THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY
AD HOC HEARING COMMITTEE

In the Matter of:	:	
	:	
ROBERT M. SCHULMAN,	:	
	:	Board Docket No. 21-BD-021
Petitioner.	:	Disciplinary Docket No. 2021-D083
	:	
A Suspended Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 376111)	:	

REPORT AND RECOMMENDATION OF THE
AD HOC HEARING COMMITTEE

Petitioner Robert M. Schulman seeks reinstatement following a three-year suspension (with a fitness requirement) entered as a result of his convictions for securities fraud and conspiracy to commit securities fraud in violation of 15 U.S.C. §§ 78j(b) and 78ff, and 18 U.S.C. § 371. *See In re Schulman*, 237 A.3d 71 (D.C. 2020) (per curiam).

For the reasons discussed in the following findings of fact and conclusions of law, we conclude that Schulman has not met his burden of proving, by clear and convincing evidence, that he is presently fit to resume the practice of law under D.C. Bar Rule XI, § 16(d) and the factors described in *In re Roundtree*, 503 A.2d 1215 (D.C. 1985). We recommend the petition be denied.

I. BACKGROUND

In 2010, Schulman was a partner at Hunton & Williams, where he specialized in intellectual property law. Schulman's clients included King Pharmaceuticals,

* Consult the 'Disciplinary Decisions' tab on the Board on Professional Responsibility's website (www.dcattorneydiscipline.org) to view any subsequent decisions in this case.

which was at the time involved in litigation against Purdue, another pharmaceutical company. DCX 9-003.[1] In early August 2010, Schulman learned from another Hunton & Williams lawyer that King was engaged in discussions with Pfizer about a potential merger between the two companies. DCX 9-004. Specifically, David Kelly, who was then a senior associate in the firm's Atlanta office, told Schulman about a meeting he had attended in New York with King's inhouse counsel and lawyers from Pfizer regarding the potential merger. DCX 9-003–9-004. Schulman understood that the purpose of the meeting was to conduct due diligence, and Schulman knew that the merger discussions were highly confidential. Tr. 76-77, 134-135, 181-182. Kelly also told Schulman to keep the information confidential. DCX 9-004.

A little more than a week later, Schulman gave that information to his financial advisor, Tibor Klein, at a dinner at the Schulman home. DCX 9-005. Schulman had hired Klein to manage his finances about ten years before, and he and his wife had subsequently become good friends with Klein. DCX 9-003; Tr. 40. They invited Klein to their daughter's wedding and their son's bar mitzvah, and Schulman occasionally went with Klein to baseball games. Tr. 40-41; DCX 1-009.

The Schulmans had given Klein discretionary authority to buy and sell securities on their behalf without first obtaining their permission. DCX 9-003. Although Hunton & Williams's policy required attorneys to clear their potential trades against a list of no-trade companies, Schulman believed that because Klein initiat-

[1] DCX refers to Disciplinary Counsel's exhibits; PX refers to Petitioner's exhibits.

ed trades without informing Schulman, he did not need to clear them with the law firm. Tr. 108. Even so, the Schulmans received monthly statements that detailed the trades that Klein made on their behalf. Tr. 43. On one occasion—at or before their August 2010 dinner—the Schulmans learned that Klein had purchased stock for them in one of Schulman's clients, Enzo Biochem. Tr. 135-136, 139-140; DCX 1-008. According to Schulman, he became angry with Klein when he learned about that purchase because he believed Enzo's CEO to be "a certifiable lunatic," not because Klein had purchased stock in one of his clients. DCX 1-008; *see* Tr. 140-141.

The Schulmans typically discussed their accounts with Klein during in-person meetings in their home that had both social and business aspects. Klein would travel from New York to D.C., spend the evening with the Schulmans, have dinner, discuss their portfolio, sleep over, and then return to New York the following day. Tr. 40-41, 152, 160-161.

The Schulmans' meeting with Klein in August 2010 followed that same pattern. The trio had dinner, discussed the Schulmans' portfolio, and Klein returned to New York the next day. Schulman drank wine that evening, though he did not consider himself impaired. Tr. 150-151. In the course of the discussion, Schulman improperly told Klein that King might be acquired. DCX 9-005. As Schulman relates it, he told Klein that it would be "nice to be King for a day"—referring to King Pharmaceuticals and knowing that Klein understood that Schulman represented King. *Id.* As described by Klein, however, Schulman went beyond that single statement. Klein stated under oath:

> During the course of the dinner with Mr. and Mrs. Schulman, Mr. Schulman provided me with material nonpublic information regarding the fact that King was the subject of an acquisition by Pfizer, Inc. More specifically, Mr. Schulman told me that he thought he had inside information because he had to give his files to someone at Hunton & Williams for a meeting with Pfizer. Mr. Schulman then stated, "You know, it would be nice to be King for a day." After I did not respond to his comment, Mr. Schulman then leaned forward toward me and emphatically repeated the statement about being King for a day. These gestures were immediately followed by Mr. Schulman stating, you know I can't trade it.

DCX 9-005. Klein testified that he understood Schulman to mean that while Schulman could not trade on the information himself, Klein could do so both for his own benefit and for Schulman's. DCX 9-006.

Upon returning to New York, Klein contacted Michael Shechtman, his friend and financial advisor, and told him that he had inside information about Pfizer acquiring King Pharmaceuticals. DCX 9-007; PX 18 at 256-259 (Shechtman). Both Klein and Shechtman then traded in King stock and options for their own accounts. DCX 9-007. Klein also purchased King stock for the accounts of 48 of his clients, including the Schulmans. *Id.* Altogether, Klein purchased more than 65,000 shares of King stock for his clients at a cost of approximately $585,000. *Id.* Those purchases included 3,000 shares for Schulman's IRA account, totaling approximately $27,000. *Id.* The vast majority of Klein's purchases were made on the first trading day after his meeting with the Schulmans. DCX 9-007–9-008. The monthly statement for Schulman's IRA subsequently reflected the King stock purchase; Schulman testified at the reinstatement hearing, however, that he did not read his monthly statements other than to review the first few pages to see if his

investments were up or down, and he therefore did not know at the time that Klein had purchased King stock in his account. DCX 9-008; Tr. 178-179.

Pfizer's acquisition of King was announced October 12, 2010. DCX 9-008. That same day, Klein sold the shares of King stock he had purchased for himself and for his clients. Within a few days, Shechtman had likewise sold the King stock and options he had purchased as a result of his conversations with Klein. *Id.* Klein's sales of King stock generated more than $328,000 in profits. *Id.* Of that amount, Klein made about $8,000 on the shares he bought for himself and Schulman gained more than $15,500 in his IRA. *Id.*

Shechtman's trades attracted the attention of investigators at his investment firm and the Securities and Exchange Commission, which interviewed Schulman under oath. *See* DCX 1. In his deposition, Schulman denied telling "anyone about any knowledge [he] had regarding a potential merger or acquisition of King Pharma." DCX 1-016. He admitted, however, that he told Klein it would be good to be "king for a day," referring to King Pharmaceuticals. *Id.* Schulman characterized the statement as "a joke" and stated that the remark was "the sum total of anything I could have told anybody." *Id.*; *see* DCX 1-017. He stated that "I would never have told him anything about their meeting, there's a potential merger." DCX 1-016. Rather, he claimed, he was "acting like I'm a big shot and I know this thing, but that's the extent of what I would have communicated to him." *Id.* Later, in an interview with the Department of Justice, Schulman reiterated that he never told

Klein that a merger between Pfizer and King was possible, and volunteered that he had "never mentioned Pfizer to Klein at all." DCX 2-006.

The SEC eventually charged Shechtman and Klein (but not Schulman) with insider trading. DCX 9-009. After initially lying about his reasons for trading King stock, Shechtman admitted liability, cooperated with the SEC, and pleaded guilty to one count of conspiracy to commit securities fraud. *Id.*

A. Schulman's Criminal Conviction

Schulman and Klein were subsequently indicted for securities fraud and conspiracy to commit securities fraud. DCX 3. The indictment charged that Schulman gave Klein material nonpublic information about the pending merger between King and Pfizer at their August 2010 dinner; that Klein traded on the information and realized profits for himself, Schulman, and his other clients; and that Klein shared the information with Shechtman, who also traded on the information. *Id.*; DCX 6-002. Schulman's case was tried before a jury, which returned guilty verdicts on both counts. DCX 6-003, 6-018. Klein's case was severed before Schulman's trial, and he pleaded guilty after the verdict in Schulman's case. DCX 9-010.

Following the verdict, Schulman filed motions for acquittal and for a new trial. DCX 9-011; DCX 6-019. In support of the motion for acquittal, Schulman argued that no reasonable jury could have found that he told Klein anything about the merger beyond stating that it would be nice to be "King for a day," *see* DCX 6-023–6-029; that no reasonable jury could have found that he intended for Klein to trade on the information about King, *see* DCX 6-029–6-039; and that the govern-

ment failed to prove the elements of conspiracy, *see* DCX 6-039–6-047. The district court rejected those arguments, finding that the evidence was sufficient to support the jury's verdict. DCX 6-023–6-047. The court likewise rejected Schulman's motion for a new trial. DCX 6-047–6-065. Schulman was sentenced to three years' probation and ordered to complete 2,000 hours of community service, to pay a $50,000 fine, and to forfeit $15,527, representing the profit he realized from the King stock trades. DCX 7.

Schulman appealed, arguing again that no reasonable jury could have found that he had communicated anything to Klein beyond the "King for a day" statement or that he intended Klein to trade on the information. DCX 8-003–8-004. The U.S. Court of Appeals for the Second Circuit affirmed the convictions, finding that "[e]xtensive circumstantial evidence supports an inference that Schulman communicated more to Klein than that 'it would be nice to be king for a day' and that Schulman expected Klein to use the nonpublic information he shared with him to trade in King securities." DCX 8-004. "As a matter of common sense," the court reasoned, "Schulman had to have communicated additional information" for Klein to conclude that "king" meant King Pharmaceuticals. DCX 8-016. "Common sense also would lead a rational juror to conclude that Schulman had to have communicated additional information to Klein for Klein to have promptly called Shechtman, cited 'inside information' about King and Pfizer, and begun buying King stock." *Id.* (citation omitted). The court found the trial record "replete with evidence sup-

porting an inference that Schulman told Klein information about King so that Klein would trade on it." *Id.*

B. Schulman's Suspension and Negotiated Discipline

Following his conviction, the D.C. Court of Appeals suspended Schulman pending resolution of a disciplinary proceeding. Order, *In re Schulman*, No. 18-BG-065 (D.C. Feb. 5, 2018); *see* D.C. Bar R. XI, § 10(c). Schulman then entered into a Negotiated Discipline with Disciplinary Counsel, stipulating to knowingly revealing client confidences or secrets in violation of Rule 1.6(a); committing criminal acts reflecting adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 8.4(b); engaging in conduct involving dishonesty, deceit, fraud, or misrepresentation in violation of Rule 8.4(c); and conviction of a serious crime in violation of D.C. Bar Rule XI, § 10. As a sanction, Schulman agreed to a three-year suspension with reinstatement conditioned on showing his fitness for readmission to the Bar. *See In re Schulman*, 237 A.3d at 71-72.

C. This Proceeding

Schulman filed the Petition for Reinstatement, along with his Reinstatement Questionnaire, on April 29, 2021. Disciplinary Counsel filed its Answer on June 30, 2021, taking no position as to whether Petitioner qualifies for reinstatement and reserving judgment until after seeing Petitioner's evidence. Given the seriousness of the underlying misconduct, however, Disciplinary Counsel contended that Petitioner's evidence should be subject to heightened scrutiny. *See In re Borders*, 665 A.2d 1381, 1382 (D.C. 1995).

An evidentiary hearing was held before this Ad Hoc Hearing Committee, consisting of Chair Theodore (Jack) Metzler, Public Member Roxanne Littner, and Attorney Member A.J. Kramer on December 6, 2021. Petitioner was represented by Christopher B. Mead, and the Office of Disciplinary Counsel was represented by Deputy Disciplinary Counsel Julia L. Porter. The Hearing Committee heard testimony from Schulman, his wife, his sister, and four additional character witnesses, and received Petitioner's Exhibits 1-19 and Disciplinary Counsel's Exhibits 1-10 into evidence. Both parties filed post-hearing briefs. In its post-hearing brief, Disciplinary Counsel concluded that Schulman had shown his fitness and thus does not presently oppose his reinstatement. DC Br. 19-23.

II. LEGAL STANDARD

An attorney seeking reinstatement must prove by clear and convincing evidence:

> (a) That the attorney has the moral qualifications, competency, and learning in law required for readmission; and (b) That the resumption of the practice of law by the attorney will not be detrimental to the integrity and standing of the Bar, or to the administration of justice, or subversive to the public interest.

D.C. Bar R. XI, § 16(d)(l). The Court of Appeals has elaborated that "in each reinstatement case," the readmission inquiry depends on five factors:

> (1) the nature and circumstances of the misconduct for which the attorney was disciplined; (2) whether the attorney recognizes the seriousness of the misconduct; (3) the attorney's conduct since discipline was imposed, including the steps taken to remedy past wrongs and prevent future ones; (4) the attorney's present character; and (5) the attorney's present qualifications and competence to practice law.

In re Roundtree, 503 A.2d 1215, 1217 (D.C. 1985). The Court places "primary emphasis . . . on the factors most relevant to the grounds upon which the attorney was suspended or disbarred." *Id.* When the nature of the misconduct is both serious and "closely bound up" with the petitioner's "role and responsibilities as an attorney," the Court applies heightened scrutiny to its examination of the other *Roundtree* factors. *In re Borders*, 665 A.2d 1381, 1382 (D.C. 1995).

Attorneys seeking reinstatement must meet their burden with clear and convincing evidence. D.C. Bar R. XI, § 16(d)(1). Clear and convincing evidence is "more than a preponderance of the evidence"; it is "evidence that will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established." *In re Cater*, 887 A.2d 1, 24 (D.C. 2005) (cleaned up).

III. ANALYSIS

A. The Nature and Circumstances of the Misconduct

We begin our analysis with this first *Roundtree* factor, which the Court of Appeals has stated is "of primary importance in considering [a] petition for reinstatement." *In re Bettis*, 644 A.2d 1023, 1028 (D.C. 1994). The nature of the misconduct here was serious. Schulman violated his duty under Rule 1.6 to maintain client confidences and to protect them from being used for his own or for others' gain. As a result, he was convicted of a securities fraud and conspiracy to commit securities fraud—serious crimes that reflect adversely on his honesty, trustworthiness, or fitness as a lawyer and establish violations of Rules 8.4(b), 8.4(c), and D.C. Bar Rule XI, § 10.

The circumstances in which Schulman's misconduct occurred heighten its seriousness. As an initial matter, the information Schulman revealed was particularly sensitive. It was nonpublic information about an event—King's potential merger with Pfizer—that was certain to have an impact on his client's stock price. Further, the person he gave it to was well situated to use the information. Klein owned his own investment firm and was regularly engaged in trading securities on his clients' behalf. Tr. 178-179 (Petitioner); DCX 1-006–1-007. Worse, Klein was Schulman's own financial advisor and thus the one person who could use the information for Schulman's personal financial gain. Worse still, Schulman had authorized Klein to trade securities for him without prior approval and did not keep himself informed of Klein's trading activity. Moreover, Schulman knew that Klein had previously bought Enzo—one of Schulman's clients—on Schulman's behalf.

Taken together, those circumstances made it particularly important that Schulman exercise proper care to protect the confidentiality of the information he possessed about the potential merger between King and Pfizer. Instead, Schulman knowingly revealed that information. He did so in the context of a discussion with his financial advisor about his investments, and he did not make any effort to ensure that Klein would not trade on the information. As a result of Schulman's conduct, Klein invested more than a half million dollars of his own and his clients' funds in King stock and also shared the information with Shechtman, who likewise made substantial trades in King securities. Those trades then spurred multiple government investigations and led to criminal convictions for all three, including

Schulman's conviction for securities fraud and conspiracy to commit securities fraud.

We find the nature and circumstances of the misconduct were serious indeed. That seriousness is reflected by the sanction imposed by the Court of Appeals and its requirement that Schulman prove his fitness before being readmitted. Nevertheless, under the Court of Appeals' precedents, Schulman's misconduct "is not necessarily a permanent bar to reinstatement," so long as the other *Roundtree* factors favor readmission. *Bettis*, 644 A.2d at 1028. We therefore turn to those factors.

B. Other *Roundtree* Factors

Two principles guide our analysis of the remaining *Roundtree* factors. First, we must apply heightened scrutiny if the misconduct was "closely bound up with Petitioner's role and responsibilities as an attorney." *Borders*, 665 A.2d at 1382. Second, we must place "primary emphasis . . . on the factors most relevant to the grounds upon which the attorney was suspended or disbarred." *Roundtree*, 503 A.2d at 1217; *In re Mba-Jonas*, 118 A.3d 785, 787 (D.C. 2015) (per curiam) ("[P]rimary emphasis should be given to matters bearing most closely on the reasons why the attorney was suspended or disbarred in the first place.").

With regard to the first principle, we find that heightened scrutiny is appropriate here. It is a "fundamental principle in the client-lawyer relationship" that "the lawyer holds inviolate the client's secrets and confidences." D.C. R. Prof'l Conduct 1.6, cmt. [4]. Schulman learned about Pfizer's acquisition of King in the

course of representing King in litigation, and was therefore required to refrain from using that information for his own or others' advantage. *See* D.C. R. Prof'l Conduct 1.6(a). Heightened scrutiny is appropriate because Schulman's discipline arose directly from violating the responsibility he owed to King as its attorney. *Borders*, 665 A.2d at 1382.

The second principle requires us to weigh the evidence bearing on the remaining *Roundtree* factors based on its relevance to the reasons that the petitioner was suspended. *Borders*, 665 A.2d at 1382; *Mba-Jonas*, 118 A.3d at 787. Where the suspension resulted mostly from "neglect in handling legal matters," for example, the Court of Appeals has emphasized in its analysis the steps the attorney took to prevent future neglect. *Roundtree*, 503 A.2d at 1217-1218.

Determining which *Roundtree* factors bear most closely on the reasons for Schulman's suspension, however, is not so simple because Schulman maintains that he is innocent of the crimes for which he was convicted. In particular, while he admits making the "king for a day" comment and that he was referring to King Pharmaceuticals, he describes the statement as a "blurt" and denies that he ever mentioned a Pfizer merger or intended Klein to trade on the information. Tr. 123, 211 (Petitioner). When asked directly about the reasons for his misconduct, he testified that it is "hard to give a good answer to that" but ultimately concluded it was a "combination of hubris, stupidity, and a disregard of ethical obligations." Tr. 213-214 (Petitioner).

But Schulman was not suspended for hubris or stupidity. He was suspended because a jury found him guilty of securities fraud and conspiracy to commit securities fraud, which necessarily entailed finding that he said *more* than "king for a day" and that he *did* intend that Klein trade on the information. *See* DCX 6-021, 6-023. We must accept those findings as fact; we are not "equipped to accept [contrary evidence] over the final judgment" of the court. *In re Sabo*, 49 A.3d 1219, 1228 (D.C. 2012). Even so, the Court of Appeals has held that an attorney is not required to admit guilt as a condition for reinstatement. *Id.* at 1226. Because Schulman maintains his innocence, we are left with little evidence about the reasons that led him to engage in the misconduct, and we will not hold his failure to confess guilt against him.

That does not mean, however, that there was no evidence relating to the reasons for Schulman's suspension. There was an abundance of evidence about the circumstances of the misconduct, and as explained above, it was those circumstances that made Schulman's conduct particularly serious. Accordingly, we will emphasize in our analysis the matters that relate most closely to those circumstances. We therefore place our greatest emphasis on the second *Roundtree* factor, whether Schulman has demonstrated that he recognizes the seriousness of his misconduct. We also give greater weight to the third and fourth factors—Schulman's conduct since discipline was imposed and his present character—to the extent that they relate to the reasons his misconduct was so serious.

1. Whether Petitioner Recognizes the Seriousness of the Misconduct

Schulman's claim of innocence also complicates our analysis of the second *Roundtree* factor. "It is a rare occurrence" for an attorney to be convicted of a felony, deny his "culpability throughout the criminal proceedings, and later petition[] for reinstatement to the bar." *Sabo*, 49 A.3d at 1225. In *Sabo*, the Court of Appeals held that it is not impossible in such a situation for a petitioner to recognize the seriousness of the misconduct while at the same time maintain his innocence. *Id.* at 1226. "Simple fairness and fundamental justice demand that the person who believes he is innocent though convicted should not be required to confess guilt to a criminal act he honestly believes he did not commit." *Id.* (cleaned up). Nevertheless, "a claim of innocence will not relieve the petitioner of his or her burden to demonstrate recognition of the serious of the misconduct that led to disbarment." *Id.*

We find that Schulman has not done so here. In *Sabo*, the Court of Appeals found that while the petitioner maintained his innocence, he presented evidence that he had accepted responsibility "for the conduct that led to his conviction." *Id.* at 1227. Here, we find that Schulman has not recognized or accepted responsibility for his misconduct or the circumstances that made it so serious.

As we have described above, what made Schulman's conduct especially serious was that he gave extremely sensitive client information about a potential merger to a broker—his broker—in the context of a discussion about his portfolio, where he had authorized the broker to trade stocks on his behalf, where he did not

pay attention to the trades the broker made on his behalf, where the broker had bought one of his clients' stock before, and where he did not instruct the broker against trading on the confidential information. Almost all of those circumstances were within Schulman's control, but Schulman does not appear to recognize how they contributed to the seriousness of his misconduct, and he does not accept responsibility for them.

To begin, Schulman continues to implausibly downplay the extent of his disclosure to Klein—and by extension his responsibility for the insider trading that ensued. In his testimony, he repeatedly described the disclosure as a "blurt" (Tr. 128, 161, 173, 197, 211) and denied any recollection of mentioning Pfizer or the possibility of a merger. Tr. 148-150. That story does not add up. As the district court in Schulman's criminal case held, his account "that he 'blurted' out the 'King for a day' comment as a joke intended to make him sound like a big shot . . . makes very little sense in the absence of any context." DCX 6-024. As the Second Circuit reasoned, common sense dictates "that Schulman had to have communicated additional information to Klein for Klein to have promptly called Shechtman, cited 'inside information' about King and Pfizer, and begun buying King stock." DCX 8-016 (citation omitted). Indeed, it is hard to understand why Klein would rush to spend more than a half million dollars of his clients' money on King stock on the first trading day after his dinner with Schulman if all he had to go on was "king for a day." Nevertheless, Schulman maintains that he believes Klein "just went off to the races based on something he shouldn't have gone off to the races on." Tr. 187-

188. As an explanation, we do not find that theory plausible; as testimony, we do not find it credible.

Perhaps recognizing the weakness of his story, Schulman now also acknowledges that maybe he could have mentioned a potential merger with Pfizer but does not remember it. Tr. 149. That testimony is new, and flatly inconsistent with what he told the SEC when he was first interviewed about the incident. He testified before the SEC that the "king for a day" remark was the full extent of what he told Klein, and "I would never have told him anything about their meeting, there's a potential merger." DCX 1-016. When asked if it was *possible* if he said anything about a deal involving King that would raise its stock price, Schulman answered "No." DCX 1-023. Later, when he was interviewed by DOJ, Schulman volunteered that he had never mentioned Pfizer to Klein at all. DCX 2-006. And in his criminal case, Schulman's legal arguments were premised on having said nothing other than the "king for a day" remark. *See* DCX 6-023; DCX 8-015. In light of those statements we give little weight to Schulman's acknowledgment here that perhaps he mentioned the Pfizer merger after all. Schulman did not acknowledge that his testimony had evolved from his claims in earlier interviews and from the theories he presented in the criminal case, and he still claims to believe the implausible story that Klein went "off to the races" on his own. Tr. 187-188.

Even beyond that claim, Schulman fails to recognize how he bears responsibility for the circumstances that enabled Klein to trade on the information he received from Schulman. For example, Schulman testified that Hunton & Williams's

policy at the time required attorneys to clear their stock trades against a list of companies for which trading was forbidden, but that "as long as you had a discretionary account, you didn't have to check that list because obviously I had no input into when the stocks were bought or sold."[2] Tr. 108. Although that arrangement was precisely what enabled Klein to purchase stock for Schulman based on Schulman's insider information, Schulman does not see anything wrong with it now. When asked by his lawyer whether he should have provided the no-trade list to Klein, Schulman answered "It's hard even with the benefit of hindsight, because I had no idea what he was buying or selling." Tr. 109. When asked directly what he thought of the policy as he had described it, Schulman answered that it "seemed to make sense" because he had "no idea he's looking at buying company X or selling company Y." Tr. 177-178. Schulman is thus still unable or unwilling to acknowledge that the trades made in his name were ultimately his responsibility, not Klein's. Indeed, Schulman testified, "What I should have done with the benefit of hindsight is said absolutely you should never buy -- you have discretion but absolutely you cannot buy any stock that you know of a company that you know that I am representing." Tr. 109. In other words, Schulman continues to believe it was Klein's responsibility—not his own—to ensure that he did not buy stock in Schulman's clients.

[2] Schulman's testimony about Hunton & Williams's policy was inconsistent with his interview with the SEC. Although he testified here that Hunton & Williams's policy was the reason he did not need to clear stock purchases with the firm, he denied knowing about any such policy when asked by the SEC, testifying "I'm sure there's a firm policy on it, but I'm not aware." DCX 1-018.

Nor does Schulman acknowledge that he should have kept himself informed of the trades that Klein made on his behalf. He testified that he did not check his account statements and gave the impression that he believed it would have been unreasonable to do so because Klein was making so very many trades.[3] *See* Tr. 178-179. Again, Schulman indicates by his testimony that he does not believe, even now, that the transactions made on his account were his responsibility.

Schulman likewise fails to acknowledge how Klein's prior purchase of stock in one of Schulman's clients could have affected how Klein interpreted Schulman's disclosure. Schulman testified that he knew Klein had purchased Enzo stock for him and that he became angry with Klein because he believed the company was not a good investment.[4] Tr. 144-145, 172-173. Schulman did not acknowledge, however, that his reaction to the Enzo purchase could have signaled to Klein he *should* buy King because it *would* be a good investment. Schulman's testimony re-

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[3] Schulman's testimony about searching for the King transaction after he learned about it was also inconsistent with his testimony before the SEC. Before the Hearing Committee, he volunteered that in April 2011, he went back to the statement "[a]nd even looking for King, it took me a good 15 minutes or so thumbing page by page through that statement before I found the King transaction." Tr. 178. In his August 2012 SEC testimony, however, Schulman testified that he and his wife had attempted to find the transaction, but "[e]ven with hindsight going back, we never found it." DCX 1-021. When he was shown the King transaction on the statement, he testified, "This is the first time I ever recall seeing this. First time I've ever seen this." DCX 1-012.

[4] Schulman's testimony about the reasons he was angry regarding the Enzo purchase was consistent with his SEC testimony, *see* DCX 1-008, but inconsistent with his DOJ interview, where he said he had reprimanded Klein because he believed it was "improper" to hold shares in one of his clients. *See* Tr. 142.

garding Enzo is another example of how he continues to downplay his culpability rather than acknowledge his responsibility.

Although Schulman testified that he believes what he did was "wrong" and understands that it violated the Rules of Professional Conduct, Tr. 128-129, we understand that testimony to refer only to the wrongdoing he is willing to admit: blurting out the "king for a day" remark and more generally "carelessness" in discussing client matters with Klein. *See* Tr. 108. At the same time, Schulman repeatedly characterized meeting with his financial advisor in terms that minimized the seriousness of revealing insider information. *See* Tr. 130 ("meeting with a close colleague in a family situation in my home"), 78 ("even though he was a trusted confidant and we were in a completely social context"). And when asked directly about the seriousness of his conduct, Schulman did not have much to say beyond acknowledging that he had in fact violated the rules. He initially described "talking about client matters with a financial adviser" as "rank[ing] very high up there on stupid." Tr. 78. When asked again if he thought insider trading or talking about client confidences are serious matters, he again answered that what he did was "stupid" and "foolish" and "the stupidest thing I ever did in my life." Tr. 128-129. On further questioning Schulman struggled to explain why he thought the conduct was serious and not merely stupid, stating that it "reflected badly" on himself and others, and referring to the seriousness of the consequences he suffered rather than the seriousness of his misconduct. *See* Tr. 179-182.

Overall, Schulman's testimony reflects the belief that his actions were simply the "but for" cause of the illegal trading activity and the responsibility lies mostly with Klein. Tr. 211. He describes Klein as a person who "hurt me more than any other human being in my life has hurt me," and describes Klein's actions as a "total betrayal." Tr. 73-74, 209. When asked directly if he considers himself a victim, he testified only that he is not a victim "in the sense" that his disclosure violated the Rules of Professional Conduct. Tr. 128-129. Unspoken in that testimony is the belief reflected in the rest of the testimony, that in other senses he very much was the victim. Indeed, Schulman does not appear to have engaged in much introspection during his suspension about what led him to violate the Rules of Professional Conduct. To the contrary, the tenor of his testimony was that while he technically violated the rules, he does not believe he truly did anything wrong. Even when testifying about what he says is "the lesson I think I've learned the most," Schulman described his own actions as "a fleeting, passing comment made under what you consider the safest of circumstances, which I did meeting with a close colleague in a family situation." Tr. 129-130. While he says he now understands that there can be "zero tolerance" for disclosing client information in that situation, Schulman's testimony reveals that he still believes it *should* have been "safe[]" to do so. *Id.*

Our finding that Schulman does not recognize the seriousness of his misconduct is not based on his claim of innocence. That claim is based most strongly on Schulman's belief that he never intended Klein to trade on information about King. *See* Tr. 123 ("But did I intend in my heart for this guy to go ahead and make these

trades given our history? Absolutely not. And I'll take that to my grave."). Schulman need not admit otherwise to acknowledge that regardless of what he claims to remember, Klein's actions do not make sense if Schulman did not mention Pfizer or a possible merger. He need not admit that he intended Klein to buy King stock to acknowledge that his stock trades were his responsibility; that it was reckless to give anyone authority to trade individual stocks on his behalf; that it was reckless to remain ignorant of the trades that were made on his behalf; that he should have been *more* careful—not less—when speaking with his financial advisor; that his disclosures were all the more reckless because he knew Klein had purchased Enzo stock; or that his reaction to the Enzo purchase could have signaled to Klein that he should trade on the information about King. Those are the circumstances of his misconduct "that led to his conviction." *Sabo*, 49 A.3d at 1227. Unlike the petitioner in *Sabo*, Schulman fails to take responsibility for them.

On the other end of the scale, we recognize that Schulman accepted some responsibility by agreeing to the negotiated discipline and the sanction. Applying heightened scrutiny and emphasizing the matters that bear most strongly on the reasons he was suspended, however, we find Schulman's acceptance of negotiated discipline is heavily outweighed by his continuing failure to acknowledge or accept responsibility for the conduct that led to his conviction. In sum, we find that Schulman has not demonstrated that he recognizes the seriousness of his conduct and weigh this factor against reinstatement.

2. Petitioner's Conduct During His Period of Disbarment

Under the third *Roundtree* factor, the Court considers a petitioner's "conduct since discipline was imposed, including the steps taken to remedy past wrongs and prevent future ones." *Roundtree*, 503 A.2d at 1217.

By all accounts, Schulman has made good use of his time while he has been suspended. He paid the court-ordered fine and disgorged the $15,527 profit from the King stock trades as part of his sentence. *See* Tr. 156-157. He also served more than the 2000 hours of community service required by his conviction. PX 7. He completed a master's degree, has become a master gardener, started a community garden, and has tutored students learning English as a second language. *See* PX 1; PX 3; PX 9. He has also used his free time to help with chores around the house, spend more time with his grandchildren, and assist his sister in caring for his parents. *See* Tr. 37-38, 261-262, 264. As commendable as all of that is, however, none of it bears much relationship to the reasons for his suspension. Although the fine, disgorgement, and community service are related to the suspension in that they were consequences imposed by the district court as a result of his conviction, fulfilling the terms of a criminal sentence strikes us as the bare minimum expected of a petitioner seeking reinstatement to the bar. Schulman's other beneficial activities are not related to the reasons for his suspension, and we therefore give them less weight under this factor.

We give more weight to steps Schulman has taken to address circumstances that contributed to the seriousness of his misconduct. In particular, he and his wife

have transferred their financial holdings to a firm under instructions to purchase only mutual funds and not individual securities. *See* PX 6; Tr. 78-79 (Petitioner). Although that step does not prevent Schulman from improperly disclosing client information in the future, it does eliminate the possibility that such a disclosure would lead to stock purchases on Schulman's own accounts. Thus, despite his unwillingness to admit there was anything wrong with his arrangement with Klein, it is helpful that Schulman is not in such an arrangement now. While Schulman's present financial arrangements do not address what led him to reveal confidential client information in the first place, they are a significant improvement from the circumstances that existed when he engaged in the underlying misconduct.

Although the question is close, we find that Schulman has taken some steps to remedy past harms by fulfilling the terms of his criminal sentence, that he has taken some steps to prevent future harms by rearranging his finances, and that he has otherwise made good use of his time while suspended. We conclude that Schulman's conduct during suspension favors reinstatement.

3. Petitioner's Present Character

To satisfy the fourth *Roundtree* factor, Petitioner must demonstrate, among other things, that "those traits which led to the petitioner's disbarment no longer exist and . . . the petitioner is a changed individual having a full appreciation for his mistake." *In re Brown*, 617 A.2d 194, 197 n.11 (D.C. 1992) (quoting *In re Barton*, 432 A.2d 1335, 1336 (Md. 1981)). As evidence of this change, Petitioner should also proffer the testimony of "live witnesses familiar with the underlying

misconduct who can provide credible evidence of . . . petitioner's present good character." *In re Yum*, 187 A.3d 1289, 1292-1293 (D.C. 2018) (per curiam) (denying reinstatement where petitioner's witnesses were unfamiliar with the details of his misconduct).

Once again, our analysis is complicated by Schulman's claim of innocence. To avoid requiring that he admit guilt in order to establish this factor, we again look to whether Schulman has demonstrated a "full appreciation for his mistake," *Brown*, 617 A.2d at 197 n.11, and whether he has proffered character witnesses to attest to his changed character.

For the reasons described above, we do not believe Schulman fully appreciates the seriousness of his conduct or takes responsibility for his actions based on his own testimony. Although the Hearing Committee heard testimony from several character witnesses, each of whom testified to Schulman's good character, we do not find that their testimony outweighs Schulman's own. Each of the witnesses affirmed, when asked by Schulman's counsel, that they knew about his conviction and that the Hearing Committee must accept that Schulman had committed the crimes for which he was convicted. Tr. 226-227 (Goldstein); 232-233 (Gibbs); 244 (Bender); 250 (Brown); 260-261 (G. Schulman). It was not clear, however, that the witnesses believed, any more than Schulman himself, that he had done anything wrong. One witness, for example, described Petitioner's statements to Klein as "a joke or flip remark." Tr. 226 (Goldstein). And regardless of how they viewed his conviction, none of the witnesses seemed to believe that Schulman's misconduct

stemmed from any trait in need of correction. *E.g.* Tr. 228-229 (Goldstein) ("I've never seen him ever either have any self-aggrandizement or any seeking for money or talking about money or anything that would be sketchy. I've never seen anything like that."); Tr. 244 (Bender) ("I feel that Rob Schulman is of the utmost moral character, now and always has been based upon my interactions with him."); Tr. 251 (Brown) ("I have never known him to be dishonest or avaricious in any way. I have always thought he[] . . . has top quality character."). The most helpful witness testified that he has "utmost confidence in Rob's honor and integrity, despite what happened -- despite the conviction." Tr. 234-235 (Gibbs). The same witness described Schulman as remorseful: "He's certainly sorry about what happened, absolutely. It's taken a terrible toll on Rob, and [his wife] and the whole family." Tr. 235 (Gibbs).

While we do not doubt the witnesses' sincerity, we do not find that it establishes Schulman has changed as an individual or that he fully appreciates his misconduct. Applying heightened scrutiny, and weighing most heavily the matters that relate to the reasons for his suspension, we find Schulman has not established that his present character favors reinstatement.

4. Petitioner's Present Qualifications and Competence to Practice Law[5]

To satisfy the last *Roundtree* factor, "[a] lawyer seeking reinstatement . . . should be prepared to demonstrate that he or she has kept up with current devel-

[5] Hearing Committee Member Littner does not join this portion of the Report and Recommendation. *See* Separate Statement of Roxanne Littner Dissenting in Part, *infra*.

opments in the law." 503 A.2d at 1218 n.11. Schulman and his character witnesses credibly testified that he has kept abreast of developments in patent law, which is his area of expertise.[6] Tr. 110-114 (Petitioner); 237-238 (Gibbs); 246 (Bender); 250, 254-255 (Brown). We therefore find that Petitioner has satisfied this *Roundtree* factor. We give less weight to this factor, however, because it has little relevance to the reasons for his suspension in that Schulman's misconduct did not result from incompetence or any lack of knowledge about patent law. *See Roundtree*, 503 A.2d at 1217.

IV. CONCLUSION

As described above, the seriousness of Petitioner's misconduct does not prevent him from establishing his fitness to practice law so long as the remaining *Roundtree* factors are satisfied. We find that Petitioner has satisfied one of the factors by demonstrating that he has taken some steps to prevent future harm of the kind that resulted from his misconduct. A majority of the Ad Hoc Hearing Committee finds he has satisfied a second factor by showing he is competent to resume the practice of law. We find those factors are outweighed by Petitioner's failure to demonstrate that he appreciates the seriousness of his misconduct or that his present character favors reinstatement. We have given the greatest weight to the factors that bear on the reasons for Petitioner's suspension, which in this case are the circumstances that caused his misconduct to be particularly serious. Petitioner fails

[6] Although Schulman took several continuing legal education courses in patent law during his suspension, he did not take any courses in legal ethics. Tr. 182-183.

to acknowledge or take responsibility for those circumstances, which were largely of his own creation or within his control. In sum, we find Petitioner has failed to demonstrate by clear and convincing evidence the fitness qualifications required for readmission under D.C. Bar R. XI, § 16(d)(1)(a) and as set forth in *Roundtree*. Accordingly, we recommend the Petition for Reinstatement be denied.

AD HOC HEARING COMMITTEE

Theodore (Jack) Metzler
Chair

Roxanne Littner[7]
Public Member

A.J. Kramer
Attorney Member

[7] Ms. Littner dissents from the finding that Schulman established his competence to resume the practice of law but joins the Report in all other respects.

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY
AD HOC HEARING COMMITTEE

In the Matter of:	:	
	:	
ROBERT M. SCHULMAN,	:	
	:	Board Docket No. 21-BD-021
Petitioner.	:	Disciplinary Docket No. 2021-D083
	:	
A Suspended Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 376111)	:	

SEPARATE STATEMENT OF ROXANNE LITTNER DISSENTING IN PART

I respectfully dissent from the Hearing Committee's finding in part III.B.4 that Petitioner Robert Schulman has established he is competent to resume the practice of law. In my view, competence includes understanding and abiding by the ethics rules that attorneys are bound to follow. Although Schulman may have shown that he has the technical skills to practice patent law, I would find that he has not established that he understands the confidentiality rules he violated. As explained in the Report and Recommendation, Schulman does not believe he did anything truly wrong and has not shown that he understands the seriousness of maintaining client confidences. His testimony shows that he believed it should have been "safe[]" to talk about client matters with his broker, and his view about revealing some kinds of client information was: "that's the kind of thing that to me I didn't think it was terribly problematic." Tr. 129-130, 185-186. His testimony gives us no reason to think his view has truly changed. His failure to take any ethics courses while suspended shows that he did not believe he had anything to learn in the area. And

while he predictably claims that he would not reveal client information again, his testimony was not convincing.

It is Petitioner's burden to establish that he is competent to reenter the practice of law by clear and convincing evidence, and we must apply heightened scrutiny to his showing because his misconduct was closely tied to his role as an attorney. I would find that Petitioner failed to make the required showing. I therefore respectfully dissent from the Hearing Committee's contrary finding. I otherwise join the opinion and its conclusion in full.

Roxanne Littner
Public Member