

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 1304 Disciplinary Docket No. 3
: :
JEFFERY L. KRAIN : Nos. 96 & 138 DB 2007
: :
: Attorney Registration No. 26100
: :
: (Out of State)
: :
PETITION FOR REINSTATEMENT :

ORDER

PER CURIAM

AND NOW, this 10th day of June , 2016, the Petition for Reinstatement is denied. Petitioner is directed to pay the expenses incurred by the Board in the investigation and processing of the Petition for Reinstatement. See Pa.R.D.E. 218(f).

A True Copy Patricia Nicola
As Of 6/10/2016

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 218(c)(5) of the Pennsylvania Rules of Disciplinary Enforcement, The Disciplinary Board of the Supreme Court of Pennsylvania submits its findings and recommendations to your Honorable Court with respect to the above captioned Petition for Reinstatement.

I. HISTORY OF PROCEEDINGS

By Order of November 11, 2008, the Supreme Court of Pennsylvania suspended Jeffery L. Krain for a period of four years. Mr. Krain filed a Petition for Reinstatement on December 15, 2014. Office of Disciplinary Counsel filed a Response to Petition on March 17, 2015 and opposes reinstatement.

A reinstatement hearing was held on June 25, 2015, before a District I Hearing Committee comprised of Chair Steven J. Cooperstein, Esquire and Members

Katherine E. Missimer, Esquire and Jillian A.S. Roman, Esquire. Petitioner appeared *pro se*. Petitioner introduced into evidence Exhibits P-1 through P-4 and testified on his own behalf. He presented no other witnesses. Office of Disciplinary Counsel introduced into evidence Exhibits ODC-1 through ODC-18 and presented the testimony of one witness.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on October 14, 2015 and recommended that the Petition for Reinstatement be denied.

Petitioner filed a Brief on Exceptions on November 13, 2015 and requested oral argument before the Disciplinary Board.

Office of Disciplinary Counsel filed a Brief Opposing Exceptions on December 3, 2015.

Oral argument was held on January 7, 2016, before a three-member panel of the Board.

This matter was adjudicated by the Disciplinary Board at the meeting on January 21, 2016.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner is Jeffery L. Krain. He was born in 1952 and was admitted to practice law in the Commonwealth of Pennsylvania in 1977. His attorney registration address is 412 Cinnaminson Avenue, Palmyra, NJ 08065. Petitioner is

subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

2. The Pennsylvania Supreme Court placed Petitioner on inactive status on November 17, 2000, effective December 17, 2000, because Petitioner failed to comply with the requirements of the Pennsylvania Rules of Continuing Legal Education.

3. By Order of the Pennsylvania Supreme Court dated November 18, 2008, Petitioner was suspended from the practice of law in Pennsylvania for a period of four years. ODC-1.

4. The basis for Petitioner's suspension was his unauthorized practice of law and his conviction in the Court of Common Pleas of Dauphin County of several misdemeanors in connection with a restaurant he owned and operated in Philadelphia.

a. Petitioner failed to withdraw his appearance, entered his appearance in new matters and/or actively engaged in the practice of law in approximately 339 cases in the Court of Common Pleas of Philadelphia and/or in the Orphans' Court of Philadelphia, and Petitioner received, disbursed, or otherwise handled client funds. Petitioner actively chose not to close his practice, despite being aware that he was on inactive status and ineligible to practice law.

b. Petitioner entered a plea of guilty to Willful Failure to File Sales Tax Returns; Willful Failure to Remit Sales Tax; Willful Failure to File Employer Withholding Tax Returns and Willful Failure to Pay Over Withheld State Income Tax. Petitioner was sentenced to 18 months' probation on each count to run concurrently and was ordered to pay fines and costs.

c. Petitioner failed to report his conviction to the Disciplinary Board as required by Rule 214(a), Pa.R.D.E. ODC-1.

5. On December 4, 2009, the State of New Jersey suspended Petitioner from the practice of law in that State for one year based upon the discipline imposed in the Commonwealth of Pennsylvania.

6. On February 12, 2014, effective March 11, 2014, the State of New Jersey suspended Petitioner from the practice of law in that State for six months for violations of RPC 5.3(a), (b) and (c) for failing to supervise a non-lawyer employee, RPC 5.5(a)(2) for assisting a nonlawyer in the unauthorized practice of law, RPC 7.3(d) for compensating another for recommending the lawyer's services, and RPC 8.4(c) for conduct involving dishonesty, fraud, deceit or misrepresentation. ODC-3.

7. The New Jersey suspension arose out of Petitioner's relationship with his paralegal employee wherein he paid her fifty percent of legal fees she generated in immigration cases she principally handled, without supervision from Petitioner. Petitioner also issued an IRS Form 1099 that understated the paralegal's income. Petitioner was named as an unindicted co-conspirator in the federal complaint that brought Conspiracy to Commit Mail Fraud charges against that paralegal. ODC-3.

8. On April 2, 2014, the Office of General Counsel, Executive Office for Immigration Review filed a Petition for Immediate Suspension and Notice of Intent to Discipline with the Board of Immigration Appeals ("BIA"), based on the February 12, 2014 order from the State of New Jersey. On April 23, 2014, the BIA granted the Petition and immediately suspended Petitioner from the practice of law before the BIA,

the Immigration Courts, and the Department of Homeland Security. Thereafter, the BIA suspended Petitioner for six months, effective *nunc pro tunc* to March 11, 2014. N.T. 99.

9. Petitioner was also privately censured by the BIA. N.T. 14.

10. On July 10, 2014, the Supreme Court of Pennsylvania reciprocally suspended Petitioner for six months, based on the February 12, 2014 order from the State of New Jersey. ODC-2.

11. On September 24, 2014, Petitioner filed a Motion for Reinstatement to Practice with the BIA. N.T. 99.

12. In his motion, Petitioner failed to disclose that he had received a six-month suspension in Pennsylvania, beginning July 10, 2014. N.T. 99-100.

13. Petitioner was contacted by counsel for the Executive Office for Immigration Review and was informed that she would be opposing his reinstatement based on the fact that Petitioner still was suspended in Pennsylvania. N.T. 103-104.

14. By email dated October 2, 2014, to Paul J. Burgoyne, Deputy Chief Disciplinary Counsel, Petitioner, *inter alia*:

a. Stated that his "term of suspension" in Pennsylvania had expired and that he was eligible to resume practice if he chose to do so; and

b. Stated that he was a "formerly admitted" attorney as opposed to a "suspended" attorney.

c. Requested an advisory opinion.

ODC-6.

15. By Order and Decision dated November 13, 2014, the BIA denied Petitioner's motion for reinstatement because Petitioner did not meet the definition of attorney set forth in 8 C.F.R. §1001.1(f). ODC-9.

16. Petitioner sought the reopening of his motion for reinstatement with the BIA.

17. By letter dated December 23, 2014, to Office of Disciplinary Counsel, Petitioner again sought validation of his position that he was not a "suspended" attorney. N.T. 100-102; ODC-10.

18. Petitioner was advised, by letter dated January 8, 2015 from Office of Disciplinary Counsel that he remained suspended in Pennsylvania and must petition for reinstatement. P-2.

19. By Order and Decision dated March 4, 2015, the BIA denied Petitioner's motion to reopen the petition for reinstatement. ODC-11.

20. Petitioner testified at the reinstatement hearing.

21. He offered testimony concerning his mental health, his deceased father's health issues, his failing restaurant business and his dissatisfaction with his law practice. N.T. 21-41.

22. Petitioner's reason for seeking reinstatement is his "feud" with the BIA over their definition of an attorney. Petitioner contends that reinstatement to the Pennsylvania Bar is not required, and that he should be deemed a "formerly admitted" attorney and not a "suspended" attorney because in his view the terms of the suspensions have ended. N.T. 13, 111-112.

23. Petitioner denied that the IRS Form 1099s submitted on his paralegal's behalf were found to be false, instead contending that they were only "inaccurate." N.T. 78.

24. Petitioner admitted that, because he underreported his paralegal's income on her 1099 forms, he could be responsible for any taxes on that underreporting of income, yet contended he had been told that he did not need to amend his corporate tax returns for the applicable years. N.T. 81-82, 88.

25. Petitioner contended that he had been told by his accountant that it was permissible to underreport his paralegal's earnings. N.T. 93.

26. At the time he was filing the false Form 1099s, Petitioner thought it was "okay" because "it was not uncommon" and the IRS had "got more tight" and imparted a "higher fine" for doing so. N.T. 90-91.

27. In Petitioner's view, the 2014 order of suspension from the Pennsylvania Supreme Court was unclear as to when the six month suspension period began; he believed that it was concurrent with the New Jersey suspension because, although the order did not state it was effective *nunc pro tunc* as to the date the New Jersey suspension period began, "it doesn't say is isn't either." N.T. 100-102.

28. Petitioner is up to date with his Pennsylvania Continuing Legal Education requirements and continues to keep abreast of changes in immigration law. N.T. 46.

29. Petitioner's primary source of income is Social Security. He does not receive a substantial income from working as an attorney. N.T. 73-74.

30. Petitioner has no intention of practicing law in Pennsylvania and, if reinstated, intends to voluntarily relinquish his license. N.T. 20.

31. Petitioner is a member in good standing of the New Jersey Bar. N.T. 13.

32. At the time he filed his Petition, Petitioner had two unsatisfied judgments against him for unpaid taxes in the Court of Common Pleas of Philadelphia County. ODC-12; ODC-13.

33. By TD Bank check in the amount of \$51,772 and dated March 30, 2015, Petitioner paid the City of Philadelphia pursuant to a settlement agreement to satisfy all liens in six different matters, including the above, and to settle any remaining tax liability for the settlement period. P-3.

34. In 2012, a complaint was filed by Althea W. Dabney regarding Petitioner's mishandling of a minor client's matter.

35. In 2003, Petitioner filed a minor's compromise on behalf of his minor client, who was Ms. Dabney's grandson. N.T. 128-187.

36. However, Petitioner did not disburse the funds received pursuant to the compromise or provide a certificate of deposit of same to Ms. Dabney on behalf of her grandson. N.T. 193.

37. Petitioner destroyed the file regarding his minor client in 2011, in violation of RPC 1.15(c).

38. Petitioner failed to notify Ms. Dabney of his 2008 and 2014 suspensions ODC-5.

39. In February 2013, after being notified of the complaint by Office of Disciplinary Counsel, Petitioner remitted to Ms. Dabney a check in the amount of \$3,100, representing the funds of \$2,616.92 plus accumulated interest.

40. Petitioner has not demonstrated acceptance of responsibility or remorse for his misconduct.

41. Petitioner did not offer evidence of community service or charitable activities during his suspension.

42. Petitioner did not offer character testimony from friends, family or colleagues.

43. Office of Disciplinary Counsel opposes reinstatement.

III. CONCLUSIONS OF LAW

1. Petitioner has not met his burden of proving by clear and convincing evidence that he has the moral qualifications required for admission to practice law in the Commonwealth of Pennsylvania. Rule 218(c)(3), Pa.R.D.E.

2. Petitioner has not met his burden of proving by clear and convincing evidence that his resumption of the practice of law within the Commonwealth will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subversive of the public interest. Rule 218(c)(3), Pa.R.D.E.

IV. DISCUSSION

Petitioner seeks readmission to the bar following his suspension for four years. Pursuant to Rule 218(a), Pa.R.D.E., an attorney who is suspended for a period exceeding one year may not resume the practice of law until reinstated by the Supreme Court of Pennsylvania. In order for Petitioner to gain reinstatement, he has the burden of proving by clear and convincing evidence that he is morally qualified, competent and learned in the law, and that his resumption of the practice of law will not be detrimental to the integrity and standing of the bar or administration of justice, nor subversive of the public interest. Rule 218(c)(3), Pa.R.D.E.

A reinstatement proceeding is a searching inquiry into a lawyer's present professional and moral fitness to resume the practice of law. The object of concern is not solely the transgressions which gave rise to the lawyer's suspension, but rather the nature and extent of the rehabilitative efforts made since the time the sanction was imposed and the degree of success achieved in the rehabilitative process. *Philadelphia News, Inc. v. Disciplinary Board of the Supreme Court*, 363 A.2d 779 (Pa. 1976).

Petitioner's suspension was the result of his unauthorized practice of law for a period of approximately seven years and his criminal conviction. After the Supreme Court transferred Petitioner to inactive status in November 2000, he failed to withdraw his appearance in cases, and entered his appearance and/or actively engaged in the practice of law in some 339 cases in the Court of Common Pleas of Philadelphia County or the Orphans' Court of Philadelphia. In addition to the unauthorized practice, in 2004 Petitioner was criminally convicted on tax-related charges arising from his ownership and operation of a restaurant, which resulted in an eighteen-month period of

probation.

The Board's review of the record establishes that Petitioner has not met his burden of proving by evidence that is clear and convincing, that he is fit to return to the practice of law in Pennsylvania. He has exhibited a marked lack of the moral qualifications necessary to practice in the Commonwealth. During his suspension period in Pennsylvania, Petitioner engaged in a legal practice in New Jersey an integral part of which was permitting a nonlawyer employee to engage in the unauthorized practice of law and sharing legal fees with the nonlawyer employee. Petitioner underreported this employee's earnings to the IRS. Petitioner was suspended for six months in New Jersey for these activities, which resulted in Petitioner's reciprocal six-month suspension in Pennsylvania effective March 11, 2014. Petitioner's activities in New Jersey mirror the misconduct which resulted in his original Pennsylvania suspension in 2008 and are an indication that he has not been rehabilitated and is likely to continue behaviors that would be detrimental to the public, the courts and the bar if he were reinstated.

Even accepting as true Petitioner's claim that he has ceased engaging in the actions which resulted in his suspension in Pennsylvania, we remain troubled by other actions which point to a lack of candor, in particular when he failed to disclose his 2014 suspension order upon application to the BIA for reinstatement. Petitioner contends he found the suspension order "unclear." Rather than disclose the suspension to the BIA and allow the BIA to make a determination, Petitioner took it upon himself to interpret the order in a way favorable to himself, thereby deciding not to reveal the suspension. His decision to proceed in that manner is an extenuation of the

pattern of actions he engaged in which resulted in his original suspension in 2008.

Petitioner has not accepted responsibility for his misconduct and continues to blame others for his prior difficulties, including, for example, his accountant for providing poor tax advice. Petitioner offered a lengthy explanation of his professional misconduct and criminal problems, which included his mental health troubles, his deceased father's health issues, his failed restaurant business, and his own disinterest in the practice of law. Petitioner offered no indication that he has remorse for his misconduct, or that he is willing to address the underlying issues which have caused him difficulties in his law practice. Petitioner made very clear that he does not intend to practice law in Pennsylvania. His principal reason for seeking reinstatement in this jurisdiction is so he can go before the BIA and demonstrate that the BIA is legally wrong in its position that Petitioner is a suspended attorney. However, no matter Petitioner's reason for desiring readmission or his stated claim that he will never practice again in Pennsylvania, he is required to meet the stringent standards for reinstatement and he has not done so, as the record reveals no evidence that Petitioner has identified and remediated his conduct so as to clearly and satisfactorily prove that he is fit to resume the practice of law in Pennsylvania.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the reinstatement of Petitioner, Jeffery L. Krain, be denied.

The Board further recommends that, pursuant to Rule 218(f), Pa.R.D.E., Petitioner be directed to pay the necessary expenses incurred in the investigation and processing of the Petition for Reinstatement.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: 

James C. Haggerty, Board Member

Date: 4/1/16

Board Member Lewis did not participate in the adjudication.