

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 1394 Disciplinary Docket No. 3
: :
: No. 42 DB 2007
WILLIAM J. WEISS : :
: Attorney Registration No. 47701
: :
PETITION FOR REINSTATEMENT : (Philadelphia)

ORDER

PER CURIAM:

AND NOW, this 24th day of April, 2013, upon consideration of the Report and Recommendations of the Disciplinary Board dated February 12, 2013, the Petition for Reinstatement is 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 Patricia Nicola
As Of 4/24/2013

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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WILLIAM J. WEISS : :
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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 the Supreme Court of Pennsylvania dated October 6, 2008, William J. Weiss was suspended for a period of two years. Mr. Weiss filed a Petition for Reinstatement on May 23, 2011. Office of Disciplinary Counsel filed a Response to Petition on August 29, 2011.

A reinstatement hearing was held on December 21, 2011 and January 11, 2012 before a District I Hearing Committee comprised of Chair Michael L. Turner, Esquire, and Members Maribeth C. Wechsler, Esquire, and Sophia Lee, Esquire. Petitioner was

represented by Barbara S. Rosenberg, Esquire. Petitioner introduced the testimony of three witnesses and one expert witness, and testified on his own behalf. He introduced character letters from his friends and a co-worker.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on July 2, 2012 and recommended that the Petition for Reinstatement be granted with one year of probation during which time Petitioner must attend Narcotics Anonymous meetings, undergo drug testing and receive psychotherapy for depression.

Office of Disciplinary Counsel filed a Brief on Exceptions on July 23, 2012 and requests that the Board recommend that the Petition be denied.

Petitioner filed a Brief Opposing Exceptions on August 13, 2012.

This matter was adjudicated by the Disciplinary Board at the meeting on October 18, 2012.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner is William J. Weiss. He was born in 1961 and was admitted to the practice of law in Pennsylvania in 1986. His current business address is 1880 JFK Boulevard, 20th Floor, Philadelphia PA 19103. Petitioner is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

2. Following his admission to the bar, Petitioner was employed by several firms and was self-employed. (N.T. 12/21/11. Pgs. 97-101, 141) As a practicing lawyer, Petitioner frequently performed pro bono services for co-workers and clients. (N.T. 12/21/11. Pgs. 103-104, 291)

3. Petitioner was suspended for a period of two years by Order of the Supreme Court dated October 6, 2008.

4. Between February 9, 2005 and January 26, 2006, Petitioner converted funds of his clients for his personal benefit. This included writing checks payable to himself, making payments for credit card bills, car leases, charitable donations and investments. From November 2005 through July 12, 2006, Petitioner engaged in the unauthorized practice of law in several clients' matters and failed to cooperate with the Disciplinary Board.

5. In 2003, during two months of hospitalization for treatment, including surgery, for diverticulitis, and six weeks of recovery at home, Petitioner was treated with potent opioids. (N.T. 12/21/11, pgs. 37-39, 110-113, 117-118, 306-309; Ex. ODC-5)

6. In or about June 2003, Petitioner ceased using the medications briefly, but shortly thereafter, he found pain medication in his home and took it for a severe headache. (N.T. 12/21/11, pgs. 113-114, 235-237; Ex. ODC -5)

7. Thereafter, Petitioner used prescriptions he had received and subsequently purchased opioids from co-workers, to the point that he was taking two extremely powerful painkillers every two hours. (N.T. 12/21/11, pgs. 114-118; Ex. ODC-5)

8. Petitioner became addicted to opioids. (N.T. 12/21/11, p. 53; Dr. Harry Sacks letter)

9. During the time that Petitioner was addicted to opioids, he began to neglect his responsibilities as a lawyer, failed to complete his Continuing Legal Education requirements, was transferred to inactive status for failure to complete registration requirements, and nonetheless continued to practice law. (N.T. 12/21/11, pgs. 120-125, 133-134, 289)

10. Petitioner engaged in the unauthorized practice of law in New Jersey when he handled the real estate closing matter of the seller that resulted in a lawsuit against Petitioner. (N.T. 12/21/11, pgs. 178-180).

11. Some of Petitioner's failures to represent clients resulted in malpractice actions, all of which have been resolved and satisfied. (N.T. 12/21/11, pgs. 134-135)

12. Family members and friends confronted Petitioner with his behavior, but for a long time Petitioner falsely denied that he was addicted. (N.T. 12/21/11, pgs. 125-127, 286-287, 311)

13. Petitioner eventually recognized that he had a problem and admitted to a family friend, Dr. Harry Sacks, that he was using opioid medications without appropriate medical supervision or prescription. (N.T. 12/21/11, pgs. 199-201)

14. Harry J. Sacks, M.D., an expert in pain medicine, is personally familiar with Petitioner and testified credibly as to his personal knowledge of Petitioner's conduct prior to, during and after his addiction, as well as the nature of opioid addiction and treatment, and Petitioner's diagnosis, treatment and prognosis.

15. After Petitioner admitted to Dr. Sacks that he was abusing opioids, Dr. Sacks recommended psychiatric treatment. (N.T. 12/21/11, pgs. 49-50)

16. In early 2006, Petitioner began to obtain treatment for his addiction, including psychotherapy and treatment with Suboxone, an opioid agonist-antagonist which replaced the unprescribed opioids but which has similar side effects to other opioids. (N.T. 12/21/11, pgs. 138-139, 202-204)

17. Treatment with Suboxone involves a gradual improvement in the condition of the patient and gradual changes in behavior, as well as a gradual reduction in

dosage to prevent significant withdrawal symptoms or relapse. A year is approximately a minimum period to use Suboxone for recovery. (N.T. 12/21/11, pgs. 57-59)

18. Suboxone permitted Petitioner to withdraw from the use of other opioids, but while on Suboxone, Petitioner continued to suffer some of the psychological effects of his addiction, including dependency, inability to function normally, lack of energy, and irresponsibility; his behavior was "difficult and erratic" during the time he was treating. (N.T. 12/21/11, pgs. 140-141, 203. Hillary Weiss letter)

19. During his treatment, Petitioner attended some meetings of Alcoholics Anonymous but stopped because of financial and time constraints and because he questioned the value to him. (N.T. 12/21/11, pgs. 143-145, 208-209)

20. During the period of his addiction and treatment with Suboxone, Petitioner received notices from the Client Security Fund and the Disciplinary Board relating to overdrafts in his IOLTA Account, to which he did not respond. (N.T. 12/21/11, pgs. 136-138, 147-148)

21. During the period of his misconduct, Petitioner was addicted to opioids. (N.T. 12/21/11, p. 53)

22. After his suspension, Petitioner failed to notify the United States District Court, which issued a Rule to Show Cause why he should not be suspended. (N.T. 12/21/11, pgs. 148-149; Ex. ODC-2)

23. Petitioner failed to promptly comply with Pa.R.D.E. 217(j)(5) and file a Notice of Engagement with the Disciplinary Board identifying his supervising attorney and certifying that his activities would be monitored to comply with Rule 217(j). (ODC-6)

24. In late 2007, Petitioner obtained employment at U.S. Airways as a ticket agent, which employment he maintained for ten months. (N.T. 12/21/11, pgs. 145-146, 314-315)

25. In December 2008, Petitioner secured employment as a paralegal at Goldfein & Joseph, P.C. (N.T. 12/21/11, pgs. 152-154)

26. In that capacity, Petitioner has not engaged in the unauthorized practice of law or held himself out to be a licensed attorney. (N.T. 12/21/11. Pgs. 154-156)

27. Bernard Levinthal, Esquire, is Petitioner's supervising attorney. He has never observed anything that would suggest that Petitioner has been under the influence of any mind-altering substance, is not fully alert, or has been hampered in his ability to perform his responsibilities. (N.T. 12/21/11, p. 265)

28. Goldfein & Joseph, P.C. has offered to Petitioner a position as an attorney if he is reinstated to the practice of law. (N.T. 12/21/11, pgs. 272-273)

29. Petitioner has not attended Alcoholics Anonymous meetings since 2007 and has never attended Narcotics Anonymous meetings. (N.T. 12/21/11, pgs. 143-144, 208)

30. Petitioner has not received any psychotherapy since he was weaned from opioids and Suboxone in December 2006. (N.T. 12/21/11, pgs. 143-144, 207, 225)

31. On July 29, 2011, Petitioner had a mental health consultation with Jay Schmulowitz, Ph.D., a New Jersey licensed psychologist, certified in the treatment of alcohol and other psychoactive substance abuse disorders. (ODC-8)

32. On November 3, 2011, Dr. Schmulowitz administered the Personal Experience Inventory for Adults, to Petitioner. (ODC-17, November 28, 2011 Report, p. 2)

33. On November 28, 2011, Dr. Schmulowitz wrote a report and diagnosed Petitioner as suffering from dysthymia, commonly known as clinical depression. (ODC-17, November 28, 2011 Report p. 2)

34. Dr. Schmulowitz opined that Petitioner's profile "suggests that he does not require drug treatment at this time" but his "psychological responses are indicative of clinical problems which suggest the need for psychotherapy." (ODC -17, November 28, 2011 Report, p. 2)

35. Harry J. Sacks, M.D. wrote a Report on July 23, 2011 in which he stated that Petitioner never exhibited any signs or symptoms of substance abuse until he became dependent on pain killers post-surgery. (ODC -17; July 23, 2011 Report of Harry J. Sacks, M.D. p. 2)

36. Dr. Sacks opined that with appropriate vigilance, Petitioner's prognosis is excellent for avoiding further substance abuse in the future. (ODC-17, July 23, 2011 Report of Harry J. Sacks, M.D. p. 2)

37. Dr. Sacks indicated that the vigilance he would suggest is ongoing psychotherapy. (N.T. 12/21/11 p. 77,78)

38. Petitioner recognizes that his conduct was detrimental to his wife and children, diminished their financial resources, damaged his reputation in the community and resulted in humiliation and depression. (N.T. 12/21/11, pgs. 160-162)

40. Petitioner takes complete responsibility for his actions. (N.T. 1/11/12 p. 19)

41. Prior to his transfer to inactive status , Petitioner had no history of discipline and had a reputation for honesty and integrity. (Ex. ODC-1, N.T. 12/21/11, pgs. 35-36)

42. Petitioner feels depressed due to his on-going situation of being a suspended attorney. (N.T. 12/21/11, pgs. 222-223, 238; N.T. 1/11/12 pgs. 18-19)

43. Petitioner believes that being reinstated would improve his emotional state. (N.T. 1/11/12 p. 19)

44. Petitioner has completed more than 36 hours of Continuing Legal Education required for reinstatement. (Ex. P-1)

45. Petitioner has reviewed many legal periodicals, including The Legal Intelligencer, Pennsylvania Law Journal, Pennsylvania Law Weekly, Advance Sheets, and Asbestos Litigation Reporter.

46. Petitioner performed legal research for Bernard Levinthal, Esquire pertaining to the firm's asbestos defense practice.

47. Petitioner made minor errors or omissions in his Reinstatement Questionnaire. He promptly responded to Office of Disciplinary Counsel's request for additional information. (N.T. 12/21/11 p. 94)

48. Petitioner suffers from physical health problems, including atrial fibrillation and diabetes, and was being treated for heart problems at the time of the reinstatement hearing. (N.T. 12/21/11, p. 109; N.T. 1/11/12 pgs. 37-38)

49. Bernard Levinthal, Esquire has known Petitioner since high school and knows others who know Petitioner in the legal profession. Mr. Levinthal opined that although these other people were familiar with Petitioner's disciplinary history, everyone trusted Petitioner's honesty and level of integrity. (N.T. 12/21/11, pgs. 265-266)

50. Those individuals that spoke with Mr. Levinthal believed that Petitioner's misconduct was an isolated aberration. (N.T. 12/21/11, p. 267)

51. Warren Siegel, Esquire has known Petitioner for many years. Mr. Siegel testified credibly that Petitioner is highly regarded in his community and has a good reputation for honesty and integrity. (N.T. 12/21/11, p. 294)

52. Dr. Harry Sacks has known Petitioner since elementary school and testified credibly as to Petitioner's reputation in his community. He indicated that Petitioner has regained his presence in the community and the trust of others. (N.T. 12/21/11, p. 69)

53. Two character letters were introduced into evidence from a friend and a co-worker who support Petitioner's reinstatement and confirm his remorse, rehabilitation, competency and good character.

III. CONCLUSIONS OF LAW

Petitioner has met his burden of proof that he has the moral qualifications, competency and learning in the law required for admission to practice law in the Commonwealth and that his resumption of the practice of law 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 reinstatement to the practice of law in Pennsylvania following his suspension for a period of two years. Pa.R.D.E. 218(c)(3) provides that Petitioner bears the burden of establishing by clear and convincing evidence that he has the moral qualifications, competency and learning in the law required for admission and that his

resumption of the practice of law will be neither detrimental to the integrity and standing of the bar nor subversive of the public interest.

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 the lawyer has 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 has demonstrated with clear and convincing evidence that he is competent and learned in the law. He has exceeded the minimum requirements for Continuing Legal Education credits. He has been employed as a paralegal for Goldfein & Joseph P.C. since October 2008. In that capacity, he performs legal research, prepares memoranda, and summarizes depositions and interrogatories among other tasks. Bernard Levinthal, Esquire, the managing partner of the firm, testified credibly that Petitioner performs his duties effectively and responsibly. Moreover, Mr. Levinthal's firm is willing to offer Petitioner a position as an attorney if he is reinstated. These qualifications are sufficient to demonstrate competency and learning in the law.

Petitioner has met his burden of proof that he has the moral qualifications required for admission to practice law in this Commonwealth. The character evidence supplied by Petitioner is of sufficient strength and quality for reinstatement. The witnesses who testified on behalf of Petitioner stated that he accepted full responsibility for his misconduct, did not attempt to conceal his wrongdoing, and expressed sincere remorse. Petitioner enjoys an excellent reputation for being an honest person.

Dr. Harry Sacks has known Petitioner since elementary school and indicated that Petitioner has regained the trust of the community. Mr. Levinthal has known Petitioner since high school and indicated that everyone he has talked to about Petitioner trusts his honesty and level of integrity. Mr. Siegel has known Petitioner for many years and knows him to be highly regarded in the community. Petitioner submitted letters in support of his reinstatement from an attorney who has known him since law school and a co-worker who worked closely with him as a paralegal for the past two years.

Petitioner's testimony supports the conclusion that he has the present moral fitness to resume the practice of law. He has demonstrated sincere remorse and recognizes that his wrongdoing was detrimental to his family and damaged his reputation in his community. He repeatedly acknowledged that his conduct was inexcusable.

Petitioner has met his burden of proof that his resumption of the practice of law within the Commonwealth will be neither detrimental to the integrity of the bar nor subversive of the public interest. The record demonstrates that the misconduct which resulted in Petitioner's suspension was inextricably linked to his addiction to opioids following treatment for a severe case of diverticulitis. The evidence is clear that Petitioner never used drugs prior to his medical issues and was by all accounts a competent, reliable and ethical lawyer. The addiction changed Petitioner's behavior, contributing to his poor judgment, loss of work ethic and irresponsibility in his law practice.

Petitioner is no longer addicted to opioids. He received treatment in 2006 consisting of Suboxone and psychotherapy. Petitioner stopped taking Suboxone at the end of 2006 and has never returned to the use of opioids in the six years since commencement of his treatment and recovery. Dr. Harry Sacks is a pain management expert and stated that the likelihood of Petitioner's relapse is very low. He opined that

Petitioner has an excellent prognosis. While Dr. Sacks did opine that it would be helpful to Petitioner to have counseling, he explained that psychotherapy was advisable for anyone who has been addicted to help deal with life's stresses. Dr. Sacks did not state that psychotherapy was necessary to Petitioner's successful performance as an attorney.

Subsequent to his suspension, Petitioner admitted that he has experienced feelings of depression. The report of Dr. Jay Schmulowitz indicates that Petitioner suffers from clinical depression. Petitioner does not receive any treatment for depression, either medication or counseling. He believes that his reinstatement to the practice of law will vastly improve his outlook and help relieve his feelings of shame and humiliation resulting from his misconduct. Petitioner also suffers from physical health problems in the form of diabetes and heart issues.

Office of Disciplinary Counsel contends that Petitioner's history of drug addiction and current untreated clinical depression make him unsuited for reinstatement. Disciplinary Counsel argues that Petitioner has not shown he is rehabilitated.

The Board is persuaded by a careful review of the record that Petitioner has rehabilitated himself. He has overcome his addiction and has gained insight and understanding into his actions. Petitioner made clear that he understands the rules and regulations on dealing with client and fiduciary funds as well as attorney registration and legal education requirements. Petitioner's paralegal work at the Goldfein law firm is exemplary. His supervisor, who is the managing partner of the firm, has never noticed anything to indicate that Petitioner is not an effective employee. The fact that the firm desires to employ Petitioner as an attorney upon reinstatement underscores his value to the firm.

That Petitioner appears to be depressed and has some physical health issues should not serve as an impediment to his reinstatement. There is no evidence to suggest that these issues have negatively impacted his personal or professional life such that his reinstatement would be detrimental to the bar and the public.

In an attempt to allay concerns about Petitioner's mental health, the Hearing Committee has recommended that Petitioner be reinstated conditioned on a one year period wherein he must attend Narcotics Anonymous, undergo periodic drug testing and receive counseling. An examination of the rules applicable to the disciplinary system in Pennsylvania does not reflect any provision authorizing conditional reinstatement from inactive status, suspension, or disbarment. Pa.R.D.E. 218; D.Bd. Rules §89.271-89.280. The basis for rejecting conditional reinstatement is that conditions indicate an attorney has not met his or her burden of proof clearly and convincingly that such attorney is fit. In re Anonymous No 14. DB 1986, 32 Pa. D. & C. 4th 495 (Pa. 1996).

Even if the rules and regulations permitted conditional reinstatement, the Board does not agree that Petitioner needs periodic drug testing, Narcotics Anonymous meetings or counseling. Petitioner has been in recovery from addiction for some six years with no relapse. The record is clear that he has overcome his addiction and has moved on with his life. The conditions are not necessary to the maintenance of his sobriety or to his successful performance as an attorney.

Based on the totality of the facts and circumstances of this particular matter, the Board recommends that Petitioner be reinstated to the practice of law.

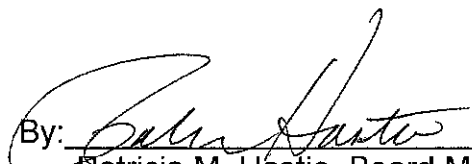
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Petitioner, William J. Weiss, 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: 
Patricia M. Hastie, Board Member

Date: February 12, 2013

Board Member Momjian did not participate in the adjudication.



THE DISCIPLINARY BOARD
OF THE
SUPREME COURT OF PENNSYLVANIA

Pennsylvania Judicial Center
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PO Box 62625
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Phone: (717) 231-3380 Fax: (717) 231-3381

February 12, 2013

In the Matter of	:	No. 1394 Disciplinary Docket No. 3
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WILLIAM J. WEISS	:	No. 42 DB 2007
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	:	Attorney Registration No. 47701
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PETITION FOR REINSTATEMENT	:	(Philadelphia)

**Expenses Incurred in the Investigation and Processing
of the above Petition for Reinstatement***

10/06/2008	2 Copies of Supreme Court Order	\$	1.00
05/23/2011	2 Copies of Petition for Reinstatement and Reinstatement Questionnaire		60.00
08/29/2011	2 Copies of Office of Disciplinary Counsel's Response to Petition for Reinstatement		2.00
07/02/2012	2 Copies of Hearing Committee Report		22.00
07/23/2012	2 Copies of ODC's Brief On Exceptions		34.00
10/05/2011	Transcript of Prehearing Conference held on 9/23/2011		303.75
01/16/2012	Transcript of Hearing held 12/21/2011		2,906.50
01/25/2012	Transcript of Hearing held 1/11/2012		644.50
08/10/2011	PA Criminal History Check		<u>10.00</u>
TOTAL AMOUNT DUE			<u>\$ 3,983.75</u>

Make Check Payable to PA Disciplinary Board
PAYMENT IS REQUIRED UPON RECEIPT OF ORDER

*Submitted pursuant to Rule 208(g) of the Pa.R.D.E. and §93.111 of the Disciplinary Board Rules.