COMMONWEALTH OF MASSACHUSETTS
BOARD OF BAR OVERSEERS
OF THE SUPREME JUDICIAL COURT

In the Matter of	)	
DANIEL J. HARRINGTON	)	**SJC No. BD-2011-010**
Petition for Reinstatement	)	

HEARING PANEL REPORT

I. Introduction

This petition for reinstatement presents difficult issues for this panel. It arose out of the petitioner's suspension from the practice of law for a year and a day, as a consequence of his having made disparaging statements in court and in numerous related filings about the Probate and Family Court judge who decided a number of post-divorce motions in which petitioner represented himself, including calling the judge "corrupt", "dishonest", and "incompetent."

In stark contrast to the petitioner's behavior during his divorce proceedings, the panel was impressed at the reinstatement hearing with petitioner's demeanor and advocacy skills on his own behalf. The petitioner also appears to have been an excellent advocate for his clients, as was attested to by clients, personal friends, and acquaintances who appeared at the hearing and testified on his behalf. Based on the evidence before us, the panel has no doubt as to petitioner's skills, his learning in the law and that, if reinstated, he would represent his clients competently. He has done well for his clients in the past and is likely to do well for his clients in the future if his suspension is lifted and he is reinstated to the practice of law.

However, the petitioner's conduct since his suspension and particularly his unwavering belief in the correctness of his views as to the judge's conduct and motives, in the face of convincing evidence to the contrary, and as found by the hearing committee in his disciplinary

hearing, leave this panel with serious concerns as to petitioner's fitness to return to practice at this time. Specifically, his present perception of the merits of the conduct that led to his suspension and his conduct since suspension, in which, without factual foundation, he perceives himself as a victim, as well as his ongoing and unnecessary visits to Judge Dorothy M. Gibson's courtroom, causes us to conclude that he has not met his burden of proof, as required by S.J.C. Rule 4:01, § 18 (5) and Section 3.65 of our rules governing reinstatement proceedings.

Further, we conclude that petitioner's conduct since his suspension, as it relates to Judge Gibson, is at best problematic and, at worst, could reflect serious psychological issues on the part of the petitioner which he needs to address before he should be considered for reinstatement. Specifically, his conduct calls into question his moral fitness to be reinstated, the public's perception were he to be reinstated, and whether his reinstatement would be considered detrimental to the integrity and standing of the bar. We believe that these issues need to be addressed professionally through psychiatric analysis and treatment, and that failing resolution through such treatment, the petitioner cannot meet his burden of proof as to his entitlement to reinstatement. Therefore, we recommend that petitioner not be reinstated until he has effectively dealt with these issues to the satisfaction of a reinstatement panel, of the board, and of the Supreme Judicial Court.

II. Standard

Supreme Judicial Court Rule 4:01, § 18(5) establishes two distinct requirements for reinstatement focusing, respectively, on the personal characteristics of the petitioner and the effect of reinstatement on the bar and the public. Matter of Gordon, 385 Mass. 48, 52, 3 Mass. Att'y Disc. R. 69, 73 (1982). The petitioner must show 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, the administration of justice, or to the public interest." S.J.C. Rule 4:01, § 18(5); Matter of Daniels, 442 Mass. 1037, 1038, 20 Mass. Att'y Disc. R. 120, 122-

123 (2004) (rescript). See Matter of Dawkins, 432 Mass. 1009, 1010, 16 Mass. Att'y Disc. R. 94, 95 (2000) (rescript); Matter of Pool, 401 Mass. 460, 463, 5 Mass. Att'y Disc. R. 290, 293 (1998).

"Passage of time alone is insufficient to warrant reinstatement." Daniels, 442 Mass. at 1038, 20 Mass. Att'y Disc. R. at 123. "The question is not whether the petitioner has been punished enough." Matter of Cappiello, 416 Mass. 340, 343, 9 Mass. Att'y Disc. R. 44, 47 (1993); Matter of Keenan, 314 Mass. 544, 547 (1943). "The act of reinstating an attorney involves what amounts to a certification to the public that the attorney is a person worthy of trust." Daniels, 442 Mass. at 1039, 20 Mass. Att'y Disc. R. at 123; Matter of Centracchio, 345 Mass. 342, 348 (1963). The petitioner must show that he has led "'a sufficiently exemplary life to inspire public confidence once again, in spite of his previous actions,'" Matter of Prager, 422 Mass. 86, 92 (1996), quoting Matter of Hiss, 368 Mass. 447, 452, 1 Mass. Att'y Disc. R. 122, 126 (1975), and that he has become 'a person proper to be held out by the court to the public as trustworthy.'" Dawkins, 432 Mass. at 1010-1011, 16 Mass. Att'y Disc. R. at 95.

In making these determinations, a panel considering a petition for reinstatement "looks to '(1) the nature of the original offense for which the petitioner was suspended, (2) the petitioner's character, maturity, and experience at the time of his suspension, (3) the petitioner's occupations and conduct in the time since his suspension, (4) the time elapsed since the suspension, and (5) the petitioner's present competence in legal skills.'" Daniels, 442 Mass. at 1038, 20 Mass. Att'y Disc. R. at 122-123, quoting Matter of Prager, 422 Mass. at 92, and Matter of Hiss, 368 Mass. at 460, 1 Mass. Att'y Disc. R. at 133.

III. Disciplinary Background and Proceedings on the Petition for Reinstatement

On April 20, 2012, Daniel J. Harrington petitioned the Supreme Judicial Court for reinstatement to practice after an order of suspension entered by the Court on March 9, 2011, effective April 8, 2011. Matter of Harrington, S.J.C. No. BD-2011-010 (March 9, 2011). This panel received the evidence and heard argument on the petition on July 12 and 13, 2012. Bar

counsel, represented by first assistant John Marshall, opposed the petition. The petitioner, acting *pro se*, testified on his own behalf and called nine witnesses; bar counsel called no witnesses. Sixteen exhibits were admitted into evidence. The parties were given leave to brief certain issues and we have received and considered that briefing and addressed those points in this report as necessary to our determinations.

The following summary of the basis for the petitioner's suspension is drawn from the published report of the respondent's discipline which, in turn, is based on the hearing committee's report. That report was adopted by the board without objection and served as the basis for the Court's order of suspension following the board's recommendation.

While acting *pro se* in post-divorce proceedings, the respondent attempted to drive the presiding judge (Judge Dorothy M. Gibson) out of the case using baseless accusations that the judge was incompetent, dishonest, and corrupt. The respondent's inflammatory comments began after the judge issued a judgment adverse to the respondent on contempt complaints against him and on his complaint for modification of the divorce judgment. Among other things, the respondent characterized the judge as a pathological liar and a rat, her courtroom as a sewer, and her award of counsel fees to his ex-wife as a "wedding gift" for opposing counsel.

The respondent made his accusations primarily in eight motions demanding that Judge Gibson recuse herself from hearing his case. He presented these motions over the course of about fifteen months. The same or similar accusations appeared in four letters to the Chief Justice of the Probate and Family Court and another to the First Justice of the Middlesex Probate and Family Court. To support his accusations, the respondent made false statements about the record, obfuscated facts, and misstated the holding of reported appellate cases. The respondent also filed a civil action against Judge Gibson in the Middlesex Superior Court seeking damages for allegedly wrongful incarceration arising out of Judge Gibson's finding that the petitioner was in contempt and also for allegedly disseminating impounded information. In the complaint in

that action the petitioner repeated his allegations against Judge Gibson. He also threatened disciplinary action against the judge and opposing counsel.

The committee found that the respondent had no objectively reasonable basis for his accusations, and none for certain allegations of his civil complaint. The committee also found that the respondent engaged in the same type of conduct during the disciplinary hearing. Still, the hearing committee noted in mitigation that "the respondent's judgment was distorted by his contentious divorce and the breakdown of his relationship with his three children – matters that would adversely affect the constitution of even a hard-bitten trial lawyer." H.C. Rpt., Introduction at 2.

IV. Findings

A. Competence and Learning in the Law

The petitioner has met his burden under S.J.C. Rule 4:01, § 18, see also B.B.O. Rules, § 3.65, to demonstrate that he has the "competency and learning in the law required for admission to practice law in this Commonwealth."

During his suspension, the petitioner attended two seminars sponsored by the Malden Bar Association, one concerning practice and procedure in the state district courts and the other concerning recent changes to family and probate law. Tr. II:309-310 (Harrington); Questionnaire, part one, at 5. He has done reading on the new Uniform Probate Code. Tr. II:311 (Harrington). He also attended a seminar, sponsored by the Middlesex County bar association, about the rules of evidence. Tr. II:309 (Harrington). He regularly reads Massachusetts Lawyers Weekly and Massachusetts Law Review, as well as a miscellany of other MCLE materials. Tr. I:274, Tr. II:309 (Harrington); Questionnaire, part one, at 5, 6. He engaged in research concerning civil, probate, criminal, and appellate practice in connection with his petitions for writs of certiorari, referenced below. Tr. II:319-320 (Harrington); Questionnaire, part one, at 6. He has maintained his membership in various bar associations and attended their meetings. Questionnaire, part one, at 5. The petitioner also attended sessions of the various courts in

Middlesex County to observe motions, pretrial conferences and trials. Questionnaire, part one, at 5.

The petitioner's character witnesses spoke highly of his knowledge and skills in the law. One of the attorney witnesses described the petitioner as his "number one" choice for discussing cases, and for referral of cases. Tr. I:35-36 (Mulhall). Another lawyer witness described the petitioner as a good lawyer whose advice she actively seeks out. Tr. I:82-83 (Stanziani). Yet another described the petitioner as excellent, one of the best lawyers she knows, who takes tough cases and handles them well and performs beautiful work; he is one of the few lawyers to whom she has referred cases. Tr. I:128-129, 129-130, 132, 145 (S.Harrington); and see Tr. I:171-172 (Lopez) (the petitioner is "probably one of two attorneys [the witness, a businessman and a lawyer] would refer cases to"); and Ex. 3 (Gill affidavit). A law school classmate who has maintained a long friendship with the petitioner, while acknowledging that the petitioner's suspension was appropriate, considers it a tragedy that the petitioner cannot practice law. Tr. I:193-196 (Carlson).

Finally, the panel was impressed by the petitioner's considerable skill in presenting a thorough and persuasive case for reinstatement through the direct examination of his witnesses. It is clear to this panel that the petitioner currently possesses the skills of a knowledgeable and capable trial attorney.

B. Moral Qualifications

The conduct underlying the petitioner's suspension "was conclusive evidence that he was, at the time, morally unfit to practice law, and it continued to be evidence of his lack of moral character ... when he petitioned for reinstatement. It was incumbent on [the petitioner], therefore, to establish affirmatively that, during his suspension period, he had redeemed himself...." Matter of Dawkins, 432 Mass. at 1010-1011, 16 Mass. Att'y Disc. R. at 95 (citations omitted); see also Matter of Ellis, 457 Mass. 413, 415 (2010). As described in the introduction,

this panel finds that, with one exception, the petitioner has demonstrated good moral character; but that one exception is the undoing of the petitioner's bid for reinstatement.

The petitioner's character witnesses – lawyer and lay -- consistently spoke well of his honesty and integrity. Tr. I:38-39, 40-41 (Mulhall); Tr. I:61 (Greenwood); Tr. I:114 (Freda); Tr. I:75-76 (Stanziani); Tr. I:103 (Sullivan); Tr. I:158 (Zeller); Tr. I:190 (Carlson); Ex. 3 (Gill affidavit). One called him "impeccabl[y]" honest, with excellent integrity. Tr. I:130 (S. Harrington). A former client described him as the most honest person he knows, whose integrity he does not question. Tr. I: 173 (Lopez). Another former client called him diligent and hard-working. Tr. I:158 (Zeller).

The petitioner's generally good moral character is further demonstrated by his history of activities devoted to the public good. During law school, he worked in the Legal Aid Society, for a suicide hot line, in the moot court program, in a program representing juvenile offenders, and in the clinical program connected with the District Attorney's Office. Tr. I:182-183, 186-187 (Carlson); Tr. I:219-220 (Harrington). One of the witnesses said he never saw a comparable commitment to helping others and that the petitioner "did an awful lot of things and helped an awful lot of people." Tr. I:188 (Carlson).

The petitioner still has a "very sincere, honest desire to help others." Tr. I:193 (Carlson). During his suspension, the petitioner provided volunteer help to immigrants seeking to learn English as a second language through the Immigration Learning Center in Malden. Tr. I:261-266, Re. II:325 (Harrington); Questionnaire, Part One, App. X-3, at 3. He has also performed volunteer work with the Andover Chamber Music Society. Tr. I:261 (Harrington); Questionnaire, Part One, App. X-3, at 3. He is a member of his church's parish council. Tr. I:276-278 (Harrington). Finally, his selfless devotion to the care of his elderly aunt further confirms his commitment to service. Tr. II:326 (Harrington); Questionnaire, Part One, App. X-3, at 3-4.

During his suspension, the petitioner took the opportunity to reflect on his misconduct, Tr. I:132 (S.Harrington), and he acknowledges, albeit incompletely, that he was wrong. Tr. I:79 (Stanziani), Tr. I:104 (Sullivan); Tr. I:146 (S.Harrington); Tr. I:196 (Carlson). In fact, one of his witnesses refused to testify on his behalf until the respondent had discussed the matter at length and acknowledged the wrongfulness of his conduct. Tr. I:194-195 (Carlson). All the witnesses testifying on petitioner's behalf described petitioner's behavior in his divorce proceeding as out of character. According to those witnesses, his misconduct was an isolated incident, Tr. I:79-80, 84 (Stanziani), an aberration. Tr. I:194 (Carlson); Tr. I:85 (Stanziani). Petitioner reported to those who testified on his behalf that he had acted "totally out of control" in Judge Gibson's courtroom, Tr. I:76-77 (Stanziani), and he "blew his top." Tr. I:104 (Sullivan). Petitioner described his conduct as a mistake and an emotional outburst related to the breakdown of his relationship with his daughters in the context of his divorce. Tr. I:78-79, 84 (Stanziani); Tr. I:133-134 (S.Harrington); Tr. I:193-194, 196 (Carlson). One witness described the petitioner as typically logic-driven and very cool when representing others, Tr. I:141 (S.Harrington); the misconduct was inconsistent with the petitioner's usual temperament. Tr. I:121-122 (Freda); Tr. I:141-142, 145 (S.Harrington). His witnesses never before saw this kind of misconduct from the petitioner. Tr. I:48-49 (Mulhall); Tr. I:121-122 (Freda); Tr. I:173-174 (Lopez). One witness called it "painful" to watch what the petitioner went through in his divorce. Tr. I:47 (Mulhall). Another warned the petitioner that his conduct was wrong, but the petitioner felt compelled to engage in it; this witness described the course of events underlying the suspension as "watching somebody self-destruct." Tr. I:134-137 (S. Harrington). Another was shocked by the news that the petitioner had been suspended for misconduct. Tr. I:114-115 (Freda).

1. Petitioner Has Not Completely Accepted That His Conduct Was Wrong.

Nevertheless, the witnesses' testimony also reflects a fatal flaw in the petitioner's proof of reform and redemption. With fair consistency, they had come to understand from the petitioner that he was suspended because he had insulted, or acted in an unbecoming manner

towards a judge, as if the gravamen of his offense was a lapse in civility and the mere use of prohibited words alone, and not also that he had made the charges recklessly and without an objectively rational basis in fact for the charges he made -- a key factual finding of the hearing committee. Tr. I:42, 44-45 (Mulhall); Tr. I:61 (Greenwood); Tr. I:76-80, 86-87 (Stanziani); Tr. I:104 (Sullivan); Tr. I:131-132, 133, 137-139 (S.Harrington); Tr. I:158 (Lopez); Tr. I:190-191, 195, 198-199 (Carlson); and cf. Tr. I:117-119 (Freda). And see Mass. Rules Prof. C. 3.1 (prohibiting frivolous pleadings or issues), 8.2(a) (prohibiting statements concerning the qualifications of a judge that a lawyer knows are false or which are made with reckless disregard as to their truth or falsity), the primary rules under which the petitioner was suspended. H.C. Rept. (Ex. 5), at ¶¶ 115, 116, 120, 121. Still, in connection with our assessment of the petitioner's moral character, and especially his honesty, it is worth noting that one of the witnesses confirmed the finding of the hearing committee that the respondent actually believed the ultimate accusations he leveled against the judge. Tr. I:138 (S.Harrington); cf. H.C. Rept. (Ex. 5), ¶ 116, at 48. See also Tr. II:288 (Harrington).

The foregoing flaw in the witnesses' testimony appears again starkly in the petitioner's opening statement, Tr. I:8-10, and in his testimony. Tr. II:288-289, 329-330 (Harrington). See also Questionnaire, Part One, App. X-2, at 2. He repeatedly affirmed his continuing belief in the truth of his accusations towards Judge Gibson, Tr. II:288-289, 371-372 (Harrington), and his belief that the hearing committee erred in finding that his accusations were without factual basis. Tr. II:289-290 (Harrington). Indeed, the petitioner's testimony so single-mindedly attempted to limit his wrongdoing to his use of specific words that he distorted the contents of the published case summary concerning his suspension that he purported to paraphrase before us. Tr. II:329-330 (Harrington).[1] Although the act of exposing corruption and bias in the court – using the

[1] In the cited testimony, the respondent said: "[The published notice of suspension] didn't say that [I] was suspended ... for impugning the integrity of the court. What it did say very specifically is that [I] used the words dishonest, corrupt and incompetent on whatever number of occasions." Tr. II:329-330. The published notice, summarizing the hearing report, stated, among other things, that "the respondent attempted to drive the presiding judge out of the case

proper procedures and where it exists and can be proved with objective evidence -- is important, equally important is upholding the integrity of our justice system by refraining from reckless attacks on the ability and integrity of a sitting judge.[2] The petitioner fails to understand that his misconduct was not only the act of accusing a judge of being corrupt, biased, and incompetent, but also the act of making these accusations in open court and with no objective basis whatsoever.

In September 2010, the hearing committee filed its report recommending the petitioner's suspension.[3] In late November of that year the petitioner waived appeal from the report but requested that the matter be re-opened as to the recommended sanction. The board upheld the report, and the Court issued its order of suspension (Ex. 8) on March 9, 2011. Based on these events, it might appear that the petitioner accepted the hearing committee's findings. But, in the meantime the petitioner appealed the dismissal of his civil action against Judge Gibson, and in his brief to the Massachusetts Appeals Court he asserted many of the same allegations the committee had found to be frivolous and reckless. Tr. II:353-354, 366-367 (Harrington); Ex. 9. In April 2012, the petitioner made the same accusations in his petition for writ of certiorari asking the United States Supreme Court to reverse the dismissal of his civil action against Judge Gibson, a dismissal that had been upheld by the Massachusetts Appeals Court and Supreme Judicial Court. Tr. II:361-362, 366-367 (Harrington); Exhibit 10.

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using baseless accusations that the judge was incompetent, dishonest, and corrupt.... Among other things, the respondent characterized the judge as a pathological liar and a rat, her courtroom as a sewer, and her award of counsel fees to his ex-wife as a 'wedding gift' for opposing counsel." Tr. II:330 (Harrington); Ex. 6.

[2] Subject to some exceptions, Rule 8.3(b) requires that a lawyer with knowledge of a serious violation of judicial ethics report the matter to the Commission on Judicial Conduct. The preamble to our Rules of Professional Conduct includes the following statements: "As a public citizen, a lawyer should seek improvement of ... the administration of justice ... [and] be mindful of the deficiencies in the administration of justice.... An independent legal profession is an important force in preserving government under law, [and challenging] abuse of legal authority ...." Preamble, sections 5, 10. Furthermore, the official comments to Rule 8.2, the primary rule the committee found the petitioner to have violated by his attacks on Judge Gibson, state as follows: "Expressing honest and candid opinions on such matters [as the professional or personal fitness of judicial candidates] contributes to improving the administration of justice."

[3] Our findings here include administrative notice of the board's records.

That a person can be rehabilitated is such a "fundamental precept of our system," Matter of Ellis, 457 Mass., at 414, that even conviction of a serious crime does not preclude a showing of present moral fitness. Id. Yet, "[r]eform is a 'state of mind' that must be manifested by some external evidence ...." Matter of Waitz, 416 Mass. 298, 305, 9 Mass. Atty. Disc. R. 336, 343 (1993). Here, the evidence indicates that the petitioner still does not truly understand the nature of his misconduct or accept the hearing committee's determination that his accusations were reckless. Tr. II:289-290 (Harrington). This panel reluctantly concludes that despite what must have been a difficult concession on his part – that he had engaged in misconduct -- he is not sufficiently reformed to warrant reinstatement.

The petitioner cannot reform himself if he does not acknowledge the reason reform is necessary. Petitioner stated in this proceeding that he acknowledged and accepted that his description of Judge Gibson in court and in court filings as (among other things) "corrupt, dishonest and incompetent" was plainly in violation of his oath when he became a lawyer and in violation of the ethical principles under which he was disciplined. Despite his acknowledgment, he has taken no steps to remedy the wrong. In the panel's view, more is required than merely saying so. Specifically, we believe that had he truly accepted that what he did was wrong, he would have taken steps to apologize to Judge Gibson for what he did to impugn her integrity and impartiality in performing her judicial functions, and otherwise to make it known, publicly, that his conduct exceeded the bounds of advocacy and was inimical to the public's perception of the proper administration of justice. The petitioner has taken no such steps.

He has, instead, pursued litigation which, despite the considered determination of the hearing committee that his assertions had no rational basis in fact, asserts his continued belief in the truth of the statements he made. We assume that the hearing committee's factual and legal determinations do not preclude petitioner from pursuing his civil appeal.[4] Nevertheless, insofar

[4] We also note that underlying his pending appeals are questions of law concerning, among other things, a Probate and Family Court's power over contempt proceedings which, from all that appears to us, he may pursue whether or

as it concerns his request to be reinstated, his continued pursuit of his rights in the face of considered factual findings by the hearing committee in his disciplinary proceedings that his statements were baseless and without objective rational factual foundation is, in our view, evidence that he has not accepted, in fact, that his conduct was wrong or what it was about the conduct the committee found to be wrong. While he has given lip service to that conclusion, his continued pursuit of factual vindication belies his conviction in what he says.

2. Petitioner's Continued Pursuit of Judge Gibson Reflects Emotional Instability and Lack of Judgment.

We noted above that the petitioner has made no effort to apologize to either Judge Gibson or to the Middlesex Probate and Family Court. Tr. II:308 (Harrington). See In re: Leahy, SJC No. BD-2011-080, at 10 (Aug. 2, 2012). Further, he continues to believe, without a rational factual basis, that Judge Gibson has a personal vendetta against him [Tr. II:390-391 (Harrington)] and has made that belief known, explicitly, to Judge Gibson's judicial superior, Hon. Peter DiGangi, First Justice of the Middlesex Probate and Family Court. And, despite assertions to the effect that his motivations were otherwise, assertions this panel does not credit, he has continued to make Judge Gibson aware of his continued animosity through regular attendance of sessions in her courtroom.

The petitioner testified that he has regularly attended sessions of the Probate and Family Court during the past year, rotating among different judges in Middlesex Probate and Family Court, because he loves courthouses, because he wants to remain current in his skills, and because he has been gathering information for books he plans to write about the Probate and Family Court. Tr. II:313-317, 378-379 (Harrington). Yet, while seven judges typically preside in the sessions of the Middlesex Probate and Family Court and at least four sit regularly in the

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not the hearing committee's findings preclude his re-litigating the recklessness of certain of the factual allegations in his appeals. Tr. II:321-324, 362-364, 431-432 (Harrington).

Cambridge session alone, the petitioner acknowledged that he devoted fully half – about twenty out of forty – of his visits to Judge Gibson's courtroom. Tr. II:317-319, 387 (Harrington). The petitioner knows that he is a recognizable character in that court, readily admits that his relationship with Judge Gibson is contentious, and acknowledges that his visits could be viewed as intimidating. Tr. II:406-409, 413 (Harrington). He insists that he must attend her sessions to write his book, even while insisting, for reasons we find unconvincing, that he feels threatened by Judge Gibson. Tr. II:411-412, 448-449 (Harrington). We do not credit these explanations and instead infer, on the basis of all the credible evidence, that the petitioner's attendance at Judge Gibson's court sessions is motivated by his personal animosity towards the judge.

The petitioner announced his intention to observe Probate and Family Court sessions in a June 23, 2011 letter to Judge DiGangi. Tr. II:378-379, 381; Ex. 11. The letter included the following:

- "I am in the process of writing two (2) books. One will deal with the inner workings of the Probate Court ... in particular, the Court in Cambridge. The second will focus on my personal experiences at the Court. I will attend Justice Gibson's sessions on occasion for background."
- "As you know, I have been threatened and intimidated by Justice Gibson on numerous occasions in pursuit of her personal vendetta against me."
- "I have ... been in contact with an agent of the FBI. As instructed, I will contact him if there is the faintest hint of intimidation or harassment at your court."
- "I have maintained copious notes... This will continue. I hold you personally responsible for any problems I encounter. Control your personnel."

We do not credit the petitioner's effort to put an innocent face on this letter. In the panel's view, the letter contains veiled threats and baseless accusations. Nor do we credit his testimony suggesting that he has a good relationship with Judge DiGangi, and that Judge DiGangi somehow considers his suspension inappropriate. Tr. II:383-384 (Harrington). Based on all of the credible evidence, we find that petitioner's June 23, 2011 letter to the court was intended as a form of intimidation.

Our conclusions about this letter are confirmed by another letter the petitioner wrote to Judge DiGangi in April 2012. In this letter, the petitioner continued to portray himself as a victim while announcing his intention to continue his visits to Judge Gibson's courtroom. Ex. 13. He wrote:

- "I am writing to you regarding my concerns with one of your subordinate justices.... I have been advised to do so by certain officials and friends who are concerned for my welfare. As you know, Justice Dorothy Gibson ... resorted to extra-legal means in order to intimidate me.[5] This behavior is a continuing concern and I am fearful that it will escalate."
- "For the past ten months I have visited your courthouse weekly as I promised in my [July 23, 2011] letter.... Somehow this letter ended up in the hands of ... Bar Counsel. ... It was obvious to me who did this cowardly act. ... I am sending a copy of this letter to Bar Counsel to save J. Gibson the effort."
- "I will continue to visit your court over the next year at least. As I told you, I intend to write about the Court, ... and my own experiences. I have spoken with some of your personnel .... I will continue to do so."
- "I wish to make myself clear that I will not suffer any harmful behavior from anyone, including physical or otherwise. I have been instructed by the F.B.I. to contact them if there is even a hint of this. The response will be blunt and, unlike others, legal."
- "I know that I can rest assured that I will have your cooperation in this matter."

Before us, the petitioner acknowledged that the only bases for his purported fear of harm were: (1) the incident with the state troopers, referenced in note 5, above, which we do not find to be a remarkable event; (2) matters rejected by the hearing committee as without factual basis; and (3) an incident where petitioner was told by unnamed Probate and Family Court personnel

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[5] Apparently, this refers to what the petitioner has described as a single visit to him by state troopers to "deliver a message" on behalf of Judge Gibson. Tr. II:390-391, 395-397; Ex. 11. We note three things about this incident. First, the petitioner's portrayal of himself, unarmed, causing the two armed troopers to flee from his offices, Tr. II:348, 397 (Harrington); Ex. 11, is not credible and is, at the very least, disturbing. Second, given the petitioner's behavior towards Judge Gibson, there were legitimate security reasons for the troopers' visit, assuming it occurred. Third, the hearing committee expressed its views about the petitioner's effort to present evidence of the incident at his disciplinary hearing as follows: "Wholly aside from the competency and relevancy of this testimony, we would not be inclined to give the matter much weight in light of our credibility determinations and other findings concerning the respondent." H.C. Rept., n. 16 at 54.

that his probate case file was temporarily misplaced in Judge Gibson's office. Tr. II:396-402, 438-448 (Harrington).

Further, we view his letters to DiGangi in his capacity as First Justice, regarding his intentions to be present in court at various public proceedings, including proceedings before Judge Gibson, to belie his acceptance of responsibility. Beyond that, his letters reflect that he believed he was at risk of harm at the hands of Judge Gibson and wanted to be protected. We find his concern about the risk of personal harm baseless and irrational. Viewed objectively, we take the letters as evidence of the petitioner's current unsuitability to resume the practice of law.

Petitioner told this panel that he no longer wants to be at war with Judge Gibson and his lawsuits are being pursued solely to enforce a principle and to obtain financial recovery. Tr. II:304, 321-324, 348-349 (Harrington). In the panel's view, his conduct belies these rationalizations. He acknowledges that he has never considered just walking away from his lawsuits against or concerning Judge Gibson, or from Judge Gibson's courtroom. Tr. II:429-430 (Harrington).

Based on the evidence before us, the petitioner appears to have psychological issues related to his difficult experiences in representing himself in his own divorce and in proceedings before Judge Gibson subsequent to that divorce becoming final. We understand that proceedings of this sort can have enormous emotional consequences for the individuals involved, and we accept that petitioner has been through a traumatic experience. Although the circumstances under which these infractions arose –conflict and family dissolution in a divorce -- have been found in other cases to "appear a poor predictor of future professional misconduct, particularly as regards client matters," In re: Leahy, SJC No. BD-2011-080 at 8-9 (Aug. 2, 2012), the key issues in the present case concern, not his handling of client matters, but his problematic personal conduct, the psychological problems associated with that conduct, and public perception of the impact of that conduct. We cannot recommend his reinstatement to the practice of law in the

absence of such treatment and evidence that petitioner has effectively dealt with these issues and that these issues will not adversely affect his conduct, once he resumes practice.[6]

3. Petitioner Demonstrated Poor Judgment In Continuing to Use the Title "Esquire" After His Suspension.

Part One of the Petitioner's responses to the Reinstatement questionnaire ends with a sworn affirmation that he has not used the title "Esquire" since his suspension. Bar counsel submitted evidence that after the effective date of the petitioner's suspension he continued to use the title "Esquire" on signs at his office. Tr. II:417-419 (Harrington). The petitioner testified that he believed this was appropriate because, in effect, he was so instructed by a teacher of the course he took in preparation for the Multistate Professional Responsibility Examination. Tr. II:434-438 (Harrington). We invited and received the parties' briefing on this point, and make two observations.

First, the pertinent rules of professional conduct contain no *per se* prohibition against a suspended lawyer using the title "Esquire."[7] Still, a suspended lawyer may not "hold out to the public or otherwise represent that the lawyer is admitted to practice in [Massachusetts]." Mass. Rule Prof. C. 5.5(b)(2). Likewise, the rules governing advertising and solicitation prohibit misleading representations. Rules 7.1-7.5. To decide whether the petitioner violated these ethical prohibitions here, or even whether there is a sufficient concern to impose on the petitioner a burden of proof concerning these matters, we would need more information than was placed

[6] Our conclusion that the petitioner is in need of professional psychiatric assistance to address his divorce and post-divorce experience and to help him move beyond his current obsession with exacting retribution from Judge Gibson is further reinforced by his denial that anger played a part in his misconduct, Tr. II:295 (Harrington); he admitted to that anger only when pressed. Tr. II:295-296 (Harrington). Yet the petitioner has not sought professional assistance with anger management. Tr. II:296-298 (Harrington). He turned down an offer to maintain a consulting relationship tendered by his pre-divorce marriage counselor. Tr. II:296-297, 299 (Harrington). He also terminated his discussions with a licensed social worker in 2010. Tr. II:297-298 (Harrington).

[7] The closest our rules come to such a prohibition appears in the preface to the signature line on the form reinstatement questionnaire, part one, Appendix to BBO Rules, Subchapter F. Still, we read the requirement that the attorney swear that he has not "identified [him]self as 'Esq.' or 'Esquire'" in the context of the phrase immediately following: "or otherwise held myself out as an attorney...."

before us. For instance, we would need to know more about what activities the petitioner conducted in his office where these signs were posted, how he interacted with inquiring members of the public, and how he interacted with other attorneys.[8]

Second, we are troubled by the fact that petitioner signed a declaration that he was not using the title "esquire" when he in fact was. On the one hand, we believe it was not an intentional misrepresentation by petitioner, and this act alone would not lead us to deny his reinstatement. On the other hand, continuing to use that title, and rationalizing that conduct with comments during or after a seminar and attenuated arguments based on passages of the ABA Standards for Imposing Lawyer Sanctions (1992) that do not address the issue of improper holding out, see Petitioner's post-hearing briefing, indicate continuing poor judgment on his part.

For all the foregoing reasons, we conclude that, despite having an otherwise good, even commendable, moral character, the petitioner has not demonstrated current moral fitness to practice.

C. Effect of Reinstatement on the Bar, the Administration of Justice and the Public Interest

The public's perception of the legal profession as a result of reinstatement and the effect on the bar and the administration of justice must be considered. "In this inquiry we are concerned not only with the actuality of the petitioner's morality and competence, but also on the reaction to his reinstatement by the bar and public." Matter of Gordon, 385 Mass. 48, 53, 3 Mass. Att'y Disc. R. 69, 73(1982).

For much the same reasons as stated above, we conclude that the petitioner's reinstatement at this time would have an adverse effect on the bar, the administration of justice,

[8] On cross-examination the respondent gave only brief testimony about these matters that disclosed no improper activities at his office. Bar counsel did not request greater detail. Tr. II:416-416 (Harrington). Contrast Matter of Halliday, 10 Mass. Att'y Disc. R. 149, 151 (1994) (sign using suffix "Esq." did not violate a clear order of the court warranting contempt finding) with Matter of Levine, 20 Mass. Att'y Disc. R. 311, 316 (2004) (suspended attorney who allowed self to be referred to as "counselor," "Esquire" and "Esq." in a letter also referencing a "client" and "lender's counsel" was in contempt of suspension order).

and the public interest. The bar and the public would have difficulty understanding how the board could recommend reinstating an attorney who, unrepentant concerning the gravamen of his professional misconduct, is pursuing a personal vendetta against a judge. The administration of justice would be impaired if conscientious judges were compelled to be on constant guard against such misbehavior.

V. Conclusions and Recommendation

For the foregoing reasons we recommend that the petition for reinstatement filed by Daniel J. Harrington be denied. Notwithstanding the petitioner's own belief that he would never repeat his misconduct, Tr. II:306-307 (Harrington), and his testimony, which we do not credit, that the judgment of his friends will prevent any further misconduct, Tr. II:331-332 (Harrington), the petitioner's continuing obsession means that he cannot be counted on to act within the appropriate limits of advocacy in the courts of this Commonwealth until he addresses his compulsive conduct towards Judge Gibson by receiving professional psychiatric assistance. We emphasize that we recognize the petitioner's professional competency and encourage him to seek professional assistance because we believe that he can return to the practice of law and be a valued and contributing member of the bar once these issues are resolved.

Respectfully submitted,
By the Hearing Panel,

Erik Lund /pmr
Erik Lund, Esq., Panel Chair

Francis P. Keough /pmr
Francis P. Keough, Panel Member

Mary B. Strother /pmr
Mary B. Strother, Esq., Panel Member

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