STATE OF MICHIGAN

Attorney Discipline Board

In the Matter of the Reinstatement Petition
of Carl J. Gabrielse, P 67512,

Petitioner/Appellee.

Case No. 14-23-RP

Decided: December 29, 2015

Appearances:

Jon R. Muth, for Petitioner/Appellee
John K. Burgess, for the Grievance Administrator/Appellant

BOARD OPINION

This matter was commenced by petitioner, Carl J. Gabrielse, in an effort to reinstate his license to practice law in the State of Michigan. Pursuant to MCR 9.124, petitioner filed his petition for reinstatement following a three-year suspension. The three-year period elapsed February 24, 2013; however, petitioner did not file his petition until March 7, 2014. Kent County Hearing Panel #1 granted the petition two-to-one. The Grievance Administrator filed a petition for review of the Order of Eligibility for Reinstatement, arguing that the panel's findings were clearly erroneous, and that petitioner did not establish by clear and convincing evidence that he can safely be recommended to the public, the courts and the legal profession as a person fit to practice law. The Attorney Discipline Board conducted review proceedings pursuant to MCR 9.118. For the reasons described below, we affirm the panel's decision that petitioner is eligible for reinstatement.

I. Factual Background

Kent County Hearing Panel #3 suspended petitioner's license for three years effective February 24, 2010, the date he entered a guilty plea to two felonies: Criminal sexual conduct in the third degree, involving force or coercion (later modified to gross indecency; between male and female persons), and the common law offense of misconduct in office. In addition, Kent County Hearing Panel #3 required that petitioner undergo "a complete psychological evaluation" before reinstatement could be considered. Petitioner fully admitted to the egregious misconduct that

resulted in his criminal convictions and the subsequent suspension of his law license. The underlying facts, presented by the hearing panel in this reinstatement proceeding, are not in dispute:

> By all accounts, Petitioner was a fine attorney, employed as an associate with a reputable firm that had the contract to serve as the City of Holland's attorney, including the contract to prosecute civil infractions and misdemeanor offenses.
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> While employed by his law firm, Petitioner acted as the Deputy City Attorney for Holland ("the City"). In that capacity, on November 3, 2009, Petitioner was acting as the City's prosecuting attorney, and met with a young woman who was charged with drunk driving. The accused had an inordinately high blood alcohol level - a .24. (Tr 6/19/14, p 260.) [Footnote omitted.] According to established policies in place at the time, if a defendant's blood alcohol level was above a .10, no plea bargain would be offered to allow the accused to plead to impaired driving. (Tr 12/14/10, p 35.)
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> Petitioner knew of this policy. He testified that he "told her that there really wasn't anything I could do about this case because of the high level of her blood alcohol content . . . I made pretty clear to her that because of her blood alcohol content that I couldn't do anything with the charge." (Tr 12/14/10, pp 39-40.)
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> Petitioner also found her to be attractive. (Tr 12/14/10, p 40.) When the accused purportedly told him "I'm willing to do anything, and when I say anything, I mean anything" to avoid having the drunk driving charge on her record, Petitioner told her that he could not dismiss the charge "because that will catch too many people's attention, but I could reduce it to an impaired and that we could possibly have fly [sic]." (Tr 12/14/10, pp 40-41.) When the accused agreed to this proposal, Petitioner arranged for her to meet him at the locked entrance to the judicial corridor, escorted her into the jury room, and they had sex in the bathroom located within that jury room. (Tr 12/14/10, p 41.)
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> At some point after agreeing to reduce the charge in exchange for sex with the accused, Petitioner took one additional step to avoid attracting attention to this plea bargain that was so out of the ordinary: he obliterated the blood alcohol level recorded on the face of the ticket so that the judge who was accepting the plea would not realize how high it was. (Tr 6/19/14, p 260.) Thus, he not only agreed to accept a plea bargain from a young woman whom he found sexually attractive that was significantly reduced from what other similarly situated accused's would have been offered in exchange for sex, but

> to facilitate that illicit conduct he deliberately took action to prevent the court from knowing what he had done, all while acting as a prosecuting attorney for the City of Holland.
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> After having sex with the accused in the jury room, Petitioner escorted her back down the judicial corridor and through the locked doorway into the public hallway outside the courtroom. They then officially entered her plea to impaired driving, and she left the courtroom. Two days after the original incident, the accused returned to the courthouse - this time wearing a hidden microphone so that the Ottawa County Sheriff's Department could tape her conversation with Petitioner. (Tr 6/9/14, p 80.) After once again arranging to have sex with the accused, Petitioner went into the judicial corridor, planning to again give her access to the jury room through the locked door. Instead, he was met by deputies from the Ottawa County Sheriff's Department, who arrested him.
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> Petitioner was initially charged with and pled guilty to two felonies: third-degree criminal sexual conduct (involving force or coercion) and misconduct in office. (Grievance Administrator's Reinstatement Report, (hereinafter "AGC Report"), Attachment B.) As part of the plea agreement, he was sentenced to six months in jail (AGC Report, Attachment B), serving five months (Tr 6/9/14, p 8), and agreed to undergo sexual counseling with a therapist. Upon successful completion of a one-year deferred sentence involving that therapy, the CSC/3rd charge against him was dismissed, and he was allowed to enter a plea to misconduct in office and gross indecency between a man and woman. [Hearing Panel Report (majority), pp 2-4.]

II. Panel Report

The panel reviewed the petition for reinstatement and found petitioner eligible for reinstatement two-to-one. The majority concluded that petitioner satisfied all of the requirements contained in MCR 9.123(B) clearly and convincingly. Specifically at issue was whether petitioner could prove that (A) he did not practice law in violation of his suspension; and (B) he can safely be recommended to the public, courts and legal profession as fit to practice law.

A. Unauthorized Practice of Law

The panel, including the dissenting member, found that petitioner established through clear and convincing evidence that he had not practiced law during his suspension, and therefore had met his burden under MCR 9.123(B)(3). Generally, a suspended attorney is forbidden from practicing

law in any form. The Michigan Court Rules also specify that a suspended attorney is forbidden from having any contact with clients or potential clients of a lawyer or law firm, appearing as an attorney before any court or officer of the court, or holding himself out as an attorney under any circumstances. MCR 9.119(E).

At issue was petitioner's work with Scott T. Bosgraaf, a local entrepreneur based in Holland, Michigan. Mr. Bosgraaf employed him to organize and manage his various business entities. (Tr 6/9/2014, pp 21-24.) Petitioner testified at length that although there was litigation involving the companies during the period of his employment, he did not offer legal advice nor did he practice law in any way. (Tr 6/9/2014, pp 21-38.) In fact, Mr. Bosgraaf was represented by outside counsel to address these matters. Petitioner further testified that ample precautions were taken to ensure that he did not engage in the unauthorized practice of law. Before agreeing to work with Mr. Bosgraaf, he consulted Marcia Proctor, a prominent legal ethicist, to discuss the permissible scope of his work. (Tr 6/9/2014, p 22.) Petitioner fully disclosed the status of his license to Mr. Bosgraaf and regularly reminded him that he could not practice law or provide him with legal advice.

Mr. Bosgraaf testified that he sought out petitioner for his organizational skills and computer expertise, not for legal work or advice. (Tr 6/9/2014, pp 203-204.) Furthermore, he testified he was familiar with petitioner's history and current status of his law license, and that petitioner himself made it clear he could not practice law nor offer legal advice. (Tr 6/9/2014, pp 207-210.) Petitioner called three witnesses, all practicing attorneys in Michigan who had worked with Mr. Bosgraaf at one time or another. All three witnesses testified that they did not believe that petitioner ever engaged in the unauthorized practice of law while employed by Mr. Bosgraaf. Attorney Robert Wardrop equated petitioner's work with that of a paralegal. He testified, "[T]hat's our responsibility also as lawyers, is not to allow him to be a lawyer. And so when we started with Scott [Bosgraaf], we said, Carl is going to be a paralegal. He's not a lawyer. He's not an associate. He is a paralegal." (Tr 6/9/14, pp 137-138.) No evidence was offered by the Grievance Administrator to contradict any of this testimony.

Accordingly, the panel determined that petitioner's work for Mr. Bosgraaf did not rise to the level of legal practice, because he was not required to employ his legal discretion and knowledge, and he made numerous disclosures during the course of his employment. Therefore, the panel found that petitioner had satisfied his burden under MCR 9.123(B)(3).

B. Fitness to Practice Law

The panel concluded that petitioner satisfied MCR 9.123(B)(7), which required him to establish that he can safely be recommended to the public, the courts, and the legal profession as a person fit to practice law. To support this conclusion, the panel noted at length the steps petitioner has taken toward rehabilitation and the numerous witnesses who fervently supported his reinstatement.

The panel was particularly persuaded by petitioner's own testimony which detailed his efforts to address his sexual addiction. These efforts included multiple intensive treatment programs in Minnesota with Dr. Mark Laaser, and regular counseling sessions with Dr. Matthew Bush at Pine Rest Christian Mental Health Services. Both practitioners specialize in treating individuals with sexual disorders and addictions. Petitioner worked with an "accountability partner," Steve Duer, with whom he spoke daily and met weekly. He even started his own accountability group at his church that met on a weekly basis. In addition, recognizing that viewing pornography was a "trigger" for the disorder, monitoring programs were placed on all of his electronic devices. The software reported petitioner's browser history directly to his wife and accountability partner. Concerning petitioner's rehabilitation, Dr. Bush testified, "as his treating clinician I would have to say that I am not sure what more he could have done to indicate a change of behavior and character." (HP Report 10/17/14, p 16.)

In addition to Dr. Bush, numerous witnesses spoke in favor of petitioner's reinstatement. Among them were members of his church, including the pastor, attorneys and business owners who worked with him post-suspension, and medical expert, Natalie Wallace, M.D., who examined petitioner as required by the discipline order. Without exception, all lay witnesses testified that they had no concerns or reservations about petitioner's ability to practice law, and that they found petitioner's conduct within the last four years to be beyond reproach. Many spoke of the power of redemption and affirmed that petitioner has taken responsibility for his actions, was sincerely committed to his rehabilitation, and has become a better person as a result.

Pastor Keith Doornbos' testimony was particularly compelling. He stated that petitioner reintegrated into the church community, has returned to leadership positions within the church, and has demonstrated profound humility, remorse, and repentance. Following the incident, petitioner turned to his church and sought counseling and guidance from Pastor Doornbos. The Pastor worked

closely with petitioner and his wife throughout the healing and rehabilitation process. Based on their relationship, he stated, "[W]atching him up close and personal, we felt that this is a new day and a new Carl. And even a new day and a new Carl from before the incident. I mean, we are seeing some wonderful new-for-us Godly characteristics that we are just thankful to see." (Tr 6/19/2014, p 281.) Despite the past betrayal of public trust, Pastor Doornbos advocated for petitioner's reinstatement, evidencing his belief that petitioner had reformed his life and is no longer a danger to the public. In fact, he expressed that the public would be well-served by his reinstatement. (Tr 6/19/2014, pp 292-293.)

Petitioner's reinstatement was contingent upon presenting a complete psychological evaluation. Upon the recommendation of Dr. Bush, petitioner chose to be evaluated by Natalie Wallace, M.D., who is board certified in forensic psychiatry and has extensive experience working with individuals afflicted with a sexual addictions. Members of the panel were impressed that petitioner chose a highly-qualified, objective witness who would provide a fair and disinterested report. Dr. Wallace concluded that petitioner fit the diagnosis of sexual disorder, not otherwise specified, in remission. Although recidivism is often a concern, she calculated that petitioner's risk was less than 2%. (HP Report 10/17/14, p 17.)

In Dr. Wallace's opinion, petitioner was capable of practicing law, albeit with some safeguards in place. Specifically, she recommended:

> (a) Petitioner should continue with an accountability partner for his sexual disorder, not otherwise specified, in remission; and should attend or lead a sexual addiction group weekly in which attendance is verified for at least 12 months;
> (b) Petitioner should be supervised for a minimum of six months when interacting with female clients, law students or subordinates;
> (c) Twelve months after Petitioner returns to the practice of law, a review of his conduct, attendance in sexual addiction groups, and contact with psychology [sic] should be reviewed.

The panel majority determined that the safeguards were merely precautionary measures and that reinstating petitioner's license was not contingent upon implementing them. Again, the Administrator did not present any evidence to the contrary. However, as described in more detail below, the dissent disagrees with this interpretation.

Due to the testimony of numerous credible witnesses, psychological evaluations and petitioner's commitment to his rehabilitation, the panel found that he had established through clear and convincing evidence that he could be recommended as a person fit to practice law.

C. Dissent of Panel Member Bruce A. Courtade

Hearing Panel Member Bruce A. Courtade dissented. He argued that although petitioner "presented a compelling case for the redemptive powers of faith, family and friendship," he nevertheless had not met the requirements for MCR 9.123(B)(7) due to the "abhorrent nature of the initial conduct," and the restrictions placed upon petitioner by mental health professionals and his church. (HP Report 10/17/14, p 31.) Additionally, the dissent contended that petitioner arguably failed to prove that his post-suspension conduct was "exemplary" and "beyond reproach." *See* MCR 9.123(B)(5).

First, petitioner's underlying crime was particularly egregious and represented a betrayal of public trust and a profound disrespect for the office and the legal profession generally. MCR 9.123(B)(7) requires the panel to consider "all of the attorney's past conduct, including the nature of the misconduct that led to the revocation or suspension." Here, petitioner used his position of power to "turn the courthouse into a cathouse" when he assaulted a desperate criminal defendant. (HP Report 10/17/14, p 42.) He promised to reduce her charges in exchange for sex, knowing that a lesser plea was in violation of an official policy. Then he went a step further by entering the plea and obliterating evidence in a blatant attempt to hide his crime. The result is that he traded an "unauthorized plea for his own sexual gratification." *Id.*

Petitioner's position as city attorney made the conduct even more deplorable. The dissent pointed out that prosecutors are entrusted with considerable discretion in the justice system and are therefore held to the highest ethical standards, having the responsibility of a minister of justice, not simply that of an advocate. See, MRPC 3.8, comment. Here, petitioner was an entrusted officer of the court and a "minister of justice," yet he engaged in outrageous misconduct, which "defiled the most public symbol of justice in his community." (HP Report 10/17/14, p 31.) Prosecutorial misconduct not only harms the immediate parties affected, but it also deteriorates the public's perception of the integrity of the system.

Second, in the dissenter's view, Dr. Wallace conditioned petitioner's reinstatement on several requirements that demonstrated he was not fully rehabilitated and therefore unfit to practice law.

The recommendation that he abstain from interacting with female clients, law students or subordinates unsupervised for six months raised a particular concern about his present fitness. The Michigan Court Rules require petitioner to prove that he can safely be recommended as a person fit to practice law to the public, not a portion thereof. *See* MCR 9.123(B)(7). Here, where a psychologist has recommended substantial limitations on who petitioner can or should interact with, it was plain to the dissenter that he had fallen short of this requirement. The majority, however, noted that these safeguards were set forth as recommendations, not requirements to his reinstatement and the practice of law.

In addition, the dissent contended that even respondent's church, which is in the business of forgiveness, had not fully reinstated him to the status he enjoyed prior to the incident.

Finally, the dissent argued that petitioner's conduct post-conviction may have fallen short of being "exemplary and above reproach," thereby failing to satisfy MCR 9.123(B)(5), because his work for Mr. Bosgraaf came "perilously close" to the unauthorized practice of law. (HP Report 10/17/14, p 36.) Petitioner drafted pleadings for submission to the court and provided input on legal strategy. However, based on the credible unrebutted testimony of attorneys Wardrop, Bila and Reynolds, he concluded that petitioner did not, in fact, cross the line and engage in the unauthorized practice of law. Notwithstanding this conclusion, he asserted petitioner's "willingness to come as close as he did to the line of impermissible conduct" as a basis for arguing that he did not meet his burden of proving through clear and convincing evidence that his conduct was "exemplary and above reproach." *Id.* Ultimately, he did not make a final determination on this issue, contending that the two aforementioned issues were more significant.

In summation, the dissent acknowledged that petitioner demonstrated admirable strength and character by taking responsibility for his conduct and addressing his disorder. However, given the seriousness of the crime committed by petitioner and the restrictions placed upon petitioner by Dr. Wallace and his church, he concluded that petitioner failed to satisfy MCR 9.123(B)(7), and therefore his petition should be denied.

III. Arguments on Review

The Grievance Administrator petitioned for review, arguing that the panel erred in finding petitioner eligible for reinstatement, because he failed to establish by clear and convincing evidence that: (A) he has not practiced law during the period of his suspension (MCR 9.123(B)(3)); (B) he can

safely be recommended to the public, the courts, and the legal profession as a person fit to practice law (MCR 9.123(B)(7)); and (C) his conduct since the order of discipline has been exemplary and above reproach (MCR 9.212(B)(5)).

A. Standard of Review

In reinstatement proceedings, this board and the court review findings of fact for proper evidentiary support. *In re McWhorter,* 449 Mich 130, 136; 534 NW2d 480 (1995). However, the grant or denial of a petition for reinstatement under MCR 9.123(B) involves "an element of subjective judgment" and the ultimate "discretionary question whether the Court is willing to present that person to the public as a counselor, member of the state bar, and officer of the court bearing the stamp of approval from this Court." *Grievance Administrator v August,* 438 Mich 296, 311; 475 NW2d 256 (1991).

It is well-established that the passage of time alone does not raise a presumption in favor of reinstatement. See e.g., *In re Reinstatement of David S. Feinberg,* 08-70-RP (ADB 2010), collecting authorities and citing *In re Reinstatement of William Leo Cahalan, Jr.,* 04-129-RP (ADB 2006). Thus, the simple fact that more than three years have passed since the time of petitioner's suspension does not entitle him to be reinstated. Petitioner is required to satisfy the requirements of MCR 9.123(B), which provides in relevant part:

> An attorney whose license to practice law has been revoked or suspended for more than 179 days is not eligible for reinstatement until the attorney has petitioned for reinstatement under MCR 9.124 and has established by clear and convincing evidence that:
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> * * *
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> (3) he or she has not practiced or attempted to practice law contrary to the requirement of his or her suspension or disbarment;
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> * * *
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> (5) his or her conduct since the order of discipline has been exemplary and above reproach;
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> * * *
>
> (7) taking into account all the attorney's past conduct, including the nature of the misconduct that led to the revocation or suspension, he or she nevertheless can safely be recommended to the public, the courts and the legal profession as a person fit to be consulted by

> others and to represent them and otherwise act in matters of trust and confidence, and in general to aid in the administration of justice as a member of the bar and as an officer of the court.

The burden is on the petitioner to prove clearly and convincingly that he is fit to practice law and that reinstating his license in no way endangers the public. We review the panel's decision to grant reinstatement in this matter applying the above standard.

B. The Panel Did Not Err in Finding that Petitioner Established He Did Not Engage in the Unauthorized Practice of Law.

As noted, all members of the panel found clear and convincing evidence that petitioner did not engage in the unauthorized practice of law in violation of his suspension. There is proper evidentiary support for this finding.

In order to be reinstated, petitioner must show that "he or she has not practiced or attempted to practice law contrary to the requirement of his suspension." MCR 9.123(B)(3). MCR 9.119(E) forbids a suspended lawyer from:

> (1) practicing law in any form;
> (2) having contact either in person, by telephone or by electronic means, with clients or potential clients of a lawyer or law firm either as a paralegal, law clerk, legal assistant, or lawyer;
> (3) appearing as an attorney before any court, judge, justice, board, commission or other public authority; and
> (4) holding himself or herself out as an attorney by any means.

As noted by the panel, the Michigan Supreme Court defined the practice of law as counseling or assistance "in matters that require the use of legal discretion and profound legal knowledge." *Dressel,* p 566. Here, petitioner, three attorneys and petitioner's employer testified that his work was administrative in nature–akin to that of a paralegal. Although paralegal work greatly assists attorneys on legal matters, it does not demand the legal discretion and knowledge necessary to elevate it to the level of practicing law.

Based on the plethora of testimonial evidence, it is clear that petitioner's administrative responsibilities did not rise to the level of practicing law. Further evidencing his non-legal position, his employer, Mr. Bosgraaf, retained outside counsel to handle his legal affairs and viewed petitioner as occupying a managerial role. He testified that he hired petitioner for his organizational skills and

computer expertise, not because of his legal knowledge. (HP Report 10/17/14, p 15.) Petitioner went to great lengths to determine the permissible scope of his employment by consulting a legal ethicist recommended by the State Bar of Michigan, and he ensured that his employer and his employer's outside counsel were aware that he was not permitted to engage in the practice of law. *Id.* Although he occasionally prepared drafts of legal documents, the testimony establishes that they were always reviewed, approved, and signed by a licensed attorney.

The panel and the Grievance Administrator paid particular attention to an email sent by petitioner to Mr. Bosgraaf. (Pet. Exhibit #7.) The Grievance Administrator argued that this email plainly demonstrated that petitioner was providing legal advice regarding complex legal doctrine, and that it was not an isolated incident, but rather, "part of a larger pattern of conduct that, when taken as a whole, indicates that Petitioner has engaged in the continuous practice of law." (Pet. Brief 11/17/14, p 9.) However, the panel was not convinced that the contents of that email were dispositive, and any significance that the Grievance Administrator placed on the email was explained and refuted by petitioner's witnesses. The Grievance Administrator provided no additional evidence to rebut the testimony of Mr. Bosgraaf or the three practicing attorneys who had knowledge of the scope of petitioner's work.

Furthermore, the profession and the legislature prohibit the unauthorized practice of law primarily to protect the public from those who practice without a license. The Supreme Court of Michigan cited "an interest in protecting the public from the danger of unskilled persons practicing law" as the bedrock for the unauthorized practice of law statutes. *Dressel,* p 564. Here, petitioner presented no such danger to the public. He was forthright with his employer and colleagues about the status of his law license and the underlying circumstances which led to his suspension. He had no interaction with clients or potential clients on behalf of a lawyer or law firm, nor is there any evidence that he misrepresented himself as an attorney to the courts or the public at large.

Petitioner satisfied his burden of demonstrating that he did not engage in the unauthorized practice of law, because he made ample disclosures about the state of his license to his employer and his co-workers, his tasks were largely administrative in nature, and he did not attempt to hold himself out as an attorney or mislead the public in any way. Therefore, we hold that the panel's decision was supported by clear and convincing evidence and that petitioner met his burden under MCR 9.123(B)(3).

C. The Panel Did Not Err in Finding that Petitioner Met His Burden of Establishing that He Can Be Safely Recommended to the Public, the Courts, and the Legal Profession As a Person Fit to Practice Law.

The principal issue in this case is whether petitioner has showed by clear and convincing evidence that he is fit to practice law under MCR 9.123(B)(7), which provides:

> Taking into account all of the attorney's past conduct, including the nature of the misconduct that led to the revocation or suspension, he or she nevertheless can safely be recommended to the public, the courts and the legal profession as a person fit to be consulted by others and to represent them and otherwise act in matters of trust and confidence, and in general to aid in the administration of justice as a member of the bar and as an officer of the court.

The rule requires that we first consider the severity of the underlying incident. Petitioner's actions were reprehensible. Not only did he use his position of power to take advantage of a desperate criminal defendant and trade sex for a lighter sentence, he altered court documents in an attempt to hide his crime. This misconduct prejudiced the administration of justice and constituted a gross abuse of his position as a prosecuting attorney for the City of Holland - a position of power where he was entrusted with heightened responsibilities and discretion. The severity of the underlying crime has been well-documented by the panel, the Grievance Administrator, and the press.

Despite the deplorable and extreme conduct that led to the suspension, the panel found clear and convincing evidence that petitioner is a reformed man who endeavored to make amends and regain the trust of those around him, and has made a great deal of progress in confronting an addiction.

Twelve witnesses supported petitioner's petition for reinstatement. Among them were members of petitioner's church and his pastor, business owners and attorneys, and his wife. Each spoke of a man who had learned hard and humbling lessons, who fought to regain his family and their trust, who became ardently involved in his church and who strengthened his religious devotion.

Perhaps the most compelling witness was petitioner himself. Petitioner's actions to address his sexual addiction during his suspension provide the cornerstone of the panel's conclusion in favor of reinstatement. He has taken full responsibility for his conduct, and openly admitted to his sexual disorder. He has committed to an onerous rehabilitation plan. His extensive efforts to improve

himself, enumerated above, demonstrated that he possessed the moral fortitude to face his addiction. Following his incarceration, he made considerable changes in his life limiting his freedom, such as installing computer monitoring software. He has attended numerous counseling sessions and workshops with Dr. Laaser and his treating psychologist, Dr. Bush, and he took the initiative to develop and lead weekly small group meetings for men at his church.

Petitioner's reinstatement is supported by mental health professionals, including Dr. Bush who testified that he did not know what else petitioner could have done to rehabilitate himself. Dr. Wallace's report concurred that petitioner suffers from a sexual addiction, which is currently in remission, in large part because of his own efforts to address the problem and seek help. The Wallace Report indicated that petitioner's likelihood of recidivism was very low and acknowledged the effectiveness of the current safeguards he has in place, such as meeting with his accountability partner. In sum, there is ample evidence from which to conclude that the efforts he has made to seek professional help demonstrate a sincere desire to address his condition and become a reformed and pious man.

Furthermore, Pastor Doornbos, who has worked closely with petitioner and his wife since the incident, vehemently advocated for his reinstatement. The Pastor testified that petitioner has demonstrated, "not mere remorse," but "true repentance." (Tr 6/19/14, p 295.) After the incident, petitioner was stripped of "all responsibilities and ministries" within the church. (Tr 6/19/14, p 280.) The congregation also placed certain restrictions on petitioner after the incident, such as barring him from being alone with female members. However, over time, he has won back the trust of his church by demonstrating true humility and his commitment to rehabilitation. Petitioner developed a men's ministry and has been asked by the elders to serve as the director of that program. Additionally, the same women in the congregation that were initially angry with petitioner have now become very supportive of the role petitioner currently has in the congregation. The Pastor testified, "there are some remaining, not restrictions, but some remaining places that . . . Carl has not been fully invited into that will happen now in times to come." (Tr 6/19/14, p 304.)

The dissent reasoned that although petitioner's commitment to his church is admirable, he should not be considered fit for reinstatement while the church "still has reservations about fully restoring him to unrestricted membership in its ranks and to the positions that he occupied before the incident in question." (HP Report, dissent, p 47.) In his brief on review, petitioner persuasively

argues that the record establishes that, although he has not yet been invited to rejoin the Council of Elders, his other activities in the church do not outweigh the extensive evidence of petitioner's deeds and rehabilitation in the church community and elsewhere. The panel majority correctly interpreted the testimony of Pastor Doornbos and concluded that petitioner clearly has the backing and trust of his congregation, and that they have confidence in his commitment to rehabilitation.

We agree that there is adequate evidentiary support to justify the panel's finding that petitioner satisfied MCR 9.123(B)(7) by clear and convincing evidence.

D. Petitioner Has Shown that His Conduct Since the Order of Discipline Has Been Exemplary and Above Reproach.

We are not convinced by the argument put forth by the Grievance Administrator that petitioner's conduct since the order of discipline has not been exemplary and above reproach. The only evidence cited for this assertion was the claim that he came "perilously close" to practicing law while working with Mr. Bosgraaf. (HP Report 10/17/14, dissent, p 36.) This argument conflates two distinct factors in the rule and arguably disregards canons of statutory and rule interpretation requiring the fair application of broad and narrower rules. The dissent explicitly stated, "I do not believe that Petitioner crossed the line into prohibited conduct." *Id.* However, he then suggested that because petitioner came close to violating this narrower rule, whether his conduct during his suspension was exemplary presents a "close call" (one that need not be made in light of other conclusions reached by the dissent). The panel unanimously concluded that petitioner did not practice law while suspended, and that he went to great lengths to avoid doing so. Likewise, there is abundant evidence of exemplary conduct during the period of suspension. We are not persuaded that the panel erred in concluding that petitioner's conduct was not exemplary and above reproach.

IV. Conclusion

This is a difficult case. Five years ago, petitioner committed ethical violations that cannot be fully described merely by the term "professional misconduct." His act of trading sex for a plea to a lesser offense was no less than corrupt and an abuse of prosecutorial power which strikes at the heart of a system of justice that must not only be fair, but must also be perceived as fair in order to function effectively. His alteration of records thereafter compounded this conduct.

We acknowledge and appreciate the serious and studious manner in which all three members of the hearing panel confronted the difficult questions in a case such as this: when, if ever, can rehabilitation and fitness after such conduct be shown, and what evidence will reach the threshold of clear and convincing?

Given that this case involves an attempt to show rehabilitation after misconduct that was a significant affront to the administration of justice, there was certainly no guarantee that petitioner would be found eligible for reinstatement. In a case involving gross, ongoing, and widespread prejudice to the administration of justice, our Court explained that the reinstatement eligibility requirements involved much more than the passage of time and the rote recitation of flowery fitness language. *Grievance Administrator v August*, 438 Mich 296, 311; 475 NW2d 256 (1991). The nature of the misconduct and the circumstances under which it was committed in a given case may require more acts of rehabilitation, and/or a longer period of rehabilitation and exemplary conduct, to support a finding of eligibility under MCR 9.123(B)(5) - (7) than may be required in other cases which may appear similar on the surface.

Petitioner's misconduct was thoroughly aired in a discipline hearing before a respected and experienced hearing panel that determined a three-year suspension was appropriate. Four years later, another excellent hearing panel conducted an exhaustive review of the impressive evidence in support of the petition for reinstatement and concluded, in a split decision (attached hereto), that the requirements of MCR 9.123(B)(7) were established. Perhaps the dissent of the panel member below, and that of our learned colleague on this Board, shows that there may never be unanimity on whether petitioner should be reinstated, or when. However, the panel majority was obviously convinced that the record showed self-discipline more than calculation, and sincerity above all in petitioner's efforts at transformation after terrible misconduct. After a careful review, we do not disagree.

There being proper evidentiary support for the panel's decision, we affirm the hearing panel's order of eligibility for reinstatement.

Board members James M. Cameron, Jr., Dulce M. Fuller, Louann Van Der Wiele, Michael Murray, James A. Fink, and John W. Inhulsen concur in this decision.

Board members Lawrence G. Campbell and Sylvia P. Whitmer, Ph.D., were absent and did not participate.

Dissenting Opinion of Board Member Rosalind E. Griffin, M.D.:

I respectfully dissent. Although I agree with my colleagues in the majority that petitioner has gone to great lengths to present a strong case for reinstatement, the petition should be denied on the basis of MCR 9.123(B)(7). The language of that provision instructs us to consider the underlying conduct. Here, petitioner engaged in egregious misconduct, harming a criminal defendant, and dishonoring his office and the legal profession as a whole. Petitioner used his position of power as a prosecuting attorney to elicit sex from a young woman through exceedingly coercive means. In addition, he tampered with official court documents in a brazen attempt to cover up his crime. The obliteration of the record of her blood alcohol level evidences knowledge of guilt and a complete disregard for the sanctity of the courts and the judicial system.

I acknowledge petitioner's efforts, but question whether, at this time, petitioner can be safely recommended to the public at large as someone who is fit to be consulted in matters of trust and confidence, and as one who can be trusted to aid in the administration of justice. I therefore would vacate the hearing panel's order of eligibility and would deny petitioner's petition for reinstatement.

STATE OF MICHIGAN

Attorney Discipline Board

In The Matter of the Reinstatement
Petition of CARL J. GABRIELSE, P 67512,

Petitioner.
_____/

Case No. 14-23-RP

REPORT OF KENT COUNTY HEARING PANEL #1

PRESENT: Martha E. Reamon, Chairperson
Bruce A. Courtade, Member
Kevin J. O'Dowd, Member

APPEARANCES: John K. Burgess, Associate Counsel
for the Attorney Grievance Commission

Jon R. Muth,
for the Petitioner

I. EXHIBITS

Exhibit 1	Report of Matthew Bush, Ph.D., dated February 5, 2014
Exhibit 2	Letters from Petitioner to Judge Jonas and Judge Knoll of the Holland District Court, the court staff, the defense bar, the Holland Police Department, the Ottawa County Prosecutor's Office, the other district court judges not specifically in Holland, Judge Post, and to the Circuit Court judges, dated October 5, 2011
Exhibit 3	March 8, and March 9, 2011 e-mail correspondence between Petitioner and Ron VanderVeen
Exhibit 4	July 18, 2012 letter from Judge Edward R. Post to William W. Jack, describing respondent's role being that of an agent communicating with and for Bosgraaf with the attorneys
Exhibit 5	Report of William W. Jack, Jr., dated August 7, 2012
Exhibit 6	Un-executed trust documents amendments for Suzanne and Scott Bosgraaf
Exhibit 7	July 25, 2011 email from Petitioner to Scott Bosgraaf regarding the HTSTS litigation
Exhibit 8	Copy of Petitioner's calendar for July 24 through 30, 2011
Exhibit 9	Summons in the matter of *HTSTS, LLC, et. al. v Scott Bosgraaf,* 20th Circuit Court Case No. 11-02197-CK
Exhibit 10	February 10, 2011 and February 12, 2011 email correspondence between Petitioner and Ron VanderVeen
Exhibit 11	Letter from Derek Stempin in support of Petitioner
Exhibit 12	January 30, 2012 time sheet
Exhibit 13	Report of Natalie Wallace, M.D., dated June 17, 2014

II. WITNESSES

June 9, 2014 Hearing	June 19, 2014 Hearing
Dennis Bila	Keith Doornbos
Scott Bosgraaf	Steve Duer
Carl Gabrielse, Respondent	Karin Gabrielse
Scot Reynolds	Mike Jager
Natalie Wallace, M.D.	Susan A. Jonas
Robert Wardrop	Scott Nyhoff
	Jane Patterson
	Dave Stielstra

III. STATEMENT OF PERTINENT FACTS AND PROCEDURAL HISTORY

A. The Conduct Giving Rise To Petitioner's Suspension

The facts leading up to the suspension of Petitioner's license to practice law are not in dispute. By all accounts, Petitioner was a fine attorney, employed as an associate with a reputable firm that had the contract to serve as the City of Holland's attorney, including the contract to prosecute civil infractions and misdemeanor offenses.

While employed by his law firm, Petitioner acted as the Deputy City Attorney for Holland ("the City"). In that capacity, on November 3, 2009, Petitioner was acting as the City's prosecuting attorney, and met with a young woman who was charged with drunk driving. The accused had an inordinately high blood alcohol level - a .24. (Tr 6/19/14, p 260.)[1] According to established policies in place at the time, if a defendant's blood alcohol level was above a .10, no plea bargain would be offered to allow the accused to plead to impaired driving. (Tr 12/14/10, p 35.)

Petitioner knew of this policy. He testified that he "told her that there really wasn't anything I could do about this case because of the high level of her blood alcohol content . . . I made pretty clear to her that because of her blood alcohol content I couldn't do anything with the charge." (Tr 12/14/10, pp 39-40.)

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1 Four days of hearing transcripts - two from the original proceeding that are deemed part of the record pursuant to MCR 9.124(C)(2)(b) and two from the days spent taking testimony on the pending Petition for Reinstatement - are cited herein. To avoid confusion, they shall be referenced by date and page number.

Petitioner also found her to be attractive. (Tr 12/14/10, p 40.) When the accused purportedly told him "I'm willing to do anything, and when I say anything, I mean anything" to avoid having the drunk driving charge on her record, Petitioner told her that he could not dismiss the charge "because that will catch too many people's attention, but I could reduce it to an impaired, and that we could possibly have fly." (Tr 12/14/10, pp 40-41.) When the accused agreed to this proposal, Petitioner arranged for her to meet him at the locked entrance to the judicial corridor, escorted her into the jury room, and they had sex in the bathroom located within that jury room. (Tr 12/14/10, p 41.)

At some point after agreeing to reduce the charge in exchange for sex with the accused, Petitioner took one additional step to avoid attracting attention to this plea bargain that was so out of the ordinary: he obliterated the blood alcohol level recorded on the face of the ticket so that the judge who was accepting the plea would not realize how high it was. (Tr 6/19/14, p 260.) Thus, he not only agreed to accept a plea bargain from a young woman whom he found sexually attractive that was significantly reduced from what other similarly situated accused's would have been offered in exchange for sex, but to facilitate that illicit conduct he deliberately took action to prevent the court from knowing what he had done, all while acting as a prosecuting attorney for the City of Holland.

After having sex with the accused in the jury room, Petitioner escorted her back down the judicial corridor and through the locked doorway into the public hallway outside the courtroom. They then officially entered her plea to impaired driving, and she left the courtroom.

Two days after the original incident, the accused returned to the courthouse - this time wearing a hidden microphone so that the Ottawa County Sheriff's Department could tape her conversation with Petitioner. (Tr 6/9/14, p 80.) After once again arranging to have sex with the accused, Petitioner went into the judicial corridor, planning to again give her access to the jury room through the locked door. Instead, he was met by deputies from the Ottawa County Sheriff's Department, who arrested him.

Petitioner was initially charged with and pled guilty to two felonies: third-degree criminal sexual conduct (involving force or coercion) and misconduct in office. (Grievance Administrator's Reinstatement Report, (hereinafter "AGC Report"), Attachment B.) As part of the plea agreement, he was sentenced to six months in jail (AGC Report, Attachment B), serving five months (Tr 6/9/14, p 8), and agreed to undergo sexual counseling with a therapist. Upon successful completion of a one-year deferred sentence involving that therapy, the CSC/3rd charge against him was dismissed, and he was allowed to enter a plea to misconduct in office and gross indecency between a man and woman. (AGC Report, Attachments B and C.)

B. Petitioner's Suspension

As the result of his guilty plea, disciplinary proceedings were initiated against Petitioner on July 19, 2010. (AGC Report, Attachment A.) Hearings were conducted on December 14 and 15, 2010. On February 25, 2011, a well-respected ADB panel issued a report suspending Petitioner's license for three years. The report also provided: "If Mr. Gabrielse petitions to have his license restored, a complete psychological evaluation of him must be performed and presented to the Attorney Discipline Board before there is any consideration of reinstatement." (AGC Report, Attachment D.)

C. Petitioner's Petition And Hearing For Reinstatement

1. The Petition and the AGC's Report

Petitioner filed his petition for reinstatement on March 7, 2014. On May 7, 2014, the Attorney Grievance Commission (hereinafter "AGC") filed its *Investigative Report*, consisting of:

Attachment A: Notice of Filing of Judgment of Conviction filed July 19, 2010
Attachment B: Record of Plea and Transcript of Sentencing
Attachment C: Judgment of Conviction modified on March 7, 2011
Attachment D: Kent County Hearing Panel #3 Report issued February 25, 2011
Attachment E: Notice of Suspension (3 years) effective February 24, 2010
Attachment F: Affidavit of Compliance filed March 29, 2011
Attachment G: Transcript of Sworn Statement conducted on April 15, 2014
Attachment H: Proof of Payment of Costs in the amount of $3,265.98
Attachment I: Bank Account Statements
Attachment J: Tax returns (redacted)
Attachment K: Copies of three civil complaints and orders of dismissal
Attachment L: Pine Rest Holland Clinic Psychological Report of Dr. Matthew Bush dated February 5, 2014
Attachment M: SA Meeting Attendance Verification

The AGC took no position regarding Petitioner's petition: "The Grievance Administrator is advancing no position at this time with regard to Petitioner's Petition for Reinstatement and is leaving Petitioner to his burden pursuant to MCR 9.123(B)." (AGC Report, p 2.) Pursuant to MCR 9.124(C)(2)(b), this Report and its supplements are deemed to be part of the record upon which this panel's decision must be based.

The AGC supplemented its *Investigative Report* on May 22, 2014, when it provided the hearing panel with a copy of Petitioner's deposition that had been taken in a lawsuit involving his employer. Again, the AGC took no formal position regarding how the contents of that deposition transcript, which discussed the nature and job responsibilities of Petitioner's post-jail employment. Then, on June 3, 2014, the AGC submitted a *Second Supplemental Investigative Report*, consisting of a May 30, 2014 letter (along with six attachments) from the law firm (Cunningham Dalman, PC) for whom Petitioner was employed at the time of the incident giving rise to his suspension. Once again, the AGC took no position regarding the significance of the Cunningham Dalman letter, simply indicating that it had "relevance to Petitioner's fitness to practice law or his conduct during the period of disciplinary suspension."

2. The Pre-Hearing Briefs

On June 2, 2014, Petitioner submitted his pre-hearing brief. The AGC filed its response two days later, on June 4, 2014. That response focused on two issues which the AGC felt raised "serious questions regarding Petitioner's fulfillment of [the requirements of MCR 9.123(B)]:" 1) the work that Petitioner performed for Scott Bosgraaf after he was released from jail but while his law license was suspended; and 2) certain restrictions on his ability to practice law that were recommended in the report of the doctor who performed his psychiatric evaluation.

3. The Hearing

(a) Twelve Of The Fourteen Witnesses Spoke In Favor Of Petitioner's Reinstatement

Over the course of two days, a total of fourteen witnesses testified before the panel regarding

Petitioner's petition for reinstatement. Of the fourteen witnesses, twelve were called to support Petitioner's petition.[2] The AGC called no witnesses. Even though three attorneys showed up for some or all of the first day of the reinstatement hearing,[3] and each presumably would have testified in opposition to the petition for reinstatement, none were called as witnesses. Despite being told that the hearing was continued until June 19, 2014, when they would be given the opportunity to speak, none chose to appear on that day. Two members of the Holland legal community did appear on both days of the hearing, and were given the opportunity to address the panel: Holland District Court Judge Susan Jonas (P37957), who spoke on behalf of herself and Holland District Judge Bradley S. Knoll (P28449); and Holland criminal defense attorney Jane L. Patterson (P37960).

(b) The Testimony Supporting Petitioner - Generally

Petitioner and his witnesses provided compelling testimony regarding his efforts to address his sex addiction. They spoke of changes that he has made to his life, from installing monitoring programs on his computer that automatically notify his wife and his accountability partner about every website that he visits, to his counseling sessions with Drs. Laaser and Bush, which eventually led him to participate in and then lead small group meetings with men from his church. Petitioner's witnesses spoke of a man who had learned hard and humbling lessons, who had fought to regain his family and their trust (including scheduling one weekday off per week to devote solely to his family), who volunteered many hours of his time to his church ministries and small groups, and who seeks reinstatement of his license to practice law so that he could help the less fortunate. In sum, the testimony by Petitioner and the witnesses called on his behalf (and particularly the testimony of Pastor Doornbos and Ms. Gabrielse) offered clear and convincing evidence that Petitioner has

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2 Testifying in support of Mr. Gabrielse's reinstatement were: Mr. Gabrielse; Natalie Wallace, M.D. - the psychiatrist who examined him as part of the reinstatement process; attorney Robert F. Wardrop, II (P31639); attorney Dennis W. Bila, II (P39975); attorney Scot A. Reynolds (P71396); Mr. Gabrielse's employer, Scott Bosgraaf; the Gabrielses' pastor, Keith Doornbos; Scott Nyhoff; Mike Jager; Steve Duer; Dave Stielstra; and Karin Gabrielse, Mr. Gabrielse's wife.

3 Andrew J. Mulder (P26280) of Cunningham Dalman, PC and Sean P. Fitzgerald (P60654) and Sara E.D. Fazio (P62046) of Kreis Enderle Hudgins & Borsos, PC.

made significant changes to his life and provided inspiration for those looking for redemption after a stunning fall from grace.

With two glaring weaknesses mentioned in greater detail below, it is difficult to imagine testimony more favorable for an attorney seeking reinstatement to the practice of law than that offered in this case.

(c) The AGC's Evidence

The AGC offered no testimony to contradict the praise heaped upon Petitioner by those who testified on his behalf. No one called by the AGC contradicted anything that Petitioner's witnesses offered in support of his petition.

The only evidence submitted by the AGC came through its Investigative Report and its two supplements thereto. (Dr. Wallace's Report was also offered by the AGC, but was obtained by Petitioner as a prerequisite to filing his petition for reinstatement.) Among the AGC Report and its supplements, the only items that seemingly impact the petition or would tend to refute Petitioner's fitness to be reinstated to the practice of law are the first supplement (Petitioner's deposition taken in a lawsuit against Mr. Bosgraaf in which he discussed the type of work that he performed for Mr. Bosgraaf) and the second supplement (the Cunningham Dalman letter that questioned his "moral character" based on the underlying conduct and offered evidence that they felt crossed the line into the unauthorized practice of law while his license was suspended).

The AGC offered no witnesses to expound upon the deposition testimony or letter offered in the supplements. Petitioner and his supporting witnesses (particularly the compelling testimony of attorneys Wardrop, Bila and Reynolds regarding the lengths to which Petitioner went to assure not only that they knew about his license suspension; the efforts that they made to assure that he did nothing that would place their licenses in jeopardy; and the steps that they took to make clear that they - and not Petitioner - were the ultimate decision makers concerning legal pleadings, tactics and strategy) sufficiently refuted what at first

blush appeared to be evidence that Petitioner may have crossed the line into prohibited conduct.[4]

(d) The Independent Witness' Testimony

Judge Jonas and Attorney Patterson voluntarily appeared at both days of the hearing because they felt strongly that Petitioner should not be readmitted to the practice of law. Judge Jonas, speaking on behalf of herself and her colleague, Judge Knoll, highlighted Petitioner's attempt to mislead the court by "obliterating" the blood alcohol content on the original ticket. (Tr 6/19/14, p 260.) She spoke of his disregard for the Court's sanctity and its safety by conducting his sexual encounter in what should have been a secured part of the courthouse - in a jury room directly adjacent to Judge Knoll's courtroom. (Tr 6/19/14, p 261.) She spoke of his "disdain," "deception" and "dishonesty" toward the Court, and of the fact that she was in essence forced to watch as he arranged a second tryst with the accused because her courtroom has a window into the conference room where Petitioner met with the accused. (Tr 6/19/14, p 261.) She spoke clearly and convincingly of Petitioner's underlying conduct, which she characterized as "a shocking breach of public trust and the standards of ethical conduct for . . . an attorney, especially one in a position of prosecutorial power and control over a vulnerable criminal Defendant." (Tr 6/19/14, p 262.)

Ms. Patterson's testimony was not nearly as persuasive as Judge Jonas'. It appeared that she was angry that Petitioner did not offer a plea bargain to her daughter that Ms. Patterson felt would have been granted by other prosecutors. She also claimed to speak on behalf of a great number of lawyers within the Holland legal community, but then admitted that she had only spoken to one other lawyer (besides Judge Jonas) about the petition. In short, Ms. Patterson's testimony was neither persuasive nor particularly helpful.

IV. MAJORITY OPINION

As a condition of reinstatement, the Petitioner in this case must prove each element in MCR 9.123(B) by clear and convincing evidence. According to the court rule, there are nine requirements which must be

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4 Even the email in which Mr. Gabrielse appeared to be offering legal advice (Exhibit 7) was placed into context by Mr. Gabrielse and Attorney Reynolds, so that the unrebutted evidence on the record compels a finding that Mr. Gabrielse was not engaged in the practice of law. Without any evidence from the AGC contradicting Mr. Reynolds' credible sworn testimony, there is no choice but to find that Mr. Gabrielse may have improperly taken credit for Mr. Reynolds' idea, but that he was not practicing law.

fulfilled. In this case, it became clear that of the nine, two were mainly at issue.

The Petitioner was the first witness to testify. A great deal of his testimony revolved around the steps he has taken to rehabilitate himself after the incidents of November 2009. Respondent testified to the following:

1. That he treated with Dr. Laaser in Minnesota. Dr. Laaser is a specialist in dealing with sexual addiction;

2. He testified regarding safeguards and filters that were placed on all computers, laptops, etc. to which he had access;

3. He worked with an "accountability partner," Steve Duer, with whom he talked daily, and met weekly. They discussed the issues that he was having during his recovery and rehabilitation;

4. He treated with Dr. Matthew Bush, a psychologist practicing at Pine Rest Hospital. He sought help from Dr. Bush because of the doctor's experience treating patients with a sexual addiction. Petitioner treated with Dr. Bush from March 2010 through March 2011. In addition, he followed up with him for three sessions of therapy between January 9th and February 5, 2014.

5. In March 2013, he began his own accountability group at his church where he meets with members of the group on a weekly basis.

Mr. Gabrielse testified at length in this matter. The following is an excerpt from his testimony that illustrates his candor and sincerity, and his humble acceptance of responsibility for his egregious transgressions and positive commitment to change:

> MEMBER O' DOWD: The other panelists might have some questions on that issue, so I'm going to move on. I want to switch gears now to just the conduct that brings us here and granted you said a lot about it and you acknowledged your mistakes and been very straightforward on all that.
>
> But still, please, help us understand how a person of your intellect and capability and connections with the court and judges could override your conscience to do not just what you did but to do it in a courthouse. And help us to understand and be satisfied that sitting here today you truly have gone through some transformative process where you, yourself, must be shocked by what you did. Because the only analogy that I can come up with that could be in the same realm would be a religious leader, priest, or minister abusing his or her religious authority to have a sexual encounter with somebody in a church. It's that reprehensible. So talk to me about that.

THE WITNESS: Sure. And I -- I mean, I can't underestimate -- I can't underdescribe (sic) the wrongness of what I did. I completely acknowledge it. And as you just explained, it was absolutely inappropriate.

To me, what I've learned is just the power of having an addiction and the fact that it completely takes over and, obviously, common sense and conscience go to the wayside when you get caught by that strong of a thing, whatever you want to call it, and that's what I've learned over the last couple years.

Obviously, you know, the same with an alcoholic is your first step is acknowledging it. Because once -- when you're in it, it doesn't seem all that big of a deal. But for me I continued to feed that addiction until, obviously, I was willing to put aside what I know is wrong and to put aside my career and my profession.

I mean, looking at this logically and cooly and calmly and collectively, it makes absolutely no sense for what I did. And there's no explanation for it other than that I had gotten myself into and gone down a road, a bad road that led me to the point where I was willing to do that.

Now, the other side is your question about what's happened since. I think as Dr. Bush says -- and I'm grateful for this and I agree with it where he says, 'I don't know else Carl could have done,' and that's how I've addressed this. Anything that I could have done, I've taken this as serious as possible because I know how significant the misstep was and the consequences to myself and everybody else, close and far. But I've also learned in the process what type of a beast that is and how to stay away from it and to be the person I need to be and to, you know, get my identity and the needs I have met in the right ways.

You know, when people talk about an addiction they talk about, you know, it's meeting a legitimate need in an improper way. It's -- you know, there's needs that we all have and holes that we all have and you can either fill them in the right way or the wrong way. So part of this whole process is filling that in the right way and that's what I've been doing too.

So, you know, it's two sided, it's defending against getting the bad stuff out, but it's also putting small stuff in with the accountability group, the small group, Bible studies, you know, intentionally working on our marriage to fill the good in as well so that, you know, that ledge is a long ways over here (indicating) now. It's -- there's good stuff filled and the bad stuff is protected against, is the idea. So there's a lot between getting back into a path like that. I hope that answers your question. If not --

MEMBER O' DOWD: No, it does. It does. Thank you. (Tr 6/9/14, pp 65- 68.)

A. MCR 9.123(B)(3) - Petitioner Must Establish That He Has Not Practiced Or Attempted To Practice Law Contrary To The Requirements Of His Or Her Suspension

According to the court rule, a suspended attorney is forbidden from practicing law in any form, having contact either in person or phone or electronic means with clients or potential clients of a law firm or appearing as an attorney before any court, tribunal, judge, etc. and lastly holding himself out as an attorney under any circumstances.

After Petitioner's release from jail, he began working for a local businessman in Holland, Scott Bosgraaf. Prior to working for Mr. Bosgraaf, Petitioner consulted Marcia Proctor, a name he obtained through the State Bar of Michigan as being knowledgeable in these issues. He discussed with her the parameters and guidelines necessary before undertaking employment for Mr. Bosgraaf or others.

Petitioner also made it clear to Mr. Bosgraaf that he could not practice law or provide Mr. Bosgraaf with any legal advice.

In support of his position regarding this issue, Petitioner called three witnesses; Robert Wardrop, Dennis Bila, and Scot Reynolds, all of whom are attorneys practicing law in the State of Michigan. At one time or another, they all worked for Scott Bosgraaf. All three witnesses unequivocally testified that at no time during their contact with the Petitioner, did they believe he had engaged in the unauthorized practice of law. Following are several excerpts from their respective hearing testimony.

Mr. Wardrop, who represented Mr. Bosgraaf, and interacted closely with Mr. Gabrielse, testified as follows:

> Q. I believe you testified that you didn't recall any situation where Mr. Gabrielse actually made a decision in connection with the litigation that you were working on. Is that correct?
>
> A. That is correct.
>
> Q. Now, were there times from time to time where he may express a legal opinion on strategy or brainstorm in the most general sense?
>
> A. The most general sense, yes.

Q. When that happened, how would the issue of being brainstormed get vetted? Would you or Mac be the one, your brother I'm referring to, be the one to make the decision? Would you consult with the client? I'm trying to understand the resolution of that if Mr. Gabrielse was involved in brainstorming with you on legals issues how that ultimately got decided?

A. It would be decided between Mac and Scott Bosgraaf, me and Suzanne Bosgraaf, always.

Q. From your perspective would you liken Mr. Gabrielse's work to a paralegal or to an associate or --

A. Paralegal.

Q. Okay.

A. And we were very careful with that. I mean, that's our responsibility also as lawyers, is not to allow him to be a lawyer. And so when we started with Scott, we said, Carl's going to be a paralegal. He's not a lawyer. He's not an associate. He is a paralegal. Carl was also very cognizant of that and always was careful when he would do stuff for us to make sure we didn't feel he was crossing the line.

Q. But you were also very cognizant of that going in. Correct?

A. It's my license too. I'm the lawyer. (Tr 6/9/14, pp 137-138.)

Likewise, Mr. Bila, who also represented Mr. Bosgraaf and interacted closely with Mr. Gabrielse, testified:

Q. Was there any point in time where, in your representation of Scott Bosgraaf or his entities, that you observed Carl giving legal advice to Scott as a client?

A. No.

Q. Now, did you understand that he had a role with your client in communicating with you?

A. Sure.

Q. And typically when you wanted to communicate with Scott Bosgraaf, did you do that directly through Carl or did it depend?

A. It depended on what I was looking for. If I needed a decision to be made on a choice that I had to make, do we want to go path A or B, I would talk to Scott. If I needed document or something summarized, I would generally go directly to Carl.

Q. Did you have discussions with Carl from time to time where you solicited his thoughts or he offered his thoughts on how something might proceed, whether it was a matter of legal strategy or theory or anything else?

A. I have.

Q. And at the end of the day, whose advice was it that was transmitted to the client?

A. Mine.

Q. Yours alone?

A. Absolutely. They even asked me - we had a motion for summary we were doing to argue and they asked me to perform it for them. And I said, I don't dance, it's not your call. It's my decision. I have a certain way of practicing law. I'm too old to go back. It's my decision. My case. My risk.

Q. Did Carl on occasion draft, whether first drafts or second or third drafts or discovery responses, other documents you had to produce in court?

A. Absolutely.

Q. And when Carl did that, were they always received by you before finalized and filed?

A. Yes. (Tr 6/9/14, pp. 146-147.)

During the Reinstatement Hearing, considerable emphasis was placed upon Petitioner's Exhibit 7 by counsel for the Grievance Administrator, consisting of an email from Mr. Gabrielse to Mr. Bosgraaf, as evidencing an unauthorized practice of law. Candidly, Exhibit 7 is the sole document presented over which the Hearing Panel had any serious concerns relative to whether Mr. Gabrielse may have strayed too close to

the line in terms of practicing law during his suspension.[5] However, in addition to calling Mr. Wardrop and Mr. Bila to rebut these allegations, Petitioner's counsel also called attorney Scot Reynolds, who clarified and placed Exhibit 7 into proper perspective. Specifically, while Mr. Gabrielse presumed to be speaking in the first person in his email to Mr. Bosgraaf (Exhibit 7), he was actually relaying the legal thoughts and strategies he had just discussed with Mr. Reynolds. As Mr. Reynold's testified:

> Q. Could you look at Exhibit 7 in that exhibit book in front of you, please Scot?
>
> A. Sure. I have to show my age here, so --
>
> Q. Have you seen this particular e-mail before?
>
> A. Well, it's addressed to Scott Bosgraaf. I may have seen it somewhere along the line, yeah.
>
> Q. Now, did you happen to, before you came here, check your calendar for Monday, July 25, 2011, to see if you had a meeting with Carl Gabrielse that morning?
>
> A. I did. Yes, I did.
>
> Q. And was the subject of your meeting the same subject that's addressed in e-mail Exhibit 7?
>
> A. Yeah. I mean, at that time I think actually on the 11th later on that - or that morning we'd had a hearing, if memory serves me, and so we had met early in the morning, you know, to talk about the HTSTS issues, and we talked about the different strategies to come out of that. And I can't be certain, but this looks like it may have been the post hearing message that had sent to Scott, but we had already talked about during the course of the day, so --
>
> Q. Now, on its face, let's be candid, this looks like Carl is giving legal advice to Scott and he's got comments, he's got opinions, he's got views.

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5 Mr. Gabrielse's former firm, Cunningham Dalman, urged the Grievance Commission's counsel to closely examine this issue, in its letter dated May 30, 2014, included with the Grievance Administrator's Second Supplemental Investigative Report, but no witnesses were presented by the Grievance Commission to testify in this regard. Nor did the Hearing Panel identify any credible documentation suggesting an unauthorized practice of law, aside from concerns related to Exhibit 7, which concerns were adequately addressed by Petitioner's counsel and the attorney witnesses called on Petitioner's behalf, discussed above.

A. Uh-hum.

Q. Do these represent the exact comments and views that had been developed by you as a result of both your interaction with him that morning and whatever happened at court? In other words, was he reporting to Scott what happened and what your thoughts and views were?

A. Yeah, I mean, we hit on all these things. We sent in there - I mean, Carl knew, you know, Ron VanderVeen from Cunningham Dahlman (sic) and so I guess he - you know, he had - I guess he knew him personally. But, yeah, these were things we talked about during that morning.

Q. Is there anything in there that constitutes his ideas about something that are contrary to or different than the legal advise you gave to Scott Bosgraaf?

A. Well, I can't speak to Carl's sore feelings toward Cunningham Dalman. But the legal stuff, no, there's nothing in there that didn't come out of the discussion that he and I had, so - from a legal standpoint. (Tr 6/9/14, pp 170-172.)

Scott Bosgraaf also testified as to the working relationship between him and Petitioner. Interestingly, one of the main reasons he approached Petitioner about employment was based upon a case Petitioner had against Bosgraaf when he was a licensed attorney. Bosgraaf was impressed by Petitioner's handling of the case in an adversarial situation.

He initially sought out Petitioner, not for his legal expertise, but for his organizational skills and computer expertise. According to Bosgraaf, Petitioner would repeatedly remind him that he could not provide legal advice or expertise and always encouraged him to obtain that information from outside counsel.

The Supreme Court of Michigan has considered the question of what constitutes "the practice of law." In *Dressle v Ameribank*, 468 Mich 557 (2003), the court stated that the main reason or need to define the unauthorized practice of law was "an interest in protecting the public from the danger of unskilled persons practicing law" (at 301-302). They also held that in general, "the completion of standard legal forms that are available to the public does not constitute the practice of law." They did, however, find that "a person engages in the practice of law when he counsels or assists another in matters that require the use of

legal discretion and profound legal knowledge." As set forth in the testimony of Petitioner, three attorneys and Mr. Bosgraaf, the Petitioner did not engage in that type of activity. As a matter of fact, on numerous occasions, he reminded Bosgraaf and others that that was not his role.

Thus, the overwhelming evidence presented by Petitioner in the form of the testimony summarized above persuasively demonstrates that Mr. Gabrielse had not engaged in the unauthorized practice of law. While the Hearing Panel is mindful and respectful of the strong arguments made by Mr. Gabrielse's former firm to the contrary, had such evidence existed supporting these arguments, it certainly was not presented during the reinstatement proceedings. The Hearing Panel therefore concurs with the closing arguments made by Petitioner's counsel in this regard (see, Tr 6/19/14, pp 415-419), and finds on the proofs presented that Mr. Gabrielse did not engage in the unauthorized practice of law.

B. MCR 9.123(B)(7) - Petitioner Must Establish That He Can Safely Be Recommended To The Public, The Courts, And The Legal Profession As A Person Fit To Practice Law

This is, of course, the major question the panel must decide. We all agree that the conduct engaged in by Petitioner in 2009 was reprehensible and egregious. It was also dealt with at the time of the original Attorney Discipline Board hearing in December of 2010. On February 25, 2011, an ADB panel issued a decision, suspending Petitioner's license for three years. The Petitioner has now essentially been suspended for approximately four years. As referenced at the beginning of this opinion, Petitioner testified as to the number of steps he has taken to rehabilitate himself and frankly, to become a better person. As noted in Exhibit 1, which is a letter the panel received from his treating psychologist, Dr. Bush, "as his treating clinician I would have to say that I am not sure what more he could have done to indicate a change of behavior and character."

What this panel has attempted to keep in mind and indeed, to be vigilant about, is that we are not here to pass moral judgment on the Petitioner. We are here to determine whether the Petitioner is eligible for reinstatement to the practice of law in Michigan and whether he has established that eligibility by clear and convincing evidence. We believe he has.

Petitioner called five lay witnesses and one expert witness to aid the panel in our determination.

As a condition of the original suspension, Petitioner was required to submit to a complete psychological evaluation. Upon the recommendation of Dr. Bush, Petitioner chose to be evaluated by Natalie Wallace, M.D. There are a number of psychologists and/or psychiatrists within the state who could have fulfilled that role. This portion of the panel was impressed by the fact that the Petitioner selected an objective witness who would provide an objective report and not be influenced one way or the other by the Petitioner and his desire to return to the practice of law.

Dr. Wallace was well qualified to perform the evaluation. Not only is she Board certified in forensic psychiatry, she also has experience working with the sexually addicted population.

Dr. Wallace opined that Petitioner did fit the diagnosis of sexual disorder, not otherwise specified, in remission. In arriving at that diagnosis, not only did she obtain a history from the Petitioner, but also performed an evaluation and several diagnostic tests.

Ultimately, Dr. Wallace was of the opinion that while there was a risk of recidivism for sexual offense, the Petitioner's risk was statistically less than 2%. She also would recommend Petitioner to be returned to the practice of law with some safeguards in place:

1. (a) Petitioner should continue with an accountability partner for his sexual disorder, not otherwise specified, in remission; and should attend or lead a sexual addiction group weekly in which attendance is verified for at least 12 months;

   (b) Petitioner should be supervised for a minimum of 6 months when interacting with female clients, law students or subordinates; or

   (c) Twelve months after Petitioner returns to the practice of law, a review of his conduct, attendance in sexual addiction groups, and contact with psychology should be reviewed.

Again, these were set forth in the doctor's opinion as safeguards and/or recommendations. She did not impose these as requirements concerning his reinstatement to the practice of law.

The Petitioner then called five lay witnesses who testified very credibly regarding their contacts and observations of Petitioner, especially within the last four years.

Not one witness testified that Petitioner had done anything within that period of time which would cause them to have a concern or reservation about his ability to return to the practice of law. Without exception, they all testified that his conduct within the last four years had been exemplary and above reproach.

Perhaps most compelling was the testimony of Pastor Keith Doornbos. He is the lead pastor at Providence Christian Reformed Church which is attended by the Petitioner and his family. Pastor Doornbos has known Mr. Gabrielse for quite some time, and noted that even prior to the events of November 2009, Mr. Gabrielse was very involved "in the life of the congregation in a variety of ways."

After the 2009 event, admittedly, he had to be reintegrated into the church community. Petitioner began working with men's ministries and was also instrumental in providing services through the church to the community of Holland.

As described by Pastor Doornbos: "So watching him up close and personal, we felt that this is a new day and a new Carl. And even a new day and a new Carl from before the incident. I mean, we, are seeing some wonderful new-for-us-Godly characteristics that we are just thankful to see."

Pastor Doornbos also testified that as the Petitioner has progressed personally, he has returned to leadership positions within the church. Both Pastor Doornbos and all the other lay witnesses commented upon Petitioner's newfound and profound humility and remorse.

Based upon his close interaction and observation of Mr. Gabrielse over the past several years, Pastor Doornbos testified regarding the success of Mr. Gabrielse's rehabilitation and why he believes Mr. Gabrielse should be reinstated:

> Q. Thank you for being here this morning, Reverend. What you have said in reference to Mr. Gabrielse and his own spiritual rehabilitation is very helpful and very persuasive on an individual level.
>
> A Sure.

Q. One of the issues that we are going to deal with as a panel beyond that is this violation of public trust, and the perception within the community of whether a reinstatement is the right thing for the community. And that's a different kind of healing. That's a healing of the community. What guidance could you offer us on that issue as we wrestle with whether that's the correct measure in view of the very serious violation of public trust that has happened within the community at large?

A. Yeah. See, I - and I - I appreciate that. I have thought about that a lot, right, because of the public nature of all this and our own - our own struggle as a congregation as a result of it because it, you know, gives a bit of a black eye to a faith community as well. So we felt that same violation that - that, you know, you feel in the legal systems where one of your own has done something that violates trust. And - so I feel that you are feeling - or the question that you are asking at least.

My - here is my reason why I think that the public trust, even understanding what you are saying here, does not trump the reinstatement. Because the reinstatement in this case is actually to serve the public, that whose trust was violated, right? In a marriage, someone's failure doesn't necessarily doom the marriage forever because that marriage still can be a blessing in the future if that marriage can be restored. So the violation of trust at this point doesn't suggest that there isn't help or even good outcomes for this community or this marriage in the future if we make an investment. In this case, too, I think that public trust was violated clearly. And yet the public will be served well by the reinstatement of a person who could serve that same public in a way that would benefit them. And then perhaps the trust that was violated can restore a servant to a project that's larger than what would have been there previously. You would have to make the case to the public about that, I guess. They would have to come to understand it, maybe some would never understand it. But I think it's got value. (Tr 6/19/14, pp 291-293.)

The Hearing Panel found Pastor Doornbos' testimony to be very compelling.

In the 4 years since the event, Petitioner has never denied responsibility for his actions, has owned up to them, and as a result, has become, in their estimation, an even better person. All of these witnesses have spent countless hours with the Petitioner and have never observed any inappropriate behavior of any kind, whether it be toward male or female parishioners, children, and/or spouses.

Again, as so eloquently expressed by Pastor Doornbos: "I have not met another person who has taken healing more seriously than Carl. From the beginning, whatever it took and wherever he had to go to get the healing he needed to have, and to confront the realities of what he is about."

Petitioner's counsel called Scott Nyhoff, a former client and fellow church member of Mr. Gabrielse, to testify in support of Mr. Gabrielse's reinstatement. Mr. Nyhoff also hired Mr. Gabrielse to work in his shop following Mr. Gabrielse criminal conviction but prior to being incarcerated, so he could earn some income during this time frame. Mr. Nyhoff offered the following testimony:

> Q. Now, we heard already that Carl worked in the shop at your company for a period of time before he went to jail?
>
> A. He did.
>
> Q. How did that come to pass?
>
> A. Carl happened to mention that he needed to find something, you know, to earn some income. And I think partially just to keep himself busy, but primarily to earn some income during that interim period. And I had a position open. It was a $10 an hour job. You know, I knew that probably wasn't what he was looking for, but I offered it to him. He took it. He was just kind of a handyman out in the shop, assisting guys on the shop floor.
>
> Q. What was your reaction when you heard that news?
>
> A. I was shocked.
>
> Q. I assume that that reaction was shared by most everybody else at Providence church?
>
> A. Yeah, yeah.
>
> Q. Since that happened, has Carl been open and honest with you and others regarding what happened from your observation?
>
> A. More so than I would have expected, yes.
>
> Q. Give me an example, if you can.
>
> A. Shortly after that, Carl contacted me and asked me if he could meet me for lunch because he wanted to be very upfront and tell me exactly what happened and what his plans were. And, you know, just tell me where we were at. (Tr 6/19/14, pp 309-310.)

Continuing, Mr. Nyhoff discussed his observations regarding Petitioner's reintegration into the church community and whether he was personally convinced that Mr. Gabrielse had restored his public trust and should be reinstated:

Q. Now, obviously, when something like that happens in a very public way, it reflects on lots of people other than Carl himself, perhaps your church community, perhaps the legal community. What have you seen happen in the church community over the last four years in terms of Carl's reintegration?

A. I have seen our church embrace Carl.

Q. What have you seen in Carl during that period of time?

A. Not knowing in advance what was - what was happening, you know, he - I'm sorry, the questions was?

Q. What have you seen in Carl in terms of his personal development in that period of time?

A. Carl has gone out of his way to seek help, to be up front with people and explain what happened, to do whatever he could to reintegrate into our church. And he has been very humble, apologetic, and has done everything he can to - I don't know about corrected, but to - to grow personally, to grow in his faith, to grow in relationships with people in the church and outside of the church.

Q. During the last four years, in your dealings with Carl, or in your observations of his dealings with others, or simply what you have heard, is there anything about his conduct that you would deem to be inappropriate?

A. Other than this --

Q. Other than this incident?

A. No, absolutely not.

Q. And have you seen him in situations where women are present?

A. Sure.

Q. And nothing about the interactions there that would give you cause for concern going forward?

A. Absolutely not.

Q. If Carl did get his license back, would you be interested in having him as your attorney again?

A. I absolutely would. I hope to be his first client. I hope I don't need his services, but I hope to be his first client.

Q. And why is it that you would put your trust in him in that capacity?

A. Several reasons. First of all, as a friend, I trust Carl implicitly. He has done a fantastic job as an attorney on everything that we have ever worked together on. And we have a great relationship. I - I feel comfortable working with Carl. And I - he would be my absolute first choice. (Tr 6/19/14, pp 310-311.)

Mr. Nyhoff also shared his observations of Mr. Gabrielse's changed demeanor:

Q. One of the words you used a bit ago was either humble or humility or something like that.

A. Um-hmm.

Q. We have heard testimony here this morning from those who have offered the view that before this happened, Carl might have been the antithesis of humble, that he was, let's say, cock sure, very self-confident, perhaps arrogant. How did you observe him in terms of the way he reacted and interacted with your work force and your factory? Was he some highfaluting lawyer out there dealing with a bunch of people who were far beneath him or did he fit in?

A. Absolutely not. He was - I would expect an attorney to be confident. If an attorney isn't confident, I don't know that that's what I'm looking for in an attorney. But in terms of, you know, being approachable and personable, he was fantastic. (Tr 06/19/14, pp 311-312.)

Next, Petitioner's counsel called as a witness, Michael Jager, also a former client and fellow church member of Mr. Gabrielse, to share his observations. Mr. Jager testified as follows:

Q. One of the questions that we have asked of a number of witnesses is whether Carl has taken seriously his recovery in terms of the personal issues he faced, in terms of the healing of breaches within the community.

A. Um-hmm.

Q. Can you give us your observation on that?

A. I feel he has taken it very seriously. I have seen a lot of change in Carl.

Q. Can you be specific? What change?

A. Carl was very arrogant before - I mean, he will admit to that. And - but now I see humble. I see passion for others. I just - I just see a - you know, it's not about Carl anymore. He has made a huge change in his perspective of where he is. You know, he is - also, you know, I think before Carl had Carl on top. Now he has God on top, and his family. And there is - you know, I have seen a great change on that.

Q. It's always a hard question to judge one's sincerity when it comes to those things. It may simply be useful to adopt a new persona in light of what has happened in the past.

A. Yep.

Q. Can you - have you reached your own view as to whether he is sincere in those changes, and whether they truly reflect a change in his character as opposed to simply a new face for the world?

A. No, he has changed the way he presents himself. He is - how do you put this in good --

Q. It's a hard question, I know.

A. There is more peace about him, you know, just - just being around him, there is a sense of - how else have I seen that he has changed? You know, there has been - again, not him first. You know, he is --

Q. Do you believe that to be sincere?

A. Oh, yea. And, you know, he is putting steps out there of, you know, accountability. I know he has an accountability partner, you know, to hold him accountable. He has, you know, put himself out even at church, you know, putting himself in front of the community, helping them, so he can speak into their lives of, you know, from his past of, you know, where it's gone wrong. You know, he is helping others because he has gone through a lot. (Tr 6/19/14, pp 321-322.)

Next, Petitioner's counsel called Steven Duer, Mr. Gabrielse's accountability partner, to testify in support of Petitioner's reinstatement. Mr. Duer and his wife met Mr. Gabrielse and his wife, Karin, back in 2004, through their church community and they are small group members at their Church. Mr. Duer is a school administrator and assistant principal of Eagle Crest Charter Academy in Holland, Michigan. As Mr. Duer testified:

> Q. Now, were you an accountability partner for Carl before November of 2009 or was it only after that event that you assumed that role?
>
> A. Only after the event. Before that, I was the small group leader. So we would have general conversations as a small group. But as far as specific accountability and touching base with him on a daily basis originally via phone, and then kind of a weekly face-to-face, that happened as a result of his request after 2009, November.
>
> Q. How is it that you became his accountability partner? Was that at the request of Carl, someone else? Is that a process that's in place at your church?
>
> A. Kind of both - Carl's request and my desire to help him recover from what happened. As a small group leader I felt like it was important to walk alongside Carl to say, hey, there is a big struggle in your life. And it led to some poor choices. What can I do as your friend, as your small group leader, to help you recover from this and grow and get better. And so he talked about, well, let's talk on the phone on a regular basis, meet face-to-face. He set up his Net Nanny account so I would get copies of any website he visited via e-mail, so I would track what he was doing online. So that was kind of a mutual thing between him and I to say, what can we do to support.
>
> Q. Was he open and transparent with you about those events in November, 2009?
>
> A. He was, and some of the struggles he had leading up to that, just the - the addiction to pornography, you know, before that. So I learned things about him that I didn't know before. So he was very open with the struggles he had. (Tr 6/19/14, pp 336-337.)

Continuing, Mr. Duer described how he and his wife assisted both Carl and Karin Gabrielse in their recovery from Petitioner's transgressions:

Q. I think you indicated that initially, at least, you spoke with Carl by phone every day?

A. Yeah. We would do a phone call - usually in the evening. And then we would meet at least once a week.

Q. And what would be the subject, first, of those phone calls?

A. Just to seeing how he was doing, check in with him, whether he was reading his Bible, his prayer life. How he was doing with his sexual recovery as far as is he staying pure, is he staying away from pornography, and things like that.

Q. Was that basically the same subject matter in your weekly meetings?

A. Yeah, yeah. We would actually - they would come over to our house for dinner. And so Carl and I would find time to slip away and talk about things. So it was kind of a - a part of their marriage recovery as well. My wife was working with Karin. So that was part of what he did as a couple to help them as a couple as well. (Tr 6/19/14, pp 338-339.)

Continuing, Mr. Duer testified regarding Petitioner's rehabilitation, whether he has any reservations or apprehensions over Petitioner's recovery, and Petitioner's sincerity and commitment to his own recovery:

Q. Do you have any sense from those interactions that women in those couples, and in those settings have any concern or apprehension about Carl?

A. No, no. I have not sensed that. My own wife does not have any problems. She has met with him in the past for different things. They are working on a project for her grad class right now. And so she has met with him alone to talk about this class she is working on. And so she has no problem - I have no problems having Carl watch my kids. Yeah, I - and I don't sense that concern from any other women in the group.

Q. From your observation through these last four years, has Carl taken his recovery seriously?

A. Very much so. To the point where if any other man he encounters indicates that they have a struggle with pornography, he is very much willing to support them, to meet with them, to set up accountability with them as well. So not only is he concerned about his own recovery, but is also intentional about trying to help other men who are struggling with the same struggles.

Q. Have you seen any change in Carl's character over the last four or five years?

A. Yeah. I think he has become much more humble. It's - well, we played games a lot together, and he was always very - he is very competitive. But other than that, he - he is much more humble. I think he is much more servant heart. He has worked on - we have a summer ministry in our church where we cook a meal for the community. And a lot of our people are a lot less fortunate than Carl is, and he is willing to help there, meet with the people that come there. He has been an encouragement and support to me, and - just some of the struggles I have been going through with job-related things, with the business of life as a husband and father. And so in many ways he has kind of slipped roles where he has been an encouragement and support to me. And I don't know before all this if that would have been the case, so --

Q. Do you find those changes to be sincere on his part as opposed to simply superficial? How deep does it go?

A. Oh, very, very sincere. I think before everything happened, you know, not that Carl was superficial in everything that he did, but I could tell a difference that he truly cares about those in need, truly wants to be able to support them. We have talked about if he is able to get his license back, what he could do to help those in need. (Tr 6/19/14, pp 342-344.)

Finally, Mr. Duer testified in general about the changes he has observed in Mr. Gabrielse:

Q. In the years that have followed the incident, in summary, what changes have you observed in Mr. Gabrielse that you could share with us?

A. Like I said, much more humble, much more of a servant heart, willingness to meet the needs of others. Willing to support people individually. Like I said, he has been a source of encouragement to me personally over the past year or so as I have gone through some struggles with things at work and just the business of life, like I mentioned earlier. He has been willing to help other men struggle with - help them with their struggles in the same areas. Like I said, helping lead this men's ministry, at church, holding individuals accountable as he becomes aware of the struggles they are having. Yeah, I'm not sure if that answers your question. (Tr 6/19/14, p 353.)

Next, Petitioner's counsel called Dave Stielstra, also a fellow church and small group member. Mr. Stielstra is very articulate in describing his observations of Mr. Gabrielse's rehabilitation. It is evident from

the following testimony that Mr. Stielstra, who has spent much time with Petitioner over the past several years and has closely monitored his progress, is firmly convinced that Mr. Gabrielse has been successfully rehabilitated, and is sincerely committed to his own recovery:

> Q. I assume it was known when you met him that he had had the issues in November of 2009 - he had been in jail, he had had a series of problems?
>
> A. Yeah, I think Carl - Carl has been very open with people that he meets. You, know, it's not the first thing that he shares, as you would expect, it's not the first thing somebody is going to share. But he has been very open with everybody that he gets to know about what his past has been, and how he has used that for his benefit and other people's benefits as well.
>
> Q. How did knowledge of that past impact, you know, your willingness to develop a relationship, a friendship with him?
>
> A. I think that knowing how open Carl was with what's happened and, you know, all of the steps he has taken, the willingness he has gone through to make sure that there are corrections and proper boundaries in place has been very freeing for us, you know, to - to get to know them better as a family, and as an individual, as a guy it's comforting to know that there is somebody out there who has gone through and has corrected those actions and has taken steps to help other guys take similar steps, you know, maybe not having done through the same degree of things as Carl has. You know, I know somebody that I meet with regularly on - every Thursday morning when I'm not on vacation, and as Carl - knowing that Carl has gone through this has helped that individual as well go through very similar steps of going through intense treatment. I think it was probably the same treatment program that Carl when through. He was in a very bad spot in his marriage. He has been struggling with this addiction for a long time. Went through similar treatment. You know, Carl's openness and willingness to talk about what he has gone through and - you know, I think it's opened a lot of people's eyes to the seriousness of the problem, how statistically prevalent it is. And that, you know, as a society, I think part of the problem with this is that our society doesn't always see it as an issue as much as it should. So I think knowing Carl has helped bring that to the light, and has helped us as a men's group, and at Providence address that head on with people and say, hey, Carl has gone through this. He is a good resource. Let's use him as that resource to make sure other people are aware of what's going on, and help get them the treatment that they need. So having an accountability partner with this man on Thursdays who has gone through treatment, his wife has also gone in a couple's

treatment as well after he came back. I think two months later they went as a couple. And they are doing much better now. So I think - you know, knowing Carl's openness with where he has been, it's allowed - you know, I'm sure there are some people that would attach a stigma to that and say, we don't want to deal with that. But Carl is very forthcoming, willing to talk about it. It's - you know, he is not showy about it. You know, he is humble about it. He realizes how humbling that was for him to have to go through that so publicly. But I have heard that they are much stronger as a couple and family after having gone through all of the treatment and everything after that. So as hard as it is, I don't think Carl or Karin would want to go back to any time before that incident, even probably five years. They are much stronger than they have ever been. And I think that is a wonderful thing. (Tr 6/19/14, pp 363-366.)

Continuing, Mr. Stielstra addressed whether he believed Petitioner had regained the public trust and would be accepted in the larger community if he were to be reinstated:

Q. If Carl were to receive his license back, obviously that would be noted by many in the community. What do you think of the receptivity of the broader community in Holland to Carl getting a license back? And probably a second piece to the same question is, over time, what's your sense of what Carl can do and how successful he can be in rebuilding trust?

A. Okay. So the first part as far as the community awareness goes with getting the license back, you know I think I have varied thoughts on whether or not people would really pay attention to that. Obviously, they were shown front and center what happened back in November, so they are very aware of that. But I don't think people would be overly upset about it. Those that know him -- in particular, know what he has gone through and everything that we have already discussed -- would welcome that. They know that he is dedicated to his family, as we have talked about already. And I think they would welcome the fact that he would use that experience in helping others with his law license. And I think he would be very capable in building trust back with the people that he interacts with. You have probably heard many other people over the last week talk about that as well. I don't think he would have any problems being successful with his law degree -- or law license. (Tr 6/19/14, pp 368-369.)

Continuing, Mr. Stielstra commented on whether he believed Mr. Gabrielse could safely be recommended to the public:

Q. One of our responsibilities as a panel is to be satisfied that we can safely recommend Mr. Gabrielse to the community in a position of trust and confidence in his role as an attorney. And as you can appreciate, once you step outside the church community, the world becomes a much more skeptical, cynical, unforgiving sort of place. What would you say to those who -- who are more doubting in nature, and may not be satisfied that he could be in a position of trust and confidence as a lawyer?

A. You know, for me it's hard to separate church from my life because that is, you know, it's the reason I'm here. But I believe, you know, I think I would have -- I would have to reference and say, you know what, we have all to some degree or another messed up in life. I view life as a series of opportunities for grace. I view this as an opportunity to say, listen -- obviously, I would want to talk to those people that are, you know, if they have issues with it and say, listen, okay, I know Carl screwed up. Carl will tell you he screwed up, you know, in a big way. And has paid for that for quite a long time. And will always have that in his history. But he has gone through some very serious, very intentional things and actions, and continues to do that in order to make himself a better person and make the community that he is in a better place to be. (Tr 6/19/14, pp 372-373.)

The Hearing Panel found the testimony of the above referenced witnesses to be very compelling in support of Petitioner's request for reinstatement. Further, no witnesses were presented by the Grievance Commission's counsel to challenge or rebut this testimony evidencing Petitioner's successful rehabilitation and his ability to be safely recommended to the public if his license is reinstated.

Last, but certainly not least, the panel heard from the Petitioner's wife, Karin. No one has suffered more as a result of Petitioner's misconduct than has she. At the end of her testimony, which was at times emotional, she was asked the following:

Q. Do you, in your own mind, have any question whatsoever, or any concern that if Mr. Gabrielse, your husband, is in a setting such as he was 5 years ago - - that the same thing would occur?

A. I have no reservations in my mind. I trust him. He has earned that from me 100%.

Q. And I assume that answer to that question, which frankly I appreciate, is because what you have seen and observed with regard to him since the event in 2009?

A. Yes, from what he has - how he has talked, how he has acted, how he has treated me, and treated other people, how he has worked very hard, first, within our family setting to get that right, and then within you know a friend setting and a church setting and things like that. (Tr 6/19/14, pp 404-405.)

This panel has been asked to weigh the evidence and determine if the Petitioner has sustained his burden of proof. Has he shown, by clear and convincing evidence that he has met the requirements of MCR 9.123? Is the evidence in favor of the petitioner strongly convincing? Are most of the questions and concerns decided in favor of the Petitioner? The majority members of this Panel believe, based upon all of the evidence presented, that the answer to this question is yes. Not once during the entire hearing did any witness called by the Petitioner, testify against the reinstatement of petitioner into the legal profession. Indeed, quite to the contrary, all of the witnesses called by the Petitioner were unequivocal in their collective expression of confidence and faith in Petitioner's successful rehabilitation and his sincere and humble commitment to his own recovery. On the strength of the evidence presented, which was overwhelmingly in support of Petitioner's request for reinstatement, the Majority members of this Panel conclude that Petitioner has met the criterion on MCR 9.123(B) clearly and convincingly.

V. ITEMIZATION OF COSTS

Attorney Grievance Commission:	
(See Itemized Statement filed 07/15/14)	$1,103.62
Attorney Discipline Board:	
Hearing held 06/09/14	$1,093.00
Hearing held 06/19/14	$ 835.75
TOTAL:	$3,032.37

ATTORNEY DISCIPLINE BOARD
Kent County Hearing Panel #1

By: _____
Martha E. Reamon, Chairperson

DATED: October 17, 2014

STATE OF MICHIGAN

Attorney Discipline Board

In the Matter of the Reinstatement Petition of CARL J. GABRIELSE, P 67512,

Petitioner.
_____/

Case No. 14-23-RP

DISSENT BRUCE A. COURTADE

Petitioner Carl J. Gabrielse (P67512), (hereinafter "Petitioner"), presents a compelling case for the redemptive powers of faith, family and friendship. He and his counsel presented strong evidence that, after committing one of the most egregious abuses of power imaginable by a prosecuting attorney, he seems to have turned his life around and has made great progress toward restoring the trust and status that he enjoyed prior to the incident that led to the long-term suspension of his license to practice law in this State.

However, given the abhorrent nature of the initial conduct leading to the suspension of Petitioner's license, relevant under MCR 9.123(B)(4), and the restrictions still placed upon him by those responsible for his spiritual and mental health (his church and his psychiatrist), I am forced to conclude that Petitioner has not yet met the burden imposed upon one seeking reinstatement to the practice of law under MCR 9.123. Where the Petitioner's psychiatrist conditions his reinstatement on a restriction forbidding him from representing more than half of the public, he has not shown by clear and convincing evidence that he is fit to be trusted to represent the public. And where his church, which is in the business of forgiveness, still has not fully restored him to the status that he enjoyed prior to the incident in question, he cannot establish by clear and convincing evidence that the profession whose rules of ethics he breached in such an egregious manner can trust him to aid in the administration of justice as a member of the bar and as an officer of the court - particularly when the conduct which led to his suspension defiled the most public symbol of justice in his community.

A. Legal Analysis

It is important to understand that this dissent is offered not as a rebuke of my fellow panelists, nor do I disagree with the vast majority of their opinion. I join in their belief that Petitioner has exhibited admirable strength of character in facing his troubles openly while remaining in a community in which the actions leading to his suspension are extremely well known. His re-commitment to his marriage and family is exemplary - and I believe that if he continues to work hard, gains full readmission into his church community and continues to seek counseling, he may eventually get to the point where he can meet the burden placed upon one seeking readmission to the practice of law.

However, based on the evidence presented at hearing, he is simply not there yet, and has not met the burden of proving by clear and convincing evidence that he can be recommended to "the public" (not a portion thereof), the courts and the legal profession as someone to be trusted to aid in the administration of justice and to act as a member of the bar and officer of the court.

1. Rules And Procedures Governing Reinstatement Petitions

(a) Attorney Licensing - Generally

Any discussion regarding the reinstatement of an attorney to practice must begin with a review of what having one's license means in the first place. That discussion starts with **MCR 9.103(A)**, which states, in pertinent part:

> The license to practice law in Michigan is, among other things, a ***continuing proclamation . . . that the holder is fit to be entrusted*** with professional and judicial matters and ***to aid in the administration of justice*** as an attorney and counselor and ***as an officer of the court.*** It is the duty of every attorney to conduct himself or herself at all times in conformity with standards imposed on members of the bar as a condition of the ***privilege*** to practice law. These standards include, but are not limited to, the rules of professional responsibility and the rules of judicial conduct that are adopted by the Supreme Court. (Emphasis added).

Thus, a license to practice law in Michigan is a privilege, not a right, and is conditioned on one's ability to live up to the rules found in the Michigan Rules of Professional Conduct ("MRPC").

A lawyer's unique role, rights and responsibilities were discussed in *In re Snyder*, 472 U.S. 634, 644–645 (1985), when the United States Supreme Court noted:

> As an officer of the court, a member of the bar enjoys singular powers that others do not possess; by virtue of admission, members of the bar share a kind of monopoly granted only to lawyers. Admission creates a license not only to advise and counsel clients but also to appear in court and try cases; as an officer of the court, a lawyer can cause persons to drop their private affairs and be called as witnesses in court, and for depositions and other pretrial processes that, while subject to the ultimate control of the court, may be conducted outside courtrooms. The license granted by the court requires members of the bar to conduct themselves in a manner compatible with the role of courts in the administration of justice.

See also, MCL 600.901 ("The members of the state bar of Michigan are officers of the courts of this state, and have the exclusive right to designate themselves as 'attorneys and counselors,' or 'attorneys at law,' or 'lawyers.' No person is authorized to practice law in this state unless he complies with the requirements of the supreme court with regard thereto.")

As explained in *Grievance Adm'r v Fieger*, 476 Mich. 231, 245, 719 N.W.2d 123, 134 (2006):

> It is to this end that our bar entrance requirements look to character as well as competence, and the bar admissions process culminates in a way unprecedented in other professions with the taking of an oath pursuant to MCL 600.913. This oath provides that the lawyer will, upon being accorded the privileges provided by membership in the bar, (1) maintain the respect due to courts of justice and judicial officers, (2) abstain from all offensive personality, and (3) conduct himself or herself personally and professionally in conformity with the high standards of conduct imposed on members of the bar as conditions for the privilege to practice law in Michigan. State Bar Rule 15, § 3(1). (Footnote omitted).

The preamble to the MRPC offers the following insight as to the minimum requirements expected of attorneys who have the privilege to practice in Michigan:

> A lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.
>
> * * *
>
> . . . A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials.

* * *

> Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers.

(b) The MRPC's Licensure Requirements and Disciplinary System

The basic goal of our disciplinary system is to protect "the public, the courts, and the legal profession." MCR 9.105; *Grievance Adm'r v Lopatin*, 462 Mich. 235, 244, 612 N.W.2d 120, 126 (2000). To that end, certain specific Rules within the MRPC set forth duties that bear upon the rights and duties imposed upon anyone wishing to practice law in Michigan, including:

- **MRPC 3.3** provides that a lawyer shall not knowingly make a false statement of material fact to a tribunal, or "offer any evidence that the lawyer knows to be false." The comment to that Rule states: "As officers of the court, lawyers have special duties to avoid conduct that undermines the integrity of the adjudicative process." Further,

  > Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process, such as ... unlawfully destroying or concealing documents or other evidence, or failing to disclose information to the tribunal when required by law to do so . . .

- **MRPC 3.8** recognizes that prosecutors have special responsibilities above and beyond those of non-prosecutors, with the Comment to that Rule providing: "A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. * * * In paragraphs (b) and (e), this rule imposes on a prosecutor an obligation to make reasonable efforts and to take reasonable care to assure that a defendant's rights are protected."

(c) Rules Specifically Regarding Reinstatement Petitions

Petitioner's petition for reinstatement is subject to specific Court Rules. First, MCR 9.119 sets forth parameters concerning the conduct of attorneys who have been disbarred or suspended. More specifically, MCR 9.119(E) governs certain actions that disbarred or suspended attorneys are forbidden from undertaking:

> An attorney who is . . . suspended . . . is, during the period of suspension . . . forbidden from:
>
> > (1) practicing law in any form;
> >
> > (2) having contact either in person, by telephone, or by electronic means, with clients or potential clients of a lawyer or law firm either as a paralegal, law clerk, legal assistant, or lawyer;
> >
> > (3) appearing as an attorney before any court, judge, justice, board, commission, or other public authority; and
> >
> > (4) holding himself or herself out as an attorney by any means.

The second Rule at issue is MCR 9.123, which sets forth the burden of proof that must be met by a petitioner seeking reinstatement to the practice of law after having been suspended. That Rule provides, in pertinent part:

> An attorney whose license to practice law has been revoked or suspended for more than 179 days is not eligible for reinstatement until the attorney has petitioned for reinstatement under MCR 9.124 and has established by ***clear and convincing evidence*** that:
>
> * * *
>
> > (3) he or she has not practiced or attempted to practice law contrary to the requirement of his or her suspension or disbarment;
> >
> > * * *
> >
> > (5) his or her conduct since the order of discipline has been ***exemplary and above reproach***;
> >
> > (6) he or she has a proper understanding of and attitude toward the standards that are imposed on members of the bar and will conduct himself or herself in conformity with those standards; [and]
> >
> > (7) ***taking into account all of the attorney's past conduct, including the nature of the misconduct which led to the revocation or suspension, he or she nevertheless can safely be recommended to the public, the courts, and the legal profession as a person fit to be consulted by others and to represent them and otherwise act in matters of trust and confidence, and in general to aid in the administration of justice as a member of the bar and as an officer of the court.*** (Emphasis added).

2. MCR 9.123(B) Requires Clear And Convincing Evidence Of Petitioner's Fitness For Reinstatement

Pursuant to MCR 9.123(B), to successfully petition for reinstatement of his license, Petitioner must prove by "clear and convincing evidence" that: 1) his conduct since his suspension has been "exemplary and above reproach" (MCR 9.123(B)(5)); and that 2) taking into account all of his past conduct, "including the nature of the misconduct which led to the . . . suspension," he nevertheless can "safely be recommended to the public, the courts, and the legal profession as a person fit to be consulted by others and to represent them . . . and in general to aid in the administration of justice as a member of the bar and as an officer of the court."

Based on the evidence presented, Petitioner arguably failed to establish clearly and convincingly that his post-suspension conduct was "exemplary" or "beyond reproach," but that issue is not dispositive on the question of whether his license should be reinstated. Rather, Petitioner's petition must fail because the testimony of his own witnesses establish that he cannot yet show either that he can be safely recommended to more than half of the public, courts or legal system or that he is ready to be fully trusted as an agent of justice and officer of the court.

3. Petitioner Arguably Failed To Show By Clear And Convincing Evidence That His Post-Suspension Conduct Is Beyond Reproach

An issue that was raised by the AGC concerned Petitioner's post-suspension employment with local businessman Scott Bosgraaf. Admittedly, that conduct appears to come perilously close to what one would expect of a practicing attorney: drafting pleadings for submission to a court and in at least one instance sending an email (Petitioner's Exhibit #7) to Mr. Bosgraaf offering "my latest ideas" and "a crazy idea" and offering legal strategy, insight and recommendations that provide all indicia of the practice of law by an unlicensed attorney. Had Petitioner practiced law, that would violate MCR 9.119(E) and be sufficient reason to deny his petition for reinstatement. However, after hearing all of the evidence - particularly the compelling testimony of attorneys Wardrop, Bila and Reynolds regarding the lengths to which Petitioner

went to assure not only that they knew about his license suspension; the efforts that they made to assure that he did nothing that would place their licenses in jeopardy; and the steps that they took to make clear that they and not Petitioner were the ultimate decision makers concerning legal pleadings, tactics and strategy - I do not believe that Petitioner crossed the line into prohibited conduct.

Nevertheless, his willingness to come as close as he did to the line of impermissible conduct - accepting a job that paid him roughly $100,000 per year to use his legal expertise to assist Mr. Bosgraaf and handle his legal affairs in a way not at all dissimilar to how a general counsel might perform his or her duties - begs the question of whether Petitioner met the burden of proving by "clear and convincing evidence" that his conduct was "exemplary" and "beyond reproach" as required by MCR 9.123(5).

In *In re Reinstatement of Richard L. Banta, II*, 01-27-RP (ADB 2002), the Attorney Discipline Board discussed what it means to be "exemplary and above reproach." Citing *In Re Reinstatement of Arthur R. Porter, Jr.*, 97-302-RP (ADB 1999), which in turn cited *In Re Reinstatement of Leonard R. Eston*, 94-78-RP (ADB 1995), *Banta* explained:

> Subrule 5 of MCR 9.123(B) requires that the suspended or disbarred attorney's "conduct since the order of discipline has been exemplary and above reproach." In [*Eston, supra*] we adopted a panel member's opinion defining these terms:
>
> > "exemplary" [means] "serving as a pattern or model for imitation; worthy of imitation." To be "above reproach" connotes behavior consistently superior to that which one might ordinarily expect.

The AGC's closing argument made a compelling case for the conclusion that Petitioner's conduct was not exemplary as a pattern or model for other suspended attorneys, instead encouraging them to likewise dance the razor's edge of practicing law while their privilege to do so has been suspended or revoked. On the other hand, the unrebutted testimony at trial is that Petitioner consulted with one of the pre-eminent legal ethicists in Michigan before starting his job with Mr. Bosgraaf, and, as previously stated, several of the attorneys with whom Petitioner worked while in Mr. Bosgraaf's employ testified that they did not feel that

he was practicing law. Therefore, it is a close call regarding whether Petitioner prevailed on this issue. Ultimately, though, we do not need to decide this issue to determine whether Petitioner should be reinstated to the practice of law, because there are two more significant issues with his petition.

4. The Conduct Leading To Petitioner's Suspension Involved A Particularly Egregious Affront To The Justice System And Our Profession

Pursuant to MCR 9.123(B)(7), we must take into account "all of the attorney's past conduct, including the nature of the misconduct that led to the revocation or suspension." Here, that conduct weighs heavily against allowing reinstatement if there is any doubt that Petitioner has met his burden.

(a) Petitioner Committed A Shockingly Horrible Breach Of Trust

In reviewing this petition, one must first acknowledge the egregious nature of Petitioner's underlying conduct. Petitioner knew that what he was doing was wrong. He knew that he was dealing with a desperate and vulnerable young woman who would "do anything" to avoid a drunk driving charge. He knew that a policy existed that forbid him from offering a plea bargain to anyone having a blood alcohol level that high. That policy was in place not only to protect the public from drunk drivers, but to assure that all defendants were treated equally and not subjected to the unjust prosecutorial whims.

Despite this knowledge, Petitioner abused his position of power and authority over a vulnerable young woman - someone whom he admits was desperate as a result of the criminal charge pending against her - to trade an unauthorized plea bargain for his own sexual gratification. He knew that his actions were sure to attract scrutiny if anyone discovered that he had given a plea bargain to someone with such a high blood alcohol level (even absent the quid pro quo pursuant to which the plea was attained), so he deliberately altered official documents, hiding crucial information from the Court to deliberately tip the scales of justice so that he could satisfy his own selfish "need" for sex.

Petitioner's former mentor, Kenneth Breese, correctly described his conduct as "such a horrific breach of trust that I was just stunned by it." (Tr 12/14/10, p 140.) He continued: "I think it's a betrayal of

trust, I think it is an astounding lapse of judgement (sic) and I certainly would consider it of the highest significance in terms of its negative impact on the profession." (Tr 12/14/10, p 143.)

In *People v Brocato*, 17 MichApp 277, 169 NW2d 483 (1969), the court faced a highly publicized trial in which several prominent Kalamazoo businessmen and professionals were accused of sexually abusing a 14 year-old girl. On appeal, one of the defendants claimed that the County prosecutor had engaged in misconduct which prevented him from receiving a fair trial. The Court of Appeals agreed, finding that the prosecutor "made every conceivable effort to prevent the defendant from having a fair trial." (*Id.*, at 291.) Before cataloguing the prosecutor's efforts to impede justice, the Brocato Court wrote:

> A quotation from *State v Tolson* (1957), 248 Iowa 733 (82 NW2d 105), will set the theme for this portion of our opinion.
>
> > "It is sometimes said that error 'crept' into the trial of a lawsuit. Not so in the case at bar. It marched in like an army, with banners, and trumpets. It was escorted, and emphasized, and aggravated by the attorney for the State." (*Id.*, at 290-291.)

Here, the nature of Petitioner's underlying conduct that led to his suspension does not "creep up" on anyone. Like the prosecutor's misconduct in *Brocato*, it screams at you, jumps off the page and demands attention because it is so abusive, prejudicial and destructive to the principles of justice that form the basis of the rule of law, and such an overwhelmingly clear violation of the Rules of Professional Conduct.

(b) Petitioner's Conduct Breached The Higher Standards To Which Prosecutors Are Held

Making Petitioner's conduct even worse is the fact that he undertook his actions while acting in the role of a prosecuting attorney. As explained in *People v Holzman*, 234 Mich App 166, 188-189; 593 NW2d 617 (1999),

> Moreover, defendants have an additional advantage because ***prosecutors are ethically bound to act as "a minister of justice and not simply that of an advocate***." MRPC 3.8, comment. Indeed, under the Michigan Rules of Professional Conduct, ***prosecutors shoulder responsibilities that are not reciprocal with defense attorneys and that do not have counterparts in civil actions***. (Emphasis added).

The administration of justice "contributes, more than any other circumstance, to impressing upon the minds of the people affection, esteem, and reverence towards the government." Alexander Hamilton, *The Federalist*, No. 17. For this reason, among others, a prosecuting attorney is and must be held to a higher standard when it comes to the administration of justice than other attorneys in our legal system. As the United States Supreme Court proclaimed in *Berger v United States*, 295 U.S. 78, 88 (1935):

> The [prosecutor] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer.

As stated in *Lindsey v State*, 725 P.2d 649 (WY 1986) (quoting "Commentary On Prosecutorial Ethics," 13 Hastings Const. L.Q. 537-539 (1986)),

> The prosecutor . . . enters a courtroom to speak for the People and not just some of the People. The prosecutor speaks not solely for the victim, or the police, or those who support them, but for all the People. That body of 'the People' includes the defendant and his family and those who care about him.

Prosecutorial misconduct weakens the public's perception of the integrity of the legal system and undermines courts' ability to achieve justice. For this reason, every prosecutor has a duty to know the ethical rules governing his or her conduct, must strive above all else to reflect that ethical conduct, and must make every effort to avoid unethical conduct.

Petitioner's father, a lawyer himself, knew of the higher standards placed upon prosecutors when he testified at the original hearing that "I think his role as a prosecutor, he had to be at a level higher than the three gentlemen of you, as lawyers, have to be. I mean, he's a public official." (Tr 12/14/10, p 135.)

And Petitioner himself knew this when he testified:

> You know, I mean, I understand that even though she was a participant in this, I had a duty to-- above and beyond just the ordinary person that -- that even though in that desperate spot where she was willing to do something, I still had a duty. I would say-- I don't know how to quantify it, but a larger duty because of my position to not do that. And so I harmed lots of people. (Tr 6/9/14, p 14.)

He knew that he had a higher duty, and that he had a "desperate" defendant accused of a serious crime. He abused his position of power, deliberately ignored policies adopted to protect the public, and fraudulently altered court records so that he could sleep with a desperate woman whom he found attractive.

In doing so, he undermined the hard-earned reputation of ethical prosecutors throughout the State, lent credence to society's worst suspicions about the lack of justice within our justice system, and subjected those who work within the Holland District Court to unwarranted criticism and disdain.

(c) Petitioner's Acts Defiled The Sanctity Of The Courthouse - A Symbol Of Justice

The horrendous nature of Petitioner's underlying actions is further compounded by his decision to commit his acts within the Holland courthouse. In his Foreword to John Fedynsky's book "*Michigan's County Courthouses: An Encyclopedic Tour of Michigan Courthouses*," (The University of Michigan Press, 2010), Michigan Supreme Court Justice Stephen Markman wrote:

> There is perhaps no institution more indispensable to a society than that of the rule of law. This book is about the venues within which this institution is most clearly on display in Michigan . . . Some courthouses are plain, some are antiquated and not always charmingly so, and some are little more than functional. Yet, what these courthouses have in common is that each stands at the center of its community, each has been the source of strength and continuity in these communities, and each has played a considerable part in the history and progress of each of these communities for over 170 years.

In the Introduction to that same book, Mr. Fedynsky aptly described the significance of our courthouses beyond their utility and functionality:

> COURTHOUSES ARE SYMBOLS. Physically they stand, but figuratively they speak. They embody the purposes for which they were created: law, order, justice, the American way, and the promise of a better tomorrow. Whatever their shape, station, or locale, the ideals are the same. Each is, in its own unique way, a gem of the people. (Emphasis in original).

Here, Petitioner chose - not once but twice - to defile the embodiment of law, order, justice and equality in the basest of ways. It was not enough to trade justice for sex - he chose to do so in the inner sanctum of a jury room within the courthouse, where justice is meted out by the public he betrayed. He

literally sold justice for sex - and in so doing turned the courthouse into a cathouse, the prosecutor into a pimp or "john."

To avoid confusion, the location of Petitioner's lascivious acts and the nature of his job when he committed them are not dispositive of whether he should be reinstated to practice. However, given MCR 9.123(B)(7)'s instruction to consider "the nature of the misconduct that led to the revocation or suspension" in reviewing his petition, they must be considered, and do impact what he must show to prove that he is worthy of reinstatement to the privilege of practicing law in this State.

5. Petitioner Failed To Prove By Clear And Convincing Evidence That He Can Safely Be Recommended To The Public, Courts Or Legal Profession

Many witnesses testified that they have seen a transformation in Petitioner since the incident that led to his suspension. They testified that where he used to seem cocky, he is now humble. They praise the checks and balances that he has put in place to prevent any further incidents like what happened, and the safeguards that he has established to remain "sober" from his admitted sex addiction. Ultimately, though, the testimony and report of Natalie Wallace, M.D. places restrictions upon Petitioner's return to the practice of law which convince me that he cannot presently meet the burdens imposed by MCR 9.123(B)(7).

Dr. Wallace issued a forensic psychiatry report dated February 19, 2014 setting forth details of her examination of Petitioner. Her diagnosis was "sexual disorder, not otherwise specified, in remission." (Exhibit 13, p 1.) Along with that diagnosis, she noted that he had a "*greater risk for sexual re-offense* than persons in the general population and a *lower risk than other known sex offenders*." (Exhibit 13, p 2; emphasis in original.) She noted:

> Mr. Gabrielse reported that the feeling of being in a position of power, the knowledge that he was able to provide the victim with something that she needed, and the awareness that an attractive young woman was interested in him sexually, all contributed to his willingness to exercise poor judgment. (Exhibit 13, p 7.)

Despite commending the efforts that Petitioner had made to keep his addiction in check, Dr. Wallace did not recommend that he be fully readmitted to the practice of law without restrictions. Instead, she offered her

opinion that if he should return to the practice of law, she would impose certain restrictions on his ability to do so, namely:

a. Mr. Gabrielse should continue with his accountability partner for his *sexual disorder, not otherwise specified, in remission*; and should attend or lead a Sexual Addiction group weekly in which attendance is verified for at least 12 months.

b. Mr. Gabrielse should be supervised for a minimum of 6 months when interacting with female clients, law students, or subordinates.

c. Twelve months after Mr. Gabrielse returns to the practice of law, a review of his conduct, attendance in Sexual Addiction groups, and contact with psychology should be reviewed.

At hearing, Dr. Wallace explained that Petitioner's likelihood of recidivism was less than the 2.6% noted in her report. (Tr 6/9/14, p 96, 104.) She highlighted the support that Petitioner had received from his wife, their parents, church and family members as one reason that she felt that his risk of recidivism was lower than it might otherwise be based solely on statistical studies. (Tr 6/9/14, p 102.)

However, despite what Dr. Wallace acknowledged was a low likelihood of recidivism, she testified that he would need "certain safeguards" in place before he could be "safely recommended to the public, the courts, the legal profession as a person fit to be consulted by others to represent them and otherwise act in matters of trust and confidence." (Tr 6/9/14, pp 104-105.) She confessed that "[o]ne of the things that I became concerned about is him interacting with female clients, with any sort of female subordinate, you know, female intern." (Tr 6/9/14, p 105.) She said that if he was to have any female clients, "that there would need to be a third party present during any meetings with that individual." (Tr 6/9/14, p 105.) "And I would avoid him having any female subordinates of any kind, so a female secretary would be something that would not be . . . doable . . . And this might even extend to phone calls. So if he can find a mechanism in which that could work, that would be - that would be excellent. But it might be at first that maybe female clients, you know, aren't appropriate." (Tr 6/9/14, p 106.)

Dr. Wallace agreed with Petitioner's counsel that it was difficult to come up with a "doable" set of restrictions, and that monitoring any such restrictions would be difficult "without the risk of jeopardizing

attorney privilege and all those practicalities . . ." ((Tr 6/9/14, p 106-107.) She also agreed with counsel that an answer to how to handle the "dilemma" of the restrictions that she imposed would be for Petitioner to not have any female clients, staffs, or interns for at least an initial twelve months. (Tr 6/9/14, p 107.) Dr. Wallace opined that "the unfortunate piece [to see if Petitioner can resist his sex addiction when in a place of power over women] is to actually expose him to female clients under supervision and then to have him reassessed." (Tr 6/9/14, p 120-121.)

Upon further examination, Dr. Wallace said that without the safeguards that she suggested, she did not believe that Petitioner could meet the criteria set forth in MCR 9.123(B)(7), but that with those safeguards in place "it's possible" that he could meet that standard. (Tr 6/9/14, p 124.)

Unfortunately, the standard that we must apply in determining whether to reinstate Petitioner's license is not whether it is ***possible*** that he can safely be recommended to the public. Pursuant to MCR 9.123 and 9.124, Petitioner must show by clear and convincing evidence that he ***can*** be trusted with the public, and MCR 9.103 states that a license to practice law in Michigan is, among other things, a continuing proclamation that the holder ***is fit*** to be entrusted (not "may be fit").

Further, the standard to be applied as to whether an applicant or petitioner is fit to practice is not whether he or she can be recommended to "some" of the public, but to "the public" - ***all*** of the public. If an attorney is incapable of being trusted to represent one class of people (particularly when that group makes up the majority of the population) then he is by definition unfit to be entrusted with the privilege of representing the public. Imagine an attorney who had suffered a closed-head injury which rendered him a racist; he could no longer be trusted to represent any persons of color, or to supervise any persons of color. His medical condition rendered him incapable of being trusted to be alone with an African-American court reporter, or a Hispanic court clerk, or an Asian witness in a civil suit in which the attorney represented that witness' employer. Would it be possible to proclaim that, despite that medical condition, that attorney was still fit to be entrusted to aid in the administration of justice (but only for white people)?

Just as clearly, when a psychiatrist reports that Petitioner admits that "the feeling of being in a position of power, the knowledge that he was able to provide the victim with something that she needed, and the awareness that an attractive young woman was interested in him sexually," and concludes that he should not be allowed to have any female clients or subordinates (and fails to account for what should be done with female court personnel, court reporters, witnesses, employees of male clients, etc.), that Petitioner cannot be said to have established by clear and convincing evidence that he is fit to be "proclaimed" as someone who "the public" (not 49% of the public)[6] can trust to act as their attorney. A petitioner seeking reinstatement to the practice is required to show clear and convincing evidence that he can safely be recommended to "the public, the courts, and the legal profession as a person fit to be consulted by others and to represent them," not to some or less than half of the public, the courts or the legal profession. Reinstatement of a license that is explicitly limited to permit one only to represent men and which is conditioned on neither representing nor supervising women admits from the start that the grantor cannot and does not proclaim that the licensee is fit to represent the public.

Perhaps if Petitioner had, over the past five years, chosen to work in a job or profession that does not require as a condition of membership that he can be safely recommended to work with women unsupervised, then Dr. Wallace might have been able to recommend reinstatement to the practice of law without such restrictions. Or perhaps Petitioner could not do that because he or others felt it would be unwise, unhealthy or unsafe. We do not know.

What we do know is that at the time of the hearing, despite the changes he has made to his life to take control of his addiction, his doctor does not trust him to be alone with women over whom he feels power or control. As such, Dr. Wallace's report and testimony establish clearly and unequivocally that Petitioner cannot at this point meet the burden of proving what is necessary under MCR 9.123(B)(7).[7]

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6 According to the 2010 United States Census, women constitute 50.9% of the population of the United States. http://www.census.gov/prod/cen2010/briefs/c2010br-03.pdf.

7 Another factor to be considered in light of the restrictions that Dr. Wallace says must be in place for her to recommend Petitioner's reinstatement to practice is the burden placed on the profession to monitor those restrictions. Who is to supervise Petitioner? Who

6. Petitioner Failed To Show By Clear And Convincing Evidence That He Can Be Trusted To Aid In The Administration Of Justice As A Member Of The Bar And Officer Of The Court

Similarly persuasive regarding the issue of whether Petitioner should be reinstated to practice at this time is the testimony of his pastor, Keith Doornbos. Pastor Doornbos was a very credible witness, and spoke convincingly of the efforts that Petitioner has made to change his life. He spoke of the new-found humility that he has seen in Petitioner, and testified glowingly about the powers of redemption and grace that he has witnessed as Mr. (and Mrs.) Gabrielse have worked through the trauma brought upon them by Petitioner's misconduct.

However, Pastor Doornbos offered particularly compelling testimony regarding whether his church, which is in the business of forgiveness and redemptive grace, has fully reinstated Petitioner to the status he enjoyed before the actions leading to his suspension. When asked about how, after the incident came to light, his church handled the issue of restoring the trust that they had previously experienced with Petitioner (who before the incident was active in many aspects of church and its leadership):

> Q. Regarding whether it's the same job restoring the trust of the public and the trust of the congregation, did the congregation place any restrictions or did the leaders of the congregation place any restrictions as far as that Mr. Gabrielse could not be alone with women or that he -
>
> A. Um-hmm.
>
> Q. -- he had to be monitored constantly?
>
> A. Yes. Initially, absolutely - completely. There was - that was true. And what's happened is that over the four or five years, as trust has kind of been built again, right, those restrictions have gone away. And there are - there are - there are some remaining, not restrictions, but some remaining places that, you know, Carl has

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is to monitor his phone calls to make sure that he is not speaking to a female client or subordinate? Who is to investigate his time records to determine if, for instance, "Acme Products" may be a corporate client, but is 100% owned by Jane Acme? Who is going to inspect his personnel records to see if he is employing a female intern, or comb through his files to make sure that he only uses male court reporters? And who would pay for all of this monitoring? What about when the male client has a workforce that consists of 80% women, all of whom are witnesses to an event giving rise to a lawsuit that Petitioner is handling? The numerous unanswered questions concerning any such restrictions weigh heavily against implementing those restrictions - and since every one of the doctors who has counseled him indicates that he should not have unsupervised interactions with female clients or subordinates, he clearly has not met the burden of showing by clear and convincing evidence that he is worthy of reinstatement without those restrictions.

> not been fully invited into that will happen now in times to come. . . . So we kind of one by one are restoring sort of the - the work that Carl has. Initially, absolutely, we guarded that at every turn. (Tr 6/19/14, pp 303-304; emphasis added.)

His own church, which is in the business of forgiveness, grace and redemption, which has been working with Petitioner in one-on-one and small group counseling for four years, still has reservations about fully restoring him to unrestricted membership in its ranks and to the positions that he occupied before the incident in question. How, then, can this panel, which is tasked with determining whether it can proclaim that he is fit to be trusted (MCR 9.103), or that he can "safely be recommended to the public, the courts, and the legal profession as a person fit to be consulted by others and to represent them . . . and in general to aid in the administration of justice as a member of the bar and as an officer of the court" (MCR 9.123(B)(7)), find that he is fit to be reinstated to the privilege of practicing law when those who know him best have not deemed him fit to be reinstated to full membership in his church?

Petitioner's attorney, for whom the panel has the highest regard personally and professionally, spoke in his closing argument about how trust is not earned "in a moment, and it doesn't happen in one place all at the same time":

> It's a bit of a ripple effect, or it's made up, perhaps, of concentric circles if you want to look at that analogy. It started with Carl building his trust with his wife. It went to the next circle. It consisted of Carl rebuilding his trust with a broader family, parents and in-laws. The next circle were friends, people who had known them for a long time. The next circle are the people who knew him slightly or perhaps little at all from his church community, 700 people, perhaps, who were intimately aware of what happened, who were impacted by what happened, but who, over a period of four years, have welcomed him back into that community and imposed their trust in him in a number of specific ways. The next circle that's left is the legal community. (Tr 6/19/14, p 408.)

Therein lies another problem with this petition for reinstatement. Petitioner, whose personal failing defiled the symbol of justice, disregarded the higher standards applicable to prosecutors, dishonored the entire legal profession and particularly those who practice in Holland, and led the initial panel to suspend him for a period of at least three years, claims that he wants his privilege to practice law reinstated so that

he can help "the least of these, the poor that need food . . . I could listen to them about the frustrations they were experiencing sometimes with the system, as they refer to it. I can't fix all of those by myself, but I think after what I've gone through I can be a much better advocate than I was five years ago . . ." (Tr 6/9/14, pp 41-42.)

But Petitioner offers no proof that he has done anything since his suspension to rebuild trust within the profession to which he now seeks readmission. He was paid hundreds of thousands of dollars to help Mr. Bosgraaf manage his legal affairs, but offers no evidence that he did anything to help Legal Aid or any other relief agency devoted to providing access to justice to the poor. He understandably focused his efforts on rebuilding his relationship with his family and his church - but asks his profession to readmit him despite: a) his doctor's restrictions indicating that she does not fully trust him; b) his pastor's testimony that even after five years his church has not yet fully reinstated him; and c) making no attempt to show the profession that he can be trusted to now obey the rules that he previously ignored to fulfill his selfish desires.

B. CONCLUSION

A lawyer who abuses his position of power to take advantage of a vulnerable young person charged with a crime for purposes of his own sexual gratification in so doing proves that he or she is not worthy of being proclaimed fit to represent the public. A lawyer who alters evidence to cover up the commission of two crimes (the underlying drunk driving offense and his own criminal sexual conduct/misconduct in office/gross indecency) and then consummates those crimes by defiling the most visible image of "law, order, justice, the American way, and the promise of a better tomorrow" in his community proves that he cannot be entrusted to aid in the administration of justice. It was these acts which led to Petitioner's initial suspension, and which we are obligated to consider in determining his fitness for reinstatement to the privilege of practicing law.

Can Petitioner once again be trusted to aid in the administration of justice as an attorney, counselor and officer of the court, as required under MCR 9.103(A)? Can he, having committed such an extreme

abuse of power, altering evidence to mislead the Court and turning his back on his role as a minister of justice, be entrusted to abide by the oath that he took upon accepting the privileges provided by bar membership to maintain the respect due to courts and judges, abstain from all offensive personality, and conduct himself personally and professionally in conformity with the high standards of conduct imposed on Michigan lawyers as conditions for the privilege to practice law?

Based on what he has done in other aspects of his life since his privilege to practice law was suspended, there is reason to hope that someday, after he has been fully reinstated to his position in his church by those who are in the business of forgiveness and after medical professionals say that he can work with women clients and subordinates without risking the public or the profession, he might be deemed fit to be reinstated to the privilege of practicing law.

However, until then and for the reasons set forth above, I believe that Petitioner has failed to meet the burden placed on one seeking reinstatement under MCR 9.123(B).