

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 632, Disciplinary Docket
: No. 2 - Supreme Court
:
[ANONYMOUS] : No. 85 DB 1988 - 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 April 15, 1996, Petitioner, [], filed a Petition for Reinstatement. Petitioner was Suspended for a period of three years retroactive to August 15, 1988, pursuant to Order of the Supreme Court of Pennsylvania dated April 16, 1992. This matter was referred to Hearing Committee [] comprised of Chairperson [],

Esquire, and Members [], Esquire, and [], Esquire. A reinstatement hearing was held on June 18, 1996. Petitioner was represented by [], Esquire. Office of Disciplinary Counsel was represented by [], Esquire.

On August 15, 1996, the Committee filed its Report 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 September 27, 1996.

II. FINDINGS OF FACT

The Board adopts the findings of facts.

1. Petitioner, [], was born on January 14, 1944. He currently resides at []. Petitioner is married with two children. His family currently resides at []. Petitioner was admitted to practice law in Pennsylvania in 1974.

2. Petitioner was Suspended for three years retroactive to August 15, 1988, by Order of Court dated April 16, 1992.

3. Petitioner was suspended as a result of his January 14, 1988 conviction in the United States District Court for the territory of Guam for the offense of misprision of a felony in violation of 18 U.S.C. '4. Petitioner was sentenced to a fine of \$10,000 and was to perform 200 hours of community service over a period of one year through the [] County Bar Association.

4. Petitioner has not engaged in the practice of law since January 1988, eight months prior to his Suspension.

5. Petitioner was self-employed as a management consultant from August 1988 through April 1991. Petitioner was concerned that some of his consulting activities might be labeled the practice of law, so he accepted a position with [A] Company in Hong Kong. After that company was sold, he accepted a position with [B] Corp. as a management consultant and moved to Japan, where he currently resides.

6. Petitioner's family continued to live in [] during the time that he has resided in Hong Kong and Japan.

7. During the period of his suspension, Petitioner has not been a member of any profession or organization or the holder of any license which resulted in a proceeding concerning removal, suspension, or revocation of said license or other discipline.

There has not been any charges of fraud made or claimed against the Petitioner during the period of his Suspension.

8. Petitioner subscribed to the ABA Journal and the Pennsylvania Reporter during the period of his Suspension. In addition, Petitioner completed the Pennsylvania Basic Practice Course at [] University. Petitioner reviewed PBI videotapes in 1995 and 1996.

9. Three witnesses testified at the reinstatement hearing as to Petitioner's character. Two of the witnesses are members of the [] legal community. All of the witnesses attested to Petitioner's impeccable reputation for honesty and integrity in the community. The attorney witnesses testified that Petitioner's return to practice would enhance the community because of his expertise in financial and business development.

10. Petitioner testified on his own behalf. He described his intention to develop an international practice relative to advising companies. He stated his desire to return to Pennsylvania because of family reasons, in that he has lived apart from his wife and children since 1991 due to his employment in the Far East. Petitioner testified that he has no desire to practice with a large law firm as he did previous to his suspension.

11. Petitioner has no prior record of discipline.

III. CONCLUSIONS OF LAW

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.

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

The principal objectives of the disciplinary system are to determine whether an attorney possesses the requisite fitness to practice law and to protect the public from unfit attorneys. Office of Disciplinary Counsel v. Keller, 509 Pa. 573, 506 A.2d 872 (1986). Pursuant to Rule 218(a), Pa.R.D.E., an attorney who is suspended for a period exceeding one year may not resume practice until reinstated by Order of the Supreme Court of Pennsylvania. In order for Petitioner to gain reinstatement to the practice of law in this Commonwealth after suspension, he has the burden of demonstrating by clear and convincing evidence that he possesses the moral qualifications, competency and learning in the law required for admission to practice law. Part of Petitioner's burden requires that he demonstrate that his 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. (Rule 218(c)(3)(i), Pa.R.D.E.)

In determining whether Petitioner clearly demonstrated his present fitness to practice law, the Board considers the nature of Petitioner's misconduct, his present competence and legal abilities, his character, rehabilitation, and the degree of remorse

expressed. Philadelphia News, Inc. v. Disciplinary Board of the Supreme Court, 468 Pa. 382, 363 A.2d 779 (1976).

Petitioner was suspended as a result of his conviction for misprision of a felony. Petitioner was acting as counsel to an investment banking firm. Petitioner became aware of the fraudulent nature of certain transactions entered into by the client, but he failed to report such transactions and thus affirmatively concealed his knowledge of these crimes. Petitioner pleaded guilty to one count of misprision of a felony and received a fine of \$10,000 plus community service. Petitioner did not appeal his sentence, and furthermore, cooperated extensively with the United States Attorney's Office. Petitioner paid his fine in full and otherwise complied with the terms of his sentence.

Since his suspension, Petitioner has not engaged in the practice of law. Because of his concern that his consulting practice might be wrongly perceived as the practice of law, Petitioner moved to the Far East and worked as a management consultant for various companies. During his suspension, Petitioner continued to develop his expertise in the area of international finance and business, while simultaneously keeping current with the

law in Pennsylvania. In achieving this goal, Petitioner attended a three day Basic Practice Course at [] University, reviewed the ABA Journal and Pennsylvania Reporter, and viewed videotapes in various subject areas. If reinstated, Petitioner wishes to combine aspects of his present employment with the ability to practice law.

Petitioner's reasons for seeking readmission to the bar in Pennsylvania are twofold in that he wants to be with his family again and he believes there are opportunities in his field of expertise that can be developed in the [] area.

Petitioner's reputation in the community is excellent.

The witnesses thought highly of Petitioner's skills as an attorney and his reputation for integrity and honesty. These witnesses had no hesitation in recommending Petitioner to handle a legal matter.

Petitioner demonstrated his remorse for his conduct and his intention to avoid such conduct in the future. Petitioner's testimony demonstrates that he has carefully considered his future career path and has worked hard to put his conviction behind him.

The record supports a finding that Petitioner is rehabilitated and ready to return to the practice of law.

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: _____
Thomas A. Leonard, Chairman

Date: November 6, 1996

Board Member George did not participate in the September 27, 1996 adjudication.

O R D E R

PER CURIAM:

AND NOW, this 30th day of December, 1996, upon consideration of the Report and Recommendations of the Disciplinary Board of the Supreme Court of Pennsylvania dated November 6, 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.

Mr. Justice Zappala did not participate in this matter.