STATE OF MINNESOTA

IN SUPREME COURT

A18-1795

Original Jurisdiction

Per Curiam
Dissenting, Moore, III, J.

In re Petition for Reinstatement of Richard A. Sand, a Minnesota Attorney, Registration No. 0095540.

Filed: December 16, 2020
Office of Appellate Courts

Edward F. Kautzer, Ruvelson & Kautzer Ltd., Roseville, Minnesota,

Daniel S. Kufus, Kufus Law, LLC, Roseville, Minnesota, and

Joshua S. Casper, Casper Law, PLLC, Roseville, Minnesota, for petitioner.

Susan M. Humiston, Director, Jennifer S. Bovitz, Managing Attorney, Office of Lawyers Professional Responsibility, Saint Paul, Minnesota, for respondent.

S Y L L A B U S

1. Based on our independent review of the record, the panel's conclusion that petitioner has undergone the requisite moral change is not clearly erroneous.

2. Because petitioner has shown by clear and convincing evidence that he has satisfied the requirements for reinstatement to the practice of law in Minnesota, we reinstate petitioner, subject to a 3-year period of probation.

Petition granted.

O P I N I O N

PER CURIAM.

In 2012, we disbarred petitioner Richard Sand. In 2018, Sand filed a petition for reinstatement to the practice of law. After considering Sand's petition and evidence, a panel of the Lawyers Professional Responsibility Board recommended that he be reinstated, concluding that Sand had proven by clear and convincing evidence that he had undergone the requisite moral change. The Director of the Office of Lawyers Professional Responsibility and Sand agree with the panel.

Based on our independent review of the record, we hold that the panel's factual findings are not clearly erroneous. Because Sand has shown by clear and convincing evidence that he has satisfied the requirements for reinstatement to the practice of law in Minnesota, we grant the petition and reinstate Sand, subject to a 3-year period of probation.

FACTS

Sand was admitted to practice law in Minnesota in 1979. From 1979 to 2011, Sand worked in private practice on criminal defense and related civil forfeiture proceedings. Since August 2013, Sand has worked as a paralegal at Sand Law, LLC, a practice owned by his two sons.

In August 2011, Sand was sentenced to 30 months in federal prison for aiding and abetting wire fraud, in violation of 18 U.S.C. § 1343, and engaging in a monetary transaction in criminally derived property, in violation of 18 U.S.C. § 1957. In summary, Sand participated in a criminally fraudulent scheme by submitting false loan applications in the name of his mother and then diverting the loan funds for his own purposes. Sand

also used criminally derived funds to purchase a cashier's check. Sand was ordered to pay $1,100,000.00 in restitution to Bank of America, and $189,481.54 in restitution to U.S. Bank.

On March 22, 2012, we disbarred Sand for his criminal conduct, which violated Rule 8.4(b) and (c) of the Minnesota Rules of Professional Conduct. *In re Sand*, 932 N.W.2d 791, 791 (Minn. 2012) (order). On December 3, 2012, after serving approximately 14 months of his sentence, Sand was released from prison. In December 2013, the Director received an additional complaint against Sand. At the time, the Director declined to investigate the additional complaint because we had already disbarred Sand.

On November 6, 2018, Sand filed a petition for reinstatement under Rule 18 of the Rules on Lawyers Professional Responsibility. Following this, the Director investigated the additional complaint that she had received in December 2013. She concluded that the additional complaint alleged the same or similar type of misconduct as the underlying misconduct giving rise to Sand's disbarment.

A panel of the Lawyers Professional Responsibility Board held a hearing regarding Sand's petition for reinstatement. During that hearing, Sand and a longtime friend testified. By a 2-1 vote, the panel concluded that Sand had "proven by clear and convincing evidence that he has undergone a significant moral change since committing the misconduct such that he is now fit to be reinstated to the practice of law," and recommended that Sand be reinstated. Subsequently, we ordered the parties to provide us with a transcript of the hearing and to file briefs addressing the standards for reinstatement. Both Sand and the Director agree with the panel's recommendation.

ANALYSIS

We have the sole responsibility for determining whether an attorney should be reinstated to the practice of law in Minnesota. *In re Kadrie*, 602 N.W.2d 868, 870 (Minn. 1999). An attorney "seeking reinstatement bears the burden of establishing that reinstatement should be granted." *In re Stockman*, 896 N.W.2d 851, 856 (Minn. 2017). To determine whether reinstatement is appropriate, "[w]e independently review the entire record." *In re Singer*, 735 N.W.2d 698, 703 (Minn. 2007). Although the panel's recommendations are considered, they are not binding. *See, e.g.*, *In re Williams*, 433 N.W.2d 104, 104 (Minn. 1988) (reinstating attorney where the panel recommended denial).

When neither party orders a transcript, but we later order the parties to provide the transcript, the panel's factual findings are not conclusive; rather, we review them under a clearly erroneous standard. *See In re Lieber*, 834 N.W.2d 200, 203 (Minn. 2013) (applying clear-error standard of review to findings following receipt of court-ordered transcript of a reinstatement hearing).

I.

To secure reinstatement, a petitioner must prove "by clear and satisfactory evidence . . . that [he] has undergone such a moral change as now to render him a fit person to enjoy the public confidence and trust once fortified." *In re Wegner*, 417 N.W.2d 97, 98 (Minn. 1987) (citation omitted) (internal quotation marks omitted). In determining whether an attorney should be reinstated, proof of moral change "is the most important factor." *Stockman*, 896 N.W.2d at 857.

To prove moral change, an attorney must show (a) "remorse and acceptance of responsibility for the misconduct," (b) "a change in the [attorney's] conduct and state of mind that corrects the underlying misconduct that led to the [discipline]," and (c) "a renewed commitment to the ethical practice of law." *In re Mose*, 843 N.W.2d 570, 575 (Minn. 2014). The evidence of this moral change "must come not only from an observed record of appropriate conduct, but from the petitioner's own state of mind and his values." *In re Swanson*, 405 N.W.2d 892, 893 (Minn. 1987).

The panel found that Sand "demonstrated the required moral change" to be reinstated to the practice of law. We agree.

A.

The panel found Sand remorseful and that he accepted responsibility for his misconduct. Sand testified that, initially, "I felt like I was unjustly targeted because I was a lawyer and because I was a public official, and that's why I was prosecuted. . . . I felt that I was the victim." Sand talked about how his incarceration began a process that allowed him to see his wrongs and accept responsibility. "It was through that process and through the recognition that . . . it was my behavior, not somebody else's behavior. . . . It was my responsibility as an attorney to avoid criminal conduct, immoral conduct, [and] unethical conduct. It was my responsibility, and it wasn't that somebody else was doing it to me." Sand testified that he apologized to his mother for using her in his fraudulent scheme and that after being released from prison, he chose to return to the same community so that he could redeem himself. Sand testified that whenever anyone has asked him about his criminal conduct, he tells them "how [he] did wrong" and "how badly [he] feels" about it.

Our independent review of the record supports the panel's finding that Sand credibly showed remorse and accepted responsibility for his misconduct.

B.

Next, Sand must prove a "change in [his] conduct *and* state of mind that corrects the underlying misconduct that led to the [discipline]." *Mose*, 843 N.W.2d at 575 (emphasis added). The panel made several findings regarding Sand's change in conduct and his state of mind.

Concerning change in conduct, the panel made numerous findings about Sand's substantial progress in addressing his chemical use issues, all of which are supported by the record. *See Lieber*, 834 N.W.2d at 204 (considering panel's findings on disbarred attorney's "substantial progress . . . in addressing his alcoholism" when concluding that he had established moral change). Sand was addicted to alcohol and pain medication, but did not recognize the scope of his chemical dependency issues until his incarceration. While in prison, Sand completed a 9-month treatment program and participated in cognitive behavioral therapy. When released from prison, Sand completed a 6-month outpatient treatment program. Sand has maintained sobriety since August 2011, and currently follows a daily regimen of the Catholic Advance Movement as his pathway for maintaining sobriety.

The panel also found that Sand provided testimony related to his changed conduct. Sand testified, "As I said before, I kind of identified, when I was in [prison in] Duluth, three areas that I thought were really important to continue to address in my life, and that

is: Honesty, humility, and patience. And I keep trying to reinforce those things in my life on a daily basis."

Finally, the panel's findings regarding the additional complaint the Director investigated demonstrate a change in Sand's conduct. This complaint involved real estate transactions that Sand entered into with a client that caused the client to suffer financial losses. Sand voluntarily agreed to repay the client, has made monthly payments to this client, and is working with a lawyer to enter into a contractual repayment schedule with this client.

The dissent concludes that Sand has not established changed conduct, mostly because the only testimony the panel relied upon was Sand's. This is correct, but we have never held that a petitioner must present corroborating testimony to secure reinstatement. Generally, the panel and our court have considered the *quality* of a petitioner's evidence, rather than the existence of a *specific type* of evidence. Reliance on third-party testimony might have strengthened Sand's request for reinstatement, but the panel heard directly from Sand and concluded that his testimony alone was sufficiently compelling to satisfy all moral change requirements, including changed conduct. Moreover, the Director did hear directly from third parties, as part of her investigation. Those conversations are summarized in the Director's report. Based on the record and the panel's ability to best understand the quality and credibility of Sand's testimony, we have no reason to conclude otherwise.

Concerning change in state of mind, the panel found significant change over time, and Sand testified extensively about this change. Sand testified, "I thought I was a big shot

and I thought I was bulletproof. . . . [But] I am different now." Sand explained that he needed to go to prison, and through treatment and therapy, to recognize he lacked humility and needed to change. A panel member asked Sand, "How is your mindset different now?" Sand replied, "I'm satisfied with my lot in life to that extent. I'm not interested in doing any real estate. I did a successful real estate subdivision on my property, and I thought, 'Hey, I'm a genius. You know, I could do this again.' I don't want to be a genius anymore." As previously stated, "What better evidence of [a petitioner's] state of mind than his own words and thoughts." *In re Swanson*, 405 N.W.2d 892, 893 (Minn. 1987). Sand has proven a change in his conduct and state of mind that addresses the misconduct that led to his disbarment.

C.

Lastly, Sand must demonstrate "a renewed commitment to the ethical practice of law." *Mose*, 843 N.W.2d at 575. Considerations of "an attorney's plan to return to the practice of law or implement systems to avoid future misconduct are factors that may be relevant to whether an attorney has shown a renewed commitment to the ethical practice of law." *In re Severson*, 923 N.W.2d 23, 32 (Minn. 2019). The panel made no findings specific to Sand's renewed commitment to the ethical practice of law. The record contains sufficient evidence of Sand's renewed commitment, however.

First, in his current employment as a paralegal, Sand meets weekly with his sons, the managing lawyers of the firm, to ensure that he is accountable and compliant with his ethical obligations to clients. Second, Sand notified the Director that if he were to be reinstated, he plans to transition from his current paralegal position to an associate attorney

position with his sons' law firm. That Sand has a specific employment plan for reentry into the profession weighs in his favor. *See Stockman*, 896 N.W.2d at 861–62 (concluding attorney had demonstrated a renewed commitment to the ethical practice of law, in part, by having a job offer as an associate at a firm with attorneys who would mentor him). We conclude that Sand has demonstrated a renewed commitment to the ethical practice of law. Accordingly, we conclude that the panel's determination that Sand has undergone the requisite moral change is not clearly erroneous.

II.

Although we have described moral change as the "decisive" factor, *In re Reutter*, 474 N.W.2d 343, 345 (Minn. 1991), and the "most important factor," *Stockman*, 896 N.W.2d at 857, we have also made clear that "evidence of moral change is not our only consideration." *Kadrie*, 602 N.W.2d at 870. Following a conclusion on moral change, we weigh five additional factors: (1) petitioner's recognition of the wrongfulness of his conduct, (2) petitioner's intellectual competency to practice law, (3) the existence of physical or mental illness or pressures that are susceptible to correction, (4) the length of time since the misconduct and discipline, and (5) the seriousness of the original misconduct. *Id*. The panel made findings on all of these factors.

Moral change and recognition of the wrongfulness of past conduct, as an additional factor, are "intertwined" and "considered . . . together." *In re Dedefo*, 781 N.W.2d 1, 8 (Minn. 2010). The panel found that Sand sincerely recognized the wrongfulness of his misconduct.

Concerning competency to practice law, we consider whether a petitioner has "remained acquainted with legal matters." *Lieber*, 834 N.W.2d at 209 (citation omitted). Sand established that he has worked as a paralegal since 2013, completed his continuing legal education reporting requirements, and recently received a satisfactory score on the uniform bar and multistate professional responsibility examinations. The Director has no concerns regarding Sand's competence to practice law.

Concerning pressures susceptible to correction, as we previously noted, Sand presented evidence and credibly testified as to how he misused alcohol and codeine when he committed his misconduct, but has been sober since August 2011 and understands that sobriety will be essential to maintain an ethical lifestyle. We agree that sobriety will be essential for Sand to maintain an ethical practice and lifestyle.

Concerning length of time, we disbarred Sand more than 8 years ago, and he pleaded guilty to the federal charges more than 9 years ago. We conclude sufficient time has elapsed for reinstatement to be appropriate.[1] *See Lieber*, 834 N.W.2d at 208 (reinstating attorney who had been disbarred for 8 years and whose misconduct occurred 9 years ago); *In re Ramirez*, 719 N.W.2d 920, 921–22 (Minn. 2006) (reinstating attorney 9 years after disbarment).

[1] Citing *In re Swanson*, 343 N.W.2d 662 (Minn. 1984), the dissent concludes that the time between Sand's completion of probation and his pursuit of reinstatement is "too limited." Unlike here, however, the petitioner in that case failed to satisfy his dispositive moral change showing. *See id*. at 664. The time elapsed since probation ended was simply an additional basis for the denial.

Lastly, and intentionally, we end our reinstatement analysis focusing on the seriousness of Sand's misconduct. "While a court should be slow to disbar . . . , it should be even more cautious in re-admitting an attorney to a position of trust." *In re Smith*, 19 N.W.2d 324, 326 (Minn. 1945). In attorney discipline matters, our prime concern is protection of the public, protection of Minnesota's judicial system, and deterring other attorneys from engaging in misconduct. *In re Rebeau*, 787 N.W.2d 168, 173 (Minn. 2010).

We fully acknowledge the seriousness of Sand's misconduct and the legitimate concerns raised by the dissenting panel member and our colleague. Unbeknownst to his own mother, Sand admitted to exploiting her—by using her creditworthiness—to facilitate his criminal scheme. Sand was ordered to pay over $1.2 million in restitution for his crimes. Simply put, Sand's misconduct was worthy of disbarment.

With that said, the underlying misconduct in reinstatement petitions involving disbarred attorneys will always be quite serious. We have "reinstated attorneys to the practice of law who have been disbarred for misappropriating client funds, stealing, or dishonesty in general." *In re Anderley*, 696 N.W.2d 380, 385 n.6 (Minn. 2005). If disbarment were permanent in every case, "[Rule 18] would be a cruel hoax." *Ramirez*, 719 N.W.2d at 924 (Minn. 2006) (citation omitted). In other words, the seriousness of his misconduct weighs against Sand's reinstatement, but does not preclude it.

Based on the Director's support of reinstatement and our independent review of the record, we hold that Sand has met his burden of showing by clear and convincing evidence that he satisfied each of the requirements for reinstatement to the practice of law. We reinstate Sand to the practice of law, require him to make payment of his annual registration

fee within 30 days of the date of this opinion, and place him on probation for a period of 3 years, subject to the following conditions:

(1) Petitioner shall abide by the Minnesota Rules of Professional Conduct;

(2) Petitioner shall cooperate fully with the Director's office in its efforts to ensure compliance with probation and shall promptly respond to the Director's correspondence by the due date provided. Petitioner shall provide the Director a current mailing address and shall immediately notify the Director of any change of address. Petitioner shall cooperate with the Director's investigation of any allegations of unprofessional conduct that may come to the Director's attention. Upon the Director's request, petitioner shall authorize the release of information and documentation to verify his compliance with the terms of this probation.

(3) Petitioner shall seek mental health treatment, chemical dependency treatment, and financial counseling should he experience any mental health or chemical dependency issues, or financial stressors, that may impact his ability to practice law and provide competent and comprehensive representation to his clients and/or handle client funds within the requirements of the Minnesota Rules of Professional Conduct. Upon seeking treatment or therapy, petitioner shall immediately notify the Director, and sign all necessary releases and authorizations to allow the Director access to petitioner's treatment/therapy records.

(4) Petitioner shall maintain total abstinence from alcohol and other mood-altering chemicals, except that petitioner may use prescription drugs in accordance with the directions of a prescribing physician who is fully advised of petitioner's chemical dependency before issuing the prescription. If requested, petitioner shall provide medical authorizations to the Director to contact petitioner's treating/prescribing physician(s).

(5) Petitioner shall be supervised by a licensed Minnesota attorney, appointed by the Director to monitor compliance with the terms of this probation. Petitioner shall provide to the Director the names of four attorneys who have agreed to be nominated as petitioner's supervisor within two weeks from the date of this order. Petitioner's sons shall not serve as petitioner's supervisor. If, after diligent effort, petitioner is unable to locate a supervisor acceptable to the Director, the Director will seek to appoint a supervisor. Until a supervisor has signed a consent to supervise, the petitioner shall on the first day of each month provide the Director with an inventory of active client files described in paragraph 6 below. Petitioner shall make active client files available to the Director upon request.

(6) Petitioner shall cooperate fully with the supervisor in efforts to monitor compliance with his probation. Petitioner shall contact the supervisor and schedule a minimum of one in-person (or virtual) meeting per calendar quarter. Petitioner shall submit to the supervisor an inventory of all active client files by the first day of each month during probation. Regarding each active file, the inventory shall disclose the client name, type of representation, date opened, most recent activity, next anticipated action, and anticipated closing date. Petitioner's supervisor shall file written reports with the Director at least quarterly, or at such more frequent intervals as may reasonably be requested by the Director.

(7) If at any time during the period of probation, after giving petitioner an opportunity to be heard by the Director, the Director concludes that petitioner has violated the conditions of the probation or engaged in further misconduct, the Director may file a petition for disciplinary action against petitioner in the Minnesota Supreme Court without the necessity of submitting the matter to a Panel or Panel Chair. Petitioner waives the right to such consideration by the Panel or Panel Chair.

Petition granted.

D I S S E N T

MOORE, III, Justice (dissenting).

While recognizing the laudable progress Richard Sand has made in his life since his disbarment in 2012, I respectfully dissent. I do not agree that Sand has met his heavy burden of proving by clear and convincing evidence a "present ability to adhere to the strict code of professional morality . . . ." *In re Peterson*, 274 N.W.2d 922, 926 (Minn. 1979). I also disagree that sufficient time has elapsed to justify reinstatement. For these reasons, I would not reinstate Sand to the practice of law at this time.

To secure reinstatement, a petitioner must establish by clear and convincing evidence that he or she has "undergone such a moral change as now to render him a fit person to enjoy the public confidence and trust once forfeited." *In re Hanson*, 454 N.W.2d 924, 925 (Minn. 1990) (citation omitted) (internal quotation marks omitted). We have emphasized that evidence of moral change "is the 'decisive' factor in considering a petition for reinstatement." *In re Reutter*, 474 N.W.2d 343, 345 (Minn. 1991) (citation omitted). The requisite moral change "must be such that if the petitioner were reinstated, 'clients could submit their most intimate and important affairs to him with complete confidence in both his competence and fidelity.' " *In re Kadrie*, 602 N.W.2d 868, 870 (Minn. 1999) (quoting *In re Herman*, 197 N.W.2d 241, 244 (Minn. 1972)). Evidence of this moral change must come from both an observed record of appropriate conduct, and from the petitioner's own state of mind and his values. *Hanson*, 454 N.W.2d at 925. "This standard requires stronger proof of good character and trustworthiness than is required in an original

application for admission to practice." *In re Porter*, 472 N.W.2d 654, 655–656 (Minn. 1991).

The high standard of proof required of a disbarred attorney applying for reinstatement is to assure us "that reinstatement would serve the public interest." *Hanson*, 454 N.W.2d at 925. The clear and convincing evidence we mandate in such cases must be "unequivocal, intrinsically probable and credible, and free from frailties." *In re Griffith*, 883 N.W.2d 798, 800 (Minn. 2016) (citation omitted).

With this standard in mind, I disagree with the court's conclusion to reinstate Sand to the practice of law for two reasons. First, I do not agree that Sand has met his heavy burden in proving changed conduct. Second, I do not agree that the time elapsed weighs in favor of Sand's reinstatement.

Sand pleaded guilty to aiding and abetting wire fraud, in violation of 18 U.S.C. § 1343, and engaging in a monetary transaction in criminally derived property, in violation of 18 U.S.C. § 1957. Sand participated in a scheme to intentionally defraud financial institutions by submitting false loan applications in the name of his mother and diverting the loan funds for his own purposes.

In June 2016, after his release from federal prison, Sand was discharged from probation after successfully completing his requirements. In November 2018, Sand filed his petition for reinstatement. Upon Sand filing for reinstatement, the Director investigated a 2013 additional complaint and concluded the conduct—taking place around 2002—alleged the same or similar misconduct as in the underlying disciplinary matter.

In concluding Sand has proven changed conduct, the court's opinion relies on Sand's sobriety and successful completion of treatment,[1] testimony he provided to the panel, and his voluntary agreement to pay a former client that he caused to suffer financial loss. I agree that Sand does present *some* evidence of changed conduct, but disagree that he presents a clear and convincing quantum of evidence. Sand's evidence is scant when compared to the evidence other successful petitioners have presented.

Not including the court's decision today, we have only reinstated six attorneys to the practice of law following disbarment since 1971, when the Office of Lawyers Professional Responsibility was established.[2] *See In re Wegner*, 417 N.W.2d 97 (Minn. 1987); *In re Reutter*, 474 N.W.2d 343 (Minn. 1991); *In re Trygstad*, 472 N.W.2d 137 (Minn. 1991); *In re Anderley*, 696 N.W.2d 380 (Minn. 2005); *In re Ramirez*, 719 N.W.2d 920 (Minn. 2006); and *In re Lieber*, 834 N.W.2d 200 (Minn. 2013).

Setting aside *Reutter*, in which our grant of reinstatement followed the reversal of the petitioner's underlying criminal conviction by the Eighth Circuit Court of Appeals, *see Reutter*, 474 N.W.2d at 344, 346, every other petitioner presented third-party testimony[3]

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[1] Even though sobriety can be evidence of changed conduct, our case law illustrates that we have considered sobriety and completion of substance treatment as being most relevant to the additional factor of whether there is a "physical or mental illness or pressures that are susceptible to correction"—an inquiry which *follows* a petitioner successfully making their moral change showing.

[2] Martin Cole, *Life Begins at 40*, Bench & Bar Minn., Jan. 2011, at 14, 14.

[3] Although the record in *Wegner* is unclear as to the number of third parties who testified in support of the petitioner, the record does indicate there was "witness testimony."

that the panel (as well as this court) relied upon in concluding the petitioner had sufficiently proven change. *Trygstad*, 472 N.W.2d at 139 (petitioning attorney presented five witnesses, including former South Dakota Attorney General who prosecuted petitioner for underlying crimes, to panel); *Anderley*, 696 N.W.2d at 383 (petitioning attorney presented three character witnesses to panel); *Ramirez*, 719 N.W.2d at 920 (petitioning attorney presented five character witnesses to panel); *Lieber*, 834 N.W.2d at 200 (petitioning attorney presented five character witnesses to panel).

In the present case, one character witness testified to the panel,[4] and the panel found the witness "offered no credible evidence on petitioner's moral change." This witness is a retired attorney with whom petitioner had shared office space in the early 1980's, but who had limited contact with petitioner from 1987 to 2010 due to living and working in another community. This witness acknowledged that he had never discussed the misconduct with Sand because he did not want "to put salt in that wound." The witness testified that it would be difficult for him to judge Sand's moral change because of Sand's lack of

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[4] The Director also spoke with two additional character witnesses and conducted three "additional interviews" as part of her investigation and report. Relating to the additional character witnesses, the Director concluded, "[I]t does not appear as though petitioner's character witnesses have a great deal of knowledge about petitioner's misconduct . . . (either now or at the time of [Sand's] indictment nine years ago)." In one of the "additional interviews," the Director noted Sand and the interviewee "have never spoken about [Sand's] misconduct directly." Notably, neither the two additional character witnesses nor the three additional interviewees testified before the panel. When a witness provides information contained in the Director's report but does not testify before the panel, we must be "mindful" and "weigh such statements accordingly" because the witness was not "placed under oath" or "subject[ed] to cross-examination." *See In re Singer*, 735 N.W.2d 698, 701 n.1 (Minn. 2007).

communication about the criminal conviction and what led up to it, and that he "can only assume that he realizes that what he did was very wrong."

Admittedly, we have not held that a petitioner must *per se* present third-party testimony to prove moral change. However, when there is "little evidence of support from members of the legal profession" or other third parties, we have previously found the petition insufficient to earn reinstatement. *In re Swanson*, 343 N.W.2d 662, 665 (Minn. 1984). In other words, "[b]efore we reinstate, more than petitioner's word . . . is required." *In re Williams*, 433 N.W.2d 104, 108 (Minn. 1988) (Simonett, J., dissenting).

Here, unlike the post-1971 petitioners who secured reinstatement following disbarment, the panel stated it was solely "relying on petitioner's testimony" to establish moral change. The absence of relied upon third-party testimony alone does not necessarily preclude Sand's reinstatement. Nevertheless, it does meaningfully distinguish his petition from the line of successful petitioners. In my view, our case law and rules[5] illustrate that we find third-party testimony, particularly from members of the bar, highly probative and an important consideration in determining whether a petitioner has met the heavy evidentiary burden of showing moral change.

In addition to the paucity of Sand's evidence, there are facts in the record that are adverse to the court's conclusion that Sand has sufficiently changed his conduct. As the

[5] The Rules on Lawyers Professional Responsibility contemplate third-party testimony playing an important role in our reinstatement deliberations. *See* Rule 18(b)(1), RLPR (directing that after an attorney submits a petition for reinstatement, "[t]he Director shall publish an announcement of the petition for reinstatement in a publication of general statewide circulation to attorneys soliciting comments regarding the *appropriateness* of the petitioner's reinstatement" (emphasis added)).

court discussed, the record indicates that Sand entered a verbal agreement to repay a former client after Sand defaulted on payments, causing the former client to lose his home and possessions. As part of the hearing on his reinstatement petition, the panel questioned Sand about whether he had made an effort to get this agreement reduced to writing. Sand testified that after his attorney forwarded drafts of an agreement to the former client, a "couple of weeks" prior to the panel hearing, the former client told him, "Look, I'm going through a divorce. I really don't want to reduce this [repayment agreement] to writing until I've completed my divorce." Sand agreed to hold off on formalizing the agreement until after his former client's dissolution case was completed. In other words, the former client was seeking to hide these payments as assets from his spouse for divorce purposes. Rather than encourage the former client to report his assets, Sand acquiesced to the former client's unscrupulous request.

The court concludes that Sand's decision to enter into a repayment agreement with the former client supports his reinstatement. I reach the opposite conclusion from the court regarding this matter. Nearly a decade after Sand's underlying misconduct, his acquiescence to dishonest behavior undermines his claim that he has shown sufficient moral change to warrant reinstatement.

Additionally, the record establishes Sand did not disclose to the Director that he procured codeine without a prescription. Sand admitted to traveling to Canada to purchase codeine and returning to Minnesota with the codeine. When asked by the Director why he did not disclose that his codeine was procured illegally and without a prescription, Sand

replied, "Because it wasn't procured illegally. . . . [I]t was legal to purchase the codeine" in Canada.

The dissenting panel member found Sand's explanation to be "a blatant display of lack of understanding what is the difference between what is right and wrong" because he was "skirting the law" by leaving "the country to obtain a drug [Sand] cannot get in the United States without a prescription." I agree. Rather than be forthright about his travel for codeine, Sand's explanation attempted to rationalize an action that Minnesota law expressly prohibits—possession of codeine in Minnesota without a prescription.[6] In my view, the lack of relied upon third-party testimony and troubling facts in the record make Sand's claim of change far from clear or convincing.

In addition to proof of moral change, as the court correctly notes, we are required to consider five other factors. *In re Anderley*, 696 N.W.2d 380, 385 (Minn. 2005). The court found four of these additional factors weigh in Sand's favor, with the seriousness of the misconduct as the exception. I agree with the court that the seriousness of Sand's misconduct weighs heavily against reinstatement at this time. However, I do not agree with the court's conclusion that the length of time consideration weighs in Sand's favor.

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[6] Under Minnesota law, codeine and its derivatives are controlled substances listed in Schedules I, II, and III. Minn. Stat. §§ 152.02, subds. 2(c)(4) (codeine methylbromide), 3(b)(1)(ii)(B) (codeine), 4(e) (narcotic drugs) (2018). Accordingly, codeine is illegal to possess in the State without a prescription. *See* Minn. Stat. §§ 152.023, subd. 2 (possession of narcotic drugs), 152.025, subd. 2(1) (possession of mixture containing Schedule I-IV controlled substances), 151.37, subd. 1 (possession of legend drug without a prescription) (2018).

The court focuses on the 9 years since Sand pled guilty, and the 8 years that have passed since we disbarred Sand. However, the court's opinion does not fully consider the short amount of time that has passed since Sand completed the terms of his federal probation, which to me is the more pertinent timing issue. When the amount of time that has passed since the expiration of probation is relatively short, we have previously denied reinstatement. *Swanson*, 343 N.W.2d at 665 ("[T]he time passed since the expiration of probation is too limited to merit reinstatement at this time."). Here, 29 months—just under two and a half years—passed between Sand completing probation and submitting his petition for reinstatement. Less than 5 years have passed between Sand completing probation and our decision today. As time passes, it may be true that this factor will begin to weigh in Sand's favor. But in my view, when probation is considered, the amount of time that has passed here is "too limited" to merit reinstatement at this time.

Without question, Sand has taken positive steps in his life since disbarment, and his devotion to his daily aftercare and spiritual regimen is commendable. However, as we have stated before, and the court's opinion correctly reminds us, our prime concern in considering a reinstatement petition is not simply the petitioning attorney's progress. "The purpose of discipline is not to punish the attorney but to guard the administration of justice and to protect the public." *Peterson*, 274 N.W.2d at 925. Because our decisions to reinstate attorneys can adversely affect the public, *see, e.g.*, *In re Lieber*, 949 N.W.2d 295 (Minn. 2020) (order) (disbarring an attorney a second time because he committed additional misconduct against clients after his initial reinstatement), we must prioritize the protection of the public and our system of justice. To minimize the possibility that a petitioner is a

threat to the public, we impose a heavy burden on the petitioner and exercise great caution in readmitting attorneys to a position of public trust. *In re Smith*, 19 N.W.2d 324, 326 (Minn. 1945) (While we should be slow to disbar, we "should be even more cautious in readmitting an attorney to a position of trust."). Exercising such caution here, I would respectfully deny Sand's reinstatement at this time.[7]

[7] Because the court has reinstated Sand, I agree that the supervised probationary conditions in the court's opinion are necessary and appropriate. In addition, with the court's decision to grant Sand's reinstatement, our admonition from *Lieber* is likewise befitting here: "We expect not to see again a disbarred attorney who, after reinstatement, commits further misconduct." *In re Lieber*, 939 N.W.2d 284, 297 (Minn. 2020).