THE DISCIPLINARY BOARD
OF THE
SUPREME COURT OF PENNSYLVANIA

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Sent via email and 1st class mail

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Re: In the Matter of J. MICHAEL FARRELL
PETITION FOR REINSTATEMENT
No. 2362 Disciplinary Docket No. 3
No. 34 DB 2017
Attorney Registration No. 33803
(Philadelphia)

Dear Mr. Stretton and Mr. Hernandez:

Enclosed please find copy of Report of Hearing Committee in the above proceeding.

Your attention is invited to the provisions of Sections 89.201 and 89.202 of the Disciplinary Board Rules, with respect to the right of participants to file a brief on exceptions and a brief opposing exceptions and to request oral argument if desired. A copy of said sections is enclosed for your information.

Upon expiration of the time limits prescribed in said Rules, the matter will be referred to the Board for consideration. You will be notified subsequently of the action of the Board.

Very truly yours,

Marcee D. Sloan
Board Prothonotary

Enclosures

cc: Members of Hearing Committee (w/o encl.)
Michael T. Scott, Chair
Patrice Smith O' Brien, Member
Patrick Joseph Cosgrove, Member
Thomas J. Farrell, Chief Disciplinary Counsel (w/encl.)
Kimberly Henderson, Special Counsel (w/encl.)

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

In the Matter of	:	No. 2362 Disciplinary Docket No. 3
	:	
J. MICHAEL FARRELL	:	No. 34 DB 2017
	:	
	:	Attorney Registration No. 33803
	:	
PETITION FOR REINSTATEMENT	:	(Philadelphia)

REPORT AND RECOMMENDATION OF THE HEARING COMMITTEE

I. SUMMARY OF THE CASE

Petitioner J. Michael Farrell ("Petitioner" or "Farrell") seeks reinstatement to the Bar of the Commonwealth of Pennsylvania. On December 4, 2019, the Supreme Court of Pennsylvania accepted Petitioner's resignation from the Bar of Pennsylvania and disbarred Petitioner. (ODC 7-8). Petitioner's suspension resulted from his criminal conviction on July 24, 2017 for six counts of money laundering, two counts of tampering with official proceedings, one count of conspiracy to engage in money laundering, and one count of attempted witness tampering. Following his conviction, Petitioner was sentenced to a term of forty-two months.

Petitioner filed his first Petition for Reinstatement on July 8, 2022. Petitioner withdrew his first Petition. On February 14, 2023, Petitioner again filed for Reinstatement on February 14, 2023. A Reinstatement Hearing occurred over three days: November 16,

2023, February 21, 2024, and February 22, 2024. For the reasons set forth below, the Hearing Committee recommends that the Petition for Reinstatement be denied.

II. STATEMENT OF THE CASE

On December 4, 2019, the Supreme Court of Pennsylvania accepted Petitioner's resignation from the Bar of Pennsylvania and disbarred Petitioner. Petitioner's suspension resulted from his criminal conviction on July 24, 2017 for six counts of money laundering, two counts of tampering with official proceedings, one count of conspiracy to engage in money laundering, and one count of attempted witness tampering. Following his conviction, Petitioner was sentenced to a term of forty-two months.

Petitioner filed his first Petition for Reinstatement on July 8, 2022. Petitioner withdrew his first Petition. On February 14, 2023, Petitioner again filed for Reinstatement on February 14, 2023. The Office of Disciplinary Counsel ("ODC") opposed Petitioner's Reinstatement Petition. The prehearing conference was held before the Hearing Committee Chair on September 26, 2023.

A Reinstatement Hearing occurred over three days: November 16, 2023, February 21, 2024, and February 22, 2024. At the hearing, Petitioner testified on his own behalf and also presented the testimony of several character witnesses.

Petitioner's Exhibits 1-50 inclusive were offered at the outset of the hearing along with ODC's Exhibits 1-61 inclusive which were admitted into evidence by the Hearing Committee. At the conclusion of the Hearing, the parties were instructed to submit briefs in support of their respective positions. Each party submitted a timely brief.

III. RULINGS ON ADMISSION OF EVIDENCE AND OTHER PROCEDURAL MATTERS

Petitioner's Exhibits 1-50 inclusive were offered at the outset of the hearing along with ODC's Exhibits 1-61 inclusive which were admitted into evidence by the Hearing Committee. (11/16/23 N.T. 6-25).

IV. FINDINGS OF FACT

The Hearing Committee makes the following findings of fact:

Petitioner's Background

1. Petitioner testified at the time of the Reinstatement Hearing that he was 71 years of age and currently resides in the University City section of Philadelphia. (2/21/24 N.T. 89, 90).
2. Petitioner was admitted to practice law in the District of Columbia in 1978. He was then admitted to practice law in North Carolina in 1979. Petitioner was finally admitted to practice law in Pennsylvania and New Jersey in 1980. (2/21/24 N.T. 96).
3. Petitioner started his own firm on January 10, 1986 where he worked until he was suspended from the practice of law.
4. Petitioner admitted he was previously reprimanded because of a failure to obtain an affidavit from the PCRA. He was not disciplined any other time until he was suspended and subsequently disbarred on December 4, 2019. (2/21/24 N.T. 218, 219).

Petitioner's Criminal Conviction

5. In October 2015, Petitioner was indicted by a federal grand jury in Maryland for twelve offenses. (ODC-1).
6. From at least 2009 through July 31, 2012, Petitioner engaged in a money laundering conspiracy with members of a multimillion-dollar marijuana distribution business headed by Matt Nicka ("Nicka"). (ODC-3, 000060).
7. On February 6, 2017, after a fourteen-day trial, a jury found Petitioner guilty of the following ten counts:
    a. Count One - alleging that from 2009 to 2013, Petitioner was involved in a money laundering conspiracy that related to proceeds generated from Nicka's multi-state, multi-million-dollar marijuana drug operation, in violation of 18 U.S.C. § 1956(h);
    b. Counts Two, Three, Five, Six, Seven and Twelve – alleging that Petitioner engaged in particular acts of money laundering in violation of 18 U.S.C. § 1956(a)(1)(B)(i), by using drug proceeds received from the Nicka Organization to write checks drawn on Petitioner's law firm account to pay for members of the Nicka Organization to receive legal services and to pay for money orders given to an incarcerated member of the Nicka Organization;
    c. Counts Four and Nine – alleging that Petitioner attempted to obstruct a DEA forfeiture proceeding and a prosecution in the Maryland District Court in violation of 18 U.S.C. § 1512(c)(2), by submitting a forged affidavit to DEA on behalf of a Nicka Organization drug dealer, by discussing with another represented Nicka Organization drug dealer the federal investigations and

criminal prosecutions, by agreeing to assist with that drug dealer's legal expenses, and by directing that drug dealer to only tell federal law enforcement authorities what they already knew at a proffer interview; and

d. Count Eight – alleging that Petitioner attempted to tamper with a witness in violation of 18 U.S.C. § 1512(b)(3), based on, *inter alia*, the advice Petitioner gave to the Nicka Organization drug dealer to withhold relevant information from federal law enforcement authorities. (ODC-1; ODC-7, Ex. B and C; Bates Nos. ODC-000145-170)

8. Testimony at Petitioner's criminal trial established that Petitioner was the lawyer for Nicka and his organization. (ODC-3, 000060).
9. Starting in at least 2009, Petitioner received drug proceeds in the form of cash from Nicka. (ODC-3, 000061). Petitioner used the cash to pay attorneys to represent grand jury witnesses, co-conspirators in state proceedings, and defendants in the marijuana conspiracy. (ODC-3, 000061).
10. During this time, Petitioner encouraged several Nicka Organization members not to cooperate with federal authorities.
11. Petitioner further filed a forged affidavit with the Drug Enforcement Agency ("DEA") on behalf of one member of the Nicka organization that prevented a forfeiture of the member's seized property.
12. Petitioner maintained inadequate records of cash deposits and falsified records to make it appear that he had received payment from Nicka Organization drug dealers, which included Petitioner instructing an organization member to write Petitioner a check for $10,000 in exchange for a $10,000 cash payment from

Petitioner so that Petitioner could make it appear that the member had paid Petitioner. (ODC-1, 000009, 000013-000026, 000037, 000039-000040, 000050)

13. Petitioner's own words established his intimate knowledge about the Nicka Organization and his status as a willing co-conspirator; Petitioner disclosed during a taped undercover conversation with an organization member that Petitioner knew "'everything'" about the Nicka Organization and considered himself "'at risk'" based on his involvement with the Nicka Organization. (ODC-1,000024).

Petitioner's Appeal to the United States Court of Appeals for the Fourth Circuit

14. Following his conviction, Petitioner appealed the conviction to the United States Court of Appeals for the Fourth Circuit. The Fourth Circuit rejected Petitioner's challenges to his convictions and affirmed his criminal judgment. (ODC-1).

15. First, the Fourth Circuit held that the evidence overwhelmingly showed Petitioner engaged in money laundering:

    a. Petitioner received thousands of dollars in cash from the Nicka Organization and used those funds to defend Nicka and the organization.

    b. Petitioner knew everything about the Nicka Organization including that the Organization made large sums of cash money from marijuana trafficking.

    c. Petitioner falsified his law firm's financial records regarding its receipt of defense fund cash from the Nicka Organization.

    d. Petitioner took on a substantial role in protecting the Nicka Organization.

    e. Petitioner threatened members of the Nicka Organization to protect the Organization.

(ODC-1, 00034-36).

16. The Fourth Circuit further held that there was substantial evidence presented at trial that Petitioner knew the money he deposited into his firm bank account was derived from the illegal source of drug trafficking. (ODC-1, 000039).
17. Based on this overwhelming evidence of Petitioner's money laundering, the Fourth Circuit affirmed his conviction for that crime.
18. Second, the Fourth Circuit affirmed Petitioner's conviction for attempted obstruction of official proceedings. The Fourth Circuit held that the evidence showed that the Petitioner forged an affidavit to the DEA and succeeded in that effort, causing the DEA to forgo the administrative forfeiture of the seized property. (ODC-1, 000042).
19. Even more troubling, the Fourth Circuit held that the evidence showed that Petitioner persuaded a witness to lie to federal authorities. (ODC-1, 000042).
20. Finally,[1], the Fourth Circuit held that there was sufficient evidence to convict the Petitioner of witness tampering. The Fourth Circuit stated that Petitioner "knowingly sought to corruptly persuade [a witness] to withhold relevant information from federal officers during the proffer meeting."

Petitioner's Post-Disbarment Conduct

21. The ODC presented substantial evidence that Petitioner failed to comply with his ethical obligations as a disbarred attorney.
22. As noted by the ODC, after the Petitioner was disbarred, he:

[1] The Fourth Circuit addressed other contentions made by Petitioner, but those contentions were related to the admissibility of witnesses and jury instructions and not relevant to Petitioner's criminal conduct or his petition for reinstatement.

a. failed to comply with Pa.R.D.E. 217(d)(3)(iii), in that Petitioner failed to promptly disburse fiduciary funds he was holding on behalf of five former Pennsylvania clients and three former New Jersey clients;

b. failed to undertake "reasonable efforts" to locate the five former Pennsylvania clients to whom he owed fiduciary funds, as required by RPC 1.15(v)(1);

c. failed to remit to the IOLTA Board the fiduciary funds belonging to the former Pennsylvania clients Petitioner was unable to locate, as required by RPC 1.15(v)(1) (Petitioner instead escheated the funds to the Commonwealth of Pennsylvania, Bureau of Unclaimed Property, in November 2022);

d. commingled the fiduciary funds he was holding on behalf of eight former Pennsylvania and New Jersey clients;

e. allowed the balance in his banking account beginning on October 25, 2022, and for several weeks thereafter, to fall below the amount that Petitioner was holding on behalf of the eight former Pennsylvania and New Jersey clients, in violation of RPC 1.15(b)(Petitioner at all times should have held in the bank account no less than $14,185.27, the total amount he escheated to Pennsylvania and New Jersey);

f. failed to comply with Pa.R.D.E. 217(c)(3) by failing to notify the United States District Court for the District of New Jersey ("the NJ District Court"), the United States Court of Appeals for the Third Circuit ("the Third Circuit"), the United States Court of Appeals for the Eight Circuit ("the Eight Circuit"), the United States Court of Appeals for the Federal Circuit ("the Federal

Circuit"), and the Supreme Court of the United States ("the Supreme Court") of his disbarment; and

g. failed to comply with Pa.R.D.E. 217(j)(4)(i), in that beginning in February 2020 and continuing until March 2021, Petitioner engaged in law-related activities for Patrick T. Duffy, Esquire, an attorney with whom Petitioner was in a partnership with before Petitioner was temporarily suspended and disbarred. (2/21/24 N.T. 181-182, 184, 188-192, 264-269, 273-277; 2/22/24 N.T. 216, 219, 222-230; ODC-11-13, 49-59; Bates Nos. ODC-000186-000195, 000487-000557; P-2, 10)

23. Petitioner failed to comply with Pa.R.D.E. 217(j)(1) during his employment with Donald Pak.

24. Mr. Pak's practice emphasizes federal immigration law. He has held a New Jersey law license since 1999 but did not obtain a Pennsylvania law license until 2023. (2/21/24 N.T. 141-142)

25. From approximately March 2021 until the present time, Petitioner has worked under the supervision of Mr. Pak as an immigration paralegal. (2/21/24 N.T. 143-44, 148).

26. From March 2021 until sometime in 2023, because Mr. Pak was not licensed to practice law in Pennsylvania, Petitioner was not in compliance with Pa.R.D.E. 217(j)(1). (2/21/24 N.T. 141, 143, 145-148).

27. In December 2020, Petitioner had to close his New Jersey IOLTA account and transferred the funds in that account (which consisted of funds belonging to both former Pennsylvania and New Jersey clients) to a savings account in Petitioner

and Petitioner's wife's name because he "didn't think of it" and he "lost track of it...." (2/22/24 N.T. 219-221, 227-228)

28. Not until the ODC inquired about Petitioner's taxes in connection with the investigation of Petitioner's 2022 Petition for Reinstatement resulted in Petitioner realizing that he was holding fiduciary funds belonging to former Pennsylvania and New Jersey clients that he had yet to disburse. (2/22/24 N.T. 217-218)

29. Petitioner conceded he had "no excuse" for:

    a. not determining if he was holding fiduciary funds on behalf of clients that had to be disbursed when he completed and filed with the Disciplinary Board a January 2020 Statement of Compliance, which document represented that Petitioner had complied with Pa.R.D.E. 217;

    b. not opening a new account so he could deposit the fiduciary funds into an account that only held those funds rather than depositing the fiduciary funds held in the New Jersey IOLTA account into the bank account belonging to Petitioner and his wife; and

    c. not notifying the NJ District Court, the Third Circuit, the Eighth Circuit, the Federal Circuit, and the Supreme Court of Petitioner's disbarment before Petitioner filed the 2023 Petition and the 2023 Questionnaire. (2/22/24 NT 221-222, 226-227, 231-232)

30. Petitioner failed to review RPC 1.15(v) before escheating to the Commonwealth of Pennsylvania the fiduciary funds belonging to Petitioner's former Pennsylvania clients. (2/22/24 N.T. 223- 224)

31. In connection with the 2022 Petition, ODC sent an August 24, 2022 letter to Petitioner inquiring whether Petitioner had notified the NJ District Court, the Third Circuit, the Eighth Circuit, the Federal Circuit, and the Supreme Court of his disbarment, yet Petitioner only sent the required notifications after filing the 2023 Petition and the 2023 Questionnaire, and following ODC's written request to do so. (ODC-29-30, 34-36; Bates Nos. ODC-000367-000368, 000373-000374, 000415-000416, 000419-000420; P-11)
32. Petitioner was "wrong" in his interpretation of Pa.R.D.E. 217(j)(4)(i) and he "misadvised Mr. Duffy" that Petitioner could work from home for Mr. Duffy. (2/22/24 N.T. 276-277)
33. Also, Petitioner incorrectly testified that he had complied with the various subsections of Pa.R.D.E. 217(j) during his employment as a paralegal with Mr. Pak because as discussed above, Petitioner had failed to comply with Pa.R.D.E. 217(j)(1). (2/21/24 N.T. 278)
34. Petitioner's carelessness resulted in omissions and inaccurate information on the 2022 Questionnaire and 2023 Questionnaire.
35. In completing the 2022 Questionnaire, Petitioner carelessly excluded seven civil cases and one landlord-tenant case in which the Petitioner appeared as a party or claimed an interest in any civil action. (2/22/24 N.T. 233-234, ODC 15-24).
36. Petitioner testified that he omitted the eight civil cases on the 2022 Questionnaire because:
    a. he only conducted a search using his name in state courts;
    b. he limited his search to cases in which he appeared as a defendant; and

c. he relied on “an assistant” and the “search was inadequate.” (2/22/24 N.T. 234-235)

37. In completing the 2022 Questionnaire and the 2023 Questionnaire, Part II, Petitioner:

    a. incorrectly answered “No” in response to Question 5(d), which inquired if Petitioner has “any debts which are currently 90 or more days past due.” (2/22/24 N.T. 236-241; ODC-25-29, 33, 39)

38. When Petitioner submitted the 2022 Questionnaire and the 2023 Questionnaire, he had an unsatisfied gas service judgment in the amount of $720.90 that was owed to the City of Philadelphia and unsatisfied fines in connection with two traffic violation cases that were filed against Petitioner in Camden County, New Jersey, in 2004 and 2008. (ODC-26-28, 39)

39. Despite the ODC’s inquiry into these matters by letter dated August 24, 2022, Petitioner still answered “No” in response to the same question on his 2023 Questionnaire. (ODC-33). The ODC made Petitioner aware of the gas service judgment and the New Jersey traffic violations, but he still falsely claimed that he did not have any debts over 90 days old.

40. Petitioner acknowledged that he incorrectly answered “No” in response to Question 5(d) on the 2023 Questionnaire, Part II, because he “was doing it [him]self with the assistance of someone that [he] relied upon” and he “was wrong” and “should have done right” in completing the 2023 Questionnaire. (2/22/24 NT 242-243)

41. Petitioner's explanation demonstrates that he did not properly oversee the accuracy of work done on his behalf by an assistant. (2/22/24 N.T. 235-241)

The Reinstatement Hearing

42. During the three-day Reinstatement Hearing, Petitioner called several character witnesses on his own behalf:

    a. **Brian McGonagle –** Mr. McGonagle is a criminal defense attorney in Philadelphia. (11/16/23 N.T. 69). Mr. McGonagle credibly testified that he knows Petitioner and Petitioner has genuine remorse for his conduct. (11/16/23 N.T. 73). Mr. McGonagle conceded, however, that he has had minimal contact with Petitioner following his conviction and his release from prison.

    b. **Bradley Bridge –** Mr. Bridge worked in the Public Defender's office for more than 40 years and knew Petitioner in that capacity. He credibly testified that Petitioner has accepted responsibility for his actions, expressed remorse, and is trying to make amends. (11/16/23 N.T. 106). However, he conceded he only spoke with Petitioner once from 2020 through October 2023. (11/16/23 N.T. 116).

    c. **Stephen Lacheen –** Mr. Lacheen has practiced law for approximately 65 years, mainly as a criminal defense attorney. Mr. Lacheen knew Petitioner well as a criminal defense attorney. He described Petitioner's conduct as "awful" but testified that Petitioner expressed acceptance of responsibility and remorse and that Petitioner apologized to the extent his actions affected

Mr. Lacheen. Mr. Lacheen, however, has had minimal contact with Petitioner since 2019.

d. **Thomas Brophy –** Mr. Brophy has known the Petitioner since high school. Like other character witnesses, Mr. Brophy described the Petitioner as "aggressive" in his lawyering. (11/16/23 N.T. 159). Mr. Brophy described Petitioner's criminal conduct as "aberrational and surprising." (11/16/23 N.T. 163). Like the other witnesses, Mr. Brophy had limited interaction with Petitioner from the time Petitioner was released from prison until his testimony on November 16, 2023. (11/16/23 N.T. 170, 171).

e. **William Ricci** – Mr. Ricci credibly testified that he has known Petitioner since high school. Mr. Ricci testified that he has seen Petitioner in recent years at group meetings and Petitioner has expressed shame, embarrassment, and remorse over his criminal conduct. (11/16/23 N.T. 204).

f. **Felicia Sarner –** Ms. Sarner knew the Petitioner in her capacity as a federal public defender. She described him as a passionate attorney who would fight hard for his clients. (11/16/23 N.T. 224). Ms. Sarner agreed that Petitioner's conduct was deliberate and not in compliance with the rules of ethics and was criminal conduct. (11/16/23 N.T. 230). She has also not communicated much with Petitioner since his release from prison. (11/16/23 N.T. 236).

g. **Michael Campbell** – Mr. Campbell has known the Petitioner since high school. (11/16/23 N.T. 248). Mr. Campbell credibly testified that Petitioner's

criminal conviction was serious and negatively impacts the public's perception of the legal profession. (11/16/23 N.T. 262). Like many of the other character witnesses, Mr. Campbell has had limited interaction with Petitioner since his release from prison. (11/16/23 N.T. 257-259). He did testify, however, that Petitioner had expressed remorse regarding his actions in a talk he gave to high school classmates before his trial. (11/16/23 N.T. 262).

h. **Honorable Gregory M. Sleet** – Judge Sleet is a retired federal judge who served for twenty years on the bench for the United States District Court for the District of Delaware. (11/16/23 N.T. 264). Judge Sleet has known the Petitioner for a number of years starting when they were both public defenders in Philadelphia (11/16/23 N.T. 265). Judge Sleet and Petitioner became law partners for approximately a year in 1986 or 1987 but then Judge Sleet moved to Delaware and took another position. (11/16/23 N.T. 266). The two, however, remained in touch and spoke or got together fairly regularly as time and commitments allowed. (11/16/23 N.T. 267). Judge Sleet credibly testified that Petitioner initially resisted the notion that he engaged in criminal conduct. (11/16/23 N.T. 282). Over time, however, Judge Sleet felt that Petitioner came to accept responsibility for his actions. (11/16/23 N.T. 283). He felt that Petitioner learned over time that you cannot do the job of representing a criminal defendant at all costs. (11/16/23 N.T. 286). You must still abide by the rules of ethics.

i. **Nicholas Pinto** – Mr. Pinto knew the Petitioner from their days as public defenders. (11/16/23 N.T. 290). Mr. Pinto also confirmed Mr. Farrell accepted full responsibility for his misconduct and has remorse. (11/16/23 N.T. 293). Since his release from prison, Mr. Pinto has had minimal interaction with Mr. Pinto since his release from prison.

j. **Frances Burns, III** - Mr. Burns has known Mr. Farrell since high school and currently sees him on Saturday mornings as part of a religious group. Mr. Burns visited the Petitioner on several occasions while Petitioner was in prison. (11/16/23 N.T. 322). Petitioner told Mr. Burns "how grieved he was" and how his behavior affected others. (11/16/23 N.T. 337).

k. **Father George Bur** – Father Bur got to know Petitioner during a Saturday morning group devoted to spiritual exercises and improvement. Petitioner joined the group in 2008 and joined again after being released from prison. (2/21/24 N.T. 14-16). Father Bur testified that Petitioner had an excellent reputation in the community and was known as a truthful and honest person. (2/21/24 N.T. 19, 20).

l. **Richard T. Bobbe III** – Mr. Bobbe has known Petitioner for years dating back to his time in the District Attorney's Office in Philadelphia. Mr. Bobbe testified that Petitioner has accepted responsibility but he has never spoken to him about the criminal case. Further, Mr. Bobbe has not seen Petitioner much since his release from prison. (2/21/24 N.T. 46)

m. **Henry W. Schober** – Mr. Schober's credibly testified that he worked for Petitioner from April 1994 until 2008. (2/21/24 N.T. 83).

n. **David Rudovsky** – Mr. Rudovsky is a criminal defense attorney who has known Petitioner for fifteen or so years. (2/21/24 N.T. 108). Mr. Rudovsky felt Petitioner showed genuine remorse after being released from prison. (2/21/24 N.T. 112). Mr. Rudovsky, however, had minimal contact with him after his release. (2/21/24 N.T. 125).

o. **Don W. Pak –** Mr. Pak is Petitioner's current employer. (2/21/24 N.T. 143). Mr. Pak confirmed Petitioner has not held himself out as an attorney and has been diligent in his working hours. He further noted Mr. Farrell's remorsefulness. (2/21/24 N.T. 130-160).

p. **Patrick T. Duffy** – Mr. Duffy is an attorney who previously partnered with Petitioner. After Petitioner was released from prison, he worked for Mr. Duffy as a paralegal until 2019. He later learned that he could not employ Petitioner and Petitioner left his employ to take another job.

V. CONCLUSIONS OF LAW

1. Petitioner has not met his "burden of demonstrating by clear and convincing evidence that [he] has the moral qualifications, competency, and learning in law required for admission to practice law in this Commonwealth." Pa. R.D.E. 218(c)(3).
2. Petitioner has not met his burden of demonstrating by clear and convincing evidence that his resumption of the practice of law within this 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).

VI. DISCUSSION

A. Petitioner's Burden of Proof

Petitioner seeks reinstatement to the bar of the Supreme Court of Pennsylvania following his resignation and disbarment by Order of the Supreme Court dated December 4, 2019. In a reinstatement from disbarment proceeding, Petitioner bears the burden of proving by clear and convincing evidence that the misconduct for which he was disbarred is not so egregious as to preclude consideration of his Petition for Reinstatement. *Office of Disciplinary Counsel v. Keller*, 506 A.2d 872 (Pa. 1986).

The Petitioner also bears the burden of proving by clear and convincing evidence that he possesses the moral qualifications, competency, and learning in the law required for admission to practice law in this 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 to the public interest. *Office of Disciplinary Counsel v. Keller*, 506 A.2d 872 (Pa. 1986); *In the Matter of Lawrence D. Greenberg,* 749 A.2d 434, 436 (Pa. 2000); Pa. R.D.E. 218(c)(3).

The clear and convincing evidence standard is the highest standard of proof for civil claims, requiring evidence "so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy of the truth of the precise facts in issue." *In the Matter of Braig,* 554 A.2d 493, 495 (Pa. 1989). A reinstatement proceeding is a searching inquiry into a lawyer's present professional and moral fitness to resume the practice of law. The object of the concern is not solely the transgressions which gave rise to the lawyer's disbarment, but rather the nature and extent of the rehabilitative efforts made since the time the sanction was imposed and the degree of success achieved in

the rehabilitative process. *Philadelphia News, Inc. v. Disciplinary Board of the Supreme Court*, 363 A.2d 779 (Pa. 1976). In determining whether Petitioner clearly demonstrated his present fitness to practice law, the Hearing Committee must consider the nature of Petitioner's misconduct, his present competence and legal abilities, his character, rehabilitation, and degree of remorse. *Id.* To meet his burden, Petitioner must prove that his conduct and efforts of qualitative rehabilitation were sufficient to dissipate the detrimental impact of his misconduct on the public trust. *In re Verlin*, 731 A.2d 600 (Pa. 1999).

As set forth in more detail below, the Petitioner has not 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 re Verlin*, 731 A.2d 600 (Pa. 1999). To start, an insufficient period of time has passed since the Petitioner resigned and was disbarred on consent from the Bar of the Commonwealth of Pennsylvania. In addition, Petitioner's lack of thoroughness and candidness with regard to his Questionnaire and Supplemental Answers raises questions concerning his competence to practice law. Finally, the Petitioner failed to demonstrate genuine remorse for his misconduct throughout the hearing.

B. An Insufficient period of time has elapsed since Petitioner's misconduct during which he engaged in qualitative rehabilitation

In every case involving a disbarred attorney seeking reinstatement, the Disciplinary Board and the Court must examine whether the magnitude of the breach of trust—the underlying misconduct—was so egregious as to preclude further reconsideration of the petition for reinstatement. *Office of Disciplinary Counsel v. Keller*, 506 A.2d 872, 975 (Pa.

1986); *In the Matter of Verlin,* 731 A.2d 600, 601 (Pa. 1999). This is known as the "first prong" of the *Keller* threshold test for reinstatement from disbarment. While the ODC concedes and this panel agrees that Petitioner's criminal conduct is not so egregious as to forever bar Petitioner from being reinstated, the Hearing Committee notes that Petitioner was convicted of several serious crimes which brought disrepute on the practice of law.

The "second prong" under *Keller* inquires whether the disbarred attorney has proven that the "current resumption" of the practice of law would not be detrimental to the profession, the courts, or the public. *In the Matter of Perrone*, 777 A.2d 413, 416 (Pa. 2001). This analysis requires that the Committee conduct two separate and distinct inquiries. The first inquiry applies an objective test, where "[t]he operative question is, if the public knew of petitioner's transgressions, would the fact that he was able to resume practicing law after a mere [seven] years of disbarment adversely affect the public's perception of the legal profession?" *In the Matter of Greenberg*, 749 A.2d 434, 437 (Pa. 2000); *id.* 436, 437 ("no independent evidence is necessary to appreciate that reinstatement at this time would be detrimental to the integrity and standing of the bar, the administration of justice and the public interest"; "[g]iven the severity of petitioner's misdeeds, to reinstate him after eight years of disbarment would reinforce the public's perception that lawyers are greedy and dishonest"). *Accord Perrone*, 777 A.2d at 417.

A second inquiry is the determination of whether a sufficient period of time has elapsed since a petitioner's misconduct during which he engaged in qualitative rehabilitation. *In the Matter of Mark Allan Kovler*, No. 172 DB 2002 (D.Bd. Rpt. 5/15/2009, p. 9)(S. Ct. Order 7/24/2009); *accord Perrone*, 777 A.2d at 416. It is not enough, however,

to be "on the road to rehabilitation." *Greenberg*, 749 A.2d at 437. In *In the Matter of Anonymous (Eugene A. Steger, Jr.),* No. 25 DB 85 (D.Bd. Rpt. 10/29/1998, p. 8)(S. Ct. Order 12/22/1998), the Board stated that "[o]ften times a longer absence from the practice of law suggests that a petitioner had an increased opportunity for meaningful rehabilitation, and a better chance of successfully demonstrating that he or she gained insight into the misconduct and an understanding about how to avoid it in the future."

In sum, the second prong of *Keller* first requires the Committee to evaluate the misconduct in relation to the number of years of disbarment to determine whether "a sufficient amount of time has passed to dissipate the detrimental impact of [a petitioner's] misconduct on the public trust." *Perrone*, 777 A.2d at 416. If the Committee finds that objectively a sufficient period of disbarment has passed to dissipate the taint of the initial breach, the Committee must then balance the term of disbarment with the rehabilitative effort while giving due consideration to the initial misconduct.

The Petitioner was first suspended from the practice of law on March 10, 2017. He was convicted of his crimes on July 14, 2017. Petitioner then appealed his conviction to the Fourth Circuit Court of Appeals which affirmed the conviction on April 5, 2019. The Petitioner then submitted a writ of certiorari to the United States Supreme Court which was denied on October 7, 2019. On December 4, 2019, the Supreme Court of Pennsylvania accepted Petitioner's resignation from the Bar of Pennsylvania and disbarred Petitioner. Although seven years have elapsed since the Petitioner was suspended, it has been only five years since he ceased filing appeals related to his criminal conduct and less than five years since he was formally disbarred (December 4, 2019) although his disbarment was retroactive to March 10, 2017.

The ODC cites to the Pennsylvania Supreme Court's decision denying reinstatement *In the Matter of Perrone*, 777 A.2d 413, 416 (Pa. 2001). In *Perrone*, the Petitioner submitted false fee petitions with the City of Philadelphia over a period of three years, receiving a total of approximately $345,000. The misconduct was discovered by a newspaper investigation. Perrone pled guilty to theft by deception, tampering with public records or information, securing execution of documents by deception, and unsworn falsification to authorities. Perrone was sentenced to five years of probation and ordered to pay restitution. When the Court issued its Opinion, Perrone had been disbarred for close to eight years. The Court noted that Perrone had completed his probation, paid restitution, volunteered with charitable organizations, had been gainfully employed, had presented eight-character witnesses (some of whom were attorneys), submitted twenty-four "character reference" letters, and expressed remorse, but nevertheless denied his reinstatement. The Court observed that Perrone's conduct was "both deliberate and committed solely for his own personal profit." *Perrone*, 777 A.2d at 416. Moreover, the misconduct was longstanding, having "continued for three years until it was discovered by the Philadelphia Inquirer," and that Perrone "'would not have come forward on his own to report his conduct had he not been directly and indisputably confronted with it.'" *Id.* at 417.

These factors, including Perrone's false swearing in court filings, moved the Court to state that "[g]iven the severity of Perrone's misdeeds, allowing him to be reinstated after less than eight years of disbarment would only reinforce the public's perception that lawyers are greedy and deceitful." *Id*. Consequently, the petition for reinstatement was denied, as the Court "believe[d] that allowing Perrone to resume the practice of law at the

present time would have a detrimental effect upon the integrity and standing of the bar and on the administration of justice and would subvert the public interest." *Id.* Perrone was reinstated five years later. *In the Matter of Perrone ("Perrone II")*, 899 A.2d 1108 (Pa. 2006).

The ODC also cited to *In the Matter of Greenberg*, 749 A.2d 434, 437 (Pa. 2000). In *Greenberg,* his misconduct occurred over a four-year period and consisted of fraudulent financial transfers that resulted in the misappropriation of 2 million dollars from a corporation and the filing of false documents in bankruptcy court to conceal his criminal conduct. Greenberg pled guilty to conspiracy and bank fraud and was sentenced, *inter alia*, to five years imprisonment and restitution in the amount of 1.7 million dollars. The Court noted that Greenberg's "misdeeds may never have come to light," but for the "diligence" of federal law enforcement authorities, and that Greenberg's actions "brought great dishonor upon the legal profession." *Greenberg*, 749 A.2d at 437, 438. Despite Greenberg offering 42-character letters and evidence establishing that he was "on the road to rehabilitation," the Court declined Greenberg's reinstatement, stating that to "reinstate [Greenberg's] license to practice law after eight years of disbarment would only tarnish the image of the legal profession further." *Greenberg*, 749 A.2d at 437, 438. Greenberg was reinstated seven years later. *In the Matter of Lawrence D. Greenberg (Greenberg II)*, No. 93 DB 1990 (D.Bd. Rpt. 5/11/2007)(S.Ct. Order 6/18/2007).

In the Matter of Milton E. Raiford, No. 50 DB 1994 (D.Bd. Rpt. 12/7/2001)(S.Ct. Order 1/31/2002) Raiford was convicted of obstruction of administration of law or other governmental function, unsworn falsification to authorities, and tampering with public records or other information, for having one client portray a second client throughout the

course of criminal proceedings. D.Bd. Rpt. at 2-3. Raiford's criminal conduct was uncovered when the second client discovered that she had a criminal record after applying for a job; according to the Board, it was questionable whether Raiford would have revealed his criminal conduct without being compelled to do so by outside events. *Id*. at 6. Raiford was sentenced to three years of probation and 250 hours of community service. Raiford had been disbarred for seven years and eight months when the Court denied Raiford's petition for reinstatement. At the reinstatement hearing, Raiford established that he: had become headmaster of a Christian school since 1995; was a licensed Baptist minister who counseled parents and parishioners and was involved in his church; had performed some legal work for attorneys; was remorseful; and had good character, having presented six-character witnesses, some of whom were attorneys. *Id*. at 7-8. In recommending denial of Raiford's petition for reinstatement, the Board stated the following:

> While [the] evidence suggests that Petitioner is working to rehabilitate himself, the Board is of the opinion that Petitioner is not ready for reinstatement. The misconduct committed by Petitioner showed an egregious disregard for the integrity of the judicial system and damaged the public trust in the legal system. Given the nature of Petitioner's acts, the Board believes that permitting him readmission to the bar after only seven years of disbarment would do further damage to the public trust in the legal system. *Id*. at 8.

Raiford was reinstated eight years later. *In the Matter of Milton E. Raiford ("Raiford II")*, No. 50 DB 1994 (D.Bd. Rpt. 2/16/2010)(S.Ct. Order 4/16/2010).

Like *Perrone,* reinstating Petitioner at this time would have a detrimental effect upon the integrity and standing of the bar and would subvert the public interest. *Perrone*, 777 A.2d 413, 416 (Pa. 2001). Petitioner committed serious crimes that showed a flaunting of the rule of law and the ethical rules that all attorneys must abide by. His

zealous advocacy of his clients was not aggressive; it crossed a line that demonstrated that Petitioner either disregarded the ethical rules or flouted them to represent his clients at all costs. An attorney is required to practice law within the confines of the law and rules of ethics. Zealous advocacy is not an excuse to break the law.

The decision in *Greenberg* is also instructive. There is no question that Petitioner's criminal misconduct would not have been discovered but for the "diligence" of federal authorities in uncovering Petitioner's crime. The Court in *Greenberg* held that eight years was insufficient to show that Petitioner would not tarnish the legal profession even further.

Finally, similar to *Raiford,* the Petitioner was convicted of obstruction of justice and showed and "egregious disregard for the integrity of the judicial system." Permitting Petitioner readmission to the Bar after only seven years would damage public trust in the legal system.

C. Petitioner's Sloppiness in Preparing his Reinstatement Questionnaire, his Supplemental Answers and his hearing testimony demonstrate that he has not proven he has the competency to practice law

The Court has held that a Petitioner lacks competency when he engages in a pattern of inaccuracies pertaining to the Questionnaire and exhibits an inability to answer questions pertaining to the Questionnaire at the reinstatement hearing. *In the Matter of Ronald I.* Kaplan, No. 39 DB 2005 (2009)(reinstatement denied).

In December 2020, Petitioner had to close his New Jersey IOLTA account and transferred the funds in that account (which consisted of funds belonging to both former Pennsylvania and New Jersey clients) to a savings account in Petitioner and Petitioner's wife's name because he "didn't think of it" and he "lost track of it...." (2/22/24 NT 219-221, 227-228). Not until the ODC inquired about Petitioner's taxes in connection with the

investigation of Petitioner's 2022 Petition for Reinstatement resulted in Petitioner realizing that he was holding fiduciary funds belonging to former Pennsylvania and New Jersey clients that he had yet to disburse. (2/22/24 NT 217-218)

Petitioner conceded he had "no excuse" for:

a. not determining if he was holding fiduciary funds on behalf of clients that had to be disbursed when he completed and filed with the Disciplinary Board a January 2020 Statement of Compliance, which document represented that Petitioner had complied with Pa.R.D.E. 217;

b. not opening a new account so he could deposit the fiduciary funds into an account that only held those funds rather than depositing the fiduciary funds held in the New Jersey IOLTA account into the bank account belonging to Petitioner and his wife; and

Petitioner's carelessness resulted in omissions and inaccurate information on the 2022 Questionnaire and 2023 Questionnaire. In completing the 2022 Questionnaire, Petitioner carelessly excluded seven civil cases and one landlord-tenant case in which the Petitioner appeared as a party or claimed an interest in any civil action. (2/22/24 NT 233-234, ODC 15-24). Petitioner testified that he omitted the eight civil cases on the 2022 Questionnaire because: (1) he only conducted a search using his name in state courts; (2) he limited his search to cases in which he appeared as a defendant; and (3) he relied on "an assistant" and the "search was inadequate." (2/22/24 N.T. 234-235).

Petitioner's sloppiness also was evident in his employment choices subsequent to his disbarment and release from prison. Petitioner was "wrong" in his interpretation of

Pa.R.D.E. 217(j)(4)(i) and he "misadvised Mr. Duffy" that Petitioner could work from home for Mr. Duffy. (2/22/24 NT 276-277). Also, Petitioner incorrectly testified that he had complied with the various subsections of Pa.R.D.E. 217(j) during his employment as a paralegal with Mr. Pak because as discussed above, Petitioner had failed to comply with Pa.R.D.E. 217(j)(1). (N.T.II 278; PFOF 19-22)

In addition, the testimony of Don Pak, Esquire, Petitioner's current employer, established that Petitioner failed to comply with Pa.R.D.E. 217(j)(1). Mr. Pak's practice emphasizes federal immigration law. He has held a New Jersey law license since 1999 but did not obtain a Pennsylvania law license until 2023. (2/21/24 NT 141-142). From approximately March 2021 until the present time, Petitioner has worked under the supervision of Mr. Pak as an immigration paralegal. (2/21/24 NT 143-44, 148). From March 2021 until sometime in 2023, because Mr. Pak was not licensed to practice law in Pennsylvania, Petitioner was not in compliance with Pa.R.D.E. 217(j)(1). (2/21/24 NT 141, 143, 145-148).

Taken together, Petitioner's post-disbarment actions raise serious questions regarding his competence. He submitted an inaccurate questionnaire in both 2022 and 2023. He failed to obtain employment in conformance with the rules. And he sloppily handled his trust accounts.

Petitioner's failure to satisfy his ethical obligations as a disbarred attorney exposed additional inadequacies in Petitioner's rehabilitative efforts. It is indisputable that Petitioner failed to comply with three ethics rules—Pa.R.D.E. 217(d)(3)(iii), RPC 1.15(b), and RPC 1.15(v)(1). Petitioner's testimony revealed that he was either lax or uninformed about his post-disbarment ethical obligations (PFOF 24-30), which is unacceptable

behavior for someone seeking to resume the practice of law. In *In the Matter of Craig B. Sokolow*, No. 83 DB 2018 (D.Bd. Rpt. 8/2/2023, p. 22)(S.Ct. Order 9/28/2023)(reinstatement denied), the Board found that Sokolow's failure to comply with his post-suspension obligations under Pa.R.D.E. 217, combined with other conduct, exemplified "the antithesis of rehabilitative efforts" and showed a lack of fitness "to resume the practice of law." *Accord*, *Gregg, supra*, at 10 (Gregg had failed to close two escrow accounts and was continuing to use his PNC IOLTA account for ten months after he was disbarred).

Petitioner did not demonstrate thoroughness in preparing the 2022 Questionnaire and the 2023 Questionnaire, which resulted in Petitioner providing inaccurate information and making omissions. Petitioner provided unsatisfactory explanations for these errors and omissions.

Petitioner's omissions and errors on the 2022 Questionnaire and the 2023 Questionnaire establish that he is not fit to resume the practice of law. *See*, *e.g.*, *In the Matter of Paul Joseph Staub, Jr.* No. 36 DB 2010 (D.Bd. Rpt. 1/9/2018, p. 15 ("The errors and omissions on Petitioner's Reinstatement Questionnaire bolster our conclusion that Petitioner is not fully prepared for readmission to the practice of law."); *In the Matter of John J. Mogck, III*, No. 78 DB 1992 (D.Bd. Rpt. 6/22/2004, p. 8) (Questionnaire contained errors and omissions regarding restitution, Mogck's work history, and his IRS liability; these "errors and omissions show carelessness and an inattention to detail that is bewildering for an individual interested in resuming his professional licensure.")(S.Ct. Order 9/28/2004) (reinstatement denied).

In conclusion, Petitioner has not shown by clear and convincing evidence that he has engaged in a period of qualitative rehabilitation.

D. Petitioner lacks the moral qualifications required to practice law because he failed to show genuine remorse at the reinstatement hearing.

Throughout the three days of Petitioner's reinstatement hearing both the Petitioner and character witnesses on his behalf expressed that the Petitioner exhibited remorse for his criminal conduct. The Petitioner's testimony, however, was filled with caveats, explanations, and excuses for his behavior which leads the Hearing Committee to the conclusion that Petitioner presently lacks the moral qualifications required for reinstatement at this time. *See, Staub* at 14 (petitioner did not "fully acknowledge that his actions harmed others and damaged the integrity of the legal system," which lead to the Board's finding that he had "failed to express genuine remorse or apologize for his actions.") (S. Ct. Order 3/1/2018).

Petitioner minimized his criminal conduct at the reinstatement hearing, which circumstance standing alone prevents Petitioner from demonstrating qualitative rehabilitation. The ODC highlighted and this panel found that the Petitioner testified that:

- he received information from Nicka and Sharpeta about Spain's grand jury testimony (Fourth Circuit stated that Petitioner shared with Nicka and Sharpeta what Petitioner learned from Spain about Spain's grand jury testimony);
- he agreed to Forman's request to give Forman $10,000 in cash in return for Forman's $10,000 check (Fourth Circuit recounted that Petitioner requested from Forman a $10,000 check and offered to

give Forman $10,000 in cash so Petitioner "could show on the books" that Petitioner had been paid);

- he had not created records making it appear that Forman had made cash payments to Petitioner (Fourth Circuit observed in a footnote that Petitioner's client transaction reports showed that Forman paid Petitioner more than $20,000 in cash);

- he did not know that the $200,000 in cash he received from Nicka were proceeds from a criminal activity (the Fourth Circuit concluded that "the evidence proved beyond peradventure Farrell's actual subjective knowledge that he had received and distributed defense fund proceeds from the Nicka Organization's unlawful drug trafficking activities";

- he kept appropriate records whenever he used the $200,000 in drug proceeds (Fourth Circuit determined that Petitioner "falsified" records related to "the defense funds he received");

- he had not directed Forman to lie to federal law enforcement authorities at a proffer session (Fourth Circuit found that Farrell instructed Forman "to lie to the federal agents."); and

- he had made "mistakes" in describing his criminal conduct (Fourth Circuit viewed Petitioner as knowingly engaging in multiple forms of criminal conduct in performing his roles as "consigliere" and "fixer.")(emphasis added to quotations from the Opinion and

Petitioner's testimony)(ODC-1, pp. 36-37, 49; Bates No. ODC-000037-000038, 000050; PFOF 13-14)

Petitioner also painted his criminal conduct in a noble and positive light that was at odds with the Fourth Circuit's perspective of Petitioner as someone who "became 'part of' the Nicka Organization itself, as its consigliere and fixer." (ODC-1, p. 36; Bates No. ODC 000037; PFOF 9, 14-15) For example, Petitioner described himself as "the first of equals in developing a team of lawyers to help these young people defend a grand jury investigation." (2/21/24 N.T. 232) Or consider that Petitioner maintained that what he "did wrong is done all the time right by especially large law firms that have a criminal department" representing organizational clients. (2/21/24 N.T. 249-250). Petitioner's insouciance regarding his criminal conduct and its impact on others shows that he still does not appreciate the gravity of his crimes.

Petitioner produced several character witnesses throughout the reinstatement hearing, and they all spoke well of Petitioner. Most of the witnesses, however, have had minimal contact with the Petitioner since his release from prison. In *Staub, supra,* at 16, the Board stated that Staub's character witnesses could not "overcome the observed deficiencies in Petitioner's testimony before the Hearing Committee. The testimony of Petitioner's witnesses can only serve to bolster a genuine statement of regret and admission of wrongdoing, which notably absent in this matter." *See also, In the Matter of Michael Radbill,* No. 113 DB 2004 (D. BD. Rpt. 1/2/2019, p. 22 (character evidence can serve to support and bolster a petitioner's remorse but cannot serve to create such remorse when the petitioner himself has not expressed it in a meaningful way." (S.Ct. Order 3/13/2019); *In the Matter of Costigan*, 664 A.2d 518, 520, 522 (Pa. 1995) (petitioner

must come to terms with the conduct which caused the loss of his license and must demonstrate that he is, in a word, trustworthy).

As in *Staub, Radbill,* and *Costigan,* Petitioner's character testimony does not overcome Petitioner's own lack of meaningful remorse for the conduct that led to his suspension. Petitioner repeatedly minimized and excused his criminal conduct, focusing on technicalities and other details rather than true remorse for his conduct. While he repeatedly stated that he was remorseful, it was evident from his testimony that he had still not come to grips with his criminal conviction in a truly meaningful way that would demonstrate his character and fitness to return to the practice of law at this time.

Likewise, while the Hearing Committee does not dispute that the Petitioner's character witnesses truthfully believed that the Petitioner was remorseful for his conduct, it was also evident that most had had minimal contact with him beyond being asked to testify at the hearing. The character witnesses cannot overcome the Petitioner's lack of meaningful remorse, particularly with such limited interaction.2

2 The one major exception was the testimony of Judge Sleet. Judge Sleet has an exemplary record as a federal judge and his testimony should be weighted accordingly. Moreover, Judge Sleet has stayed in contact with Petitioner throughout and therefore his testimony is more meaningful than the other character witnesses. Judge Sleet, however, did concede that the Petitioner resisted admitting that he engaged in criminal conduct and only over time did he reluctantly accept that what he did was wrong. Judge Sleet's testimony demonstrates that an insufficient period of time has passed to allow the Petitioner readmission to the bar.

VIII. RECOMMENDED DISPOSITION

For the above reasons, the Hearing Committee respectfully recommends that the Petition for Reinstatement be Denied.

Respectfully submitted,

/s/ *Michael Scott*
Michael Scott, Esq., Chair

/s/ *Patrice O'Brien*
Patrice O'Brien, Esq., Member

/s/ *Patrick Cosgrove*
Patrick Cosgrove, Esq., Member

Dated: 8/16/2024