BEFORE THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

IN THE MATTER OF — No. 68 DB 2020

DAVID CHARLES AGRESTI

Atty. Registration No. 79582

PETITION FOR REINSTATEMENT — (Erie County)

PETITIONER'S BRIEF TO THE HEARING COMMITTEE

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STATEMENT OF THE CASE

1. Procedural History.

By Order of July 21, 2021, the Supreme Court of Pennsylvania suspended Petitioner from the practice of law for three years. Petition for Reinstatement (Pet.), 9/25/25, at 1, 39 (Ex. RQI-F).[1] The suspension took effect on August 20, 2021, and it expired on August 21, 2024. Pet. 1–2. The discipline rested on Petitioner's mishandling of advanced fees in three client matters. Pet. 40–70 (Ex. RQI-G) (Disciplinary Board Report and Recommendation).

Petitioner did not seek reinstatement when he first became eligible. He waited. On September 25, 2025, he filed his Petition for Reinstatement and the accompanying Reinstatement Questionnaire. Pet. 1–2 (Ex. RQI-A).

On May 7, 2026, the matter came before the District IV Hearing Committee: Ryan D. Very, Esq., Richard W. Kelly, Jr., Esq., and Christopher W. Cahillane, Esq. *See generally* Hearing Transcript (H.T.), 5/7/26, at 1–2, 4. Petitioner testified and called seven character witnesses: attorneys John Knox III, John Carlson, James Toohey, William Weichler, and Zanita Zacks-Gabriel; intermediate-unit director Bradley Whitman; and business

[1]Page references from the Petition for Reinstatement follow sequentially in the PDF of the Petition filed of record. A quick note: the reference on the first page of the Petition that Petitioner was "suspended *on consent*" is a typographical error of counsel's making, borrowing language from a prior Petition for Reinstatement. Petitioner was suspended after a full hearing, and his materials bear that fact out.

executive Benjamin Gerring. H.T. 3, 7–8. The Office of Disciplinary Counsel, by Cory J. Cirelli, Esq., called no witnesses and does not oppose reinstatement. H.T. 142 ("We don't oppose the petition.").

2. Factual Background.

David Agresti was born into the Erie bar. His grandfather Joseph, and great-uncle Richard, founded the family firm in 1935, and both served in leadership roles in the Erie County Bar Association and throughout the Erie community at large. H.T. 14–15; Pet. 100. His father Charles, his uncle, and his brother Michael all practiced law. H.T. 14, 122; Pet. 100. For three generations, the Agresti name carried goodwill across a community where, as Petitioner put it, everyone "knows the other person, or knows their parents." H.T. 15. He inherited that goodwill without lifting a finger. Pet. 100.

This inheritance opened doors. "The goodwill my grandfather and my uncle and my dad established was bestowed on me without any effort," Petitioner testified. "Doors were opened for me. Introductions were made." H.T. 16. He went straight to the family firm out of law school, and he became an Assistant District Attorney with no application—someone simply "walk[ed] [him] down to the courthouse" to meet the incoming District Attorney. H.T. 17–18. Solicitorships and other opportunities followed: Children and Youth, the public defender's mental-health docket, the Erie

airport, Presque Isle Downs. H.T. 19–22. “There is no question,” he conceded, “that my foot in the door was afforded because of the longstanding work that my family had done.” H.T. 21–22 (Petitioner acknowledging he was “automatically trusted” on the strength of the family name).

That ease exacted a cost. Courtesy “was extended to me that I otherwise . . . wouldn’t have,” Petitioner explained, “because I didn’t have the opportunity to prove myself,” and he “adopted that expectation” as though there was nothing to it. H.T. 24–25 (Petitioner describing the “latitude” he was given that other attorneys were not). A man who never has to earn his place, and never pays a price, builds no habit of consequence. That was not his family’s conscious doing; they raised him modestly and never traded on their standing. H.T. 25–26. The mentality was Petitioner’s alone: “it was my sense of self-entitlement and selfishness that prevailed over humility.” Pet. 103 (Ex. RQI-L).

Then things came apart all at once. Petitioner’s marriage dissolved in litigation around 2012, and he assumed the entire marital debt. H.T. 28–29. The government contracts that had fed his family firm dried up when “the political tides changed.” H.T. 27. His father and brother left for another firm. H.T. 30. For the first time in his career, Petitioner practiced alone—“one foot

in" the law and "one foot out." H.T. 30–31. He kept no real office, no staff, and, importantly, no IOLTA trust account. H.T. 31, 34–35.

In that condition, in 2019, Petitioner mishandled advanced fees in three matters: a $50,000 criminal retainer from Sanjay Bhatia; a $10,000 employment retainer from J. David Eubank; and a $3,500 domestic retainer from Brittany Mentley Abbey. Pet. 40–70 (Ex. RQI-G). He deposited the funds in his personal checking account and spent them—on living expenses and, in the Bhatia matter, a boat. H.T. 31–38, 74–75; Pet. 45–52 (Board findings tracing the deposits and personal expenditures). When the Bhatias terminated him and asked for a refund, he claimed the fee was "deemed earned" and threatened suit. H.T. 36–37; Pet. 61–64. "I dug my heels in shamefully," he testified. "I needed that money." H.T. 36.

The roots of that misconduct run back to the beginning. A lawyer who has never had to earn his place, and never paid a price, has little occasion to treat the profession's rules as constraints that bind him—and the trust-accounting rules were the plainest of them. Petitioner kept no IOLTA, treated advanced fees as his own, and, when the Bhatias asked for their money back, "dug [his] heels in shamefully" and threatened to sue them. H.T. 36–37 (Petitioner conceding he took "the most aggressive[,] ignorant stance" available to him). The conduct makes plain that Petitioner felt

unrestrained by the rules, and his own reckoning names the cause: “it was my sense of self-entitlement and selfishness that prevailed over humility.” Pet. 103 (Ex. RQI-L). Essentially, Petitioner had assumed that the ordinary obligations of practice were someone else’s to keep. That was his wrong-headed way of thinking—*back then*.

Indeed, at his 2020 disciplinary hearing, Petitioner still was not seeing clearly. He argued for a mere public reprimand and clung to his claim on the Bhatia fee. Pet. 41, 87, 103. He had not then apologized to his clients, and he displayed, in his own later words, a “palpable total lack of remorse.” Pet. 103 (Ex. RQI-L). He suffered the disciplinary fallout as a consequence.

And Petitioner’s fall was both public and total. The day after his suspension took effect, the Erie Times-News ran a front-page account, and all three local television stations followed. Pet. 101 (front-page coverage in a newspaper reaching more than 150,000 subscribers across four counties). Petitioner had hidden the discipline from his family for an entire year, and they only learned of it from the news. H.T. 43. He had not wanted them to “call in every favor”—to spend, on him, the reputation they had built over decades. H.T. 43–44. He believed he had “eviscerated the goodwill” of three generations, and for the first few months afterward he “did absolutely nothing.” H.T. 46.

What followed remade him. Petitioner applied for more than a hundred jobs—the first résumés of his life—and did not land a single interview. “I felt defeated and truly humbled by the universal rejection.” Pet. 102; H.T. 45. He began attending daily Mass in early 2022, and he has maintained that routine since. Pet. 102; H.T. 51–52. A former client handed him a broom, and he swept the floor of a metal-fabrication shop, H.T. 47; and he substitute-taught across Erie’s schools, teaching learning support and emotional support and students from all walks of life—the inner city and the gifted. H.T. 49. And through all of it, he and his father and brother took eight-hour shifts caring for his mother through the last 15 months of her 12-year battle with Alzheimer’s, until her death in January 2023. Pet. 102; H.T. 53.

Out of that humility came work Petitioner chose for himself. A manufacturer hired Petitioner precisely because he had survived “a drastic failure,” and there—the man who once neglected the rules of his own practice—he built and administered a fair code of conduct for blue-collar employees. H.T. 130–34 (Gerring testifying that Petitioner instituted the company’s code of conduct and disciplinary process). Also, engaging in introspection, Petitioner re-read his own disciplinary opinions, this time from “a place of humility,” and saw what he had refused to see in 2020. Pet. 103;

H.T. 54. When a former colleague urged him to seek reinstatement in December 2023, he declined; he "wasn't ready," and he let more time pass before filing. Pet. 100, 103–04.

The decision to seek reinstatement prompted a question the Committee pressed at the hearing. *See, e.g.,* H.T. 76 ("What was the catalyst for that change . . . to now wanting to get back into the law?"). In 2020, Petitioner had said he meant to leave practice for teaching. H.T. 76–77. He was candid about why: he had been "fed up"—not with the law, but "with me"—and he knew that the way he was then practicing "was not sustainable." H.T. 96–97. Four years of work outside the law changed that, however. He came to see the profession not as the thing that had failed him, but as the work he was made for. H.T. 78–79. He noted, though, he does not plan to "sink or swim" on his own, and getting his license back will not mean "hanging a shingle right away." H.T. 97–98.

Ultimately, Petitioner set about making amends. He reimbursed the Pennsylvania Lawyers Fund for Client Security in full for the award it paid the Bhatias, and he had returned Eubank's unused fee back in 2019. H.T. 37, 39; Pet. 24, 38, 51, 62. He personally apologized to Eubank and Abbey, and Eubank, in fact, wrote a letter supporting reinstatement. H.T. 39–41; Pet. 123 (Ex. RQI-X) (former client praising Petitioner's "thorough,

meticulous” representation). He completed roughly twice the required CLE classes, weighted toward the ethics and practice-management subjects he once neglected. H.T. 58–59; Pet. 35–37 (Ex. RQI-D). And since March 2025, he has volunteered with Lawyers Concerned for Lawyers—counseling three attorneys through their own discipline—while working under his father’s supervision with appropriate notice to the Board. Pet. 104, 121–22 (Exs. RQI-V, RQI-W); H.T. 55–57.

Petitioner was candid about what is not yet finished. He disclosed an open bank judgment left from his divorce, on which he has arranged a payment plan; a tax lien, for which he has retained a tax firm; and a lawsuit a creditor filed weeks before the hearing, which he is defending through counsel. H.T. 60–63. He hid none of it.

Seven witnesses testified for Petitioner, from different vantage points, to the same changes Petitioner detailed and which they observed. Attorney John Carlson—who had tried cases against him—said Petitioner "screwed up royally" and "let his ego get the best of him," but is now "quite humble and contrite" and "not the same guy that he once was." H.T. 107–10. Attorney John Knox called his contrition "as genuine as anyone’s I have ever seen," adding that time with Petitioner makes him "think, 'I should be more like that.'" H.T. 92. Attorney James Toohey found his perception of

Petitioner "changed dramatically." H.T. 117. A believer in redemption, he acknowledged that he senses a "hunger" in Petitioner "to get things right." H.T. 117–19. Attorney William Weichler—Petitioner's counsel in the original proceeding and himself a former Hearing Committee member—described a "significant transition," a man "severely humbled" and "genuinely committed to improving himself." He specifically made this observation:

> So his reputation even at the time of imposition of discipline was positive. Since then, it has been my observation that people recognize that David put his head down, served his suspension, worked as hard as he could to try to continue to provide for his family. And expressed the desire to get back to becoming a lawyer, a practicing lawyer. And doing so in an honorable way.

H.T. 126.

Attorney Zanita Zacks-Gabriel called him "a good man who made a really stupid … decision" who has shown "remarkable contrition." H.T. 139–40. Benjamin Gerring, who hired him, watched him "navigate forgiveness" and "find a deeper purpose." H.T. 136. And Bradley Whitman said the process "made him a better person." H.T. 85. Not one had heard a negative word about Petitioner's honesty in the years since his suspension. H.T. 85, 91, 108–09, 118–19, 125–26, 134, 140. Each would refer clients to him, and, those asked, offered to mentor him if needed. H.T. 86, 93, 111, 120, 126, 141.

Petitioner does not intend to hang a shingle. He hopes to serve as in-house counsel to a manufacturer—one client, no retainers, no Rule 1.15 funds—the structure least like the solo practice that undid him. H.T. 66, 70, 97–98. In time, he hopes to practice alongside the next generation of his family: his daughter, now pre-law, and his son, who intends to follow. Pet. 104; H.T. 65. The lineage that once opened every door is now the reason he wants to return—not to trade on it again, but to show his children the right way to carry it. Pet. 104.

PROPOSED FINDINGS OF FACT

A. Educational background and bar admission.

1. Petitioner graduated from Cathedral Preparatory School, Gannon University, and Ohio Northern University College of Law, and was admitted to the bar of this Commonwealth in 1997. H.T. 13–14; Pet. 100.

B. The prior discipline.

2. By Order of the Supreme Court of Pennsylvania dated July 21, 2021, Petitioner was suspended from the practice of law for three years, effective August 20, 2021. Pet. 1, 39 (Ex. RQI-F).

3. The discipline arose from Petitioner's mishandling of advanced fees in three 2019 client matters—Bhatia, Eubank, and Abbey—after he had ceased to maintain a trust account. H.T. 31–38; Pet. 40–70 (Ex. RQI-G).

4. The three-year term of Petitioner's suspension expired on or before August 21, 2024. Pet. 1–2.

C. A career of opened doors.

5. Petitioner is a third-generation Erie lawyer; his grandfather and great-uncle founded the family firm in 1935, and both served in leadership roles in the Erie County Bar Association. H.T. 14–15; Pet. 100.

6. Professional opportunities came to Petitioner through his family's name and reputation rather than through competition, and he never applied for a position before becoming an Assistant District Attorney. H.T. 16–22.

7. Petitioner has acknowledged that this lifelong ease bred in him a sense of entitlement and a failure to develop the disciplines of practice. H.T. 24–25; Pet. 103 (Petitioner: "it was my sense of self-entitlement and selfishness that prevailed over humility").

D. Personal and professional collapse.

8. Around 2012, Petitioner went through a contentious divorce and assumed the entirety of the marital debt. H.T. 28–29.

9. The firm Petitioner shared with his father and brother dissolved, his government contracts were lost, and he was left to practice alone—without staff or a trust account. H.T. 27, 30–31, 34–35.

E. Acceptance of responsibility.

10. Petitioner reimbursed the Pennsylvania Lawyers Fund for Client Security in full for the sum it paid the Bhatias. H.T. 37; Pet. 38 (Ex. RQI-E).

11. Petitioner returned Eubank's unearned fee in 2019. H.T. 39; Pet. 51.

12. Petitioner personally apologized to former clients Eubank and Abbey, and Eubank submitted a letter supporting reinstatement. H.T. 39–41; Pet. 123 (Ex. RQI-X).

13. Petitioner acknowledged that his three-year suspension was warranted, and he has declined to minimize his conduct. H.T. 95; Pet. 100, 103.

14. Petitioner disclosed his outstanding financial obligations candidly and has retained professionals to address them. H.T. 60–63.

F. Rehabilitation and personal change.

15. Petitioner did not seek reinstatement when first eligible; he allowed additional time to pass because he did not believe he was ready. Pet. 100, 103–04; H.T. 53–54.

16. After his suspension, Petitioner applied for approximately 100 jobs without a single interview, swept floors at a metal-fabrication shop, taught school across Erie County, and helped a manufacturer build and administer a fair employee-discipline process. H.T. 45, 47, 49, 130–34; Pet. 102.

17. Petitioner returned to daily religious practice. Pet. 102; H.T. 51–52, 66.

18. With his father and brother, Petitioner provided eight-hour daily shifts of care for his mother through the final 15 months of her illness. Pet. 102; H.T. 53.

G. Service to the profession.

19. Since March 2025, Petitioner has served as a volunteer with Lawyers Concerned for Lawyers, assisting three attorneys facing discipline. Pet. 104, 122 (Ex. RQI-W); H.T. 56–57.

H. Competency and learning in the law.

20. Petitioner completed roughly twice the required continuing legal education, concentrated in ethics and law-practice management. H.T. 58–59; Pet. 35–37 (Ex. RQI-D).

21. Petitioner maintained his legal knowledge by reading periodicals, including Pennsylvania Lawyer and the Erie Bar Association newsletter. H.T. 59

22. Since March 2025, Petitioner has worked under the supervision of his father, on notice to the Board pursuant to Pa.R.D.E. 217(j). Pet. 121 (Ex. RQI-V); H.T. 55.

I. Moral qualifications.

23. Seven witnesses—five attorneys and two prior employers—credibly described Petitioner as honest, contrite, and transformed, and none had

heard anything negative about his character in the years since his suspension. H.T. 85–141.

24. Each witness would refer clients to Petitioner, and, when asked, offered to assist or mentor him upon reinstatement. H.T. 86, 93, 111, 120, 126, 141.

J. A measured plan for return.

25. At his 2020 hearing, Petitioner had expressed an intention to leave practice; through his rehabilitation, he has come to seek a return to the profession with the seriousness it demands, and he intends to ease back under supervision rather than practice solo. H.T. 76–79, 96–98.

26. Petitioner intends to practice as in-house counsel rather than as a solo practitioner. H.T. 66, 70, 97–98.

PROPOSED CONCLUSIONS OF LAW

1. The purpose of attorney discipline is to protect the public and maintain the integrity of the legal system, not to punish. *See Office of Disciplinary Counsel v. Keller*, 506 A.2d 872, 875 (Pa. 1986).

2. The three-year term of Petitioner's suspension has run and has satisfied the breach of trust occasioned by his misconduct. *Id.* at 874–75 & n.5 (acknowledging that, "in the case of a suspension," the disciplinary order "sets forth the period of time necessary to satisfy the breach of trust occasioned by the conduct which led to the suspension").

3. Petitioner has demonstrated, by clear and convincing evidence, that he possesses the moral qualifications, competency, and learning in the law required for admission to practice in this Commonwealth. Pa.R.D.E. 218(c)(3).

4. Petitioner has demonstrated, by clear and convincing evidence, that his resumption of practice will be neither detrimental to the integrity and standing of the Bar or the administration of justice nor subversive of the public interest. *Id.*

DISCUSSION

1. The governing standard.

Discipline is not meant for punishment. "The primary purpose of our system of lawyer discipline is to protect the public from unfit attorneys and to maintain the integrity of the legal system." *Office of Disciplinary Counsel v. Keller*, 506 A.2d 872, 875 (Pa. 1986) (explaining that disciplinary procedures are "a catharsis for the profession and a prophylactic for the public"). When the discipline is suspension, the privilege to practice is withdrawn "for a specified period of time," after which the lawyer "can resume the practice of law upon a demonstration of his . . . fitness." *Id.* at 874–75. The term of discipline itself "satisf[ies] the breach of trust occasioned by the conduct which led to the suspension." *Id.* at 875 n.5.

Petitioner's three-year term has run, and the discipline has served its purpose.

What remains is the inquiry Rule 218(c)(3) prescribes: whether Petitioner has shown, by clear and convincing evidence, that he possesses "the moral qualifications, competency and learning in law required for admission," and that his return "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). That inquiry looks forward. It is "a searching inquiry into a lawyer's present professional and moral fitness," and its "object of concern is not solely the transgressions which gave rise to the . . . suspension," but "the nature and extent of the rehabilitative efforts . . . made since" and "the degree of success achieved in the rehabilitative process." *In re Cappuccio*, 338 A.3d 115, 137–38 (Pa. 2025) (cleaned up) (describing the present-fitness inquiry under Rule 218(c)(3)).

2. Petitioner has met his burden.

Measured by that present-fitness standard, the record is clear and convincing.

Moral qualifications. The question is not who Petitioner was in 2019, but who he is in 2026. Seven witnesses testified, without exception, that he is honest, contrite, and changed. H.T. 85–141. None had heard an

unkind word about his character in years. And the change they described is manifest over the arc of transformation that started from a hundred unanswered job applications, a borrowed broom, a return to faith, the daily care of a dying mother, to, finally, the self-awareness to wait rather than rush to file for reinstatement when he was not ready—*i.e.,* a kind of humility he lacked previously. Pet. 100–04; H.T. 45–55.

Competency and learning. Petitioner has completed roughly twice the required CLE classes, concentrated in the ethics and practice-management subjects he once neglected, and has worked under his father's supervision, adhering to the appropriate prerequisites to do so. H.T. 55, 58–59; Pet. 35–37, 121 (Exs. RQI-D, RQI-V). He also maintained his legal knowledge by reading periodicals, noting, "I was fortunate, my dad subscribed to four different periodicals, Pennsylvania Lawyer, Erie Bar Association newsletter, things like that." H.T. 59.

His time outside the courtroom was not idle either: he drafted and managed for an employer the very kind of accountability system—a written code of conduct, a fair disciplinary process—that his own practice once lacked. H.T. 130–34.

No detriment to the public or the profession. The misconduct here was the mishandling of advanced fees by a solo practitioner who kept no

trust account. Petitioner has made his former clients and the Lawyers Fund whole. H.T. 37; Pet. 38 (Ex. RQI-E). He proposes to return not as a solo practitioner but as in-house counsel—one client, no client funds, no Rule 1.15 trust obligations—which is the practice setting least exposed to the failing that produced his discipline. H.T. 66, 70. And the Office of Disciplinary Counsel—the body that prosecuted him and knows this record best—does not oppose his reinstatement. H.T. 142.

The concerns raised at the hearing are answered. Asked why a lawyer who once meant to leave the profession now seeks to return, Petitioner explained that in 2020 he had been "fed up" with himself, not the law, and had known his practice "was not sustainable." H.T. 96–97. Presently, he does not intend to practice alone, and his reinstatement will not mean "hanging a shingle right away." H.T. 97–98. Asked about his finances, he deflected nothing: a divorce-era judgment now on a payment plan, a tax lien he has retained professionals to resolve (RQII-E),[2] and a creditor's suit—filed weeks before the hearing—that he is defending through counsel. H.T. 60–63. Petitioner is not one whose return threatens the public.

[2] RQII-E is a Client Services Agreement with Optima Tax Relief, which is made part of the sealed "Part II" of the Reinstatement Questionnaire, which is part of the record. *See* H.T. 7, 12 (admitting, without objection, "both parts" of the Reinstatement Questionnaire and accompanying exhibits).

Time and a steady post-suspension record have dissipated whatever detriment Petitioner's misconduct once posed. See *Cappuccio*, 338 A.3d at 136 (passage of time, together with the post-discipline record, dissipates the detrimental impact of misconduct on the integrity of the bar). What is left is a lawyer the Bar that knows him best vouches for, asking to return to a profession he has spent five years learning to deserve.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Hearing Committee recommend to the Disciplinary Board the reinstatement of David Charles Agresti to the bar of this Commonwealth.

Respectfully submitted.

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

This filing was prepared with the assistance of Artificial Intelligence tools (e.g., Claude by Anthropic or Lexis Protégé). I certify that I have reviewed and verified the accuracy of any work generated by these tools in the preparation of this filing.

s/Ryan H. James
Ryan H. James (PA 313049)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served, by electronic mail, the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 204 Pa. Code § 89.22 (relating to service by a participant).

Dated this 1st day of June, 2026.

s/Ryan H. James
Ryan H. James (PA 313049)