IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	**)**	
	)	
THOMAS M. UTTERBACK	**)**	**Supreme Court #SC89223**
	)	
Petitioner	**)**	

RESPONDENT'S BRIEF

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STATEMENT OF FACTS

Respondent does not believe that Petitioner's Facts are complete in that Petitioner does not set forth the underlying facts concerning his disbarment or Petitioner's plans if reinstated. Thus, Respondent is supplementing Petitioner's Statement of Facts.

Background Information

Petitioner was admitted to Missouri's Bar on September 23, 1973. **R's App. p. A2**. Petitioner had a civil law practice in St. Louis, Missouri. **R's App. p. A2**. He practiced municipal law, cable television law and property annexation law. In addition, at various times, he served as City Attorney of Cape Girardeau, Jefferson City, Sullivan, Fenton and St. Charles. **R's App. p. A2**.

Petitioner's Criminal Conviction

On May 13, 1998, Petitioner entered a guilty plea to a felony count of violating 18 U.S.C. § 1956(a)(2)(B) (unlawful transport and transfer of monetary instruments and funds). **R's App. pp. A18-26**. As a part of his guilty plea, Petitioner entered into a factual stipulation which provided:

> "In November, 1997, the defendant, acting with another, caused United States currency in the approximate amount of $3,240,000 to be loaded into the hollow cavities of large blasting plugs. The defendant chartered a private jet at the Spirit of St. Louis Airport in St. Louis County and caused the blasting plugs to be loaded onto the plane and flown to the Country of Panama. On November 14, 1997, the defendant flew in the chartered aircraft that stopped in Houma, Louisiana, to clear United States Customs.

The currency was concealed from Customs officials in the blasting plugs during the clearing process. There was no declaration of the currency as required by federal law. (In order to transport currency in excess of $10,000 out of the United States, a person must complete a so-called "CMIR" which is a CF 490 - Report of International Transportation of Currency or Monetary Instruments.) The chartered plane carried the defendant and others, together with the blasting plugs containing the currency, to the country of Panama.

In Panama, the defendant and another attempted to make arrangements for the deposit of the currency in financial institutions there. They were unsuccessful. The defendant and another then repackaged the currency into four (4) Samsonite hard-sided suitcases and the defendant traveled along with the four (4) suitcases by commercial airplanes from Panama to Geneva, Switzerland with a change of planes in Amsterdam, the Netherlands. On November 20, 1997, the defendant arrived in Geneva, Switzerland. Within hours after his arrival in Geneva, the defendant was arrested by Swiss authorities.

The investigation shows that the currency in question constituted proceeds of illegal trafficking in controlled substances. The defendant does not contest this issue. The defendant was aware of a high probability and believed that the currency in question constituted proceeds of drug trafficking activity and he deliberately avoided learning the truth. By his

actions the defendant sought to conceal and disguise the source, ownership and control of the money. In addition, the defendant sought to avoid the monetary transaction reporting requirements under federal law. The investigation does not reflect that the defendant was directly involved in the illegal trafficking of controlled substances."

R's App. pp. A23-25.

DEA's Report of Interview with Petitioner

A more detailed account of Petitioner's crime is set forth in the Drug Enforcement Agency's ("DEA's") report of the DEA's interview of Petitioner on November 24, 1997. The DEA's report provides:[1]

Petitioner was a civil law attorney practicing in St. Louis, Missouri. Petitioner began representing Edward Trober in 1988/1989. Petitioner's initial representation concerned a night club Mr. Trober owned. In 1997 Petitioner began representing Mr. Trober regarding a possible real estate investment and the licensing and marketing of a new airbag device for vehicles.

Among other things, Mr. Trober owned a classic car dealership. In the spring of 1997, Mr. Trober asked Petitioner to research the possibility of using offshore banks to consummate cash transactions with Russians wanting to buy classic cars.

[1] Respondent has summarized the DEA's report.

In July 1997, Mr. Trober took Petitioner to a storage shed on his sister's property to see some of Mr. Trober's classic cars. In one of the vehicles were several canvas type gym bags. Mr. Trober opened two of the bags and Petitioner saw that the bags were full of cash. Mr. Trober said there was $2,000,000 in the bags. Petitioner was shocked and nervous after seeing the cash. Mr. Trober never directly addressed where he had obtained the money. He, however, did say during the return drive that he was getting out of "the business" and wanted help getting the money into legal circulation. Mr. Trober asked if Petitioner was going to tell on him. Petitioner said he was Mr. Trober's attorney, implying that he would not tell. Mr. Trober also made a comment to the effect that he knew where Petitioner lived. Petitioner told Mr. Trober he would think about helping him.

Sometime later Mr. Trober discussed with Petitioner methods used to transport marijuana and the ruthlessness of Mexican drug traffickers. Petitioner was negotiating on the behalf of another client to market blasting plugs to Panamanian officials. In August or September 1997 Petitioner talked with Mr. Trober about taking Mr. Trober's money to Panama.

In September 1997 Petitioner and Mr. Trober traveled to Panama. While in Panama, Petitioner met with Panamanian officials regarding the blasting plugs Petitioner was attempting to market. Mr. Trober and Petitioner also met with a Panamanian attorney and discussed the possibility

of depositing cash into a Panamanian bank from the sale of classic cars to Russians.

Panamanian officials requested a demonstration of the blasting plugs Petitioner was marketing. Petitioner scheduled a demonstration for November 17, 1997. While preparing the blasting plugs for shipment to Panama, Petitioner and Mr. Trober hid the cash ($3,240,000) in the canisters holding the blasting plugs. Petitioner then flew to Panama on a chartered jet with the money and blasting plugs. Mr. Trober flew to Panama on a commercial flight.

After the two arrived in Panama, Petitioner called the Panamanian attorney about depositing the cash. When Petitioner informed the attorney how much cash he had the attorney refused to assist Petitioner in depositing the cash. Petitioner and Mr. Trober then talked about opening numerous Panamanian accounts and depositing $9,000 in each of the accounts but did not do so. They decided it would be better if they could get the money out of Panama.

The next morning Petitioner called Martin Sigillito, a St. Louis attorney familiar with international banking, and told Mr. Sigillito that he needed help in putting money from the sale of classic cars into a Swiss bank account. Mr. Sigillito agreed to meet Petitioner in Switzerland.

Petitioner and Mr. Trober did not have a set plan on what they were going to do after Petitioner deposited the money into a Swiss bank account.

Their initial thoughts were to put the money into a 401K retirement plan for Mr. Trober. Petitioner planned on taking his 10 percent commission and depositing it into another Swiss account.

Mr. Trober flew back to the United States and Petitioner placed the money in suitcases and flew to Switzerland with the cash. At a layover in Amsterdam officials determined Petitioner's suitcases were filled with cash and alerted Swiss officials. After arriving in Switzerland, Petitioner and Mr. Sigillito were arrested in their hotel room by Swiss officials.

R's App. pp. A31-62.

Petitioner's Letter to the DEA

After Swiss officials arrested Petitioner, Petitioner began drafting a letter to the DEA. This letter sets forth, in Petitioner's own words, an account of what happened and provides insight into Petitioner's motivations.[2] The letter states:

"I helped to plan and execute an operation that was to move $3,240,000 plus or minus from the United States to Panama or Switzerland. What I am putting on these pages are my thoughts on how I can redeem myself, that is, turn this horrible situation into a positive situation. While I

[2] In past pleadings, Petitioner has asserted that the DEA's report was not an accurate representation of his conversations with DEA agents. Therefore, Respondent has chosen to include a summary of Petitioner's letter to the DEA to address Petitioner's concerns about the accuracy of the DEA's report.

will not plead that I am a wonderful person caught in a bad situation, I will say that when you review my background you will be shocked to find me in a situation like this. What I would ask you to consider as we proceed are the following:

1. the safety of my family.

2. the safety of Ed Trober's family.

3. when the matter is through as little or even no jail time for me. (I know this is a stretch.)

4. the same consideration for Ed if he fully cooperates."

R's App. pp. A267-68.

In his letter, Petitioner then details his relationship with Mr. Trober and the plan to transport the funds to Panama and then to Switzerland. Petitioner classified Mr. Trober as "a good man who had done unlawful things." **R's App. p. A268**. Petitioner stated he met Mr. Trober in 1988 or 1989 after another attorney referred Mr. Trober to Petitioner to help stop the foreclosure of a nightclub owned by Mr. Trober. **R's App. pp. A268-71**. Between 1990 and 1997, Petitioner only had sporadic contact with Mr. Trober. **R's App. p. A271**.

In 1997, Mr. Trober contacted Petitioner to: (1) help a friend with patenting and marketing a new type of air bag for cars, (2) about the selling of classic car to investors in the Ukraine, and (3) about obtaining a visa for a woman Mr. Trober had met in the Ukraine. **R's App. pp. A271-77**.

In July 1997, Mr. Trober invited Petitioner to his garage to show him some of his classic cars. **R's App. p. A274**. During the visit Mr. Trober asked Petitioner if he wanted to see something and then showed him a canvas bag full of money, approximately $2,000,000. **R's App. pp. A274-75**.

Mr. Trober did not explain the origin of the money but did explain that he wanted to get the money lawfully invested and "quit the business." **R's App. pp. A274-76**. Petitioner did not believe the "business" was Mr. Trober's classic car business. **R's App. pp. A274-76**. Mr. Trober offered Petitioner 10 percent of the money for help in "placing the money." **R's App. p. A276**. Petitioner's first thought was that he should contact Jim Crowe, an Assistant United States Attorney Petitioner knew. **R's App. p. A275**. Petitioner admitted that "unfortunately that thought didn't go far. I was tempted by Ed's proposition. As it turns out, more than tempted. . . . But I didn't do anything. I just waited for a call from Ed. However, this started the deterioration in my marriage, my concentration, and my moral surrender to the promise of easy money." **R's App. pp. A275-76**.

In August 1997, Petitioner took Mr. Trober to Washington D.C. to meet with Longhorne Bond, "a transportation bigshot" regarding the patent for the airbags. **R's App. p. A278**. While in Washington D.C., they met with Rogelio Novey, a Panamanian diplomat. **R's App. p. A278**. They discussed selling plugs being manufactured by another company Petitioner represented to the Panama government for the widening of the Panama canal. **R's App. p. A278**. They asked Mr. Novey to provide them with the

name of an attorney in Panama who could advise them about cash transactions in Panama. **R's App. p. A278**.

After the trip to Washington D.C., Petitioner and Mr. Trober discussed taking the $2,000,000 to Panama. **R's App. p. A278**. Previously they had discussed using a private airplane to transport the money out of the United States and Petitioner had contacted pilots at the Chesterfield airport and learned it was not difficult to leave the United States in a private plane. **R's App. p. A278**.

Mr. Trober agreed to finance the trip to Panama to meet with Panamian officials about using the American made blasting plugs to enlarge the Panama canal. **R's App. p. A278**. Prior to going to Panama, Petitioner met with Longhorne Bond and Rogelio Novey again and Mr. Novey began setting up appointments for Petitioner in Panama. **R's App. p. A280**.

During the trip to Panama, Petitioner met with the contractors who had been hired to widen the Panama canal, among others. **R's App. p. A281**. A relative of Mr. Novey referred Petitioner to attorney Jaime Aleman. **R's App. p. A283**. Petitioner and Mr. Trober spoke with Mr. Aleman about the blasting plugs and the "Ukraine car deal." **R's App. p. A283**. Petitioner informed Mr. Aleman that they would have either $800,000 or $3,000,000 in cash to deposit and there would be no documentation regarding the source of the funds. **R's App. p. A283**. Mr. Alemen indicated that the lack of documentation would not be a problem. **R's App. p. A283**.

After the trip to Panama, Petitioner, using his mother-in-law's funds, financed a real estate deal for Mr. Trober. **R's App. p. A283**. A few weeks before Mr. Trober and

Petitioner transported the money to Panama, Mr. Trober began making comments such as, “I don’t have to worry about you crossing me – I know where you live.” **R's App. p. A289**. Mr. Trober also began to discuss additional trips to Panama to transport funds to Panama. **R's App. p. A289**. Petitioner told Mr. Trober that his participation was a “one shot” deal. **R's App. p. A289**.

Before the next trip to Panama, Petitioner packed the blasting plugs with the cash. **R's App. p. A285**. After packing the plugs, Mr. Trober wanted to “call off the whole thing” but after further discussions changed his mind. **R's App. p. A285**. Mr. Trober flew to Panama on a commercial jet and a few days later, Petitioner flew to Panama on the private jet with the blasting plugs and officials from the company manufacturing the blasting plugs. **R's App. p. A285**.

After arriving in Panama, Petitioner called Jamie Aleman and informed him he had $3,000,000 to deposit. **R's App. p. A286**. Mr. Aleman came “unglued” saying he could handle $800,000 but not $3,000,000. **R's App. p. A286**. Mr. Aleman called the banks and learned the bank would not take the money without documentation. **R's App. p. A286**. Petitioner called Rogelio Novey who urged him to turn over the money to the head of national security in Panama. **R's App. p. A286.**

After this, Petitioner became concerned the Panamanians were “setting them up” and they could end up dead. **R's App. p. A286**. Petitioner convinced Mr. Trober that Petitioner should take the money to Switzerland. **R's App. p. A286**. Petitioner went out and bought four suitcases and put the money into the suitcases and left for Switzerland. **R's App. p. A286**. At Geneva, the porter took the bags through the non-declaration line

to Petitioner's surprise. **R's App. p. A286**. Mr. Sigillito was not at the airport as Petitioner expected. **R's App. p. A286**.

Mr. Sigillito met Petitioner at the hotel and the two went out for dinner. **R's App. p. A286**. After dinner, Petitioner showed Mr. Sigillito the money and began explaining he did not have documentation on the money, when the police came into the room and arrested them. **R's App. p. A286**.

Initially Petitioner told the Swiss police that the funds were derived from the sale of used cars to the Ukraine. **R's App. p. A288**. The police officer then told Petitioner that the Swiss authorities had contacted the United States DEA. **R's App. p. A288**. Petitioner then began cooperating with Swiss police. **R's App. p. A288**.

In his letter, Petitioner sets forth a plan for the DEA to allow him to work undercover to learn information about the individuals supplying the drugs or money to Mr. Trober. **R's App. p. A288**. Petitioner noted that as long as Mr. Trober did not know Petitioner was working with the DEA, Petitioner's family was safe. **R's App. p. A288**.

Petitioner's Disbarment

On or about June 4, 1998, Petitioner filed a motion to surrender his license. On June 30, 1998, this Court accepted the surrender of Petitioner's license and disbarred Petitioner. **R's App. p. A8**.

Petitioner's Plans If Reinstated

If reinstated, Petitioner originally indicated that he would practice with Ledbetter and Gilmore, a Florida law firm where he currently works as a paralegal. After Petitioner applied for reinstatement, he applied to the State Department to work in Iraq or

Afghanistan as a civilian employee assisting with the set-up of various governmental entities. If hired by the State Department and reinstated, Petitioner hopes to be appointed an Assistant United States Attorney after returning from Iraq or Afghanistan.

ARGUMENT

I.

THE SUPREME COURT SHOULD NOT REINSTATE PETITIONER BECAUSE HE HAS NOT MET HIS HEAVY BURDEN OF SHOWING HE IS OF GOOD MORAL CHARACTER IN THAT COOPERATING WITH LAW ENFORCEMENT AUTHORITIES DOES NOT EQUATE TO GOOD MORAL CHARACTER.

Because the purpose of lawyer discipline is not punishment, disbarred attorneys may be reinstated. However, to ensure that the public is adequately protected, the presumption should be against reinstatement. 1991 ABA Standards for Imposing Lawyer Sanctions, § 2.10 and Comments. An applicant seeking reinstatement must be required to present stronger proof of qualifications than one seeking admission for the first time. *In re Mose*, 754 N.W.2d 357, 362 (Minn. 2008). As stated by the Pennsylvania Supreme Court, disbarred attorneys have no basis for an expectation of the right to resume practice at some future point in time. *In re Costiga*, 664 A.2d 518, 520 (Penn. 1995). Accordingly, Rule 5.28 places the burden upon Petitioner to establish:

a. the cause for Petitioner's disbarment has abated;

b. Petitioner is of good moral character; and

c. the best interest of the public will be served by the reinstatement of Petitioner's license to practice law.

After conducting its investigation into Petitioner's reinstatement application, Respondent concluded that the cause for Petitioner's disbarment has abated. Petitioner has completed his prison sentence and is no longer associated with Edward Trober, the client Petitioner assisted in the money laundering.[3] At issue is whether Petitioner is of good character and it is in the best interest of the public and the Bar to reinstate Petitioner.

In considering whether Petitioner is of good moral character, Respondent reviewed Petitioner's past conduct, Petitioner's level of remorse, Petitioner's

[3] In April 2005, Mr. Trober pled guilty in the United States District Court of Southern Illinois to one count of violating 21 U.S.C. § 846, (conspiracy to distribute 1000 kilograms or more of marijuana) and one count of violating 21 U.S.C. § 841(a)(1) and (b)(1)(B) (possession with intent to distribute 100 kilograms or more of marijuana). In April 2005, Mr. Trober also pled guilty in the United States District Court of Eastern Missouri to one count of violating 18 U.S.C. § 1956(h) (conspiracy to commit money laundering), one count of violating 18 U.S.C. § 1956(a)(2)(B) and 2 (money laundering) and one count of violating 18 U.S.C. § 1957 (engaging in monetary transactions in property derived from specified unlawful activity). (The Missouri matter is based upon Mr. Trober's attempt to launder the drug money in Panama and Switzerland. The Southern Illinois matter is unrelated to Petitioner.) Mr. Trober was sentenced to 63 months imprisonment for each case, with the sentences to run concurrently. **R's App. pp. A299-309.**

acknowledgement of past wrongdoing, and Petitioner's conduct since his conviction. *In re Wiederholt*, 24 P.3d 1219, 1226 (Alaska 2001); *In re Mose*, 754 N.W.2d 357, 362 (Minn. 2008).

Respondent concluded that Petitioner had not met his burden of showing good moral character. In its recommendation, Respondent expressed concern about Petitioner's remorse as he appears unable to admit his wrongdoing at times. In its Recommendation, Respondent brought three matters to this Court's attention regarding Petitioner's inability to fully admit his wrongdoing. These factors were: (1) Petitioner was incorrectly asserting that based upon recent changes in the law, the most serious crime he could be charged with today is a misdemeanor; (2) In his Response, Petitioner provided incorrect information regarding the United States Attorney's Office's position regarding his application for reinstatement, and (3) In his Response, Petitioner stated that when the bank in Panama refused to deposit the money, Mr. Trober's "henchman" put a gun to his head. This accusation was not detailed in the DEA's interview notes with Petitioner or the letter Petitioner wrote to the DEA. **R's App. pp. A183-90; A237-66**. Respondent believed these statements were attempts by Petitioner to reduce his culpability in the eyes of this Court and in the public.

Petitioner asserts that this Court should find that he is of sufficiently good moral character to be reinstated because he began cooperating with law enforcement after his

arrest and again in 2004 and he provided truthful information to law enforcement. [4] Furthermore, he asserts he never wanted to be part of Mr. Trober's "gang."

Respondent does not contest that Petitioner began cooperating with law enforcement after his arrest and again in 2004 or that he provided truthful information to law enforcement. However, Petitioner's cooperation with law enforcement, in itself, does not mean he is of good moral character. Petitioner is a very intelligent businessman and had been an attorney for a very long time when he was apprehended in Switzerland. He knew that the best way to obtain a reduced sentence was to cooperate with authorities. In order to be credited with cooperating with the government, Petitioner had to provide information that could be verified and would be of assistance to the government. Petitioner was looking out for his own best interests when he began cooperating with government officials. In his letter to the DEA, Petitioner acknowledges "a good part" of his motivation for cooperating "was to save his own skin". **R's App. p. A297.** Petitioner then asked the DEA that he get little or no jail time for his help and that law enforcement consider putting him and his family in the Witness Protection Program. **R's App. pp. A267-68.** This Court should not find Petitioner is of good moral character because he tried to "save his own skin" after arrest.

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[4] In his Brief, Petitioner criticized Respondent for failing to contact the DEA or the United States Attorney's Office to verify Petitioner's cooperation with law enforcement. The undersigned contacted both the DEA and the United States Attorney's Office when Petitioner sought reinstatement in 2005 and as part of this reinstatement application.

Petitioner also emphasizes to this Court that he received a reduced sentence because of his cooperation with law enforcement. The fact that Petitioner received a reduced sentence does not add support to Petitioner's application for reinstatement. Data from the U.S. Sentencing Commission shows that in 1998 there were 53 individuals in the Eighth Circuit who were convicted of money laundering offenses and that the average sentence imposed was 36 months, the same sentence Petitioner received. U.S. Sentencing Commission, 1998 Datafile, OPAFY 98. Furthermore, the statistics show that in 1998, 25 percent of the criminal defendants sentenced in the Eastern District of Missouri received a reduced sentence because of substantial cooperation with government officials. *Id.* Thus, the fact that Petitioner received a reduced sentence does not bolster Petitioner's assertion that he is of good moral character.

Respondent also takes issue with Petitioner's statement that he did not want to be part of Mr. Trober's gang. In the letter Petitioner wrote to the DEA, he stated, "I was tempted by Ed's proposition. As it turns out, more than tempted. . . . [T]his started the deterioration in my marriage, my concentration, and my moral surrender to the promise of easy money." **R's App. pp. A275-76.** Thus, at least initially Petitioner began assisting Mr. Trober (and became part of Mr. Trober's gang) because of the desire for "easy money."[5] The fact that Petitioner helped Mr. Trober with the financing of a real

[5] Respondent does not dispute that after Petitioner became more involved in the matter he may have felt fear for himself and his family. However, Petitioner's letter to the DEA shows that Petitioner initially agreed to assist Mr. Trober because of greed.

estate matter after Mr. Trober asked him to launder the money and the fact that Petitioner asked the DEA to consider no jail time or reduced jail time for Mr. Trober refutes Petitioner's claims that he laundered money because he was coerced.

As the Arizona Supreme Court stated in *In re Arrotta*¸ 96 P.3d 213, 217 (Ariz. 2004), to show rehabilitation, a disbarred attorney must first show that he has identified just what weakness caused the misconduct and then demonstrate that he has overcome those weaknesses. Petitioner cannot admit his weakness to this Court or to the general public. Without admitting his weakness it is impossible to demonstrate that he is of good moral character and should be reinstated.

II.

THIS COURT SHOULD NOT REINSTATE PETITIONER BECAUSE IT WOULD UNDERMINE THE PUBLIC'S CONFIDENCE IN THE JUDICIAL SYSTEM TO READMIT SOMEONE CONVICTED OF SUCH A SERIOUS CRIME.

Respondent also opposes Petitioner's reinstatement because Respondent is concerned about what impression it would make on the public to reinstate someone convicted of such a serious crime. Even when an applicant presents evidence of good moral character, which Petitioner has not shown, courts must sometimes deny reinstatement. The severity of the offense and the court's duty to maintain the confidence of the public in the judicial system can require a court to deny a petition for reinstatement. *See In re Page*, 866 P.2d 1207, 1212 (Okla. 1993).

Petitioner contends that he should be reinstated because: (1) the crime he committed was not very serious, (2) he did not participate in the distribution of the marijuana, (3) the crime that he pled guilty to was not even a crime until 1986, and, (4) there were no "victims" of the crime he committed.

Petitioner goes on to assert that this Court should use the federal sentencing guidelines to assess the seriousness of his crime. He then compares the base offense level for money laundering to that of first degree murder, involuntary manslaughter, obstruction of justice and drug trafficking. Petitioner points out that the base line for money laundering is less than the other crimes listed. He then notes that he received a 21 point increase because of the amount of money involved. He then insists that he did not

have any control over the amount of money transported to Panama so this Court should not consider the 21 point enhancement.

Petitioner is missing the point. This Court's job is not to compare how the federal sentencing guidelines treat different crimes. This Court's job is to determine whether reinstatement would have a detrimental effect on the standing or integrity of the bar and whether it would be subversive to the public interest. *In re Hughes v. Board of Professional Responsibility*, 259 S.W.3d 631, 646 (Tenn. 2008). Determining the seriousness of a crime in the context of whether a disbarred attorney should be reinstated is a subjective analysis, not something subject to fitting into a formula. *Id.* It is based upon the court's own sense of professional responsibility, as the regulatory authority for attorneys, and the respect the court holds for society. *Id.* As this Court balances the Petitioner's desire for reinstatement with the interest of the public and the bar, its primary responsibility should remain at all times with the protection of the public and the protection of the integrity of the bar. *In re Arrotta,* 96 P.3d 213, 216 (Ariz. 2004). Feelings of sympathy toward Petitioner must be disregarded. *In re Hird,* 184 P.3d 535, 540 (Okla. 2008).

Contrary to Petitioner's assertion, the crime of money laundering is a very serious crime. In *In re Hird,* 184 P.3d 535 (Okla. 2008), a disbarred attorney sought reinstatement to the Oklahoma Bar. The disbarred attorney had pled guilty in 1992 to one count of bank fraud and one count of money laundering. The disbarred attorney, like Petitioner, had cooperated with law enforcement and received a reduced sentence. The applicant also admitted his wrongdoing. The Court noted that the commission of a felony

does not forever bar an applicant from reinstatement but noted the decision to reinstate must be made on a case-by-case basis. The court held:

> "Mere lapse of time does not ameliorate the seriousness of past wrongdoing. Neither is petitioner's conduct over the last fourteen years sufficient to overcome the grave nature of the offense. A petitioner's rehabilitation is not the sole consideration in reinstatement proceedings. It is the duty of the court to safeguard the interest of the public, the courts and the legal profession. The court must also determine that reinstatement would not adversely affect the Bar. Here petitioner's acts were not only unlawful, but because he served as general counsel to Capbrock [a bank] they were a violation of his ethical duties to the institution and its depositors. This brings disrepute to the Bar and undermines the public's confidence in the integrity of its members. The court has recognized that the more severe was the past misconduct the heavier is the burden cast on applicant to gain reinstatement. Petitioner's burden here is indeed heavy. In light of the seriousness of the misconduct and its impact on the Bar, we cannot say that he has met his burden."

Id at 539.

Similarly, the Kentucky Supreme Court determined that an attorney convicted of the offense of conspiracy to commit money laundering should be permanently disbarred.[6] The Court held:

> "Though he continues to maintain his innocence, it is uncontested that Rorrer was convicted of a serious felony offense in federal court and that his conviction was affirmed on appeal. Furthermore, Rorrer's criminal conduct involved using his professional skills to further a conspiracy involving his client and the laundering, or attempted laundering, of drug money. Obviously, such serious criminal conduct brings dishonor to both Rorrer and the entire bench and bar. Thus, we believe that Rorrer's criminal misconduct is sufficiently serious to warrant permanent disbarment."

In re Rorrer, 222 S.W.2d 223, 229 (Ken. 2007) (underlining added).

Framing the issue differently, the operative question before this Court is if Petitioner is reinstated eleven years after being disbarred for attempting to launder $3.2 million in drug money for a client would this adversely affect the public's perception of the legal profession? *See In re Greenberg*, 749 A.2d 434, 437 (Penn. 2000). Respondent contends that reinstating Petitioner would have a very negative effect upon the public's perception of the Bar in that the public would believe attorneys only receive a slap on the hand for their very bad acts, and the

[6] Some states do not allow disbarred attorneys to apply for reinstatement.

reputation of the whole bar and bench would suffer. While Petitioner asserts that there are no victims of the crime he committed, he is wrong in that members of the bench and bar suffered dishonor because of Petitioner's actions. In addition, if he had been successful in laundering the money, his actions would have furthered the illegal drug trade in this country. Illegal drugs claim or destroy the lives of many Americans each year. Thus, there were many potential victims of Petitioner's actions – a fact Petitioner refuses to acknowledge. Because the public's perception of the integrity of the Bar would be very adversely affected by Petitioner's reinstatement, this Court should not reinstate Petitioner.

CONCLUSION

For the reasons set forth in Respondent's Brief and Informant's Report and Recommendation, this Court should deny Petitioner's Application for Reinstatement.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of May, 2009, two copies of Respondent's Brief and a diskette containing the brief in Microsoft Word format have been sent via First Class mail to:

Thomas M. Utterback
126 Canterbury Circle
Niceville, FL 32578
Petitioner

_____
Nancy L. Ripperger

CERTIFICATION: RULE 84.06(c)

I certify to the best of my knowledge, information and belief, that this brief:

1. Includes the information required by Rule 55.03;

2. Complies with the limitations contained in Rule 84.06(b);

3. Contains 5,612 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and

4. That AVG 8.0 software was used to scan the disk for viruses and that it is virus free.

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Nancy L. Ripperger

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