DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In re the Matter of:	:	
	:	
MICHAEL J. BEATTIE,	:	D.C. App. No. 16-BG-893
	:	Board Docket No. 15-BD-085
Petitioner.	:	Bar Docket No. 2015-D247
	:	
A Disbarred Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 450873)	:	

REPORT AND RECOMMENDATION

Petitioner filed a petition for reinstatement on August 20, 2015. An Ad Hoc Hearing Committee recommended that the petition be denied on September 1, 2016. On September 19, 2016, Petitioner filed a motion of voluntary dismissal, seeking the dismissal of his reinstatement petition, and entry of an order "stating that the recommendations made by the committee shall not be published and shall not be cited in any future proceedings." On November 15, 2016, the Court granted the motion to dismiss, denied the request to preclude citation to the Hearing Committee report in future proceedings, and referred to the Board the request that the Hearing Committee report not be published on the D.C. Bar website.

The Board requested that the parties brief the issue. Petitioner filed a Motion for Sanctions and [to] Prohibit Publication, and an Alternative Motion to Red[e]nominate Proceedings. Disciplinary Counsel filed a Response Regarding Publication of Hearing Committee Report on the Bar's Website. In its response,

Disciplinary Counsel acknowledged that Petitioner could request that "particularly sensitive" information be sealed pursuant to Board Rule 9.7(d). To assist the Board in its consideration of whether the Hearing Committee's report should be posted on the Bar's website, the Board ordered Petitioner to identify for Disciplinary Counsel (1) those portions of the Hearing Committee report that should be redacted from the Hearing Committee report if the report remains on the D.C. Bar's website; and, (2) those documents in the record of this matter that should be placed under seal in their entirety, or portions of documents that should be redacted. The Board also ordered that the parties meet and confer regarding Petitioner's proposed redactions and documents to be sealed.

On March 27, 2017, the parties filed a Joint Statement Regarding Redaction of the Hearing Committee's Report and Recommendation, in which they agreed that the Hearing Committee report should remain publicly accessible on the Bar's website, with certain redactions. A copy of the proposed redactions is attached hereto. The parties also agreed that the unredacted report and recommendation would be available in proceedings involving Petitioner in the event that he seeks reinstatement in the future. The parties agreed that the unredacted Hearing Committee report is not privileged, but that the party seeking to offer the Hearing Committee report in evidence in a future proceeding would need to show that it is relevant and not merely cumulative.

D.C. Bar R. XI, § 17(a) provides that all proceedings before a Hearing Committee shall be open to the public, and all documents filed in a disciplinary matter are available for public inspection, absent entry of a protective order pursuant to § 17(d). *See also* Board Rule 9.7(d) (reinstatement proceedings are open to the public, subject to the issuance of a protective order). Here, although Petitioner's reinstatement hearing was open to the public, he has requested that certain information publicly disclosed to the Hearing Committee be redacted from the Hearing Committee's report, which is currently available on the D.C. Bar's website. We have reviewed the redacted materials and conclude that Petitioner has a legitimate privacy interest in their contents. Thus, the Board must balance the public interest in the openness of disciplinary proceedings against the Petitioner's desire to prevent the further disclosure of sensitive personal information provided to the Hearing Committee. In considering this issue, we note that, because Petitioner has withdrawn his petition for reinstatement, and has agreed that a redacted version of the Hearing Committee report should remain publicly available, the public interest in access to the unredacted Hearing Committee report is lessened. We also note that Disciplinary Counsel agrees that only a redacted version of the Hearing Committee report should be publicly available.

In light of the parties' agreement to the redaction of the Hearing Committee report and future use of the unredacted Hearing Committee report, the personal

privacy interests of Petitioner, and the limited public interest in the redacted information, the Board Chair has issued an order directing that the unredacted version of the Hearing Committee report be removed from the Bar's website and the Fastcase® legal research service,[1] and replaced with the redacted version agreed upon by the parties.

As such, the Board recommends that Petitioner's request that the Hearing Committee report not be posted on the Bar's website be denied as moot.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: /MGK/
Matthew G. Kaiser

Dated: April 24, 2017

All members of the Board concur in this report and recommendation.

[1] The Court opinions, Board and Hearing Committee reports, and informal admonitions issued by Disciplinary Counsel that are available on the D.C. Bar website are now also available on Fastcase®.

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

In the Matter of:	:	
MICHAEL J. BEATTIE,	:	
	:	Board Docket No. 15-BD-085
Petitioner.	:	Disc. Docket No. 2015-D247
A Disbarred Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 450873)	:	

REPORT AND RECOMMENDATION
OF THE AD HOC HEARING COMMITTEE

This is a contested reinstatement proceeding conducted in response to Michael J. Beattie's ("Beattie" or "Petitioner") Petition for Reinstatement filed August 20, 2015 (the "Petition"). The Petition follows an order of the District of Columbia Court of Appeals (the "Court of Appeals") disbarring Petitioner, by consent, on March 5, 2009. *In re Beattie*, 967 A.2d 154 (D.C. 2009) (per curiam) ("*Beattie III*"). Petitioner's license to practice law in Virginia was also revoked by consent on January 6, 2009, for misconduct in four separate matters. Before his disbarment, Petitioner was twice suspended from the practice of law in this jurisdiction based on reciprocal discipline matters from Virginia. *In re Beattie*, 930 A.2d 972 (D.C. 2007) (per curiam) (appending Board Report) ("*Beattie I*"); *In re Beattie*, 956 A.2d 84 (D.C. 2008) (per curiam) ("*Beattie II*").

Based upon the parties' written submissions and evidence presented at an April 5, 2016 hearing, and for the reasons set forth below, the Hearing Committee concludes that Petitioner has not met his burden of showing by clear and convincing evidence that he is presently fit to resume practice under D.C. Bar R. XI, § 16(d) and the factors set forth in *In re Roundtree*, 503 A.2d 1215 (D.C. 1985). We therefore recommend denial of the Petition for Reinstatement.

I. PROCEDURAL HISTORY

Petitioner was admitted to the District of Columbia Bar ("D.C. Bar") in 1996. He was admitted to the Virginia Bar in 1995, and practiced before the United States Court of Appeals for the 4th and 11th Circuits, the District Court for the Eastern District of Virginia, and the District Court for the District of Columbia. In the course of his practice, Beattie was admitted *pro hac vice* in separate matters pending before the United States Supreme Court, the District Court for the Northern District of New York, and the District Court for the Western District of Florida.

Within seven years of beginning his practice of law, Mr. Beattie became the subject of a series of bar complaints from clients and suspensions from court practice by judges. These led to disciplinary actions against Petitioner and resulting suspensions by the Virginia Bar authorities, with reciprocal discipline and suspensions by D.C. Court of Appeals – all with Petitioner's consent. *Beattie I*, 930 A.2d at 972; *Beattie II*, 956 A.2d at 85. Despite these initial disciplinary proceedings and suspensions, bar complaints against Petitioner continued. As a result, Petitioner ultimately consented to disbarment in D.C. after consenting to license revocation Virginia. *See Beattie III*, 967 A.2d at 154. Mr. Beattie's consent disbarment was based on numerous violations of the Virginia Rules involving at least four clients. Petitioner's Rule violations included: Rule 1.1 (competence), 1.3 (diligence), 1.4 (communications), 1.16 (terminating client relationship), 3.4(d) (fairness to opposing counsel and party, knowingly violating rule of tribunal), 3.5(f) (impartiality, conduct that disrupts the tribunal), and 5.1(c) (responsibility to supervise subordinates).

On August 20, 2015, Mr. Beattie filed the instant Petition with Reinstatement Questionnaire. DX 1 (Petition).[1] [redacted]

[1] "DX" refers to Disciplinary Counsel's Exhibits. "PX" refers to Petitioner's Exhibits.

[redacted] Disciplinary Counsel[2] timely opposed the Petition in an Answer filed November 18, 2015, later amended with leave on March 25, 2016. The Ad Hoc Committee Chair conducted a pre-trial conference on February 29, 2016. Petitioner Beattie and Assistant Disciplinary Counsel William R. Ross attended. Thereafter, the parties prepared and filed pre-hearing submissions, including proffered exhibits and Proposed Stipulation of Facts.

The Ad Hoc Hearing Committee ("Committee") was comprised of Thomas E. Gilbertsen (Chair), Joel Kavet (Public Member), and Malcolm L. Pritzker (Attorney Member). The Committee held a hearing on the Petition on April 5, 2016. Petitioner Beattie was not represented by counsel at the hearing, but he presented opening and closing argument, testified on his own behalf, and was cross-examined by Assistant Disciplinary Counsel Ross. Although Petitioner submitted several affidavits and unsworn statements from some of his mental health care providers and professional colleagues, as well as his mother, Petitioner did not call any other witnesses to testify on his behalf at the hearing. Assistant Disciplinary Counsel Ross cross-examined Petitioner, but did not call any further witnesses. The Committee received all of Petitioner's proffered exhibits (including exhibits 4-6 over Disciplinary Counsel's objection) and each of Disciplinary Counsel's exhibits into evidence.

Petitioner filed his post-hearing brief on May 11, 2016, and Disciplinary Counsel filed its proposed findings of fact, conclusions of law and recommendation on June 8, 2016. No further briefing was sought or filed by either party.

[2] The District of Columbia Court of Appeals changed the title of Bar Counsel to Disciplinary Counsel, effective December 19, 2015. We use the current title herein.

II. STANDARD OF REVIEW

D.C. Bar R. XI, § 16(d)(1) sets forth the legal standard for reinstatement, placing upon Petitioner the burden of proving by clear and convincing evidence that:

> (a) he has the moral qualifications, competency, and learning in law required for readmission; and
>
> (b) his resumption of the practice of law will not be detrimental to the integrity and standing of the Bar, nor to the administration of justice, nor subversive to the public interest.

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) (emphasis added) (quoting *In re Dortch*, 860 A.2d 346, 358 (D.C. 2004)). *Roundtree* remains the seminal precedent in this area, identifying five factors that inform this reinstatement determination:

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 post-discipline conduct, including 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.

503 A.2d at 1217.

Based on the following findings and conclusions of law, and Mr. Beattie's own admissions at the hearing, we find that the *Roundtree* factors weigh against reinstating Petitioner to the practice of law.

III. FINDINGS OF FACT

A. Petitioner's Prior Misconduct and Disciplinary Record

1. Mr. Beattie's disciplinary history involves a steady course of misconduct that commenced in 2002 and continued through two suspensions and until his ultimate disbarment in 2009. In connection with his disbarment by consent, Mr. Beattie admitted repeatedly neglecting client matters, failing to communicate with clients, failing to maintain required records, and failing to supervise non-lawyer staff in four separate matters. DX 6. Mr. Beattie was previously disciplined for similar misconduct involving client neglect, making false statements to tribunals, lack of fairness to opposing parties, dishonesty, and failure to supervise non-lawyer staff. [redacted] DX 7 at 4 (Virginia State Bar Disciplinary Board Order of Suspension of 60 Days, dated Aug. 26, 2005) (Virginia Board imposes mitigated sanction on grounds that "during the relevant time period Respondent [Beattie] was suffering from an impairment which affected both his judgment and his ability to understand the significance of the proceedings."); *Beattie I*, 930 A.2d at 975 n.2 ("The Virginia Board found there was a mitigating factor that respondent suffered from an impairment that affected his judgment and ability to understand the significance of the proceeding and that respondent, subsequently, gained control over that impairment."); DX 22 at 10; Hearing Transcript ("Hearing Tr.") at 23-25, 34-41 (Beattie testimony about circumstances of his disbarment and mental disabilities).

2. Petitioner's 2007 suspension – stayed in favor of a 60-day period of unsupervised probation – arose from a reciprocal discipline proceeding after Mr. Beattie was suspended by Virginia Bar authorities for misconduct in the course of representing Joyce Spangler in a 2002 employment discrimination suit pending in the United States District Court for the Eastern District of Virginia. *See* DX 22 at 3; *Beattie I*, 930 A.2d 972 (the "Spangler Matter"). Petitioner filed a complaint in the Spangler Matter on September 5, 2002, and on September 27, he was contacted by Ray Hogge, a lawyer retained by defendant. Hogge left a voicemail message for Petitioner indicating that he represented defendant, and providing his name and telephone number. Three days later, Attorney Hogge wrote to Petitioner confirming his representation of defendant in the Spangler Matter and offering to waive service of process under applicable Federal Rules of Civil Procedure. DX 22 at 9; *Beattie I*, 930 A.2d at 976. A little over a month later, Attorney Hogge left another voicemail for Petitioner, asking him to agree to an extension of time for defendant's response to the complaint and requesting a settlement demand. *Id.*

3. Petitioner responded to none of these communications from defense counsel, and, on November 7, 2002, Mr. Beattie moved for a default judgment against the defendant. In his default motion, Petitioner certified that "a copy has not been sent to opposing counsel because no attorney has entered an appearance in this case." *Beattie I*, 930 A.2d at 977. Eleven days thereafter, Petitioner appeared on his default motion in the Eastern District of Virginia and, when questioned by the court about whether any defense counsel had contacted him in connection with the case, Petitioner responded that a lawyer had left him two voicemails about the case, but that he did not know who the lawyer was. *Id*. at 976-77.

4. The court entered the default motion sought by Mr. Beattie's motion. *Id.* Five days later, Attorney Hogge faxed Petitioner asking him to sign an agreed order setting aside the default judgment. DX 22 at 9-10. When Petitioner refused, Attorney Hogge filed a motion for relief from

the default judgment. The court set that motion for hearing on May 21, 2003, but Petitioner failed to appear. The court then issued a show cause order for Petitioner to appear on July 2, 2003, and on August 13, 2003, the court entered an order vacating the default judgment, indefinitely suspending Mr. Beattie from practice before that court and entering a $5,000 sanction against Petitioner, finding that he made material misrepresentations to the court at its November 18, 2002 default judgment hearing. DX 22 at 10; *Beattie I*, 930 A.2d at 977. Petitioner failed to pay the sanction, whereupon the court entered another show cause order on which a hearing was conducted on March 10, 2004. Petitioner was held in contempt during that hearing, which included Petitioner telling the judge that "you need to perhaps go to anger management classes." *Id*.

5. In the ensuing disciplinary action, Mr. Beattie stipulated that his conduct in the Spangler Matter included making false statements to a tribunal, offering evidence known to be false, failing to inform a tribunal of all material facts in an *ex parte* proceeding, and conduct intended to disrupt a tribunal. DX 22 at 8. The misconduct at issue occurred between September 2002 and March 2004. DX 1 at 161-62; DX 22 at 9-10. The Virginia Board found, as a mitigating factor, that Petitioner was suffering from a mental health impairment during the relevant period, which affected both his judgment and his ability to understand the significance of the default judgment and show cause order proceedings. DX 22 at 2 n.2; *Beattie I*, 930 A.2d at 972 n.2. The Virginia Board further found that at the time – August 2005 – Mr. Beattie was controlling this disability through "changes in lifestyle and appropriate professional treatment" and imposed a more lenient discipline in reliance on those claims. DX 22 at 10; *Beattie I*, 930 A.2d at 977.

6. Shortly after Mr. Beattie completed his probationary period in *Beattie I*, he was again cited by Virginia Bar authorities for violating Rule 1.1 (competence), 1.3(a) (diligence), 1.4(a), (b), and (c) (communication), 3.4(e) (fairness to opposing party and counsel), 4.1(a) (truthfulness in statements to others), 5.1 (responsibilities of a partner or supervisory lawyer), and

8.4(c) (misconduct) of the Virginia Rules of Professional Conduct. *Beattie II*, 956 A.2d 84. Exhibit 9 to the Petition is an "Order of Suspension, With Terms" issued by the Circuit Court of Fairfax County, detailing a number of matters in which Mr. Beattie violated Virginia ethical rules.

7. In one such matter (the "Jeffers Matter"), Petitioner was sanctioned by the Eastern District of Virginia in August 2003, and suspended indefinitely from practicing before that court. Petition, Exhibit 9 at ¶¶ 1-2. A certain Kimberly Jeffers had retained Petitioner a month earlier, paying him a $7,000 advance retainer to represent her in a sexual discrimination suit in that court. Petitioner did *not* advise Ms. Jeffers about his suspension from appearing in the Eastern District of Virginia. *Id.* at ¶ 3; *see also* DX 24 at 4. Ms. Jeffers rarely heard from Petitioner for a time thereafter, and Petitioner told his client that her highly confidential file had been stolen. Petition, Exhibit 9 at ¶ 4.[3] The following year, in July 2004, Petitioner's firm filed a complaint for Ms. Jeffers in the Eastern District of Virginia. Mr. Beattie hired a part-time contract attorney to draft and sign the pleadings, and thereafter the Petitioner and attorneys associated with his firm routinely failed to meet deadlines, participate in discovery, failed to appear at hearings, and otherwise violated that court's scheduling order. *Id*. at ¶ 5. Ms. Jeffers's case was ultimately dismissed on summary judgment. *Id.*

8. In a related matter at issue to Petitioner's second suspension in Virginia, the "Brincefield Matter," Petitioner retained a lawyer at another firm to help him defend a deposition of Ms. Jeffers. Mr. Beattie told the other lawyer that his own law firm was short-staffed and that he was not licensed to practice before the Eastern District of Virginia, which was false. Petitioner agreed to send the other lawyer $1,000 as an advance against fees for the deposition appearance. When Petitioner failed to pay the other lawyer's fee, another bar complaint was filed. *Id*. at ¶ 6.

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[3] Petitioner makes similar claims of stolen files and data in this proceeding. *See* Hearing Tr. at 24.

9. In his ensuing second Virginia disciplinary proceeding, Mr. Beattie admitted violating rules relating to competence, diligence, communication with client, fairness to opposing parties, making knowing false statements, failing to supervise subordinates, and dishonesty. DX 23 at 1 n.2; DX 24 at 3-4. The misconduct in these matters occurred between July 2003 and January 2007. DX 1 at 152-154.

10. Petitioner entered a February 2007 consent decree whereby he was suspended by Virginia for six months with conditions, but he failed to notify D.C. Bar authorities about this second suspension, as required by D.C Bar R. XI, § 11(b). DX 24 at 3. Upon discovery of the undisclosed, additional disciplinary action against Petitioner, Disciplinary Counsel filed a certified copy of the Virginia order with the Court of Appeals. *Id.*; *Beattie II*, 956 A.2d at 85. The Court of Appeals immediately suspended Mr. Beattie and referred the matter to the Board for further proceedings to determine whether identical, lesser, or greater reciprocal discipline should be imposed on Petitioner. DX 24 at 3. Before the Board issued any recommendation on reciprocal discipline, Mr. Beattie consented to the requested six-month suspension provided that its effective date began October 11, 2007 – the date on which the Court of Appeals had suspended him upon learning of the undisclosed Virginia order constituting his second suspension. *Beattie II*, 956 A.2d at 85-86. The net effect of the September 11, 2008 *Beattie II* decision is that Mr. Beattie was suspended for six months, but that discipline ran *nunc pro tunc* to October 11, 2007, so his suspension was effectively terminated by that decision. Mr. Beattie also consented to a three-year period of unsupervised probation subject to the conditions imposed by the Virginia Board. *Id*.

11. Several months later, the Petitioner was disbarred, by consent, on March 5, 2009. DX 2; *Beattie III*, 967 A.2d 154. Because Mr. Beattie had already filed an affidavit complying with his obligations as a disbarred attorney, Mr. Beattie's disbarment was deemed to run from the date of his filing, February 27, 2009. DX 3 (D.C. Bar R. XI, § 14(g) affidavit).

12. Mr. Beattie consented to revocation of his law license in Virginia, agreeing that he had violated the following Virginia Rules of Professional Conduct: 1.1 (competence), 1.3(a) (diligence), 1.4(a)-(b) (communications), 1.16(d)-(e) (terminating client relationship), 3.4(d) (knowingly violating rule of tribunal), 3.5(f) (conduct that disrupts the tribunal), and 5.1(c) (responsibility to supervise subordinates). His misconduct included, but was not limited to, failing to make court appearances, filing briefs late without seeking an extension, submitting a brief for a different client to a government agency, and failing to communicate with clients. *See, e.g.*, DX 7 at 4-6.

13. In his affidavit of consent to disbarment, Mr. Beattie admitted violating Rules 1.4 (communication) and 1.15(a) (record keeping). He also acknowledged he could not successfully defend against additional charges that he violated Rules 1.1 (competence), 1.3 (diligence), and 1.4 (communication). In consenting to disbarment, Mr. Beattie admitted misconduct in several different client matters, as follows:

14. **Bar Docket No. 2007-D195 (Stanley)**: On behalf of his client Karen Stanley, Mr. Beattie filed a civil complaint alleging serious malfeasance including defamation, intentional misrepresentation, and libel. DX 12 at 1. Because the initial complaint was "largely indecipherable," the court directed Mr. Beattie to file an amended complaint. DX 13 at 1. After Mr. Beattie failed to respond to a motion to dismiss (DX 13), the defendant filed a supplement to its motion, requesting that its uncontested motion be deemed conceded. DX 14 at 1. Although Mr. Beattie ultimately filed an opposition, it was significantly out of time and without leave of court. The court therefore struck Mr. Beattie's opposition to the motion. DX 17. Mr. Beattie then attempted to withdraw from this representation without complying with the proper procedures. DX 19.

15. Because Mr. Beattie had not taken any steps to protect Ms. Stanley's interests after the opposition brief was stricken by the court, Ms. Stanley's complaint was dismissed over a year

later. DX 20. Mr. Beattie acknowledged that he neither notified Ms. Stanley that her suit had been dismissed, nor filed any appeal. DX 11 at 1. Mr. Beattie admitted failing to communicate with Ms. Stanley. DX 6 at 1 (consent affidavit); DX 11 at 1 (letter to Disciplinary Counsel). He described his conduct in the Stanley matter as "utterly indefensible." Hearing Tr. at 36.

16. **VSB Docket No. 07-051-2331 (Perkins)**: Mr. Beattie was retained to represent Amy Perkins in an employment discrimination matter. DX 7 at 4. In seeking additional time to oppose a motion to conclude the matter without a hearing, he falsely asserted that he had never received a copy of the government's motion. *Id.* The defendant produced a copy of the receipt signed by Mr. Beattie demonstrating his timely possession of the motion, and the court therefore denied Mr. Beattie's request for additional time to respond. *Id.* Mr. Beattie also failed to timely discuss case developments with Ms. Perkins. After the client terminated him from the representation, Mr. Beattie declined to turn over Ms. Perkins's file and instead filed a substantive motion, purportedly on Ms. Perkins's behalf. *Id.* Ms. Perkins sued Mr. Beattie for malpractice and was awarded $11,680.88, which he promptly satisfied in full. DX 7 at 5. He admitted violating rules relating to incompetence, neglect, failure to account for his fee, and failure to respond to client inquiries about the representation. *Id.*

17. **VSB Docket No. 06-051-3317 (Givens)**: Mr. Beattie was retained by Florence Givens to appeal a denial of worker's compensation benefits. In that case, Petitioner filed a brief that presented facts and arguments for an unrelated client. DX 7 at 5. Mr. Beattie did not notice the error until months after Ms. Givens's claims had been denied. Although he informed Ms. Givens that her claim had been denied, he failed to inform her that he had filed the wrong brief. *Id.* Mr. Beattie agreed to file a new claim for Ms. Givens free of charge, but he failed to do so. *Id.* He admitted violating rules relating to competence, diligence, communication, and supervision of subordinates. *Id.*

18. **VSB Docket No. 07-051-1351 (Kaitala)**: Mr. Beattie represented an Army employee before the Merit Systems Protection Board but failed to participate in a status conference and failed to respond to numerous telephone messages left by both the tribunal and opposing counsel. DX 7 at 5-6. Mr. Beattie then attempted to condition settlement on a promise that opposing counsel would not file a bar complaint against him. DX 7 at 6. He admitted violating rules relating to diligence, knowingly disobeying a tribunal, and conduct intended to disrupt a tribunal. *Id.*

19. **VSB Docket No. 07-051-1867 (Clinton)**: Mr. Beattie was retained to represent Curtis Clinton's daughter in a civil matter, but failed to attend two court appearances without explanation to the court or opposing counsel. DX 7 at 6. He admitted violating rules relating to competence, diligence, communication, protecting a client's interests upon termination of the representation, and knowingly disobeying a tribunal. *Id.*

20. Mr. Beattie's Petition refers to other bar complaints that were apparently dismissed without prejudice in Virginia after his revocation. DX 1 at 14 (Capers complaint); DX 1 at 16 (Hoag & Gill complaints); DX 1 at 18 (Windsor complaint); DX 1 at 19 (Virginia State Bar complaint). Nothing else in the record explains anything about these complaints.

21. Disciplinary Counsel was unable to obtain any records from the Virginia State Bar relating to complaints dismissed without prejudice in Virginia, because they remain confidential. Mr. Beattie would be able to obtain confidential documents involving himself, upon request. This would not require a Freedom of Information Act ("FOIA") request.

22. Mr. Beattie did not describe any steps taken to determine the actual status of these disciplinary matters other than claiming he had filed a FOIA request. Hearing Tr. at 91-94; DX 1 at 14 ("I submitted a Freedom of Information Act request in 2014, and that produced a document

showing Ms. Capers' case number was dismissed in 2008."). Petitioner did not submit any documents disclosed by the Virginia Bar in response to the FOIA request.

[redacted]

[redacted]

[redacted] [redacted]

[redacted] [redacted]

4 [redacted]

[redacted]

C. Petitioner's Conduct During Period of Disbarment

32. Petitioner maintains that his current regimen of medication and counseling has effectively remediated symptoms from his serious mental health issues and problematic behaviors.

The Petition portrays Mr. Beattie's "successful completion" of a two-year assignment as a human resources policy specialist at the United States Department of Justice ("DOJ") and relies heavily on this work experience while inviting the Committee to view it as "another indicator that I now have improved judgment and stability." Petition at 13, 24-25. Yet, at the hearing, it was disclosed that workplace stress required Mr. Beattie to take an extended medical leave from that position in 2012. Hearing Tr. at 46-51 (detailing circumstances of Petitioner's leave of absence at DOJ).

33. Mr. Beattie's employment at DOJ occurred between November 2010 and November 2012. DX 1 at 5. Mr. Beattie took extended medical leave from this position in January 2012 because the job was giving him "too much stress" and he had "trouble doing his work." DX 1 at 100 (Dr. Wilken Report); Hearing Tr. at 46. Mr. Beattie remained on leave at least into March 2012, when he was assessed by Dr. Wilken. DX 1 at 5 (noting that Mr. Beattie was still not working). Mr. Beattie believed the problems were caused by a supervisor, whose personality was "not really compatible" and who gave vague instructions. Hearing Tr. at 49.

34. While Mr. Beattie received a performance award and a successful performance appraisal during his two-year temporary appointment at DOJ, these appraisals were prior to and therefore did not cover the period when Petitioner took extended medical leave because of anxiety and his other work performance difficulties. PX 8 (July 1, 2010 – July 30, 2011); PX 9 (Sept. 2011).

35. [redacted]

36. [redacted].

37. While completing his Masters of Social Work degree at George Mason University between 2010 and 2014, Mr. Beattie sought and received accommodations due to his disabilities, including extra time on exams, extra time to complete assignments that required significant reading, permission to listen to course books on audio tape, and preferential seating at the front of classrooms. Hearing Tr. at 98-99; PX 11 (GMU transcript).

38. Although Mr. Beattie stated that he intends to practice law if reinstated, Petitioner also vowed that he "would not actually represent anyone in court." Petition at 17. At the hearing, Mr. Beattie testified that he did not know whether he would be able to "handle the adversarial environment" of litigation and would instead stay away from any area of the practice of law "where I am uncertain and uncomfortable." Hearing Tr. at 67. Mr. Beattie attempted to clarify this by stating he would "help clients file simple types of actions on their own . . . sort of, as in-house counsel, if you will, but not actually go to court for them necessarily." *Id*. at 68.

39. Mr. Beattie argued that his current character should be compared and contrasted with his prior misconduct. Hearing Tr. at 54:5-6. A former employee, Kostyantyn Nesterov, submitted an affidavit stating that Petitioner's mental health problems caused him to yell at subordinates and regularly treat them disrespectfully, and mistreatment of staff precipitated high staff turnover. PX 2 at ¶ 5. Mr. Nesterov's affidavit contrasted that behavior to what he has

witnessed more recently with Mr. Beattie, albeit not in a work environment. *Id.* at ¶¶ 13-14. While well-intentioned, the Nesterov Affidavit contains a fair amount of hearsay and lay opinion about Mr. Beattie's improved behavior and capacity for managing stressful situations, from an available witness who did not appear at the hearing, and we therefore cannot accord it much weight.

40. A fulsome disclosure of Mr. Beattie's leave of absence at DOJ was notably absent from the Petition, nor does he address this episode in his proposed findings, but asks instead that the Committee find that his employment history at DOJ demonstrates that Mr. Beattie has made "dramatic improvement" during the period of his disbarment. PFF at ¶ 37.

41. Petitioner embarked on a great deal of volunteer work since the time of his disbarment. *See generally* PFF at ¶¶ 30-32. Petitioner also completed a Masters of Social Work degree from George Mason University during his period of disbarment. PFF at ¶ 34. Petitioner submits that his good academic record during that MSW degree program – including the timely completion of assignments and consistent attendance at class – "indicates he would likewise make it to court appearances and turn in pleadings on time if permitted to resume the practice of law." *Id*. This proposed finding is at odds with Petitioner's vow not to resume a litigation practice if reinstated. Moreover, Petitioner was provided with significant accommodations during his MSW degree program. It is unclear from the record whether Petitioner is fit to practice law with similar accommodations, and Mr. Beattie made no detailed proposals about what accommodations he would need or seek, nor from where the accommodations would come, if he resumed the practice of law.

42. Mr. Beattie was unable to confirm or substantiate his beliefs about the status of claims against him by former clients or the steps he has taken to remedy his prior misconduct and make restitution to those clients, where appropriate. Petitioner maintains that he is unable to

provide certain facts on these matters because the Commonwealth of Virginia made inadequate responses to his FOIA requests (Findings 20-22, *supra*) and that "a former client came into the office and stole [his] law firm's server," and then someone also destroyed the office manager's hard drive. DX 1 at 24. When the former client returned the server, its "memory was destroyed" and "the data could not be recovered." *Id*. Mr. Beattie admitted his firm did not maintain a backup copy of the data. *Id*.

43. As Mr. Beattie acknowledged, the Virginia disciplinary system is separate from the Virginia Client Protection Fund and the "fund may have documents that the clerk of the disciplinary system don't have." Hearing Tr. at 94-95. Mr. Beattie reported that his FOIA requests to the Virginia State Bar produced documents that did not conclusively establish whether he still owed money to his clients or to the Virginia Client Protection Fund. *See, e.g.*, DX 1 at 15. Yet, Mr. Beattie never sought this information directly from the correct party – the Virginia Client Protection Fund – either through a FOIA request or other means.

44. Mr. Beattie admitted having "outstanding unpaid judgments for cases occurring prior to April 2009." DX 1 at 30. It remains unclear whether these outstanding judgments are disclosed elsewhere in the Petition.

45. As a result of services rendered after his bankruptcy, Mr. Beattie had judgments entered against him personally for non-payment of law firm vendors and a former employee. Mr. Beattie asserts that he paid off these judgments in 2010. DX 1 at 35.

46. Mr. Beattie did not dispute IRS claims that his law firm failed to pay its portion of employment taxes in 2005. DX 1 at 37 (response to Reinstatement Questionnaire, Question 17(e)). Instead, he argued the limitations period had run on the IRS's efforts to collect the past-due taxes, and that the corporate entity of Beattie & Associates was defunct. DX 1 at 38.

47. Mr. Beattie acknowledged that multiple clients filed claims with the Virginia Client Protection Fund (Hearing Tr. at 90), and he knew at least some of those claims had resulted in awards to his former clients through seizure of portions of his tax refund, (*Id*. at 60, 91), but Petitioner testified that he never received a formal decision in any of those cases. *Id*. at 93-94. Nothing in the record supports Mr. Beattie's assertion that he does not owe funds to the Virginia Client Protection Fund.

48. Mr. Beattie claimed that David McConnell, one of the clients involved in his Virginia disbarment, told Beattie he was "very satisfied" with his settlement and was not requesting a refund. Hearing Tr. at 60. Although Disciplinary Counsel had no evidence to the contrary, that sort of hearsay has little or no bearing or weight in this proceeding.

49. Mr. Beattie acknowledged that Amy Perkins, one of the clients involved in his Virginia disbarment, sued him in Fairfax County Circuit Court. Mr. Beattie claimed he admitted liability for breach of contract in that action and took issue only with a small portion of her request for damages. Mr. Beattie claimed he paid the judgment quickly and did not appeal the decision. Hearing Tr. at 59:21. While Disciplinary Counsel had no evidence to the contrary, it is difficult to make key factual findings about a reinstatement petitioner's restitution to former clients based solely on a petitioner's testimony without further documentation. A "clear and convincing" evidentiary standard precludes making such a finding based solely on a petitioner's testimony.

50. Mr. Beattie claimed at least one of his two clients who filed complaints in the District of Columbia (Stanley and Carr) never requested a refund, and he asserted that his own attorney never suggested that Mr. Beattie should pay damages or refunds to either of them. Hearing Tr. at 62. Mr. Beattie acknowledged that he should have reached out to these clients rather than passively waiting for them to make a demand. *Id*. at 96:18. Petitioner admitted that he did not know whether these former clients received any reimbursement for the funds they paid to his

firm, but they "should have gotten some money from me." *Id.* at 61-62. Although he "should have paid them some amount of money," he did not know exactly what the amount should be. *Id*. at 62. Mr. Beattie had not contacted either Ms. Stanley or Ms. Carr directly in order to determine the amount he might owe them. *Id*. at 97 ("I wasn't proactive and I should have reached out and done it. And I didn't.").

51. Petitioner's Proposed Findings of Fact regarding his conduct during the period of disbarment, including steps taken to remedy past wrongs and prevent future ones (*i.e.*, the effectiveness of his current treatment and medication to prevent future misconduct), are against the weight of the evidence.

D. Petitioner's Recognition of the Seriousness of His Misconduct

52. Although Mr. Beattie expressed remorse at times about his prior misconduct and the damage he caused to clients, tribunals, and other attorneys by his misconduct, Petitioner was not forthcoming about the scope and nature of his prior misconduct and gave conflicting testimony about the seriousness of his prior misconduct.

53. At the April 2016 hearing, Mr. Beattie asserted that his misconduct was actually worse than reported in the disbarment decisions, because those decisions gave the false impression that they were isolated incidents. Mr. Beattie contended his violations were not aberrations but rather part of a broader pattern of misconduct. Hearing Tr. at 23. Mr. Beattie testified that "for three years I lost the ability to function effectively as an attorney" and "my actions were much worse than described in disciplinary opinions." *Id*. at 23. Mr. Beattie acknowledged that his "entire practice was infected by chronic systemic poor judgment, obnoxiousness, and mismanagement," and he "should not have been practicing law." Petition at 2-3.

54. At other points in his testimony, Petitioner argued that his prior misconduct should be given little weight for various reasons, that opposing counsel and judges misunderstood him,

and that he was being held to a standard of courteous behavior that is not required under governing ethical rules. For example, Mr. Beattie consistently referred to his misconduct as involving only a lack of competence and diligence (Hearing Tr. at 23), ignoring more serious violations that involved dishonesty to tribunals, clients, and other counsel. In the Spangler Matter, Mr. Beattie was found to have made a false statement to a tribunal, offered false evidence, failed to inform the tribunal of material facts in an *ex parte* proceeding, and engaged in conduct intended to disrupt the tribunal. DX 22 at 8. Yet in his Petition, Mr. Beattie blamed this misconduct on a case file that was "not organized" and his being "mentally paralyzed." DX 1 at 22 (response to Reinstatement Questionnaire, Question 12). At the hearing, Mr. Beattie testified that the misconduct occurred because he did not anticipate being asked about whether he had been in contact with opposing counsel in advance of an *ex parte* hearing on a default motion. Hearing Tr. at 30. Mr. Beattie equivocated when asked about whether he accepted his stipulations in the *Spangler* matter – which included dishonest conduct. Hearing Tr. at 84-88. The findings included making a false statement to a tribunal, offering evidence known to be false, and failing to inform a tribunal of all material facts in an *ex parte* proceeding. DX 22 at 8. Mr. Beattie testified, however, that he had not been "malevolently calculating and duplicitous." Hearing Tr. at 86-87. In this and other ways, Petitioner was still trying to minimize and excuse his prior misconduct – rather than acknowledge it – throughout the reinstatement hearing.

55. Mr. Beattie's Petition described one complaining party as "a former client who was stalking me" and who encouraged another client to file a bar complaint against him. DX 1 at 13 (response to Reinstatement Questionnaire, Question 11). Mr. Beattie's characterization of this former client (Perkins) as a stalker was inconsistent with his own stipulation that he had failed to communicate with her and failed to respond to her reasonable requests for information. DX 7 at 4-5 (Virginia Affidavit consenting to disbarment).

56. [redacted] Instead, he felt "the problem was the system, the problem was other people, I was treated unfairly, that I had bad luck, but basically I was not willing to take responsibility. . . ." Hearing Tr. at 38. Yet, at the April 2016 hearing, Mr. Beattie demonstrated an ongoing belief that he was treated unfairly in past disciplinary matters, that other people (particularly a supervisor at DOJ) were a problem, and he demonstrated an ongoing unwillingness to accept responsibility for the past misconduct in his disciplinary record.

57. Mr. Beattie's proposed findings fail to acknowledge that his prior misconduct involved instances of dishonesty toward judges, clients and other attorneys.

58. Petitioner apparently failed to make complete amends for damages caused to his clients by his misconduct, and Mr. Beattie has not taken action to assess whether certain clients have been properly reimbursed. Petitioner's lack of reparation to damaged clients is coupled with his continued lack of understanding about the most serious aspects of his misconduct (including his dishonesty to courts, clients and opposing counsel). As demonstrated above, Petitioner failed to make a complete showing about the nature and status of his prior misconduct and bar complaints. *See* Findings 54 and 57, *supra*.

59. The Petitioner's Proposed Findings of Fact about his recognition of the seriousness of his misconduct are against the weight of the evidence. In particular, his Proposed Finding of Fact indicating that he first acknowledged the gravity of his misconduct when he self-reported some of his own errors to the Virginia Bar is explicitly described as a litigation tactic. DX 7 at 6. His Proposed Finding of Fact indicating that consent to revocation of his law license in Virginia

and disbarment in the District of Columbia demonstrated realization of the seriousness of his misconduct is also against the weight of the evidence. PFF at ¶ 15.

E. Petitioner's Present Character and Fitness to Resume Practice

60. Based on the foregoing factual findings, including Petitioner's demeanor on the stand and the substance of this testimony, which continued to minimize the nature of prior misconduct that involved dishonesty to tribunals and clients, as well as [redacted] Petitioner's proposed findings about his present character and fitness are not supported by clear and convincing evidence.

61. Based on the foregoing factual findings, we find that Petitioner's proposed findings about his present qualifications and competence to resume the practice of law are not supported by clear and convincing evidence.

IV. LEGAL ANALYSIS

Petitioner has not met his substantial burden to prove by clear and convincing evidence that he is fit to resume the practice of law. D.C. Bar R. XI, § 16(d), which sets forth the standards for readmission to the Bar following suspension or disbarment, provides in relevant part:

> [T]he attorney seeking reinstatement shall have the burden of proof by clear and convincing evidence. Such proof shall establish:
>
> (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.

In assessing whether Mr. Beattie has met his substantial burden imposed by § 16(d), we focus primarily on five factors: (1) the nature and circumstances of the misconduct for which the attorney was disciplined; (2) the attorney's recognition of the seriousness of the misconduct; (3) the

attorney's post-discipline conduct, including 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. *Roundtree*, 503 A.2d at 1217.

Mr. Beattie has not presented clear and convincing evidence sufficient to satisfy the criteria outlined in *Roundtree*.

A. Nature and Circumstances of the Misconduct

The nature and circumstances of the misconduct for which Mr. Beattie was previously suspended on two occasions and then ultimately disbarred is a significant factor in the reinstatement determination, because of its "obvious relevance to the attorney's 'moral qualifications . . . for readmission' . . . and [this Committee's] duty to insure that readmission 'will not be detrimental to the integrity and standing of the Bar.'" *In re Borders*, 665 A.2d 1381, 1382 (D.C. 1995) (quoting D.C. Bar R. XI, § 16(d)).

The nature and circumstances of Petitioner's misconduct underlying his prior suspensions and ultimate disbarment are indeed serious. The misconduct involved a pervasive pattern of client neglect, including the failure to communicate with clients, failure to maintain required records, failure to supervise non-lawyer staff, missing court deadlines, and gross negligence in the filing of erroneous pleadings. And although he was loath to admit it at the hearing, Mr. Beattie's prior misconduct also involved instances of false statements to tribunals and clients and other counsel. Mr. Beattie's disciplinary history involved a steady course of misconduct from 2002 until at least 2007, which prejudiced his clients.

[redacted]

[redacted].

Disciplinary sanctions have long been mitigated in this jurisdiction with so-called *Kersey* mitigation when a disabling condition was a significant factor in causing the misconduct and there was significant evidence of rehabilitation. *In re Kersey*, 520 A.2d 321, 327 (D.C. 1987). But the *Kersey* factors do not apply in the same way on a petition for reinstatement, and Mr. Beattie did not assert *Kersey* mitigation in the disbarment proceeding. Nor did Mr. Beattie make an adequate showing here for a *Kersey* determination that substantiates his claimed disabilities and the effectiveness of his current treatment regime.

B. Recognition of the Seriousness of the Misconduct

This Committee assesses "a petitioners recognition of the seriousness of misconduct as a 'predictor of future conduct.'" *In re Sabo*, 49 A.3d 1219, 1225 (D.C. 2012) (quoting *In re Reynolds*, 867 A.2d 977, 984 (D.C. 2005) (per curiam)). "'If a petitioner does not acknowledge the seriousness of his or her misconduct, it is difficult to be confident that similar misconduct will not occur in the future.'" *Id.*

As Mr. Beattie acknowledges, recognition of the seriousness of misconduct is an important "predictor of future misconduct." Pet. Brief on Disability at 8 (quoting *Reynolds*, 867 at 984). Although Mr. Beattie professed to recognize the seriousness of his misconduct, he was often heard minimizing it throughout this proceeding. In his testimony and filings, Petitioner referred to his misconduct as involving only a lack of competence and diligence. He equivocated when asked whether his misconduct involved dishonesty. Mr. Beattie failed to recognize the severity of his

conduct, particularly as evidenced by his description of his misconduct in the case of Joyce Spangler. Hearing Tr. at 80-89 (indicating he did not know certain information requested by a judge, suggesting that the single judge did not have authority to suspend him in Virginia, and stating that he felt like he did not lie). As detailed in the factual findings above, on several occasions at the hearing and in his written submissions Mr. Beattie offered excuses for his prior misconduct, shifting all or significant responsibility onto judges, clients who were "stalking" him, clients who were stealing his office computers, or clients who had weak underlying claims in the matters they retained him to handle.

Further, although Mr. Beattie acknowledges that the Court in *Sabo* found it noteworthy that "Mr. Sabo acknowledged the seriousness of his mental illness and was forthcoming about its effect on his decision-making capabilities and actions," 49 A.3d at 1227, Mr. Beattie fails to do likewise here. Mr. Sabo provided character witnesses and health care provider witnesses. *Sabo*, 49 A.3d at 1222-23; *see also id*. at 1232 ("Resoundingly, the witnesses spoke highly of Mr. Sabo."). Mr. Beattie provided ***no*** witness testimony other than his own. Thus, his conclusory statements regarding his recognition of his need for treatment predicting his future compliance receive little weight from the Committee.

Because Mr. Beattie has been found to have engaged in misconduct involving dishonesty, in order to be reinstated, he "must prove he is an honest person," and to be "less than strictly candid, to equivocate with respect to the wrongdoing, to fail to be straightforward in an explanation of past dishonest conduct is fatal to this burden." *In re Brown*, 617 A.2d 194, 197 (D.C. 1992). The dishonesty aspect of his prior misconduct also compels Mr. Beattie to corroborate his claims with evidence from disinterested witnesses, documentation, and experts: a showing that was flatly absent in this reinstatement proceedings.

Mr. Beattie's testimony repeatedly indicates he does not understand the severity of his misconduct. He minimizes the wrongful conduct, and frequently describes the issues as only "obnoxious" or "irascible" behavior. He indicates that his misconduct involved a lack of diligence, competence, and unprofessional behavior, but fails to recognize the ethical underpinnings of his pattern of dishonesty and other misconduct. Hearing Tr. at 76-77. Even following the hearing, Mr. Beattie contended that misconduct involving fraud or misappropriation "stems from a character flaw and/or the absence of a moral compass . . . [but] [i]n contrast, an attorney who negligently, incompetently, or unprofessionally [sic] is more amenable to reform, because methods to promote competence can be taught." Pet. Brief on Disability at 7. Mr. Beattie has not proved by clear and convincing evidence that he recognizes that his pattern of misconduct involves more than a simple lack of competence. *Id*.

The Committee concludes that Petitioner fails to recognize the seriousness of his misconduct and does not satisfy the second *Roundtree* factor.

C. Petitioner's Post-Discipline Conduct

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; *see also Sabo*, 49 A.3d at 1229 (finding rehabilitation where attorney had "made significant positive changes, creating a convincing case of rehabilitation").[5]

While it appears that Petitioner made some efforts to remedy his past misconduct, his

[5] Petitioner relies heavily on *Sabo* for many propositions. *See, e.g.*, Pet. Brief on Disability at 8-10. This matter is readily differentiated from *Sabo*, where Disciplinary Counsel did *not* oppose the attorney's reinstatement because sufficient evidence had been presented during Disciplinary Counsel's investigation. *Sabo*, 49 A.3d at 1222 ("Mr. Sabo's petition came to this court uncontested by [Disciplinary Counsel] and it remains so . . . ."). Mr. Sabo also presented live testimony from character witnesses, as well as witnesses attesting to his mental health treatment and ongoing recovery. *Id.* at 1222-23; *see also id*. at 1232 ("Resoundingly, the witnesses spoke highly of Mr. Sabo."). Here, Petitioner presented no live witness testimony.

showing on this factor was woefully inadequate and largely unsubstantiated. Further, while he has taken some steps to prevent future wrongs, it is unclear whether Petitioner made significant positive changes necessary to establish a clear and convincing case of rehabilitation.

First, Mr. Beattie frankly admitted at the hearing that restitution for his past wrongs is a "weakness" of his case. Hearing Tr. at 63. Mr. Beattie testified that he did not have confirmation that he no longer owed money for claims filed against him under the Virginia Client Protection Fund. *Id*. at 90-94. For other clients, he claimed that if an attorney "thought [he] should pay them some money, [he] would have paid them." *Id*. at 96-97. Mr. Beattie was unable to confirm that he had reached out to clients to make amends. *Id*. He testified that he "definitely wish[ed] [he] reached out to them" and stated that he "didn't do enough" and whatever he did was "definitely . . . not enough and it wasn't much at all." *Id.* at 96. Mr. Beattie has outstanding unpaid judgments, unpaid employment taxes, and no evidence demonstrating whether he has satisfied claims paid by the Virginia Client Security Fund, and he acknowledged that he had not reached out to former clients owed refunds.

[redacted] Although Mr. Beattie submitted sworn and unsworn statements from mental health providers who were otherwise available to testify at the hearing, these statements are not sufficiently reliable absent the opportunity for cross-examination. Accordingly, the Committee is unable to give them substantial weight. Neither Mr. Beattie's current fitness to practice law, nor his ability to prevent future wrongful conduct, can be evaluated based upon these statements and Mr. Beattie's own testimony regarding his treatment and rehabilitation.

Although Mr. Beattie claims that disability was the main cause of his underlying misconduct leading to his prior suspensions and ultimate disbarment, he did not call any medical experts or treatment providers to testify about his treatment. Petitioner was informed at the pre-hearing that this type of testimony and evidence would be crucial to meeting his heightened burden in this proceeding. There is essentially no evidence beyond Mr. Beattie's own testimony that the steps he has taken will prevent future misconduct. Even his own testimony provides little assurance that his conduct will not recur as he states that he will not repeat the conduct because he will be on "thin ice." Hearing Tr. at 72. [redacted] Ultimately, Mr. Beattie's failure to correct past wrongs coupled with his inability to provide adequate assurance that, if reinstated, he will not repeat the pattern of misconduct that led to his suspension, precludes a finding that he satisfied the third *Roundtree* factor.

D. Petitioner's Present Character

Mr. Beattie did not present the testimony of a single witness to corroborate his own testimony or attest to his character. Thus, Mr. Beattie presented no character witnesses subject to cross-examination about his acceptance of responsibility, honesty, or steps he has taken to remedy past wrongs, current character, or fitness to resume the practice of law. *See, e.g.*, *Reynolds*, 867 A.2d at 978 (denying reinstatement where, among other reasons, petitioner "did not produce any witnesses"). The Court has "stressed the obvious importance of this factor, and the need for a

petitioner to put on live witnesses familiar with the underlying misconduct who can provide credible evidence of a petitioner's present good character." *Id.* at 986 (citations omitted).

Mr. Beattie compares his demonstration of his understanding of the impact of his disability to the petitioner in *In re Roxborough*, 775 A.2d 1063, 1079 (D.C. 2001), who impressed the hearing committee with his "understanding of the psychological causes of his previous problems." In addition to his personal testimony, that reinstatement petitioner provided testimony of treating health care providers who testified to his fitness to return to the practice of law and his treatment and rehabilitation. Based on Mr. Beattie's testimony and statements of individuals not presented for cross-examination, this Committee cannot find that Mr. Beattie proved by clear and convincing evidence the sufficiency of his present character.

The Hearing Committee concludes that Mr. Beattie has failed to satisfy the fourth *Roundtree* factor.

E. Petitioner's Present Qualifications and Competence

"Learning in the law is an important factor in every reinstatement case," and a lawyer seeking reinstatement "should be prepared to demonstrate that he or she has kept up with current developments in the law." *Roundtree*, 503 A.2d at 1218 n.11. "What must be proven in any given case will depend, in part, on the length of the suspension or disbarment and the reasons for it," but in general, "the longer the suspension, the stronger the showing that must be made of the attorney's present competence to practice law." *Id.* Mr. Beattie's disbarment was effective February 27, 2009. Because he has been out of the practice of law for an extended period of time, he must make a stronger showing about his current competence to practice law. Mr. Beattie's social work classes do not demonstrate learning in the law, and aside from a number of Continuing Legal Education Courses that he took online over a compressed period, he provides no evidence about his present

competence to practice law. Mr. Beattie has not presented clear and convincing evidence that he possesses the present qualifications or competence to practice law.[6]

Again, Mr. Beattie relies on alleged similarities of his case and *Roxborough*, yet the present ability of Roxborough to practice law was supported by testimony of treating medical providers who testified that in their opinion he was fit to practice. Further, Mr. Beattie indicates that his case is stronger than the Petitioner in *Roxborough* because he plans to avoid litigation and solo practice due to his prior issues working with opposing counsel and judges as well as the stress of solo practice. These self-imposed limitations do not provide assurance that Mr. Beattie is fit to return to practice and that, if reinstated, similar issues will not recur.

Conditions may be imposed on reinstatement *only* if the attorney is found fit to resume the practice of law in the first instance. *Sabo*, 49 A.3d at 1233. Reinstatement conditions "are not a substitute for proof of fitness but are instead intended to 'help even a fit attorney . . . meet the challenges of returning to the practice.'" *Id.* (quoting *In re Robinson*, 915 A.2d 358, 361 (D.C. 2007) (per curiam)). The Court has rejected the notion of permanent monitoring to ensure an attorney complies with the rules. *In re Appler*, 669 A.2d 731, 740 (D.C. 1995) ("It is not reasonable to expect [Disciplinary] Counsel, the Board or the court to engage in a scheme of continual and

[6] Petitioner incorrectly relies on D.C. Bar R. XI, § 13. Pet. Brief on Disability at 14-15. That Rule applies when an attorney claims that a disability precludes the attorney's ability to defend against disciplinary charges. That Rule does not apply here because Petitioner has already been disbarred and he never asserted that his mental illnesses prevented him from defending against disciplinary charges. Instead, he consented to disbarment. DX 2. In any case, Petitioner has not made a showing that would justify reinstatement under D.C. Bar R. XI, § 13. Further, Petitioner is incorrect when he states that "*Roxborough* did not raise the issue of disability until his request for reinstatement." Pet. Brief on Disability at 15. Disability was explicitly raised in the third *Roxborough* disciplinary matter, and his reinstatement was expressly conditioned on a showing under D.C. Bar R. XI, § 13. *In re Roxborough*, 775 A.2d 1063, 1076 (D.C. 2001). The biggest and most striking difference between Petitioner and *Roxborough*, however, is that Petitioner called no witnesses, while *Roxborough* involved both character and medical witnesses.

endless monitoring, solely to accommodate respondent's desire to continue practicing law in the District of Columbia.").

V. CONCLUSION

Based on the foregoing, the Hearing Committee concludes that Petitioner failed to demonstrate by clear and convincing evidence the moral qualifications required for readmission as required by D.C. Bar R. XI, § 16(d)(1) and as set forth in *Roundtree*. Nor has he demonstrated his resumption of the practice of law would not be detrimental to the integrity and standing of the Bar, the administration of justice, or subversive to the public interest, as required by D.C. Bar R. XI, § 16(d)(2). Accordingly, the Hearing Committee recommends denial of the Petition for reinstatement.

AD HOC HEARING COMMITTEE

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Dated: September 1, 2016