

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 2179 Disciplinary Docket No. 3
: :
JAMES FRANCIS DONOHUE : No. 112 DB 2013
: :
: Attorney Registration No. 56692
: :
PETITION FOR REINSTATEMENT : (Butler County)

ORDER

PER CURIAM

AND NOW, this 6th day of July, 2020, the Petition for Reinstatement is granted. Petitioner is directed to pay the expenses incurred by the Board in the investigation and processing of the Petition for Reinstatement. See Pa.R.D.E. 218(f).

A True Copy Patricia Nicola
As Of 07/06/2020


Attest:
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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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 dated July 7, 2015, the Supreme Court of Pennsylvania suspended Petitioner, James Francis Donohue, for a period of three years on consent. By Petition filed on August 29, 2019, Petitioner seeks reinstatement to the bar. Office of Disciplinary Counsel (“ODC”) filed a response on October 4, 2019.

Following a prehearing conference on November 14, 2019, a District IV Hearing Committee (“Committee”) conducted a reinstatement hearing on December 18, 2019. Petitioner and four witnesses testified, and Petitioner introduced into evidence exhibits P-1 through P-3, without objection. ODC did not call any witnesses or offer any exhibits.

On February 3, 2020, Petitioner filed a post-hearing brief in support of his reinstatement. ODC is not opposed to reinstatement and waived its right to file a brief by letter of February 5, 2020.

By Report filed on March 13, 2020, the Committee recommended that the Petition for Reinstatement be granted.

The Board adjudicated this matter at the meeting on April 22, 2020.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner is James Francis Donohue, born in 1961 and admitted to the practice of law in the Commonwealth of Pennsylvania in 1989. Petitioner resides at 1396 Riverview Road, Crescent, PA 15046. Petitioner is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

2. By Order dated July 7, 2015, the Supreme Court of Pennsylvania suspended Petitioner on consent for three years.

3. Petitioner was suspended for misappropriating entrusted funds in four client matters, totaling approximately \$48,066.00. Joint Petition in Support of Discipline on Consent (“J. Pet.”).

4. Petitioner was entrusted with \$38,971.04 in settlement funds on behalf of his client Beau Burgunder, but due to disbursements made by Petitioner which were not made to or on behalf of Mr. Burgunder, the balance in Petitioner’s IOLTA Account was at least \$14,567.50 below the entrusted amount. J. Pet. ¶¶ 5-12.

5. ODC’s investigation of Mr. Burgunder’s complaint led to an audit of Petitioner’s records, which revealed that Petitioner had received settlement proceeds on behalf of another client, Mr. Suchonic, in which \$1,250.00 was to be paid to Advantage Chiropractic Center on behalf of Mr. Suchonic for an unpaid bill. J. Pet. ¶¶ 25-28.

6. Petitioner’s IOLTA Account was \$744.50 below the entrusted amount due to disbursements made by Petitioner which were not made to or on behalf of Mr. Suchonic. J. Pet. ¶ 29.

7. The audit also revealed an entrustment of funds in the amount of \$2,500.00 as a result of a dispute between Petitioner’s client Ms. Leihgeber and another party; however, the funds were not placed into a client escrow account and/or segregated from personal funds. J. Pet. ¶¶ 30-34.

8. The audit uncovered additional entrusted funds in the amount of \$5,485.30 for the Estate of Rose M. Jackson/Virginia Jackson, which were placed in Petitioner’s IOLTA Account; however, the account was at least \$5,418.47 below the

entrusted amount due to disbursements made by Petitioner which were not made to or on behalf of the Estate. J. Pet. ¶¶ 35-48.

9. Petitioner also deposited or caused to be deposited at least \$9,500.00 of personal funds into his IOLTA Account in order to replace entrusted funds and did not maintain a complete check register or a separately maintained client ledger. J. Pet. ¶¶ 49-54.

10. Petitioner used the funds for college tuition payments for his children, living expenses, office rent, and payroll. Reinstatement Questionnaire ("RQ") No. 5(b).

11. Petitioner suffered from drug addiction at the time of his completion of law school in 1988 and was an inpatient at Gateway Rehabilitation in Allegheny County for 28 days in 1988. N.T. 44.

12. Subsequent to his time at Gateway, Petitioner spent 90 days as an inpatient at Butler A Center, now known as the Ellen Gaiser Addiction Center. *Id.*

13. Petitioner has been sober since July 13, 1988. He maintains an active role in Narcotics Anonymous ("NA"), both sponsoring individuals and working with his own sponsor to maintain sobriety. N.T. 45-46.

14. Subsequent to his admission to the Pennsylvania bar in 1989, Petitioner practiced law in Butler County, primarily as a sole practitioner concentrating in criminal law, personal injury, workers' compensation, and discrimination work. N.T. 46-47.

15. Petitioner was also admitted to the bars of New York and Connecticut, as well as federal courts. Petitioner was reciprocally suspended in these jurisdictions. N.T. 43, 47; RQ No. 7(a).

16. During the time frame of his misconduct, Petitioner was married to his first wife, who suffered from substance abuse issues. Petitioner became overwhelmed with the stress of dealing with his wife's problems while taking care of their five children and household concerns, causing him to lose track of his office records and financial management. N.T. 48.

17. Petitioner testified that he "lost [his] way completely with maintaining [his] office records and continuing to keep track of the money, and [he] just got in a really bad place." *Id.*

18. Petitioner placed himself in financial situations which he could not sustain, both professionally and personally, and understands that he cannot do that going forward. N.T. 48-49.

19. Petitioner and his first wife eventually divorced and he became involved in a contentious custody battle for their younger children, which has been concluded. N.T. 41, 49.

20. Petitioner is remarried and has custody of his youngest son, who is 16. N.T. 39, 59.

21. Petitioner has maintained employment during his suspension, first working for Steam Services of America and Diversified Rail Services, which required him to work away from home. As a consequence of his custody dispute, Petitioner decided to

seek local employment and currently is employed at Laurel Vending and Amazon, performing warehouse work at both organizations. Petitioner works the day shift at Laurel and works late nights and weekends at Amazon. N.T. 53-56.

22. Petitioner fulfilled his required Continuing Legal Education credits for reinstatement and reviewed the Pennsylvania Law Weekly during his suspension. N.T. 56-57; RQ No. 19(b).

23. Petitioner reimbursed all funds to his victims prior to the audits conducted by Petitioner. N.T. 49; RQ No. 5(c).

24. Petitioner has financial obligations in the form of tax liens that have been filed by the Internal Revenue Service ("IRS") totaling approximately \$42,786.44. N.T. 50; P-1.

25. Petitioner has retained Don Augenstein, an accountant in Canfield, Ohio, specializing in tax liens, to work with the IRS on Petitioner's behalf and facilitate a negotiated payment plan. N.T. 50.

26. Petitioner has filed all current tax returns. N.T. 51.

27. In ODC's February 5, 2020 letter waiving its post-hearing brief, ODC stated that it was satisfied with the evidence presented at the reinstatement hearing as to the steps taken to address Petitioner's federal tax liens.

28. Petitioner has a judgment against him in Allegheny County as a result of a dispute over tuition for his son's tutoring services, which he testified he intends to pay. N.T. 52-53, 57.

29. Petitioner testified to a plan of re-entry into the practice of law with contract work for research initially and then a return to solo practice in either Allegheny County or Beaver County, local to where he currently resides. N.T. 57-58.

30. Petitioner hopes that with more income through legal work, he will be able to pay off tax liens and the Allegheny County judgment. N.T. 57.

31. Petitioner demonstrated sincere remorse for his misconduct. He is very sorry that he did not seek help to manage his financial situation before he improperly used the entrusted funds. N.T. 58.

32. Petitioner testified that he has learned a lot through his experience as a suspended lawyer and has a new appreciation for the obligations of being honest and upholding the law in the legal profession. *Id.*

33. Petitioner presented the credible testimony of four witnesses.

34. Steven Norris, Esquire, is a licensed lawyer in Texas and traveled from Texas to testify on Petitioner's behalf. Mr. Norris attended law school with Petitioner and has a long-standing friendship with him. Mr. Norris is aware of Petitioner's addiction and sobriety efforts and Petitioner's difficult first marriage. N.T. 12-16.

35. Mr. Norris testified that he has worked with Petitioner on a professional basis doing consulting and trying a few cases together. Mr. Norris described Petitioner's legal skills as coherent, thorough, and excellent. N.T. 12-14.

36. Mr. Norris testified that Petitioner's reinstatement to the practice of law will not pose a threat to the public. N.T. 18.

37. Victor E. Vouga, Esquire has practiced law in Pennsylvania for thirty-six years, primarily in Butler County. He has known Petitioner for many years. N.T. 20-21.

38. Mr. Vouga testified that Petitioner is an excellent lawyer, able to think on his feet. Mr. Vouga described Petitioner as "battling for the little guy," working hard on every case, whether they were good or bad. Mr. Vouga has no hesitation in referring cases to Petitioner upon reinstatement. N.T. 23.

39. Mr. Vouga testified that Petitioner's reputation in the community for honesty and integrity is very good, stating that "[e]verybody knew that [Petitioner] was a very smart, driven, hardworking attorney." N.T. 24.

40. Mr. Vouga is familiar with Petitioner's misconduct, as he has spoken with Petitioner about the charges that led to his suspension. According to Mr. Vouga, Petitioner has been candid with others concerning his misconduct. Mr. Vouga's knowledge of the misconduct does not change his view that Petitioner should be readmitted to the practice of law. N.T. 24-25.

41. Mr. Vouga believes Petitioner will be an asset to the legal community, the bar association, and to his clients, because Petitioner's experience has made him a better person. N.T. 25.

42. Elizabeth M. Tarasi, Esquire has been a licensed attorney in Pennsylvania since 1991 and practices in Pittsburgh. Ms. Tarasi has known Petitioner for a long time, as their children attended the same school. Over the years she has gotten to know Petitioner personally and professionally, working together on cases. N.T. 28-29, 31.

43. Ms. Tarasi described Petitioner as an excellent attorney and she has no reservations about his readmission to practice, as she believes Petitioner has learned his lesson. N.T. 31, 32.

44. Paul Shirey is a retired IRS examiner from Beaver County. Mr. Shirey knows Petitioner from many years of attending NA meetings. N.T. 35.

45. Mr. Shirey testified that Petitioner has been active in NA, helping other addicts both in meetings and through long-term sponsorships. N.T. 36.

46. ODC does not oppose reinstatement.

III. CONCLUSIONS OF LAW

1. Petitioner demonstrated by clear and convincing evidence that he has the moral qualifications, competency and learning in the law required for admission to practice of law in this Commonwealth. Rule 218(c)(3), Pa.R.D.E.

2. Petitioner demonstrated by clear and convincing evidence 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. Rule 218(c)(3), Pa.R.D.E

IV. DISCUSSION

Petitioner seeks readmission to the practice of law in Pennsylvania following his suspension on consent for a period of three years, ordered by the Supreme Court of Pennsylvania on July 7, 2015. Pursuant to Rule 218(a)(1), Pa.R.D.E., an attorney who is suspended for a period exceeding one year may not resume the practice of law until reinstated by the Supreme Court of Pennsylvania.

Petitioner bears the burden of proving by evidence that is clear and convincing, that he is morally qualified, competent, and learned in the law and 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. Pa.R.D.E. 218(c)(3). A reinstatement proceeding must be a searching inquiry into a lawyer's present professional and moral fitness to resume the practice of law, as the object of concern is not solely the transgressions that gave rise to the lawyer's suspension, but rather, the nature and extent of the rehabilitative efforts 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 of Pennsylvania*, 363 A.2d 779, 780-781 (Pa. 1976).

The misconduct for which Petitioner was suspended on consent involved his commingling and conversion of entrusted funds. Petitioner used client funds to pay law practice expenses and personal expenses and deposited personal funds in his IOLTA account in order to reimburse clients for the monies he improperly disbursed to himself. He failed to maintain appropriate and required records and ledgers for the entrusted

funds. Although Petitioner's misconduct represented a serious breach of his fiduciary duties to his clients and caused his suspension from the practice of law, we conclude that he has met his reinstatement burden and we recommend that the Petition for Reinstatement be granted.

Petitioner presented clear and convincing evidence that he spent his suspension period since 2015 engaged in genuine rehabilitation and that he is fit to be reinstated to the practice of law through demonstration of his moral qualifications, competence, and knowledge in the law. See *In the Matter of Mark B. Peduto*, No. 75 DB 2015 (D. Bd. Rpt. 12/11/2019) (S. Ct. Order 1/21/2020); *In the Matter of Madeline E. Schwartz*, No. 77 DB 2010 (D. Bd. Rpt. 6/10/2019) (S. Ct. Order 7/22/2019).

The uncontradicted testimony of four character witnesses and Petitioner's own testimony prove that Petitioner is fit to practice law. Petitioner accepted full responsibility for his misconduct and expressed genuine remorse. The earliest expression of Petitioner's contrition can be found in his reimbursement of client funds prior to ODC's investigation of this matter. Further, Petitioner cooperated with Office of Disciplinary Counsel during its investigation and submission of the Joint Petition in Support of Discipline on Consent, wherein Petitioner agreed to a three year suspension of his license.

Petitioner explained the circumstances of his misconduct, but did not minimize his wrongful actions. During the time frame of the misconduct, Petitioner became overwhelmed by the stress and strain of a troubled marriage to a substance-addicted spouse. His struggles to maintain his household, including the wellbeing of his

children, while attempting to assist his former spouse with her problems, caused him to neglect his professional responsibilities and mismanage his IOLTA account. Fortunately Petitioner, who himself experienced addiction issues as a young man, was able to maintain his sobriety during this stressful time, despite his difficulty managing his household and solo practice. In his testimony before the Committee, Petitioner made clear that he should not have placed himself into financial situations that he could not sustain, and that he has since learned to maintain proper records and avoid doing things that he simply cannot afford to do.

Since his suspension was imposed in 2015, Petitioner has divorced, remarried a supportive spouse, and gained custody of his youngest child. He has maintained consistent employment throughout his suspension and currently works two warehouse jobs performing physical labor to help support his family. Petitioner's changed lifestyle and reduced economic circumstances have increased his awareness of the importance of living within his means. Petitioner has used his time on suspension as a learning experience and has a new appreciation for his obligations as an attorney.

Petitioner addressed his tax concerns. He has filed all current tax returns and retained an accountant to assist in the negotiation of tax liens totaling approximately \$42,786. Petitioner is willing to enter into a repayment plan with the IRS, but with his current employment situation, he is not in a financial position to repay the liens in full or satisfy a judgment against him in Allegheny County. Petitioner is hopeful that with his reinstatement to the practice of law, he can work at a higher wage than his current earnings and repay his debts.

Petitioner fulfilled his required Continuing Legal Education courses and reviewed the Pennsylvania Law Weekly during his suspension. If reinstated, Petitioner plans to perform contract research work as a way to ease himself into a solo practice in Allegheny and Beaver Counties.

Petitioner's four character witnesses provided credible testimony. These witnesses have known Petitioner personally and professionally for many years and were knowledgeable as to the personal difficulties that led to his misconduct. They addressed his ability to maintain his sobriety through challenging times and Mr. Shirey described Petitioner's active role in NA to help and sponsor others. Three of the witnesses are attorneys who have worked with Petitioner and credibly attested to his competency in the law. In particular, Mr. Vouga, who has practiced law in Butler for several decades, described Petitioner as a natural attorney, at ease in the courtroom, with an excellent reputation in the community as an intelligent and hard-working attorney. Mr. Vouga testified that Petitioner "battled for the little guy," which sentiment was echoed by Ms. Tarasi, who spoke to Petitioner's painstaking exploration of every case. Mr. Norris described Petitioner as a coherent and thorough practitioner. These attorney-witnesses have no hesitation in recommending Petitioner's reinstatement to the bar, and would refer cases to him in the future.

Under similar circumstances, attorneys have been reinstated to practice law in this Commonwealth. In *In the Matter of Bruce R. Akins, Sr.*, No. 58 DB 1989 (D. Bd. Rpt. 4/4/2017) (S. Ct. Order 5/12/2017), the Supreme Court reinstated a petitioner-attorney who had been suspended for a period of three years for commingling personal

and entrusted funds on twenty-seven occasions and using the funds for his personal and business purposes. Mr. Akins expressed sincere remorse and an understanding of his misconduct and how to correct his actions for the future, and offered the credible testimony of four character witnesses. The petitioners in the above-cited matters of ***Peduto*** and ***Schwartz*** engaged in misappropriation of entrusted funds and were reinstated after demonstrating clear and convincing evidence of rehabilitation.

Similarly, Petitioner accepted responsibility for his actions, demonstrated sincere remorse, successfully engaged in rehabilitation, and has the support of community members.

Upon this record, we conclude that Petitioner is a moral, competent, hard-working individual with learning in the law whose reinstatement will not represent a danger to the public, or harm the integrity and standing of the bar.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Petitioner, James Francis Donohue, 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: 
Dion G. Rassias, Member

Date: 6.10.20