

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 1009 Disciplinary Docket No. 3
: :
: No. 18 DB 2005
ROSANNE KAY DIEHL : :
: Attorney Registration No. 64261
: :
PETITION FOR REINSTATEMENT : (Allegheny County)

ORDER

PER CURIAM:

AND NOW, this 16th day of March, 2012, upon consideration of the Report and Recommendations of the Disciplinary Board dated November 15, 2011, the Petition for Reinstatement is denied.

Pursuant to Rule 218(f), 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.

A True Copy Patricia Nicola
As Of 3/16/2012

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

On October 1, 2010, Rosanne Kay Diehl filed a Petition for Reinstatement to the bar of the Supreme Court of Pennsylvania. Ms. Diehl was disbarred on consent by Order of the Court dated April 15, 2005. Office of Disciplinary Counsel filed a Response to Petition on December 2, 2010 and opposes reinstatement.

A reinstatement hearing was held on January 20, 2011, before a District IV Hearing Committee comprised of Chair Edwin W. Smith, Esquire, and Members Susan M. Key, Esquire, and Lisa A. Zemba, Esquire. Petitioner appeared pro se. Petitioner testified and called five witnesses.

The Hearing Committee filed a Report on April 25, 2011 and recommended that the Petition for Reinstatement be denied.

Petitioner filed a Brief on Exceptions on May 17, 2011.

Office of Disciplinary Counsel filed a Brief Opposing Exceptions on June 6, 2011.

This matter was adjudicated by the Disciplinary Board at the meeting on July 23, 2011.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner is Rosanne Kay Diehl. She was born in 1951 and was admitted to the practice of law in Pennsylvania in 1992. Her current address is 209 S. Braddock Ave. #2B, Pittsburgh PA 15221. She is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

2. On or about February 21, 2005, Petitioner signed a resignation under Rule 215 of the Pennsylvania Rules of Disciplinary Enforcement, indicating that she wished to resign. The resignation acknowledged the then pending investigation into allegations that she had been guilty of attorney misconduct. The resignation acknowledged that she had pleaded guilty and was criminally convicted in the United States District Court for the

Western District of Pennsylvania of conspiracy to commit bank fraud in violation of 18 U.S.C. § 371. Further, the resignation acknowledged that the crime Petitioner was convicted of consisted of a “serious crime” as defined by the Rules of Disciplinary Enforcement.

3. By Order of the Supreme Court of Pennsylvania dated April 15, 2005, Respondent was disbarred on consent.

4. Within the guilty plea referenced above, Petitioner pleaded guilty to Count I, “That in or around June 1998 and continuing thereafter until in or around May 2000, in the Western District of Pennsylvania and elsewhere, NEP, which is the National Endowment Program, also operated under the names the Law Offices at the National Legal Academy and the Law Offices at National Endowment, and Petitioner and Lynne Lamar knowingly and willfully did conspire, combine, confederate and agree together and with each other, to commit the offenses of bank fraud and fraudulent representation in connection with the loan application and wire fraud and mail fraud.”

5. Within the plea, the United States Attorney acknowledged that while there was some evidence that the Petitioner was working as an attorney, the substance of the offense did not directly deal with her actions as an attorney.

6. Petitioner was sentenced to the custody of the United States Bureau of Prisons to be imprisoned for a term of 12 months and one day. In addition, she was ordered to pay restitution to various wronged entities, and to undergo a term of supervised release for a period of five years thereafter.

7. Petitioner served her period of imprisonment as well as the period of supervised release. The period of supervised release was discharged by order of Court of February 29, 2008.

8. With regard to the restitution, Petitioner satisfied those debts or compromised those debts to the satisfaction of the Court.

9. Following her release from prison, Petitioner ceased any involvement with her co-conspirator, Lynne Lamar.

10. Petitioner worked for the Law Office of Lois Glanby in McMurray, Pennsylvania from January 2010 to June 2010, when the office closed. Petitioner described her employment duties as secretarial in nature, such as routing mail, organizing files, and answering the telephones.

11. Neither Petitioner nor Ms. Glanby filed with the Office of the Secretary the necessary documentation pursuant to Rule 217(j)(5) certifying that Petitioner was being monitored for compliance with subdivision (j) of Rule 217.

12. Petitioner was previously employed by Ms. Glanby during the period of time when the acts which led to her criminal conviction, and upon which her disbarment on consent was predicated, took place.

13. Ms. Glanby was transferred to inactive status on May 24, 2010.

14. Another attorney employed at the firm, Jill Devine, was suspended from the practice of law for one year and one day by Order of the Court dated June 23, 2010.

15. Petitioner believed that as she was only employed as office and support staff, she did not need to send any notice to the Office of the Secretary.

16. In response to Question 9(a) on the Reinstatement Questionnaire, Petitioner failed to list two state court criminal charges.

17. Petitioner acknowledged that she did not list these on her petition as she believed they were dismissed and subsumed within the federal indictment to which she later pled guilty.

18. In response to Question 10(d) on the Reinstatement Questionnaire, Petitioner failed to list Allegheny County Tax Liens entered against her.

19. Petitioner acknowledged that she did not list these on her petition under the belief that the property had been foreclosed upon. Further, Petitioner filed for bankruptcy and thought that those tax liens were discharged through bankruptcy.

20. Prior to Petitioner's disbarment on consent, she received an Informal Admonition on October 17, 2001, administered for violations of the Rules of Professional Conduct in two matters. The facts of the underlying misconduct show that Petitioner was involved with Lynne Lamar, her co-conspirator, and ratified the unauthorized practice of law by Ms. Lamar by introducing Ms. Lamar to individuals as Petitioner's "associate."

21. Petitioner acknowledged signing the Informal Admonition but did not recall the underlying facts.

22. Petitioner presented the testimony of five character witnesses.

23. Belinda Woods, Thomas Baldwin, Patricia Thompson, Mie Lipowcan, and James Lemieux testified credibly that Petitioner is a kind, compassionate person who would be a benefit to the legal community.

24. Mr. Baldwin was not familiar with the charges filed against Petitioner, but was aware that she was convicted in federal court.

25. Mr. Lemieux is a former attorney who is disbarred in Pennsylvania.

26. Petitioner fulfilled the necessary requirements for Continuing Legal Education in order to be reinstated.

27. If reinstated, Petitioner plans to practice in Pittsburgh as a sole practitioner.

III. CONCLUSIONS OF LAW

1. The misconduct for which Petitioner was disbarred is not so egregious as to preclude reinstatement. Office of Disciplinary Counsel v. Keller, 506 A.2d 872 (Pa. 1986).

2. Petitioner has not demonstrated by clear and convincing evidence that a sufficient period of time has passed since the misconduct, during which she engaged in a qualitative period of rehabilitation. In re Verlin, 731 A.2d 600 (Pa. 1999).

3. Petitioner has not demonstrated, by clear and convincing evidence, that she possesses the moral qualifications, competency and learning in the law required for admission to practice law in Pennsylvania, and that her resumption of the practice of law within the Commonwealth will be neither 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).

IV. DISCUSSION

Petitioner seeks reinstatement to the bar of the Supreme Court of Pennsylvania following her disbarment on consent by Order of the Supreme Court dated April 15, 2005.

Petitioner's request for readmission is initially governed by the standard set forth by the Supreme Court of Pennsylvania in Office of Disciplinary Counsel v. Keller, 506 A.2d 872 (Pa. 1986). The Keller standard states that when reinstatement is sought by a disbarred attorney, the threshold question must be whether the magnitude of the breach of trust would permit 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 interest.¹

This inquiry recognizes that some forms of misconduct are so egregious that they will bar the attorney from successfully gaining reinstatement. As a threshold matter, therefore, the Board must determine whether Petitioner's breach of trust was so egregious as to preclude her reinstatement. See In re Verlin, 731 A.2d 600 (Pa. 1999); Office of Disciplinary Counsel v. Costigan, 664 A.2d 518 (Pa. 1995).

Petitioner's breach of trust involved her criminal conviction for conspiracy to commit bank fraud. Petitioner and another individual were involved as partners in an entity that was purportedly organized to create an unaccredited law school or "legal academy." Petitioner applied for numerous loans in the name of the program, presented false tax returns, false W-2 statements, and false pay stubs in connection with those loan applications. Petitioner was sentenced to one year and one day in federal prison and five years of supervised release, which she completed on February 29, 2008.

Petitioner's misconduct is very serious and regrettable; however, the Court has declined to find that bank fraud and similar misconduct are acts sufficiently egregious to bar reinstatement. In re Greenberg, 749 A.2d 434 (Pa. 2000) (misappropriation of \$2 million and commission of perjury in bankruptcy proceeding not so egregious as to

¹ As noted by the Court in In re Verlin, 731 A.2d 600 (Pa. 1999), this threshold inquiry overlaps somewhat with the requirements of Rule 218(c)(3).

preclude reinstatement); In re Verlin, 731 A.2d 600 (Pa. 1999) (conspiracy, perjury, false swearing and theft by deception were not so egregious to preclude reinstatement); In re Anonymous No. 47 DB 86, 14 D. & C. 4th 588 (1992) (reinstated after disbarment for conspiracy with a bank officer, misapplication of bank funds, filing false statements and loan applications).

A related question in reinstatement from disbarment matters is whether Petitioner has met her burden of proving by clear and convincing evidence that her 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. Office of Disciplinary Counsel v. Keller, supra. The Board must consider the quantity of time that has passed since Petitioner was disbarred and her efforts at rehabilitation, in order to determine whether the detrimental impact of the misconduct on the public trust has dissipated. In re Verlin, supra.

Petitioner was disbarred on consent on April 15, 2005. At the time she filed her Petition for Reinstatement in October 2010, she had been removed from the practice of law for approximately five and a half years. The only firm timetable set by the Supreme Court in reinstatement from disbarment matters is the five year waiting period after disbarment Pa.R.D.E. 218(b). There is no guarantee of regaining a law license once an attorney is disbarred. Whether a sufficient time has passed must be determined by the unique circumstances of each case. The record in this case demonstrates that the period of disbarment has not been qualitative and meaningful to Petitioner.

Subsequent to her disbarment, Petitioner was employed by Lois Glanby Law Offices in what Petitioner describes as a support staff capacity. Sufficient documentation of Petitioner's employment was not filed indicating that during the period of employment,

Petitioner was monitored in compliance with Pa.R.D.E. 217(j) by a supervising attorney. Also troubling is the fact that various attorneys within that law office were transferred to inactive status or suspended from the practice of law during the time Petitioner worked there. This association with two formerly admitted members of the bar and the lack of supervision by a licensed attorney weighs against a finding that Petitioner engaged in qualitative rehabilitation.

The record does not indicate that Petitioner engaged in any civic or charitable activities to support a finding of rehabilitation. Petitioner presented five character witnesses who opined that Petitioner is a kind and compassionate person who helped them in various ways. One witness was not aware of the charges against Petitioner. Another of the witnesses offered is a former attorney who is disbarred in Pennsylvania. The testimony given by these witnesses is not persuasive or compelling enough for the Board to conclude that Petitioner is rehabilitated.

The case law provides guidance in determining whether a disbarred attorney has demonstrated a quantitative period of qualitative rehabilitation. It is clear from prior reinstatement matters that Petitioner's attempt to be reinstated after five and one half years of disbarment is uncommon. The majority of disbarred attorneys wait seven or more years before petitioning for reinstatement, and even then may not achieve reinstatement. In the matter of In re Anonymous No. 50 DB 1994, 42 Disciplinary Docket No. 3 (Pa. Jan. 31, 2002), Petitioner's seven year period of disbarment was deemed insufficient to show that he was rehabilitated from his criminal conviction for obstruction of justice, unsworn falsification to authorities, and tampering with public records. There are two matters wherein attorneys who were disbarred for five or six years were reinstated after they clearly demonstrated their rehabilitation.

In the matter of Office of Disciplinary Counsel v. James J. Gillespie, Jr., 125 DB 1999, 581 Disciplinary Docket No. 3 (Pa. Sep. 19, 2006), Mr. Gillespie was reinstated from disbarment after a period of just over five years. The Board found that Petitioner engaged in a qualitative period of rehabilitation. He worked steadily during his disbarment at a variety of jobs in order to support his family, continued volunteer work with his church, Boy Scouts and sports programs, and used his legal background to educate himself about the needs of his autistic son and the programs available. Mr. Gillespie was able to work as a lawyer in New Jersey following his reinstatement in that jurisdiction. Mr. Gillespie did not engage in any improper behavior during his disbarment, and the Board specifically found that he showed signs of remorse even prior to his disbarment on consent by contacting his victims and informing them of his wrongdoing. The Board noted that "While a five year absence from the bar is not as lengthy as in other cases, [we are] persuaded that Petitioner is rehabilitated."

In the matter of Office of Disciplinary Counsel v. Sharon Brass-Corey, 25 DB 1999, 508 Disciplinary Docket No. 3 (Pa. Sep. 19, 2006), Ms. Brass-Corey applied for reinstatement six and one-half years after her disbarment. The Board cited the "extraordinary history of rehabilitation" during her disbarment as a reason for granting her reinstatement. Petitioner rehabilitated herself from alcoholism and actively sought volunteer opportunities. She received a teaching certificate in health and physical education and became a school teacher. She provided credible and persuasive character testimony.

The instant matter is markedly different from the above cited cases. Petitioner demonstrated minimal efforts at rehabilitation. Her employment at the Lois Glanby law firm and her association with two formerly admitted attorneys is troubling. Her

witness testimony made no positive impact on the proceedings, nor did it enlighten the Committee or the Board as to the character of Petitioner. Considering the totality of the record before us, and with guidance from prior disciplinary cases, the Board concludes that Petitioner has not engaged in a sufficient period of qualitative rehabilitation during her disbarment. Having made that conclusion, it follows that Petitioner has not met her burden of proof under Pa.R.D.E. 218(c)(3). The misconduct committed by Petitioner showed an egregious disregard for the profession while damaging the public trust. Petitioner has not shown by clear and convincing evidence that she is ready to resume the practice of law.

For the above reasons, the Board recommends that the Petition for Reinstatement be denied.

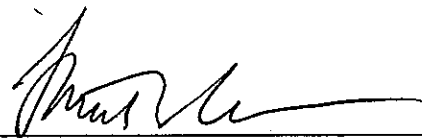
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that reinstatement of Petitioner, Rosanne Kay Diehl, be denied.

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: 
Stewart L. Cohen, Vice-Chair

Date: November 15, 2011

Board Member Momjian did not participate in the adjudication.