

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 2004 Disciplinary Docket No. 3
: :
CHRYSTYNA M. FENCHEN : No. 9 DB 2014
: :
: Attorney Registration No. 33494
: :
: (Northampton County)
PETITION FOR REINSTATEMENT :
: :
: :
: :

AMENDED ORDER

PER CURIAM

AND NOW, this 28th day of December, 2016, the Petition for Reinstatement is granted. 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 12/28/2016

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 dated May 23, 2014, the Supreme Court of Pennsylvania suspended Chrystyna M. Fenchen ("Petitioner") from the practice of law in the Commonwealth of Pennsylvania for a period of one year and one day. The suspension was based on Petitioner's Driving Under the Influence ("DUI") convictions in 2013. On November 2, 2015, Petitioner filed a Petition for Reinstatement. Office of Disciplinary Counsel filed a Response to Petition on January 11, 2016.

A reinstatement hearing was held on April 15, 2016, before a District II Hearing Committee comprised of Chair Michael W. McTigue, Jr., Esquire and Members Elizabeth Schneider, Esquire and Kyle M. Elliott, Esquire. Petitioner was represented by Philip D. Lauer, Esquire. Petitioner offered exhibits into evidence and presented the testimony of seven witnesses as well as her own testimony. Office of Disciplinary Counsel did not present witnesses and did not offer any exhibits.

Following the hearing, on May 27, 2016, Petitioner filed a Brief in Support of Reinstatement. On June 3, 2016, Office of Disciplinary Counsel submitted a letter finding no basis to oppose the Petition for Reinstatement.

The Hearing Committee filed a Report on July 25, 2016, and recommended that the Petition for Reinstatement be granted.

The parties did not file exceptions to the Hearing Committee's Report and recommendation.

The Disciplinary Board adjudicated this matter at the meeting on October 13, 2016.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner is Chrystyna M. Fenchen. She was born in 1950 and was admitted to practice law in the Commonwealth of Pennsylvania in 1980. Her attorney registration address is 3686 Lower Saucon Road, Hellertown, Northampton County, PA 18055. Petitioner is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

2. Subsequent to her admission to the bar in 1980, Petitioner worked in Bethlehem, Pennsylvania, as a solo practitioner in the field of family law. N.T. 80, 101.

3. Petitioner has a history of DUI arrests and convictions.

4. In 1998, Petitioner was arrested for DUI and was admitted into the Accelerated Rehabilitative Disposition ("ARD") program and successfully completed the terms of her probation. N.T. 104-105; Reinstatement Questionnaire ("RQ").

5. In 2007, Petitioner was convicted twice of DUI, which resulted in a county prison sentence and a private reprimand with probation for two years imposed by the Disciplinary Board. During her probation, Petitioner was appointed a sobriety monitor, required to attend Alcoholics Anonymous ("AA") meetings, and required to file quarterly written reports with the Disciplinary Board. Petitioner completed her disciplinary probation without incident in October 2010. N.T. 110-111; RQ.

6. Petitioner was arrested for DUI on February 6, 2013, and April 25, 2013. On August 5, 2013, Petitioner pled guilty to one count of DUI, highest rate of alcohol, and one count of DUI, general impairment. Both counts were considered Petitioner's third DUI offense for sentencing purposes. N.T. 112; RQ.

7. In connection with her guilty pleas on August 5, 2013, Petitioner was sentenced to consecutive sentences of one to five years in state prison, fined \$2,500, and ordered to pay the costs of prosecution and attend long-term residential dual diagnosis care. RQ, Docket Entries.

8. By Order dated May 23, 2014, the Supreme Court of Pennsylvania suspended Petitioner's license to practice law on consent for one year and one day. RQ.

9. Petitioner spent eighteen months in prison. She was released on February 9, 2015. N.T. 87, 90.

10. While imprisoned, Petitioner ended her reliance on medications, such as Xanax and Vicodin. She also reflected deeply on her law practice, her family, and her personal and professional relationships. Petitioner decided to address her alcoholism and make something positive out of her experiences. N.T. 87-89, 114-117.

11. Petitioner has been sober since April 26, 2013, and has abstained from alcohol since her release from prison. There is no evidence to suggest that she has failed to maintain her sobriety during her period of suspension. N.T. 90.

12. Petitioner attended outpatient treatment at Northeast Treatment Center ("NET") from February 26, 2015, through June 25, 2015. She was given an Axis I diagnosis of severe alcohol use disorder. Petitioner was discharged after completing the treatment program. Her attendance and participation were noted as good, and her prognosis was noted as good. N.T. 91; NET Report. Exh. 1 annexed to Transcript.

13. From August 2015 through March 2016, Petitioner received Mindfulness Based Stress Reduction ("MBSR") training from Dr. Alexandra T. Milspaw, Ph.D., LPC. Petitioner initially presented with Post Traumatic Stress Disorder ("PTSD") symptoms, high anxiety, difficulty falling asleep and staying asleep, depression and overall health and wellness concerns. During treatment, Petitioner demonstrated a strong motivation to heal and create healthy habits and coping mechanisms. Dr. Milspaw reported no symptoms of PTSD during the final treatment session on March 23, 2016. N.T. 94; March 23, 2016 Report of Dr. Milspaw, Exh. 3 to Transcript.

14. Since her release from incarceration, Petitioner has attended a bi-monthly meeting of Lawyers Concerned for Lawyers ("LCL") on a consistent basis. LCL is a statewide support group for lawyers in recovery from alcoholism, drug abuse, and other disorders. N.T. 11, 13, 95.

15. Petitioner's physical health has improved significantly during her suspension. She has resolved a spinal stenosis condition and has been physically active since her release from prison. Her only current medications are for a hyperthyroid condition and for high blood pressure. N.T. 87-88, 103, 113-116.

16. Petitioner's emotional health has improved significantly during her suspension. She has addressed her emotional pain through outpatient treatment, AA meetings, LCL meetings, individual therapy and MBSR training with Dr. Milspaw. N.T. 45-46, 91, 94-95, 103, 113-114; Report of Dr. Milspaw.

17. Petitioner's financial situation has improved since her release from incarceration. She lives on a small farm and has modest financial needs. N.T. 28, 96-97, 124-125.

18. If reinstated, Petitioner intends to provide her services to North Penn Legal Services and conduct mediation for clients. She intends to resume the general practice of law. N.T. 101-102, 122, 134; RQ No. 20.

19. Petitioner has addressed the bulk of her outstanding tax obligations. She reached payment plan agreements with the Internal Revenue Service ("IRS") and the Tax Claim Bureau of Northampton County. She is negotiating an agreement with the Pennsylvania Department of Revenue. N.T. 96-99; IRS Letter; Northampton County Letter, Exh. 4 and 5 to Transcript.

20. Petitioner fulfilled the Continuing Legal Education requirements necessary for reinstatement. She stayed current in the law by working at the prison law library while incarcerated and doing research on various topics including family law, bankruptcy and real estate. N.T. 95-96, 117-118; RQ No. 19(b), (e).

21. Petitioner accepted responsibility for her misconduct and expressed genuine remorse. She is deeply sorry for having demeaned the legal profession through her actions, and she intends to make amends by doing pro bono work and serving her clients. N.T. 101-102; RQ No. 21.

22. Petitioner has surrounded herself with a strong support network to help ensure her continued sobriety. N.T. 13-16.

23. Attorneys Kevin Danyi, Linda Shay Gardner, Joanne Kelhart, Adam Meshkov, and Alexander Ward are practicing lawyers in the Lehigh Valley, all of whom credibly testified at the reinstatement hearing.

24. These witnesses are familiar with Petitioner's competence and ability as a family law practitioner. These witnesses are aware of Petitioner's alcoholism and are familiar with her efforts to attend meetings and programs to treat alcoholism.

25. Petitioner represented Mr. Danyi during his divorce proceeding and he was satisfied with her legal representation, finding her to be a qualified and experienced attorney. N.T. 21-22.

26. Mr. Danyi is a committed member of AA and Petitioner's former sobriety monitor. The Lehigh Valley LCL meeting is held in Mr. Danyi's office, and he has had the opportunity to see or speak with Petitioner about once a week since her release from prison, because he drives her to LCL meetings. Mr. Danyi believes Petitioner is taking all of the correct steps to maintain her sobriety. N.T. 10-22.

27. Ms. Gardner has known Petitioner in a professional capacity for the past twenty years and observed her to be a prepared lawyer during the time when Petitioner practiced law. N.T. 34. Ms. Gardner has observed positive changes in Petitioner since her release from prison. She indicated that Petitioner has developed a

strong support group to help with her alcohol-related issues and the Lehigh Valley legal community will provide support for Petitioner upon her reinstatement. N.T. 35-36, 38.

28. Mr. Meshkov regularly attends the Lehigh Valley LCL meetings. He has been a member of AA for more than twenty years. Mr. Meshkov credibly testified that Petitioner regularly attends recovery meetings and has a genuine interest in maintaining her sobriety. N.T. 44-45.

29. Mr. Ward is a co-founder of Lehigh Valley LCL, along with Mr. Danyi. Mr. Ward has been sober for more than five years. He has seen Petitioner at every LCL meeting since her release from prison, and he believes Petitioner has undergone the transformation required for a successful, long-term recovery from alcoholism. N.T. 66-69.

30. Ms. Kelhart observed that Petitioner is working hard to get her life in order. Ms. Kelhart believes that Petitioner paid a price for her actions and deserves another chance to practice law. According to Ms. Kelhart, Petitioner learned from her imprisonment and now exudes a calm acceptance of her situation. N.T. 51-52.

31. Veronica Horn credibly testified at the reinstatement hearing. Ms. Horn is Petitioner's AA sponsor, and has been in regular contact with her for the past one and a half years. Ms. Horn witnessed Petitioner's struggle with her sobriety in the past due to stress from family, as well as financial and health problems. Ms. Horn has observed a marked difference in Petitioner since her release from incarceration, and noted that Petitioner has associated herself with positive AA role models. N.T. 22-27.

32. According to Ms. Horn, Petitioner has maintained her sobriety, repaired her relationship with a formerly estranged family member, and addressed her financial issues. N.T. 28-29.

33. Talley Ruhle credibly testified at the reinstatement hearing. She has known Petitioner for approximately three years due to their shared interest in dogs and horses. Ms. Ruhle admires Petitioner for owning her issues by moving forward in her life and making changes for the better. N.T. 53–56, 58.

34. Petitioner presented an Affidavit in support of her reinstatement from Deborah Gaber, Esquire, an attorney practicing in the Lehigh Valley. Ms. Gaber has known Petitioner in a professional capacity for approximately ten years and has deepened her relationship with Petitioner in the past year or so through their mutual interest in German Shepherds. During this time, she has observed Petitioner's commitment to recovery from alcoholism. Ms. Gaber is confident in Petitioner's abilities as a lawyer, and would not hesitate to refer clients to her. Gaber Affidavit, Exh. 6 to the Transcript.

35. Petitioner introduced a letter in support of her reinstatement from Robert J. Brasko, Esquire, a lawyer practicing in the Lehigh Valley. He has known Petitioner in a professional capacity for approximately ten years. Mr. Brasko wrote that he has never seen Petitioner fail to act with the required degree of professional competence, even when she was facing serious DUI charges. He believes that Petitioner will conduct herself in an ethical manner if reinstated. Brasko Letter, Exh. 7 to Transcript.

36. Petitioner introduced a letter in support of her reinstatement from Mildred Molino, Esquire, a lawyer practicing in the Lehigh Valley who has known Petitioner since the early 1980s. Ms. Molino observed that when Petitioner was practicing family law, she always represented her clients in a competent and caring manner. She believes that Petitioner has suffered for her misconduct both personally and professionally, and she hopes that Petitioner will be given an opportunity to practice law again. Molino Letter, Ex. 8 to Transcript.

37. Petitioner introduced a letter in support of her reinstatement from Michael Abgott, M.D., who has been her primary care physician for thirty-four years. N.T. 92-93. According to the letter, Petitioner provided legal representation to Dr. Abgott and he found her to be a good attorney. Dr. Abgott stated that Petitioner will be a benefit to her clients, if she is given an opportunity to practice law again. Abgott Letter, Exh. 2 to Transcript.

38. Dr. Abgott stated that Petitioner has good insight into her past transgressions, and has made positive advancements in acknowledging and addressing her alcoholism, and remaining sober. *Id.*

39. Office of Disciplinary Counsel does not oppose the Petition for Reinstatement.

III. CONCLUSIONS OF LAW

1. Petitioner demonstrated by clear and convincing evidence that she has the moral qualifications, competence and learning in the law required for admission to practice in the Commonwealth. Pa.R.D.E. 218(c)(3).

2. Petitioner demonstrated by clear and convincing evidence that her resumption of the practice of law will not be detrimental to the integrity and standing of the bar or the administration of justice, nor subversive of the public interest. Pa.R.D.E. 218(c)(3).

IV. DISCUSSION

Petitioner seeks reinstatement to the practice of law in Pennsylvania following her suspension on consent for a period of one year and one day. To gain reinstatement,

Petitioner has the burden of proving by clear and convincing evidence that she is morally qualified, competent and learned in the law and that her resumption of the practice of law will not be detrimental to the integrity and standing of the bar or the administration of justice, nor subversive of the public interest. Pa.R.D.E. 218(c)(3); *In the Matter of Lawrence D. Geenberg*, 749 A.2d 434 (Pa. 2000); *In the Matter of Jerome J. Verlin*, 731 A.2d 600 (Pa. 1999). A reinstatement hearing 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 that 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 Newspapers, Inc. v. Disciplinary Board of the Supreme Court*, 363 A.2d 779, 780-81 (Pa. 1976).

The Board concludes from the evidence of record that Petitioner has met her reinstatement burden and now recommends that her Petition for Reinstatement be granted.

The underlying misconduct for which Petitioner consented to a suspension of one year and one day was her criminal convictions for DUI, for which she was imprisoned for a period of eighteen months. Petitioner is extremely remorseful for her misconduct and has acknowledged her wrongdoing. She did not attempt to cast blame on others or minimize the seriousness of her criminal actions. She sincerely apologized for demeaning the legal profession through her misconduct and intends to make amends by working hard and serving her clients.

During her imprisonment, Petitioner came to understand that her situation could become a learning experience and she used her time in jail to reflect on her law practice, her family, and her relationships with others. Petitioner decided to focus on her

alcoholism and seek help. Since her release from prison, Petitioner has taken positive measures to receive appropriate treatment for her alcoholism. In February 2015, shortly after her release from prison, Petitioner entered outpatient treatment at NET. She was discharged in June 2015 with a good prognosis after successful completion of the program. Petitioner continued her rehabilitation by receiving MBSR training from Dr. Milspaw, which successfully attended to Petitioner's PTSD symptoms and taught her coping mechanisms.

Petitioner has been actively involved in AA and LCL since her release from prison. She regularly attends meetings of these organizations and counts many friends and practicing attorneys in the Lehigh Valley among her strong support system to ensure her continued sobriety. Some of her supporters were witnesses on Petitioner's behalf at the reinstatement hearing. These witnesses offered credible, encouraging testimony and collectively opined that Petitioner has made substantial changes in her life, is committed to recovery, and is maintaining her sobriety. Petitioner submitted four letters of reference in support of her reinstatement, three from attorneys in the Lehigh Valley and one from her family doctor, who has treated her for more than thirty years. These letters are indicative of the support Petitioner has received from members of her community and support the favorable impression she gave that her readmission would be a positive circumstance.

In addition to addressing her alcoholism, which has improved her emotional and physical wellbeing, Petitioner has improved her financial situation by tackling many of her outstanding tax obligations. While suspended, Petitioner fulfilled her Continuing Legal Education requirements and stayed current in the law by working at the prison law library and performing research on family law and related topics. If reinstated, Petitioner hopes to work with prior clients, assist a legal aid organization, and accept mediation referrals.

Under similar circumstances, attorneys have been reinstated to practice law

in this Commonwealth. In *Matter of Laurie Jill Besden*, No. 190 DB 2005 (D. Bd. Rpt. 10/21/2009) (S. Ct. Rpt. 12/4/2009), Ms. Besden had been suspended for a period of three years based upon her criminal convictions for violating various drug and identify theft laws, offenses she committed in support of her drug addiction. Ms. Besden presented ample and compelling evidence of her involvement in AA and LCL treatment programs, her sincere remorse and acceptance of responsibility, as well has her dedication to sobriety. The Supreme Court adopted the recommendation of the Disciplinary Board and reinstated Ms. Besden to the practice of law.

In *Matter of Ashly Mae Guernaccini a/k/a Ashly Mae Wisher*, No. 118 DB 2005 (D. Bd. Rpt. 8/5/2015) (S. Ct. Order 8/21/2015), the Supreme Court also granted reinstatement in accordance with the Board's recommendation. Ms. Guernaccini had been suspended for a period of two years based upon her conviction of possession of controlled substances. Following her release from prison, Ms. Guernaccini successfully completed treatment and rehabilitation for her drug addiction and surrounded herself with a support system to ensure her continued sobriety.

Similar to the above petitioners, who successfully sought reinstatement after discipline for misconduct caused by addiction issues, Petitioner has accepted responsibility for her actions, demonstrated commitment to long-term recovery from alcoholism, maintained her sobriety, and aligned herself with a strong support network.

The evidence of record demonstrates, therefore, that Petitioner has successfully met her reinstatement burden under Pa.R.D.E. 218(c)(3), and is morally qualified, competent and learned in the law. Her reinstatement will not be detrimental to the public or to the profession. For all of the above reasons, the Board recommends that her Petition for Reinstatement be granted.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Petitioner, Chrystyna M. Fenchel, be reinstated to the practice of law.

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: 

Jane G. Penny, Board Chair

Date: 11.23.16

Board Members Leonard and Goodrich did not participate in the adjudication.