

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 493, Disciplinary Docket
: No. 2 - Supreme Court
:
[ANONYMOUS] : No. 20 DB 1985 - Disciplinary
: Board
:
: Attorney Registration No. []
:
PETITION FOR REINSTATEMENT : ([] County)

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

On September 14, 1993, Petitioner, [], filed a
Petition for Reinstatement. Petitioner was Disbarred on Consent

by Order of the Supreme Court of Pennsylvania dated June 11, 1985.

An Amended Petition for Reinstatement was filed on November 21, 1994. A hearing on this matter was held on March 30, 1995 before Hearing Committee [] comprised of Chairperson [], Esquire, and Members [], Esquire, and [], Esquire. Petitioner was represented by [], Esquire. Office of Disciplinary Counsel was represented by [], Esquire.

The Committee filed its Report on October 10, 1995 and recommended that the Petition for Reinstatement be denied. Petitioner filed a Brief on Exceptions on November 7, 1995 and requested oral argument. Office of Disciplinary Counsel filed a Brief Opposing Exceptions on November 20, 1995. Oral argument was heard on January 24, 1996 before a two member panel of the Disciplinary Board.

This matter was adjudicated by the Board at the meeting of February 1, 1996.

II. FINDINGS OF FACT

1. Petitioner was born on April 21, 1948. He was admitted to the practice of law in Pennsylvania in September 1975.

Petitioner is currently divorced from his wife but is in the process of reconciling with her and maintains a good relationship with her. Petitioner has two children from that marriage and has

accepted his ex-wife's child from a previous marriage as his own.

2. Petitioner practiced law as a sole practitioner from 1975 to 1985. He represented clients in civil and criminal cases. (N.T. 111)

3. Petitioner received an Informal Admonition in 1981 for neglecting to take action in a divorce case.

4. Petitioner's Disbarment on Consent was precipitated by his misconduct which included commingling and conversion of client funds, failure to properly maintain an escrow account, neglect of client cases and delay. (N.T. 117, 118, Petition for Reinstatement)

5. Petitioner testified that all of the clients from whom he had converted funds had been repaid except for one. (N.T. 119, 120, Petition for Reinstatement) Since the reinstatement hearing that particular client has been reimbursed.

6. Petitioner does not owe any monies to the Lawyers Fund for Client Security. (N.T. 122)

7. During the time of his Disbarment, Petitioner performed paralegal work, wrote business plans, did accounting and tax work. (N.T. 122, 123)

8. Petitioner worked for the [] of [] County in 1986 and 1987 doing complaint resolutions, investigation, fund

raising and community outreach work. (N.T. 124)

9. Petitioner has worked hard to maintain a family relationship with his children, who live in Ohio, and spent portions of time during his Disbarment residing and working in Ohio. (N.T. 125, 126)

10. Petitioner testified that during the years of his Disbarment he made very little money and experienced serious financial difficulties. (N.T. 127)

11. Petitioner testified that he fell behind on his child support obligations due to lack of regular income. He testified that prior to the hearing he was able to pay the arrearage and submitted an affidavit supporting this testimony. (N.T. 126, 237-241)

12. Petitioner testified that he owes taxes to the federal and state taxing authorities, and he has made arrangements for payment on these liens. (N.T. 136-138)

13. Petitioner testified that at the time of his Disbarment he was a party to a civil suit, but he has satisfied his obligations. (N.T. 135)

14. Petitioner has not been involved in any illegal activities nor has he been charged or arrested for any criminal conduct during his disbarment. (N.T. 133)

15. Petitioner has been very active in community affairs, including working with disabled children and tutoring students. (N.T. 127-130)

16. Petitioner is very active in his church and related programs. (N.T. 131, 132)

17. Petitioner took the three day course at [] University in 1989, 1990, and 1992, which satisfies the course requirements of the Pennsylvania Rules of Disciplinary Enforcement. (N.T. 139, 140, 141)

18. Petitioner maintains his knowledge of the law by reading the National Law Journal, [], and the Pennsylvania Reporter. (N.T. 141)

19. Petitioner testified that his employment as a paralegal aided him in maintaining his knowledge in the law. (N.T. 142, 143)

20. Petitioner testified that when he filed his original Petition for Reinstatement the document contained inaccuracies. Petitioner subsequently obtained legal counsel and filed an Amended Petition. (N.T. 144-146)

21. Petitioner testified that he is very remorseful for his misconduct and the related devastation that it brought to his family, friends and members of the bar. (N.T. 149, 150)

22. Petitioner testified that he gained a great deal of insight over the past ten years and will not repeat his misconduct. (N.T. 151, 152)

23. Petitioner testified that if he was privileged to be reinstated he would know to use a separate escrow account, segregate client funds, use an accountant to monitor his finances, and he would associate himself with an attorney of good repute. (N.T. 118, 119)

24. Petitioner testified that if reinstated, he would engage in a general practice of law and serve the African-American community in []. (N.T. 146-149)

25. Petitioner presented numerous character witnesses who testified to his excellent reputation in the community. These witnesses included attorneys, ministers, and business people as well as family members and friends. (N.T. 8-101)

III. CONCLUSIONS OF LAW

The misconduct for which Petitioner was Disbarred is not so egregious as to preclude immediate consideration of his Petition for Discipline.

Petitioner has satisfied his burden by demonstrating through 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.

Petitioner's resumption of the practice of law will not be detrimental to the integrity of the bar nor will it be subversive to the interests of the public.

IV. DISCUSSION

The sole issue before the Board is whether Petitioner's request for reinstatement to the Pennsylvania bar should be granted. Determining the correct answer to this question requires a two-step analysis.

The Board must initially decide whether the conduct for which Petitioner was Disbarred was so egregious as to preclude possible reinstatement at this time. Such an inquiry demands analysis of whether a sufficient amount of time has passed since the misconduct occurred, during which Petitioner engaged in a qualitative period of rehabilitation. Office of Disciplinary Counsel v. Keller, 509 PA. 573, 506 A.2d 872 (1986). Assuming Petitioner's misconduct will not prevent consideration of his current request for reinstatement, the next question is whether Petitioner possesses the moral qualifications, competency and learning in the law necessary to merit readmission to the Pennsylvania bar. It is Petitioner's burden to prove, by clear and convincing evidence, that he has the moral qualifications,

competency and learning in the law necessary to resume practice in this Commonwealth, and that his resumption of practice will not be detrimental to the integrity of the bar nor subversive of the interests of the public. Rule 218(c)(3)(i), Pa.R.D.E.

The initial point of inquiry when a disbarred attorney seeks reinstatement is whether the conduct which led to disbarment is so patently offensive and contrary to the spirit of the bar that reinstatement is impossible. There are certain acts of misconduct so repellant to the integrity of the bar and opposite to the interests of the public that no amount of time or rehabilitation can cure the injustice that Petitioner's reinstatement would cause. Therefore, when entertaining a petition for readmission, a review of the underlying offenses is required as an initial step in determining eligibility for reinstatement. Review of the facts of this case indicate that while Petitioner's misconduct was serious, it was not so egregious a breach of trust or repugnant to the integrity of the bar or interests of the public to obviate his reinstatement. Petitioner was Disbarred on Consent after he engaged in commingling and conversion of client funds and neglect of client files, delay, intentional failure to carry out terms of representation of clients, and misrepresentation to clients.

The conclusion that Petitioner's misconduct is not so egregious as to preclude his reinstatement at this time is supported by case law. In the case of In Re Anonymous No. 44 DB 82, 24 Pa.D. & C. 4th 434 (1994), an attorney was disbarred on consent after conversion of client and partnership funds. The Board concluded that while this conversion of funds was serious, it was not so egregious as to preclude readmission to the bar after a passage of time during which the attorney rehabilitated herself. In the case of In Re Anonymous No. 24 DB 84, 14 Pa.D. & C. 4th 235 (1991), an attorney was disbarred on consent following allegations of misuse of client funds and neglect. The attorney was reinstated as the Board concluded that the misconduct was not so egregious as to preclude his readmission. In the case of In Re Anonymous No. 67 DB 81, 13 Pa.D. & C. 4th 652 (1991), an attorney was disbarred for mismanagement, commingling and conversion of client funds. After review of the underlying actions, the Board determined that the attorney's misconduct was not so repugnant as to obviate his reinstatement.

Having determined that Petitioner's misconduct was not so egregious as to permanently avert his reinstatement to the Pennsylvania bar, the next query is whether a quantitative period during which Petitioner has engaged in qualitative rehabilitation

has elapsed since his 1986 disbarment, so as to make his readmission request timely. Petitioner has been removed from the practice of law for close to eleven years. A review of other reinstatement cases, while not a mandate for the model duration of disbarment, illustrate that the length of disbarment is subjective and based on the Petitioner's rehabilitation. In Re Anonymous No. 22 DB 79 & 33 DB 83, 21 Pa. D. & C. 4th 450 (1993) (attorney reinstated after twelve years during which time he received psychological counseling, overcame mental problems, administered a non-profit organization, worked as a teacher and a paralegal); In Re Anonymous No. 47 DB 86, 14 Pa. D. & C. 4th 588 (1992) (attorney reinstated after six years during which he successfully overcame his drug addiction through counseling); In Re Anonymous No. 24 DB 84, 14 Pa. D. & C. 4th 235 (1991) (attorney reinstated after seven years during which he received treatment for his cocaine and gambling addictions); In Re Anonymous No. 33 DB 82, 13 Pa. D. & C. 4th 464 (1991) (attorney reinstated after eight and one-half years during which he supported his family as an insurance salesman and did not engage in any financial improprieties such as the conduct that led to his disbarment).

In the instant matter, Petitioner's ten year absence from the bar included a period of qualitative rehabilitation.

Petitioner engaged in many church and community activities, including working with disabled children, assisting non-profit organizations, and tutoring students in the community. Petitioner was employed mainly as a paralegal, and he also worked at the [].

Petitioner spent part of the time he was disbarred residing in Cleveland in order to be near his two children and his step-daughter. While he was residing in Cleveland he worked as a paralegal. Petitioner testified that his ten years away from the practice of law enabled him to understand how he violated each client's trust. He stated that if he was able to practice law again, he would never commingle and convert client funds, and he would utilize the services of an accountant to help him keep track of his finances. Based on this evidence the Board concludes that Petitioner has participated in a qualitative period of rehabilitation during which he has come to understand the serious nature of his prior misconduct and how he can avoid such conduct in the future.

The next burden for Petitioner to overcome in order to be reinstated is compliance with Rule 218, Pa.R.D.E., which mandates that he demonstrate, with clear and convincing evidence, that he has the requisite moral qualifications, competency and learning in the law expected of a Pennsylvania lawyer and that his

resumption of the practice of law will not be subversive to the interests of the public nor offensive to the integrity of the bar.

This second step in the analysis of Petitioner's Petition for Reinstatement raised concerns for the Hearing Committee. The Committee found that Petitioner did not meet his burden under Rule 218. The Committee pinpointed three areas of concern. The first area of concern was Petitioner's preparation of his Reinstatement Questionnaire. The Committee found that the history of the completion of the original Petition and the Amended Petition demonstrated a lack of attention to detail in a matter of significance and reflected adversely on Petitioner's competence. The second and third areas of concern were Petitioner's financial affairs. The Committee found that Petitioner failed to manage his personal finances in the years preceding the filing of the Petition. The Committee believed this failure was notable considering the nature of Petitioner's conduct which led to his disbarment. Petitioner is indebted to the tax authorities for the years 1989-1993 and is currently on a payment plan. In addition to tax problems, Petitioner was in arrears on his child support obligation in the amount of \$10,000 until he made several lump sum payments directly to his former wife shortly before the Reinstatement Hearing occurred. The Committee believed that Petitioner's

history of failing to timely pay taxes and child support demonstrated a lack of diligence and attention to financial obligations.

While the Hearing Committee correctly found that Petitioner demonstrated problems in certain areas, the Board does not conclude that these areas are sufficiently troublesome to prevent Petitioner's reinstatement.

The Committee found that Petitioner's Amended Questionnaire contained numerous errors and omissions including schools attended, business addresses, identification of employers, and identification of outstanding civil actions. At the hearing, Petitioner testified as to the correct answers and sufficiently explained any omissions. A defective questionnaire should not be a bar to readmission where Petitioner testified at the hearing and fully explained any discrepancies. In Re Anonymous No. 1 DB 73, 29 Pa. D. & C. 3d 407 (1984). In that case the Hearing Committee recommended that the attorney not be reinstated because he neglected to list his outstanding judgments. The Board rejected this recommendation because it found that the attorney supplemented the information in the questionnaire. In the case of In Re Anonymous No. 19 DB 81, 4 Pa. D. & C. 4th 155 (1989), an attorney failed to list a civil suit in which the judgment was

discharged in bankruptcy, and he failed to include a copy of the bankruptcy docket entry, as well as an IRS lien. The attorney admitted to the bankruptcy and lien. The Board determined that the omission constituted form, not substance, and as such would not adversely affect his reinstatement. In the case of In Re Anonymous No. 26 DB 81, 7 Pa. D. & C. 4th 260 (1990), an attorney failed to include his involvement in three partnerships, several sources of income, misstated his income as being lower than it really was, and misstated the percentage of shares he owned in a corporation. These omissions and mistakes did not prevent the attorney from gaining readmission to the bar. In the case of In Re Anonymous No. 60 DB 75, 18 Pa. D. & C. 3d 640 (1981), the petitioner omitted from his questionnaire three civil actions to which he was a party and failed to include certain sources of income. The Board determined that such omissions were either explained or were not relevant to the issue. Although these cases indicate that discrepancies will not be an obstacle for an attorney seeking readmission, the Board emphasizes that it does not condone or encourage inaccurate or incomplete answers on questionnaires. These cases reflect the position that every mistaken response or oversight will not automatically disqualify a petitioner from regaining the privilege to practice law.

The Committee found that Petitioner's failure to timely pay federal and state income taxes was obstructive to his reinstatement. While Petitioner testified that he knew he was obligated to set money aside to pay taxes, he was not able to do so. Petitioner testified that he is on a payment plan to pay his debt, and he has made substantial progress in reducing his liens.

Petitioner also testified that he had a very limited income during the time period that he failed to pay taxes. A study of the case law reveals that owing back taxes to the federal and state governments does not reflect adversely on an attorney's moral qualifications. In Re Anonymous No. 20 DB 80, 36 Pa. D. & C. 3d 575 (1985). In that case, the petitioner owed \$19,000 in back taxes. The facts revealed that his income dropped dramatically while he was disbarred and he was unable to pay. However, the facts also demonstrated that the petitioner made small payments and was able to make restitution. In a similar case, an attorney who failed to satisfy judgments against him was not penalized for that when he petitioned for reinstatement. In Re Anonymous No. 82 DB 84, 8 Pa. D. & C. 4th 514 (1990). The attorney therein testified that he had been financially unable to make payments on the judgments but expected to satisfy them in two years. The Board found that although there was a legitimate

interest in having the judgments satisfied expeditiously, the attorney's testimony was credible that he was unable to pay. The Board recommended reinstatement.

In the instant case Petitioner owes back taxes and has made arrangements to pay through a payment plan and has substantially lowered his obligation. Petitioner also testified as to his limited income. The Board does not believe that Petitioner's failure to pay taxes reflects adversely on his moral qualifications and should not act as a barrier to his reinstatement.

The Committee lastly found that Petitioner's failure to timely pay child support reflected a neglect of financial affairs that suggested a lack of moral qualifications. Evidence was presented that Petitioner had an arrearage of \$10,000, however Petitioner made several lump sum payments to his former wife shortly before the reinstatement hearing that eradicated this arrearage. The Committee questioned Petitioner's motives behind his hasty payment so close to the reinstatement hearing. The Committee also noted that Petitioner did not pay the monies through the Domestic Relations Office, as established by court order, but sent them directly to his former wife. Although a court order existed pursuant to which Petitioner was obligated to

pay a certain sum each month, contempt proceedings were never brought against Petitioner to enforce this obligation. While it may have been wiser for Petitioner to make payment through the Domestic Relations Office, his failure to do so is not an adverse reflection on his moral character. Petitioner credibly testified that his straitened financial situation did not enable him to make regular payments.

Review of the record convinces the Board that Petitioner has met his burden of proving by clear and convincing evidence that he possesses the moral qualifications, competency and learning in the law necessary to resume practice in Pennsylvania, and his resumption of practice will not be detrimental to the bar nor subversive of the interests of the public. Petitioner presented extremely favorable character testimony from members of his community and the bar who have known him for many years. All of these witnesses testified that Petitioner was a moral person and a credit to the community. None of these witnesses expressed reservations concerning Petitioner's reinstatement. Petitioner expressed his extreme remorse for his misconduct and testified to the lessons he learned from his experience.

Petitioner presented evidence that he took the required

PBI courses at [] University in 1989, 1990 and 1992. Petitioner regularly reviews the advance sheets, National Law Journal, and other legal documents. Petitioner worked as a paralegal for the majority of his disbarment, and some of his employers testified at the hearing as to their favorable observations of his work.

In light of Petitioner's satisfaction of the Keller requirements, his compliance with the requisites of Rule 218, Pa.R.D.E., and his sincere remorse, the Board recommends that the Petition for Reinstatement be granted.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania 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: _____
Alfred Marroletti, Member

Date: May 8, 1996

Board Member Lieber did not participate in the February 1, 1996 adjudication.

PER CURIAM:

AND NOW, this 1st day of July, 1996, upon consideration of the Report and Recommendations of the Disciplinary Board of the Supreme Court of Pennsylvania dated May 8, 1996, 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.