IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of	:	No. 2144 Disciplinary Docket No. 3
	:	
MICHAEL ANDREW RABEL	:	No. 33 DB 2015
	:	
PETITION FOR REINSTATEMENT	:	Attorney Registration No. 201443
	:	
	:	(Allegheny County)

ORDER

PER CURIAM

AND NOW, this 8th day of March, 2023, the Petition for Reinstatement is denied. 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 03/08/2023

Attest: Nicole Traini
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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PETITION FOR REINSTATEMENT	:	(Allegheny County)

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

By Order dated April 21, 2016, the Supreme Court of Pennsylvania suspended Petitioner, Michael Andrew Rabel, for a period of five years on consent. On July 13, 2021, Petitioner filed a Petition for Reinstatement and Reinstatement Questionnaire ("Questionnaire"). Office of Disciplinary Counsel ("ODC") submitted a response to Petition for Reinstatement on September 8, 2021, and opposed

reinstatement, setting forth multiple deficiencies in Petitioner's responses to the Questionnaire. On November 1, 2021, Petitioner filed Amended Answers to the Questionnaire.

Following a prehearing conference held on October 18, 2021, a District IV Hearing Committee ("Committee") held a reinstatement hearing on November 30, 2021. Petitioner testified on his own behalf and presented the testimony of five additional witnesses. Petitioner offered Exhibits A through L, which were admitted into evidence. ODC offered Exhibits 1 through 13, which were admitted into evidence. ODC did not present any witness testimony.

On January 19, 2022, Petitioner filed a post-hearing brief to the Committee in support of his reinstatement. On February 7, 2022, ODC filed a post-hearing brief and requested that the Committee recommend to the Board that the Petition for Reinstatement be denied.

By Report filed on April 8, 2022, the Committee concluded that Petitioner failed to meet his burden of proof under Pa.R.D.E. 218(c)(3) and recommended that the Petition for Reinstatement be denied. On May 5, 2022, Petitioner filed a brief on exceptions to the Committee's Report and requested oral argument before the Board. On May 20, 2022, ODC filed a brief in opposition to Petitioner's exceptions.

On June 17, 2022, a three-member panel of the Board held oral argument. The Board adjudicated this matter at the meeting on July 21, 2022.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner is Michael Andrew Rabel, born in 1974 and admitted to practice in the Commonwealth of Pennsylvania in 2006. Petitioner's address of record is 4848 Bayfield Rd., Allison Park, Allegheny County, PA 15101. Petitioner is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.
2. By Order dated April 21, 2016, the Supreme Court of Pennsylvania suspended Petitioner on consent for a period of five years. ODC 1, ODC 2, ODC 3.
3. The Joint Petition in Support of Discipline on Consent approved by the Court addressed Petitioner's misconduct in 11 separate legal matters and involved his violation of the Rules of Professional Conduct of the jurisdictions of Florida, Virginia, Connecticut, Arizona, South Carolina, Alabama, Ohio, Washington, Wisconsin, and Illinois. ODC 1.
4. The misconduct that resulted in the Joint Petition involved improper solicitation of clients, unauthorized practice of law, charging and/or collecting an illegal or clearly excessive fee, improper handling of advanced fees, failure to return files and unearned fees upon termination of representation, lack of diligence, and lack of communication. ODC 1.
5. Petitioner became involved with a loose affiliation of attorneys nationwide who were in the mortgage foreclosure mitigation business. The central lawyer from New York State had convinced Petitioner that because he had attorneys in network

admitted in various states, any of the other attorneys could perform work in that jurisdiction with the in-state attorney being "local counsel." N.T. 79.

6. Petitioner consulted with John E. Quinn, Esquire in 2015, about his practice model and Mr. Quinn advised Petitioner to cease that portion of his practice that dealt with clients and their properties located outside of the Commonwealth of Pennsylvania. N.T. 76-78.
7. Petitioner heeded Mr. Quinn's advice and stopped those practices. N.T. 78.
8. After the Joint Petition had been submitted to the Board in December 2015, but before the Board recommended that the Supreme Court approve the Joint Petition, ODC informed Petitioner that the following additional complaints had been filed against him (ODC 5, ODC 9, ODC 10, ODC 11):

File Number	Complainant	Jurisdiction
C4-15-516	Leisa Ellison	New Jersey
C4-15-589	Kathy Rund	Minnesota
C4-15-668	Elizabeth A. Manginelli	Pennsylvania
C4-15-795	Marggie L. Hoschar	Pennsylvania

9. Petitioner submitted a statement of position in response to only one of those complaints (Ellison #C4-15-516) by letter dated July 24, 2015. ODC 6.
10. In his statement of position, Petitioner represented that Ms. Ellison had received a full refund via Telecheck of the $1,666.66 fee Petitioner had collected from her. ODC 6.

11. Charge III of the Joint Petition involved Stanley Kowalewski's retention of Petitioner for "loss mitigation services" for his residence located in Connecticut. Mr. Kowalewski filed a complaint with the Connecticut Disciplinary Counsel, who investigated the matter. ODC 1, pp. 16-23; ODC 7; PE D.

12. Petitioner was charged with violating the Connecticut Rules of Professional Conduct and on October 10, 2013, after a hearing at which Petitioner appeared and participated, he was found to have violated the Connecticut Rules of Professional Conduct 1.5(a) (fees), 5.5(a) (unauthorized practice of law), and 8.4(4) (conduct prejudicial to the administration of justice). It was determined that Petitioner be subjected to a public reprimand and, because he had engaged in the unauthorized practice of law in Connecticut, he was ordered to make restitution of $3,000 to Mr. Kowalewski within 60 days of April 17, 2014. ODC 1, pp. 16-23; ODC 7; PE D.

13. Petitioner failed to timely comply with the repayment condition attached to the public reprimand, which resulted in his disbarment by the Superior Court of Connecticut by Order dated January 13, 2015. ODC 1, pp. 16-23; DC 7; PE D.

14. Petitioner refunded $3,000 to Mr. Kowalewski on March 26, 2015. ODC 1, pp. 21-22; PE L, p. 2.

15. Charge VIII of the Joint Petition involved L.N.'s retention of Petitioner for "loss mitigation services" for a residence located in Washington. L.N. filed a complaint against Petitioner with the Washington Department of Financial Institutions (DFI). ODC 1, pp. 51-58, ODC 8.

16. After investigation, the DFI found that Petitioner violated sections of the Revised Code of Washington, which constituted a basis for the entry of an Order to cease and desist from engaging in the business of a mortgage broker or loan originator and prohibited him from doing so for a period of five years. *Id.*

17. Petitioner reimbursed L.N. the sum of $1,200 but has not paid the State of Washington the fine of $6,000, or the costs taxed at $368.80, as ordered. N.T. 97-98; PE L, p. 4.

18. The Pennsylvania Lawyers Fund for Client Security (the "Fund"), in response to the claims made by Petitioner's clients Bowers, Burton, David, Hogan, Klever, Rund, Manginelli, Hoschar, Bonilla, Kinney, MacDonald, and Robinson, refunded a total of $37,479.00. N.T. 96-97; ODC 4; PE C.

19. By letter dated June 29, 2021, the Fund acknowledged receipt of a check issued by Assured Settlement Solutions, LLC, dated April 30, 2021, in the amount of $33,295.04, which represented payment on behalf of Petitioner for:

> The remaining principal obligation owed to the [Fund] in the amount of $19,881, and the interest obligation in accordance with the Rule of Disciplinary Enforcement 531, in the amount of $13,414.04. On June 28, 2021, we received your personal check numbered 1179 in the amount of $15.25 representing the satisfaction fee in order to have the [Fund's] judgment entered in Dauphin County marked satisfied.

20. The Joint Petition Charges IV, VI, and XI each involved similar misconduct by Petitioner involving clients who made advance payments of fee to Petitioner as follows:

File Number	Complainant	Fee Advanced
C4-14-288	Jorge & Luz Argota	$3,000
C4-13-885	Aaron Kindred	$1,000
C4-15-506	Patrick W. Walsh	$6,000

ODC 1, pp. 23-30, 38-44, 75-81; PE L, pp. 2-6.

21. Those clients did not file claims with the Fund. ODC 4.

22. Petitioner failed to refund the fees that the Argotas, Mr. Kindred and Mr. Walsh had paid to him, totaling $10,000. N.T. 111-12; PE L pp. 2-6.

23. Based upon conduct set forth in Charge X (Jeffrey & Patricia Klever) of the Joint Petition, and other similar conduct, a civil complaint and request for declaratory judgment, injunctive relief, consumer damages, and civil penalties was filed in Ohio against Petitioner in the matter captioned ***State of Ohio ex rel. Ohio Attorney General v. Michael A. Rabel & Associates, LLC***, on March 29, 2016. ODC 1, pp. 69-75; PE L, p. 5.

24. A final Judgment and Order was entered in that matter on November 6, 2016, permanently enjoining Petitioner from engaging in the acts and practices described therein and ordering him to pay consumer damages in the total amount of $6,500 to the Ohio Attorney General in three matters. ODC 1, pp. 69-75; ODC 4; PE L, p. 5.

25. The judgment entered against Petitioner in Ohio, including a civil penalty of $50,000, remains unsatisfied.[1] ODC 12; N.T. 99.

26. Based upon similar conduct to that set forth in the Joint Petition, in the Court of Common Pleas of Allegheny County, Pennsylvania, Pennsylvania's Attorney General filed an Assurance of Voluntary Compliance in the matter of ***Commonwealth of Pennsylvania v. Michael A. Rabel et al.***, based upon an investigation into Petitioner's conduct pursuant to the Unfair Trade Practices and Consumer Protection Law, 73 PS SECTION 201-1, et seq. ODC 13; N.T. 100-101.

27. The Attorney General's filings cited to the Pennsylvania Supreme Court's Order suspending Petitioner pursuant to the Joint Petition, Petitioner's agreement with the Attorney General to cease and desist from violating the Consumer Protection Law, the Mortgage Licensing Act, and the Mortgage Assistance Relief Services (MARS) Rule, and Petitioner's agreement to the settlement terms set forth in the Assurance of Voluntary Compliance. ODC 13; N.T. 100-101.

28. Those terms included payment to the Commonwealth of Pennsylvania in the amount of $15,500, allocated as $4,500 for restitution to be distributed at the sole discretion of the Commonwealth, $10,000 in civil penalties to be distributed to the Commonwealth's Department of Treasury and $1,000 for public protection and educational purposes. The civil penalties were suspended by agreement, but

[1] The $1,000 portion of the consumer damages Ohio ordered to be paid to Patricia Klever correlates with the Fund's payment of that amount to Ms. Klever. ODC 12.

necessitated that Petitioner pay the $5,500 for restitution and public protection upon entering the agreement with the Commonwealth. This remains unsatisfied.

29. Petitioner offered no evidence that he had contested the judgments and obligations entered against him in the Washington, Ohio, and Pennsylvania consumer protection proceedings. N.T. 66-118.

30. Petitioner testified that he is committed to repaying all judgments and liens against him unrelated to fee disputes. N.T. 87-88; PE E.

31. Petitioner also testified that he is committed to paying the judgments and other obligations filed against him by Washington, Ohio, and Pennsylvania N.T. 97-101, 113-114; ODC 1, pp. 51-58, 69-75, ODC 12, ODC 13; PE L.

32. Petitioner did not offer any evidence that he has made any good faith attempts at satisfying those judgments or obligations. N.T. 66-118.

33. Petitioner did not offer any evidence that he has developed a plan for satisfying those judgments or obligations. N.T. 66-118.

34. Petitioner failed to state with any certainty a timeframe during which he intended to pay the Washington, Ohio, and Pennsylvania judgments and obligations. N.T. 66-118.

35. On cross-examination, Petitioner acknowledged that he did not refund fees he had collected from his clients the Argotas ($3,000), Mr. Kindred ($1,000), and Mr. Walsh ($6,000). N.T. 106-112; DOC 1, pp. 23-30, 38-44, 75-81; ODC 4; PE L.

36. Petitioner did not explain why he has failed to refund $10,000 in fees he had collected from those former clients. N.T. 66-118.

37. Petitioner did not offer any evidence that he has made good faith attempts to make those former clients whole. N.T. 66-118.

38. Petitioner failed to state with any certainty a timeframe within which he intends to reimburse the Argotas, Mr. Kindred, or Mr. Walsh. N.T. 66-118.

39. Petitioner did not offer any evidence that he has developed a plan to repay those three former clients. N.T. 66-118.

40. When Petitioner was asked by the Hearing Committee whether he had any plan for repayment for the Argotas, Mr. Kindred, and Mr. Walsh, he stated that "It's my intention to make everyone whole." N.T. 116-117.

41. Petitioner testified that his misconduct occurred during a period in his life when he was drinking excessively. N.T. 69-71.

42. As of April 20, 2015, Petitioner has stopped drinking alcohol and using illegal drugs. N.T. 82.

43. Petitioner satisfied the Continuing Legal Education requirements necessary for reinstatement. N.T. 89.

44. David Kennedy Houck, Esquire of the law firm of Ogg, Murphy and Perkosky in Pittsburgh credibly testified on Petitioner's behalf. Mr. Houck has known Petitioner since 2001. N.T. 13-15. Mr. Houck credibly testified that "he did come to learn of and understand" Petitioner's misconduct and license suspension, and "was shocked ... about what had happened ..." N.T. 21-22. PE F.

45. Mr. Houck testified that Petitioner "worked with [the Ogg firm as a paralegal] for a while ... he was laid off, and then there was another opportunity for him to come

back, and so, we brought him back, and I really got to see firsthand sort of [Petitioner's] progression from where he was at the beginning of the suspension to where he is today ... His life had really come apart ... but he slowly, surely and progressively started to put his life back together. " N.T. 22-23.

46. Eric N. Anderson, Esquire of the law firm of Meyer, Darragh, Buckler, Bebeneck and Eck in Pittsburgh credibly testified on Petitioner's behalf. Mr. Anderson met Petitioner when the law firm was looking for a paralegal. N.T. 31-35, PE H.

47. Mr. Anderson credibly testified that he was aware of Petitioner's status as a suspended attorney at the time he interviewed for the paralegal position with Meyer Darragh. N.T. 36-37.

48. Mr. Anderson testified that he has been satisfied with the level and quality of Petitioner's work and the firm would consider hiring Petitioner as a lawyer if he is reinstated to the practice of law.

49. Samuel LaLomia, III, credibly testified on Petitioner's behalf. Mr. LaLomia is a senior client relations manager with Highmark. He testified as to his social interactions with Petitioner based upon a friendship between his significant other and Petitioner's wife. Mr. LaLomia sees Petitioner in social settings approximately three times per month and has always observed Petitioner to be sober. N.T. 41 – 45.

50. Shawn Mulvay credibly testified on Petitioner's behalf. Mr. Mulvay is employed by Liberty Mutual and initially met Petitioner when they were in college. After they reconnected several years ago, Petitioner told Mr. Mulvay about his disciplinary

problems and his substance abuse problems. Mr. Mulvay testified that on the occasions when they are together, Petitioner always is sober. Mr. Mulvay also testified as to Petitioner's focus on work and described Petitioner as having a very good work ethic. N.T. 46 – 58.

51. Brooks DiFiore testified credibly on Petitioner's behalf. Mr. DiFiore has known Petitioner for approximately six years as a social friend and interacts with him in a variety of social settings. Mr. DiFiore testified that Petitioner has been up front with him about his past problems and he has observed that Petitioner is sober and firm in his commitment to sobriety. N.T. 61-63.

52. ODC opposes reinstatement.

III. CONCLUSIONS OF LAW

1. Petitioner failed to meet his burden 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. Pa.R.D.E. 218(c)(3).
2. Petitioner failed to meet his burden by clear and convincing evidence that his resumption of the practice of law within the Commonwealth will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subversive of the public interest. Pa.R.D.E. 218(c)(3).

IV. DISCUSSION

Petitioner seeks reinstatement to the bar following suspension on consent from the practice of law for a period of five years imposed by the April 21, 2016 Order of the Supreme Court of Pennsylvania. Petitioner's misconduct as set forth in the Joint Petition involved 11 separate clients, from several states, all of whom had hired Petitioner to represent them in foreclosure and loan modification matters. Petitioner was only licensed to practice law in Pennsylvania; nevertheless, he charged and collected fees from his clients who, along with their property, were located outside of Pennsylvania. Petitioner failed to place the fees in a trust account until earned and his practice included employing nonlawyers to solicit the formation of the attorney-client relationships. Petitioner violated multiple Rules of Professional Conduct in several states by his improper solicitation, unauthorized practice of law, charging and/or collecting illegal or clearly excessive fees, failing to hold property of clients separate from his own property, failing to protect clients' interests upon termination of representation, including failing to refund advanced payment of fees not earned, lack of diligence, and lack of communication.

In a reinstatement proceeding, a suspended attorney bears the high burden of demonstrating by clear and convincing evidence that such person has the moral qualifications, competency and learning in the law required for admission to practice law in Pennsylvania and that the resumption of the practice of law within the Commonwealth will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subversive of the public interest. Pa.R.D.E. 218(c)(3).

The reinstatement process is not a mere formality; it is a searching inquiry focused on the nature and extent of the petitioner's rehabilitative efforts made since the time that the sanction was imposed, and the degree of success achieved in the rehabilitative process. ***Philadelphia Newspapers, Inc. v. Disciplinary Board of the Supreme Court***, 363 A.2d 779, 780-781 (Pa. 1976). This inquiry necessarily involves thorough examination of a wide range of issues relevant to a petitioner's fitness to resume the practice of law. ***Id.***

Following the submission of the parties' post-hearing briefs, wherein Petitioner requested that the Committee recommend his reinstatement to the Board and ODC opposed reinstatement, the Committee filed its Report and recommended denying reinstatement. The Committee concluded that Petitioner failed to meet his reinstatement burden for the reasons that his lack of thoroughness and candidness with regard to his Questionnaire, Amended Answers, and testimony raised questions concerning his competence to practice law; and his failure to satisfy his debts, or to set forth any good faith effort to do so, demonstrated that Petitioner has not fully engaged in the qualitative rehabilitation that would support his reinstatement to the practice of law. Petitioner takes exception to the Committee's conclusions and recommendation to deny his reinstatement.

Upon review of this record, and for the following reasons, we conclude that Petitioner has failed to meet his stringent reinstatement burden.

Petitioner's lack of action over the duration of his lengthy suspension to address all issues material to his rehabilitation, his lack of attention in providing clear and

complete answers on reinstatement materials, and his lack of a good faith effort to satisfy financial obligations demonstrate a significant shortcoming in Petitioner's rehabilitative efforts. First, we address Petitioner's Questionnaire in support of his reinstatement, his Amended Answers, and his testimony, which both omitted and failed to explain relevant information. Petitioner persisted in failing to fully and satisfactorily answer some of the standard concerns sought to be addressed by the Questionnaire. These concerns were the focus of ODC's initial opposition to the Petition for Reinstatement. For example, Question 5 of the Questionnaire asks Petitioner if he was charged with, or found to have commingled, withheld, misused, or neglected to have paid money to or on behalf of clients, or if there was a similar charge involving improper handling of funds in his suspension. If so, Petitioner was required to, under 5(a), itemize the name and address of any person involved and the amount withheld; and under 5(c), disclose "to what extent, if any, has restitution been made?" As to 5(a), Petitioner simply listed the names but no addresses for his clients, did not provide any further information, and did not disclose or itemize the amounts of any unearned fees collected from the individual clients. As to 5(c), Petitioner failed to provide any response, leaving the question blank.

Furthermore, Question 7(a) on the Reinstatement Questionnaire asked whether Petitioner was ever disciplined by a court of any other jurisdiction, including state or federal administrative agencies. Despite Petitioner being aware at the time he filed his Petition and Questionnaire of the existence of the State of Washington Department of Financial Institutions Divisions of Consumer Services Final Order entered on March 31, 2015, he omitted any reference to it. Petitioner had been ordered to pay $1,200 restitution

to the consumer identified as L.N., a fine of $6,000 and an investigation fee of $364.80. Additionally, Question 10(c) asked whether there were judgments against Petitioner that court records indicated were currently unsatisfied. Petitioner omitted any reference to the question as it pertained to compliance with the financial sanctions imposed by the State of Washington.

After receiving ODC's response in opposition to his reinstatement, which described the unanswered questions and missing information, Petitioner filed Amended Answers to the Questionnaire and attempted to remedy the deficiencies by providing some additional information as to each of the client matters involved in the Joint Petition, including the amount of fee Petitioner had received from each. For certain clients, Petitioner stated that they were reimbursed through the Fund or directly by Petitioner. Through his Amended Answers, Petitioner corrected some of his prior omissions, but he again failed to provide essential information with regard to fees totaling $10,000 received from his former clients the Argotas, Mr. Kindred and Mr. Walsh, to which he was not entitled. Although Petitioner listed the substantial sums he received as fees from each of those clients, he failed to plainly state whether or not these former clients had been reimbursed. In fact, it was not until asked on cross-examination that Petitioner admitted that he had not repaid the three former clients. N.T. 111-12. Petitioner's omission of this information is particularly troubling. When a lawyer harms his clients by taking monies and failing to refund unearned fees, the reimbursement of those funds becomes a matter of vital importance to the Board and the Court. That Petitioner failed to recognize the necessity of answering questions related to reimbursement in an honest and open

manner raises doubts as to the seriousness with which he approached the reinstatement process.

Prior reinstatement matters establish that a petitioner lacks competence when he engages in a pattern of inaccuracies pertaining to the Questionnaire and fails to credibly explain the omissions and deficiencies. *See*, ***In the Matter of Sabrina L. Spetz***, No. 31 DB 2011 (D. Bd. Rpt. 1/3/2020) (S. Ct. Order 2/28/2020) (Spetz's deficient responses on the Questionnaire and her inability to sufficiently and credibly address the deficiencies at her hearing cast doubt on her fitness); ***In the Matter of Ronald I. Kaplan***, No. 39 DB 2005 (D. Bd. Rpt. 4/22/2009) (S. Ct. Order 7/24/2009) (Kaplan's failure to satisfactorily explain numerous discrepancies on the Questionnaire demonstrated a lack of competence). However, a petitioner's credible explanation of inaccuracies in the Questionnaire can remedy concerns as to competency. *See*, ***Matter of Robert F. Creem***, No. 181 DB 2003 (D. Bd. Rpt. 8/27/2008) (S. Ct. Order 11/21/2008) (the Board found that Creem satisfactorily explained the inaccuracies in his Questionnaire, concluded he did not intend to conceal pertinent information, and recommended reinstatement, which the Court granted).

Here, Petitioner submitted a defective Questionnaire and failed to correct the deficiencies through the filing of his Amended Answers, which remained incomplete in certain areas. Despite these defective answers, Petitioner had the opportunity at his reinstatement hearing to credibly explain his omission of important information, such that the deficient Questionnaire would not pose an obstacle to his reinstatement. In fact, Petitioner finally acknowledged on cross-examination that he had not reimbursed three

former clients, thus correcting his apparent reluctance to answer straightforward questions concerning reimbursement of clients that lasted from the time he filed the Questionnaire on July 13, 2021. However, Petitioner's testimony did not remedy the observed deficiencies in his Questionnaire and Amended Answers in that he offered no explanation for his failure to answer the Questionnaire in a complete manner and offered no evidence that he had made any good faith efforts to make certain clients whole.

The Board's next area of concern centers on Petitioner's failure to reimburse former clients and satisfy civil judgments and obligations. The record demonstrates that as a result of Petitioner's egregious misconduct, numerous former clients filed claims with the Fund and were made whole. Petitioner reimbursed the Fund as he was required to do under Pa.R.D.E. 531 in order to be eligible for reinstatement. The record further demonstrates that despite being suspended in 2016 and reimbursing a significant sum to the Fund in 2021, Petitioner made no efforts during his lengthy period of suspension to reimburse those clients listed in the Joint Petition (Argota, Kindred and Walsh) who had not filed claims with the Fund. Certainly Petitioner was aware of the existence of these former clients, as they were listed in the Joint Petition, and was aware that he owed them money. This was not information that was unknown when he filed his Petition for Reinstatement and Questionnaire. It appears that Petitioner chose to address only those debts that formed an obstacle to his reinstatement, i.e., the claims made to the Fund.

As discussed above, Petitioner initially failed to provide essential information pertaining to these clients on his Questionnaire and did not fully acknowledge

that he had not reimbursed them until he was cross-examined at his reinstatement hearing. After acknowledging that he still owes money to three former clients, Petitioner was asked if he had any plan to repay these clients. Petitioner simply stated that it was his intention to make everyone whole. The record reveals that the Argotas, Mr. Kindred and Mr. Walsh have yet to hear, these many years later, a single word from Petitioner about how he intends to repay them and make good their loss. Further, the record shows that Petitioner has made no efforts to pay sanctions levied against him as a direct consequence of his misconduct in Washington, Ohio, and Pennsylvania. Petitioner's failure to offer evidence to show that he has made a good faith attempt to make his clients whole, his failure to state with any certainty a timetable within which he intends to reimburse his former clients, and the lack of evidence of a plan to show how he intends to satisfy any of these debts demonstrates a significant shortcoming in his rehabilitative efforts.

The full satisfaction of all debts is not a prerequisite to reinstatement. In the recent case of ***In the Matter of Joseph A. Gembala, III***, No. 21 DB 2012 (D. Bd. Rpt. 5/10/2022) (S. Ct. Order 6/21/2022), the Court reinstated a petitioner who had significant outstanding financial obligations related to his underlying misconduct and who established that he had repaid the vast majority of that debt and had one remaining outstanding obligation. Gembala credibly testified that he had been overwhelmed by his financial obligations, had attempted to contact the remaining judgment holder shortly before the reinstatement hearing without success, and intended to satisfy the judgment. This reinstatement matter was Gembala's second attempt at reinstatement after

withdrawing his first petition some years earlier following the Board's recommendation that he be denied reinstatement due in part to his failure to pay financial obligations. On his second attempt, Gembala was able to demonstrate that he addressed many of his financial obligations. *See also,* ***In the Matter of Robert P. Maizel***, No. 26 DB 214 (D. Bd. Rpt. 10/15/2018) (S. Ct. Order 11/16/2018) (Court reinstated petitioner who had outstanding debt, failed to disclose debt related to taxes and omitted judgments on reinstatement questionnaire; petitioner established that he maintained continuous employment and arranged for payment plans in order to address debt); ***In the Matter of Bruce R. Akins, Sr.,*** No. 58 DB 1989 (D. Bd. Rpt. 4/4/2017) (S. Ct. Order 5/12/2017) (Court reinstated petitioner who established that he was attempting to resolve his obligations by entering into repayment agreements); ***In the Matter of Andrew Keith Fine***, No. 115 DB 1995 (D. Bd. Rpt. 1/24/2014) (S. Ct. Order 5/23/2014) (Court reinstated petitioner who had numerous judgments and made a good faith effort to resolve the debt).

In the above-cited cases, the petitioners had not fully repaid their financial obligations at the time they sought reinstatement but established good faith efforts to address their debts, which efforts were found to demonstrate rehabilitative intent sufficient for reinstatement. On the other hand, a petitioner's failure to demonstrate good faith efforts to satisfy debt related to the underlying misconduct can be a bar to reinstatement. The Court's decision in ***In the Matter of Jay Marc Berger***, No. 159 DB 2008 (D. Bd. Rpt. 9/13/2021) (S. Ct. Order 1/6/2022) emphasizes the importance that disbarred and suspended attorneys need to address their outstanding obligations in good faith before regaining the privilege of practicing law in the Commonwealth. In ***Berger***, the Hearing

Committee recommended denial of reinstatement due, *inter alia*, to Berger's lack of "concern for making good on his debts" and "inability to accept responsibility for his debt" in that the debt had never been addressed by Berger. The Hearing Committee noted with disapproval Berger's failure to submit any plan, provide any accounting, or submit a path forward to handle his debt. After the Board issued its Report recommending that Berger be reinstated, the Court issued a rule directing Berger to show cause why an order denying reinstatement should not be entered. The Court mentioned several concerns including Berger's outstanding debt and his failure to outline his plan to address his outstanding debt obligations at the reinstatement hearing. The Court ultimately denied Berger's reinstatement.

In ***In the Matter of Brian Joseph Smith***, No. 236 DB 2018 (D. Bd. Rpt. 11/10/2021) (S. Ct. Order 3/18/2022), the Board recommended reinstating Smith, a suspended attorney, even though Smith had not made any payments to satisfy financial obligations that occurred as the result of his professional misconduct and had not entered into payment plans or communicated with his creditors. Similar to the instant Petitioner, Smith testified that he intended to pay the judgments when he was reinstated but had taken no action during his suspension to address the outstanding debt. Smith's reason for failing to pay the judgments was that he was in a poor financial position that rendered him unable to do so. Smith explained that he was earning $1,000 per week and his spouse was not employed due to the COVID-19 pandemic and the need to take care of their minor children at home. Smith testified that once he was reinstated as an attorney and earning more money, he would be able to make repayment. Here, Petitioner makes a

similar argument that he cannot afford to reimburse his former clients and pay off other financial obligations at this time but once he becomes employed as an attorney and begins to earn a better income, he will repay the obligations. While the Board found Smith's statement of intent credible and concluded that he met his reinstatement burden, the Court denied reinstatement following the issuance of a rule to show cause directing Smith to address good faith efforts to satisfy outstanding debts.

The Board's interpretation of the precedent addressing a petitioner's satisfaction of debts related to the underlying misconduct leads us to conclude that a petitioner's stated intention to repay is not sufficient absent evidence of any attempt to make reimbursement or to formulate a repayment plan that might succeed at some later date to discharge his financial obligations. Without evidence of a good faith effort that indicates recognition of the obligation to repay, the Board is left in the position of judging whether a petitioner will make good on his intentions. Here, Petitioner ignored his three former clients and offered nothing beyond a mere statement that he intends to repay, without details of how or when he will carry through on his intentions. Similarly, Petitioner has unpaid sanctions levied against him by three jurisdictions as a direct consequence of his misconduct and has proffered no plan to pay those sanctions. In accordance with the guiding precedent, we conclude that Petitioner's failures as outlined above evince a significant lack of the requisite rehabilitative effort that would support a recommendation of reinstatement.

This is a difficult matter, as Petitioner has offered credible evidence demonstrating that he is rehabilitated from a substance abuse problem that negatively

impacted his life and is a person of good character who has moved forward with his life since suspension. While compelling, this evidence is not enough to overcome the fact that Petitioner filed a defective Questionnaire that did not address restitution to victims, filed Amended Answers that continued to skirt the question of restitution to all aggrieved parties, and failed to make a good faith effort to address the outstanding monies owed to three victims of his misconduct and the sanctions levied against him in other jurisdictions. We find that the harm visited on the public and the profession by Petitioner's misconduct has not been truly dissipated due to these failures. In accordance with the guiding precedent, we conclude that Petitioner has not met his burden by clear and convincing evidence to demonstrate that he is rehabilitated from the underlying misconduct. Based on the totality of the circumstances of this record, we recommend that the Petition for Reinstatement be denied.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the reinstatement of Petitioner, Michael Andrew Rabel, be denied.

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: /s/ Christopher M. Miller
Christopher M. Miller, Member

Date: 12/20/2022

Members Mongeluzzi and Vance dissent in favor of granting reinstatement.

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

In the Matter of	:	No. 2144 Disciplinary Docket No. 3
	:	
	:	No. 33 DB 2015
MICHAEL ANDREW RABEL	:	
	:	Attorney Registration No. 201443
	:	
PETITION FOR REINSTATEMENT	:	(Allegheny County)

DISSENTING STATEMENT

As relayed in the Report and Recommendation, the Board majority offers two principal reasons for denying reinstatement. First, according to the Board majority, the omissions in Petitioner's reinstatement questionnaire—which, in its view, were not adequately addressed during the hearing—raise significant doubts about Petitioner's fitness to practice law. Second, although it recognizes that Petitioner has reimbursed most clients financially injured by his misconduct, discerning a new legal principle from a pair of recent *per curiam* orders issue by the Supreme Court, the Board majority concludes Petitioner's failure to formulate a concrete "plan" for satisfying his remaining financial obligations should bar reinstatement. Bd. Rep. & Rec. at 21-22. In my view, however, neither of these facts are an impediment to reinstatement under the established framework governing our analysis. Ultimately, because I believe that Petitioner has satisfied the stringent criteria for reinstatement, I respectfully dissent.

Turning initially to the defects in the questionnaire, I am in full accord with the Board majority that "a petitioner lacks competence when he engages in a pattern of inaccuracies pertaining to the Questionnaire and fails to credibly explain the omissions and deficiencies." I am unable to agree, however, that Petitioner's submissions reflect anything approaching a "pattern of inaccuracies" that would justify denial of reinstatement; and, in any event, from my perspective, any such discrepancies were fully explained at the hearing. *See* ***In the Matter of Jonathan M. Levin***, No. 108 DB. 2001 (D. Bd. Rpt. 1/3/2011) (S. Ct. Order 4/15/2011) ("Errors and omissions on a reinstatement questionnaire are not automatic bars to reinstatement where a petitioner testifies at a hearing and fully explains the discrepancies." (citing ***In re Anonymous***, No. 1 DB 73, Pa.D. & C. 3d 406 (1984); ***Matter of Robert F. Creem***, No. 181 DB 2003 (D. Bd. Rpt. 8/27/2008) (S. Ct. Order 11/21/2008)). In this regard, as best as I can tell, the only discernable defect in Petitioner's Amended Answer relates to Question 5(c), which provides:

> 5. If a charge or finding of commingling, withholding, misusing or neglecting to pay money to or on behalf of clients or any other similar charge involving improper handling of funds was involved in your disbarment/suspension/transfer to disability inactive status, itemize the following:
>
> > c. To what extent, if any, has restitution been made? State, as to each client, when and by whom restitution has been made and whether any interest was paid:

In response, Petitioner provided an itemized list of the pertinent client matters and, for each of them, specified the exact amount of fees he had improperly received. Furthermore, if the client had been reimbursed, Petitioner indicated as much; if no restitution had been made, however, Petitioner only provided the amount of fees involved,

but "failed to plainly state whether or not [they] had been reimbursed." Bd. Rep. & Rec. at 16.

While I agree it would have been preferable for Petitioner to affirmative indicate the amount of restitution rendered to each client (even if that amount was zero), in my view, Petitioners less-than-complete answer to this question is not of the sort that raises doubts about his competence to practice law. As a preliminary matter, I note that Question 5(c) itself is not a model of clarity in this respect and, from my perspective, Petitioner's interpretation of the question—even if mistaken—was not entirely unreasonable. Moreover, setting aside the imprecise construct of the question, Petitioner's incomplete response to one subset of a ***single*** question on the Questionnaire hardly resembles the type of pervasive and recurring inaccuracy that has justified denial of reinstatement in the past. *See, e.g.*, ***In the Matter of William James Helzlsouer***, No. 197 DB 2018 (D. Bd. Rpt. 9/27/2022) (S. Ct. Order 12/7/2022) ("The record demonstrated that Petitioner's Questionnaire included false and inaccurate answers to three sets of questions.").

Finally, from my vantage point, to the extent any lingering concerns remained relative to the omissions, Petitioner's testimony during the hearing put them to rest. Specifically, when asked about those three clients, Petitioner readily acknowledged that they had not yet been reimbursed and clarified that he intended to reimburse them as soon as he became financially able to do so.[1] In short, therefore, I respectfully disagree

[1] In my view, the fact that the clarification was offered on cross-examination, rather than during Petitioner's case-in-chief, is immaterial under the present circumstances and to the extent the Board majority or ODC suggest to the contrary, no authority is offered in support of such an approach. While Petitioner bears the

with my colleagues' conclusion that the relatively minor defects in Petitioner's responses to the Questionnaire warrant denial of reinstatement.

Turning to the second overarching reason the Board majority offers in support of its recommendation, I respectfully differ from my colleagues' conclusion that Petitioner's failure to offer a concrete "plan" for satisfying his outstanding financial obligations is a sufficient basis for denying reinstatement. In particular, I disagree with the premise that this Court's *per curiam* orders in ***In the Matter of Jay Marc Berger***, No. 159 DB 2008 (D. Bd. Rpt. 9/13/2021) (S. Ct. Order 1/6/2022), and ***In the Matter of Brian Joseph Smith***, No. 236 DB 2018 (D. Bd. Rpt. 11/10/2021) (S. Ct. Order 3/18/2022), established a new guiding principle—namely, a requirement that a petitioner with outstanding obligations proffer some type of a repayment plan before being granted reinstatement. [2]

Most fundamentally, in my view, the Board majority's approach is at odds with precedent from our Supreme Court, which has repeatedly admonished that "[w]hile an unexplained *per curiam* decision is certainly binding as the law of that case, by definition it establishes no precedent beyond the authority cited in the order[.]"

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burden of satisfying the criteria for reinstatement, he cannot be required to predict every basis on which ODC might object. Here, after Petitioner submitted his original answer, ODC raised concerns about its completeness, prompting Petitioner to file an Amended Answer. Absent further correspondence suggesting that ODC considered his supplemental responses insufficient to remedy the perceived defects—which I do not believe occurred—Petitioner had no reason to address the issue on direct examination.

[2] Although the Board majority does not expressly indicate that Petitioner's failure to offer a payment plan was determinative, I note that the Hearing Committee expressly stated that "[h]ad Petitioner take any steps to set up a payment plan with the aggrieved parties this Committee most likely would have recommended reinstatement despite the "defective questionnaire" and an Amended Answers to Reinstatement Questionnaire that did not fully provide all the essential information regarding Petitioner's former clients." Hr'g Cmt. Rpt. At 23. In my view, therefore, whether *Berger* and *Smith* require a "payment plan" is the lynchpin of this matter.

Commonwealth v. Smith, 836 A.2d 5, 17 (Pa. 2003); ***Commonwealth v. Thompson***, 985 A.2d 928, 937 (Pa. 2009) (reiterating that "[t]he legal significance of *per curiam* decisions is limited to setting out the law of the case" and cautioning that "*per curiam* orders have no stare decisis effect"). I recognize that this principle has never been expressly applied to disciplinary orders. But from perspective, "the rationale for declining to deem *per curiam* decisions precedential," ***id.***, applies with equal force to this context. As explained by the *Thompson* panel, "[s]uch orders do not set out the facts and procedure of the case nor do they afford the bench and bar the benefit of the Court's rationale." *Id.* at 938. And like the appellants in ***Thompson***, the Board majority is forced to rely on "facts [that] have not been adopted or even mentioned by this Court in its *per curiam* dispositions" with "no way of knowing whether or to what extent any member of th[e] Court relied on such facts to resolve the case in the manner it did." ***Id.*** (citing ***Smith***, 836 A.2d at 17 ("[T]here is no reason to conclude that the Justices who agreed on [the *per curiam*] mandate accepted the dissenters' view of the facts, the procedural posture of the case, [or] the issue presented.")).

Indeed, the Board majority's Report and Recommendation in this matter, aptly illustrates the concerns articulated in ***Thompson***. Specifically, in concluding that a petitioner with outstanding financial obligations must present some type of a repayment "plan," the Board majority relies on the Rules to Show Cause ("RSC") issued in ***Berger*** and ***Smith***.[3] Considering these two cases *seriatim*, the *Berger* RSC highlighted four

[3] It also bears mentioning that although the RSCs in these matters a matter of public record, they are not readily available on either the Court's website, or any of the common legal research platforms, such as WestLaw or LexisNexis. In my view, the fact that a reasonably diligent petitioner seeking reinstatement

distinct areas of inquiry, which, in addition to "Petitioner's failure to outline a plan to address his outstanding debt obligations at the reinstatement hearing[,]" also included: (1) an overall concern about "Petitioner's outstanding debt;" (2) "Petitioner's failure to disclose outstanding debt on his reinstatement questionnaire; and (3) "the Hearing Committee's observation that Petitioner had not demonstrated remorse for his misconduct." Similarly, the ***Smith*** RSC, directed the attorney seeking reinstatement to address, "among other considerations . . . whether he has demonstrated a good faith effort towards satisfying his outstanding debt[,]" and "discuss the Hearing Committee's observations that his testimony relative to his income was incredible and that he did not show remorse for his failure to repay his obligations."[4] Without the benefit of any explanation, it is impossible to tell the whether—and to what extent—these factors animated the Court's ultimate disposition in ***Berger*** and ***Smith***.[5]

In sum, while I share my colleagues' ultimate goal of ensuring that our recommendations are in accord with the Supreme Court's mandates, in my view, it is imprudent to overlay existing decisions with newly formed legal principles based on inferences. Rather, insofar as the legal framework requires modification or clarification, I believe the more sound approach is to await more definitive indication to that effect from the Court. Absent such further guidance, from my perspective, our analysis in this regard

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would not be aware of the concerns raised in the RSCs, further militates against reliance on them.

[4] Notably, unlike Petitioner here, the attorney seeking reinstatement in *Smith* had not made *any* payments toward his outstanding obligations. This alone is sufficient to render *Smith* inapplicable.

[5] In fact, the *Smith* RSC makes no mention of a "plan" at all, but rather, is focused on the petitioner's credibility and the familiar "good faith effort" rubric.

should continue to center on whether the record, considered as a whole, reflects a good faith effort on the part of petitioner to satisfy his outstanding obligations.

Undertaking the inquiry that I believe should continue to govern our analysis, my review of the record leads me to conclude that Petitioner has firmly established that he has made a good faith effort to address his debts. In this respect, all told, Petitioner has paid over $ 50,000 toward satisfying his financial obligations and, as a result, fourteen clients have been fully reimbursed. *See* Bd. Rep. & Rect. at ¶ 14 ("Petitioner refunded $3,000 to Mr. Kowalewski on March 26, 2015."); ¶ 17 (indiciating "Petitioner reimbursed L.N. the sum of $1,200"); 18-19 (indicating that he has fully discharged his obligations to the Pennsylvania Lawyers Fund for Client Security, which totaled over $ 50,000 ($ 37,479.00 in principal and approximately $ 13,000 in interest)). While Petitioner still has not discharged his obligations to three clients and several judgments remain unpaid, I cannot conclude that Petitioner's substantial payments to date do not constitute a "good faith effort."

A final (but crucial) point in this connection relates to the public interest, which is one of the chief considerations in reinstatement matters. *See* Pa.R.D.E. 218(c)(3). In my view, where a petitioner has shown progress toward compensating clients harmed by his misconduct—and has provided sufficient evidence that he will continue to do so if reinstated—the best way of ensuring that the outstanding financial obligations are satisfied is to restore the privilege of resuming employment in the legal profession.

For the foregoing reasons, I respectfully dissent and would recommend that Petitioner be granted reinstatement.

Respectfully submitted,

By: _____
Shohin H. Vance, Board Member

Date: 12/20/2022

Member Mongeluzzi joins this dissenting statement.