

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 346, Disciplinary Docket
: No. 1 - Supreme Court
:
[ANONYMOUS] : No. 55 DB 1982 - Disciplinary Board
:
: Attorney Registration No. []
:
PETITION FOR REINSTATEMENT : ([])

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

Petitioner, [], filed a Petition for Reinstatement to the bar of Pennsylvania on February 25, 2000. Petitioner was Disbarred on Consent by Order of the Supreme Court of Pennsylvania on September 9, 1982. This is Petitioner’s second request for reinstatement. His first Petition for Reinstatement was denied by Order of the Supreme Court dated September 2, 1992.

A reinstatement hearing was held on December 12, 2000, before Hearing Committee [] comprised of Chair [], Esquire, and Members [], Esquire, and [], Esquire. Petitioner was represented by [], Esquire. [], Esquire, appeared for Petitioner.

The Committee filed a Report on May 7, 2001, and recommended that the Petition for Reinstatement be granted.

No Briefs on Exceptions were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting of July 24, 2001.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner was born in 1947 and was admitted to practice law in Pennsylvania in 1973. He resides at [].
2. Petitioner was Disbarred on Consent in 1982 after he misused client funds, used bad checks to pay filing fees, and neglected client matters.
3. In 1992 Petitioner filed a Petition for Reinstatement. This Petition was denied by Order of the Supreme Court dated September 2, 1992.
4. From the ages of fourteen(14) to twenty-nine(29), Petitioner suffered from a debilitating illness, causing open wound leg ulcerations covering the majority of each leg. This illness required frequent hospitalizations, many of them lengthy. This condition continued until 1976. (N.T. 24-29)
5. Although Petitioner's illness had been cured prior to the time of the events leading to disbarment, and he does not contend that it was an immediate cause of his misconduct, his long-term unusual illness did have an adverse psychological effect on Petitioner. Petitioner began to believe that, freed of his illness, he could now "do anything and it would work out". (N.T. 53-55, 81-82)

6. Petitioner recognizes that he exacerbated the financial problems in his practice because he failed to face up to his responsibilities and address problems as they occurred. (N.T. 39-40)

7. Petitioner recognizes that his former poor management skills resulted in a chaotic practice and contributed to his misconduct. (N.T. 35)

8. Petitioner has accepted full responsibility for his actions and has expressed sincere remorse. (N.T. 37-28)

9. After his disbarment, Petitioner worked in insurance sales. He left that job in December 1986 and worked briefly as a coordinator for [A's] mayoral campaign, as a substitute teacher, and as a telephone solicitor.

10. In October 1987, Petitioner accepted a position as a law clerk to the Commonwealth of Pennsylvania Bureau of []. He held that position until September of 1989. As law clerk to the Bureau's various judges, Petitioner drafted opinions.

11. In 1989, Petitioner began to treat with a psychologist, who helped him to understand how his chronic illness had affected his past behavior and attitudes. Through this treatment Petitioner has come to terms with his past behavior and has developed better coping mechanisms.

12. In September 1989, Petitioner accepted a position as a law clerk to Attorney [B]. Petitioner worked full-time in this position until October of 1992. He performed legal research and drafted documents.

13. Since October 1992, Petitioner has been self-employed, providing paralegal services to different attorneys on a contract basis.

14. Petitioner has made full restitution to his former clients and the Prothonotary, but for one client, whom he is unable to locate.

15. Petitioner has not complied with Pa.R.D.E. 217, but has made substantial efforts to do so. (N.T. 101-104) At the time of his disbarment he transferred all open client files to another attorney. At the time, Petitioner did not expect to seek reinstatement and, being in debt, did not have the financial ability to notify approximately 100 clients by certified mail of his disbarment. He attempted to assure that his clients were advised of his disbarment.

16. In 1992, after an inquiry from the Disciplinary Board, Petitioner made substantial efforts to reconstruct his client list in order to send the required certified letter to all clients. However, the files that he had not already transferred to another attorney were destroyed in a flood. Petitioner asserts that he has spent substantial time and efforts trying to reconstruct a client list from the dockets in the Courts of Common Pleas but has not been able to identify all clients. (N.T. 103-104)

17. Since his disbarment, Petitioner has made a conscious effort to assure that his past problems do not recur.

18. Since his disbarment, Petitioner has remained current in his knowledge of the law through his various jobs as a law clerk.

19. Petitioner fulfilled his required CLE credits.

20. Petitioner is active in community affairs. He has served as a fundraiser for the [] and the []. He serves as a volunteer for the []. He has served as an announcer for sports leagues and colleges.

21. If reinstated, Petitioner hopes to practice in [] Pennsylvania and to specialize in worker's compensation matters.

22. A number of character witnesses appeared on Petitioner's behalf, each of whom testified to his excellent reputation as a truthful, honest citizen. Those familiar with his legal work praised his knowledge of the law and the quality of his work. Each of the witnesses recommended that Petitioner be reinstated to the practice of law.

23. In addition to the testimony presented at the hearing, 24 individuals submitted letters urging Petitioner's reinstatement.

III. CONCLUSIONS OF LAW

1. The misconduct for which Petitioner was disbarred is not so egregious as to preclude immediate consideration of his petition for reinstatement.
2. Petitioner has demonstrated, with clear and convincing evidence, that he possesses the moral qualifications, competency and learning in the law necessary to practice law in the Commonwealth of Pennsylvania.
3. Petitioner's resumption of the practice of law will not be detrimental to the integrity of the bar nor subversive of the interests of the public.

IV. DISCUSSION

Petitioner's request for reinstatement to the bar after disbarment is initially governed by the standard set forth by the Supreme Court of Pennsylvania in Office of Disciplinary Counsel v. Keller, 509 Pa. 573, 506 A.2d 872 (1986). The Keller opinion articulates a threshold question which must be met before the requirements of Pa.R.D.E. 218(c)(3)(i) are considered. This threshold inquiry is whether the magnitude of the breach of trust would permit the resumption of practice without a detrimental effect upon the integrity and standing of the bar or the administration of justice nor be

subversive of the public interests. Keller thus requires a determination that the original misconduct was not so offensive as to preclude reinstatement.

Petitioner's Disbarment on Consent was based on six complaints against him, all arising from his mishandling of client funds, use of bad checks to pay filing fees, and neglect of client matters. Petitioner's practice was in poor financial condition, arising in part because of the nature of his low-fee practice and poor management. Unable to make ends meet, Petitioner used retainers received from one client to fund the filing fees and expenses of other clients whose cases he had previously accepted. Cases were not timely filed. In an effort to clear the backlog of cases and get complaints filed, Petitioner presented a series of bad checks to the Prothonotary for payment of filing fees.

While Petitioner's misconduct was serious, it does not preclude reinstatement. The case law clearly establishes that this breach of trust is not of a type that would bar Petitioner from reinstatement to the profession. In re Anonymous No. 14 DB 86, 32 Pa. D. & C. 4th 495 (1996), In re Anonymous No. 24 DB 84, 14 Pa. D. & C. 4th 235 (1991).

The Board must next determine whether Petitioner met his burden of proving by clear and convincing evidence that he has the moral qualifications, competency and learning in the law required for admission to practice law in Pennsylvania, and that his current resumption of the practice of law would not have a detrimental impact on the integrity and standing of the bar, the administration of justice, or the public interest. Pa.R.D.E. 218(c)(3)(i). In order to make this determination, the Board must consider the amount of time that has passed since Petitioner was disbarred, as well as efforts at rehabilitation.

Petitioner was disbarred in September of 1982. He has been without a license to practice law for more than eighteen years. The record demonstrates that Petitioner has shown sincere remorse and has taken full responsibility for his actions. He made restitution to the victims of his misconduct. Petitioner received counseling and has shown self-awareness of the personality factors that contributed to his past problems. Petitioner has been an active participant in community affairs during his disbarment.

Petitioner has demonstrated a detailed working knowledge of worker's compensation, his chosen area of practice. He has maintained a substantial continuing legal education, through CLE courses, and through his work as a law clerk.

Petitioner's character witnesses have uniformly praised his knowledge of the law, his analytical and writing skills, and his professionalism.

Considering all of the foregoing facts, the Disciplinary Board is persuaded that Petitioner has demonstrated that he engaged in a qualitative period of rehabilitation during his eighteen year period of disbarment. Petitioner has met his burden of proving that he has the moral qualifications, learning in the law and competency to practice law and that his resumption of the practice of law would not have a detrimental impact on the integrity and standing of the bar, the administration of justice or the public interests. Petitioner has shown that he is prepared to accept his responsibility as a lawyer to conduct himself in an ethical manner.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Petitioner, [], be reinstated to the practice of law.

The Board further recommends that, pursuant to Rule 218(e), 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: _____
Angelo L. Scaricamazza, Jr.
Board Chair

Date: December 19, 2001

Board Member Morris did not participate in the consideration of this matter.

Board Members Schultz and Sheerer did not participate in the July 24, 2001 adjudication.

PER CURIAM:

AND NOW, this 14th day of February, 2002, upon consideration of the Report and Recommendations of the Disciplinary Board of the Supreme Court of Pennsylvania dated December 19, 2001, the Petition for Reinstatement is granted.

Pursuant to Rule 218(e), 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.