

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 1888 Disciplinary Docket No. 3
CHARLES M. NASELSKY, :
PETITION FOR REINSTATEMENT : No. 169 DB 2012
: Attorney Registration No. 51473
: (Philadelphia)

ORDER

PER CURIAM

AND NOW, this 4th day of May, 2022, the Petition for Reinstatement is granted. Petitioner is ordered to pay the expenses incurred by the Board in the investigation and processing of the Petition for Reinstatement. See Pa.R.D.E. 218(f).

A True Copy Nicole Traini
As Of 05/04/2022

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 218(c)(5) of the Pennsylvania Rules of Disciplinary Enforcement, The Disciplinary Board of the Supreme Court of Pennsylvania submits its findings and recommendations to your Honorable Court with respect to the above captioned Petition for Reinstatement.

I. HISTORY OF PROCEEDINGS

On October 5, 2012, Petitioner, Charles M. Naselsky, filed a verified Statement of Resignation stating that he desired to resign from the Bar of the Commonwealth of Pennsylvania in accordance with the provisions of Rule 215, Pa.R.D.E. By Order dated December 13, 2012, the Supreme Court of Pennsylvania accepted the resignation statement and disbarred Petitioner on consent. On January 26, 2021,

Petitioner filed a Petition for Reinstatement and Reinstatement Questionnaire. On March 24, 2021, Office of Disciplinary Counsel (“ODC”) requested a 45-day extension to file a reply in order to complete its investigation, which request was granted. On May 12, 2021, ODC filed a Response to Petition and stated that it did not have any specific objections but reserved its right to argue that Petitioner had not met his burden after consideration of the evidence.

The parties did not request a pre-hearing conference. On June 24, 2021, a District I Hearing Committee (“Committee”) held a reinstatement hearing. Petitioner testified on his own behalf and presented the testimony of eight character witnesses. Petitioner offered into evidence Petitioner’s Exhibits P-1 through P-6. ODC did not present any witnesses or introduce any exhibits. The record was closed on June 24, 2021. On July 23, 2021, Petitioner filed a Motion to Supplement/Reopen the Record. By Order dated July 26, 2021, the Committee Chair granted the Motion and allowed the parties to file a Joint Stipulation.

On July 30, 2021, Petitioner filed a post-hearing brief to the Committee and requested that the Committee recommend to the Board that the Petition for Reinstatement be granted. On August 9, 2021, ODC filed a letter in lieu of a formal post-hearing brief and stated that after a hearing on the evidence, it found no impediment to Petitioner’s reinstatement.

By Report¹ filed on October 12, 2021, the Committee concluded that Petitioner did not meet his burden of proof by clear and convincing evidence and

¹ The Committee erroneously titled its Report “Report and Recommendations of the Disciplinary Board of

recommended that the Petition for Reinstatement be denied. Petitioner filed a Brief on Exceptions on November 30, 2021 and requested oral argument before the Board. On December 7, 2021, ODC filed a Brief Opposing Exceptions and stated that while it did not oppose Petitioner's reinstatement after the hearing, it recognized that the determination to recommend reinstatement rested with the Committee and it did not oppose the Committee's recommendation.

A three-member panel of the Board held oral argument on January 18, 2022. The Board adjudicated this matter at the meeting on January 21, 2022.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner is Charles M. Naselsky, born in 1960 and admitted to practice law in the Commonwealth of Pennsylvania in 1987. Petitioner is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

2. Petitioner was admitted to the bar in New Jersey in 1985 and began his legal practice in that state. He later held partnership positions in several Philadelphia law firms between 1990 and 2010. DB-36 Question No. 2(d); N.T. 108-109.

3. Petitioner's area of expertise was "business and real estate transactions that were entrepreneurial in nature." N.T. 109.

the Supreme Court of Pennsylvania" and in the Report erroneously referred to itself on occasion as "The Board."

4. As his career developed, Petitioner worked on bigger transactions; “the transactions were several hundred million dollars on a regular basis.” *Id.*

5. In 2000, Petitioner divorced from his first wife, with whom he had two children, after which he suffered from depression, sought psychiatric help and was treated with a variety of medications. Petitioner testified that he suffered additional stress due to later personal relationships, which included two very short marriages, the last one ending around the time he was released from prison. N.T. 112, 127.

6. Petitioner testified that he “basically managed my emotions for some five years well before my indictment using prescription drugs, things like Klonopin.” Petitioner no longer uses those medications. N.T. 127, 177.

7. Petitioner testified that as his practice was expanding, he began to lose sight of what was important to him and became more materialistic. (“I had to maintain myself and maintaining myself required me to also live the life that was – as I thought was proper at the time, and it was expensive. ... [T]he expensive lifestyle was my own decision, nobody asked me to buy an expensive car, I just did it myself.”). N.T. 114.

8. Petitioner further testified that his priorities at that time required him to maintain his business life, but outside of the law environment, his priorities were fake, and his lifestyle was expensive, inappropriate, and wrong at every level. N.T. 114-115.

9. Petitioner’s expensive lifestyle led him into debt. He testified, “[Y]our liabilities are here and your assess (sic) should be the same, but when they aren’t

you have a problem. And my financial obligations were growing and because of my decisions – not because I suddenly had a responsibility to a third party, I just made decisions to acquire things and my assets didn't raise at the same level.")

N.T. 113.

10. Petitioner resolved his financial problems through "... a course that was wrong, not only was it wrong, it was criminal." N.T. 115.

11. Petitioner explained his criminal conduct that led to his conviction:

a. In 2005 I was a member of Cozen O'Connor. I represented owners and developers of real estate. In and around 2005-2006, I introduced certain of my clients to one another knowing that they were perspective buyers and sellers of commercial real estate in Philadelphia. Some of these introductions resulted in sales. At the time of the sale of each of 1401 Arch Street, 1500 Walnut Street and 410 Front Street, I received, separate from legal fees (which were paid by the clients directly to the firm), finder's fees of \$190,000 (as to 1401 Arch Street), \$90,000 (as to 1500 Walnut Street) and \$90,000 (as to 410 Front Street). I did not share the finder's fees with Cozen and I did not timely or properly report most of those fees as income on my personal tax return. Specifically, I failed to include \$190,000 as income on my 2005 federal tax return and \$175,000 on my initial 2006 tax return, amending it to include only \$75,000 additional income after being called as a witness in a federal investigation against one of these clients for unrelated matters.

b. In 2009 facing the pressing inquiry from law enforcement, I attempted to obstruct the discovery of these events through emails and communications with my accountant and another former client. These emails and communications included my attempt to establish a false fact pattern of loans rather than income all to avoid, after the fact, the tax liability and, as a result of which, I obstructed justice.

DB-36 Question No. 20.

12. Petitioner testified at the reinstatement hearing that looking back on his actions of taking the fees and not paying taxes on them, selfish greed was the motivator that led to his misconduct. N.T. 116-117.

13. Petitioner's conduct resulted in an Indictment filed in the Eastern District of Pennsylvania. DB-36 Ex. C.

14. At the time of his trial, Petitioner knew he was guilty of the tax offense but at that time believed that he had a legal defense to the charge of defrauding Cozen O'Connor of legal fees. As the offense could not be bifurcated, Petitioner went to trial. N.T. 183.

15. On September 25, 2012, Petitioner was convicted in the United States District Court for the Eastern District of Pennsylvania of tax evasion, filing false tax returns, wire fraud, and obstruction of justice.

16. Petitioner was sentenced on November 21, 2012. He accepted his guilt and his responsibility for all his offenses at that time and stated:

Your Honor, I stand before you as an individual solely as a result of my actions and omissions. ... Words of regret do not – do not serve to express the disappointment I have towards myself and lack of judgment towards my profession, towards others, and towards my family. I cherished, honored, and respected my profession, and I let it down. I was proud to be a lawyer and for the vast majority of my life served my clients with respect and ethical standards of the highest caliber. Beyond regret, I'm also embarrassed by every aspect of my behavior during these periods and the fact that I have lost the trust of many, many people. I must also live with that for the rest of my life.

Your Honor, my apologies come from a humble heart and willingness and commitment to repent for my misdeeds, to

take full ownership of each crime, and intent to restore each person that might be a victim of my conduct.

P-3, page 1.

17. During his sentencing hearing, Petitioner further stated:

So, what I did was wrong on every level. I betrayed my profession, my friends, my family. And as to my profession, I was honored – I was honored to call myself a lawyer. I believed in its purpose, the people served, and the system that I have now – I have now surrendered forever.

P-3 at 72.

18. The sentencing judge questioned Petitioner as to whether he would apply for reinstatement, and Petitioner answered “No, Your Honor.” P-3, p. 76.

19. Petitioner testified at the reinstatement hearing that at the time of his sentencing in 2012, his response to the judge was truthful, as he believed that he would not apply for readmission because he could not imagine that he would deserve to be a lawyer again and never expected to achieve a point in his life where he would deserve it. N.T. 120 -121.

20. At the reinstatement hearing, the Committee questioned Petitioner about his statement to the sentencing judge and asked if Petitioner made the statement because he thought it would help with his sentence. Petitioner testified that “I guess, in part, it couldn’t hurt. Look, I got a 70-month sentence, I’m not commenting about it. I got a 70-month sentence and I complied with that sentence entirely. A (sic) spent 42 months in federal prison so I would - - the answer is, I said, everything that I thought I could say to demonstrate not only that I was

remorseful but that I'm recognizing the magnitude of what I did, and not being a lawyer is a reflection of that magnitude." N.T. 188-189.

21. Petitioner was sentenced to serve 70 months in the custody of the Bureau of Prisons, pay restitution to the Internal Revenue Service ("IRS") of \$133,345 and \$290,000 to Cozen O'Connor, a special assessment of \$900, and three years of supervised release. DB-36 Ex. E at 5.

22. The sentencing court ordered that the IRS be paid in full prior to restitution being paid to Cozen O'Connor, and further required Petitioner to pay a lump sum of \$30,000 within 60 days to the IRS. Petitioner paid the lump sum. DB-36 Ex. F.

23. Related to his law license, shortly after his conviction and prior to sentencing, Petitioner filed a Statement of Resignation with the Board on October 5, 2012 and on October 24, 2012, Petitioner's verified Statement of Resignation was submitted to the Supreme Court of Pennsylvania. DB-36 Ex. A.

24. As to his resignation, Petitioner testified that the day after he was convicted, he began the process to surrender his license, recognizing the gravity of what had just occurred. N.T. 121, 174.

25. As a result of his conviction of tax evasion, filing false tax returns, wire fraud, and obstruction of justice, by order of December 13, 2012, the Court accepted Petitioner's resignation and he was disbarred on consent. DB36-Ex. A.

26. Petitioner was transferred to the Camp at F.C.I. Otisville after spending several weeks in federal detention facilities in Philadelphia and New York. N.T. 123.

27. At Otisville, Petitioner was employed in positions of trust and responsibility, including managing the prison's food distribution warehouse and working at a job that required leaving the prison to run errands. N.T. 125.

28. Petitioner considered these jobs as opportunities "to restore a sense of self-worth." DB-36, Question No. 20.

29. While in Otisville, Petitioner successfully completed a non-residential drug program. N.T. 126. After completion of that program, and after undergoing a rigorous admissions process, Petitioner was deemed eligible to participate in the Bureau of Prison's Residential Drug Abuse Program ("RDAP") in Miami. In order to qualify, a participant must establish a historical behavioral issue associated with a drug or alcohol dependency. Petitioner's issue was connected to his prescription drugs that had been used to treat depression and anxiety. N.T. 128-131, 175-176; DB-36 Ex. P.

30. RDAP is a cognitive behavioral therapeutic community where approximately 100 people live together in an independent wing of the prison and experience group therapy at the same time. Petitioner testified that RDAP "truly dives into one's sole (sic). It allows you to own every inch of your life." N.T. 129. Participation in RDAP requires the individual to continue therapy for at least one year after leaving the program. N.T. 129-130.

31. Petitioner testified that his participation in RDAP led to “the single biggest change” in his thinking. This change included his understanding that acceptance of responsibility means that misconduct cannot be justified, minimized or blamed on anyone else and that each person makes a choice about how they will act in every situation. N.T. 131.

32. While in RDAP, Petitioner got a job as the clerk of the program, helping with organizational tasks. N.T. 131.

33. Petitioner was released from prison in April 2016 to the jurisdiction of the United States Probation Office for the Southern District of New York and remanded to a halfway house. N.T. 132.

34. Petitioner was later released to his current apartment residence in West Harlem in New York. DB-36 Question No. 1(d). For the first several months, a friend paid Petitioner’s rent. N.T. 63.

35. Petitioner continued therapy through the therapeutic community at the Department of Probation and then switched to private services for about two years through 2018. In 2021, Petitioner reestablished a telephone therapy relationship with a psychologist on an as-needed basis. N.T. 129-130,178-179.

36. Following his release from prison, Petitioner worked performing administrative tasks and some manual labor for a clothing business and a commercial restaurant equipment company. N.T. 133; DB-36 Question No. 11.

37. Petitioner attempted to find work as a business consultant and met with very limited success. N.T. 187-188.

38. Petitioner obtained part-time work with Viking Asset Management in its real estate division and is currently paid per-task through his consulting company. N.T. 193-194; DB-36 Question No. 12.

39. Petitioner's engagement agreement for his consulting services includes a provision that he is not a lawyer and cannot provide law-related or legal services. N.T. 74, 135.

40. Petitioner's income as a consultant for Viking was \$28,371. N.T. 168.

41. Petitioner's Judgment and Commitment Order contained a provision requiring that he pay the IRS no less than \$1,000 per month after his release from prison. DB-36 Ex. E at 4.

42. After his release in 2016, Petitioner met regularly with U.S. Probation and provided them with his financial records. N.T. 165.

43. Petitioner testified that he has not able to pay \$1,000 per month and there was never a time when he paid \$1,000 per month. N.T. 166.

44. In 2018, while still on supervised release, and with knowledge of his probation officer, Petitioner filed a request for an Installment Plan with the IRS. The Installment Plan request included a detailed financial disclosure of Petitioner's assets, liabilities, and income. DB-36 Ex. H.

45. On January 1, 2019, Petitioner began to make monthly payments to the IRS of \$100. DB-36 Ex. I.

46. Petitioner testified that he was not in a position to increase the monthly amount but would do so when able, testifying that it was his intention to pay the maximum amount that he could afford every month to dispose of the IRS liability. N.T. 167.

47. On April 4, 2019 and May 21, 2019, the IRS responded to the request for the Installment Plan and advised Petitioner that it would be in touch with him. DB-36 Ex. H at pp. 7-9.

48. On May 20, 2019, the IRS informed Petitioner that it had applied his 2018 refund to his debt to the IRS. DB-36 Ex. J. Petitioner has received no further contact from the IRS on this issue. N.T. 167.

49. On December 15, 2019, Petitioner successfully completed and was discharged from his term of supervised release. DB-36 Ex. G.

50. Petitioner testified that it was his intent to pay the amounts in his restitution judgment fully: "My plan is to pay it. It's as simple as that. And restitution as I understand is not dischargeable ... I've worked really hard to clean up my credit report. I worked really hard to stand independent and I'm proud of the fact that I have really respectable credit now and I pay my bills. And restitution is one of those responsibilities that I have to complete." N.T. 140, 144, 167, 185.

51. Petitioner has no credit card or consumer debt. N.T. 192.

52. Petitioner further testified "I'm going to work the rest of my life to pay people back." N.T. 144, 167.

53. When questioned if it was his intention to pay back Cozen O'Connor, Petitioner testified "100 percent. I communicated to them about it." N.T. 185.

54. At the time of the reinstatement hearing, Petitioner had paid approximately \$3,000 to the IRS. N.T. 197.

55. Two days after the June 24, 2021 reinstatement hearing, Petitioner's close relative died. Joint Stipulation of Fact ("JSF") ¶ 3.

56. This relative had executed a will that provided a bequest to Petitioner. JSF ¶ 4.

57. Based on his expectation of the distribution of the bequest, Petitioner borrowed the amount needed to pay the IRS. JSF ¶¶ 5,6.

58. On July 8, 2021, Petitioner's counsel informed Cozen O'Connor of the existence of the bequest and Petitioner's intention to pay the IRS, thereby moving Cozen's restitution debt to first priority and making it payable for the first time since the entry of the sentencing court's order. JSF ¶ 8.

59. On July 12, 2021, Petitioner paid the IRS the remaining restitution amount owed. JSF ¶ 7.

60. At the January 18, 2022 oral argument before the three-member Board panel, Petitioner's counsel stated that she was authorized by representatives of Cozen O'Connor to share that Cozen knows about the bequest from the letter and is aware that it is next in line for restitution, and that there have been further discussions between counsel and Cozen. Oral Argument N.T. 30-31.

61. Prior to his release from prison, the director of the RDAP program in Miami approached Petitioner about meeting Dr. Gerard Bryant, a professor at John Jay College of Criminal Justice and in 2016, after his release, Petitioner met with Dr. Bryant. N.T. 17, 145.

62. Following the meeting, Petitioner met with Dr. Bryant's undergraduate criminal psychology class on four occasions prior to the pandemic to share his experiences with the criminal justice system, including his incarceration. N.T. 15, 146.

63. In 2016 and 2017, Petitioner volunteered at the Fortune Society in Harlem and the Safe Foundation in Brooklyn. N.T. 147-148.

64. In 2019, Petitioner contacted the U.S. Probation Office in Philadelphia to discuss whether his experience could be of use to them in their administration of the Supervision to Aid Re-entry ("STAR") program. This program focuses on individuals in the City of Philadelphia with a significant risk of recidivism and history of violent crime. The participants need employment training and assistance or are likely to benefit from the program's resources in other ways. P-6.

65. As a result of discussions between Petitioner and the U.S. Probation Office, it was determined that Petitioner could assist the program by helping to develop a peer-to-peer mentoring group. As part of the launch of the program, Petitioner drafted the peer-to-peer mentoring guide, which was court-approved. P-5, P-6 at p. 9.

66. During the pandemic, the mentoring group has met every other week for 90-minute sessions. N.T. 152. Petitioner has found his participation in the mentoring sessions to be therapeutic. N.T. 130.

67. During the period of his disbarment, Petitioner reviewed online resources including the American Bar Association Journal, the Legal Intelligencer, the New York Law Journal, the Prison Law Journal, the Law Practice Magazine, Title News Magazine (ALTA), as well as publications and newsletters from the First American Title Insurance Company and Lawyers Title Company. Petitioner also regularly reviewed case reports and followed trends. He stayed current on tax-related matters associated with real estate including 1031 exchanges, tax incentives, and opportunity zones. DB-36 Question No. 19(b),(c).

68. In the year prior to filing his Petition for Reinstatement, Petitioner completed 39.5 CLE credits, 19 of which were ethics. The rules require 36 credit hours, 17 in ethics. DB-36 Question No. 19(a).

69. Petitioner took over 200 CLE credits during his disbarment. N.T. 156.

70. Petitioner testified that he took numerous CLEs in order to reacquaint himself with the law. N.T. 157.

71. If reinstated, Petitioner plans to return to a transactional real estate practice as a solo practitioner. N.T. 155. Petitioner further testified that he intends to open an office in Philadelphia and intends to be an active participant in the legal community and seek work. N.T. 173.

72. In the Reinstatement Questionnaire, Petitioner outlined his plans if reinstated and stated that he has had discussions with individuals at Viking Asset Management expressing his interest in providing legal services and has maintained good relationships with many former clients who have expressed a willingness to engage him as an attorney on their behalf. DB-36 Question No. 18.

73. If reinstated, Petitioner also intends to use his legal skills to assist participants in the STAR re-entry program who need pro bono legal representation in a variety of areas to deal with matters that present barriers to employment and economic security. N.T. 175; DB-36 Question No. 18.

74. Petitioner credibly testified to the remorse he feels for his wrongdoing and his acceptance of full responsibility:

I would say it this way, you know, it's only after many years of personal reflection that you can truly own what you did and own your past. ... My definition of remorse is probably a little more deep than many others. For me, remorse is not just about saying sorry, remorse is about recognizing the damage that you have done to others, you can always forgive yourself. But it's really important that you embrace the people that were impacted by you.

N.T. 122.

I have really learned deeply about my thinking errors, what lead to it, disregard of values, skewed priorities, none of which justified anyone's criminal behavior. You just have to be a good person. ... I don't deny any of the past. The past for me is right in my face every day. I am a felon, it's not going away, so I have to work with it. ... I allow my past to be a reminder and to be an image of what I can't repeat.

I want the committee to know that I and I alone am responsible for my actions. And all those decisions, all that criminal conduct, there's nobody else that is accountable for my

behavior. ... I'm very grateful right now that I ... had a chance to turn my life around. So I say to the committee in a humble way who I have become is a different person. ... And these experiences have now shaped me into what I hope will be a better lawyer.

N.T. 159-164.

75. Petitioner expressed similar regret and remorse on his Reinstatement Questionnaire:

It has been over a decade since my life changed, the circumstances and cause solely my doing. I accept responsibility and recognize the damage that my conduct caused others. To my family and friends, to the profession that I was a proud member of, to my colleagues and clients, and to the members of the legal community that I swore an oath of integrity, honesty and ethical conduct, I apologize and will continue to express my remorse day in and day out.

DB-36 Question No. 21.

76. Petitioner presented the credible testimony of eight character witnesses.

77. Dr. Gerard Bryant is the Director of Counseling at John Jay College of Criminal Justice and adjunct professor in the psychology department. He has been an adjunct since 2005 and the Director of Counseling since 2015. N.T. 13.

78. Prior to his work at John Jay, Dr. Bryant worked for the Federal Bureau of Prisons for 22 years. He started as a staff psychologist and was promoted to Chief Psychologist and Psychology Services Administrator for the Northeast Regional Office. He retired as an Associate Warden at the Metropolitan Detention Center in New York. N.T. 14-15.

79. Dr. Bryant was introduced to Petitioner by a former colleague in the Bureau of Prisons. This colleague was the RDAP Coordinator at Petitioner's program, who described Petitioner to Dr. Bryant as a model participant. N.T. 15.

80. Dr. Bryant testified that Petitioner "was interested in just being able to give something back to the community ... to just basically give himself to others to make amends." N.T. 17. Dr. Bryant further testified that Petitioner was "very forthright about his criminal offenses. ...[H]e's a very genuine and humble person." *Id.*

81. Dr. Bryant testified that Petitioner expressed remorse, embarrassment, and shame about his wrongdoing. N.T. 18.

82. Petitioner spoke to Dr. Bryant's classes on three to four separate occasions and was genuine, honest, and open. N.T. 19.

83. Dr. Bryant testified that he believes Petitioner has the moral qualifications to be an attorney, and described Petitioner as remorseful and insightful with a broad perspective of life. N.T. 21.

84. Darryl Booker is a graduate of the STAR program and fellow participant with Petitioner in the peer-to-peer mentoring program. N.T. 25-26. Mr. Booker has acted as a spokesperson for the STAR program at judicial conferences. N.T. 26-27.

85. Mr. Booker met Petitioner through the STAR program. N.T. 26.

86. Mr. Booker testified about Petitioner's positive influence on him: "I actually didn't know Charles was an attorney. I had learned through him and I

learned from him ... some of the tactics that he gave me, you know, influence and good ideas to try to maintain through situations that we go through ... I actually learned through him to be firm and stay on course, don't give up." N.T. 28-29.

87. Prior to his testimony, Mr. Booker had read the Indictment in Petitioner's case and understood the nature of his offenses. N.T. 30, 35. Mr. Booker testified that he had "talked to Charles and I know the remorsefulness because I felt the same thing. ... He hasn't given up. He's always positive and I see a good person in Charles and he's really been a real good influence for me and I appreciate having met him and I have no problem coming ... to speak about him because he's a very sincere person and a friend of mine now." N.T. 30-31.

88. Mr. Booker testified that in his opinion, Petitioner had the moral qualifications to be an attorney. N.T. 31-32.

89. Donald Onorato, Esquire, is a solo practitioner in New Jersey. He has known Petitioner since their first day of law school in 1982. N.T. 39.

90. Mr. Onorato had read the Indictment and understood that the crimes charged were very serious, especially for a lawyer. N.T. 41.

91. Mr. Onorato discussed these offenses with Petitioner prior to the reinstatement hearing. Based on these discussions, Mr. Onorato believes that Petitioner is remorseful, very ashamed, and embarrassed for those offenses and for what he did to his family and the profession. Mr. Onorato testified that he believes Petitioner appreciates that his conduct was a black mark on the profession. N.T. 41-42.

92. Mr. Onorato testified to the changes he has observed in Petitioner during his disbarment. "Charlie used to be, he was kind of hyper, ... somewhat materialistic. And Charlie is a different person. He's a better version of what he was. He's calmer. ... I think he's more thoughtful, again he's remorseful, he's not the same person he was. ... [S]ince he's released, you can see it, you know it. ... You can tell that he's changed. You can tell that he's a different person." N.T. 43-44.

93. Mr. Onorato testified that if Petitioner were reinstated, he would be an asset to the bar association and to the community, and Mr. Onorato would have no qualms about Petitioner representing any of Mr. Onorato's clients. N.T. 44.

94. Bruce Frank is Petitioner's former client who came to regard Petitioner as a close friend. N.T. 53.

95. From 1980 to 2018, Mr. Frank was the president of a family-owned chain of movie theaters operating in 12 states. N.T. 50-51.

96. Petitioner began representing Mr. Frank's company in the early 2000s. N.T. 53. Mr. Frank testified that he and his family admired Petitioner's skill, his technique, and his ability to talk to people, as well as his ability to find solutions. N.T. 54.

97. Mr. Frank described Petitioner as diligent and responsible. *Id.*

98. Mr. Frank learned of the Indictment from Petitioner and has discussed Petitioner's misconduct with him "100s of times." N.T. 54.

99. Mr. Frank testified that he is satisfied Petitioner has taken responsibility and that he knows the damage he has done to many relationships. N.T. 56.

100. Mr. Frank testified that "I don't think there is a moment when we are together that he does not feel that, that remorse and that almost sense of stupidity for somebody that was where he was at the top of the food chain." N.T. 56.

101. Mr. Frank observed that Petitioner has taken time to "soul search" and reject the materialism that had become part of his life. Mr. Frank testified that Petitioner is "180 degrees from who he was. ... He's much more insightful, he's much more in touch with reality, he's much more in touch with himself." N.T. 60.

102. Mr. Frank has many friends who are developers, bankers, doctors and lawyers and he testified that he would refer any and all of them to Petitioner for their legal work. N.T. 65.

103. Gary Steinfield has been a real-estate developer and entrepreneur for almost 40 years and met Petitioner in 2007 when he hired him for representation in real estate transactions. He considers Petitioner a friend and colleague. N.T. 68, 70.

104. Mr. Steinfield described Petitioner as "the brightest attorney that I had ever worked with. Not only from grasping legal issues, but he seemed to have a very strong grasp of business issues and was very, very helpful in negotiating contracts and really being able to reach the other side of the table and forge consensus with other parties in very complex legal matters." N.T. 69-70.

105. Petitioner informed Mr. Steinfield of his Indictment when it happened, and Mr. Steinfield understood that the charges were very serious. N.T. 71.

106. Mr. Steinfield and Petitioner discussed the charges, the conviction and Petitioner's conduct "extensively over the years." *Id.*

107. Mr. Steinfield testified that based on these discussions, he believes that Petitioner has taken full responsibility for what he did and the damage that it caused. N.T. 72.

108. Petitioner never minimized his conduct or blamed anyone else for it. *Id.*

109. After Petitioner's incarceration, Mr. Steinfield engaged him to provide consulting services. As part of the engagement, Petitioner provided an agreement that included a statement that he was not a lawyer and could not provide legal services. N.T. 73-74.

110. Mr. Steinfield would hire Petitioner as an attorney if he is reinstated. Mr. Steinfield testified that he "got the sense that ... whatever he had done, he took ownership of it, and moved on pretty significantly in terms of changing his life. He told me he was involved in substance abuse and alcohol rehab in prison. He told me he was working with ... community outreach and mentoring programs...[H]e's really owned up to the mistakes." N.T. 75.

111. Mr. Steinfield testified that he believes Petitioner is a different person today. *Id.*

112. Sara Naselsky is Petitioner's 27-year old daughter and is a graduate student in a Ph.D. program for clinical psychology. N.T. 81.

113. Ms. Naselsky has observed changes in her father over time in that he has regained values of family and honesty, has become calmer and less quick to anger, and has "mellowed out quite a bit in that way." N.T. 86.

114. Ms. Naselsky observed that after the Indictment, Petitioner realized he was the problem that needed to be fixed. "And he put ... all that energy he had toward fixing everything else towards himself and really put in the time and the work to do that." N.T. 87.

115. Ms. Naselsky has discussed the STAR mentoring program with Petitioner and she "can see ... how much he enjoys helping other people in that way." N.T. 88.

116. Amy Attias, Petitioner's sister, is a teacher. N.T. 90.

117. After Petitioner's conviction, Ms. Attias frequently visited Petitioner in prison. During each visit, Ms. Attias observed that Petitioner was very aware of the need to change and that "he could make a choice for himself and his values and his goals." N.T. 94.

118. Ms. Attias testified that since Petitioner's conviction and imprisonment, there is a "huge difference" in all of Petitioner's relationships and that "he realizes his values and ... understands who he was as a person and what was important to him." N.T. 93.

119. Ms. Attias testified that “[t]oday my brother is an honest person and he absolutely has the integrity to be a lawyer. And not just a lawyer, but somebody who understands that you make a choice every moment to be honest.” N.T. 96.

120. Hope Cohen is a chef, author, and producer of an internet video channel. N.T. 97-98. At the time of the reinstatement hearing, Ms. Cohen and Petitioner had been dating for 18 months. N.T. 99.

121. Ms. Cohen and Petitioner maintain separate residences and shared a beach house in New Jersey for part of the summer. N.T. 104. Ms. Cohen testified that she signed the lease on the beach house and Petitioner contributed toward the lease. N.T. 105. Petitioner testified that his mother gave him the funds to contribute to the beach house lease and his mother intended to stay there for part of the summer. Other than groceries, Petitioner did not make a monetary contribution. N.T. 153.

122. Through personal conversations with Petitioner, Ms. Cohen understands the gravity and severity of his offenses. N.T. 100.

123. Ms. Cohen testified that she has observed that Petitioner “realized how grave the decisions that he made were and the mistakes that he made. ... Charlie has said to me – he said, literally, you would not have liked the person that I was, I didn’t like the person that I was. But the Charlie that I read about in that Indictment and the Charlie that I know and that I’ve known over the past year- and -a-half are two different people.” N.T. 100-101.

124. Ms. Cohen testified that she and Petitioner had discussed his mentoring program at the re-entry court and that she has observed that he “loves doing that” and “it helps to give him purpose to be able to give something back. ... It’s important – he’s talked about wanting to continue doing it.” N.T. 102-103.

125. Based on the time Ms. Cohen has spent with Petitioner, she believes that he is remorseful for the decisions that he made in the past. N.T. 103.

126. Petitioner introduced eight character letters into evidence. P-2.

127. The letters in support of Petitioner’s reinstatement are from:

a. Eric Heinz, Esquire, a real estate attorney licensed in Pennsylvania who has known Petitioner for 15 years;

b. Arthur Birenbaum, a banking executive and former client who has known Petitioner since 1993;

c. Steven W. Smith, Esquire, a Pennsylvania attorney and partner at Buchanan Ingersoll who has known Petitioner since 1996;

d. Marc Tepper, Esquire, a Pennsylvania attorney and partner at Buchanan Ingersoll who has known Petitioner for 20 years;

e. Dean Weisgold, Esquire, a Pennsylvania attorney and commercial litigator who has known Petitioner since 1999;

f. Alan M. Gottlieb, Esquire, a Pennsylvania attorney and Vice-President and Special Counsel at American Title Company who has known Petitioner for 17 years;

g. Abe Gabbay, Principal of Viking Asset Management and Petitioner's current part-time employer;

h. Rachel Cohen Farber, Petitioner's former wife, who is a former Senior Director of Public Policy and External Affairs at Comcast and who has known Petitioner for more than 20 years.

128. Each author stated that they are aware of the misconduct that led to Petitioner's disbarment, they have witnessed Petitioner's honestly expressed remorse and acceptance of responsibility, they have observed Petitioner's personal and emotional growth, they believe he has the moral qualifications, learning and competence to meet the standard for reinstatement, and they believe Petitioner's reinstatement will be positive for the profession.

129. ODC offered no exhibits and called no witnesses.

130. Significantly, ODC did not call any witnesses nor present any written statements, letters, or affidavits from any attorney associated with, employed by, a member in, or a representative of the law firm of Cozen O'Connor.

131. ODC does not oppose reinstatement.

III. CONCLUSIONS OF LAW

1. The misconduct for which Petitioner was disbarred is not so egregious as to preclude consideration of his Petition for Reinstatement. ***Office of Disciplinary Counsel v. John Keller***, 506 A.2d 872 (Pa. 1986).

2. Petitioner has met his burden of proof by clear and convincing evidence that a sufficient period of time has passed since the misconduct, during which he engaged in qualitative rehabilitation. *In the Matter of Jerome J. Verlin*, 731 A.2d 600 (Pa. 1999).

3. Petitioner has met his burden of proof by clear and convincing evidence that he has the moral qualifications, competency and learning in the law required for admission to practice law in the Commonwealth of Pennsylvania. Rule 218(c)(3), Pa.R.D.E.

4. Petitioner has met his burden of proof by clear and convincing evidence that his resumption of the practice of law in the Commonwealth of Pennsylvania will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subversive of the public interest. Rule 218(c)(3), Pa.R.D.E.

IV. DISCUSSION

Petitioner seeks reinstatement to the practice of law in Pennsylvania following his disbarment on consent on December 13, 2012. Petitioner's disbarment was the result of his September 2012 conviction by a jury in the United States District Court for the Eastern District of Pennsylvania of tax evasion, filing false tax returns, mail fraud, and obstruction of justice. On January 26, 2021, eight years after the effective date of his disbarment, Petitioner filed his Petition for Reinstatement and Reinstatement Questionnaire, and a hearing was held on June 24, 2021. Following the submission of the parties' post-hearing briefs, wherein Petitioner requested that the Committee

recommend his reinstatement to the Board and ODC stated it had no opposition to reinstatement, the Committee filed its Report and recommended denying reinstatement. The Committee concluded that while Petitioner's misconduct was not so egregious as to prevent reinstatement, he failed to meet his burden to demonstrate that a sufficient period of time has passed since his misconduct during which he engaged in qualitative rehabilitation. Further, the Committee concluded that Petitioner failed to demonstrate by clear and convincing evidence that he possesses the moral qualifications necessary to practice law in the Commonwealth, and that his resumption of the practice of law will not be detrimental to the integrity and standing of the bar or the administration of justice nor subversive of the public interest.

Petitioner takes exception to the Committee's conclusions and recommendation to deny his reinstatement. ODC has stated throughout the proceedings that it is not opposed to reinstatement, but filed a letter brief stating that the decision to recommend reinstatement rests with the Committee and ODC is not opposing the Committee's Report and recommendation.

Upon our independent review of the record, we conclude that Petitioner met his reinstatement burden.

When a disbarred attorney seeks reinstatement, the Board must initially examine whether the magnitude of the breach of trust was so egregious as to preclude further reconsideration of the petition for reinstatement. As the Court held in **Keller**, "[i]n the case of disbarment, there is no basis for an expectation by the disbarred attorney of the right to resume practice at some future point in time." **Keller**, 506 A.2d at 875.

Petitioner engaged in serious criminal conduct that included dishonesty and deceit and that damaged the public's confidence in the legal profession. He defrauded his law firm of fees, failed to report the fees as income on his tax returns, and obstructed the discovery of those events through emails and communications with his accountant that attempted to establish a false fact pattern of loans rather than income to avoid tax liability.

We conclude, as did the Committee, that Petitioner's misconduct, while extremely serious, is not so egregious as to prevent the possibility of reinstatement. The Supreme Court's precedent makes clear that Petitioner's misconduct does not bar reinstatement. See, ***In the Matter of Cory Adam Leshner***, No. 159 DB 2013 (D. Bd. Rpt. 11/20/2020) (S. Ct. Order 12/16/2020) (attorney disbarred on consent following conviction for conspiracy to commit wire fraud; was a co-conspirator in the Scarfo organized crime family before, during, and after law school; conduct not so egregious to bar reinstatement); ***In the Matter of Sabrina L. Spetz***, No. 31 DB 2011 (D. Bd. Rpt. 1/3/2020) (S. Ct. Order 2/28/2020) (attorney disbarred on consent for conviction of mail and wire fraud conspiracy arising from falsification of bank records; conduct not so egregious to preclude consideration of reinstatement; reinstatement denied on other grounds); ***In the Matter of Michael Radbill***, No. 113 DB 2004 (D. Bd. Rpt. 1/8/2019) (S. Ct. Order 3/13/2019) (attorney disbarred for conviction of health care fraud for filing 29 fraudulent personal injury cases and false tax returns for multiple years; conduct not so egregious to preclude reinstatement; reinstatement denied on other grounds); ***In the Matter of Stephen Greg Doherty***, No. 69 DB 2010 (D. Bd. Rpt. 9/13/2017) (S. Ct. Order

10/27/2017) (attorney disbarred on consent for conviction of mail fraud, wire fraud, bankruptcy fraud, and money laundering based on a scheme of real property sales and leaseback transactions; conduct not so egregious as to bar reinstatement).

The Board's inquiry does not end with the determination of the **Keller** threshold issue. We next consider whether Petitioner has established by clear and convincing evidence that he has the moral qualifications, competency and learning in the law required for admission to practice law in Pennsylvania and that his readmission would not have a detrimental impact on the integrity and standing of the bar, the administration of justice nor be subversive of the public interest. Pa.R.D.E. 218(c)(3). Petitioner must prove that his post-disbarment conduct and efforts at qualitative rehabilitation during his period of disbarment were sufficient to dissipate the detrimental impact of his serious misconduct on the public trust. **In the Matter of Verlin**, 731 A.2d at 602.

A petitioner seeking reinstatement from disbarment may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment. Pa.R.D.E. 218(b). The record established that over 12 years have passed since Petitioner's criminal misconduct and over eight years have passed since his disbarment on consent. The evidence of record demonstrates that Petitioner's period of disbarment has been a time of genuine rehabilitation that has dissipated the breach of trust caused by his serious misconduct. In previous matters, the Court has reinstated disbarred attorneys who met their heavy burden after a disbarment period similar in length to that of the instant Petitioner. See, **In the Matter of Jerome J. Verlin**, 731 A.2d 600

(Pa. 1999) (reinstatement from disbarment after nearly eight years; attorney facilitated the impersonation of a client at a deposition and was convicted of criminal conspiracy, perjury, false swearing, and theft by deception); ***In the Matter of Peter Joseph Payne, Jr.***, No. 197 DB 2012 (D. Bd. Rpt. 6/3/2019) (S. Ct. Order 7/22/2019) (reinstatement from disbarment after six years; misappropriation of client funds in the amount of \$500,000); ***In the Matter of Michael K. Simon***, No. 149 DB 2005 (D. Bd. Rpt. 4/3/2014) (S. Ct. Order 6/16/2014) (reinstatement from disbarment after six years; misappropriation of client funds in the amount of \$395,000); ***In the Matter of Gerard Emmett Evans***, No. 10 DB 2001 (D. Bd. Rpt. 10/3/2008) (S. Ct. Order 12/15/2008) (reinstatement from disbarment after seven years; mail and wire fraud conviction); ***In the Matter of Mark Allan Kovler***, 172 DB 2002 (D. Bd. Rpt. 5/15/2009) (S. Ct. Order 7/24/2009) (reinstatement from disbarment after five years and eleven months; fraudulent conveyance of home to insulate from judgment in a pending malpractice action); ***In the Matter of James J. Gillespie, Jr.***, No. 125 DB 1999 (D. Bd. Rpt. 6/8/2006) (S. Ct. Order 9/19/2006) (reinstatement from disbarment on consent after five years and three months; fabrication of court order and forgery of judge's name).

Petitioner's rehabilitation began almost immediately after his conviction in October 2012, when he acknowledged the harm he had done to the legal profession by resigning his license to practice law. At his sentencing hearing in November 2012, Petitioner accepted his guilt and responsibility, apologized to the sentencing court, and expressed remorse, regret, and shame for his misconduct. Petitioner's rehabilitation continued through his years in prison, during which he held full-time employment

managing the prison's food distribution warehouse and was entrusted to leave the prison to run errands, positions that required Petitioner to demonstrate responsibility. While in prison, Petitioner successfully completed a non-residential drug program, after which he was deemed eligible to participate in RDAP, a rigorous drug and alcohol dependence cognitive behavioral therapeutic community for prisoners who meet strict qualifications. Petitioner described his participation in RDAP as contributing to the biggest change in his understanding of the meaning of accepting responsibility for choices and actions, as the program did not permit blaming others. While in RDAP, Petitioner continued to improve himself by working as a clerk for the program.

After his release from prison in 2016 and later release from a halfway house, Petitioner moved to an apartment in the West Harlem neighborhood of New York City and continued his rehabilitation in significant ways. He gave back to the community through his participation in Dr. Bryant's classes at John Jay College, where he candidly shared his experience in the prison system with undergraduates. Petitioner also volunteered his time at the Fortune Society in Harlem and the Safe Foundation in Brooklyn. In particular, Petitioner's involvement with the STAR re-entry program affiliated with the United States Probation Department has exemplified his commitment to rehabilitation. Petitioner helped to develop a peer-to-peer mentoring group that provides a confidential forum for individuals re-entering society from prison to candidly discuss their challenges and give each other support. As part of the launch of that program, Petitioner drafted a mentoring guide that was approved by the court. Petitioner was not merely active with the development side of the mentoring program; he participated in the

peer-to-peer sessions and found them to be very therapeutic. Petitioner's involvement in the peer-to-peer program helped others, as evidenced by the testimony of Mr. Booker, who described Petitioner as a good influence on him. In addition to the peer-to-peer mentoring therapeutic environment, Petitioner sought outpatient treatment on his own with a psychologist in an effort to improve himself.

Petitioner demonstrated rehabilitation by maintaining continuous employment following his release from prison. Petitioner initially performed administrative tasks and some manual labor for two businesses. Later, he attempted to find work as a business consultant, with limited success. Ultimately, Petitioner obtained part-time work with Viking Asset Management in its real estate division and is paid per-task through his consulting company. The record showed that he has an income of approximately \$28,371. Petitioner has avoided holding himself out as a lawyer and drafted his engagement agreements for his consulting services to include a provision that he is not a lawyer and cannot provide law-related or legal services.

Petitioner's efforts to maintain competency and learning in the law are further evidence of his fitness and rehabilitation. During his period of disbarment, Petitioner reviewed many online resources and regularly read case reports and followed trends in the law. He stayed current on tax-related matters associated with real estate. In addition to meeting his 36 CLE credits for reinstatement, Petitioner took over 200 CLE credits in order to reacquaint himself with the law and ensure he is prepared if reinstated. On the question of his future in the law, if reinstated, Petitioner plans to open a solo

practice in transactional real estate with the possibility of opening an office in Philadelphia, where he practiced for many years, in order to be an active participant in the legal community. Petitioner further shared his interest in providing pro bono legal services to participants in the STAR re-entry program who need representation in a variety of areas.

As part of Petitioner's criminal sentence, he was ordered to pay restitution to the IRS of \$133,345 and \$290,000 to Cozen O'Connor, with the IRS having first priority. At sentencing, Petitioner was directed to make an immediate lump sum payment of \$30,000 to the IRS, which he paid. Petitioner's Judgment and Commitment Order required him to pay the IRS \$1,000 per month after his release from prison. While on supervised release, Petitioner contacted the IRS in order to request an installment plan, as he was unable to afford the \$1,000 per month payment. Petitioner's probation officer was aware of Petitioner's efforts to secure an installment plan. Although he never heard from the IRS in response to his request, on January 1, 2019, Petitioner began making monthly payments of \$100 to the IRS. Petitioner testified at the reinstatement hearing that he understood the restitution was not dischargeable, it was his responsibility, and he intended to pay it, however long it might take.

Shortly after the reinstatement hearing, Petitioner's relative died and provided a bequest to him. Petitioner took several actions based upon this change in circumstances. First, he obtained a personal loan based on the expectation of the distribution of the bequest in order to pay the IRS in full. Petitioner's counsel contacted Cozen O'Connor to inform the firm of Petitioner's intent to pay the IRS, thereby moving

the firm's restitution debt to first priority. Lastly, Petitioner paid the IRS in full. These actions demonstrate that Petitioner has not attempted to evade his financial obligations, to the contrary, Petitioner took the very first opportunity possible to pay the IRS, consistent with his reinstatement testimony. Although Cozen O'Connor has not been paid, the record established Petitioner's contact with the firm and his intent to do so.

The steady and concerted efforts undertaken by Petitioner to rehabilitate himself would be meaningless without the concomitant demonstration of remorse and acceptance of responsibility that goes to the heart of a disbarred attorney's rehabilitative process. The record established that Petitioner has committed himself to a path of responsibility and has demonstrated genuine contrition for his transgressions. The record is replete with Petitioner's credible expressions of remorse and regret for his actions.

Petitioner forthrightly described the events that led to his misconduct and candidly admitted that he was selfish and greedy, and that his choice to lead an expensive lifestyle and purchase expensive items directly led to his ultimate decision to engage in criminal conduct. Petitioner described that time in his life as a period when he lost sight of his priorities and disregarded his values. He accepted full responsibility for his conduct and holds himself accountable.

Petitioner took affirmative steps during his time in prison and in the years since his release to commit to honesty and integrity and realign his values. He credibly testified that change comes from within and is self-directed, and he worked hard to make changes by engaging in considerable and deep thoughts about his past errors in thinking.

The record supports the finding that he committed himself to change, as evidenced by his hard work in prison that resulted in his ability to hold positions of trust and responsibility within the prison, and his hard work during RDAP, an intensive drug and alcohol dependency program that allowed him to engage in cognitive behavioral therapy, which he testified was the real turning point for him in his efforts to change himself. Petitioner is grateful he had a chance to turn his life around and believes he is a humbler person, which he hopes will make him a better lawyer. Importantly, Petitioner recognized the damage that his "shameful" misconduct had on others, including his family, friends, and the legal profession, and he expressed sincere remorse. DB-36 Question No. 21.

Petitioner's positive rehabilitative efforts have been observed by his family, friends, and colleagues, eight of whom appeared at the hearing and credibly testified in support of Petitioner's reinstatement. The witnesses represented a cross-section of Petitioner's life, most of whom had lengthy relationships with Petitioner and knew him well. Dr. Bryant is a psychology professor that Petitioner was referred to through RDAP, Mr. Onorato is an attorney who has maintained a friendship with Petitioner since their law school days, Mr. Frank and Mr. Steinfield are Petitioner's former clients who have known him for many years as a professional and as a friend, Mr. Booker is a graduate of the STAR re-entry program and met Petitioner through the peer-to-peer mentoring program, Ms. Naselsky and Ms. Attias are family members, and Ms. Cohen is Petitioner's significant other. The compelling testimony of these trustworthy witnesses bolsters Petitioner's authentic expressions of remorse and regret and supports the conclusion that he has changed during his disbarment and is currently a fit and moral person. The

witnesses testified that Petitioner had expressed shame and remorse for his misconduct, had been humbled, had acted to redeem himself, had expressed an interest in helping others, and that based on their observations, had emerged from his experience a changed individual. Several of the witnesses who are lawyers or businesspeople unhesitatingly asserted their observations of Petitioner's competence and their willingness to refer clients to him if he is reinstated. Petitioner's daughter and sister, who have known him through their lives, credibly testified to the positive changes they have seen in Petitioner, as he has regained his priorities of family values and honesty. Likewise, the character letters from six colleagues (five of whom are Pennsylvania attorneys), his current employer and his former wife attested to Petitioner's integrity, acceptance of responsibility and remorse, and commitment to turning his life around. The character testimony and letters provide ample evidence that Petitioner possesses the moral qualifications and competence necessary to resume the practice of law and his readmission will not be damaging to the bar or the public.

Upon this record, the Board concludes that Petitioner met his burden for reinstatement. The Committee reached a different conclusion. We examine the Committee's findings to explain why they are not supported by the record and why the Committee erred in recommending denial of Petitioner's reinstatement.

The Committee found numerous deficiencies that it posited showed Petitioner was insufficiently rehabilitated and should prevent Petitioner's reinstatement. First, the Committee found that an insufficient period of time had passed since disbarment

because, in its estimation, Petitioner had applied for reinstatement “almost immediately” after the lapse of the five year waiting period. Committee Report at p. 15.² The Committee erred in its finding. The period of disbarment is calculated from the effective date of the disbarment. In this case, the effective date was January 12, 2013, with Petitioner filing his reinstatement request on January 26, 2021. Therefore, Petitioner had been disbarred for eight years at the time he filed for readmission, three years beyond the mandatory five year waiting period. The additional three years of waiting to apply cannot be characterized as applying “immediately” after the expiration of the five year waiting period.

Next, the Committee criticized Petitioner’s restitution efforts to the IRS and Cozen O’Connor, finding that he paid less than the \$1,000 per month payment contained in the Judgment and Commitment Order (the Committee at p. 14 of its Report inaccurately described Petitioner’s obligation as an “IRS directive”) and made no efforts to repay his former law firm. The Committee doubted the accuracy of Petitioner’s finances and found it incredible that Petitioner’s income as a consultant for Viking Asset Management would total only \$28,371. The Committee made much of Petitioner’s residence in New York City as evidence he was untruthful regarding his income and suggested that he should have moved to a less expensive area in order to pay more towards the IRS debt. The Committee similarly focused on the fact that Petitioner shared a summer beach rental in New Jersey with his significant other and discounted unrebutted evidence that Petitioner’s mother paid for his share of the rental. In short, the Committee found Petitioner’s

² The Committee’s Report does not contain page numbers. The Board’s Report references page numbers assuming the first page of the Committee Report would be No. 1.

testimony on his finances to be dishonest and incredible. However, the Committee failed to cite any evidence to support these findings. ODC thoroughly investigated Petitioner's reinstatement application and never raised any issue related to Petitioner's finances and there is no evidence of record to suggest that Petitioner's financial disclosures were inaccurate, let alone untrue. It is simply not enough for the Committee to find "an air of deception" (Committee Report at p. 17) about Petitioner's finances without supporting evidence of such deception. Simply put, the Committee based its findings on nothing more than its own supposition that the evidence produced by Petitioner was, inaccurate, at best and dishonest at worst, without a scintilla of evidence in support of said findings.

Likewise, the Committee erred in finding that Petitioner's full restitution payment to the IRS raised credibility concerns. At the hearing, Petitioner testified that he understood he had an obligation to pay the restitution to the IRS and Cozen O'Connor and it was his intent to fully pay the restitution. As stipulated by the parties, two days after the reinstatement hearing concluded, Petitioner's relative died, providing him the expectation of a bequest that could fund the repayment to the IRS, which was first in payment priority. Consistent with his hearing testimony as to his intent to pay and as soon as he knew he had the means, Petitioner took a personal loan and paid the IRS. Petitioner through counsel notified Cozen O'Connor of both the inheritance and the elevation of its debt to first priority. This action is again consistent with Petitioner's testimony regarding his intent to pay. There is no evidence in the record to support the Committee's finding that Petitioner was not credible as to restitution. Somewhat incomprehensibly, the Committee appears to doubt the existence of the bequest and the

loan. Committee Report at p. 17.³ There is certainly no evidence to support the Committee's suspicion and nothing in the record to suggest that Petitioner or ODC would stipulate to facts of questionable provability.⁴

³ Curiously and without explanation or evidence, the Committee casts aspersions upon the Joint Stipulation of Facts by insinuating that the absence of documentation regarding the then pending bequest to Petitioner and his use of that pending bequest to secure a personal loan sufficient to repay the IRS, somehow makes the existence of the loan and the bequest both suspect and of questionable existence. Committee Report at p. 17, n.10 (and accompanying text). It is beyond peradventure that the procedures in a reinstatement hearing of the type and kind conducted by the Committee are to be governed by the "...rules applicable to formal proceedings shall govern the procedure for hearings before one or more hearing committee members...." See Pa. D. Bd. R. 89.276. It is equally beyond reproach that the Disciplinary Board Rules governing formal proceedings provide that: (1) the admissibility of any evidence is governed by the then in force Pennsylvania Rules of Evidence applicable to a non-jury trial (trial by the court without a jury) of civil matters in courts of common pleas of this Commonwealth. Rule 89.141(a); (2) that the parties may enter into stipulations as to "any relevant matters of fact" and once those stipulations are received into evidence in any matter, the stipulations "shall be binding on the participants with respect to the matters therein stipulated." Rule 89.131; and (3) "A stipulation of facts is binding and conclusive on a trial court, although the court may nonetheless draw its own legal conclusions from those facts." See *Mader v. Duquesne Light Co.*, 241 A.3d 600, 615 (Pa. 2020). Accordingly, as in any other civil case, once the participants in this reinstatement proceeding entered into a stipulation of facts relating to Petitioner's pending bequest and subsequent personal loan, those **facts** were binding upon the committee. *Id.* That means that the Committee was **not** at liberty to question the veracity of the facts for any reason, not the least of which is the fact that more documentation of said facts was not attached to said stipulation. See, e.g., Pa. R. Evid. 201 (court can take judicial notice of facts because they can be determined from sources whose accuracy cannot reasonably be questioned); Pa. R. Evid. 901(a) (a proponent of any evidence is relieved of requirements of authenticating or identifying an item of evidence if the evidence is stipulated). Of course, to the contrary, the entire purpose of entering into the stipulation is to avoid the very requirement the Committee complains is lacking. *Id.*

⁴ Further complicating the tale told by the Committee to discredit Petitioner's sincere testimony regarding his efforts and desires to repay his debts, is the peculiar suggestion that it was the **Committee itself** which induced the Petitioner to pay the restitution which he was ordered to pay by the United States District Court for the Eastern District of Pennsylvania. See Committee Report at p. 17 n.9 ("Only after the extensive questioning by the Committee which focused almost exclusively on financial aspects of the case did Petitioner seek out a personal loan to make any real progress towards the payment of debt."). What makes the Committee's mere assertion of this notion distressing, is the fact that it is **undisputed** and **stipulated** that the security used by Petitioner to obtain the personal loan which allowed him to pay the IRS, was a bequest made to Petitioner in the last will and testament of a "close family relative" who died on or about June 26, 2021 (two days **after** the conclusion of Petitioner's reinstatement hearing). See JSF at ¶3. It is hard for this Board to fathom how a Hearing Committee would suggest that the "fortuitous" death of a close family relative of Petitioner two days after the conclusion of the reinstatement hearing resulting in a bequest that Petitioner was able to leverage to obtain a "personal loan" should somehow inure to the credit or benefit of the Committee and not the Petitioner.

In the same vein, the Committee erroneously found that Petitioner's lack of payment to Cozen O'Connor should prevent reinstatement. as it signified that his "debt" to the legal profession remains "unpaid." Committee Report at p. 15. A failure to make full restitution based on an inability to pay is not a bar to reinstatement if Petitioner demonstrates intent to repay. See *In the Matter of Robert Langston Williams*, No. 7 DB 2013 (D. Bd. Rpt. 12/11/2019) (S. Ct. Order 1/21/2020) (reinstatement granted to petitioner-attorney who owed a balance of \$106,277 in restitution related to his federal court conviction and was making payments toward the balance); *In the Matter of Andrew Keith Fine*, No. 115 DB 1995 (D. Bd. Rpt. 1/24/2014) (S. Ct. Order 5/23/2014) (non-payment of judgment not a bar to reinstatement where petitioner-attorney demonstrated that he was making a good faith effort to resolve the judgment).

As the record established, the Judgment and Commitment Order made restitution to the IRS the first priority, with Cozen O'Connor in second position. The record also demonstrated that Petitioner immediately notified Cozen of his inheritance and the fact that it was moved to first priority. Petitioner's intent to pay is well-supported in the record and he has entered discussions with Cozen about repayment. There is no evidence that Petitioner is living a profligate lifestyle at the expense of paying his restitution judgment, and no evidence that he has attempted to evade his obligation. Rather, the evidence supports the finding that Petitioner has proactively addressed his obligation with his former law firm and demonstrated a good faith effort to satisfy that obligation.

The Committee's finding that Petitioner was untruthful to the sentencing court in 2012 when he stated that he would not apply for reinstatement, which raised doubt with the Committee as to Petitioner's credibility at the reinstatement hearing, is equally flawed. The record demonstrated that at his sentencing hearing, Petitioner made a lengthy statement to the court expressing his remorse, shame, and regret and stated that he had betrayed his profession and surrendered that profession "forever." P-3 at 72. When pressed by the judge to affirm that he was stating that he would never apply for reinstatement, Petitioner stated that he would not. P-3, 75-76.

At the reinstatement hearing, Petitioner credibly testified that at the time he delivered his response to the sentencing court, "I could not imagine that I deserved to be a lawyer again. The charges that were against me, since they go to the core of the conduct that one expects as an attorney. I just never expected that I would achieve a point in my life where I would deserve it. ... It was a truthful statement at the time I made it." N.T. 120-121. In response to a question from the Committee as to whether he told the court he would not seek reinstatement to "help with your sentence," Petitioner replied forthrightly, testifying that "I guess, in part, it couldn't hurt. ... I said everything that I thought I could say to demonstrate not only that that I was remorseful but that I'm recognizing the magnitude of what I did and not being a lawyer is a reflection of that magnitude." N.T. 188-189.

In our view, Petitioner's reinstatement testimony supports a finding that he was not dishonest to the sentencing court; he told the court what he was feeling at the time, which was that he would not apply for reinstatement. However, years passed after

the sentencing hearing, during which time Petitioner engaged in self-reflection and took active steps to change as a person. His time in prison and following his release was a time of rehabilitation, such that Petitioner believed he had achieved the point in his life where he was able to be a lawyer once again. We do not find that Petitioner should be bound by his statement more than nine years ago to the sentencing court, nor does the evidence support the Committee's interpretation of the facts that Petitioner made a misrepresentation to the court in an effort to achieve a reduced sentence.

Next, we consider the Committee's finding that Petitioner lacked remorse for the offense committed against Cozen O'Connor and provided "waffling" responses to questions regarding accountability for his actions against his former law firm. Committee Report at p. 19. The Committee faulted Petitioner for believing, at the time of his trial, that he had a legal defense to his criminal conduct involving Cozen O'Connor. To be clear, Petitioner was entitled to exercise his Constitutional rights to go to trial and that decision should not be held against him at a reinstatement hearing. Petitioner's beliefs at the time of trial are not relevant to whether he is currently remorseful. The Committee again referenced Petitioner's lack of payment to Cozen O'Connor and found that his lack of "concrete plans to do so" is "probably reflective of the fact that [Petitioner] does not think what he did to the firm was wrong." Committee Report at p. 19.

In fact, the record shows that Petitioner unwaveringly accepted responsibility for all of his wrongdoing, including that involving Cozen O'Connor, and he is sincerely sorry for that misconduct. There is no evidence to support the Committee's conclusions that Petitioner believes he did nothing wrong or thinks his actions did not

warrant discipline. Petitioner repeatedly expressed remorse starting almost immediately after his conviction and through the instant reinstatement proceeding. Petitioner's actions in resigning his law license, working hard in prison and in his therapeutic programs, and engaging in many worthwhile community service activities post-incarceration serve as an active expression of his remorse and acceptance of responsibility for the wrongs he committed. The record further demonstrated that Petitioner credibly testified regarding his intent to repay his former firm and promptly notified Cozen O'Connor of his inheritance and the fact that Cozen was now first priority for payment. These facts support the finding that Petitioner is genuinely remorseful.

The Committee erred in finding as a basis to deny reinstatement that Petitioner lacked a legitimate plan to return to the legal profession. The record demonstrates that Petitioner plans a practice as a sole practitioner in transactional real estate and took many CLE credits to maintain his learning in the law. Petitioner provided further specifics that he would like to open a practice in Philadelphia in order to be an active part of the legal community. Additionally, in response to Question No. 18 of the Reinstatement Questionnaire, Petitioner stated that he has had discussions with Viking Asset Management regarding providing legal services if he is reinstated and he maintained relationships with many former clients who have expressed willingness to engage him as an attorney. Petitioner also expressed interest in providing pro bono legal services to STAR re-entry participants.

Recently, an attorney was reinstated to practice after sharing his plan to resume a general practice of law in the areas of civil litigation, family law, and bankruptcy.

In the Matter of Robert J. Colaizzi, No. 120 DB 2016 (D. Bd. Rpt. 9/2/2021) (S. Ct. Order 11/8/2021). Another attorney's plan to practice criminal defense and general civil litigation in Centre County was found sufficient for reinstatement. ***In the Matter of Stacy Parks Miller***, No. 32 DB 2017 (D. Bd. Rpt. 8/3/2021) (S. Ct. Order 8/31/2021). Petitioner's plan is a specific, legitimate plan and very similar to the plans proffered by the successful petitioners in ***Colaizzi*** and ***Miller***.

Finally, we consider the Committee's rejection of Petitioner's character evidence. The Committee found that the eight diverse character witnesses "appeared to be good people with genuine affection for Mr. Naselsky" but nevertheless found the witnesses were not compelling as to Petitioner's remorse and rehabilitation, leaving the Committee with the impression that Petitioner was "sorry he was caught and sorry he embarrassed his family, but that does not equate to remorse for his ethical violations or his repeated criminal activity." Committee Report at p. 20. Upon review, we conclude that the Committee's findings lack support in the record, as in the first instance, the Committee disregarded Petitioner's repeated, genuine expressions of remorse, which are the antithesis of the self-pity ascribed to Petitioner by the Committee. For example, see P-3 at 71-72 ("I cherished, honored, and respected my profession, and I let it down. I betrayed my profession, my friends, my family."); N.T. 159-164; see *a/so* DB -36 No. 21 ("it has been over a decade since my life changed, the circumstances and cause solely my doing. I accept responsibility and recognize the damage that my conduct caused others. To my family and friends, to the profession that I was a proud member of, to my colleagues and clients, and to the members of the legal community that I swore an oath of integrity,

honesty and ethical conduct, I apologize and will continue to express my remorse day in and day out.”)

Because the Committee disregarded the compelling evidence of Petitioner’s own remorse, it improperly minimized the consistent, heartfelt, and detailed testimony from the character witnesses, all of whom testified that Petitioner had repeatedly expressed his shame and remorse for hurting others, had been humbled by his experience, had acted to redeem himself, and based on their observations, had emerged from his experience a changed person for the better. The credible testimony of these witnesses bolsters Petitioner’s own sincere remorse and must be accorded proper weight.

The Committee further erred in finding, with no explanation, that the eight character letters submitted by Petitioner were “of little to no value.” Committee Report at p. 21. Character letters are regularly considered by the Board and the Court in reinstatement matters. See, *In the Matter of Benjamin Hart Perkel*, No. 23 DB 2014 (D. Bd. Rpt. 1/28/2021) (S. Ct. Order 3/15/2021) (reinstatement granted; petitioner presented four live witnesses and two character letters); *In the Matter of Harry Vincent Cardoni*, No. 210 DB 2010 (D. Bd. Rpt. 2/25/2020) (S. Ct. Order 3/12/2020) (reinstatement granted; petitioner presented one live witness and nine character letters). Many of the letters in the instant matter came from experienced attorneys and businesspeople who credibly asserted their support of Petitioner’s reinstatement based on his acceptance of responsibility, rehabilitation, remorse, and competence as a lawyer. These individuals

are willing to hire Petitioner or refer clients to him, thus displaying a high level of trust in Petitioner's qualifications.

Upon this record, the Board concludes that Petitioner is fit to practice law. Petitioner has been disbarred for more than eight years, during which time he reflected on his egregious acts and gained self-knowledge that helped him change his life for the better. The evidence of record demonstrates that his period of disbarment has been a time of genuine and steadfast commitment to rehabilitation that has dissipated the breach of trust caused by his serious criminal misconduct. Petitioner demonstrated his rehabilitation through his words and actions. Upon this record, we conclude that Petitioner has met his reinstatement burden by clear and convincing evidence that he is morally qualified, competent and learned in the law, and that his reinstatement will not be detrimental to the public or to the integrity of the profession. We recommend Petitioner's reinstatement to the Court.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Petitioner, Charles M. Naselsky, be reinstated to the practice of law.

The Board further recommends that, pursuant to Rule 218(f), Pa.R.D.E., Petitioner be directed to pay the necessary expenses incurred in the investigation and processing of the Petition for Reinstatement.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: David S. Senoff
David S. Senoff, Member

Date: 3/24/2022