

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 1086 Disciplinary Docket No. 3
: :
: No. 18 DB 2004
JOHN FRANCIS MURPHY : :
: Attorney Registration No. 21616
: :
PETITION FOR REINSTATEMENT : (Tioga County)

ORDER

PER CURIAM

AND NOW, this 10th day of January, 2013, a Rule having been issued upon John Francis Murphy by this Court on August 22, 2012, to show cause why an order denying reinstatement should not be entered and, upon consideration of the responses filed, the Rule is discharged and the Petition for Reinstatement is hereby granted.

Pursuant to Rule 218(f), Pa.R.D.E., petitioner is directed to pay the expenses incurred by the Board in the investigation and processing of the Petition for Reinstatement.

A True Copy John A. Vaskov, Esquire
As Of 1/10/2013

Attest: 
Deputy Notary
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 February 7, 2006, the Supreme Court of Pennsylvania suspended John Francis Murphy for a period of five years. On November 17, 2010, Mr. Murphy filed a Petition for Reinstatement. After Office of Disciplinary Counsel responded in opposition to the Petition, Petitioner withdrew the Petition without prejudice to refile. On June 8, 2011, Petitioner filed a second Petition for Reinstatement. Office of Disciplinary Counsel filed a Response on September 20, 2011 and stated its concerns.

A reinstatement hearing was held on November 30, 2011, before a District III Hearing Committee comprised of Chair William R. Bunt, Esquire, and Members Vincent Cimini, Esquire, and Elizabeth Beckley, Esquire. Petitioner was represented by William A. Hebe, Esquire. Petitioner offered the testimony of one witness, himself. Office of Disciplinary Counsel introduced exhibits.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on January 31, 2012 and recommended that the Petition for Reinstatement be granted.

Office of Disciplinary Counsel filed a Brief on Exceptions on February 15, 2012.

Petitioner filed a Brief Opposing Exceptions on March 2, 2012.

This matter was adjudicated by the Disciplinary Board at the meeting on March 21, 2012.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner is John Francis Murphy. He was born in 1947 and was admitted to practice law in the Commonwealth in 1975. His current address is 16 Pearl Street, Wellsboro PA 16901. He is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

2. Petitioner was admitted to the United States District Court in 1981, the State of New York in 1981 and the United States Tax Court in 1995.

3. Following his admission to the bar, Petitioner practiced law in Wellsboro, a small town located in Tioga County. He was in-house counsel for a finance company and, since 1985, self-employed as a sole practitioner.

4. On February 7, 2006, Petitioner was suspended from the practice of law for a period of five years. He violated Rules of Professional Conduct 1.8(a), 1.8(b), and 1.9 when he acquired an existing mortgage interest in his clients' farm. He then evicted the clients and sold the property to satisfy the existing mortgage. Petitioner received a \$4,000 fee from the purchasers and made a \$9,000 profit on the sale.

5. Petitioner was the subject of a reciprocal disciplinary process in the State of New York and the United States District Court for the Middle District of Pennsylvania. In the latter proceeding, Petitioner filed a Memorandum in Opposition of Identical Discipline with the Middle District on April 6, 2006.

6. In that Memorandum, Petitioner requested that the federal court not impose the identical discipline imposed in the Pennsylvania state proceedings, but rather a lesser discipline.

7. Petitioner received a five year reciprocal suspension in both New York and the Middle District.

8. Subsequent to Petitioner's suspension, he prepared approximately 12 Petitions for Bankruptcy as a non-attorney. This occurred from February 2006 through May or June 2006. As a result of the U.S. Bankruptcy Trustee raising an objection to Petitioner's preparing the Petitions, Petitioner ceased preparation of the Petitions no later than June 2006.

9. During the short period of time that Petitioner prepared Bankruptcy Petitions, Petitioner provided no legal advice, filed no motions, appeared at no hearings; and, when his activities were questioned, he promptly ceased that activity.

10. During his suspension, Petitioner has prepared several hundred income tax returns and has been involved in a real estate partnership with Walter F. Grabowski, dealing primarily in residential rental property.

11. Petitioner has not practiced law during his suspension.

12. Petitioner fulfilled the Continuing Legal Education requirements necessary for reinstatement.

13. Petitioner has kept apprised of the current state of the law by reviewing various legal periodicals and advance sheets.

14. If reinstated, Petitioner plans to return to a civil law practice in Wellsboro.

15. As a condition precedent to reinstatement in New York, Petitioner was required to sit for the multi-state bar exam in February 2011. He passed the exam and was readmitted in New York State.

16. Petitioner has admitted his misconduct, is remorseful and takes full responsibility for his actions.

III. CONCLUSIONS OF LAW

Petitioner has met his burden of demonstrating by clear and convincing evidence, that he has the moral qualifications, competency and learning in the law required for admission to the practice of law in the Commonwealth and that his resumption of the

practice of law in 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. Pa.R.D.E. 218(c)(3).

IV. DISCUSSION

Petitioner seeks readmission to the bar from a suspension of five years imposed on February 7, 2006. 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. Petitioner carries the burden of proving by clear and convincing evidence that he possesses the moral qualifications, competency and learning in the law required for admission to practice law in the Commonwealth. In addition, Petitioner has the burden of demonstrating 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 rehabilitation efforts the lawyer has made since the time that 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 engaged in serious misconduct which resulted in a suspension for five years. Prior to his suspension, he had an unblemished professional record. During his

suspension, he was employed primarily in the preparation of income tax returns and with a real estate partnership. He admitted that he prepared approximately 12 bankruptcy petitions as a non-attorney during a four -month time frame. Petitioner ceased this activity upon the objection of the Bankruptcy Trustee. Office of Disciplinary Counsel acknowledged that the activity was short-lived and not a basis to reject Petitioner's reinstatement. During his suspension, Petitioner fulfilled his Continuing Legal Education requirements and has reviewed advance sheets and legal periodicals. He passed the multi- state bar examination to gain readmission in the State of New York.

Petitioner expressed remorse for his actions when testifying at the reinstatement hearing on November 3, 2011. Petitioner testified that, "I respect and accept the findings of the Court in the matter. I'm very sorry that I made a mistake. I do admit I made a mistake. I take full responsibility for that. I apologize to the Court and my fellow attorneys and anyone that was affected by the mistake, especially Mr. and Mrs. Tombs (former clients.)" (N.T. 34)

Office of Disciplinary Counsel suggests that Petitioner has failed to take responsibility for his actions, and cites Petitioner's Memorandum filed in 2006 in the Middle District of Pennsylvania wherein he argued for a lesser discipline, as well as Petitioner's November 17, 2010 Petition for Reinstatement that was subsequently withdrawn. Notwithstanding statements made by Petitioner in 2006 and 2010, we find that Petitioner's testimony in 2011 is indicative of his sincere remorse and admission of wrongdoing to his clients. His conduct subsequent to the misconduct and his testimony at the hearing demonstrate that he accepts responsibility for his actions.

Office of Disciplinary Counsel points out that Petitioner offered no character witnesses. While the testimony of other witnesses would have been relevant, it is not unprecedented that a petitioner seeking reinstatement has no character testimony. Office of Disciplinary Counsel v. James J. Gillespie Jr., 125 DB 1999, 581 Disciplinary Docket No. 3 (Pa. Sept. 19, 2006) (reinstated from disbarment; even though no character evidence presented, balance of record supported the conclusion that petitioner was morally qualified.) We conclude that the totality of the evidence of record supports a finding that Petitioner is morally qualified to resume practicing law. There is no evidence that he engaged in any immoral, improper behavior during his suspension. The record also supports a finding that Petitioner is competent and learned in the law.

Petitioner has met his burden of proving his fitness to practice law. For these reasons, we recommend that the Petition for Reinstatement be granted.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Petitioner, John Francis Murphy, 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: 
David A. Nasatir, Board Member

Date: May 16, 2012

Board Members Buchholz and Bevilacqua did not participate in the adjudication.