64. On February 27, 2020, Capital One Bank filed another collection action against Petitioner, this time seeking payment of a $3,927.48 debt owed by Petitioner. (Ex. 59.) An order for judgment was entered against Petitioner on August 31, 2020, after he failed to appear for the scheduled hearing. In the order, the court wrote, "he gave notice to the court on August 12 that he had this hearing coming up, but now claims not to know of this hearing." (Ex. 60.)

65. On September 23, 2020, Petitioner appealed the conciliation court's judgment. (Ex. 61.) As a result, the conciliation court judgment was vacated. (Ex. 62.)

66. On June 29, 2022, Petitioner filed a civil defamation lawsuit in Hennepin County District Court naming four defendants, all of which were financial institutions (case no. 27-CV-22-9866) ("Financial Institution Litigation"). (Ex. 39.)

67. The filing of the Financial Institution Litigation was inconsistent with Petitioner's testimony in the Wisconsin referee proceeding in November 2020, that he would not put himself in the position of representing himself again as described in paragraph 23 above.

68. Petitioner asserted the four defendants in the Financial Institution Litigation falsely reported to national credit reporting agencies that Petitioner owed a debt to them. (*Id*.) Petitioner claimed that the reporting of this information caused Petitioner financial harm and damaged his professional and employment opportunities. (*Id*.)

69. Petitioner failed to file, as required by the Rules, affidavits of service of the complaint on the defendants. (Tr. 322: 1-4.) On July 12, 2022, the court ordered Petitioner to do so by July 27, 2022. (Ex. 40.)

70. In response, Petitioner provided the court with a declaration of service by mail to the Secretary of State to serve one of the defendants, but Petitioner failed to provide confirmation the civil complaint was actually served. (Ex. 41.) In addition, Petitioner failed to provide affidavits of service of the complaint on the other three defendants. (*Id*. at 2.)

71. On July 26, 2022, the court ordered Petitioner to appear on August 17, 2022, to show cause as to why the court should not dismiss his case for failure to comply with the Minnesota Rules of Civil Procedure. (Ex. 41 at 2.)

72. Petitioner testified that he did not comply with the Rules of Civil Procedure in commencing his defamation lawsuit in 2022. (Tr. 330: 3-17.)

73. When asked about the harm caused by the court needing to issue successive orders to ensure his compliance with the rules, Petitioner stated, "Well, it's not judicious use of time." (Tr. 330: 18-19.)

74. On September 2, 2022, the court filed its scheduling order. (Ex. 42.) On December 28, 2022, the court stayed deadlines due to Petitioner's failure to respond to defendants' and the court's communication. (Ex. 43.)

75. As noted by the court in a subsequent order, Petitioner did not attend a case management conference in early December 2022, nor did Petitioner attend the motion hearings held by the court in January 2023. (Ex. 45 at 1-2.)

76. Petitioner testified before the Panel that he did not recall why he did not respond to the defendants' and the court's communications. (Tr. 332: 17-19.)

77. By order dated April 13, 2023, the court granted the motions to dismiss Petitioner's action. (Ex. 45.)

78. The court found that Petitioner's "claims for defamation and libel were based in their entirety on Barclays' and ConServ's responsibilities as a furnisher of

information to credit reporting agencies and are, therefore, preempted by the FCRA." (Ex. 45 at 2; Tr. 335: 12-16.) The court noted that Petitioner's last appearance in the case occurred in October 2022. (Ex. 45 at 1.)

79. Petitioner described the Financial Institution Litigation as follows: Conserve was Barclay bank's bill collector. [Hearing Transcript page 265, lines 1-4.] Although only one account was involved, Conserve and Barclay each filed separate weekly credit reports as though Petitioner owed two separate debts. [Hearing Transcript page 265, lines 5-14.] Petitioner believed that the duplicate claims were creating havoc with respect to his credit report and that this was preventing him from obtaining employment and getting other things going. He stated, "I couldn't get a job and I couldn't get anything going because all these reports going weekly. [Hearing Transcript page 265, lines 7-9.] Petitioner believed that these credit reports were "killing" him [Hearing Transcript page 265, line 13], and he responded the same way he had always responded to threats against him before he had the benefit of therapy. He resorted to his pre-therapy behavior and summoned his anger to "fight my way through" [Hearing Transcript page 250, lines 8-12] – in this instance, by suing ConServe Account and Barclay in 2022.

80. Petitioner acknowledged on cross-examination that he failed to competently and diligently pursue the Financial Institution Litigation because he did not properly effectuate service of the Summons and Complaint upon the Defendants

prior to filing the suit [Hearing Transcript page 322, line 21 - page 323, line 4; Director's Exhibit. 40, July 12, 2022 Order for Submissions, page 1], requiring the Court to issue an order mandating that he do so; requiring the Court to issue an order to show cause to get Petitioner to comply with the Minnesota Rules of Civil Procedure [Hearing Transcript page 330, line 3 – page 13; Director's Exhibit 41,July 26, 2022 Order to Show Cause, page 1],requiring the Court to issue two orders staying the proceedings on account of Petitioner's failure to respond to Defendants' and the Court's communications. [Director's Exhibit 42, September 21, 2022, Scheduling Order; Director's Exhibit 43, December 18, 2022Order to Stay Deadlines; Director's Exhibit 44, January 17, 2023 Order to Stay Deadlines, page 2]. Petitioner failed to appear at the case management conference in December 2022, as well as the hearing on the Defendants' motion to dismiss on January 6, 2023. [Hearing Transcript page 335, lines 5-11.] The latter occurred because his representation conflicted with the representation of his then Wisconsin public defender clients. [Hearing Transcript page 440, lines 6-11.] Petitioner admitted his claims for relief failed to state a cause of action because his claims were preempted by federal law. [Hearing Transcript page 335, lines 12-16.]

81. On February 14, 2023, petitioner filed the current petition for reinstatement, his third in Minnesota since 2015. (Ex. 2.)

82. As part of its initial investigation into Petitioner's petition, the Director asked Petitioner to describe any special facts and circumstances which may have led to

Petitioner's misconduct. Petitioner's answer in April 2023, began, "Petitioner has not always been treated fairly in Minnesota judicial proceedings." (Ex. 66A at 5.)

83. When asked how Petitioner's recent self-examination (noted in his petition) would support future compliance with the ethics rules, Petitioner responded, in part, that "given the severity of the consequences of Petitioner's misconduct, Petitioner believes that his discipline from that will function as a sufficient deterrent to repetition of such errors in the future." (*Id*. at 17.) Petitioner also stated that, "Petitioner will obey all judges under all circumstances." (*Id*. at 18.)

84. Petitioner has not filed any complaints on his own behalf since he began therapy in May of 2023. [Hearing Transcript page 354, lines 14-17.]

85. At the time he filed the Petition for Reinstatement in February 2023, Petitioner thought that he had met the requirements of the 2015 suspension order necessary to seek reinstatement, but he did not realize until after he started meeting with the therapist that he had not yet met all the requirements and that he probably would not have been successful in seeking reinstatement without her [365:21-366:10].

86. Petitioner requested discovery from the Director's Office. This discovery was focused on petitioner's underlying discipline going back to 1995. Petitioner moved to have his requests for admissions admitted because the Director objected to responding, which motion was denied by the Panel since requests for admissions are not a tool provided for by Rule 18, RLPR. (July 26, 2023, Order at 5.)

87. Petitioner declined to be interviewed by the Director's Office, calling the investigation a "charade." (Ex. 72 at 3.) Petitioner thereafter did not reconsider his decision to be interviewed by the Director's Office, asserting he "accepted the advice of counsel." (Tr. 339: 15-25.)

88. At the evidentiary hearing, Petitioner testified that, following his 1997 suspension, he has "never recovered" financially. (Tr. 238: 4-7.) He felt "humiliated, angry, embarrassed, shunned, rejected." (Tr. 238: 11-12.) Petitioner blamed the OLPR and the Minnesota Supreme Court. (Tr. 238: 17-25.) Petitioner blamed himself "for believing that the system would believe that racism and discrimination existed." (Tr. 239: 2-5.)

89. Petitioner testified that he still felt that way when he petitioned for reinstatement in February 2023. (Tr. 365: 16-20.)

90. Petitioner testified that he started therapy in May 2023. (Tr. 239: 21-23.) Petitioner's testimony was inconsistent regarding how long he has been seeing his current therapist. (Tr. 240: 15-20.) At first, he indicated that he has been seeing his therapist since May 2023. (*Id*.) Later, he acknowledged that although he started with other therapists, he has only been seeing his current therapist since approximately September 2023. (Tr. 386: 14-25; Tr. 387: 1-7.) Petitioner also testified that one of his first therapists did not agree to work with him because he was "too angry," although this timeline was not clear. (Tr. 240: 10-12.)

91. Petitioner sees his therapist weekly for one-hour sessions. (Tr. 385: 1-2; 388: 1-5.)

92. The pattern that Petitioner engaged in *i.e.,* failing to file the proper legal paperwork or to file it in a timely fashion; failing to appear at appearances; missing deadlines; assertion of legal claims unsupported by existing law; failure to comply with discovery obligations, failing to pay a financial obligation, or failing to comply with Court rules, continued during Petitioner's suspension and persisted at least until Petitioner began receiving therapy in approximately May 2023. [Hearing Transcript page 240, lines 15-16.]. This was true despite the fact that Petitioner testified in the Wisconsin referee proceeding that he would not put himself in the position of representing himself again.

93. Prior to commencing therapy, Petitioner blamed all his problems on someone other than himself. He also blamed the system, the Office of Lawyer Professional Responsibility, and the Supreme Court. [Hearing Transcript page 238, lines 21-23.]

94. Prior to commencing therapy, Petitioner blamed himself for believing that the system would work for him. [Hearing Transcript page 239, line 2.]

95. At some point, Petitioner attended a seminar that he had read about which suggested that he might have been exposed to "generational trauma." [Hearing Transcript page 240, lines 3-5.] The concept of "generational trauma" resonated with

Petitioner and he sought out someone who specialized in trauma therapy. [Hearing Transcript page 24, lines 8-9.] The Petitioner did not testify in any more detail as to what generational trauma he had actually suffered, if any, nor did he testify that whatever generational trauma he may have suffered was related directly or indirectly to the conduct which led to his suspension.

96. Petitioner testified that he struggled to find a compatible therapist who could or would accept Petitioner's insurance. In September 2023, late in this process and well after the original hearing date for this Petition, Petitioner testified that he found a therapist that would accept his insurance and turned out to be a good fit. [Hearing Transcript page 240, lines 13-20.

97. As a result of the therapy, Petitioner testified, he finally had access to professional services that provided the tools he needed to review his own behavior.

98. Although Petitioner's former attorney in this proceeding, Allen Gibas, had earlier counseled Petitioner to "do the work, Scott" [Hearing Transcript page 242, line 10], Petitioner did not quite understand what Mr. Gibas was talking about. [Hearing Transcript page 242, lines 1-2.]

99. Only when the therapist "broke it down" [Hearing Transcript page 242, line 12] for Petitioner did he finally grasp what he needed to do in order to "do the work." As a result of the therapy, Petitioner finally understood that all his anger had gotten him nothing [Hearing Transcript page 241, lines 1-5]; that his anger was not

allowing him to do what he wanted [241:5-10]; and that the only way to move beyond the anger was to figure out how he had directly contributed to the place where he found himself [Hearing Transcript page 241, lines 12-15].

100. Under the guidance of his therapist, Petitioner testified he systematically reviewed the various court filings in which he was involved – his submissions to the Court and the Court's responses – and Petitioner testified that he was embarrassed by what this examination revealed: He had not been careful, not even in the least professional way.

101. Petitioner testified that under the care of his therapist, Petitioner gradually acquired the tools that equipped him to be able to deconstruct his behavior and ultimately acknowledge that his reactions to court rulings were inappropriate and that they failed to meet the competency and diligence standards which he now has unequivocally acknowledged in his testimony at the hearing. Petitioner acknowledged that his response was inappropriate, that the error was his and his alone, and that it was his responsibility for having made the error. [Hearing Transcript page 245, line 15.]

102. Petitioner testified that his inappropriate response, which Petitioner described as acting "incompetently" [Hearing Transcript page 246, line 24], hurt Petitioner. It hurt his family. It hurt the Court because he wasted the Court's time and resources. It hurt the taxpayers. He wasted opposing counsels' time. [Hearing Transcript page 245, line 25 – page 246, line 6.] Petitioner acknowledged in his

testimony that he repeatedly failed to file responses and paperwork competently with various courts; that he was angry; and that he wasn't thinking clearly, [Hearing Transcript page 246, lines 23-24.]

103. Petitioner did not testify or acknowledge that his conduct harmed the opposing parties in the *Wilson v. Selmer* and *Selmer v. Wilson* litigation which led to the 2015 suspension from which he now seeks reinstatement. Nor did Petitioner testify that his conduct harmed his opposing parties in the Financial Institution Litigation.

104. There is no evidence in the record that Petitioner has apologized, or ever intends to apologize, for his conduct to his opposing parties in either the *Wilson v. Selmer, Selmer v. Wilson,* or Financial Institution Litigation. There is no evidence in the record that Petitioner has apologized, or ever intends to apologize, for his conduct to the judges or lawyers who he testified were harmed by his conduct.

105. Petitioner testified, "Now, I did not intentionally file a frivolous action or intentionally intend to harass. But I might as well have. Because I was angry and I wasn't thinking clearly. And certainly, I had failed to file competently the action that I filed because it was not well filed." [Hearing Transcript page 246, lines 21-25 and page 247, line 1.]

106. Petitioner admitted that he was unfamiliar with the procedures for filing in U.S. District Court, so he failed his responsibility under Rule 1.1, Professional Rules of Conduct and failed his duty of diligence under Rule 1.3. [Hearing Transcript page

247, lines 2-7.] Petitioner testified that he received a warning about his failures but admitted that he did not see the warning because of his lack of due diligence and his failure to properly monitor his emails and other communications. He was not paying attention. [Hearing Transcript page 247, lines 8-9.] Petitioner acknowledged that the pattern of his conduct continued from June 17, 2012, through all the appeals in the Wilson litigation (which led to the 2015 suspension) [Hearing Transcript page 247, lines 10-18]. He also acknowledged that all the actions he took were a needless waste of time and resources. Petitioner further admitted that he wasted taxpayers' money, for which there was no excuse. [Hearing Transcript page 247, lines 10-18.]

107. Petitioner acknowledged that his 2015 suspension resulted from frivolous litigation [Hearing Transcript page 248, lines 3-6]; failing to handle cases diligently and competently [Hearing Transcript page 248, lines 9-11]; noncompliance with discovery rules [Hearing Transcript page 248, lines 12-14]; and disobeying court orders [Hearing Transcript page 248, lines 15-17]. Petitioner testified that doing these things was not worth losing his license to practice law in Minnesota and he would never do these things again. [Hearing Transcript page 248, lines 22-25.]

108. Petitioner identified the steps he has undertaken to recognize his mistakes and for which he takes sole responsibility. [Hearing Transcript page 249, lines 3-5.] He described going back and reading all the orders from the various courts and that he noticed the specific opportunities each court order gave him to correct his mistakes.

[Hearing Transcript page 249, lines 7-10.] He described how his anger had previously prevented him from seeing things clearly, and how the process of therapy has provided him with a "guiding hand," and that this guiding hand has helped him through the process of analyzing things and understanding them. [Hearing Transcript page 249, lines 11-12.]

109. Petitioner described some earlier, failed attempts to obtain therapy [Hearing Transcript page 249, line 22 – page 250, line 1], and he described finally identifying a therapist willing to stick with him in approximately September, 2023. [Hearing Transcript page 250, line 1.] Petitioner described himself learning through therapy how to peel back the layers and that when he did so, things started to become clearer and more understandable to him. [Hearing Transcript page 250, lines 3-7; pages 386-387.]

110. Petitioner described how, prior to therapy, his basic survival tool was his "anger." [Hearing Transcript page 250, line 8.] His anger motivated him to "fight my way through" things. [Hearing Transcript page 250, lines 8-12.] When his anger did not work for him, Petitioner acknowledged that he automatically resorted to blaming others without looking at his own behavior. [Hearing Transcript page 250, lines 19-23]. Prior to therapy Petitioner used to blame everyone except himself for his circumstances. [Hearing Transcript page 250, lines 21-25.]

111. Petitioner testified that because of his therapy, Petitioner now takes sole responsibility for the errors he committed that resulted in his discipline, stating:

> "A. I can control myself. That's all I can do. I can control myself. I have to take responsibility for myself.
>
> Q. And have you taken responsibility – as you sit here today before this tribunal, are you wholeheartedly admitting that you take responsibility for making the mistakes you made?
>
> A. I made the mistakes. I take responsibility for my mistakes. I put the blame on me. I am where I am because of my conduct.
>
> Q. So are you saying that you understand that the actions you took were wrong?
>
> A. That's exactly what I'm saying."

[Hearing Transcript page 251, lines 4-6.]

112. Petitioner testified that he feels regret for how long it took him to understand what he has learned through therapy [Hearing Transcript page 252, line 1], but he also feels relief – because he no longer must be angry. [Hearing Transcript page 252, line 9.] Petitioner was ashamed and embarrassed for what he put his family through [Hearing Transcript page 252, lines 14-15], but also had a renewed faith in our legal system, because in reviewing the various court orders he noticed all of the opportunities the court offered him to correct his errors, and he found this reassuring. [Hearing Transcript page 252, line 17 – page 253, line 1.] Petitioner described a situation when the court gave him two chances to correct an error he had made, but he didn't

even notice the court had done this until after he began therapy and reviewed court documents. [Hearing Transcript page 253, lines 16-18.]

113. Petitioner acknowledged that the conduct for which he was suspended was serious. [Hearing Transcript page 274, lines 22-25.]

114. When Petitioner was asked what he would do if reinstated to practice law in Minnesota, he stated that he was committed to being competent and diligent. [Hearing Transcript page 254, lines 23-25.] He stated that he would probably begin by taking Public Defender cases once he was reinstated [Hearing Transcript page 271, line 7], and that he would get back to being a civil litigator at the trial level, not the appellate level. [Hearing Transcript page 271, lines 7-10.] He testified that his personal goal was to "be a good lawyer and to devote myself to being an ethical, competent, diligent lawyer." [Hearing Transcript page 276, lines 18-22.]

115. Petitioner acknowledged that because of therapy he has changed his attitude with respect to a mentoring relationship. After he was reinstated to practice law in Wisconsin, initially he objected to entering a mentoring relationship, thinking it was unnecessary. [Hearing Transcript page 304, lines 4-9.] But as a result of therapy, Petitioner now would accept a mentoring relationship, realizing that "I could get out of it what I put into it." [Hearing Transcript page 304, lines 17-23.] A mentoring relationship would be valuable to Petitioner because now he is more trusting that the mentor would be there to help him. [Hearing Transcript page 304, line 24 – page 305,

line 6.] His mentorship pursuant to the Wisconsin reinstatement order ended on or about December 6, 2022. [Director's Exhibit 76, Mentoring Agreement and Mentoring Reports, Page 4.]

116. Petitioner described that he also has learned from his therapy to defer to legal counsel and to listen to other people. He recognized that he can be emotional when directly involved in some things and cannot be as objective as someone who is more removed from the situation; and for that reason, it is important to defer to those who are more objective than Petitioner, including legal counsel. [Hearing Transcript page 306, lines 9-21].

117. During cross-examination, the Director asked why Petitioner had declined to be interviewed by the Director's Office, and Petitioner answered that he deferred to advice of his then counsel Allen Gibas. [Hearing Transcript page 338, lines 17-20.]

118. Petitioner did not call his therapist as a witness during his case in chief.

119. The Panel expressed to Petitioner and his counsel that it would be interested in hearing from Petitioner's therapist. The Panel offered to continue the hearing and schedule a portion of a day to hear testimony from Petitioner's therapist. (Tr. 473-474: 22.) After a consultation between Petitioner and his counsel, Petitioner declined the Panel's offer. (Tr. 475: 6-9.)

120. Although Petitioner testified that he had reviewed the court's 2015 order, the only rules he could recall violating were Rules 1.1 and 1.3, MRPC. (Tr. 247: 4-7.)

Petitioner did not recall the additional misconduct he engaged in except through questions from his counsel. (Tr. 248: 1-25.)

121. Petitioner's recollection was incorrect. Petitioner was not found to have violated Rule 1.3, MRPC. (Ex. 1 at 13.)

122. Petitioner admitted that he had not read the court's 2015 order before the reinstatement hearing, and he could not recall specifically the rules he had violated. (Tr. 303: 17-23.)

123. Petitioner testified that it is hard for him to be objective in his own personal matters. (Tr. 344: 24-25; 345: 1-2.)

124. Prior to his February 2023, petition, petitioner had not made any payments toward the remaining $2,400 sanction, except potentially a modest payment he did not recall details about. (Ex. 66A at 20.)

125. Petitioner did not provide to the Director "a payment plan for satisfying the judgments against him." (Ex. 1 at 17.)

126. Petitioner reported, and the Director was able to verify, that in February 2024, petitioner paid $1,100 toward the $2,400 obligation. (Ex. 82; Tr. 279: 22-24.)

127. When asked at the evidentiary hearing why it was important that sanctions be paid, petitioner's response was that he would have to "start guessing," but then stated, "Because that's the rule." (Tr. 278: 10-17.)

128. Because of the Petitioner's erratic income circumstances it was challenging for Petitioner to make consistent payments on his court imposed or required obligations. [Hearing Transcript page 449 line 25, page 450 lines 1-25, page 451 lines 1-13 page 453 lines 23-25, page 454 lines 1-25, age 455 lines 1-25; Hearing Transcript page 428 line 25, page 429 Lines 1-10, page 430 lines 5-16.]

129. Petitioner maintains a law firm website for Scott Selmer Law, LLC. (Ex. 70.) The website refers to "trial lawyers" in the plural. (*Id*.) And it invites viewers to "Contact Us for Criminal Defense and Civil Litigation." (*Id*.) Despite being suspended in Minnesota, the website includes a Minneapolis address and phone number, and an email for scott@scottselmerlaw.com. (*Id*.) It did not contain a Wisconsin address or phone number. (*Id.)*

130. Petitioner provided conflicting testimony regarding when he created his law firm website. At first, petitioner stated he created it as part of a journalism exercise. (Tr. 255: 9-13.) Then, petitioner stated he created it in 2019. (Tr. 294: 15-17.) Then, petitioner testified that it was created after he was reinstated in Wisconsin. (Tr. 296: 25 – 297: 1-25.)

131. Petitioner did not review the ethics rules relating to law firm advertising before creating the website. (Tr. 303: 1-6.) The website does not indicate that petitioner is only licensed in Wisconsin. (Ex. 70.) Petitioner agreed the website was available to the public and that he has control over its content. (Tr. 296: 11-15.) Petitioner testified

that it did not occur to him to make it clear on the website that he is only licensed in Wisconsin. (Tr. 301: 9-11.) This is the case even though the Director asked petitioner questions regarding the website, and whether it was misleading in March 2023. (Ex. 66A at 14.)

132. Petitioner stated that if he ever received a call from someone asking him to represent them in a Minnesota matter, he would reply that he is not a licensed Minnesota attorney. (Tr. 301: 3-8.)

133. Petitioner testified that he probably made errors in judgment during the reinstatement proceeding, but was unable to identify any, and said only that "Time will tell. I don't know." (Tr. 341: 15-25 - 342: 1-6.)

134. Petitioner stated that he likely will handle criminal matters if reinstated in Minnesota, but that he wanted to get back into civil litigation. (Tr. 271: 4-10.) Petitioner did not have any specific practice plans or office procedures. (Tr. 347: 8-25.)

135. Should Petitioner have the need to be involved as a party in litigation in the future, Petitioner does not have a plan for representing himself ethically and in compliance with the rules. Instead, he stated, he would now go to his brother, also a lawyer (and his counsel at the evidentiary hearing in this proceeding). (Tr. 352-353: 1-7.) The Panel majority is unable to give any weight to this testimony given the fact that Petitioner gave similar testimony in the Wisconsin referee hearing, but was in fact

representing himself in a matter at the time he gave the testimony and thereafter commenced the Financial Institution Litigation on his own behalf.

136. Petitioner stated that:

> I have had a lot of setbacks and I have had a lot of losses and I was pissed off for a long time. But I have made a lot of mistakes and I have to pay for what I have done. But right now, I know that I've got to start over and I know that I'm going to be watched. But I can do this.

(Tr. 396: 9-14.)

137. Petitioner provided character testimony from three witnesses: Dr. Susan Moore, Alan Gibas and Professor Richard Painter, in addition to Scott Herrick, his Wisconsin mentor.

138. Dr. Susan Moore is a professor of education at North Hennepin Community College and has taught for 49 years. (Tr. 118: 20-24; 119: 2.) She and petitioner have a personal relationship and reside together in her home in Bloomington, Minnesota. (Tr. 120: 21-25; 121: 1-7.)

139. Dr. Moore believes petitioner to be honest, a man of high integrity and a terrific father. (Tr. 121: 8-19.)

140. Dr. Moore encouraged petitioner to seek therapy and is proud that he has done so. (Tr. 127: 19-27.)

141. Dr. Moore observed that Petitioner is more at peace with himself, has been calmer, and is going to Catholic Mass again. (Tr. 137: 1-10.)

142. Dr. Moore was not able to testify as to detailed conversations of what legal insights petitioner has had since beginning therapy. However, she did testify that he has said he cannot believe he did what he did after reviewing court orders, and that he has stated he knew better. (Tr. 153: 14-24.)

143. Dr. Moore believes that petitioner is "too hard on himself because he tries to be all things to all people." (Tr. 156: 10-12.)

144. Dr. Moore believes that the court's decisions have been "harsh," but she has not heard petitioner describe them that way. (Tr. 150: 19-25 - 151: 1-5.)

145. Dr. Moore testified that she was aware that Petitioner's misconduct resulting in the 2015 suspension involved bringing frivolous actions in litigation [Hearing Transcript page 126, line 22], failing to diligently handle cases [Hearing Transcript page 126, line 24], failing to follow court orders [Hearing Transcript page 127, line 4], and failing to comply with discovery request [Hearing Transcript page 127, line 7].

146. Dr. Moore testified that the changes she observed in Petitioner's attitude and behavior began after he started therapy in approximately May 2023. [Hearing Transcript page 127, lines 13-24.] She stated that after he began therapy:

a. Petitioner accepted responsibility for some of the situations he got himself into. [Hearing Transcript page 127, line 13.]

b. Petitioner started setting a timer to make sure he kept his therapy appointments because it was important that he be there. [Hearing Transcript page 128, line 20.]

c. Petitioner began employing strategies to deal with issues. [Hearing Transcript page 128, line 25 – page 129, line 1.]

d. Petitioner began taking daily walks for reflection. [Hearing Transcript page 129, line 7.]

147. Dr. Moore also testified that after starting therapy, Petitioner started to realize things, started making connections [Hearing Transcript page 129, lines 14-15], started reflecting and being more introspective [Hearing Transcript page 12, line17], started recognizing things that he should have done [Hearing Transcript page 129, line 20], stopped blaming everyone else except himself for the problems or conditions he was in [Hearing Transcript page 130, line 25], definitely became more introspective and engaged in looking at what he had done wrong to lose his law license [Hearing Transcript page 131, lines 6-15], looked at the order issued by Judge Kyle, looked at the court orders, and noticed that the courts appeared to be reaching out to him to guide him, but he missed them [Hearing Transcript page 132, lines 4-20], acknowledged that he was completely wrong on his part [Hearing Transcript page 133, lines 9-13].

148. Dr. Moore testified that after beginning therapy, Petitioner openly acknowledged that he had repeatedly failed to conduct himself in competently and diligently representing himself as a client. [Hearing Transcript page 133, lines 13-17.]

149. Dr. Moore testified that since beginning therapy, Petitioner no longer blames others for the position he is in now, but instead very much accepts that what he had done was wrong. [Hearing Transcript page 133, line 20], and that he was horrified or mortified by the errors he had made [Hearing Transcript page 134, line 4].

150. Petitioner acknowledged to Dr. Moore that he regretted his actions and was embarrassed by his conduct. [Hearing Transcript page 134, lines 7-11.]

151. Dr. Moore testified that Petitioner began behaving differently after beginning therapy, by once again attending Catholic Mass becoming more aware of things around him, including faith and diligence, becoming calmer [Hearing Transcript page 137, line 2], thinking things out [Hearing Transcript page 137, line 5], being more at peace with himself [Hearing Transcript page 137, line 8], going through everything because of his walks and therapy [Hearing Transcript page 137, line 9.]

152. The Panel finds Dr. Moore to be a credible witness, and the Panel concludes that Dr. Moore's testimony, which was not disinterested, is helpful but not decisive in assessing whether Petitioner has undergone moral change. Dr. Moore's testimony is not helpful in assessing Petitioner's competence to practice law.

153. Alan Gibas and Petitioner have been friends and colleagues since 1980. (Tr. 405.)

154. Mr. Gibas represented Petitioner in the reinstatement proceeding from the date of the petition until his withdrawal following the adjournment of the evidentiary hearing in July 2023. (Tr. 407: 4-10; Order at 7.)

155. Mr. Gibas testified that he has been present for the evidentiary hearing, including Petitioner's testimony, and that he has learned things he did not know, and it has struck him like a "thunderbolt." (Tr. 407: 20-25 - 408: 1-2.)

156. For Mr. Gibas, the insight is that before starting therapy, Petitioner did not have a clear understanding of what had occurred that led to Petitioner's discipline, because of his "trauma response." (Tr. 443: 13-15.)

157. Mr. Gibas testified that Petitioner stated that he could not believe his own conduct, that he detailed the various opportunities the Court of Appeals offered him to correct his errors, but he failed to act, and his embarrassment about his conduct and his disappointment at letting his family down. [Hearing Transcript page 468, lines 11-19.] Petitioner also expressed to Mr. Gibas remorse about making critical remarks about Judge Marrinan, realizing that doing so "aids and abets the kind of people who want to destroy our judicial system and the rule of law. That was what he said to me." [Hearing Transcript page 468, line 20 – page 469, line 3.

158. Mr. Gibas believes that because Petitioner is currently receiving therapy, he would not repeat the conduct that resulted in his discipline, stating:

> "And I got to thinking, you know, he talked at some length about reading these Court of Appeals' decisions where he was given an opportunity to correct his mistake. And I now realize he couldn't correct his mistake because he was stuck. in that flight situation where what he did was he fled. He just ignored it. He just dismissed it without dealing with it. That was his trauma response. And it was just, oh, my goodness, this is not going to happen again now. Because he has finally gotten to the point where he has got some skills, so he is not going to respond with this lizard brain. He is going to respond in the way that he does with his clients. He is going to respond rationally and analytically and employ the skills that has demonstrated when he is not representing himself." [Hearing Transcript page 444, line 18 – page 445, line 1.]

159. Mr. Gibas stated that he did not go over with Petitioner the requirements for reinstatement before Petitioner filed for reinstatement. (Tr. 448: 9-15.) Petitioner signed the petition for reinstatement and submitted it himself; it was not signed by counsel. (Ex. 2 at 6.)

160. Mr. Gibas testified that Petitioner is "…completely intellectually competent. You don't have intellectual incompetence when you get a master's degree from Columbia University. He has demonstrated both before all of this and since this that he knows how to analyze things. He knows how to -- he is very creative and innovative in his approach to things. Yes, he is perfectly competent intellectually and functionally." [Hearing Transcript page 469, lines 13-22.]

161. While the Panel finds Mr. Gibas to be a sincere witness, he was not disinterested or unbiased given his friendship with Petitioner and his prior advocacy

and representation of Petitioner in this matter. The Panel found Mr. Gibas' testimony helpful but not determinative in assessing whether Petitioner has undergone moral change. The Panel did not find Mr. Gibas' testimony helpful in assessing whether Petitioner is currently competent to practice law. The fact that Petitioner was intellectually competent to obtain a master's degree in journalism from Columbia University nearly seven years ago is not probative of his competence to practice law at the time of the evidentiary hearing.

162. Professor Richard Painter testified that he has been a law professor at the University of Minnesota Law School since 2007, where he currently teaches professional ethics classes, among other classes. Prior to that, Professor Painter was, among other positions, chief ethics counsel for President George W. Bush. (Tr. 411.)

163. Professor Painter is not licensed to practice law in Minnesota and does not practice law in Minnesota.

164. Professor Painter met Petitioner prior to his 2019 reinstatement hearing when petitioner approached him about Petitioner's disciplinary matter. (Tr. 413: 1-8.)

165. The Panel denied Petitioner's request to allow Professor Painter to provide expert opinion testimony relating to Rule 18, RLPR, and limited Professor Painter's testimony to his knowledge of Petitioner. (Tr. 417: 3-14.)

166. Professor Painter believes Petitioner to be an honest man who has made serious mistakes. (Tr. 418: 1-5.) He believes that Petitioner "has the ability to be a good

lawyer and an honest lawyer and a hardworking, diligent lawyer." (Tr. 423: 22-24.) Professor Painter did not specifically testify that Petitioner is intellectually competent to practice law.

167. Professor Painter testified that Petitioner had never done any work for him, and he had never seen any of Petitioner's written work product. (Tr. 426: 8-20).

168. Professor Painter has not observed Petitioner practicing law, representing a client, engaged in litigation, or appearing before a judicial or administrative authority. (Tr. 426: 21-25.) Professor Painter has not referred any clients to Petitioner. (Tr. 427: 7-9.)

169. Because Professor Painter's testimony lacked sufficient foundation and factual basis, it was not useful to the Panel in assessing Petitioner's moral change or competence to practice law.

Based on the foregoing Findings of Fact, the Panel makes the following as its

CONCLUSIONS OF LAW

1. Petitioner carries the burden to prove by clear and convincing evidence that he is presently fit to be granted the privilege of a law license. Through its case law and Rule 18, RLPR, the Minnesota Supreme Court has set forth the requirements for reinstatement. *See e.g., In re Reinstatement of Mose (VI), 993* N.W.2d 251 (Minn. 2023).

2. Specifically, petitioner must demonstrate, by clear and convincing evidence: (1) moral change; (2) compliance with the suspension order conditions, if any;

(3) his "intellectual competence to practice law," and (4) compliance with the requirements of Rule 18, RLPR. *Mose*, 993 N.W.2d at 257, 260. Additionally, the court considers four other required factors: [1] the attorney's recognition that the conduct was wrong, [2] the length of time since the misconduct and suspension, [3] the seriousness of the misconduct, and [4] any physical or mental pressures susceptible to correction. *Id. (*additional citations omitted).

3. The majority of the Panel understands that if Petitioner fails to carry his burden of demonstrating moral change, compliance with the suspension order conditions, and his intellectual competence to practice law by clear and convincing evidence, that the proof of the other four required factors that are to be considered is insufficient to justify the Panel in recommending reinstatement. The majority of the Panel further understands that the Petitioner need only prove the four other required factors by a preponderance of the evidence.

4. The Minnesota Supreme Court has said that "'clear and convincing' means exactly what is suggested by the ordinary meaning of the terms making up the phrase. * * * The burden of clear and convincing evidence is less than that required by the 'beyond a reasonable doubt' standard and is met when the truth of the fact to be proven is 'highly probable.' * * * In order to prove a claim by clear and convincing evidence, a party's evidence should be *unequivocal, intrinsically probable and credible, and*

*free from frailties. * * "Gassler v. State*, 787 NW 2d 575, 583 (Minn. 2010)(italics added; internal citations omitted).

5. Where a lawyer has been out of legal practice for several years, particularly where prior discipline involved incompetency, a petitioner's demonstration that they are competent to practice law is important, and usually involves more than completion of the requisite continuing legal education requirements. *Id.* at 261.

6. Proving moral change is the most important factor in reinstatement determinations. *In re Stockman*, 896 N.W.2d 851, 857 (Minn. 2017).

7. To prove moral change, "a lawyer must show remorse and acceptance of responsibility for the misconduct, a change in the lawyer's conduct and state of mind that corrects the underlying misconduct that led to the suspension, and a renewed commitment to the ethical practice of law." *In re Mose (V),* 843 N.W.2d 570, 575 (Minn. 2014) ("Such evidence 'must come not only from an observed record of appropriate conduct, but from the petitioner's own state of mind and his values.'" *Id*. (quoting *In re Swanson*, 405 N.W.2d 892, 893 (Minn. 1987)). The court has defined "remorse" as an expression of "genuine regret and moral anguish for [the attorney's] conduct and the effect it had on others." *In re Severson*, 860 N.W.2d 658, 670 (Minn. 2015).

8. Petitioner has completed the required length of suspension. (Ex. 1.) Petitioner has been suspended for more than 12 months, and in fact has remained suspended almost nine years. The length of Petitioner's suspension is a factor that,

standing alone, would weigh in favor of reinstatement. However, the length of Petitioner's suspension has not been due to any action or inaction by the Director, the Lawyers Professional Responsibility Board, or the Supreme Court; any delays in seeking reinstatement are solely attributable to Petitioner. The Panel majority believes that the length of suspension is, therefore, a neutral factor in determining whether Petitioner should be reinstated.

9. Petitioner has complied with Rule 26, RLPR, by providing the required Rule 26 affidavit, although not in a timely manner. (Ex. 80).

10. Petitioner has complied with Rule 18(e)(2), RLPR, by obtaining a passing score on the MPRE (Ex. 83) and has provided proof of CLE compliance as required by Rule 18(e)(4), RLPR. (Ex. 108.)

11. Petitioner has complied with Rule 24, RLPR, by paying the costs associated with his 2015 discipline and a satisfaction of judgment has been entered. (Ex. 81.)

12. Petitioner has acknowledged and proven by the preponderance of the evidence that as of the time of the evidentiary hearing he recognized that the conduct which led to his suspension was wrong.

13. Petitioner has acknowledged and proven by the preponderance of the evidence that he recognizes the seriousness of the misconduct that led to his suspension.

14. Petitioner has acknowledged and proven by a preponderance of the evidence that he suffered from a mental condition of anger. The Panel believes that anger issues are susceptible of correction, though there is no evidence in the record to confirm that belief other than Petitioner's own testimony.

15. Petitioner did not, prior to petitioning for reinstatement in February 2023, satisfy the remaining sanctions, nor did Petitioner provide to the Director as required a payment plan for satisfying the judgments against him. (Ex. 1 at 17.) Other than an unidentified modest payment, Petitioner did not pay the remaining sanctions before petitioning, nor did he provide a proposed payment plan to satisfy the sanctions at or before he petitioned for reinstatement. Petitioner paid $1,100 toward the remaining $2,400 sanction in February 2024, but still has not provided a payment plan to the Director to satisfy the judgment, as required by the terms of the court's 2015, order.

16. Petitioner did not seek relief from any portion of the court's order before petitioning for reinstatement. (Tr. 280: 11-17.)

17. Petitioner has stated that he is financially unable to make any further payments at this time. (Tr. 274: 6-11). When petitioner was reinstated to the practice of law in Wisconsin in March 2021, and able to practice law again, he did not make any payments toward the sanctions, or provide a payment plan. Petitioner is also not compliant with his obligation to pay $20 per month as part of his reinstatement in Wisconsin. (Ex. 33.)

18. Petitioner did not present evidence that he read the court's 2015 order before petitioning for reinstatement in February 2023, to ensure that he understood and was compliant with the terms of that order. Although Petitioner has failed to prove by clear and convincing evidence that he has satisfied the financial requirements of the court's suspension order, and notwithstanding that strict compliance with the court's suspension order is not only generally required but particularly relevant in this case given Petitioner's underlying misconduct of failing to follow court orders, the Panel believes that given the length of Petitioner's suspension and the financial hardship which he has demonstrated, this case presents circumstances which would warrant an unusual hardship exception if all other criteria for reinstatement were satisfied.

19. Petitioner has shown moral change, including remorse, by a preponderance of the evidence. However, the majority of the Panel is unable to reach a conclusion that based upon the totality of the evidence in the record, when viewed as a whole, that the evidence is unequivocal, intrinsically credible and probable in all material respects, and free from frailties in order to establish that Petitioner has undergone moral change, including remorse, by "clear and convincing evidence," as that term is defined by the Court, due to a number of factors.

20. First, it is unclear when the therapy that Petitioner attributes to his moral change and remorse, and recognition of the role anger played in his conduct, actually

began. At the very earliest the recognition of personal responsibility did not start until several months after the adjourned July 16 evidentiary hearing.

21. Second, it is unclear when in relation to the March evidentiary hearings the realizations that led Petitioner to moral change and remorse began to occur. Was it six months earlier, or six days earlier? The record is unclear and not free from frailties.

22. Third, given the fact that the moral change occurred very recently and given the fact that Petitioner did not produce testimony from his therapist to corroborate and explain what had occurred to cause the moral change, the Panel majority does not believe the evidence of moral change is unequivocal, intrinsically credible, or free from frailties, sufficient enough to rise to the level of clear and convincing evidence. The testimony of Dr. Moore and Mr. Gibas , though helpful in permitting the Panel majority to reach the conclusion that, together with Petitioner's own testimony, moral change is proven by a preponderance of the evidence, the evidence in the record is inadequate to permit the majority of the Panel to conclude that the evidence of moral change is clear and convincing.

23. Fourth, Petitioner's evidence of acceptance of responsibility was mixed. He testified that he accepted responsibility for his mistakes that led to his discipline in 2015, but could not recount in detail, other than two rules (Rules 1.1 and 1.3, MRPC, one of which he did not violate,) for what specifically he was accepting responsibility. *In re Trombley*, 947 N.W.2d 242, 248 (Minn. 2020) ("We look favorably on attorneys who

recount their misconduct, and in doing so, reveal that they have reflected on their misconduct and understand 'how and why the misconduct occurred.'") Petitioner's insight appears to be limited to his failure to read court orders, and his filing of frivolous claims in federal court, but petitioner's misconduct was broader than that.

24. Fifth, as recently as the July 2023 evidentiary hearing, Petitioner was not accepting responsibility for the majority of his misconduct but was stating that he had not been fairly treated by the courts, a belief he has held since 1997, and Petitioner believed that the Director's investigation was a charade.

25. Sixth, based on Petitioner's testimony, it appears that his moral change occurred in late 2023 or in early 2024 before the March hearing. In assessing the genuineness of Petitioner's moral change, the Panel cannot ignore the fact that from 2020-2023, petitioner filed lawsuits in personal matters without following court rules or procedures, failed to respond to discovery or attend hearings or conferences in those matters, and filed a defamation claim which was preempted by federal law, many of the same types of conduct that led to his 2015 suspension. Moreover, such conduct is inconsistent with the ethics rules that require competent lawyering (Rule 1.1, MRPC), compliance with court orders (Rule 3.4(c), MRPC), and reasonably diligent efforts to comply with discovery (Rule 3.4(d), MRPC). This is particularly concerning to the majority of the Panel given the testimony Petitioner gave in the Wisconsin referee hearing in November, 2020, that he did not intend to represent himself any longer, even

though he was at the time representing himself in a frivolous matter and subsequently commenced another frivolous matter in which he represented himself.

26. Seventh, the Panel cannot ignore the fact that for a significant portion of the period during which he has been suspended the Petitioner has maintained a website that makes it appear as if he was a lawyer practicing law in Minnesota, which would be a violation of the Rules of Professional Conduct since he was under suspension. That website was still available on the internet during the evidentiary hearing in March 2024. Indeed, as of June 8, 2024, the website is still active on the internet and has not been changed since the evidentiary hearing.

27. Eighth, Petitioner's insights from therapy are recent, and laudable to the limited extent the Panel was provided information, but those insights are counterbalanced by evidence in recent years of continuing to engage in the same types of conduct that led to issues. Petitioner did not provide the testimony of anyone other than himself who could comment on the progress that petitioner has made in therapy as it relates to his law practice, his understanding of all the root causes for his misconduct, or who had an opinion regarding the durability or lasting nature of any insights or changes that petitioner has been able to make recently. The unwillingness of Petitioner to call his therapist as a witness to corroborate his testimony is concerning to the Panel majority.

28. Ninth, Petitioner has not apologized, nor testified he has plans to apologize, to the people he harmed which led to his suspension in 2015. Nor has he apologized, or indicated an intention to apologize, to people harmed by his conduct during his suspension which was similar to the conduct for which he was suspended.

29. Petitioner has proven by a preponderance of the evidence that he is intellectually competent to practice law based solely upon his unrebutted testimony that he has represented defendants in 250 criminal cases in Wisconsin. However, the Panel majority is unable to conclude that the evidence in the record is unequivocal, inherently credible and probable, and free from frailties in order to support a conclusion that Petitioner has proven intellectual competence to practice law by clear and convincing evidence. This is supported by several factors.

30. First, Petitioner did not provide the testimony of anyone who has observed any of his work or how he engages in the practice of law, whether for himself or in the representation of others, who could speak to specific changes in how petitioner practices law following his suspension, even though petitioner has been readmitted to practice law in Wisconsin for more than three years.

31. Second, Petitioner's character witnesses did not assist in satisfying his burden of proof because none of them were able to testify about any specific legal work petitioner has engaged in since 2015, nor did anyone testify to how any insights Petitioner has gained in therapy will likely transfer to his legal practice.

32. Third, Petitioner presented no evidence of the type of legal work he did, such as writing briefs, arguing motions, or trying bench or jury trials. Nor did Petitioner offer examples of his written work product or court orders resulting from his advocacy from which the Panel could assess the quality of his work in order to determine his intellectual competence. The Panel does not know whether the 250 cases Petitioner handled in Wisconsin were all plea bargains negotiated at a first appearance, or whether they represented efforts by Petitioner in complex cases with legal issues requiring extensive legal analysis or whether they fell across a spectrum of legal difficulty.

33. Fourth, Petitioner presented no testimony from opposing counsel, co-counsel, or members of the judiciary who observed his work in the 250 criminal matters he handled and who could comment upon the quality or competence of Petitioner's work based on first-hand knowledge.

RECOMMENDATION

The Panel majority recommends that the Petitioner not be reinstated to the practice of law in Minnesota due to failure to establish the requisite elements of moral change and intellectual competence to practice law by clear and convincing evidence.

Should the Court disagree with the Panel majority's recommendation and determine that the Findings of Fact support conclusions that moral change and intellectual competence to practice law have been proven by clear and convincing

evidence, the Panel recommends that the Court waive the requirement that Petitioner satisfy the financial obligations previously imposed upon him as a prerequisite to reinstatement on the grounds of proven financial hardship, but that if the Court does decide to reinstate Petitioner, the Petitioner should be reinstated to the practice of law only subject to the following conditions:

1. Petitioner must enter into payment plans to satisfy the prior financial obligations imposed by the Court, and Petitioner must strictly adhere to such payment plans.

2. Petitioner may not represent himself, his children, his grandchildren, his life partner, his spouse, or any other relative up to the third degree, in any transaction, adjudicative proceedings, or other legal matter.

3. Petitioner may not fail to meet any deadlines set by any court in which he is appearing, nor fail to comply with any order of any court.

4. Petitioner will be subject to audit at least annually by the Director of the Office of Lawyer Professional Responsibility to determine whether he is in strict compliance with the reinstatement order of the Court.

5. Petitioner will be on probation for the remainder of the time he practices law in Minnesota, and in the event of any suspected violation of the Court's reinstatement order, or of any Rule of Professional Conduct, Petitioner will be subject to immediate temporary suspension of Petitioner's license to

practice law in Minnesota by the Court pending a determination whether such violation occurred.

6. Proven violation of any provision of the Court's reinstatement order will result in disbarment.

Dated: June 11, 2024

William Z. Pentelovitch, Panel Chair

Dated: June 11, 2024

/s/Paul Lehman
Paul Lehman, Public Member

Opinion of Dissenting Panel Member

1. The Minnesota Supreme Court imposes sanctions in attorney-discipline cases, "not as punishment", but rather "to protect the public, to protect the judicial system, and to deter future misconduct by the disciplined attorney and other attorneys." *In re: Charges of Unprofessional Conduct in Panel File No. 39302*, 884 N.W.2d 661, 669 (Minn. 2016). quoting, *In re Rebeau*, 787 N.W.2d 168, 173 (Minn. 2010). Sanctions are imposed "according to the unique facts of each case" weighing" (1) the nature of the misconduct, (2) the cumulative weight of the disciplinary violations, (3) the harm to the public, and (4) the harm to the legal profession." *Id.*

2. In that light, it appears the majority leans more heavily on its interpretation of the Minnesota Supreme Court's "clear and convincing" evidence standard than is warranted by the case law in professional discipline cases and places too little weight on the additional requirements.

3. Although I recognize petitioner must demonstrate, by clear and convincing evidence: (1) moral change; (2) compliance with the suspension order conditions, if any; (3) his "intellectual competence to practice law," and (4) compliance with the requirements of Rule 18, RLPR, *Mose*, 993 N.W.2d at 257, 260, I do not read *Gassler v. State,* 787 NW 2d at 575, as the relevant precedent for what "clear and convincing" means in attorney discipline cases. *See In re Sanchez*, 985 N.W.2d 352 (Minn. 2023); *In re Klotz*, 996 N.W.2d 165 (Minn. 2023); *In re Reinstatement of Severson*, 923 N.W.2d 23 (Minn. 2019) ("must be such that if the petitioner were reinstated, 'clients could submit their most intimate and important affairs to him with complete confidence in both his competence and fidelity."). I credit Petitioner's testimony, that in the period between May 2023 and the March 2024 hearing, he reviewed his own case history and recognized his role and responsibility in his 2015 suspension and in the several failed efforts at reinstatement since. I find it clear and convincing that Petitioner, through meaningful mental health care, improved his moral position.

4. That said, even if Petitioner has only just started changing his moral position and has not yet fully arrived, I believe that this is a case for which the

additional requirements were contemplated, and are needed to prevent the Minnesota Supreme Court turning Petitioner's suspension into a punishment.

5. The court considers the four other required factors: [1] the attorney's recognition that the conduct was wrong, [2] the length of time since the misconduct and suspension, [3] the seriousness of the misconduct, and [4] any physical or mental pressures susceptible to correction.

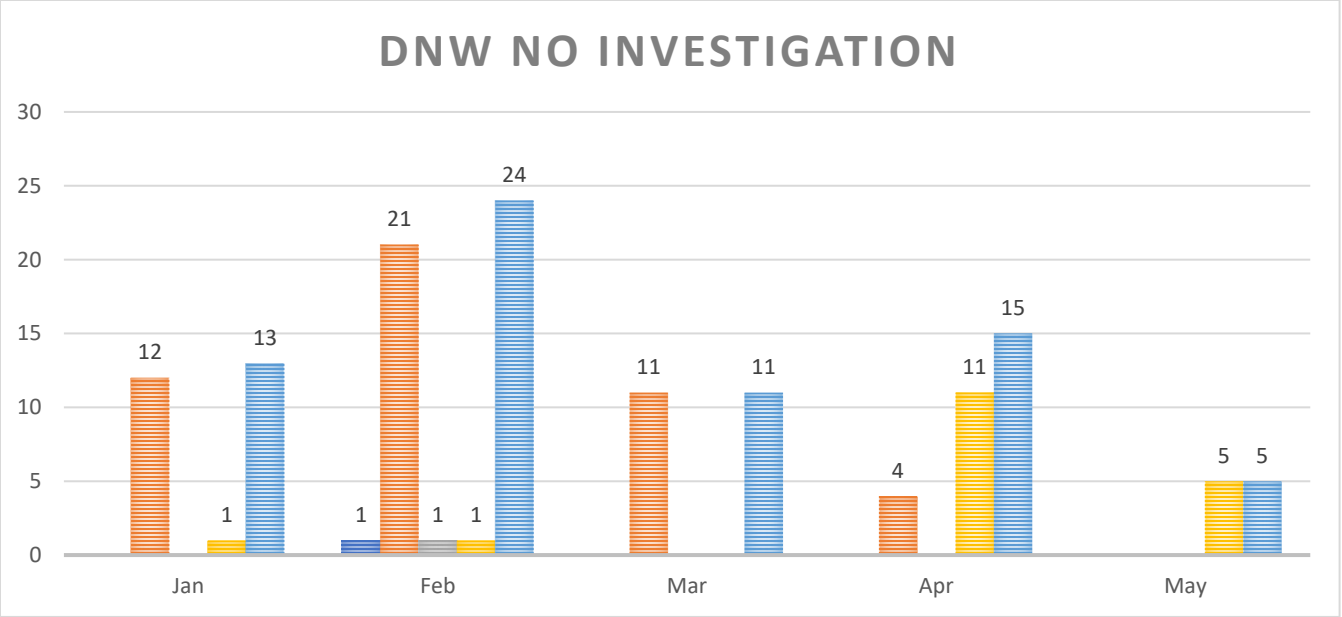
6. First, as indicated above, I credit Petitioner's testimony that he recognizes his conduct leading to his suspension was wrong. Second, I weigh the significant passage of time since the misconduct and suspension in this case in Petitioner's favor. The suspension at issue here is from 2015. Petitioner's own conduct and only relatively recent progress in therapy contributed to the delay. Indeed, it appears the time was necessary to have given Petitioner the space and time to recognize the personal missteps leading to his discipline. In this case the long length of time also gives the Court some relatively unique additional points of reference. Already reinstated by the Wisconsin Supreme Court, the Minnesota Supreme Court can see the discipline free time Petitioner has been a practicing and competent attorney in Wisconsin. The quantity of this discipline and complaint free work shows convincingly that Petitioner can be relied on. Therefore, I believe the length of time since the misconduct and suspension weighs in Petitioner's favor. Third, I credit Petitioner's testimony recognizing seriousness of the misconduct. And, fourth, I view any physical or mental

pressures are susceptible to correction in Petitioner's case, as long as he continues to seek the help of professionals, friends and family.

7. The majority's conditions, with which I concur, should satisfy the Court's concerns with reinstatement, protecting the public, while preventing discipline from becoming punishment.

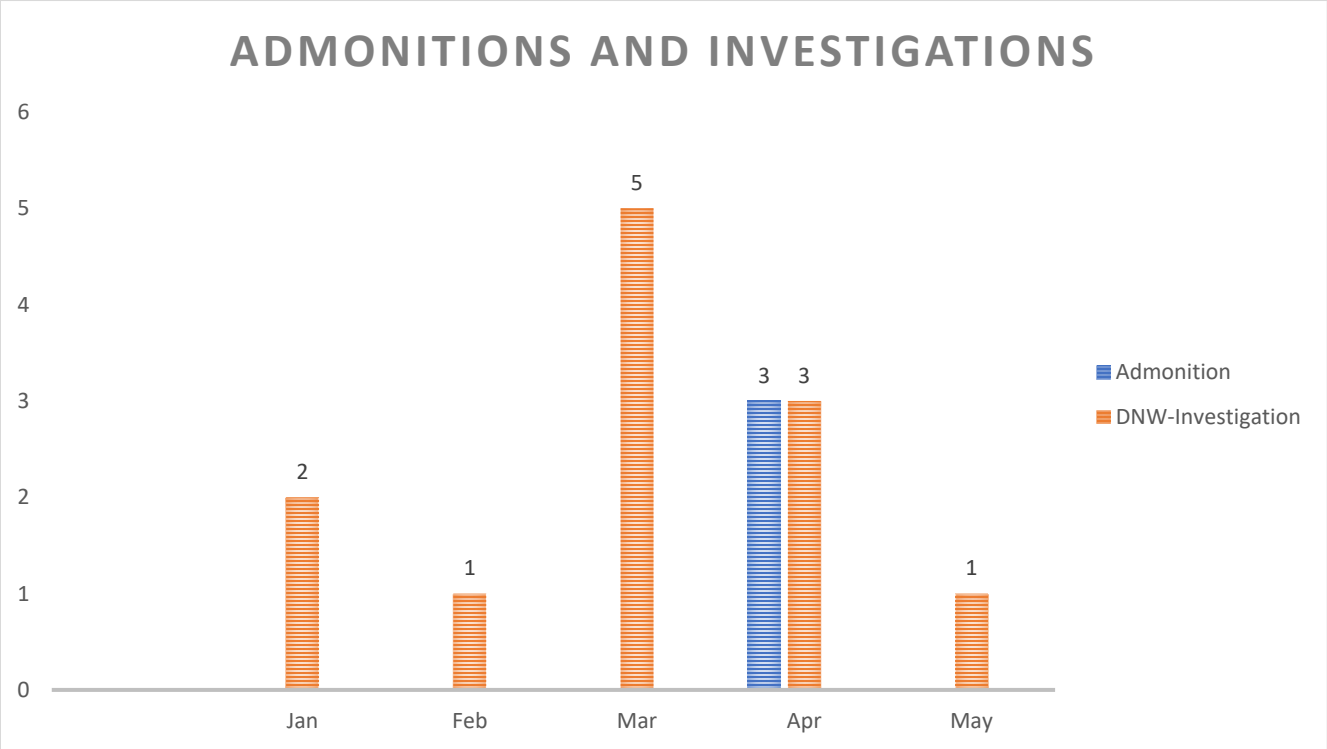
Dated: June 11, 2024

/s/John Zwier
John Zwier, Lawyer Member



Blue: Total
Gray: Further Investigation
Yellow: Active Cases
Orange: Affirmed

Average: 20.142 days



Average: 19 days

OLPR Dashboard for Court And Chair

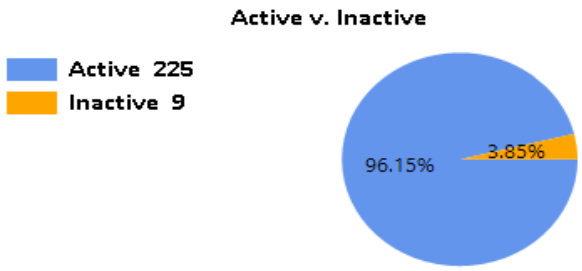
	Month Ending April 2025	Change from Previous Month	Month Ending March 2025	Month Ending April 2024
Open Files	651	20	631	578
Total Number of Lawyers	427	13	414	392
New Files YTD	524	127	397	383
Closed Files YTD	473	107	366	359
Closed CO12s YTD	140	34	106	74
Summary Dismissals YTD	298	74	224	189
Files Opened During April 2025	127	0	127	88
Files Closed During April 2025	107	-15	122	97
Public Matters Pending (excluding Resignations)	34	-1	35	28
Panel Matters Pending	10	0	10	9
DEC Matters Pending	118	4	114	105
Files on Hold	13	0	13	8
Advisory Opinion Requests YTD	577	128	429	625
CLE Presentations YTD	8	5	3	15
Files Over 1 Year Old	234	7	227	175
Total Number of Lawyers	129	2	127	116
Files Pending Over 1 Year Old w/o Charges	127	5	122	123
Total Number of Lawyers	88	3	85	88

	2025 YTD	2024 YTD
Lawyers Disbarred	4	1
Lawyers Suspended	3	6
Lawyers Reprimand & Probation	1	0
Lawyers Reprimand	0	2
TOTAL PUBLIC	**8**	**9**
Private Probation Files	0	2
Admonition Files	35	27
TOTAL PRIVATE	**35**	**29**

FILES OVER 1 YEAR OLD

Year/Month	OLPR	AD	PAN	HOLD	SUP	SCUA	REIN	Total
2018-10		2						**2**
2018-12	1							**1**
2019-04					1			**1**
2019-07	1							**1**
2019-08	1							**1**
2020-01	1							**1**
2020-02					1			**1**
2020-09	1							**1**
2021-01	1					1		**2**
2021-03	1			1				**2**
2021-05	3							**3**
2021-06	1	1				2		**4**
2021-07	1							**1**
2021-08					2	1		**3**
2021-09	1					1		**2**
2021-10	1							**1**
2021-11	5							**5**
2022-01	1							**1**
2022-03	1					1		**2**
2022-04	3				1			**4**
2022-05	2							**2**
2022-07	1							**1**
2022-08	2		1			2		**5**
2022-09	1		1			1		**3**
2022-10	1			3	1			**5**
2022-11	2		1			1		**4**
2022-12	1							**1**
2023-01	3				2	1		**6**
2023-02	3			3	2	2		**10**
2023-03	3				3			**6**
2023-04	3				1	1		**5**
2023-05	3			1	1	1		**6**
2023-06	2							**2**
2023-07	8				1	7		**16**
2023-08	10		1			2		**13**
2023-09	5	1			23	1		**30**
2023-10	4			1	4	2	1	**12**
2023-11	10				1	5		**16**
2023-12	4					1		**5**
2024-01	3	1				2		**6**
2024-02	12				1	1		**14**
2024-03	10	1				2		**13**
2024-04	10	2				1	1	**14**
Total	**127**	**8**	**4**	**9**	**45**	**39**	**2**	**234**

	Total	**Sup. Ct.**
Sub-total of Cases Over One Year Old	195	47
Total Cases Under Advisement	39	39
Total Cases Over One Year Old	**234**	**86**



All Pending Files as of Month Ending April 2025

Year/Month	SD	DEC	REV	OLPR	AD	PAN	HOLD	SUP	SCUA	REIN	RESG	TRUS	**Total**
2018-10					2								**2**
2018-12				1									**1**
2019-04								1					**1**
2019-07				1									**1**
2019-08				1									**1**
2020-01				1									**1**
2020-02								1					**1**
2020-09				1									**1**
2021-01				1					1				**2**
2021-03				1			1						**2**
2021-05				3									**3**
2021-06				1	1				2				**4**
2021-07				1									**1**
2021-08								2	1				**3**
2021-09				1					1				**2**
2021-10				1									**1**
2021-11				5									**5**
2022-01				1									**1**
2022-03				1					1				**2**
2022-04				3				1					**4**
2022-05				2									**2**
2022-07				1									**1**
2022-08				2		1			2				**5**
2022-09				1		1			1				**3**
2022-10				1			3	1					**5**
2022-11				2		1			1				**4**
2022-12				1									**1**
2023-01				3				2	1				**6**
2023-02				3			3	2	2				**10**
2023-03				3				3					**6**
2023-04				3				1	1				**5**
2023-05				3			1	1	1				**6**
2023-06				2									**2**
2023-07				8				1	7				**16**
2023-08				10		1			2				**13**
2023-09				5	1			23	1				**30**
2023-10				4			1	4	2	1			**12**
2023-11				10				1	5				**16**
2023-12				4					1				**5**
2024-01				3	1				2				**6**
2024-02				12				1	1				**14**
2024-03				10	1				2				**13**
2024-04				10	2				1	1			**14**
2024-05				17			1	2	2				**22**
2024-06				21			1						**22**
2024-07				22				1		1			**24**
2024-08		1		23	1		1	1					**27**
2024-09		1		13				1					**15**
2024-10		5		25				1					**31**
2024-11		5	1	20				2		1			**29**
2024-12		8	3	27								1	**39**
2025-01		18	3	22			1	1	1				**46**
2025-02		19		15									**34**
2025-03		34		12							1		**47**
2025-04	29	27		15						2	8		**81**
Total	**29**	**118**	**7**	**359**	**9**	**4**	**13**	**54**	**42**	**6**	**9**	**1**	**651**

ALL FILES PENDING & FILES OVER 1 YR. OLD	
SD	Summary Dismissal
DEC	District Ethics Committees
REV	Being reviewed by OLPR attorney after DEC report received
OLPR	Under Investigation at Director's Office
AD	Admonition issued
ADAP	Admonition Appealed by Respondent
PROB	Probation Stipulation Issued
PAN	Charges Issued
HOLD	On Hold
SUP	Petition has been filed.
S12C	Respondent cannot be found
SCUA	Under Advisement by the Supreme Court
REIN	Reinstatement
RESG	Resignation
TRUS	Trusteeship

AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

Formal Opinion 515 **March 5 , 2025**

A Lawyer's Discretion to Report When a Client Commits a Crime Against the Lawyer or Against Someone Associated with, or Related to, the Lawyer.

A lawyer who is the victim of a crime by a client or prospective client may disclose information relating to the representation to the appropriate authority in order to seek an investigation and potential prosecution of the alleged offender or other services, remedy, or redress. To the extent that the information would otherwise be subject to the lawyer's duty of confidentiality under Model Rule of Professional Conduct 1.6, the information is subject to an implicit exception to the Rule.

This implicit confidentiality exception also applies when someone associated with the lawyer or related to the lawyer is a victim of the client's crime and the lawyer is a witness to that crime.

I. Introduction

Lawyers or those with whom they work occasionally become victims of a client's financial crime, violent crime, or other crime. Like other people, lawyers may have a personal interest or perceive a societal interest in reporting a crime committed against them to enable law enforcement authorities to investigate or prosecute as appropriate. Lawyers may also have other interests in disclosing information relating to the crime, such as in receiving medical treatment, insurance coverage or other services, or to prevent harm to others. However, the information that the lawyer would need to report for purposes such as these may include information relating to the representation of the client that the lawyer ordinarily must protect under ABA Model Rule of Professional Conduct 1.6(a). Although Rule 1.6(b) recognizes certain exceptions when a client abuses the client-lawyer relationship, no exception would apply to all situations in which a lawyer, or someone associated with the lawyer or related to the lawyer is a victim of a client's crime. This opinion concludes that there is an implicit confidentiality exception in this situation when the lawyer is a victim of the client's crime or someone associated with the lawyer or related to the lawyer is a victim of the client's crime and the lawyer is a witness to that crime.

II. Hypothetical scenarios

A lawyer may become a crime victim in various ways. We consider the following scenarios to ground the discussion that follows.

Hypothetical #1[1]

A person purporting to be a foreign creditor, whom the lawyer does not know and never meets, seeks by email to retain a lawyer in a collections matter on a contingent-fee basis. After email exchanges culminate in an engagement agreement with the alleged

[1] This scenario appears in N.Y. City Bar Ass'n Op. 2015-3 (2015).

creditor, the lawyer corresponds with the alleged debtor, who quickly agrees to send a check in full settlement of the alleged debt. Promptly upon receipt, the lawyer deposits the check into the lawyer's client trust account, and, soon after, the lawyer receives notice that the funds have become available. The lawyer immediately transfers a portion to the lawyer's general operating account to pay the lawyer's fee and transfers the remaining portion to the client's foreign bank account. Sometime later, the bank notifies the lawyer that the check was fraudulent,[2] and that it will use other funds in the client trust account, or look to the lawyer, to cover the deficiency.

Hypothetical #2

A person purporting to be a foreign creditor, whom the lawyer does not know and never meets, seeks by email to retain a lawyer in a collections matter on a contingent-fee basis. Before agreeing to accept the representation, the lawyer conducts an inquiry and determines that both the alleged creditor and the alleged debtor are sham parties seeking to scam lawyers by inducing them to deposit fraudulent checks into their client trust accounts and then transfer funds that the banks make available.

Hypothetical #3

A lawyer meets a client in the lawyer's office to discuss a matter that the lawyer is handling for the client. The client becomes angry with the lawyer, removes a firearm, shoots the lawyer or the lawyer's paralegal in the shoulder, and then flees the office and the building.

Hypothetical #4

During an in-person meeting with a client, a lawyer briefly leaves the client in the lawyer's office unattended. After the client leaves, the lawyer discovers that the client has stolen the lawyer's wallet from the lawyer's desk.

III. Establishment of a Duty of Confidentiality

Rule 1.6(a) of the ABA Model Rules of Professional Conduct provides in pertinent part: "A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent … ." The Model Rules establish a similar confidentiality duty with respect to a "prospective client," which Rule 1.18(a) defines as "[a] person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter." Rule 1.18(b) provides that: "Even when no client-lawyer relationship ensues, a lawyer who has learned

[2] "Unfortunately, the attorney might not realize that a bank can 'clear' a check and make the funds available before the bank actually ***collects*** the funds. The bank may take weeks or even months to discover that the check is fraudulent. When that happens, the bank will notify the attorney that the check was fraudulent." *Id. See also* Mo. Informal Op. 2020-15 (2020) for a discussion of Missouri Rule 1.15(a) and distinguishing "good funds" which can be disbursed and "cleared funds."

information from a prospective client shall not use or reveal that information, except as Rule 1.9 would permit with respect to information of a former client."[3]

The threshold question for a lawyer victimized in scenarios like those above is whether information the lawyer seeks to report is subject to the confidentiality duty of Rule 1.6(a) or Rule 1.18(b). In some situations, information the lawyer seeks to report about a crime committed against the lawyer or a member of the lawyer's firm or family, or someone else close to the lawyer, will not be subject to a confidentiality duty for either of the following reasons.

First, the information may not relate to the representation of an actual "client" or "prospective client."

Whether a person is a "client" for purposes of Rule 1.6 and other professional conduct rules is governed by law outside the professional conduct rules,[4] on which this Committee does not ordinarily opine. But we note that contract law, which ordinarily determines whether a client-lawyer relationship was formed, supports the proposition that the formation of such a relationship requires the person to have a good faith intention of seeking legal services from the lawyer.[5] Accordingly, several ethics committees have concluded that in scenarios like Hypothetical #1, where the person never sought actual legal services but entered into an engagement agreement with the lawyer only with the intent to defraud the lawyer, there is no bona fide client-lawyer relationship and therefore the lawyer has no confidentiality duty.[6] For example, in an opinion regarding a lawyer who is the intended fraud victim of a purported real estate investor, the New York State Bar's committee opined: "If the purported investor's aim was to perpetrate a scam on the inquiring attorney, then he was not making a bona fide attempt to obtain legal advice or other legal services. We believe that in that case, there would be no representation and consequently no duty of confidentiality under Rule 1.6."[7]

Whether a person is a *prospective* client, on the other hand, is governed by Rule 1.18(a), not principally by other law. The Committee has little difficulty concluding that a person who pretends to seek a lawyer's services solely for purposes of defrauding the lawyer is not a prospective client. Comment [2] to Rule 1.18 addresses the situation in which a person goes through the motions of consulting with the lawyer about a possible client-lawyer relationship but is not a prospective client as defined by Rule 1.18. This Comment states that one who

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[3] MODEL RULES OF PROF'L CONDUCT R. 1.9(c) provides: "A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter: (1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or (2) reveal information relating to the representation except as these Rules would permit or require with respect to a client."

[4] *See* MODEL RULES OF PROF'L CONDUCT Scope [17].

[5] *See, e.g.*, RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §14 (holding that a client must "manifest" an intent to seek legal services from the lawyer); RESTATEMENT (SECOND) OF CONTRACTS §153 ("Where a mistake of one party at the time a contract was made as to a basic assumption on which he made the contract has a material effect on the agreed exchange of performances that is adverse to him, the contract is voidable by him if he does not bear the risk of the mistake . . ., (a) the effect of the mistake is such that enforcement of the contract would be unconscionable, or (b) the other party had reason to know of the mistake or his fault caused the mistake.").

[6] Ky. Bar Ass'n Op. KBA E-455 (2022); N.Y. City Bar Ass'n Op. 2015-3 (2015); N.Y. State Bar Ass'n Comm. on Prof'l Ethics Op. 923 (2012).

[7] N.Y. State Bar Ass'n Comm. on Prof'l Ethics Op. 923 (2012).

"communicates with [the] lawyer for the purpose of disqualifying the lawyer" is not a prospective client. If, as in Hypothetical #2, the party requesting the lawyer's services intends to defraud the lawyer, that party is not a prospective client and the lawyer has no confidentiality duty and may freely report any information about that party to law enforcement authorities, financial institutions, and others.[8] Lawyers who make initial inquiries and assessments before accepting a new engagement, consistent with the recent amendment to Rule 1.16(a) and earlier opinions,[9] may be able to more readily identify sham clients.[10]

Second, even if there is a bona fide client-lawyer relationship, certain information about the client's commission of a crime against the lawyer may not be "information relating to the representation." But it will be a rare occasion when the information about a client's acts does *not* relate to the representation, given the breadth of information protected by Rule 1.6, which includes the identity of clients,[11] and that the Rule prohibits disclosures which themselves do not reveal protected information "but could reasonably lead to the discovery of such information by a third person."[12] For example, in opinions addressing lawyers' on-line discussions of their legal representations, the Committee has cautioned lawyers about the provision of detail that might enable readers to identify the unnamed clients and thereby to learn information about specific clients' representation.[13] Giving broad scope to the confidentiality duty protects the interests of current and former clients and fosters trust in the client-lawyer relationship.[14]

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[8] Of course, many lawyers will treat the person as a prospective client upon first contact, but the lack of intent to form a bona fide client-lawyer relationship on the part of the scammer means that no actual duty was owed at all to the scammer.

[9] The requirement is discussed in ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 513 (2024).

[10] NYC Bar Association Opinion 2015-3 identifies a series of "red flags" relevant to this assessment: The email sender is based abroad; the email sender does not provide a referral source; the initial email does not identify the law firm or recipient attorney by name; the email uses awkward phrasing or poor grammar, suggesting that it was written by someone with poor English or was converted into English via a translation tool; the email is sent to "undisclosed recipients," suggesting that it is directed to multiple recipients; the email requests assistance on a legal matter in an area of law the recipient attorney does not practice; the email is vague in other respects, such as stating that the sender has a matter in the attorney's "jurisdiction," rather than specifying the jurisdiction itself; the email sender suggests that for this particular matter the attorney accept a contingency fee arrangement, even though that might not be customary for the attorney's practice; the email sender is quick to sign a retainer agreement, without negotiating over the attorney's fee (since the fee is illusory anyway); the email sender assures the attorney that the matter will resolve quickly; the counterparty, if there is one, will also likely respond quickly, settling the dispute or closing the deal with little or no negotiation; the email sender insists that his funds must be wired to a foreign bank account as soon as the check has cleared; the email sender or counterparty sends a supposed closing payment or settlement check, typically from another jurisdiction, within a few days. *See also* N.C. State Bar Formal Op. 2021-2 (2021).

[11] *See* ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 511 (2024) (Confidentiality Obligations of Lawyers Posting to Listservs).

[12] MODEL RULES OF PROF'L CONDUCT R. 1.6 cmt. [4].

[13] *See* ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 511R (2024) (Confidentiality Obligations of Lawyers Posting to Listservs); ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 496 (2021) (Responding to Online Criticism); ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 480 (2018) (Confidentiality Obligations for Lawyer Blogging and Other Public Commentary).

[14] Although lawyers also have a confidentiality duty to former clients under Rule 1.9, that is ordinarily a duty to preserve the confidentiality of information relating to the former representation. We assume that if a former client commits a crime against the lawyer, the criminal conduct will not relate to the former representation, and therefore information about that conduct will not be protected by the confidentiality duty. To the extent that information relating to the crime is related to the former representation, however, then the lawyer contemplating disclosure should consider whether and to what extent an express or implied confidentiality exception applies.

In Hypotheticals #3 and #4, if there is a bona fide client-lawyer relationship, then the information that the lawyer would want to report likely falls within the ambit of Rule 1.6(a). For example, the fact that a particular individual was a client who met with the lawyer in the lawyer's office at a particular time is all information relating to the representation and thus protected by Rule 1.6(a), even if the lawyer does not reveal the subject of the representation or the nature of any communications with the client. Rule 1.6(a) covers substantially more information than does the attorney-client privilege, which ordinarily protects only confidential communications between the client and the lawyer or their respective agents.[15] The confidentiality duty in Rule 1.6(a) is intended not only to encourage clients' disclosures but to preserve clients' trust, which could be eroded by lawyers' disclosure of *any* information relating to the representation without the client's consent.[16] A lawyer in Hypotheticals #3 and #4 may not ordinarily report information relating to a bona fide client-lawyer relationship unless there is an applicable exception to the confidentiality duty.

IV. Rule 1.6(b)'s Express Exceptions to the Confidentiality Duty

Rule 1.6 recognizes various express exceptions to the confidentiality duty. Rule 1.6(b) provides that: "A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary" for any of seven specific purposes. The list has expanded over time. As of 1980, the ABA Model Code of Professional Responsibility permitted disclosures without the client's consent insofar as necessary to serve only three purposes: to prevent a client's crime; to collect a lawyer's fee or to defend the lawyer or the lawyer's employees or associates against an accusation of wrongful conduct; or to comply with another rule, a law or a court order.[17]

In some circumstances, a lawyer may have discretion to report a client's crime against the lawyer under one of the current express exceptions. To begin with, Rule 1.6(b)(1) permits disclosures "to the extent the lawyer reasonably believes necessary . . . to prevent reasonably certain death or substantial bodily harm." It is conceivable that a client who committed a violent crime against the lawyer, a member of the lawyer's family, or someone associated with the lawyer will be threatening further violence. A lawyer may disclose information relating to the representation in the rare circumstance in which the lawyer reasonably believes that such disclosure is necessary to prevent further violent acts that are "reasonably certain [to result in] death or substantial bodily harm." But such a disclosure must be limited to the extent reasonably necessary to prevent death or substantial bodily harm.

Under Rule 1.6(b)(3), a lawyer may make disclosures "to the extent the lawyer reasonably believes necessary . . . to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services." This

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[15] MODEL RULES OF PROF'L CONDUCT R. 1.6 cmt. [3].

[16] Under Rule 1.6(a), the lawyer may report the client's conduct if the client gives "informed consent," but we assume that in the last two scenarios, the client is unlikely to give such consent. Under this provision, a lawyer also may disclose information relating to the representation if "the disclosure is impliedly authorized in order to carry out the representation."

[17] MODEL CODE OF PROF'L RESPONSIBILITY DR 4-101 (1980).

exception might cover some scenarios in which the lawyer is a victim of a client's financial crime. For example, it may apply when other individuals besides the lawyer were the victims of the client's financial crime, and where disclosures are reasonably necessary to prevent, mitigate, or rectify substantial injury to the others. However, this exception would not apply in the four scenarios set forth above, either because the relevant crime is not a financial crime, the lawyer's services were not used to commit the crime, third parties were not victimized, or disclosure would not prevent, mitigate, or rectify financial harm to third parties.

Finally, Rule 1.6(b)(5) permits a lawyer to make disclosures "to the extent the lawyer reasonably believes necessary . . . to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client." To the extent that the lawyer initiates a civil claim against the client – or, presumably, now-former client – to seek redress for harm caused by the client's crime, such as the return of stolen property, the lawyer may make reasonably necessary disclosures under this exception. But the exception would not justify initially reporting to law enforcement authorities, since a criminal investigation or prosecution is not a controversy between the lawyer and the client.[18]

V. An Implicit Exception to the Confidentiality Rule Permitting Disclosure to the Extent Reasonably Necessary to Report a Crime Against the Lawyer, Lawyer's Family, or Others Associated With the Lawyer

In considering the situation in which a lawyer is a victim of a client's crime, the Committee finds interpretive guidance in the Scope section of the Model Rules which observes: "The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself."[19] Lawyers might readily assume that, if a client commits a crime against them or their employees or associates, they can report the crime to law enforcement authorities and appropriate others, notwithstanding the confidentiality duty under

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[18] *Cf.* ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 496 (2021) ("[A] negative online review, because of its informal nature, is not a 'controversy between the lawyer and the client' within the meaning of Rule 1.6(b)(5), and therefore does not allow disclosure of confidential information relating to a client's matter."); ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 10-456 (2010) (when a defense lawyer's former client files an ineffective assistance of counsel claim, "[t]he lawyer may not respond in order 'to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client,' because the legal controversy is not between the client and the lawyer"). Other rules that, under narrowly prescribed circumstances, permit or require lawyers to disclose information relating to the representation include: Rule 1.13(c)(2) (permitting an entity's lawyer to disclose violations of law under limited circumstances, including exhaustion of internal reporting); MODEL RULES OF PROF'L CONDUCT R. 1.14(c) (permitting disclosures when taking permissible protective action on behalf of a person with diminished capacity); MODEL RULES OF PROF'L CONDUCT R. 3.3(a)(3) & (b) (requiring remedial measures, which may include disclosure, where necessary to prevent or rectify perjury or other criminal or fraudulent conduct relating to a proceeding); and MODEL RULES OF PROF'L CONDUCT R. 4.1(b) (requiring disclosure where necessary to avoid assisting a crime or fraud). There also might be circumstances in which a lawyer reasonably believes disclosure of a client's crime or illegal conduct is necessary to comply with other law or a court order. *See* MODEL RULES OF PROF'L CONDUCT R. 1.6(b)(6).

[19] MODEL RULES OF PROF'L CONDUCT, Scope, para. [14]. For our prior opinions giving weight to this interpretive principle, see ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 09-455 (2009) (recognizing confidentiality exception for conflict checking purposes); ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 476 (2016) (recognizing confidentiality exception when moving to withdraw for nonpayment of legal fees). *See also* D.C. Bar Formal Op. 323 (2004) (lawyers employed as government investigators may employ deceit in the course of their official duties).

Rule 1.6(a). The Committee concludes that they would be correct, even though, in many situations, no express exception to the confidentiality duty will apply. That is because, in this situation, the Committee believes an implicit exception applies.

While rare, the Committee has in the past identified an implicit exception to the duty of confidentiality in a recurring situation, such as this one, that was not considered by the drafters of the Model Rules or of prior ethics codes. Prior to 2002, when the ABA adopted Rule 1.6(b)(4) to allow lawyers to seek advice from legal experts outside their law firms regarding compliance with the professional conduct rules, lawyers widely assumed that such consultations were impliedly permitted by the Rules. And in ABA Formal Op. 09-455 (2009), the Committee opined that it was permissible for lawyers moving from one firm to another to disclose information about their representations as "reasonably necessary to accomplish the purpose of detecting and resolving conflicts," as long as the lawyers did not "compromise the attorney-client privilege or otherwise prejudice a client or former client." This exception was subsequently codified in Rule 1.6(b)(7).[20]

Additionally, recognizing an implied exception here is also consistent with the principle underlying the explicit exceptions incorporated in Rule 1.6(b)(3) and Rule 1.6(b)(5) discussed above. That is, a lawyer may make disclosures as necessary to prevent or rectify abuse of the client-lawyer relationship. It is unreasonable to require lawyers to remain silent when their clients abuse the relationship by committing a crime against the lawyer. Requiring confidentiality in this situation would make lawyers too easy a target of clients' crimes, would deprive lawyers of the rights that all others have to invoke the criminal process and to seek other redress when they are crime victims, and would undermine the public interests underlying enforcement of the criminal law. At the same time, it is not necessary for the Rules to promise clients that information relating to the representation will be kept confidential in this situation in order to encourage clients to seek legal assistance or to secure their trust and confidence in lawyers. Occasionally, lawyers may metaphorically take a bullet *for* the client, but they cannot reasonably be expected to take a bullet *from* the client and to keep quiet about it.

The implied exception also applies to situations where the lawyer is a witness to a client's crime against someone associated with the lawyer or related to the lawyer.[21] It would be unreasonable to conclude that a lawyer may report when the lawyer is personally a victim of a client's criminal act but not when the lawyer witnesses a crime against someone associated with the lawyer or related to the lawyer like a staff member of the lawyer's firm or against someone such as a family member. This exception, however, applies to crimes against others associated with or related to the lawyer only to the extent the disclosure of information is reasonably necessary, and therefore will ordinarily apply only when the lawyer is a witness. All exceptions set forth in Rule 1.6(b) are limited to the extent "reasonably necessary" to accomplish the permitted purpose. Therefore, the lawyer must have a reasonable belief that the information to be provided would be necessary for: an investigation and prosecution of the alleged criminal conduct; for securing

[20] This amendment was added in 2012. *See* A LEGISLATIVE HISTORY: THE DEVELOPMENT OF ABA MODEL RULES OF PROFESSIONAL CONDUCT, 1982-2013, at 143 (Art Garwin ed. 2013).

[21] The exception would also apply to nonlawyer members of the lawyer's staff who witnessed a crime against the lawyer or who were personally a victim of the client's crime. However, under Rule 5.3(b), the lawyer would have a responsibility to ensure that the nonlawyer's disclosure of information related to the representation was limited to what is reasonably necessary.

services like medical treatment or insurance coverage; or for other redress or remedy and that such information would not be reasonably available from other sources. The implied exception does not otherwise permit lawyers to report clients' crimes against third parties.[22]

It bears emphasis that lawyers are not free to disregard the Rules whenever they conclude that the purposes underlying the Rules are not being served. Rules may legitimately apply more broadly than necessary to serve their underlying purposes, for example, because the Rule drafters want lawyers to steer far clear of the lines, or because it is necessary to draw a bright line rather than employ an imprecise standard. What makes applying Rule 1.6(a) unreasonable here is that doing so serves no good purpose *and* would cause affirmative harm that seemingly was not contemplated by the Rule drafters, who, as far as we are aware, did not specifically consider the problem of clients' crimes against their lawyers.

The implicit exception limits what information relating to the representation may be disclosed. A lawyer may disclose information about the client's crime against the lawyer to the extent reasonably necessary to permit the relevant authorities to investigate and possibly prosecute the crime, or for the lawyer to seek other services like medical care, restitution, or another reasonably necessary remedy or redress. A lawyer may also disclose information for such purposes when someone associated with the lawyer or related to the lawyer is a victim of the client's crime and the lawyer is a witness to that crime. But this does not mean that the lawyer may disclose unnecessary or unrelated details of the representation. In Hypothetical #1, assuming there is a bona fide representation, it would probably be reasonably necessary to disclose certain details of the representation in order to explain how the financial fraud was accomplished.[23] But in Hypotheticals #3 and #4, involving a violent crime and a theft, it would probably not be reasonably necessary to disclose much beyond the client's identity and what occurred relating to the crime. Perhaps in Hypothetical #3 a lawyer might reasonably disclose the interaction, including communications, that led up to the shooting, but it would not be reasonably necessary to provide a more complete account of the representation.[24] While it may be reasonably necessary for lawyers to provide information to authorities subsequent to the initial report to permit investigation and prosecution, lawyers should be cautious in such subsequent disclosures to limit the information to the amount reasonably necessary.[25] The exception recognized in this opinion is permissive and imposes no affirmative duty on lawyers to report clients' crimes when the lawyer or someone associated with or related to the lawyer is the victim.

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[22] Other exceptions under Rule 1.6(b) may or may not apply in other circumstances.

[23] In some situations, there may be some ambiguity about whether a crime was committed at all and, if so, whether it was the client or another who committed it. Whether the disclosure of information relating to the representation is "reasonably necessary," given the uncertainty, will depend on all the facts. In general, the disclosure of information relating to a representation will not be reasonably necessary unless the lawyer is strongly justified in concluding that the lawyer, or someone close to the lawyer, was in fact the victim of the client's criminal conduct. Where there is uncertainty, it may be possible for the lawyer to obtain more information before a disclosure becomes reasonably necessary.

[24] The responsibilities of a lawyer who may be requested or required to testify at the trial of a former client is beyond the scope of this opinion.

[25] Like other exceptions to Rule 1.6, if information is disclosed pursuant to an authorized exception, the information remains otherwise protected under Rule 1.6.

Finally, we note that a client-lawyer relationship almost certainly cannot continue after the client victimizes the lawyer or someone associated with the lawyer or related to the lawyer and the lawyer reports the client's crime pursuant to an exception to the duty of confidentiality under Rule 1.6, whether express or implied. The lawyer will ordinarily have an obligation under Rule 1.4 to inform the client that the disclosure will be, or was, made. If the client then discharges the lawyer, the lawyer must withdraw from the representation under Rule 1.16(a)(3). Likewise, the lawyer must withdraw if the crime and ensuing disclosure have created a conflict of interest that materially impairs the lawyer's ability to represent the client competently. Indeed, it is hard to imagine a scenario in which a lawyer who is actively seeking the prosecution of a client would not be materially impaired in the ability to competently represent the client.[26] Even if withdrawal is not mandatory, the lawyer may elect to withdraw if, as is not unlikely, the client's criminal conduct has made it unreasonably difficult to continue the representation.[27]

Conclusion

On occasion, lawyers or others associated with them (such as someone on their staff) or related to them (such as a family member) are victims of financial crimes, violent crimes, or other crimes committed by the lawyers' clients or prospective clients, or committed by individuals purporting to be their clients or prospective clients. When the crime is committed by a bona fide client or prospective client, the lawyer will generally have a duty of confidentiality to the client or prospective client under Rule 1.6(a) or Rule 1.18(b). In some of these situations, an explicit exception in Rule 1.6(b) may nevertheless permit the lawyer to make disclosure to law enforcement authorities or others to initiate an investigation or prosecution or for other important purposes, but Rule 1.6(b) will not include an applicable exception in all situations. The Committee concludes that, when a client commits a crime against a lawyer or the lawyer witnesses a crime against someone associated with the lawyer or related to the lawyer, the Rule implicitly permits the lawyer to disclose information about the client's crime to the extent reasonably necessary to permit the relevant authorities to investigate and possibly prosecute the crime or to enable the lawyer to seek other services, remedy, or redress.

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[26] *See* MODEL RULES OF PROF'L CONDUCT R. 1.7 & 1.16(a)(1).

[27] *See* MODEL RULES OF PROF'L CONDUCT R. 1.16(b)(6). In these situations, if the lawyer is representing the client before a tribunal, the "lawyer must comply with applicable law requiring notice to or permission of [the] tribunal" before ending the representation. MODEL RULES OF PROF'L CONDUCT R. 1.16(c).

AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

Formal Opinion 516 **April 2, 2025**

Terminating a Client Representation Under MRPC 1.16(b)(1): What "Material Adverse Effects" Prevent Permissive Withdrawal?

ABA Model Rule of Professional Conduct 1.16(b)(1) permits a lawyer to voluntarily end, or seek to end, an ongoing representation if "withdrawal can be accomplished without material adverse effect on the interests of the client." A lawyer's withdrawal would have a "material adverse effect on the interests of the client" if it would result in significant harm to the forward progress of the client's matter, significant increase in the cost of the matter, or significant harm to the client's ability to achieve the legal objectives that the lawyer previously agreed to pursue in the representation. A lawyer may be able to remediate these adverse effects and withdraw in a manner that avoids or mitigates the harm that the Rule seeks to prevent. The lawyer's motivation for withdrawal is not relevant under Model Rule 1.16(b)(1). Therefore, under the Model Rules, if the lawyer's withdrawal does not cause "material adverse effect" to the client's interests in the matter in which the lawyer represents the client, a lawyer may withdraw to be able to accept the representation of a different client, including to avoid the conflict of interest that might otherwise result.

Introduction

A lawyer may ordinarily decline to accept an engagement for almost any reason.[1] For instance, a lawyer may be concerned about the amount of work involved, the payment terms, the temperament and personality of the client, opposing parties or opposing counsel, a history with the judge, the merits of the litigation, the likelihood of success of the transaction, or whether the cause is one the lawyer wishes to champion. Perhaps the lawyer is trying to balance practicing law with matters that permit time flexibility or that are in a new area of law. Perhaps the lawyer just has a gut feeling that things will not work out. These are all valid factors to consider when a lawyer decides to decline an engagement. But once an engagement is accepted, could these concerns be sufficient reason for the lawyer to unilaterally terminate the representation?

While "[a] client has a right to discharge a lawyer at any time, with or without cause, subject to payment for the lawyer's services,"[2] ABA Model Rule of Professional Conduct 1.16 limits the

[1] But a lawyer may not "seek to avoid appointment by a tribunal to represent a person except for good cause." MODEL RULES OF PROF'L CONDUCT R. 6.2. Under some jurisdictions' civil rights laws, lawyers may also be restricted from declining clients for impermissibly discriminatory reasons. *See* Nathanson v. Commonwealth, 16 MASS. L. REP. 761 (2003). However, Model Rule 8.4(g), which prohibits lawyers' discriminatory conduct based on race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status, "does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16."

[2] MODEL RULES OF PROF'L CONDUCT R. 1.16 cmt. [4].

circumstances under which a lawyer may or, in some situations, must end a representation.[3] Simply put, getting out of a matter can be a lot harder than getting in.

Rule 1.16(a) requires a lawyer to end, or seek the court's permission to end, the representation when:

> (1) the representation will result in violation of the Rules of Professional Conduct or other law; (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; (3) the lawyer is discharged; or (4) the client or prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud ….

By comparison, a lawyer may voluntarily end, or seek to end, an ongoing representation only if "withdrawal can be accomplished without material adverse effect on the interests of the client," Rule 1.16(b)(1), or if good cause to end the representation exists. Rule 1.16(b)(2)–(b)(6) enumerates circumstances constituting good cause and Rule 1.16(b)(7) explains that "other good cause" may exist.

This opinion offers guidance to lawyers seeking to unilaterally terminate a representation under Rule 1.16(b)(1) when withdrawal is not mandatory under Rule 1.16(a) and is not permitted under circumstances enumerated under subparagraphs (2)-(7) of Rule 1.16(b). The opinion addresses the meaning of the Rule's phrase "material adverse effect on the interests of the client" and provides a framework for analyzing when and whether such an effect prevents a lawyer from permissive unilateral withdrawal. The opinion concludes that a material adverse effect is one which, despite a lawyer's efforts to remediate negative consequences, will significantly impede the forward progress of the matter, significantly increase the cost of the matter and/or significantly jeopardize the client's ability to accomplish the objectives of the representation.[4] In other words, the material adverse effect must relate to the client's interests in the matter in which the lawyer represents the client.

The meaning of "material adverse effect"

Prior to the 1983 adoption of the ABA Model Rules of Professional Conduct, there was no equivalent to what is today Rule 1.16(b)(1). The ABA's Model Code of Professional Responsibility, which preceded the Model Rules, included a provision regarding a lawyer's termination of a client-lawyer relationship. But the provision, Disciplinary Rule 2-110, did not authorize a lawyer to withdraw from a representation without good cause or the client's consent. The addition of Rule 1.16(b)(1) reflected a judgment that if a lawyer would not significantly impair the client's interests in a matter by withdrawing from the representation, the Rules would not

[3] If the matter is in litigation, Rule 1.16(c) provides, "A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation."

[4] In this opinion, the terms "representation" and "matter" are used interchangeably. This is consistent with their use in Model Rule 1.2(a).

compel the lawyer to see the matter through to completion simply because the lawyer had initially agreed to do so and the client might perceive it as disloyal for the lawyer to renege.[5]

Under Rule 1.16(b)(1), a lawyer's withdrawal would have a "material adverse effect on the interests of the client" if the lawyer's withdrawal would significantly harm the client's interests in the matter in which the lawyer represents the client—e.g., if the lawyer's withdrawal would result in significant harm to the forward progress of the client's matter, significant increase in the cost of the matter, or significant harm to the client's ability to achieve the legal objectives that the lawyer previously agreed to pursue in the representation. This conclusion is consistent with ethics opinions which have determined that a lawyer's withdrawal will not have a "material adverse effect" where all projects for that client were completed,[6] where no projects for the current client are imminently contemplated,[7] where the case is at "an early stage,"[8] where the client has retained successor counsel,[9] or where the lawyer has given the client "ample notice."[10] This interpretation of "material adverse effect" is consistent with this Committee's previous interpretation of the same phrase in Rule 1.9(a), which proscribes a representation "in which [a new client's] interests are materially adverse to the interests of the former client." *See* ABA Formal Op. 497 (2021).[11]

Circumstances where withdrawal will likely have a "material adverse effect"

A lawyer's withdrawal may significantly harm the representation in several ways.[12] In some transactional representations, for example, delay caused in the search for substitute counsel may

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[5] Rule 1.16(b)(1) drew from case law in which courts permitted lawyers to withdraw from a representation in litigation. The Reporter's Notes accompanying the proposed rule acknowledged the general principle that "[u]ndertaking representation implies an obligation to continue to completion the project for which the lawyer has been retained," but explained that what is today Rule 1.16(b)(1) "adopts the position of cases holding that a lawyer may withdraw without cause or client consent . . . if no material prejudice to the client will flow from the withdrawal." KUTAK COMMISSION, PROPOSED FINAL DRAFT MODEL RULES OF PROFESSIONAL CONDUCT 104 & 106 (May 30, 1981), *available at* https://www.americanbar.org/groups/professional_responsibility/resources/report_archive/kutakcommissiondrafts/. The Reporter's Notes further explained: "What amounts to specific performance by an attorney has been required, but such cases are extremely rare. They fall into two general classifications, that is, situations where the client's rights will be prejudiced by the delay consequent on replacing counsel and cases where the trial calendar of the Court will be dislocated, so as to impede the interests of justice . . .." *Id.* at 106, quoting Goldsmith v. Pyramid Communications, Inc., 362 F. Supp. 694, 696 (S.D.N.Y. 1973).

[6] Conn. Bar Ass'n Informal Op. 95-4 (1995).

[7] D.C. Bar Ethics Op. 272 (1997); Phila. Bar Ass'n Prof'l Guidance Comm. Op. 98-5 (1998).

[8] State Bar of Mich. Op. JI-154 (2023).

[9] Phila. Bar Ass'n Prof'l Guidance Comm. Op. 2000-2 (2000).

[10] Mo. Informal Ops. 990177 (1999) & 20030049 (2003).

[11] Typically, the quoted language covers representations in which the new client is involved in litigation against the former client. However, ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 497 (2021) notes that this language may also cover situations in which a new representation will cause "specific tangible direct harm" to the former client. The Committee notes that the "material adverse effect on the interests of the client" referred to in Rule 1.16(b)(1) is not identical to the "materially adverse" circumstance referred to in Rule 1.9(a), but that both phrases refer to a harm that is material – not negligible.

[12] "The client might have to expend time and expense searching for another lawyer. The successor lawyer might have to be paid what in effect are duplicated fees for becoming familiar with the matter. . . . Delay necessitated by the change of counsel might materially prejudice the client's matter. An equally qualified lawyer might be unavailable or available only at material inconvenience to the client. In some circumstances, the nature of

result in scuttling a deal or reducing its value. If no substitute lawyer is available, or if none is available who can complete the representation in the necessary timeframe, the client will suffer a material adverse effect.[13] Where the timing is objectively important to the client, significant delay can itself be a material adverse effect even if the representation can otherwise be completed successfully.

In some cases, having to retain a new lawyer may threaten the success of the representation because the original lawyer has unique abilities or unique knowledge that cannot be replicated in the allotted time or at all. Alternatively, the relevant adverse effect may consist of the client incurring significant additional expense because, to "get up to speed," successor counsel will charge fees to duplicate work previously performed.

A lawyer may be able to remediate these adverse effects and withdraw in a manner that avoids the harm that the Rule seeks to prevent. For example, the withdrawing lawyer may help the client find a new lawyer, collaborate with successor counsel to bring the new lawyer up to speed, and/or return or forego legal fees for work that will have to be duplicated.[14]

Circumstances where withdrawal is unlikely to have a "material adverse effect"

There are various circumstances where the withdrawing lawyer likely can avoid significantly harming the client's interest in the legal matter.[15] One such situation is where the representation has barely gotten off the ground. For example, a court found that "where defendant never deposited a retainer, where insubstantial services have been rendered and where the firm notified the court of its intention to withdraw early on in the litigation," withdrawal would "not significantly prejudice defendant."[16] One can envision circumstances such as these where, very soon after accepting a representation, the lawyer realizes that the legal work is not a good fit for the lawyer's skills, the work will take substantially more time than anticipated, it will be difficult to develop the client's trust, or there are other considerations that make the representation untenable.[17]

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confidential information relevant to the representation might make the client reasonably reluctant to retain another lawyer." RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §32 cmt. (h)(ii) (2000).

[13] *See*, *e.g.*, Rusinow v. Kamara, 920 F. Supp. 69, 71-72 (D.N.J. 1996).

[14] RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §32 cmt. i (2000) (noting possible "material adverse effects" include the possibility that "[t]he client might have to expend time and expense searching for another lawyer" or "[t]he successor lawyer might have to be paid what in effect are duplicated fees for becoming familiar with the matter," though "[a] lawyer wishing to withdraw can ameliorate those effects by assisting the client to obtain successor counsel and forgoing or refunding fees."). At least one opinion has suggested, "if the attorney refunded fees paid by the client to the extent services would be duplicated by new counsel, and addressed any other harm sustained by the client, then withdrawal [pursuant to 1.16(b)(1)] might be appropriate." Utah State Bar Advisory Op. 20-01 (2020).

[15] In all cases, Rule 1.16(d) requires a lawyer withdrawing from a representation to "take steps to the extent reasonably practicable to protect a client's interests." This Rule applies to mandatory termination under Rule 1.16(a) and withdrawal for cause as described in subsections (b)(2) through (7). However, the "reasonably practical" steps required by Rule 1.16(d) may not be sufficient to avoid the "material adverse effect" that would prevent withdrawal under Rule 1.16(b)(1).

[16] People v. Young, 38 Misc. 3d 381, 387 (NY City Ct. 2012).

[17] There may be cases where more than one section of Rule 1.16 applies. For instance, if the lawyer took on a matter that was beyond the lawyer's ability to complete competently, mandatory withdrawal might be necessary under Rule 1.16(a)(1) to avoid a violation of the duty of competency provided in Rule 1.1. While it may not be necessary under the Rule if another section of Rule 1.16 applies, it is always helpful to analyze whether Rule 1.16(b)(1) can be

Although it would have been preferable for the lawyer to decline the representation in the first place,[18] Rule 1.16(b)(1) generally permits the lawyer to withdraw early in the relationship.[19]

Another circumstance where withdrawing is unlikely to significantly harm the client's interests in the matter is where co-counsel can successfully complete the remaining work. For example, a court found that the withdrawal of one lawyer among many representing a party in the matter had no material adverse effect on the client's interests where the lawyer "completed all of the work he had been assigned" before withdrawing and the client "remained represented by dozens of other attorneys."[20] In other situations, the lawyer's withdrawal will not significantly harm the client's interests because the lawyer's work is substantially completed, and any remaining work does not require the lawyer's particular knowledge of the client and the matter. For example, after substantial completion of a transaction or litigation, there may remain ministerial tasks that would be easy for successor counsel to perform.

It follows that there will ordinarily be no material adverse effect on the client's interests in the matter at issue when there is no ongoing or imminent matter at the time the lawyer withdraws. For example, a lawyer and client may have an express or implied understanding that the lawyer will provide tax or estate planning advice when needed, or that the lawyer will represent the business client in collection matters as they arise. If the lawyer has completed all previously assigned matters, and there is no impending matter, having to secure a new lawyer for future matters is unlikely to have a material adverse effect on the client's interests.[21]

As these scenarios illustrate, Rule 1.16(b)(1) does not: protect a client's interest simply in maintaining an ongoing client-lawyer relationship, protect against the client's disappointment in losing the lawyer's services, or prohibit withdrawal based on the client's perception that the lawyer is acting disloyally by ending the representation.[22] Because it does not significantly harm the client's interests in the matter, the client's disappointment that this particular lawyer will not conduct or complete the representation is not a "material adverse effect" contemplated by the provision. If it were otherwise, the provision could never be used to permit a lawyer to unilaterally end the client-lawyer relationship.

While client consent is preferable, when a lawyer permissibly withdraws, or seeks to withdraw, under Rule 1.16, it is not required. In general, subject to confidentiality duties to others, the lawyer

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successfully invoked. In any context, the ability to demonstrate that withdrawal will not cause a "material adverse effect" will be helpful in establishing that the lawyer's withdrawal complied with Rule 1.16.

[18] The Committee acknowledges that it can be difficult to turn potential clients away. However, it is better to feel badly in the short run than to live with regrets in the long run.

[19] This will not invariably be true, however. For example, in fast moving litigation, a lawyer's withdrawal may have a material adverse effect even if it occurs early in the engagement.

[20] Cobell v. Jewell, 243 F. Supp. 3d 126, 165 (D.D.C. 2017).

[21] *See*, *e.g.*, R.I. Ethics Advisory Panel Op. 2023-6 (2023) (no material adverse effect on the client's interests where the lawyer has completed the services agreed to and no matter is pending or impending).

[22] In general, to the extent that the Model Rules proscribe disloyalty, they do so because of the expectation that a lawyer's disloyalty will adversely affect the quality of the lawyer's work. For example, a lawyer may not undertake another representation that is directly adverse to a current client without that client's informed consent because "the client is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively." MODEL RULES OF PROF'L CONDUCT R. 1.7 cmt. [6].

owes the client a full explanation for withdrawing (*see* Rule 1.4), but not an explanation that necessarily satisfies the client or convinces the client that it is best to retain a different lawyer.

Invoking Rule 1.16(b)(1) when the lawyer's motivation is to represent an adverse party

When a lawyer withdraws under Rule 1.16(b)(1), the lawyer's motivation is irrelevant, unlike when a lawyer withdraws under one of the other provisions of Rule 1.16(b). Under the other provisions of paragraph (b), if a lawyer has an enumerated purpose for withdrawing, such as that the client has used or is seeking to use the lawyer's services to commit a crime or fraud, the lawyer may end an ongoing representation even if doing so has a material adverse effect on the client's interests. Rule 1.16(b)(1), however, permits withdrawal regardless of the lawyer's reason, so long as the lawyer's withdrawal would not have a material adverse effect on the client's interests. Therefore, a lawyer may withdraw for any reason, including for reasons relating to the lawyer's personal life or professional livelihood—e.g., to reduce the lawyer's workload—or for other reasons for which the client is entirely blameless.

For this reason, although Rule 1.16(b)(1) derives from judicial decisions, the provision parts company with the case law regarding whether a lawyer may withdraw from representing a client to avoid the conflict of interest that has resulted, or would result, from direct adversity to that client.[23]

In the context of litigation, some courts have held that without the client's consent, a lawyer may not withdraw from a representation to litigate against the now-former client.[24] Lawyers who end a representation for this reason have sometimes been disqualified from representing the new client. The so-called "hot potato" rule or doctrine comes from *Picker International, Inc. v. Varian Associates, Inc.*, 670 F. Supp. 1363, 1365 (N.D. Ohio 1987), *aff'd*, 869 F.2d 578 (Fed. Cir.1989), where the court concluded, "a firm may not drop a client like a hot potato, especially if it is in order to keep happy a far more lucrative client." The implication of these decisions is that, even if the lawyer's withdrawal would otherwise be permissible, the lawyer may not withdraw to litigate against the client whose representation is terminated. But some courts recognize that the principle is not absolute and that it should not necessarily apply when the lawyer's withdrawal is not significantly prejudicial because, for example, "a lawyer's representation is sporadic, non-litigious and unrelated to the issues involved in the newer case."[25]

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[23] Directly adverse conflicts can arise in transactional matters as well as in advocacy. MODEL RULES OF PROF'L CONDUCT R. 1.7 cmts. [6] & [7].

[24] *See*, *e.g.*, Unified Sewerage Agency v. Jelco, Inc., 646 F.2d 1339 (9th Cir. 1981); *In re* Gov't Investigation, 607 F. Supp. 3d 762 (S.D. Ohio 2022); Universal City Studios Inc. v. Reimerdes, 98 F. Supp. 2d 449 (S.D.N.Y. 2000); Int'l Longshoremen's Ass'n Local Union 1332 v. Int'l Longshoremen's Ass'n, 909 F. Supp. 287 (E.D. Pa. 1995); Penn Mutual Life Ins. Co. v. Cleveland Mall Associates, 841 F. Supp. 815 (E.D. Tenn. 1993); Harte Biltmore Ltd. v. First Pennsylvania Bank, 655 F. Supp. 419 (S.D. Fla. 1987); Truck Ins. Exch. v. Fireman's Fund Ins. Co., 8 Cal. Rptr.2d 228 (Cal. Ct. App. 1992); Phila. Bar Ass'n Prof'l Guidance Comm. Op. 2009-7 (2009); *see also* RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §132 cmt. c (2000).

[25] Metro Life Ins. Co. v. Guardian Life Ins. Co. of Am., 2009 U.S. Dist. LEXIS 42475, at *13-14 (N.D. Ill. 2009). Another context where courts are unlikely to apply the principle is when a conflict of interest arises because through no "'fault' of the law firm, . . . two client companies or their affiliates merged or new parties joined a law suit." HAZARD, HODES, JARVIS & THOMPSON, THE LAW OF LAWYERING §21.15, n.3 (2024). *See also* John Leubsdorf, *Conflicts of Interest: Slicing the Hot Potato Doctrine*, 48 SAN DIEGO L. REV. 251, 283 (2011) ("courts frequently let

The "hot potato" principle is derived from neither Rule 1.16 nor any other professional conduct rule.[26] Rather, the principle is an extension of the common law duty of loyalty[27] and the need to preserve public confidence in the bar.[28] Even where a lawyer would otherwise be permitted to end a representation, such as where the lawyer is not currently engaged in a matter for the client or the client would not be significantly prejudiced if another lawyer completes the representation, courts might consider it disloyal for the lawyer to withdraw for the purpose of advocating against the now-former client even in an unrelated matter.

In general, although a lawyer may not advocate for a party that is directly adverse to another current client without both clients' informed consent, a lawyer may advocate against a former client if the matter is unrelated to the former representation and the lawyer does not use or reveal information relating to the representation to the disadvantage of the former client. *Compare* Rule 1.7(a)(1) (current client conflict rule) *with* Rule 1.9(a) (former client conflict rule).[29] Courts applying the "hot potato" doctrine treat the lawyer's withdrawal as if it did not occur and apply the principle of Rule 1.7(a)(1), which prohibits a representation that is directly adverse to another current client without consent from both clients.[30]

Disqualification decisions are informative, but they are not dispositive of the meaning and application of the Rules of Professional Conduct because courts do not necessarily rely exclusively on an application of the Rules to decide disqualification motions. Instead, many courts in the disqualification context have developed and come to rely on a judicial common law that is not necessarily tied directly to the jurisdiction's professional conduct rules. Courts often decline to disqualify lawyers even when the applicable conflict of interest rule appears to forbid the representation,[31] and less frequently, courts disqualify lawyers even when the applicable rule

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the doctrine remain unenforced by exercising their discretion to deny disqualification in light of many more or less relevant factors").

[26] Critics of the "hot potato" rule have noted that it originated in *Picker International, Inc.* under a set of professional conduct rules that did not include the current exception under Rule 1.16(b)(1). Further, the hot potato decisions are "facially inconsistent with the permissive withdrawal scheme of Model Rule 1.16(b)," and "[g]iven that permissive approach, it is hard to see why the more interesting or lucrative work could not entail suing a 'dropped' former client - assuming in addition, of course, that the matters are not substantially related." HAZARD, HODES, JARVIS & THOMPSON, *supra* note 24, §21.15, n.3.

[27] *See, e.g.*, Local 1332 v. Int'l Longshoremen's Ass'n, 909 F. Supp. 287, 293 (E.D. Pa. 1995).

[28] *See, e.g.*, Harte Biltmore Ltd. v. First Pa. Bank, 655 F. Supp. 419, 422 (S.D. Fla. 1987) ("Public confidence in lawyers and the legal system would necessarily be undermined when a lawyer suddenly abandons one client in favor of another").

[29] Even if withdrawal would not cause a material adverse effect on a client, a lawyer is not permitted, absent informed consent confirmed in writing, to be materially adverse to a now-former client in a matter that is substantially related to the former representation. For example, if a family law lawyer drafts a pre-nuptial agreement for a spouse and has completed all pending tasks, she would be permitted to withdraw as doing so would not cause a material adverse effect. But absent that spouse's consent, the lawyer would not be permitted to then represent the other spouse in seeking to interpret the pre-nuptial agreement because the matters are substantially related and the current spouse-client's interests would be materially adverse to the former spouse client's interests. *See* ABA Comm. on Ethics & Professional Responsibility, Formal Op. 497 (2021).

[30] *See, e.g.*, Markham Concepts, Inc. v. Hasbro, Inc., 196 F. Supp. 3d 345 (D.R.I. 2016).

[31] *See, e.g.*, Hempstead Video, Inc. v. Inc. Vill. of Valley Stream, 409 F.3d 127, 132 (2d Cir. 2005) ("Although our decisions on disqualification motions often benefit from guidance offered by the American Bar Association (ABA) and state disciplinary rules, . . . such rules merely provide general guidance and not every violation of a disciplinary rule will necessarily lead to disqualification"). For example, some courts have held that a lawyer representing co-parties in litigation may withdraw from representing one co-client and continue to represent the other when the co-

would permit the representation.[32] Courts are well positioned to determine whether the harms against which the conflict of interest rules are meant to protect are likely to occur. Courts may also consider the harm to the party that could lose its chosen counsel and other relevant considerations such as whether the conflict appears to have been raised for tactical reasons or could have been addressed at an earlier juncture in the case. But because courts are not necessarily interpreting and applying the Rules of Professional Conduct in the disqualification setting, one cannot assume that approaches like the hot-potato rule developed by the judiciary and applied in many disqualification decisions are coterminous with the provisions of the Rules of Professional Conduct governing conflicts of interest.

Rule 1.16(b)(1) and other Rules of Professional Conduct do not incorporate the "hot potato" concept for the reason discussed above, namely, that a lawyer's motivation for invoking Rule 1.16(b)(1) is irrelevant. Even if the lawyer's reason for invoking Rule 1.16(b)(1) may be perceived as disloyal, the lawyer's motivation is not relevant. The salient question under Rule 1.16(b)(1) is whether, by withdrawing from a representation, the lawyer will materially adversely affect the client's interests in the matter in which the lawyer represented the client, not whether the lawyer will be adverse to the client in an unrelated matter after the representation is over.

Courts are, of course, free to exercise their supervisory authority over trial lawyers by disqualifying those who drop a client "like a hot potato" to advocate against that client in another case. Courts may elect to do so as a sanction or remedy for the lawyer's perceived disloyalty or to remove the incentive for lawyers to end representations for what courts regard as inappropriate reasons. But it does not necessarily follow that the lawyer's withdrawal, for a purpose of which courts may disapprove, constitutes a violation of the Rules of Professional Conduct for which a lawyer could be professionally sanctioned.

Conclusion

Rule 1.16(b)(1) permits a lawyer to voluntarily end, or seek to end, an ongoing representation if "withdrawal can be accomplished without material adverse effect on the interests of the client." A lawyer's withdrawal would have a "material adverse effect on the interests of the client" if it would result in significant harm to the forward progress of the client's matter, significant increase in the cost of the matter, or significant harm to the client's ability to achieve the legal objectives that the lawyer previously agreed to pursue in the representation.

A lawyer may be able to remediate these adverse effects and withdraw in a manner that avoids or mitigates the harm that the Rule seeks to prevent. For example, the withdrawing lawyer may help

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clients become adverse, at least when the now-former client was an "accommodation client." *See, e.g.*, Allegaert v. Perot, 565 F.2d 246 (2d Cir. 1977). Although Model Rule 1.9(a) might ordinarily forbid the lawyer from representing the remaining client in this situation without the former client's informed consent, a court might deny the former client's disqualification motion on the basis that the former client impliedly agreed in advance that the lawyer could continue to represent the principal client if a conflict of interest were to arise. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §132 cmt. i (2000).

[32] *See* MODEL RULES OF PROF'L CONDUCT R. 1.10 cmt. [7] ("Lawyers should be aware, however, that, even where screening mechanisms have been adopted, tribunals may consider additional factors in ruling upon motions to disqualify a lawyer from pending litigation.").

the client find a new lawyer, collaborate with successor counsel to bring the new lawyer up to speed, and/or return or forego legal fees for work that will have to be duplicated.

Ideally, lawyers will exercise care and thoughtfulness in deciding whether to accept an engagement and will generally refrain from ending a relationship without good cause, whether out of a sense of obligation, loyalty to the client, or professional pride. But even careful lawyers may occasionally desire to end a representation for reasons other than those that constitute "good cause" under Rule 1.16. The lawyer's motivation is not relevant under Rule 1.16(b)(1). Therefore, under the Model Rules, if the lawyer's withdrawal does not cause "material adverse effect" to the client's interest, a lawyer may withdraw to be able to accept the representation of a different client, including to avoid the conflict of interest that might otherwise result.

DISSENT

Ethics opinions should, at their core, be helpful to lawyers seeking to navigate their ethical responsibilities. This opinion provides very helpful guidance to lawyers on many of the situations it addresses. However, the portion seeking to argue why the ethics rules do not prohibit a lawyer from firing one client in order to sue another client is something that we fear will prove more harmful than helpful to lawyers.

First, we are concerned that this opinion will only make it more difficult to convince lawyers to close files and transform current clients into former clients when they have completed their work on a matter. Practical guidance to help lawyers and firms understand the importance of actually terminating and closing files for dormant clients in order to limit ethical duties and conflict scenarios would be a much more helpful piece of guidance on this issue.

Second, the "hot potato" portion of the opinion is incomplete. The opinion fails to address the breadth of precedent on the "hot potato" doctrine, and we are concerned that by seeming to dismiss this judicial doctrine as involving a handful of outlier cases, the opinion may mislead lawyers about the law.[1] The opinion is incomplete, and thus also incorrect, because it does not directly answer whether terminating a client for the purpose of turning around and filing suit against it for another client could itself qualify as an act inflicting a material adverse effect on the interests of the client being dropped under Rule 1.16(b)(1).

Finally, we believe that there are several other reasons why the opinion is incomplete and thus not helpful guidance for lawyers. The opinion is incomplete because it avoids offering guidance on mandatory withdrawal under Rule 1.16(a).[2] While the adjudication of disqualification motions is always case and fact specific, any guidance on whether the ethics rules might conflict with the judicial "hot potato" doctrine should address the mandatory withdrawal scenario of Model Rule 1.16(a)(1). Realistically, when a lawyer or law firm comes to realize they have accepted a representation adverse to another client they must, at minimum, drop one representation to avoid running afoul of Rule 1.16(a)(1). This can happen for a variety of reasons, including through no fault of the lawyer. See the "thrust upon exception to the hot potato doctrine."[3]

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[1] *See* "HOT POTATO" DOCTRINE, https://www.freivogelonconflicts.com/hotpotato.html (last visited Feb. 17, 2025).
[2] ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 515 (2025), at 2.
[3] *Supra* note 1, collection of precedent discussed after the heading "The 'Thrust-Upon Exception."

The opinion also fails to offer guidance for transactional lawyers. It only addresses "hot potato" situations in litigation as if they are deliberate decisions made before accepting a new representation. It does not meaningfully address common situations in transactional matters such as where a lawyer or firm terminates the representation of a business client in order to take on the representation of a different client in an adverse transaction or other non-litigation matter. Accordingly, we dissent, in part, from this opinion.

Brian Faughnan
Wendy Muchman

A year of public discipline

BY SUSAN M. HUMISTON ✉ susan.humiston@courts.state.mn.us

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As we settle into 2025, it is appropriate to review 2024. Each year a summary of the prior year's public discipline appears in this column. The purpose of this summary is largely a cautionary tale for lawyers; one of the reasons for public discipline is to deter misconduct by other lawyers. Public discipline also demonstrates to the public that the profession takes ethical misconduct seriously.

Views on the adequacy of the discipline imposed vary widely. Oftentimes the discipline imposed is the discipline recommended by this Office; sometimes the Court imposes a different level of discipline. Determining the appropriate level of discipline is often more challenging than one might guess. In all matters there are lessons to be learned.

The numbers

The Court issued 42 decisions in public matters in 2024. Five lawyers were disbarred, 14 were suspended, two were reprimanded and placed on probation, and six received public reprimands. (One lawyer received two.) Additionally, three lawyers were placed on disability inactive status in lieu of discipline, one reinstatement petition was denied, and 10 lawyers were reinstated to the practice of law, most from short suspensions.

The 2024 numbers are generally in line with the prior year's numbers; however, a couple of numbers stand out. First is the number of reciprocal discipline matters. More lawyers than ever before received public discipline in other jurisdictions, necessitating reciprocal consideration in Minnesota. I have no insight into the uptick in this number. For decades, Minnesota lawyers have maintained practices outside of Minnesota, and we generally see one or two reciprocal discipline matters a year. In 2024, nine of the court's decisions (including two disbarments) involved public discipline from other states, and there are several more reciprocal matters in process.

Reciprocal discipline might seem more straightforward than original discipline matters—but they rarely are, given the variability in how other jurisdictions handle discipline. Also, Rule 12(d), Rules on Lawyers Professional Responsibility—the procedural rule that governs reciprocal discipline—could use a refresh.

Another number that caught my eye was the return to a more even distribution among the types of public discipline imposed. In 2023, 24 lawyers were suspended and only one lawyer received a public reprimand. In 2024, 14 lawyers were suspended, and nine public reprimands were issued, a more typical distribution. Still serious overall, but more in line with historical averages.

Disbarment

Five lawyers were disbarred in 2024, compared to three in 2024. These lawyers were James V. Bradley, R. James Jensen, Jr., Fong Lee, Madsen Marcellus, and Michael Padden. The most common reason for disbarment generally is misappropriation of client funds. Three lawyers were disbarred in 2024 for conduct that included misappropriation of client funds—Mr. Bradley, Mr. Lee, and Mr. Padden.

Mr. Bradley was a family law attorney who misappropriated approximately $8,500 in funds he was holding for the benefit of his client. Although he originally placed those funds in trust, he did not disburse those funds to his client but instead used the money for other matters. Mr. Bradley also engaged in misconduct in his own divorce, by making false statements relating to a judgment and decree and defying court orders. Mr. Lee was a general litigation attorney who misappropriated more than $18,000 from three clients, among other misconduct. Mr. Padden, who was primarily a criminal defense lawyer but also engaged in civil litigation, was found to have misappropriated $25,000 from a client, among other serious misconduct.

Notably, and somewhat unusually, three of the lawyers disbarred in 2024 were disbarred in whole or in part due to misconduct in their own divorce proceedings. As noted, Mr. Bradley made false statements and disobeyed court orders in his divorce. The trial court handling Mr. Bradley's divorce concluded that he committed fraud on the court regarding planned IRA transfers. He also sold property he had been ordered not to sell, and never paid court-ordered sanctions or distributed the required funds to his ex-wife. Mr. Jensen was disbarred in 2018 in Washington due to his disobedience of court orders as well as for making frivolous claims and misrepresentations

to the court in his Washington state divorce. Mr. Jensen also had extensive discipline in Minnesota while he practiced here. Mr. Jensen did not advise this Office of his disbarment in 2018, but rather his disbarment came to light in late 2022 when he attempted to get his license reinstated in Minnesota, where he had been on inactive status since 2003.

Madsen Marcellus was disbarred in Florida as the result of two separate discipline proceedings that cumulatively involved participating in a fraudulent mortgage application, willfully violating numerous court orders in his divorce, failing to pay court-ordered fees, taking steps to avoid service of process, and failing to pay court-ordered child support for several years. Mr. Marcellus was first suspended in Florida for 18 months in 2018. He then returned to Minnesota, and reinstated his Minnesota license in October 2020, which license had been administratively suspended since 2009. A second proceeding in Florida commenced in 2021 and he was disbarred in late 2022 for misconduct also related to his divorce and child support obligations. Mr. Marcellus did not advise this Office of either of the discipline proceedings in Florida; rather, we learned of the disbarment from Florida discipline counsel.

A few lessons jump to mind from these cases. First, misconduct outside the practice of law can lead to professional license consequences up to and including disbarment. While the most severe discipline is typically reserved for misconduct relating to a lawyer's legal practice, that is not always the case. Second, if you are publicly disciplined in another jurisdiction, you must disclose that to us. While there is no duty to self-report in the Minnesota Rules of Professional Conduct, the Court's procedural discipline rules—the Rules on Lawyers Professional Responsibility—include a duty to notify the Director if you are subject to public discipline charges or public discipline in another jurisdiction. Third, once you are admitted to practice in Minnesota, until you resign that license, you are subject to the discipline authority of the Minnesota Supreme Court, even if your license is administratively suspended. While you can let your license lapse, your license status (inactive or active) does not affect the Court's power to act on that license if warranted—unless you petition the Court to resign your license under Rule 11 of the Rules on Lawyers Professional Responsibility.

Suspension

Fourteen lawyers were suspended in 2024, down significantly from 2023. Also notable in 2024: Most suspensions were short in duration, including only three longer than 90 days and only one for a period exceeding one year. Usually there is a wider range in length of suspensions, which can range from 30 days to five years, the maximum suspension short of disbarment.

A couple lessons of note from these suspensions. Charles Gerlach and Garrett Slyva were disciplined for misconduct that is a variation on a theme we have been seeing more recently—poor boundary judgment. Mr. Gerlach is an experienced prosecutor whose background includes the prosecution of sex crimes, and who frequently served as a faculty member for new lawyer training. During a recent conference, Mr. Gerlach engaged in harassing conduct toward a female attendee, namely slapping the young woman's butt on a couple of occasions, sitting next to the same woman and pulling her chair physically close to his, and frequently touching her arms and brushing her legs with his, conduct an observer described as "handsy." This conduct was unwelcome by the woman and harassing. The woman reported her concerns to the training organizers, who took her concerns seriously, and eventually reported the misconduct to this Office. Mr. Gerlach stipulated to a 30-day suspension, which the Court approved.

While it is likely that far too many women continue to put up with similar conduct in professional settings without consequences, it is also true that sometimes there are appropriate consequences and those consequences continue to be more serious (a suspension, that is, versus a public reprimand). In a similar but different vein, Mr. Slyva engaged in conflicted representation by attempting to pursue personal relationships with two of his criminal defense clients, both of whom were incarcerated at the time. The North Dakota Supreme Court reprimanded Mr. Slyva, but through a stipulation approved by the Court, Mr. Slyva was suspended for 30 days. Sex with clients is unethical, but other boundary-crossing behavior can also lead to serious professional consequences.

Another lesson from the 2024 suspensions is a reminder to always tell the truth. Several of the suspensions and one of the public reprimands involved dishonest conduct, another trend we are seeing. For example, Paul Overson was suspended for knowingly making a misleading statement to a court and failing to correct that statement. Kevin Shoeberg was suspended for making several knowingly false and misleading statements to a client about the status of a matter, among other misconduct. Catherine McEnroe was suspended for making a false statement to the court and opposing counsel during a criminal trial and engaging in dishonest conduct to cover up the false statement. William Henney was suspended for, among other conduct, making knowingly false and misleading statements to the court, opposing counsel, and the Director. Daniel Gallatin was publicly reprimanded for filing a settlement document with a court containing the opposing parties' electronic signature without having confirmed consent or authorization to do so.

As noted above, Mr. Jensen and Mr. Marcellus lied in their divorce proceedings, which with other misconduct ultimately led to disbarment. We continue to receive and are investigating numerous other matters involving dishonesty. It is probably true that everyone lies, and it might be tempting to lie or dissemble in any given situation. I also understand that sometimes lying is a natural self-protection mechanism. But I hope the serious consequences to your license and reputation that can occur when you are caught lying will dissuade you from any such temptation.

Conclusion

There are more than 25,000 lawyers in Minnesota with active licenses. Out of those thousands, 28 received public discipline in 2024, the same as in 2023. Each year, more than 1000 complaints are filed with the Director's Office. Most do not result in discipline, because most lawyers take very seriously their ethical obligations. Thank you to all who do. The lawyers who receive public discipline are outliers in the profession—but, at the same time, could be any one of us. If you need assistance understanding your ethical obligations, please do not hesitate to call our Office. Every day a lawyer is available free of charge to answer your ethics questions. ▲

ETHICS QUESTIONS
The Office of Lawyers Professional Responsibility is available to answer your ethics questions: 651-296-3952

Lessons from private discipline in 2024

BY SUSAN M. HUMISTON ✉ *susan.humiston@courts.state.mn.us*

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Private discipline is nonpublic discipline issued for violations of the Minnesota Rules of Professional Conduct (MRPC) that are isolated and nonserious. Several lessons can be learned from reviewing the mistakes and situations that led to private discipline last year.

Fee disputes with clients

No one likes fee disputes. Your focus will be on getting paid, but remember there may be ethical obligations you need to follow as well. Last year a few attorneys received private discipline for failing to follow the ethics rules when fee disputes occurred.

For example, Rule 1.15(b), MRPC, requires that lawyers must withdraw earned fees from trust within a reasonable time of the fees being earned. This is not only the rule, but it is good practice, as it can minimize the amount that you need to place back into trust if the client timely disputes your entitlement to fees. In one private discipline case, a lawyer learned this lesson the hard way.

The lawyer received a fee advance and placed those funds into trust as they were required to do. Along the way, the client paid additional advance funds for expert costs and a trial retainer. Instead of withdrawing funds against the advance fee retainer as the matter progressed (and sending timely invoices that would account for those withdrawals), the lawyer waited to bill the client.

Prior to trial, the lawyer was discharged, and it was then that a bill was sent. The client promptly disputed the fees charged, which triggered an ethical obligation to return the disputed fees to trust. Rule 1.15(b), MRPC, provides "[i]f the right of the lawyer or law firm to receive funds from the [trust] account is disputed within a reasonable time after the funds have been withdrawn, the disputed portion must be restored to the account until the dispute is resolved." The lawyer did not return any portion of the fees to trust, primarily because the lawyer did not think much of the client's basis for disputing the fees.

This representation had lasted for about a year, and if the lawyer had promptly withdrawn fees as they were earned and promptly accounted to the client for those withdrawals, he would have minimized the amount of funds that needed to be placed back into trust when the relationship disintegrated and the client disputed the fees earned. In this case, the lawyer violated Rule 1.15(b), MRPC, by failing to withdraw fees within a reasonable time of those fees being earned and then failing to place disputed fees back into trust when the dispute arose.

Lawyers must also remember that when funds are withdrawn from a trust account, whether it's to pay the lawyer or third parties, it is mandatory under Rule 1.15(b), MRPC, to provide written notice to the client (or other third party whose funds they are) of: (1) the time, amount, and purpose of the withdrawal and (2) an accounting of the remaining funds in trust. You should make sure your invoicing software provides this level of detail to clients (and there is a process to follow to account to third parties if you are holding nonclient funds in a trust account as part of a representation). We have seen instances in which solo, small, and midsize law firms fail to include the needed detail on invoicing. These are ethics issues that we notice, even if a complaining client does not.

Remember also that if you have a flat fee arrangement with your client and the client disputes the amount of fee that has been earned, you must, under Rule 1.5(b)(3), MRPC, "take reasonable and prompt action to resolve the dispute." Just ignoring your client is inconsistent with the ethics rules (and a good way to draw an ethics complaint). You cannot simply wait for the client to ask for a refund of unearned flat fees. If the lawyer-client relationship ends before the entire scope of work is completed and the flat fee fully earned, it is mandatory that the unearned portion be refunded.

There are several ethics rules that may be implicated when a fee dispute arises. Although we tend to try to stay away from fee disputes since they are such a strain on our resources, we will investigate these types of collateral issues when we see them, and we often see such issues when we are investigating some other portion of a complaint.

Conflicts

Last year in this column I wrote about conflicts of interest. We continue to see a lot of complaints alleging conflict issues and more complaints than we would like are ultimately substantiated. Most cases arise from failing to obtain informed consent to joint representations where there is a high probability that adversity will arise and cannot be reconciled between co-clients.

Rule 1.7, MRPC, addresses concurrent conflicts of interest. There are two kinds of concurrent conflicts: direct adversity under Rule 1.7(a)(1), and substantial-risk conflicts under Rule 1.7(a)(2). Direct adversity under Rule 1.7(a)(1) occurs when the representation of one client will be directly adverse to another client. Rule 1.7(a)(2) defines a conflict as "a substantial risk that the representation of one or more clients will be materially limited by the lawyer's responsibility to another client, a former client or a third person, or by a personal interest of the lawyer."

Both kinds of conflicts can be consented to under many circumstances unless the requirements of Rule 1.7(b) cannot be met. When there is a concurrent conflict that is consentable, you need to ensure that "each affected client gives informed consent, confirmed in writing." As many lawyers who simultaneously represent corporations and individuals as well as generations of family members know, identifying conflicts and obtaining informed consent where available is an important part of onboarding clients, and it can be overlooked when things are going well. The key, particularly as it relates to joint representations, is to think about whether there is a future risk of material limitation.

In one case, for example, a lawyer took on the representation of co-personal representatives. Each personal representative owes a fiduciary duty to the beneficiaries of the estate, and it is foreseeable that they may disagree on how to jointly carry out their duties, a classic example of a circumstance in which informed consent to the significant-risk conflict is needed. Here, disputes arose quickly, mostly small ones—but as the matter progressed, disagreements continued to arise between the co-personal representatives, with the lawyer taking the side of one client over the other. In this matter, not only did the lawyer fail to see the conflict situation at the time of retention and fail to get his clients' informed consent, but also failed to see that choosing sides between co-clients is not how you manage a conflict when actual adversity arises, even if one client is being unreasonable.

Comments [29] – [33] to Rule 1.7 set out several special considerations in common representation, and these comments provide a good framework of issues to consider and discuss with potential clients for lawyers considering common representations. Many joint or common representations involve conflicts that are consentable, but it is important to remember how conflicts are defined, and that they are consentable only if and for as long as you can provide competent and diligent representation to each party.

If you are representing multiple parties in a matter, you must analyze for conflicts and whether consent should be obtained, and then, if needed, obtain confirmation of that informed consent in writing.

Supervision of paraprofessionals

In 2024, the Minnesota Supreme Court converted the paraprofessional pilot project to a standing committee and continues to explore expansion of the program. These paraprofessionals are practicing under a lawyer's law license through the Rules of Supervised Practice. This means lawyers may be subject to discipline for misconduct engaged in by the paraprofessionals.

In 2024, one lawyer was disciplined for failing to adequately supervise the work of a paraprofessional approved as part of the project. In that matter, the lawyer failed to adequately review documents the paraprofessional was e-filing, and in fact allowed the paraprofessional to e-file and e-serve documents with the lawyer's signature that had not been reviewed and approved by the lawyer before filing. Additionally, the paraprofessional was not complying with court rules—a fact that opposing counsel brought to the supervising lawyer's attention, to no avail. It was only when the opposing side filed a motion for conduct-based attorney's fees that the supervising lawyer stepped in and took corrective action.

This discipline matter happened to arise in the context of the paraprofessional program, but it is a good reminder that if you supervise lawyers or nonlawyers, you must make reasonable efforts to ensure that there are effective measures in place giving reasonable assurance of compliance with the ethics rules. You can be directly responsible for the misconduct of those you supervise if you ratify, direct, or know about the misconduct with time to correct, but you can also fail to satisfy your ethical supervisory responsibilities if you have inadequate measures in place and those you supervise violate the rules.

Conclusion

Most attorneys care deeply about compliance with the ethics rules, and no one wants professional discipline, even if it is private. Please take some time each year to reread the Minnesota Rules of Professional Conduct. They can be found on our website and in the Minnesota Rules of Court. You will find the time well spent. And remember, we are available to answer your ethics questions: 651-296-3952. ▲

Private conduct and lawyer discipline

BY SUSAN M. HUMISTON susan.humiston@courts.state.mn.us

SUSAN HUMISTON is the director of the Office of Lawyers Professional Responsibility and Client Security Board. Prior to her appointment, Susan worked in-house at a publicly traded company, and in private practice as a litigation attorney.

This month's column explores what happens when private conduct raises attorney license issues. Most of the misconduct that is reported to this Office involves a lawyer's legal practice. But we also see conduct outside the practice of law that results in discipline, both public and private. Below is a non-exhaustive list of private conduct that has led to professional discipline.

Taxes

April 15 will be here before you know it. Since 1972, the Minnesota Supreme Court has held that failure to file individual income taxes is professional misconduct. And repeated non-filing of individual tax returns warrants presumptively public discipline. The Court is less concerned about failure to pay your individual taxes as long as tax returns are filed. In a 1992 case, the Court stated "[w]e note again it is for failure to file tax returns that lawyers are subjected to disciplinary sanctions, not for failure to pay taxes owed. As we said in *In re Disciplinary Action against Chrysler*, 434 N.W.2d 668, 669 (Minn.1989), the lawyer disciplinary system is not, nor should it be, a tax collection auxiliary for the government."[1]

You must also ensure that employee withholding returns are filed, *and* that those withheld funds are promptly paid to taxing authorities. The Court treats it as serious misconduct if you fail to pay withholding taxes.[2]

Child support or maintenance arrearage

You can also be administratively suspended if you are in arrears on maintenance or child support and fail to enter into a payment plan or to comply with that plan. In 1996, the Court adopted Rule 30, Rules on Lawyers Professional Responsibility (RLPR), which provides for an administrative suspension from practice for just this situation. Further, to the extent that you may be knowingly disobeying a court order, discipline may be warranted under Rule 3.4(c), Minnesota Rules of Professional Conduct (MRPC).

Criminal conduct

Rule 8.4(b), MRPC, provides it is professional misconduct for a lawyer to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects." Comment [2] provides some guidance as to which criminal conduct is particularly troubling for lawyers:

> "Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to the practice of law. Offenses involving violence, dishonesty, or breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even if ones of minor significance when considered separately, can indicate indifference to legal obligations."

Some specific cases illustrate the types of criminal conduct that can lead to discipline, including misdemeanor conviction for interference with a 911 call,[3] felony driving while impaired,[4] misdemeanor convictions involving dishonesty such as theft by swindle,[5] crimes of violence,[6] and basically all felony level crimes. I'm sure this surprises no one. Minnesota ethics requirements depart from some other jurisdictions by not pursuing misdemeanor offenses for first-offense driving while impaired—though judges, in contrast, do receive professional discipline for misdemeanor driving while impaired convictions.

Dishonest conduct

Rule 8.4(c), MRPC, makes it professional misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit, or misrepresentation." Dishonest conduct in one's personal life has led to discipline. Some examples include lying during *voir dire* as a potential juror,[7] lying during your own divorce,[8] lying to law enforcement,[9] dishonestly converting funds of a family member,[10] misleading statements in a lawyer's own bankruptcy,[11] and lying on your resume and forging transcript documents.[12] These are only a few examples, but I believe you get the point. Dishonest conduct by lawyers can lead and has led to serious professional consequences, even if the lies do not involve a client representation.

Duty to report

There is no duty to self-report your own misconduct either within the practice of law or outside the practice of law, with limited exceptions. Rule 12, RLPR, requires lawyers who have been publicly disciplined in another jurisdiction or who are facing public discipline charges in another jurisdiction to notify this Office of those facts.

Others likely will have a duty to report your misconduct, if it is serious, whether it relates to the practice of law or not. Rule 17(a), RLPR, requires court administration to report to this Office whenever a lawyer is criminally convicted of a felony. Rule 8.3(a), MRPC, requires lawyers who know that another lawyer has committed a rule violation that raises a "substantial question as to that lawyer's honesty, trustworthiness, or fitness" to report that information to this Office. One of the most frequently asked questions we receive on the attorney ethics hotline is whether particular facts give rise to a duty to report.

Conclusion

Most lawyers not only ensure their professional conduct is compliant with the ethics rules, but also ensure their personal conduct is compatible with the expectations the Court has established for lawyers. When lawyers are admitted to the bar, we must demonstrate good character. It is that good character that helps to protect the public and to safeguard the judicial system. Once we are licensed, good character remains relevant, and many actions contrary to good character can have professional consequences, even if no client conduct is involved. ▲

NOTES

[1] *In re Tyler*, 495 N.W.2d 184, 187 n1 (Minn. 1992).
[2] *In re Moulton*, 721 N.W.2d 900 (Minn. 2006).
[3] *In re Stoneburner*, 882 N.W.82 200, 206 (Minn. 2016).
[4] *In re Ask*, 991 N.W.2d 266 (Minn. 2023).
[5] *In re Glasser*, 831 N.W.2d 644 (Minn. 2013).
[6] *In re Thompson*, 953 N.W.2d 522 (Minn. 2021).
[7] *In re Warpeha*, 802 N.W.2d 361 (Minn. 2011).
[8] *In re Marcellus*, 13 N.W.3rd 679 (Minn. 2024).
[9] *In re Wesley Scott*, 8 N.W.3d 236 (Minn. 2024).
[10] *In re Trombley*, 916 N.W.2d 362 (Minn. 2018).
[11] *In re Crabtree*, 916 N.W.2d 869 (Minn. 2018).
[12] *In re Ballard*, 976 N.W.2d 720 (Minn. 2022).