STATE OF MINNESOTA

IN SUPREME COURT

A19-1603

Original Jurisdiction

Per Curiam
Dissenting, Thissen, Anderson JJ.

In re Petition for Reinstatement of
Randall D. Tigue, a Minnesota Attorney,
Registration No. 0110000.

Filed: June 16, 2021
Office of Appellate Courts

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Randall D. Tigue, Golden Valley, Minnesota, pro se.

Susan M. Humiston, Director, Office of Lawyers Professional Responsibility, Saint Paul, Minnesota, for respondent.

Kenneth E. Keate, Keate Law Firm, Saint Paul, Minnesota, for amicus curiae First Amendment Lawyers Association.

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S Y L L A B U S

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

2. Application of the moral change requirement for reinstatement does not violate petitioner's free speech rights under the First Amendment to the United States Constitution.

Petition denied.

## O P I N I O N

PER CURIAM.

In 2017, we indefinitely suspended petitioner Randall Tigue. In 2019, Tigue filed a petition for reinstatement to the practice of law. After a hearing, a panel of the Lawyers Professional Responsibility Board unanimously recommended against reinstatement, concluding that Tigue failed to prove by clear and convincing evidence that he had undergone the requisite moral change. The Director of the Office of Lawyers Professional Responsibility agrees with the panel. Tigue contests the panel's findings and recommendation, asserting that he should be reinstated.

Based on our independent review of the record, we hold that the panel's findings and conclusions are not clearly erroneous. Because Tigue has failed to show by clear and convincing evidence that he has satisfied the requirements for reinstatement to the practice of law in Minnesota, we deny his petition for reinstatement.

## FACTS

Tigue was admitted to practice law in Minnesota in 1973. He has a lengthy disciplinary history featuring repeated and escalating incidents of financial misconduct, culminating in intentional misappropriation of client funds. In 2007, we publicly reprimanded Tigue and placed him on probation for 2 years for allowing his trust account to become overdrawn, failing to promptly fix the overdraft, and failing to maintain required trust account books and records. *In re Tigue (Tigue I)*, No. A07-1936, Order (Minn. filed Oct. 26, 2007). In 2014, we suspended Tigue for 30 days for failing to properly maintain trust account books and records and for negligent misappropriation of client funds. *In re*

*Tigue (Tigue II)*, 843 N.W.2d 583, 588–89 (Minn. 2014). We noted that Tigue had "intentionally stopped maintaining his trust account books and records shortly after his previous probation period ended because he was not required to submit reports to the Director." *Id.* at 587.

Following the end of his 30-day suspension, in April 2014, we conditionally reinstated Tigue and again placed him on a 2-year probation. *In re Tigue (Tigue III)*, 845 N.W.2d 761, 762 (Minn. 2014) (order). As a condition of his probation, we required Tigue to submit his trust account books and records to the Director for review and approval and provide the Director with monthly certifications, signed by a CPA, that his trust account books and records were maintained in accordance with the Minnesota Rules of Professional Conduct and the trust account was not overdrawn. *Id.* We also required Tigue to provide "proof of [his] successful completion of the professional responsibility portion of the state bar examination" by March 12, 2015. *Id.*

In October 2014, the Director admonished Tigue. Tigue had failed to withdraw from representation or address a conflict of interest and paid a mediator fee with client funds despite the client's refusal to pay the mediator.

In April 2015, we revoked Tigue's conditional reinstatement and indefinitely suspended him because he had failed to provide proof of successful completion of the professional responsibility portion of the state bar examination. *In re Tigue (Tigue IV)*, No. A13-0519, Order at 2–3 (Minn. filed Apr. 15, 2015). The following month, after Tigue provided proof of completion, we reinstated him and placed him on probation, subject to

the same conditions imposed in our April 2014 order. *In re Tigue (Tigue V)*, 863 N.W.2d 82, 83 (Minn. 2015) (order).

Tigue's most recent suspension occurred in 2017. *In re Tigue (Tigue VI)*, 900 N.W.2d 424, 434 (Minn. 2017). We suspended Tigue because he intentionally misappropriated client funds, negligently misappropriated client funds, and failed to promptly correct an overdraft in his trust account. *Id.* at 427–28. With respect to the intentional misappropriation, Tigue agreed to represent a client in a matter in federal court. *Id.* at 428. Pursuant to the written fee agreement, Tigue received " 'an advance retainer of $2,000.00.' " *Id.* Of that retainer, $400 was " 'an advance payment of the . . . filing fee.' " *Id.* Tigue transferred the entire retainer amount, including the $400 filing fee, to himself, without filing a complaint or any other pleading in federal court. *Id.* The client later terminated the representation. *Id.* Tigue repaid this client only after the petition for disciplinary action was filed. *Id.*

Tigue argued that the terms of the retainer agreement entitled him to keep the filing fee. That agreement stated that Tigue was " 'entitled to *quantum meruit* compensation' " if Tigue " 'withdr[e]w from representation' " because the client had " 'hinder[ed Tigue's] representation.' " *Id.* at 429–30. We rejected that argument, reasoning, in part, that the retainer agreement "clearly reserved $400 for a filing fee, and the *quantum meruit* provisions did not alter that reservation."[1] *Id.* at 430. Instead, we concluded that Tigue

[1] The dissent claims that Tigue's argument "was not unreasonable" because "his case represented the first occasion in which we had rejected such an interpretation of a quantum meruit fee agreement provision in a discipline proceeding." Tigue's argument, however,

intentionally misappropriated client funds because he "obtained $400 from [a client] to pay a filing fee; . . . did not keep these funds in trust; . . . never paid a filing fee on behalf of [the client]; and . . . disbursed the $400 to himself," in violation of Minn. R. Prof. Conduct 8.4(c) and other rules.[2] *Tigue VI*, 900 N.W.2d at 430.

Regarding the negligent misappropriation, after we reinstated Tigue in 2014, he initially complied with the terms of his probation. *Id.* at 427. However, once the Director instructed Tigue to begin quarterly, instead of monthly, reporting of his trust account books and records, the Director noticed several trust account shortages. *Id.* at 427–28. An investigation by the Director revealed that on six occasions, "Tigue issued payments from his trust account that caused shortages in client trust accounts." *Id.* at 427. Tigue eventually made payments to cure the shortages, and as a result, no client "suffered any permanent financial loss during those periods." *Id.* at 427.

We again suspended Tigue indefinitely with no right to petition for reinstatement for 2 years.[3] *Id.* at 434–35. We also "permanently prohibited Tigue from being an

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was contrary to the clear language of the fee agreement and the facts in that case. *See Tigue VI*, 900 N.W.2d at 430. It was also contrary to our long-standing definition of misappropriation. *See, e.g.*, *In re Brooks*, 696 N.W.2d 84, 88 (Minn. 2005) ("An attorney misappropriates client funds whenever the funds are not kept in trust and are used for a purpose other than one specified by the client.").

[2] Rule 8.4(c) of the Minnesota Rules of Professional Conduct states that "[i]t is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit, or misrepresentation."

[3] While he was subject to this suspension, the Director admonished Tigue for failure to make all of the required notifications regarding his suspension under the professional rules.

authorized signatory on a client trust account." *Id.* at 435. Two members of the court dissented, arguing that we should have disbarred Tigue for his intentional misappropriation. *See id.* at 435–38 (Stras, J., dissenting).

On October 8, 2019, Tigue filed a petition for reinstatement. Following a hearing, the panel unanimously recommended against reinstatement primarily because of its conclusion that Tigue "failed to prove by clear and convincing evidence that he has undergone the requisite moral change to now render him fit to resume the practice of law" and "that he recognizes the wrongfulness of his misconduct." The Director also opposes Tigue's reinstatement. Tigue urges us to disregard the panel's recommendation and reinstate him to the practice of law in Minnesota.

**ANALYSIS**

"The responsibility for determining whether a petitioner will be reinstated rests with this court." *In re Kadrie*, 602 N.W.2d 868, 870 (Minn. 1999). We conduct an independent review of the entire record; although we consider a panel's recommendation, we are not bound by it. *See In re Dedefo*, 781 N.W.2d 1, 7 (Minn. 2010) (reinstating a suspended attorney when a panel recommended against reinstatement).

If a petitioner orders a transcript of the reinstatement hearing, "none of the [panel's] findings of fact or conclusions shall be conclusive, and either party may challenge" them. Rule 18(c), Rules on Lawyers Professional Responsibility (RLPR). However, "we uphold the panel's factual findings if they have evidentiary support in the record and are not clearly erroneous." *In re Stockman*, 896 N.W.2d 851, 856 (Minn. 2017). "Factual findings are clearly erroneous if, after reviewing the record, we are 'left with the definite and firm

conviction that a mistake has been made.' " *Id.* (quoting *In re Lyons*, 780 N.W.2d 629, 635 (Minn. 2010)).

In a petition for reinstatement, the petitioner bears the burden of proving: "(1) compliance with the conditions of suspension; (2) compliance with the requirements of Rule 18, RLPR; and (3) demonstration of moral change." *Stockman*, 896 N.W.2d at 856; *see also In re Porter*, 472 N.W.2d 654, 655 (Minn. 1991) (stating that a petitioner must prove by clear and convincing evidence that they are entitled to reinstatement). "Showing a moral change is the most important factor in the determination of whether to reinstate an attorney." *Stockman*, 896 N.W.2d at 857.

In addition to moral change, "we weigh five other factors" when considering reinstatement: "the attorney's recognition that the conduct was wrong, the length of time since the misconduct and suspension, the seriousness of the misconduct, any physical or mental pressures 'susceptible to correction,' and the attorney's 'intellectual competency to practice law.' " *Id.* at 856 (quoting *Kadrie*, 602 N.W.2d at 870). "While moral change and recognition of wrongfulness are considered to be only two factors in the overall analysis, we have previously recognized the 'decisive' nature of these factors." *In re Holker*, 765 N.W.2d 633, 639 n.2 (Minn. 2009) (quoting *In re Reutter*, 474 N.W.2d 343, 345 (Minn. 1991)); *see also In re Griffith*, 883 N.W.2d 798, 801–03 (Minn. 2016) (denying petition for reinstatement because the petitioner failed to prove moral change and recognition of wrongfulness without addressing the additional reinstatement factors). Here, the panel concluded that Tigue failed to show both moral change and recognition of the wrongfulness of his misconduct.

I.

A petitioner "must establish by clear and convincing evidence that she or he has undergone such a moral change as now to render [the petitioner] a fit person to enjoy the public confidence and trust once forfeited." *In re Hanson*, 454 N.W.2d 924, 925 (Minn. 1990) (citation omitted) (internal quotation marks omitted). To establish moral change, a petitioner must show: a) "remorse and acceptance of responsibility for the misconduct," b) "a change in the [petitioner's] conduct and state of mind that corrects the underlying misconduct that led to the suspension," and c) "a renewed commitment to the ethical practice of law." *In re Mose (Mose II)*, 843 N.W.2d 570, 575 (Minn. 2014).

The dissent asserts that this test is nebulous and slippery and, thus, difficult to apply. We disagree with the dissent's claim that it is too difficult to apply our moral change test.[4]

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[4] A showing of remorse is relevant in other areas of the law. *See State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982) (stating that a court should consider numerous factors, including the defendant's "remorse," when deciding whether to impose a downward dispositional departure). And while part of the showing related to moral change is subjective, such as the change in the petitioner's state of mind, fact finders are regularly required to determine an actor's mental state, such as when a jury has to decide whether the defendant had the intent to kill.

We also note that other courts require a petitioner to prove moral change or consider factors comparable to our moral change requirement when determining whether to reinstate an attorney. *See Milligan v. Bd. of Pro. Resp. of Sup. Ct. of Tenn.*, 301 S.W.3d 619, 631 (Tenn. 2009) (stating that "all states require some sort of proof of moral character" when considering whether to reinstate an attorney and that "[i]n general, the moral character requirement requires that petitioners show that they have undergone a 'moral change' so that the weaknesses that produced the prior conduct have been corrected"); *see also In re McLaughlin*, 419 P.3d 239, 242 (Okla. 2018) ("In evaluating a bid for readmission," the court weighs, among other factors, present moral fitness, "the applicant's understanding of the wrongfulness and disrepute their unprofessional conduct brought upon the legal profession," evidence of rehabilitation, and the post-resignation conduct); *In re Yum*, 187 A.3d 1289, 1291–92 (D.C. 2018) (stating that factors to consider when deciding to

Remorse and acceptance of responsibility are not difficult concepts. Petitioners often prove remorse and acceptance of responsibility by presenting evidence that the petitioner is sorry for, or regrets, the misconduct, that what the petitioner did was wrong, and that the petitioner took responsibility for the misconduct. *See, e.g.*, *In re Severson*, 923 N.W.2d 23, 29 (Minn. 2019) (noting the petitioner's testimony " 'that he felt remorse and was sorry he caused hurt to [his client],' " that what he did was " 'just wrong,' " and he " 'acknowledged he had previously blamed others when he should have blamed himself' "). And panels regularly make credibility determinations and findings related to the three components of moral change and determine whether a petitioner has proven moral change. *See, e.g.*, *In re Griffith*, 883 N.W.2d 798, 801 (Minn. 2016) (discussing panel's findings that supported its conclusion that the petitioner had not proven moral change).

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reinstate an attorney include "whether the attorney recognizes the seriousness of the misconduct; the attorney's conduct since discipline was imposed," whether the traits that led to discipline "no longer exist" and the petitioner "is a changed individual having full appreciation of the wrongfulness of [his or her] conduct" (citation omitted) (internal quotation marks omitted)); *In re Holt*, 166 So.3d 9, 15 (Miss. 2012) ("While good moral character is but one of five jurisdictional requirements to be weighed in determining reinstatement to the practice of law, this Court previously has held that '[t]he declarations of the person whose reformation is urged are worthy of solemn consideration, but more so are his overt acts and habits which disclose any professed changes in his moral attitude, practical beliefs and conduct.' " (quoting *Miss. State Bar Assoc. v. Wade*, 167 So.2d 648, 650 (Miss. 1964))); *Score v. People*, 179 P.3d 1041, 1048−49 (Colo. O.P.D.J. 2008) (stating that when considering whether to reinstate an attorney, "the analysis of rehabilitation should be directed at the professional or moral shortcoming, which resulted in the discipline imposed" and that other relevant factors are the attorney's "conduct and business pursuits" since the discipline was imposed, and whether the attorney "recognizes the seriousness of the conduct that lead to the" discipline).

Here, the panel found that Tigue "failed to prove by clear and convincing evidence that he has undergone the requisite moral change to now render him fit to resume the practice of law." We agree.

A.

Tigue did not present evidence of much, if any, remorse for his misconduct in his reinstatement hearing. In his testimony, he essentially characterized all of his client trust account issues as "clerical errors" and contended he "kept all the records [he] was supposed to keep," downplaying the seriousness of his misconduct. Although he acknowledged that he made some errors in trust account calculations and kept a filing fee he should not have kept, he also repeatedly characterized his 2017 suspension as "unfair." He said: "Do I feel I was treated unfairly by getting that two-year suspension. Damn right I do."

The panel found that although Tigue agreed that his conduct leading up to the 2017 suspension was serious, his testimony lacked credibility because of his continued characterization of his misconduct as "clerical errors" as well as his blaming of others. The panel also discounted Tigue's testimony that he accepted our decision that he committed intentional misappropriation and will not commit intentional misappropriation in the future due to Tigue's "history and disregard for his ethical obligations with his trust account." We generally defer to the panel's findings that the petitioner's testimony regarding moral change was not credible. *Griffith*, 883 N.W.2d at 802 ("The panel did not find [petitioner] credible on key points in his testimony. We defer to the panel's credibility determinations."); *Dedefo*, 781 N.W.2d at 9 (stating that we typically "defer to a panel's finding" regarding the credibility of a petitioner's testimony that they "ha[ve] undergone

the requisite moral change" (citation omitted) (internal quotation marks omitted)); *In re Mose (Mose I)*, 754 N.W.2d 357, 362 (Minn. 2008) ("As a general rule we will defer to a panel's finding that a petitioner's testimony that he has undergone the requisite moral change is not credible . . . .").

The record supports these findings. At the reinstatement hearing, Tigue agreed that when we suspended him in 2017, we concluded that his misconduct was serious. However, Tigue continued to frame his repeated misconduct as mere clerical errors, while disputing whether he should have been subject to discipline in the first place.[5] Tigue's negligent misappropriation of client funds occurred in part because of his failure to perform monthly reconciliations of his trust account books and records and "keep his client subsidiary ledgers up to date." *See Tigue VI*, 900 N.W.2d at 429. These were not mere clerical errors; they resulted from Tigue's deliberate choices not to keep all the required trust account books and records. *See id.* (referring to Tigue's claim that he kept all trust account books and records in a manner compliant with the rules as "unavailing"). Tigue also shifted some blame for his 2017 suspension to a prior client as well as to the Director. He testified that he was treated unfairly because he had represented unpopular clients in the past and

[5] The dissent dismisses reliance by the panel and Director on "Tigue's use of the phrase 'clerical errors' to describe his trust account mismanagement." We, however, have said that a lawyer's minimization of their prior misconduct is relevant in determining whether that lawyer has proven moral change. *See Mose I*, 754 N.W.2d at 363 (stating that the attorney's characterization of his "intentional lies to clients" as " 'inaccurate statements' or 'misstatements' . . . indicates an ongoing unwillingness to recognize the wrongfulness of his conduct"). By referring to Tigue's use of the phrase "clerical errors" to describe his negligent misappropriation, the panel made findings and the Director presents arguments based on this precedent.

because he "had the temerity to call out attorneys on the Lawyers Board for professional misconduct and dishonesty." When asked what he had learned from his misconduct, Tigue stated, "if you call out a member of the legal establishment . . . for engaging in dishonest or unprofessional conduct, not only will you get no relief, you will be retaliated against for having done so." And he downplayed the severity of his misconduct, testifying that the Director sought to suspend him "for conduct which I am sure you will not be able to find a single instance of somebody who engaged in that conduct even provoking a disciplinary investigation." Tigue does not appear to recognize the gravity of his misconduct—namely, misappropriation of client funds, which we have repeatedly stated is a "particularly serious violation." *In re Lundeen*, 811 N.W.2d 602, 608 (Minn. 2012) (explaining that we "generally disbar attorneys who [intentionally] misappropriate client funds unless there are substantial mitigating circumstances" (citation omitted) (internal quotation marks omitted)); *see also Tigue II*, 843 N.W.2d at 587 ("This court considers 'unintentional misappropriation' of client funds and the failure to maintain the required trust account books and records a serious violation of the rules.").

Our decision in *In re Holker* provides an apt analogy to this case. 765 N.W.2d 633 (Minn. 2009). There, the panel recommended against reinstatement following a suspension, concluding "that Holker failed to demonstrate . . . that he had undergone the requisite moral change for reinstatement or recognized that his conduct was wrong." *Id.* at 634. We suspended Holker, in part, because he had fabricated certain documents provided to the Director in the course of the investigation of his alleged misconduct. *Id.* at 634 n.1. In his reinstatement hearing, Holker continued to dispute this, arguing that he had not

fabricated the documents. *Id.* at 637. He also shifted blame to his staff and clients while minimizing the seriousness of his misconduct. *Id.* at 638. Accordingly, we deferred to the panel's findings that Holker had failed to display remorse and accept responsibility for the wrongfulness of his conduct and denied his petition for reinstatement. *Id.* at 638–39.

Like in *Holker*, Tigue has repeatedly minimized the seriousness of his conduct and called into question the grounds for his suspension in the first place, though he did acknowledge that he remains bound by our 2017 decision. And his comments at the hearing suggest that Tigue may not be fully "clear on what he had done wrong" in the past. *Id.* at 637 (internal quotation marks omitted). Consequently, based on our independent review of the record, the panel's finding that Tigue did not show remorse and acceptance of responsibility for his misconduct is not clearly erroneous.

B.

The panel also concluded that Tigue "failed to establish by clear and convincing evidence that he has had a change of conduct and state of mind," making several specific findings of fact to support this point. *See Mose II*, 843 N.W.2d at 575 (finding an attorney had "not established that he . . . changed either his conduct or his state of mind that resulted in his misconduct."). First, the panel found that Tigue's "testimony . . . evidences a history and disregard for his ethical obligations with his trust account." Second, the panel found that Tigue "has done nothing by which the Panel could find that [he] would not continue to make the same mistakes" and that "[t]he only action [Tigue] identified taking regarding his trust account is obtaining another lawyer to act as trust account signatory, which is a Court-ordered requirement for his reinstatement." Third, the panel found that Tigue

asserted "without sufficient evidence . . . that it would be impossible for [him] to misappropriate client funds" in the future. Finally, the panel found that "[m]ost of [Tigue's] character witnesses could not identify specific examples of how [Tigue] had undergone the requisite moral change since he has been suspended and had not had an in-depth conversation with [Tigue] about the facts of his misconduct."

The record supports these findings. Tigue stated in his hearing that he "absolutely know[s] how to keep trust account records" and does not need any further education because he has "successfully" maintained his trust account records for years. Tigue's disciplinary history involving repeated failures to properly maintain his trust account books and records refutes this claim.

Further, Tigue argues that because he has arranged for another attorney with no disciplinary history (R.S.) to serve as the signatory on and do the accounting for his trust account, there is no way that he could misappropriate client funds going forward. In particular, Tigue emphasizes that if he were to ask R.S. to "sign a check that results in the negligent or deliberate diversion of client funds," R.S. would refuse to do so. But Tigue and R.S. are not going to practice law in the same firm. In addition, R.S. will be completely dependent on information that Tigue provides him. For example, Tigue could provide incomplete or inaccurate information to R.S., such as a bill that did not properly reflect work Tigue had done. In such a scenario, it is not entirely clear how R.S. would know this inaccuracy had occurred. Thus, Tigue's claim that his arrangement with R.S. makes it impossible for him to misappropriate client funds is simply not true.

Moreover, when pressed about how he planned to ensure that R.S. accurately maintains his trust account records, Tigue simply stated, "I'm going to look at them." Tigue appears to be placing all of his eggs in one basket: that R.S. will not make any mistakes handling his client trust account. Tigue has not provided any assurances beyond a claim that he will check R.S.'s work. Given Tigue's history of failure to properly maintain trust account books and records and his refusal to further educate himself on his trust account obligations, we conclude that the panel did not clearly err in finding Tigue's assurances insufficient.

In addition to his own testimony, Tigue's character witnesses provided little evidence of how Tigue's conduct or state of mind has changed since his suspension. Several witnesses testified about Tigue's character, yet none of the witnesses had discussed Tigue's misconduct with him in detail. And while some of them testified positively about his ethics in general, most could not provide specific examples of how Tigue's conduct or state of mind had changed since his suspension. The panel's findings regarding these character witnesses were not clearly erroneous. *See Griffith*, 883 N.W.2d at 802 (concluding "that the panel did not clearly err when it gave little or no weight to the testimony of [the petitioner's] witnesses" when they had not discussed the misconduct with the petitioner and did not "provide[] specific examples of how he had demonstrated a moral change").

Finally, in disputing the panel's conclusion on change in conduct and state of mind, Tigue claims that he meets the moral change requirement simply because he would have

R.S. handle his trust account matters going forward.[6] Because we permanently prohibited Tigue from being an authorized signatory on a client trust account, *Tigue VI*, 900 N.W.2d at 435, this decision appears to be compliance with our prior order and not a change in conduct that Tigue has actually made. Other than that, it does not appear that Tigue has had a shift in his state of mind regarding the underlying misconduct—intentional misappropriation and trust account mismanagement—that led to his 2017 suspension. Tigue asserts that because he has implemented a technical solution that supposedly prevents him from committing the same misconduct, he automatically satisfies the change in conduct and state of mind factor. We have already rejected Tigue's claim that this solution prevents him from committing the same misconduct. But even if Tigue's proposed arrangement with R.S. functioned flawlessly, we require both a showing of change of conduct *and* state of mind to satisfy the moral change requirement. *See In re Swanson*, 405 N.W.2d 892, 893 (Minn. 1987) ("[E]vidence of a 'moral change' must come *not only* from an observed record of appropriate conduct, but from the petitioner's own state of mind and his values" (emphasis added)). Tigue has not demonstrated a change in his state of mind regarding his underlying misconduct.

*Mose II* provides another useful analogy to this case. 843 N.W.2d at 575–76. There, we agreed with the panel's conclusion that Mose had failed to demonstrate a sufficient change in conduct and state of mind to satisfy the moral change requirement. *Id.* at 576.

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[6] Tigue stated at the hearing: "I have rendered it impossible for me to engage in the conduct that got me suspended. And that ought to account for more than any moral change."

Much of Mose's misconduct stemmed from office mismanagement and missed client deadlines, which Mose proposed to address by using a calendar "tickler" system. *Id.* We suggested that such a promise by itself was insufficient because Mose had failed to educate himself further on law office management. *Id.* In other words, Mose proposed a technical solution to establish his change in conduct and state of mind, which was not enough to demonstrate moral change.

Like Mose, Tigue has put forth a plan to fix the "recurring theme" of his prior misconduct: having R.S. handle his trust account. *Id.* In some ways, Tigue's plan is more credible and concrete. For example, R.S. testified that he would manage Tigue's client trust account, whereas in *Mose II*, the petitioner's plan did not involve oversight by a competent attorney. However, the panel here concluded that Tigue's plan was still insufficient because it raised questions about issues that could arise with R.S.'s supervision of the trust account and Tigue failed to demonstrate that he understood trust account management.

In the end, our independent review of the record supports the panel's conclusion that Tigue failed to demonstrate a sufficient change in conduct and state of mind to correct his underlying misconduct. Tigue's insistence that R.S.'s handling of his trust account shows sufficient moral change suggests that Tigue's state of mind regarding the underlying conduct that led to his suspension has not changed much, if at all, since 2017.

C.

Finally, the panel concluded that Tigue's "inability to testify regarding anything he has done to improve his understanding of trust account books and records demonstrates

that [Tigue] does not have a renewed commitment to the practice of law." "[A]n attorney's plan to return to the practice of law or implement systems to avoid future misconduct are factors that may be relevant" to whether a petitioner has demonstrated "a renewed commitment to the ethical practice of law." *Severson*, 923 N.W.2d at 32.

As discussed above, Tigue has both a plan to return to the practice of law if reinstated as well as a "system" to avoid future misconduct (having R.S. handle his trust account). On the other hand, Tigue has apparently failed to take steps since his suspension to educate himself on trust account management.[7] And even though he would not handle his trust account directly if reinstated, he would remain responsible for ensuring that R.S. did so properly, and as the panel found, there was no evidence showing that Tigue and R.S. had even discussed how Tigue would "practically and permissibly divorce himself from his trust account obligations." Without a showing by Tigue that he actually understands proper trust account management, we agree with the panel that Tigue has not demonstrated a renewed commitment to the ethical practice of law.[8]

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[7] When asked on cross-examination in the reinstatement hearing what steps he had taken since his 2017 suspension to educate himself on trust account books and recordkeeping in accordance with the professional rules, Tigue replied: "I've read the rules. I don't need any education. I have done it, I have successfully done it for years. And the Lawyers Board knows I've successfully done it for years." This statement clashes with Tigue's history of public and private discipline related to trust account misconduct.

[8] As highlighted above, several of Tigue's character witnesses spoke about Tigue's ethics generally. But none could articulate specifically how Tigue had demonstrated a renewed commitment to ethical practice in light of the misconduct that led to his 2017 suspension.

D.

Both Tigue and the dissent challenge the application of the moral change requirement to Tigue's misconduct. Tigue argues that his misconduct did not show any kind of moral failing on his part, such as dishonesty, and thus he should not be required to show moral change at all. The dissent contends that the moral change requirement does not apply to Tigue's negligent misappropriation of client funds. We reject both positions.

We begin with Tigue's argument that he does not need to show moral change because his misconduct did not involve any kind of moral failing. Such a conclusion requires two assumptions: 1) that Tigue's misconduct did not involve a moral failing; and 2) that we alter our reinstatement test based on the nature of a petitioner's misconduct. Neither assumption is accurate.

First, Tigue's misconduct clearly involved a moral failing. As we noted in 2017, misappropriation of client funds in *any* amount—whether negligent or intentional—represents serious misconduct. *See Tigue VI*, 900 N.W.2d at 431. Indeed, we generally *disbar* attorneys who intentionally misappropriate client funds because taking a client's money and using it for the lawyer's own personal benefit is dishonest conduct that represents a significant breach of a client's trust. *See id.* In addition, Tigue's negligent misappropriation occurred in part because of his deliberate choice to stop maintaining required trust account books and records as soon as the Director stopped reviewing them

on a monthly basis.[9] *Id.* at 427–28 ("Tigue admitted that he did not reconcile his trust-account books and records for the month of November 2015 until January 2016, despite knowing that he was required to complete monthly reconciliations."). The same behavior led to Tigue's 2014 suspension. *See Tigue II*, 843 N.W.2d at 587 (stating that Tigue "intentionally stopped maintaining his trust account books and records shortly after his previous probation period ended because he was not required to submit reports to the Director"). Thus, Tigue's negligent misappropriation here involved the moral failing of choosing not to comply with his ethical obligations when he no longer had to demonstrate his compliance.

Second, we do not alter our reinstatement test or the moral change requirement based on the nature of a petitioner's misconduct. We have consistently applied the same basic test and standard of review for reinstatement cases for years, regardless of the type of misconduct the attorney committed. *See, e.g.*, *Severson*, 923 N.W.2d at 27–29 (applying moral change requirement in reinstatement proceeding involving an attorney who entered into improper business dealings with a client and committed multiple acts of dishonesty); *Stockman*, 896 N.W.2d at 855–57 (applying moral change requirement in reinstatement

[9] The dissent claims that we "seek[] to have [our] cake and eat it too" by characterizing Tigue's negligent misappropriation as being based on deliberate choices. We disagree. Consider a person who causes a car crash because they were texting while driving. That person may negligently, but not intentionally, cause the crash, but in that case, the negligence was based on the deliberate choice to send and review text messages while driving. Tigue is like that driver. Some of Tigue's misappropriation was negligent, and not intentional, but his negligent misappropriation occurred because of his deliberate choice not to comply with his ethical obligations as soon as he no longer needed to demonstrate compliance.

proceeding involving an attorney who failed to maintain required trust account books and records, failed to communicate with clients, neglected client matters, failed to respond to discovery requests, improperly loaned money to clients, and charged an unreasonable fee); *Mose II*, 843 N.W.2d at 572–76 (applying moral change requirement in reinstatement proceeding involving an attorney who incompetently represented clients, neglected client matters, failed to communicate with clients, made misrepresentations to clients, and failed to refund an unearned retainer). In fact, we have required a showing of moral change in reinstatement proceedings since at least 1945. *See, e.g.*, *In re Smith*, 19 N.W.2d 324, 326 (Minn. 1945).

The dissent takes a slightly different approach. It contends that we should not apply our moral change standard to less serious negligent misappropriation. The dissent claims that the reinstatement cases in which we have applied the moral change requirement involved either dishonesty or what it defines as moral turpitude.[10] The dissent's position is flawed.

Under our rules, we do not require every lawyer to prove moral change to be reinstated to the practice of law. But we do not base the determination of who must prove

[10] The dissent bases its definition of moral turpitude on a Wisconsin Supreme Court decision, *State v. McCarthy*, 38 N.W.2d 679, 687 (Wis. 1949), that we cited in *In re Bunker*, 199 N.W.2d 628, 631 (Minn. 1972). *Bunker* was a discipline case, not a reinstatement case, involving a lawyer's failure to file income tax returns. 199 N.W.2d at 628–29. We did not adopt the definition of moral turpitude from *McCarthy* in *Bunker*. *See id.* (stating we were not deciding the case based "on the question of moral turpitude"). More importantly, the dissent cites no case in which we have stated that we required a lawyer seeking reinstatement to prove moral change because that lawyer committed an act of moral turpitude or dishonesty.

moral change on whether the lawyer's misconduct involves dishonesty or moral turpitude. Instead, we generally reinstate lawyers who have been suspended for 90 days or less without requiring them to prove moral change. *See* Rule 18(f), RLPR (stating that "unless otherwise ordered by the court," the provisions for petitioning for reinstatement do not apply and permitting lawyers suspended for 90 days or less to be reinstated by affidavit). We apply this procedure to lawyers who have committed dishonest acts. *See, e.g.*, *In re Aitken*, 787 N.W.2d 152, 162–64 (Minn. 2010) (suspending a lawyer for 90 days for submitting a forged document to a court and failing to cooperate with the Director and allowing him to petition for reinstatement). Lawyers disbarred or suspended for more than 90 days must petition for reinstatement and prove moral change. *See* Rule 18(a)–(d), RLPR (addressing petitions for reinstatement); *Hanson*, 454 N.W.2d at 925 (outlining a lawyer's burden of proof when petitioning for reinstatement). Thus, we use the overall seriousness of the misconduct that a lawyer has committed, as judged by the length of their suspension, and not the categorization the dissent has created, to determine whether a lawyer must prove moral change to be reinstated.

In addition, we have applied our moral change requirement to reinstatement cases that did not involve dishonesty or the dissent's definition of moral turpitude. *See In re O'Gara*, 887 N.W.2d 279, 279 (Minn. 2016) (order) (reinstating an attorney who was suspended for neglect of client matters and failing to comply with terms of a private probation after a panel concluded the attorney had proven "by clear and convincing

evidence that she is morally fit to resume the practice of law");[11] *In re Schaefer*, 794 N.W.2d 372, 372–73 (Minn. 2011) (order) (reinstating an attorney who was suspended "for neglect of a single client matter that resulted in the entry of a default judgment against the client" when the panel found that the attorney "has proven by clear and convincing evidence that he has undergone the requisite moral change"); *In re McCormick*, 767 N.W.2d 1, 1 (Minn. 2009) (order) (reinstating an attorney who was suspended, in part, for neglect of client matters and incompetent representation, after a panel found that he "has undergone the requisite moral change");[12] *In re Fraley*, 721 N.W.2d 605, 605 (Minn. 2006) (order) (reinstating an attorney who was suspended for, among other things, incompetent representation and failure to maintain trust account books and records after a "panel found that petitioner had undergone a moral change");[13] *In re Haugen*, 583 N.W.2d

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[11] *See In re O'Gara*, 746 N.W.2d 130, 130–31 (Minn. 2008) (order) (suspending the attorney for 90 days and requiring her to petition for reinstatement for failing to appear at court hearings in two matters, neglecting those matters, and failing to comply with the terms of a private probation).

[12] *See In re McCormick*, 710 N.W.2d 563, 563 (Minn. 2006) (order) (suspending the attorney for 90 days and requiring him to petition for reinstatement for neglecting client matters, failing to communicate with clients, and failing to cooperate with the Director); *In re McCormick*, 728 N.W.2d 496, 496–97 (Minn. 2007) (order) (extending the attorney's suspension by 30 days for failing to properly file an appeal, advising client he did not need to comply with terms of criminal probation while appeal was pending, failing to communicate with the client, and failing to cooperate with the Director).

[13] *See In re Fraley*, 709 N.W.2d 624, 625 (Minn. 2006) (order) (suspending the attorney for 90 days and requiring him to petition for reinstatement for incompetent representation of a client, charging an unreasonable fee, conflict of interest, failure to adequately supervise a suspended attorney, improper fee sharing, and failing to maintain trust account books and records).

925, 925 (Minn. 1998) (order) (denying petition for reinstatement of an attorney who was suspended for trust account violations and failing to pay court reporting fees when the panel concluded that the attorney "had failed to prove by clear and convincing evidence that he is conscious of the wrongfulness of his conduct giving rise to his discipline or that he now has the moral character and trustworthiness necessary to reassume the title of attorney");[14] *In re Lawton*, 552 N.W.2d 25, 26 (Minn. 1996) (order) (reinstating an attorney who had been suspended for trust account violations and neglecting client matters after a panel concluded that he "ha[d] undergone the moral change necessary to again be certified to the public as trustworthy").[15]

Finally, we have never done what the dissent is suggesting here—separate an attorney's acts of misconduct into different categories and require the attorney to show moral change only with respect to some of them.[16] Cases the dissent cites when we have

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[14] *See In re Haugen*, 543 N.W.2d 372, 375–76 (Minn. 1996) (suspending the attorney for 12 months for trust account violations and failure to pay court reporters when the attorney had a disciplinary history).

[15] *See In re Lawton*, 538 N.W.2d 905, 905 (Minn. 1995) (order) (suspending the attorney for 6 months for "trust account violations including commingling client funds and business account funds and client neglect and disservice in two instances").

[16] Setting aside the dissent's flawed, myopic view of moral change, even when the dissent claims to apply our moral change requirement to Tigue's intentional misappropriation, it fails to properly apply that standard. We review a panel's finding that a petitioner has not proven moral change for clear error. *In re Trombley*, 947 N.W.2d 242, 250 (Minn. 2020) ("For all of these reasons, we conclude that the panel's finding that Trombley has not proven moral change was clearly erroneous."). The dissent does not apply this standard of review. It also misapplies the burden of proof when it relies on the panel's failure to identify any past dishonest conduct by Tigue, apart from his intentional misappropriation of client funds. It was Tigue's burden to prove that his actions since his suspension demonstrate his moral change. *See Stockman*, 896 N.W.2d at 856.

applied the moral change standard, *In re Stockman*, 896 N.W.2d 851 (Minn. 2017), and *In re Mose (Mose II)*, 843 N.W.2d 570 (Minn. 2014), illustrate this. In both of them, we suspended the lawyers for a variety of misconduct, much of it client-related misconduct of incompetence and failure to communicate, as well as making false statements to either clients or opposing counsel. *See Stockman*, 896 N.W.2d at 855; *Mose II*, 843 N.W.2d at 572–73. Stockman had also committed trust account violations, including shortages in his trust account and failure to maintain the required trust account books and records. *Stockman*, 896 N.W.2d at 855. When evaluating the panels' findings regarding moral change, we did not limit our analysis to the petitioners' dishonest acts. *See Stockman*, 896 N.W.2d 859–61; *Mose II*, 843 N.W.2d at 574–76. Instead, we considered all of their misconduct when determining whether they had proven moral change. *See Stockman*, 896 N.W.2d at 860 (explaining that "[m]uch of Stockman's client-related misconduct involved a lack of diligence and failure to communicate with clients" and concluding that he had shown an observed record of change in conduct and state of mind based, in part, on testimony that he had worked diligently and competently as a legal assistant while suspended); *Mose II*, 843 N.W.2d at 576 (stating that a "recurring theme in Mose's disciplinary history is client neglect, failure to follow through on his commitments, and failure to represent clients diligently" and concluding that he had not proven moral change, in part, because problems he had during his suspension while volunteering and student teaching "are reminiscent of the problems he had while practicing law"). Therefore, our precedent does not support the dissent's claim that we should apply our moral change requirement to only some of Tigue's misconduct.

E.

In summary, based on our independent review of the record, we hold that Tigue has not met his burden of showing by clear and convincing evidence that he has undergone a moral change or recognizes the wrongfulness of his conduct.[17] Accordingly, we deny his petition for reinstatement.

II.

Tigue also alleges that both the Director and the panel oppose his reinstatement "solely because [he] expresse[d] the belief that he was treated unfairly and did not deserve his current suspension." Consequently, Tigue asserts that denying his reinstatement petition based on his failure to demonstrate moral change would violate his free speech rights under the First Amendment to the United States Constitution, which applies to Minnesota through the Fourteenth Amendment. *See State v. Wicklund*, 589 N.W.2d 793, 797 (Minn. 1999). Tigue further alleges that the panel made its recommendation because he disagreed with the Director's characterization of his prior misconduct and the requirements for reinstatement. Thus, according to Tigue, the Director and panel punished him for exercising his constitutional speech and expression rights, and denying his petition for reinstatement would violate those rights. *See* U.S. Const. amends. I, XIV. We disagree.

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[17] Because moral change and recognition of past wrongful conduct are intertwined, "we may consider those factors together." *In re Lieber*, 834 N.W.2d 200, 208 (Minn. 2013). The details we outlined above in assessing moral change—including Tigue's lack of remorse, insistence that he need not demonstrate moral change, minimization of previous misconduct, and characterization of disciplinary actions taken against him as unfair—all suggest that Tigue has not truly grappled with his past conduct to the extent necessary to satisfy this requirement. Thus, we conclude that the panel's finding on this factor is not clearly erroneous.

In reinstatement proceedings, the petitioner has the burden of proof to show by clear and convincing evidence that they are entitled to reinstatement. *See Porter*, 472 N.W.2d at 655; *cf. In re Stanbury*, 561 N.W.2d 507, 512 n.3 (Minn. 1997) (dismissing a First Amendment argument in a disciplinary action without extensive analysis in part because the attorney "made no effort" to analyze the scope of the relevant professional rule). Tigue bases his First Amendment claim on the factual premise that the panel recommended against reinstatement solely because he expressed his belief that he was treated unfairly and should not have been suspended. There are two fatal flaws to Tigue's claim.

First, Tigue does not supply any evidence to support his allegation that the Director and the panel oppose his reinstatement *solely* because of his belief that he was treated unfairly in the prior disciplinary proceeding and should not have been suspended. Rather, he asserts—without evidence—that the Director and the panel oppose his reinstatement simply because he disagreed with their characterization of his misconduct and the moral change requirement. He provides no substantive explanation to back up this claim. More importantly, Tigue's comments about the supposed unfairness of his prior discipline represent only one factor in the panel's analysis and recommendation. The panel considered other factors, including Tigue's planned trust account arrangement with R.S., his failure to demonstrate any improved understanding of trust account management, the inability of his character witnesses to provide specific examples of how he had shown moral change, and his lack of remorse with regard to the misconduct for which he was suspended. In other words, the panel did not oppose Tigue's reinstatement—and we do not deny his petition—solely because of his words and thoughts.

Second, Tigue expressly concedes that it would not violate the First Amendment to deny a reinstatement petition based on an attorney's ideas about their misconduct "when there is a nexus between a moral characteristic, such as dishonesty, and an attorney's likelihood of repeating" the misconduct that led to the suspension. We suspended Tigue in part because he engaged in dishonest conduct by intentionally misappropriating client funds. And as we outlined above, Tigue's negligent misappropriation also involved a moral failing because of his deliberate choice to not comply with the relevant rules when managing his trust account.

Because Tigue's misconduct involved "a moral characteristic," there is a clear nexus between his beliefs about his misconduct and the likelihood of him repeating it. We believe that Tigue is more likely to repeat such misconduct if, as the record here shows, he minimized it while testifying at the reinstatement hearing, because such testimony shows that Tigue does not fully appreciate or acknowledge what he did wrong. This conclusion is especially true when considering Tigue's disciplinary history, which involves repeated and escalating financial misconduct, culminating in intentional misappropriation while on a disciplinary probation that demonstrates a pattern of committing the same type of misconduct, despite the prior discipline we imposed. Thus, even if we adopt Tigue's legal theory on when we may consider an attorney's beliefs about their prior misconduct in determining if they have proven moral change, there is no First Amendment violation under that theory based on the facts of this case.

In sum, assuming without deciding that it may violate the First Amendment to deny an attorney's petition for reinstatement based on their beliefs about their misconduct, the facts of this case do not establish a First Amendment violation.

Petition denied.

D I S S E N T

THISSEN, Justice (dissenting).

Petitioner Randall D. Tigue was suspended in 2017 for negligent and intentional misappropriation of client funds. *In re Tigue (Tigue VI)*, 900 N.W.2d 424, 426 (Minn. 2017). Tigue's misconduct stemmed from his failure to timely cure overdrafts in his trust account and his retention of a $400 filing fee from a client. *Id.* at 428. "[N]o client was permanently deprived of money," with the sole exception of Tigue's client who incurred a $12 fee when Tigue's check repaying the $400 bounced. *Id.* at 432. In our 2017 suspension order, we permanently prohibited Tigue from serving as an authorized signatory on a client trust account if he were reinstated. *Id.* at 435.

Tigue now seeks reinstatement to the practice of law. His petition has been pending since 2019. The Director of the Office of Lawyers Professional Responsibility opposes Tigue's reinstatement chiefly because of the conclusion made by a panel of the Lawyers Professional Responsibility Board that Tigue failed to demonstrate sufficient moral change. The Director concedes that Tigue met all other reinstatement conditions in our 2017 order. I conclude that proving moral change is not necessary in this case. Tigue established that, if reinstated under the conditions he proposes, he will not engage in the misconduct for which he was suspended and the public will be protected. Because I would grant his petition for reinstatement, I respectfully dissent.

The core goals of attorney discipline are to "protect the public, safeguard the judicial system, and deter future misconduct by the disciplined attorney and other attorneys." *In re Severson*, 860 N.W.2d 658, 671 (Minn. 2015). Accordingly, our focus when deciding

whether to reinstate an attorney is whether the petitioner will likely recommit the conduct that got him suspended and whether clients can "submit their most intimate and important affairs to him with complete confidence in both his competence and fidelity." *In re Herman*, 197 N.W.2d 241, 244 (Minn. 1972); *see also In re Kadrie*, 602 N.W.2d 868, 870 (Minn. 1999). We consider the specific misconduct that led to violations of the Minnesota Rules of Professional Conduct and whether we are confident that a petitioner, if reinstated, will not repeat *those* violations. *See In re Mose* (*Mose II*), 843 N.W.2d 570, 575 (Minn. 2014) (stating that we look for a "change in the lawyer's conduct . . . that corrects the *underlying misconduct that led to the suspension*" (emphasis added)).

We suspended Tigue for two basic rules violations: negligent misappropriation resulting from trust account mismanagement that resulted in temporary shortages in client trust account balances and intentional misappropriation of a $400 filing fee. *Tigue VI*, 900 N.W.2d at 426–28. Thus, we must decide whether we are sufficiently confident that Tigue will neither mismanage his trust account nor intentionally misappropriate client funds. It is to those questions that I now turn.

A.

I start first with Tigue's trust account violations and associated negligent misappropriation. Tigue failed to keep proper and timely trust account books and records and, as a result, on multiple occasions over the course of several months, his trust account had insufficient funds to cover client trust account liabilities. No client lost money because of this negligent misconduct. *Tigue VI*, 900 N.W.2d at 433.

Tigue seeks reinstatement to practice law under the condition we imposed in our 2017 suspension order permanently prohibiting him from serving as a signatory on any client trust account. He also proposes that R.S., an attorney trained in accounting with no previous disciplinary record, manage his trust account on a regular basis and serve as signatory. Under this arrangement, Tigue argues, he cannot commit similar trust account violations in the future.[1] I agree.

The panel concluded that Tigue "has done nothing by which the Panel could find that Petitioner would not continue to make the same mistakes." That conclusion is directly contradicted by the record and clearly error. *See In re Torgerson*, 870 N.W.2d 602, 609 (Minn. 2015) (stating that clear error exists where we have "a 'definite and firm conviction that a mistake has been made' " (quoting *In re Wentzell*, 656 N.W.2d 402, 405 (Minn. 2003))). Tigue states that he has arranged for R.S. to manage his trust account and serve as signatory and that he will continue to comply with the condition of reinstatement *we* imposed in 2017; namely, to never serve as signatory on any client trust account.[2] *Tigue VI*, 900 N.W.2d at 435.

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[1] This type of arrangement is not unprecedented as a condition of reinstatement. In *In re Barta*, 491 N.W.2d 654, 655 (Minn. 1992), we approved reinstatement of a lawyer under a supervisory requirement similar to the arrangement that Tigue has proposed here.

[2] At oral argument, the Director raised the specter that Tigue could falsify bills or receipts and trick R.S. into trust account violations. But the Director could point to no evidence that Tigue has ever engaged in such conduct in the past. Such unfounded and frankly irresponsible speculation by the Director must be rejected.

The Director and the court also assert that Tigue engaging R.S. to manage his trust account is not a sufficient safeguard to protect the public because Tigue ultimately remains responsible for the account. But the Director offers no meaningful explanation of how

Relying on the panel's findings, the court grounds its decision to reject Tigue's petition for reinstatement as it relates to trust account violations and related negligent misappropriation in Tigue's failure to demonstrate moral change. I disagree with the court's analysis as well as the panel's relevant findings.

First, the panel and Director appear deeply offended by Tigue's use of the phrase "clerical errors" to describe his trust account mismanagement. They suggest that such language diminishes the seriousness of the misconduct and fails to show a change of heart and mind and renewed commitment to the ethical practice of law. I am less concerned. Tigue does not dispute that he committed misconduct by failing to properly maintain his trust account, he acknowledged that his violation of the professional rules is serious, and he accepted responsibility for failing to keep accurate books and records. And once again, no client lost money as a result of Tigue's mismanagement of his trust account. Indeed, if one looks at the substance of the trust account errors that led to Tigue's 2017 suspension, "clerical error" is a commonsense descriptor of what caused the shortfalls in Tigue's client trust accounts.[3] This characterization does not mean that Tigue's rules violations were not

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Tigue could mismanage his trust account under the conditions and limitations to which he is agreeing. Further, the Director points to absolutely no other conditions that we could impose on Tigue to assuage her concerns. To the extent that the panel and Director are concerned that Tigue does not sufficiently understand principles of trust account management to oversee R.S.'s handling of his account, I am fully comfortable with requiring that Tigue attend a CLE on the principles of trust account management as a condition of reinstatement.

[3] Although the record shows that Tigue was not diligent in reconciling his trust account books and records on a regular basis, he eventually corrected all of his bookkeeping errors by performing the required reconciliations. Tigue acknowledged that

serious. But these violations were *less* serious than intentional manipulation of a trust account to line one's pockets.

More fundamentally, I disagree that moral change is an appropriate reinstatement consideration in the context of Tigue's trust account mismanagement and the related negligent misappropriation. Specifically, because the conditions under which Tigue has agreed to handle his trust account if reinstated (no signatory power and independent management) are sufficient to protect the public and deter future violations, there is no need to dive into an inquiry about moral change. The court does not come to terms with this fundamental point. It simply takes a formalistic approach and insists that we need to apply the moral change requirement in every case where a suspension of over 90 days is imposed without regard to the specific facts of the case.

My consideration of whether we should assess moral change when considering Tigue's reinstatement petition begins once again with a focus on our fundamental inquiry when addressing such petitions: if reinstated, is the petitioner likely to engage in the same misconduct for which he was suspended or otherwise put the public at risk? *See In re Porter*, 472 N.W.2d 654, 655 (Minn. 1991) (stating that the purpose served by the moral change standard is to ensure that a petitioner, if reinstated, is fit "to enjoy the public

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he "made mistakes in calculation," which was one of the reasons that he was "getting [R.S.] to do the calculations" on his trust account going forward. Thus, while Tigue may have a history of shoddy trust account recordkeeping, the record does not support a conclusion that Tigue intentionally or dishonestly ceased compliance with the relevant rules. Rather, the record suggests that, although Tigue struggled with regular compliance and recordkeeping, he ultimately corrected his errors. His arrangement with R.S. will mitigate this risk of noncompliance going forward.

confidence and trust once forfeited"). The moral change standard is one predictive tool that we use to answer that question.

We have identified a constellation of eye-of-the-beholder factors that imprecisely inform our assessment of whether a petitioner has sufficiently demonstrated moral change, including whether the petitioner has shown "remorse and acceptance of responsibility for the misconduct, a change in the [petitioner's] conduct and state of mind that corrects the underlying misconduct that led to the suspension, and a renewed commitment to the ethical practice of law." *Mose II*, 843 N.W.2d at 575. This inquiry is slippery, much like Justice Potter Stewart's old test for obscenity: "I know it when I see it." *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring). Quite frankly, as a person charged with applying the moral change standard, I must admit that I truly struggle to grasp when a petitioner has demonstrated sufficient moral change.[4]

Despite the nebulous nature of the moral change standard, however, one thing is clear from our case law: when assessing the character of lawyers for reinstatement, we distinguish personal moral character from professional moral character. Our responsibility "to formulate ethical principles and standards of professional conduct and to enforce those

[4] The court points to standards used in other states that require some showing of moral change or moral character in reinstatement proceedings to assert that Minnesota's moral change standard for reinstatement is not "too difficult to apply." The standards that the court cites to, with one exception, do not align precisely with Minnesota's moral change standard. Moreover, that some other states examine moral character in reinstatement proceedings does not mean that Minnesota's moral change standard is easy to apply consistently from case to case. Nor does that fact resolve the possible free speech implications that I discuss below. Finally, the fact that states examine moral character does not answer the basic question of whether we need to do so in this particular case.

standards on the lawyers of this state does not give us license to make judgments as to a lawyer's personal morality, but only with regard to that lawyer's professional moral character." *In re Peterson*, 274 N.W.2d 922, 925 (Minn. 1979). Accordingly, we do not penalize petitioners for their unorthodox personal views or irascible demeanor so long as we are confident in their fitness to practice law and capacity to regain "the public confidence and trust [they] once forfeited." *Id*. at 925–26. Put another way, moral change does not turn on whether the lawyer petitioning for reinstatement fits our conception of what a lawyer should be like. Instead, we focus solely on whether the petitioner will follow the rules of professional conduct and serve clients competently and honestly. *Id*.

This case illustrates the dangers inherent in the moral change standard. Consider, for example, the panel's and Director's analysis of whether Tigue was sufficiently remorseful, accepted responsibility for his trust account violations and related negligent misappropriation, and demonstrated a renewed commitment to the ethical practice of law. The record plainly discloses that Tigue repeatedly acknowledged that he violated the professional conduct rules on trust account management, stated that he does not plan to violate the rules again, and proffered a set of reinstatement conditions that would impose accountability on him. That is good evidence of remorse: a lawyer has accepted responsibility for his misconduct and is committed to complying with the rules.

The Director, however, demands more. The Director emphasizes that while Tigue stated that he is bound by our interpretation of the professional conduct rules, he would not concede that our interpretation of the rules is correct. For instance, contrary to our holding in *Tigue VI*, Tigue asserts that, where no client money ends up in the lawyer's pocket and

no client actually loses money, trust account errors should not be considered negligent misappropriation. *See Tigue VI*, 900 N.W.2d at 429. Tigue also claims that he was disciplined more severely than other lawyers who have committed trust account violations; a claim the panel and Director never effectively refuted. The Director effectively insists that to satisfy the moral change standard, a petitioner must not only swear that he will *abide* by the rules of professional conduct as we have interpreted those rules (as Tigue has done here), but he must also affirm that he *agrees* with how we have interpreted the rules.

The Director's position is flawed. First, to protect the public and deter misconduct, lawyers need not agree with how we have interpreted the rules of professional conduct as long as they abide by our interpretation of the rules. More critically, requiring a lawyer to *agree* with our interpretation of the law (and so be constrained from expressing disagreement in his advocacy) presents serious concerns under the First Amendment to the United States Constitution and Article I, Section 3, of the Minnesota Constitution.[5] At the very least, it is hard to see how requiring a lawyer to not only agree to abide by our interpretation of the rules of professional conduct, but also to pledge agreement with our interpretation of the law, is narrowly tailored to protect the public and deter future trust account violations where another preventative tool (here, the strict conditions of reinstatement prohibiting Tigue from serving as signatory on any client trust account and

[5] The court essentially sidesteps the First Amendment implications raised by Tigue on this front. I reach no conclusions today on whether the Director's interpretation of the moral change standard *necessarily* violates the free speech and expression rights guaranteed by the United States and Minnesota Constitutions, but simply note that the Director's interpretation plausibly implicates such rights.

requiring that Tigue engage R.S. to manage his trust account) effectively serves those same interests. *See Republican Party of Minn. v. White*, 536 U.S. 765, 774–75 (2002) (observing that restrictions on certain categories of speech protected by the First Amendment must be narrowly tailored to serve a compelling state interest); *Tatro v. Univ. of Minn.*, 816 N.W.2d 509, 521 (Minn. 2012) (applying a narrowly tailored standard when assessing speech restrictions "directly related to established professional conduct standards"). There is no legitimate public protection reason for us to require petitioners to prostrate themselves before this court in sackcloth and ashes and pledge fealty to our legal reasoning.[6] Indeed, for public protection purposes, we expect lawyers in this state to do precisely the opposite when representing their clients.

Setting aside any broader concerns with the moral change standard, the question before us here is whether moral change is a useful and necessary tool in *every* case for assessing whether, if the petitioner is reinstated, the public will be placed at risk because the petitioner is likely to engage in the same type of misconduct for which he was suspended. A brief review of the emergence and evolution of the moral change standard provides insight into when it is proper and useful to apply it.

We first applied the standard in 1945, noting that "[t]he burden of proof [for reinstatement] is upon [an] applicant to establish by clear and satisfactory evidence . . . that [the] applicant has undergone such a moral change as now to render [the applicant] a fit

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[6] *See, e.g.*, Jonah 3:4–10 (*The New American Bible* 2020) (wherein the people of Nineveh donned sackcloth and ashes to placate a deity and avoid the destruction of their city).

person to enjoy the public confidence and trust once forfeited." *In re Smith*, 19 N.W.2d 324, 326 (Minn. 1945). We further explained that "[t]he decisive inquiry is whether the applicant is of such good moral character that he should be readmitted to the office of attorney and recommended to the public as a *trustworthy person*." *Id.* (emphasis added).

Our earliest cases applying the moral change standard—and indeed nearly every case we have decided since—dealt with attorney misconduct involving either dishonesty or "moral turpitude."[7] *See, e.g.*, *Smith*, 19 N.W.2d at 326 (embezzlement); *In re Strand*, 107 N.W.2d 518, 519 (Minn. 1961) (dishonesty towards clients and business partners);[8] *In re Peterson*, 181 N.W.2d 341, 341 (Minn. 1970) (inducement of client to pay retainer to defend a fictitious charge); *Herman*, 197 N.W.2d at 241–42 (repeated "swindling" of clients); *In re Swanson*, 343 N.W.2d 662, 663 (Minn. 1984) (forgery and intentional misappropriation); *In re Hanson*, 454 N.W.2d 924, 925 (Minn. 1990) (forgery and

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[7] An act of moral turpitude is a very serious violation of accepted conduct: "an act of baseness, vileness, or depravity in the private and social duties which a [person] owes to [other persons], or to society in general, contrary to the accepted and customary rule of right and duty between [person and person]." *State v. McCarthy*, 38 N.W.2d 679, 687 (Wis. 1949) (definition cited by our court in *In re Bunker*, 199 N.W.2d 628, 631 (Minn. 1972)) (internal quotation marks omitted) (citations omitted); *see also In re Haukebo*, 352 N.W.2d 752, 754 (Minn. 1984) (noting that "good moral character" in the attorney licensing context "has traditionally been defined as absence of proven conduct or acts which have been historically considered as manifestations of moral turpitude" (internal quotation marks omitted) (citations omitted)). Not every violation of law or of the Minnesota Rules of Professional Conduct is an act of moral turpitude. *See Bunker*, 199 N.W.2d at 631; *In re Conley*, 248 N.W. 41, 42 (Minn. 1933) (concluding that being held in contempt by a federal court in violation of Minnesota law is not de facto an act of moral turpitude).

[8] We discussed the facts of Strand's misconduct in *In re Strand*, 260 N.W. 499 (Minn. 1935).

intentional misappropriation); *In re Trygstad*, 472 N.W.2d 137, 138 (Minn. 1991) (conspiracy); *Kadrie*, 602 N.W.2d at 869 (forgery and dishonesty); *In re Jellinger*, 728 N.W.2d 917, 919–20 (Minn. 2007) (false statements); *In re Holker*, 765 N.W.2d 633, 637 (Minn. 2009) (fabrication of documents); *In re Dedefo*, 781 N.W.2d 1, 3 (Minn. 2010) (intentional filing of meritless lawsuits, presentation of false affidavit, and obstruction of access to evidence in an ongoing case); *In re Lieber*, 834 N.W.2d 200, 202 (Minn. 2013) (improper financial advances to clients by charging interest at a monthly rate of 15 percent and false statements under oath); *In re Stockman*, 896 N.W.2d 851, 855 (Minn. 2017) (improper loaning of money to clients and false statements to opposing counsel); *Severson*, 923 N.W.2d at 27 (knowingly imposing unfair and unreasonable investment agreement on client).[9]

[9] The court cites to several orders involving stipulations on reinstatement petitions where we have required proof of moral change for reinstatement in cases where the underlying misconduct did not involve fraud, dishonesty, or moral turpitude. Orders that adopt a stipulated condition are not the result of adverse briefing and do not carry significant precedential weight. *See In re Pearson*, 888 N.W.2d 319, 323 (Minn. 2016) (placing limited value on a stipulated discipline case).

Consequently, our cases suggest that a showing of moral change matters when a petitioner's underlying misconduct involves some display of fraud, dishonesty, or moral turpitude.[10] And there is no evidence here to suggest such misconduct.[11]

Moreover, we have never required a showing of moral change *solely* in the context of negligent misappropriation involving trust account mismanagement where there is no evidence of fraud, dishonesty, or moral turpitude.[12] And that makes sense, especially where, as here, a concrete solution exists that will protect the public and deter future misconduct going forward. For instance, why is it necessary to probe Tigue's mind and

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[10] The court notes that "we do not base the determination of who must prove moral change on whether the lawyer's misconduct involves dishonesty or moral turpitude. Instead, we generally reinstate lawyers who have been suspended for 90 days or less without requiring them to prove moral change." I agree that, in accordance with Rule 18(f), Rules on Lawyers Professional Responsibility (RLPR), we typically do not require an attorney suspended for 90 days or less to show moral change. But that is not the issue in this case. The issue is whether attorneys suspended for *more* than 90 days who must petition for reinstatement under Rule 18(a)–(d), RLPR (like Tigue here) must demonstrate moral change in every case if the conduct for which they were suspended did not involve some underlying fraud, dishonesty, or moral turpitude.

[11] In the next section, I address our finding in *Tigue VI* that Tigue intentionally misappropriated a $400 filing fee.

[12] At oral argument, the Director cited three cases she claims support the use of the moral change standard where negligent misappropriation and trust account violations are the only acts of misconduct at issue: *In re Holker*, 765 N.W.2d 633 (Minn. 2009), *In re Mose*, 843 N.W.2d 570 (Minn. 2014), and *In re Griffith*, 883 N.W.2d 798 (Minn. 2016). None of these cases supports the Director's argument because each one involved dishonesty or moral turpitude. *Holker* involved a petitioner who allegedly fabricated documents during a disciplinary investigation. 765 N.W.2d at 637. *Mose* involved a petitioner who had been disciplined in part for lying to clients and failing to account for and return unearned retainer fees. 843 N.W.2d at 572–73. And *Griffith* involved a petitioner who had sexually harassed a law student and attempted to pressure the student into recanting her complaints against him. 883 N.W.2d at 799.

soul using an imprecise standard to see if he has demonstrated a change in conduct and state of mind correcting the underlying misconduct that led to his suspension? Reinstatement conditions like the prohibition on Tigue having signatory authority for client trust accounts and requiring Tigue's engagement of R.S. to manage his trust account objectively accomplish just that. We do not need a proxy predictive tool like the moral change standard in the context of the negligent handling of trust accounts when we can impose objective, limiting reinstatement conditions to protect the public effectively and avoid future misconduct.[13]

B.

I now turn to the other rules infraction underlying our 2017 suspension of Tigue: his intentional misappropriation of a $400 filing fee. In 2015, R.D. retained Tigue to pursue a matter in federal district court. *Tigue VI*, 900 N.W.2d at 428. R.D. signed a $2,000 retainer agreement providing that $400 of that amount would function as an advance payment to cover the district court filing fee. *Id.* Tigue drafted a complaint but did not file it, and R.D. ultimately terminated the representation. *Id.* Tigue claimed "that he was entitled to retain the $400 filing fee as *quantum meruit* compensation for the services he rendered to R.D."

[13] Like the Director, the court also speculates about possible ways that the R.S. arrangement could fail. But there are ways to mitigate these risks. For example, we could require Tigue and R.S. to enter into a formal, binding arrangement with the Director as a condition of reinstatement to ensure Tigue's trust account mismanagement does not reoccur in the future, and R.S.—an attorney with no record of discipline—has signaled his willingness to do so. At any rate, if reinstated, Tigue still would have to practice under our prohibition on him serving as an authorized signatory for client trust accounts. He has no other option: he must comply with that prohibition or face further discipline.

prior to termination of the representation. *Id.* Tigue eventually refunded the $400 to R.D. while the disciplinary investigation that led to his suspension was pending.[14] *Id.*

In 2017, Tigue argued that he believed he could retain the filing fee based on an express provision in the retainer agreement, which provided: "Client understands that should it hinder Attorney's representation of Client in any way, Attorney shall immediately withdraw from representation and be entitled to *quantum meruit* compensation as per the terms of this agreement." *Id*. at 429–30. We noted that Tigue believed that he was entitled to keep the $400 filing fee under the quantum meruit provisions of the retainer agreement. *Id.* at 429. The referee in the disciplinary proceeding, however, rejected Tigue's argument and we concluded that the record supported the referee's finding that Tigue intentionally misappropriated the filing fee. *Id.* at 430. While Tigue ultimately failed to persuade us with his quantum meruit argument, his case represented the first occasion in which we had rejected such an interpretation of a quantum meruit fee agreement provision in a discipline proceeding, so his good faith argument under the provision was not unreasonable.

Nonetheless, because we held that the referee in 2017 did not clearly err by finding that Tigue had intentionally misappropriated client funds—behavior at the very least suggestive of dishonesty, fraud, or moral turpitude—requiring a showing of moral change

[14] As mentioned above, R.D. incurred a $12 bank fee when Tigue's check for repayment of the $400 bounced. *Tigue VI*, 900 N.W.2d at 428. After that initial mishap, Tigue "successfully repaid the $400 with a money order." *Id.* This loss of $12 is the only instance in the record where Tigue's misconduct—whether negligent or intentional—resulted in a client suffering a permanent financial loss.

as to Tigue's intentional misappropriation is justifiable. And under the moral change standard, I believe Tigue should be reinstated.

Although Tigue maintains that we decided the intentional misappropriation issue incorrectly, he repeatedly acknowledged in the reinstatement hearing that he is bound by our decision and will not commit the same misconduct in the future. The panel nonetheless found Tigue's promise that he will not withhold filing fees to cover his own expenses under a quantum meruit or any other theory in the future not credible based solely on his past *negligence* in handling his trust account. But that mismanagement is not intentional conduct.[15] Indeed, the panel did not identify *any* past dishonest conduct by Tigue apart from the single instance of using the $400 filing fee to cover his own expenses in accordance with his understanding of his retainer agreement. Because of Tigue's repeated statements that he will not commit this same type of intentional misconduct in the future and the panel's failure to identify anything in the record or Tigue's disciplinary history that undermines Tigue's credibility on this point, I conclude that Tigue has met his burden to prove moral change as to his prior intentional misappropriation of client funds. At the very least, he has demonstrated "acceptance of responsibility" for his misconduct and a change

[15] The court characterizes Tigue's negligent appropriation as resulting from a "deliberate choice to stop maintaining required trust account books and records as soon as the Director stopped reviewing them on a monthly basis." The court seeks to have its cake and eat it too: the shortages in Tigue's client trust accounts stemming from his trust account mismanagement amounted to *negligent* misappropriation, but the mismanagement was somehow simultaneously the result of Tigue's *intentional* choice to stop maintaining his books and records. Either Tigue's actions vis-à-vis his trust account were negligent or intentional; they cannot be both. In fact, in our 2017 order, although we stated that "Tigue's *negligence* caused shortages in several client trust accounts" we did not suggest that Tigue's actions were intentional. *Tigue VI*, 900 N.W.2d at 429 (emphasis added).

in his "conduct and state of mind that corrects the underlying misconduct that led to [his] suspension." *Mose II*, 843 N.W.2d at 575. He accepts our decision and has pledged to not repeat this conduct in the future. Nothing in the record supports a finding to the contrary.

C.

Tigue seeks reinstatement because his planned arrangement with R.S. and his permanent prohibition on serving as an authorized signatory on client trust accounts means that he cannot repeat his misconduct involving trust account mismanagement and negligent misappropriation. I agree. Further, Tigue has stated many times that he will not repeat the conduct that constituted intentional misappropriation and there is no evidence in the record undermining Tigue's statements on that front. Finally, Tigue acknowledged in his reinstatement hearing that he remains bound by our 2017 decision and that his behavior represented misconduct under the professional rules.

Consequently, because Tigue has demonstrated sufficient moral change as to his intentional misappropriation and because a showing of moral change is inapplicable to his trust account misconduct and negligent misappropriation, I would reinstate Tigue.

For the reasons stated above, I respectfully dissent.

ANDERSON, Justice (dissenting).

I join in the dissent of Justice Thissen.