

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF A	§
MEMBER OF THE BAR OF THE	§ No. 116, 2002
SUPREME COURT OF THE	§
STATE OF DELAWARE:	§ Board Case No. 46, 2001
	§
JOHN J. SULLIVAN, JR.	§
	§
Petitioner.	§

Submitted: October 7, 2003
Decided: November 12, 2003

Before **VEASEY**, Chief Justice, **HOLLAND**, and **BERGER**, Justices.

ORDER

This 12th day of November 2003, upon consideration of John J. Sullivan, Jr.'s petition to modify the conditions of his reinstatement and the Office of Disciplinary Counsel's (ODC) response thereto, it appears to the Court that:

(1) Sullivan was suspended from the practice of law for a period of eighteen months beginning September 1, 1998 for numerous violations of the Delaware Lawyers' Rules of Professional Conduct (DLRPC), including making false statements to clients, failing to act with diligence, and failing to provide competent representation.¹ The Court granted Sullivan's petition for reinstatement in 2002 subject to certain conditions, including obtaining

¹*In re Sullivan*, 727 A.2d 832 (Del. 1999).

malpractice insurance with limits approved by the ODC.² Sullivan now seeks a modification of that condition to his reinstatement.

(2) Sullivan contends that, despite his good faith efforts, he has been unable to obtain malpractice insurance. He asserts that his inability “to obtain malpractice insurance has effectively prevented him from being wholly readmitted to the practice of law.” Sullivan argues that the conditions of his reinstatement should be modified and made consistent with the conditions imposed upon another lawyer, Elizabeth Rodriguez Howard, who recently was reinstated following a four-year suspension. In Howard’s case, the Court approved the Board’s condition that Howard be reinstated even if, despite good faith efforts, she could not obtain malpractice insurance, so long as Howard informed each client that she did not have malpractice insurance, and each client signed a written waiver acknowledging that fact.³ Sullivan urges the Court to modify the condition that he obtain malpractice insurance and allow him, instead, to adhere to the procedure set forth in *In re Howard*.

(3) The ODC opposes Sullivan’s petition. The ODC first contends that Sullivan has not provided adequate documentation to establish whether he,

² *In re Sullivan*, 801 A.2d 933 (Del. 2002).

³ *In re Howard*, Del. Supr., No. 701, 2002, Walsh, J. (Jan. 27, 2003) (adopting Board’s recommendation of reinstatement with conditions).

in fact, has made good faith efforts to obtain malpractice insurance. Second, the ODC argues that Sullivan's case is distinguishable from *In re Howard* because Sullivan's misconduct, unlike Howard's, had resulted in several legal malpractice actions filed against him, with at least one of those actions resulting in a civil judgment. Finally, the ODC asserts that Sullivan's contention that he has complied with all of the other conditions of his reinstatement, except for the condition of malpractice insurance, is not accurate. The ODC contends that Sullivan agreed to a schedule for repaying the costs of the disciplinary proceedings but has failed to adhere to the proposed schedule and has not requested a modification of the schedule.

(4) After careful consideration of the parties' respective positions, the Court has determined that Sullivan's petition to modify the conditions of his reinstatement should be denied. We find the circumstances of Sullivan's prior misconduct, which led to his suspension, to be distinguishable from the circumstances in Howard's case. Sullivan's prior misconduct led to several civil lawsuits asserting malpractice claims against him, and judgment was entered against him as a result. Under the circumstances, we continue to believe, at the present time, that "it would be a breach of our duty to the public if we were to permit a lawyer with Sullivan's history of malpractice to be

reinstated as an active member of the Bar without adequate malpractice insurance coverage.”⁴

NOW, THEREFORE, IT IS ORDERED that the petition for modification of the conditions of reinstatement is DENIED.

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice

⁴ *In re Sullivan*, 801 A.2d at 937.