STATE OF MINNESOTA

IN SUPREME COURT

A20-0198

Original Jurisdiction | Per Curiam
Dissenting, Thissen, Chutich, JJ.

In re Petition for Reinstatement of
William G. Mose, a Minnesota Attorney,
Registration No. 125659.

Filed: July 12, 2023
Office of Appellate Courts

Edward F. Kautzer, Ruvelson & Kautzer, Ltd., Roseville, Minnesota; and

Daniel S. Kufus, Kufus Law, LLC, Roseville, Minnesota, for petitioner.

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

S Y L L A B U S

A suspended attorney who proves that he has undergone the requisite moral change but fails to establish that he has the intellectual competence to practice law is not entitled to reinstatement, notwithstanding the attorney's agreement to resign his license upon reinstatement.

Petition denied.

Considered and decided by the court without oral argument.

OPINION

PER CURIAM.

This petition presents a question of first impression: does our traditional test for attorney reinstatement apply when an attorney agrees that upon reinstatement, he will resign his law license and not apply for admission or re-admission to practice in any jurisdiction? We hold that under these circumstances, it does. Applying our traditional reinstatement test, we conclude that although petitioner William G. Mose has proven the requisite moral change for reinstatement, he has not demonstrated that he has the intellectual competence to practice law. We therefore deny the petition for reinstatement.

FACTS

Mose was admitted to the practice of law in Minnesota in 1980. But Mose did not begin practicing law until 1984, when he opened a solo law practice in the Twin Cities area. In 1986, he moved his law practice to the Pequot Lakes area, focusing primarily on family law. In 1989, Mose moved his practice back to the Twin Cities area.

Disciplinary History

Mose engaged in the active practice of law for only 5 years—1984 to 1985, and 1986 to 1990. In those 5 years, the Director of the Office of Lawyers Professional Responsibility received 19 complaints against Mose, all of which resulted in discipline.

In 1988, the Director received three complaints against Mose involving incompetence, client neglect, and failing to follow court orders. On July 19, 1989, based on a stipulation for discipline, we publicly reprimanded Mose and placed him on supervised probation for 2 years, subject to several conditions, including completion of a

trial advocacy course. *In re Mose (Mose I)*, 443 N.W.2d 191, 191–92 (Minn. 1989) (order). Our order provided for Mose's immediate suspension if he failed to comply with those conditions. *Id.* at 192.

In 1990, the Director petitioned to revoke Mose's probation for failing to comply with probation conditions and for additional client-related misconduct involving incompetence, failure to adequately communicate with clients, and false statements to clients. On July 16, 1990, we indefinitely suspended Mose from the practice of law for failing to comply with the terms of probation. *In re Mose (Mose II)*, 458 N.W.2d 100, 100 (Minn. 1990) (order).

While Mose was suspended, the Director filed a petition alleging that Mose committed additional misconduct in eight more client matters. The allegations involved incompetence, client neglect, lack of diligence, false statements to clients, failure to adequately communicate with clients, failure to account for or refund unearned retainer fees, failure to secure client consent before transferring client files to substitute counsel, failure to comply with the requirements of Rule 26, Rules on Lawyers Professional Responsibility (RLPR), and failure to cooperate with the Director's investigations.

On May 20, 1991, based on a stipulation for discipline, we suspended Mose for a minimum of 5 years, retroactive to the date of his original suspension. *In re Mose (Mose III)*, 470 N.W.2d 109, 109–10 (Minn. 1991) (order). Reinstatement was conditioned upon, among other things: successful completion of the entire bar exam; full compliance with the terms of probation set forth in our July 1989 order; and refunding certain unearned client retainers. *Id.* at 110.

In addition to the public reprimand and suspensions detailed above, Mose received four admonitions between June of 1989 and August of 1990 for client neglect and failure to adequately communicate with clients.

Reinstatement History

In 2007, Mose filed a petition for reinstatement to the practice of law; the Director opposed the petition. We concluded that Mose should not be reinstated to the practice of law because Mose failed to (1) satisfy several of the previous conditions of reinstatement, (2) prove that he had undergone the requisite moral change, and (3) prove that he is competent to practice law. *In re Mose (Mose IV)*, 754 N.W.2d 357, 359 (Minn. 2008).

In 2012, Mose again filed a petition for reinstatement; the Director again opposed the petition. We once more concluded that Mose should not be reinstated to the practice of law. *In re Mose (Mose V)*, 843 N.W.2d 570, 577 (Minn. 2014). First, we observed that Mose had failed to complete a trial advocacy course as required by a condition of his suspension. *Id.* at 574.

With respect to moral change, we concluded that Mose "has not established that he has changed either his conduct or his state of mind that resulted in his misconduct." *Id.* at 575. We noted the significant length of time that Mose had taken before trying to locate his former clients to make restitution. *Id.* We also noted that Mose had continued to demonstrate neglect and lack of diligence in his volunteer and student-teaching positions. *Id.* at 576. Additionally, we observed that Mose had no "deliberate plan to return to the practice of law [nor] systems in place to avoid future misconduct." *Id.*

Finally, we concluded that Mose had still not demonstrated his intellectual competence to re-enter the practice of law. Despite passing the bar exam an additional time (the third since his suspension), "[w]e conclude[d] that when an attorney is suspended for incompetence and lack of diligence, and has not practiced law for an extended period of time, the attorney must not only pass the bar examination, but also demonstrate legal reasoning and case management skills through paid- or volunteer-work experience." *Id.* at 577 & n.1. Although we noted that "[a] petitioner need not work at a law firm or as a paralegal to prove he or she is competent to practice law," *id.* at 576, Mose had not shown any work experience that required legal reasoning and case management:

> Mose has neither worked in a law-related field nor demonstrated through his part-time volunteer work that he has the intellectual competence to practice law. . . . Since his suspension 23 years ago, Mose has not had any full-time employment. Instead, he has worked on average 25 hours per week officiating sporting events, a job he retired from in 2013. Given the length of time since Mose has practiced law, his lack of legal employment since his suspension, and the type of work he performed as a volunteer, the panel's conclusion that Mose lacks the competence to practice law is supported by the record.

Id. at 577.[1]

Current Reinstatement Proceedings

Mose filed his current petition for reinstatement in February 2020. The matter was investigated by the Office of Lawyers Professional Responsibility, and the Director prepared her report on the petition.

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[1] In addition to the reinstatement petitions described above, Mose also petitioned for reinstatement on two other occasions: once in April 2005, and again in August 2018. Mose withdrew those petitions before consideration by our court.

In her report, the Director indicated that Mose has stated that he does not intend to practice law. Describing the case as "unique," the Director concluded that Mose "has not established his intellectual competency to practice law," and that his last passage of the bar examination was in 2010, and therefore not current.[2] However, the Director recognized that "those facts, while conditions for reinstatement, may be appropriate for a Court waiver since petitioner does not plan to practice law."

The Director also noted that Mose had "taken numerous and specific steps indicative of a specific plan to work in a law adjacent field," namely his desire to become an alternative dispute resolution (ADR) neutral. The Director explained that Mose plans to provide mediation services to parents who are having trouble with their children following a divorce.

Although the Director opined that she had "not yet seen the moral change required of a petitioner," she acknowledged that "[i]f petitioner is able to meet his burden" to demonstrate moral change, "the Director would not challenge that determination if petitioner's readmission was also conditioned on the immediate resignation of his license . . . and provided the Court is willing to waive the requirements of a current bar exam score and competence to practice law."

A panel of the Lawyers Professional Responsibility Board held a hearing on October 18, 2021. At the hearing, Mose informed the panel that he sought reinstatement

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[2] For this assertion, the Director relied on Rule 6(J), Rules for Admission to the Bar, which provides that "[a] passing score on the Minnesota Bar Examination is valid for 36 months from the date of the examination. Applicants must be admitted within 36 months of the examination."

in order to resign from the practice of law and practice as an ADR neutral providing early neutral evaluation services. Mose explained that he wished to be reinstated and resign so that he could be placed on the Minnesota Judicial Branch's roster of qualified neutrals, which he is prohibited from joining with a suspended law license. *See* Minn. Gen. R. Prac. 114.12, subd. 2(a) (stating that a person whose "professional license has been suspended or revoked" may not be placed on the roster of qualified neutrals).

The panel received 37 exhibits and heard the testimony of Dr. Paul Reitman (a forensic psychologist), Janet Goehle (an ADR practitioner), and Mose himself. Dr. Reitman testified that he diagnosed Mose with generalized anxiety disorder and social phobia. Dr. Reitman attributed Mose's prior misconduct to his mental health, explaining, "[e]very time he was meeting with a client, it was not a pleasurable, positive experience for him. That's why he avoided them so much because he didn't know how to deal with people on that kind of basis." Dr. Reitman explained that Mose cooperated with a mental health treatment plan, and between 2020 and 2021, Mose had undergone a "transformation" where he recognized the wrongfulness of his conduct. Dr. Reitman testified that Mose's mental health symptoms were "in remission" due to his "transformation" and opined that Mose "can handle what he wants to do with the proper support."

Goehle testified that she had reviewed Mose's business plan for an ADR practice and felt that it was a satisfactory plan for Mose's proposed practice. Goehle explained that Mose has all of the training necessary to provide early neutral evaluation services and to apply for the qualified neutral roster. Goehle stated that she was aware of Mose's

disciplinary history but felt that working within the field of early neutral evaluation was a good way for Mose to start his ADR practice.

Finally, Mose testified that he had remorse, shame, and guilt for his misconduct. Mose stated, "I did a very bad job, and I have remorse for it. I feel bad from a lawyer's perspective, and morally I didn't treat people well. They expected a good lawyering job, and I did not do well." Mose stated that he thinks "a lot" about the harm that he caused to his clients.

Mose also testified about the steps he had taken to prepare for a career in ADR, noting that he took family law CLEs, familiarized himself with the ADR ethics rules, set up an office, and obtained liability insurance. Mose also stated that he had familiarized himself with the early neutral evaluation process through his job with Hennepin County Family Court Services. Mose explained that he will have a support system in Goehle and agreed to see a counselor at least once a month. Mose also expressed openness to taking medication for his mental health issues.

The panel recommended reinstatement, but with the condition that Mose immediately resign his law license upon reinstatement. The panel concluded that Mose demonstrated moral change by clear and convincing evidence, possessed the competence to practice law, and had satisfied all court-ordered conditions for reinstatement.

The Director filed the panel's findings, as well as a stipulation for reinstatement and resignation entered into between the Director and Mose. In the stipulation, the parties jointly recommend that the appropriate disposition is reinstatement, with Mose simultaneously moving to resign his license pursuant to Rule 11, RLPR, and agreeing not

to apply for admission or re-admission to practice law in Minnesota or any other jurisdiction.

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). While we consider a panel's recommendation, "we are not bound by it." *In re Tigue*, 960 N.W.2d 694, 699 (Minn. 2021).

While this petition presents unique circumstances, we begin with our traditional reinstatement test. In a petition for reinstatement, the petitioner bears the burden of proving: (1) moral change; (2) compliance with the conditions of suspension; and (3) compliance with the requirements of Rule 18, RLPR.[3] *In re Stockman*, 896 N.W.2d 851, 856 (Minn. 2017). "In addition to these requirements, we weigh five other factors: 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.* (quoting *Kadrie*, 602 N.W.2d at 870).

I.

We have long held that demonstrating moral change "is the most important factor in the determination of whether to reinstate an attorney." *Stockman*, 896 N.W.2d at 857

[3] No party contests that Mose has complied with the requirements of Rule 18, RLPR (except the requirement to pass the bar exam, Rule 18(e)(1), RLPR, which we discuss below). We therefore do not address that element in our analysis.

(citing *In re Reutter*, 474 N.W.2d 343, 345 (Minn. 1991)). To establish moral change, a petitioner must show: (1) "remorse and acceptance of responsibility for the misconduct"; (2) "a change in the [petitioner's] conduct and state of mind that corrects the underlying misconduct that led to the suspension"; and (3) "a renewed commitment to the ethical practice of law." *Mose V*, 843 N.W.2d at 575. "These changes must be genuine, and not contrived or superficial." *Id.* We believe that Mose has satisfied all three elements of moral change.

A.

In 2014, we recognized no evidence demonstrating Mose's remorse and acceptance of responsibility for his misconduct. *Id.* at 575–76. In the present proceedings, however, Mose voiced unequivocal remorse for his misconduct and the impact that it had on his clients. As Mose bluntly put it, "I did a very bad job, and I have remorse for it." Mose also testified that he thinks "a lot" about the harm he caused his clients, which will lead him to "remember what [he] did wrong and try not to repeat the mistakes." Mose's "present candid admissions of his past misconduct weigh in favor of his reinstatement." *In re Dedefo*, 781 N.W.2d 1, 10 (Minn. 2010).

Mose also presented the testimony of Dr. Reitman, who similarly testified to Mose's remorse and noted that Mose did not try to minimize or rationalize his misconduct in his sessions with Dr. Reitman. Dr. Reitman's testimony bolsters Mose's expressions of remorse and acceptance of responsibility. *See In re Severson*, 923 N.W.2d 23, 31 (Minn. 2019) (considering the testimony of character witnesses in evaluating whether petitioner showed remorse and acceptance of responsibility). In sum, based on the record,

we agree with the panel's conclusion that Mose demonstrated remorse and acceptance of responsibility for his misconduct.

B.

We next consider whether Mose has demonstrated a change in his "conduct and state of mind that corrects the underlying misconduct that led to the suspension." *Mose V*, 843 N.W.2d at 575. In 2014, Mose pointed to his volunteer work and promise to implement a calendar "tickler" system to prevent future office mismanagement and missed deadlines. *Id.* at 575–76. We concluded that those facts did not support reinstatement because (1) Mose had demonstrated incompetence in his volunteer positions, and (2) Mose's promise to use a "tickler" system, by itself, was insufficient because Mose had failed to educate himself further on law office management. *Id.*

In the present proceedings, Mose and Dr. Reitman provided evidence of Mose's "transformation" in 2020 and 2021. Both testified that Mose had begun to deal with his mental health issues and had come to a deeper understanding of the gravity of his misconduct. Dr. Reitman explained that as a result, Mose "chose to learn from the consequences of his actions in order to make a presentation, in my opinion. It's a good solid psychological presentation and I think he has changed." Mose similarly testified that over 2020 and 2021, he began to understand how his mental health issues impacted his legal practice and developed coping techniques to manage his mental health.

Severson provides a useful analogy here. In *Severson*, both the petitioner and his therapist testified that the petitioner had made a "change" from being defensive and deflecting responsibility to being "sincere in his efforts to understand what he did wrong

and sincere in his desire to accept responsibility." 923 N.W.2d at 31 (internal quotation marks omitted). The petitioner also detailed lessons that he had learned from the disciplinary process and therapy. *Id.* at 31–32. We concluded that this evidence, coupled with the petitioner's remorse and acceptance of responsibility, demonstrated a change in conduct and state of mind that corrected the underlying misconduct. *Id.* at 32. Mose has similarly demonstrated a "change" in his state of mind that corrects, in Dr. Reitman's view, a key contributing factor to Mose's misconduct—Mose's mental health issues.

As for Mose's conduct, he has now done much more than merely promise to implement a particular office calendar system. He has acquired all the necessary training and certificates to offer early neutral evaluation services and to be listed on the judicial branch's roster of qualified neutrals. He developed a business plan for an ADR practice and discussed it with an ADR practitioner, who approved of the plan. He has set up an office and obtained liability insurance. And he has developed a professional support network and committed to continue treatment for his mental health issues.

In *Mose V*, we were concerned with Mose's "ongoing problem with following through on his commitments." 843 N.W.2d at 576. But Mose has demonstrated that since 2014, he has been able to set goals and stick to them. We therefore agree with the panel that Mose has proven a change in his conduct and state of mind that corrects the underlying misconduct that led to the suspension.

C.

We next evaluate whether Mose has proven "a renewed commitment to the ethical practice of law." *Mose V*, 843 N.W.2d at 575. In truth, Mose has no plan to return to the

practice of law. But Mose intends to practice in a law-related field—early neutral evaluation—and we therefore evaluate whether Mose has shown a commitment to ethically practicing in that field.

An 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. In 2014, Mose had not demonstrated a "deliberate plan to return to the practice of law"; he had not contacted any attorneys or law firms regarding potential employment. *Mose V*, 843 N.W.2d at 576. As described above, however, Mose has now taken concrete, deliberate steps to develop an ADR practice.

Additionally, Mose has implemented several "systems to avoid future misconduct." *Severson*, 923 N.W.2d at 32. Mose testified that he would have a support system of other ADR professionals to whom he could turn for advice or assistance. Mose further explained that he would work with Goehle to start out slowly and manage an appropriate caseload. Mose also committed to continuing treatment for his mental health issues, a contributing factor to his past misconduct. We are convinced that Mose's concrete steps to develop an ADR practice, coupled with his professional and mental health support networks, demonstrate a commitment to ethically practicing in the field of early neutral evaluation. *Cf. Stockman*, 896 N.W.2d at 861–62 (concluding attorney had demonstrated a renewed commitment to the ethical practice of law, in part, by having a job offer as an associate at a firm with mentorship support).

In sum, we believe that Mose has demonstrated moral change by clear and convincing evidence.

II.

We next evaluate whether Mose has complied with the conditions of his suspension. *See Stockman*, 896 N.W.2d at 856. The Director suggested in her report that Mose has not complied with our condition requiring successful completion of the bar exam. Observing that a "passing score on the Minnesota Bar Examination is valid for 36 months from the date of the examination," the Director took the position that Mose had not satisfied this condition because he last passed the bar exam in 2010. But before the panel, the Director took the position that the lack of a valid bar score was not a "technical barrier" to Mose's reinstatement.

The panel agreed with the Director's latter position, and so do we. All we required of Mose was "successful completion of the entire bar examination," not a valid bar exam score. *Mose III*, 470 N.W.2d at 110. Mose has passed the bar exam three times since his suspension. He has therefore satisfied this condition of his suspension.

The Director also noted in her report that Mose has not yet satisfied the condition from *Mose I* that he complete an appropriate trial advocacy course. We noted in 2014 that Mose had not fulfilled this condition, *see Mose V*, 843 N.W.2d at 574, and Mose offers no evidence in the present proceeding that he has taken an appropriate trial advocacy course since 2014. However, given that Mose has no intent to practice law, this condition no

longer serves any functional purpose. We are therefore inclined to waive this condition of suspension, subject to the agreement of Mose not to practice law in the future.[4]

III.

Finally, our precedent directs us to weigh five other factors: 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." *Kadrie*, 602 N.W.2d at 870.

It is true that we have referred to an attorney's "intellectual competency to practice law" as a factor to be weighed in reinstatement cases. *See Tigue*, 960 N.W.2d at 699; *Severson*, 923 N.W.2d at 28. But today we clarify that an attorney's "intellectual competency to practice law" is a requirement to be met for reinstatement, not merely a factor to be weighed. The attorney petitioning for reinstatement has the burden to prove, by clear and convincing evidence, their intellectual competence to practice law. *See Dedefo*, 781 N.W.2d at 7–8 (explaining that a petitioner must demonstrate "by clear and convincing evidence that [they are] entitled to be reinstated to the practice of law").

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[4] Our waiver of the trial advocacy course condition should not be read as approval of Mose's failure to comply with the condition. Indeed, if Mose had not presented other evidence of his moral change, we would be inclined to hold this failure against him, as we did in *Mose V*, 843 N.W.2d at 574, 576. But under the unique facts presented here, we believe that waiving this condition will not undermine the purposes of attorney discipline: "to protect the public, protect the judicial system, and deter future misconduct by the disciplined attorney and other attorneys." *In re Ulanowski*, 800 N.W.2d 785, 799 (Minn. 2011); *see also In re McDonald*, 962 N.W.2d 451, 466 (Minn. 2021) (noting that our disciplinary decisions are "tailored to the specific facts of each case").

We do not consider this proposition to be controversial. The first substantive rule of the Minnesota Rules of Professional Conduct is that "[a] lawyer shall provide competent representation to a client." Minn. R. Prof. Conduct 1.1. If we reinstated attorneys who lack the intellectual competence to practice law, we would seriously jeopardize our duty to "protect the public from harm and deter future misconduct." *In re Getty*, 452 N.W.2d 694, 698 (Minn. 1990); *see also In re Fru*, 829 N.W.2d 379, 388 (Minn. 2013) (explaining that a pattern of incompetence and client neglect is "serious misconduct" (citation omitted) (internal quotation marks omitted)).

Therefore, we must now determine whether Mose has demonstrated by clear and convincing evidence his intellectual competence to practice law.[5]

A.

In 2008, we addressed Mose's competence to practice law. *Mose IV*, 754 N.W.2d at 365. We noted that Mose had passed the bar exam twice since being suspended and was current in his CLE requirements but concluded that "more is needed to prove his competence to return to the practice of law," such as "work directly related to the law . . . or training specifically related to the practice areas in which he is interested in pursuing." *Id.* Citing Mose's pattern of incompetence during the years in which he practiced as an

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[5] In summary, we clarify that in a petition for reinstatement, the petitioner bears the burden of proving: (1) moral change; (2) the intellectual competence to practice law; (3) compliance with the conditions of suspension; and (4) compliance with the requirements of Rule 18, RLPR. In addition to these requirements, we will weigh four other factors: the attorney's recognition that the conduct was wrong, the length of time since the misconduct and suspension, the seriousness of the misconduct, and any physical or mental pressures susceptible to correction.

attorney and lengthy time away from the practice of law, we required that Mose must "provide more than his successful completion of the bar examination and CLE credits to prove he is now competent to practice law." *Id.*

We again considered Mose's competence to practice law in 2014. *Mose V*, 843 N.W.2d at 576–77. At that time, Mose largely relied on the same evidence of competence that he had relied on in *Mose IV*: successful completion of the bar exam and being current on CLE requirements. *Mose V*, 843 N.W.2d at 576. We again concluded that more was required, holding that "when an attorney is suspended for incompetence and lack of diligence, and has not practiced law for an extended period of time, the attorney must not only pass the bar examination, but also demonstrate legal reasoning and case management skills through paid- or volunteer-work experience." *Id.* at 577.

We acknowledged that Mose volunteered with HOME Line, a housing law nonprofit. *Id.* at 576. But we concluded that Mose's work with HOME Line "did not involve many of the skills necessary to practice law, such as long-term case management or legal research or writing." *Id.* at 577. Rather, the work involved "recording client intake information, reporting the information to a staff attorney, and responding to the client with possible courses of action." *Id.* We therefore concluded that Mose continued to lack the intellectual competence to practice law. *Id.*

In the present proceedings, Mose largely relies on the same evidence of competence that he relied on in *Mose IV* and *Mose V*. Before the panel, Mose pointed to his successful completion of the bar exam and compliance with CLE requirements, which we have twice said is inadequate to demonstrate Mose's competence to practice law. *Mose IV*,

754 N.W.2d at 365; *Mose V*, 843 N.W.2d at 576–77.

As for demonstrating "legal reasoning and case management skills through paid- or volunteer-work experience," *Mose V*, 843 N.W.2d at 577, Mose testified that he had worked for Hennepin County Family Court Services. But it appears that Mose was already doing that in 2014. *See id.* at 575. Mose further testified that he volunteered for the Volunteer Lawyers Network, but his position involved largely the same type of work he was doing at HOME Line in 2014: "recording client intake information, reporting the information to a staff attorney, and responding to the client with possible courses of action." *Id.* at 577. And while Mose mentioned working at a law office for a year, his description of his work was extremely vague: "I basically read witnesses' statements and gave them a summary at the end of the day."

Crucially, there was no testimony that Mose was successful in his law-related positions. This is important, because in 2008 and 2014, we noted that Mose had demonstrated a pattern of incompetence in his work and volunteer positions. *See Mose IV*, 754 N.W.2d at 366 (noting that "evidence showed that Mose was terminated from three different positions during his suspension for reasons such as missing work"); *Mose V*, 843 N.W.2d at 576 ("While a volunteer at [Family Court Services], Mose failed to complete paperwork correctly, work independently, and follow supervisors' instructions.").

Based on this record, we conclude that Mose has not demonstrated "legal reasoning and case management skills."[6] *Mose V*, 843 N.W.2d at 577. Mose has therefore failed to demonstrate his intellectual competence to practice law.

B.

Although we conclude that Mose continues to lack the intellectual competence to practice law, the Director suggests we could waive the competence requirement because Mose does not intend to practice law. Under the circumstances of this case, we believe it would be inappropriate to waive the competence requirement.

Although it is true that Mose is not technically planning on practicing law, he is planning on entering a field that is very much intertwined with the practice of law. The practice of ADR is governed by rules set by the judicial branch. *See* Minn. Gen. R. Prac. 114, 310. The members of the board governing the ethical practice of ADR are appointed by our court. Minn. Gen. R. Prac. 114.13(A). And ADR practitioners are intimately

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[6] Although the dissent suggests that we create a Catch-22 by requiring suspended attorneys to prove intellectual competence to practice law, we do not view our rule so harshly. First, in many cases, a suspended attorney's intellectual competence to practice law will not be in question. *See, e.g.*, *In re Ramirez*, 719 N.W.2d 920, 925 (Minn. 2006) (noting that it was "undisputed" that the attorney had the intellectual competence to practice law). Second, although our modified reinstatement analysis requires all suspended attorneys to demonstrate intellectual competence to practice law, only suspended attorneys who "ha[ve] not practiced law for an extended period of time" will have the burden of "demonstrat[ing] legal reasoning and case management skills through paid- or volunteer-work experience." *Mose V*, 843 N.W.2d at 577. Third, even for those attorneys who must make such a demonstration, the rule we articulate today is not as onerous as the dissent suggests. Mose's own activities since his suspension show that paid and volunteer work experience is available to suspended attorneys who need to develop and demonstrate intellectual competence. But critical to demonstrating legal reasoning and case management skills is demonstrating *success* in the paid and volunteer work that provide those opportunities. Mose failed to make such a showing here.

involved with litigation in the district courts. *See* Minn. Gen. R. Prac. 114.04 (describing the role of district courts and parties in selecting an ADR process). Indeed, given the entanglement between ADR and the law, some scholars suggest that the practice of ADR implicates the practice of law. *See* Carrie Menkel-Meadow, *When Dispute Resolution Begets Disputes of Its Own: Conflicts Among Dispute Professionals*, 44 UCLA L. Rev. 1871, 1881–82 (1997).

Moreover, Mose has indicated that he wishes to be reinstated and resign so that he can be placed on the judicial branch's roster of qualified neutrals, which he is prohibited from joining with a suspended law license.[7] *See* Minn. Gen. R. Prac. 114.12, subd. 2(a). Qualified neutrals who wish to provide many types of services—including services that Mose has suggested that he would attempt to provide—must be "qualified practitioners" in their field,[8] with qualification as a practitioner to be demonstrated in part by professional

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[7] We observe that Mose does not need to be on the judicial branch's roster of qualified neutrals to provide ADR services as a neutral. *See* Minn. Gen. R. Prac. 114.02(e)–(f) (distinguishing between a "Neutral," who is "an individual who provides an ADR process under [Rule 114]," and a "Qualified Neutral," who is "an individual . . . listed on the State Court Administrator's roster as provided in the Rules of the Minnesota Supreme Court for ADR Rosters and Training"); *see also* Minn. R. Gen. Prac. 114.04(b) ("Any individual providing ADR services under Rule 114 must either be a Qualified Neutral *or* be selected and agreed to by the parties." (emphasis added)).

[8] *See* Minn. Gen. R. Prac. 114.12, subd. 4(d)(1) (qualified neutrals providing parenting time expediting services must "be recognized as qualified practitioners"); *id.*, subd. 4(e)(1) (same for providing parenting consulting services); *id.*, subd. 4(f)(1) (same for providing Social Early Neutral Evaluations); *id.*, subd. 4(g)(1) (same for providing Financial Early Neutral Evaluations); *id.*, subd. 4(h)(1) (same for providing Moderated Settlement Conferences); *id.*, subd. 4(i)(1) (same for providing family law adjudicative services).

licensure.[9] Some of these qualified neutral positions additionally require at least 5 years of experience working in family law.[10] It would seem to violate the spirit—and perhaps the letter—of those rules to allow an attorney who practiced family law for only approximately 5 years, 30 years ago, before he was suspended, and who committed serious misconduct during those 5 years, to be reinstated and permitted to hold himself out as a "qualified practitioner" in family law without demonstrating that he is currently fit to practice law.[11]

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[9] *See* Minn. Gen. R. Prac. 114.12, subd. 4(d)(1) ("Recognition may be demonstrated by submitting proof of professional licensure, professional certification, faculty membership of approved continuing education courses related to high-conflict couples or acceptance by peers as experts in their field."); *id.*, subd. 4(e)(1) (same); *id.*, subd. 4(f)(1) (same); *id.*, subd. 4(g)(1) (same but substituting "family law related finances" for "high-conflict couples"); *id.*, subd. 4(h)(1) (same but substituting "family law" for "high-conflict couples"); *id.*, subd. 4(i)(1) (similar but substituting "family law" for "high-conflict couples" and adding "service as court-appointed adjudicative Neutral").

[10] *See* Minn. Gen. R. Prac. 114.12, subd. 4(d)(1) (requiring "at least 5 years of experience working with high-conflict couples in the area of family law"); *id.*, subd. 4(e)(1) (same); *id.*, subd. 4(f)(1) (requiring "at least 5 years of experience as family law attorneys" or "as other professionals working in the area of family law"); *id.*, subd. 4(g)(1) (same); subd. 4(i)(1) (requiring "at least 5 years of professional experience in the area of family law").

[11] The dissent suggests that the State Court Administrator's Office—the office that manages the roster of qualified neutrals—could prevent any harm to the public and the judicial system by keeping Mose off the roster. But just because another entity could prevent harm to the public and the judicial system does not absolve us of our "duty to regulate the legal profession." *See In re Riehm*, 883 N.W.2d 223, 232 (Minn. 2016). We—not the State Court Administrator's Office—are charged with protecting the public and judicial system from disciplined attorneys like Mose. *In re Eichhorn-Hicks*, 916 N.W.2d 32, 39 (Minn. 2018). While Mose may no longer be formally practicing law as an ADR practitioner, any harm he causes to the public and the judicial system as a qualified neutral would be directly attributable to our decision to reinstate him as an attorney and to permit him to resign his law license. Our "exclusive power to regulate

Put simply, parties expect—and the General Rules of Practice require—a neutral to have "experience in the subject matter of the dispute." Minn. Gen. R. Prac. 114.02(b)(1). The only substantive family law experiences Mose has had during his suspension are family law courses and his unsuccessful tenure at Family Court Services. We are unconvinced that these experiences have provided Mose with "experience in the subject matter" of family law. *See id.* Because we are not assured that reinstating Mose for the purpose of becoming a qualified neutral will protect the public and judicial system from harm, we decline to waive the competence requirement for reinstatement.[12]

In conclusion, we acknowledge Mose's admirable efforts to address his mental health issues and carefully develop an ADR practice, and we are heartened by his moral change. But because Mose has not demonstrated the intellectual competence to practice law, we must deny his petition for reinstatement.

Petition denied.

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attorney discipline proceedings" is therefore not as narrow as the dissent suggests. *Riehm*, 883 N.W.2d at 232.

[12] Our decision not to loosen our traditional test for attorney reinstatement is further supported by our rule that we do "not allow a lawyer to resign with charges pending." *In re Blomquist*, 958 N.W.2d 904, 911 (Minn. 2021). "We do not allow resignation when allegations of serious misconduct are pending because to do so 'would not serve the ends of justice nor deter others from legal misconduct.' " *Id.* (quoting *In re McCoy*, 447 N.W.2d 887, 891 (Minn. 1989)). To be sure, the charges against Mose are far from "pending." But allowing an attorney to be reinstated pursuant to a relaxed standard because the attorney agrees to resign from the practice of law would run afoul of some of the same concerns that the no-resignation-with-charges-pending rule is designed to avoid. Specifically, it would not serve the ends of justice nor deter others from misconduct if we were to allow an attorney to hold themselves out as resigned from the practice of law—which we allow only for an attorney in good standing—when, in fact, their standing was anything but good.

D I S S E N T

THISSEN, Justice (dissenting).

I would reinstate William G. Mose under the terms of the stipulation he entered with the Director, including his commitment to immediately resign his law license and agreement to never apply for admission or re-admission to practice law in Minnesota or any other jurisdiction.

The Minnesota Rules of Professional Conduct are rules governing the *practice of law*. "The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself." Minn. R. Prof. Conduct, *Preamble: A Lawyer's Responsibility*, ¶ 14. A person can only harm the public as a lawyer—the thing we are concerned with in our role as regulator of the legal profession—if the person is going to practice law. Mose does not plan to, and has agreed that he never will, practice law. Under those circumstances, our refusal to reinstate Mose to allow him to permanently resign and move on with his life is troubling. It also demonstrates a lack of compassion for someone who, as the court acknowledges, has done significant work to address the mental health issues that resulted in his suspension and who wishes to contribute to society in a non-lawyer function.

The court's sole justification for refusing to reinstate Mose is that he has not demonstrated the "intellectual competence to practice law" due to a failure to do enough non-lawyer legal work since his suspension. *Supra* at 18–19. One may reasonably ask, why should we care about Mose's intellectual competence to practice law if he is not going to practice law?

The court answers that question by pointing out that Mose desires to work as a qualified neutral under Minn. Gen. R. Prac. 114. Importantly, Rule 114 does not require qualified neutrals to be lawyers. Certainly, by acting as a qualified neutral, a person is not "practicing law."[13] And Mose had already stipulated that he will not practice law, a circumstance that will not change if he is placed on the roster of qualified neutrals. By restoring Mose under the terms of this stipulation, we are not placing our imprimatur on his capacity to serve as a qualified neutral for the simple reason that Mose will not have a law license granted under our authority.

Further, Rule 114.12, subdivision 4, sets forth in great detail the qualifications, training and experience requirements that a person must meet to be placed on the qualified neutral roster. For some categories of qualified neutrals, those requirements include the elements noted in the court's opinion above—that qualified neutrals be "qualified practitioners" in their field, sometimes with professional licensure or years of experience working in the field. *Supra* at 20–21, n.8–10. Critically, in contrast with our direct oversight of lawyers under the Rules of Professional Responsibility, we have entrusted the State Court Administrator with overseeing qualified neutrals and with the authority to place individuals on, and remove individuals from, the roster of qualified neutrals. Minn. Gen. R. Prac. 114.12, subd. 2(a).

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[13] Of course, if non-lawyers hold themselves out as lawyers in the course of their practice as qualified neutrals, that would be a criminal act under Minn. Stat. § 481.02 (2022).

Nonetheless, the court reasons that:

> It would seem to violate the spirit—and perhaps the letter—of [Rule 114.12, subd. 4] to allow an attorney who practiced family law for only approximately 5 years, 30 years ago, before he was suspended, and who committed serious misconduct during those 5 years, to be reinstated and permitted to hold himself out as a "qualified practitioner" in family law without demonstrating that he is currently fit to practice law.

Supra at 21. But precisely because it would violate the Rules to place individuals who do not meet those experience requirements—and who additionally are not "recognized [beyond simply having the requisite experience] as qualified practitioners in their field," Rule 114.12, subd. 4—the State Court Administrator's Office cannot and will not put the person on the specific list of qualified neutrals that have those requirements. I trust the State Court Administrator's Office to do the job we have assigned to it.

Stated more succinctly, if having a legal license and experience is a requirement for getting on the roster of some categories of qualified neutral, then Mose will not qualify to be a qualified neutral because he is permanently giving up his law license. If legal licensure and experience is *not* a requirement for getting on the roster of a category of qualified neutral, the intellectual competence to practice law (the only thing standing between Mose and reinstatement) is irrelevant. There is no need for us to flex in our role as regulators of the legal profession to provide the same protections that we have charged the State Court Administrator's Office to provide.

Further, we have established an entire regulatory process to "provide standards of ethical conduct to guide Neutrals who provide [alternative dispute resolution (ADR)] services, to inform and protect consumers of ADR services, and to ensure the integrity of

the various ADR processes." Minn. Gen. R. Prac. 114.13(A) (Introduction). Every person who provides ADR services required by Minnesota court rules, *see* Minn. Gen. R. Prac. 114.01(a), is subject to the Code of Ethics for Court-Annexed ADR Neutrals and to the authority of the ADR Ethics Board. Minn. Gen. R. Prac. 114.01(b) and 114.04(a). Neutrals who do not perform competently or fail to provide a quality process, which includes ensuring diligence and procedural fairness, are subject to sanctions such as private or public reprimand, direction to take corrective action, or removal from the roster of qualified neutrals. Minn. Gen. R. Prac. 114.13(A); Minn. Gen. R. Prac. 114.13(B), subd. 3.

And in this case, according to the panel's Findings of Fact and the undisputed evidence in the record, Mose has accomplished all the training needed to apply for the roster—training conducted by well-respected trainers. Further, Janet Goehle, an ADR practitioner, testified that Mose's business plan for a proposed ADR practice was a good plan and that working within the field of early neutral evaluation was a good way for Mose to start his ADR practice.[14] Mose plans to work with Goehle to start out slow and manage an appropriate ADR caseload and has a support system of other ADR professionals to whom he could turn for advice or assistance. Nothing in the record suggests that Mose will not perform well as a qualified neutral if he otherwise meets the rostering requirements. And the court disputes none of these facts.

[14] In this regard, it is ironic that the reason the court finds that Mose has not demonstrated that he is intellectually competent to return to the practice of law following his suspension is because he has not shown enough experience in law-related work. It creates a bit of a Catch-22 and a somewhat manufactured and unfair hurdle, especially for suspended lawyers who must otherwise earn a living because they cannot practice law.

We should not stand in the way of Mose getting on with his life in a non-lawyer capacity. Accordingly, I dissent.

CHUTICH, Justice (dissenting).

I join in the dissent of Justice Thissen.