

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 1018, Disciplinary Docket
: No. 3 – Supreme Court
: :
MICHAEL KEITH HOLLINGER : No. 19 DB 2004 - Disciplinary Board
: :
: Attorney Registration No. 78427
PETITION FOR REINSTATEMENT :
: (Berks 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

Michael Keith Hollinger filed a Petition for Reinstatement to the bar of the Supreme Court of Pennsylvania on July 18, 2005. Petitioner was suspended for one year and one day retroactive to July 20, 2004, by Order of the Supreme Court dated June 16,

2005. On September 20, 2005, following an investigation, Office of Disciplinary Counsel filed a Response to Petition for Reinstatement stating its opposition to reinstatement at that time.

A reinstatement hearing was held on December 6, 2005, before a District III Hearing Committee comprised of Chair Wayne M. Pecht, Esquire, and Members Helen Roth Vanston, Esquire, and Howard A. Rothenberg, Esquire. Petitioner was represented by Richard F. Maffett, Jr., Esquire.

The Hearing Committee filed a Report on April 7, 2006 and recommended that the Petition for Reinstatement be granted.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on May 10, 2006.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner is Michael Keith Hollinger. He was born in 1971 and was admitted to practice law in the Commonwealth of Pennsylvania in 1996. His current home address is 18 Marshall Ave., Reading PA 19606. Petitioner is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

2. From June 1998 to December 2001, Petitioner was employed as an associate attorney with the Harrisburg law firm of Farrell & Ricci, P.C.

3. From January 2001 to December 2001, Petitioner engaged in a pattern of conduct which included billing clients for work he had not actually performed and sending clients correspondence including false reports of services performed, claims that he had attended matters which he had not attended, and significant exaggeration of the amount of services performed or time expended on matters he did actually perform.

4. In December 2001 Petitioner was terminated from the firm of Farrell & Ricci, P.C. and made partial restitution of \$10,000 to the firm.

5. Following his termination, Petitioner sought help from Lawyers Concerned for Lawyers and was referred to Frederick Henry, M.S.W., a mental health therapist, who has counseled Petitioner from December 2001 until the present at a frequency of every two to three weeks.

6. Mr. Henry diagnosed Petitioner with a major depression and panic disorder.

7. Mr. Henry opined that Petitioner has improved significantly since the initial contact in December 2001 and he has no areas of concern at this time.

8. On January 4, 2002, Petitioner began treatment with John Timko, M.D., a psychiatrist. This treatment has continued to the present at a frequency of every one to three months.

9. Dr. Timko prescribed medication to Petitioner to address Petitioner's depression and panic disorder. Currently Petitioner takes Paxil for depression, Klonopin for panic and anxiety, and Lunesta as a sleep aid.

10. Dr. Timko opined that Petitioner is fit to practice law from a psychiatric standpoint.

11. Petitioner began work as an Assistant Public Defender in Berks County in January 2002.

12. On December 13, 2002, two summary offense Disorderly Conduct citations were filed against Petitioner, alleging he created a physically offensive condition on October 25, 2002.

13. Petitioner was not arrested, but received the citations in the mail.

14. On December 18, 2002, Petitioner entered no contest pleas to both summary citations by mail to the District Justice.

15. Petitioner entered no contest pleas by mail because he was not mentally and emotionally strong enough to go through a hearing.

16. Chief Public Defender Glenn Welsh did not take any formal disciplinary action against Petitioner as a result of his no contest pleas.

17. Chief Public Defender Welsh did at least four Performance Evaluations of Petitioner from January 15, 2003 through March 15, 2004, with overall evaluations of "good" each time, recommendations for promotion twice, and no mention or concerns listed about misconduct.

18. Chief Public Defender Welsh received reports from staff of the Public Defender's Office that Petitioner improperly touched an 18 year old female client on April 2, 2004. This touching involved rubbing her back for a few seconds in front of a District Justice and resting his arm on the client's knee while kneeling to speak to her while she was seated.

19. The client's mother, Carol Lowery, was present with her daughter and did not witness any inappropriate touching by Petitioner. Ms. Lowery testified at the reinstatement hearing as to the events of April 2, 2004.

20. Chief Public Defender Welsh did not contact the client or her mother regarding the events, even after receiving a letter from the client which said nothing improper occurred.

21. On April 6, 2004, Petitioner was asked to resign or be terminated. Petitioner resigned.

22. At Petitioner's disciplinary hearing on the underlying misconduct, in June of 2004, he was asked if he had any arrests or prosecution during the last ten years. Petitioner answered in the negative.

23. Petitioner explained at the reinstatement hearing that he did not intentionally fail to disclose the summary no contest pleas, but did not recall them because of passage of time and the feelings of nervousness he experienced while testifying.

24. Petitioner did report the summary charges on the Reinstatement Questionnaire.

25. From September 2004 until January 2005, Petitioner worked as a law clerk for Reading attorney Paul Herbein, Esquire.

26. From January 24, 2005 through the present, Petitioner has been employed as a law clerk with the law firm of Merow & Jacoby, P.C. in Reading.

27. Character witnesses testified on behalf of Petitioner at the reinstatement hearing.

28. Paul Herbein, Esquire, employed Petitioner as a law clerk for approximately four months. He found Petitioner to be moral, honest, and trustworthy, and supports his reinstatement to the practice of law. Mr. Herbein was aware of the Petitioner's original misconduct and the issues surrounding his employment with the Public Defender.

29. Joel Merow, Esquire, is Petitioner's current employer and supervisor at the firm of Merow & Jacoby. Mr. Merow described Petitioner as moral, honest and trustworthy and deserving of reinstatement to the bar. Prior to being hired by Mr. Merow, Petitioner informed him of his disciplinary situation and his termination from the Public Defender's Office.

30. Mr. Merow described the quality of Petitioner's work as tremendous.

31. Mr. Merow has never observed nor received complaints from any staff members or clients of improper behavior by Petitioner.

32. Michael Dautrich, Esquire, is a Reading attorney who has known Petitioner since 1993. He believes that Petitioner has sufficient knowledge and learning in the law as well as moral character and is fit to resume practice. Petitioner has frequently

expressed remorse to Mr. Dautrich for his ethical lapses in the past and Mr. Dautrich has the impression that Petitioner clearly understands he used wrong judgment.

33. Barbara Kitrell is the Executive Director of the Berks County Bar Association and has known Petitioner well for approximately three years. She is aware that Petitioner has a good reputation in the legal community as being honest and moral.

34. Three of Petitioner's former colleagues in the Berks County Public Defender's Office offered letters as to his excellent character, reputation for ethical behavior and remorse.

35. Fourteen character letters were admitted into evidence. Each states that Petitioner's reputation is excellent for integrity, trustworthiness and legal ability among employers, colleagues and other attorneys.

36. Petitioner has a long history of donating his time to Big Brothers/Big Sisters and is involved with other organizations, such as the Elks, as well as his church.

37. Petitioner has reflected on the circumstances of his misconduct and is very remorseful for his unethical behavior.

38. Petitioner believes that he has learned from his experiences and is a better person, both mentally and physically.

39. Petitioner kept current with the state of the law by fulfilling his Continuing Legal Education credits required for reinstatement, and reviewing various legal periodicals and advance sheets in conjunction with his employment at Merow & Jacoby.

40. Petitioner has been offered employment as an associate attorney at Merow & Jacoby upon reinstatement.

III. CONCLUSIONS OF LAW

1. Petitioner has the moral qualifications, competence and learning in the law required to practice law in Pennsylvania.

2. Petitioner's 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.

IV. DISCUSSION

Petitioner requests reinstatement to the practice of law following his one year and one day suspension imposed on June 16, 2005, retroactive to July 20, 2004. Pursuant to Rule 218(a), 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 has the burden of proving by clear and satisfactory evidence that he possesses the moral qualifications, competency and learning in the law required for admission to practice law in this Commonwealth. In addition, Petitioner has the burden of demonstrating

that his resumption of the practice of law will not be detrimental to the integrity and standing of the bar, or administration of justice, nor be subversive of the public interest. Rule 218(c)(3)(i), Pa.R.D.E.

The misconduct which resulted in suspension of Petitioner's license was billing clients for work he had not actually performed, or significantly exaggerating the amount of time spent for services performed. This occurred during a one year period of time at the law firm where he was employed as an associate attorney. Petitioner was ultimately terminated from his position. Almost immediately, Petitioner sought mental health counseling, as he was having difficulty absorbing the realities of his situation. Frederick Henry, a mental health therapist, and Dr. John Timko, a psychiatrist, provided assistance to Petitioner, eventually diagnosing him with a major depression and panic disorder. Petitioner was put on medication by Dr. Timko. Petitioner continues to take medication and counsel with his respective therapists, which he believes has been very beneficial to the state of his well-being. Petitioner has exhibited significant progress in his recovery and personal growth, according to Mr. Henry and Dr. Timko. Both witnesses stated unequivocally that there was nothing about Petitioner's condition that would prevent him from practicing law.

Shortly after his contact with the mental health counselors, and approximately one month after his termination from the law firm, Petitioner found a position as an assistant public defender in Berks County. Petitioner was employed in such position for approximately two years. While employed, several incidents occurred which have been

raised by Office of Disciplinary Counsel in the instant proceedings as reflecting negatively upon Petitioner's moral qualifications. In December 2002 Petitioner received two summary disorderly conduct citations, to which he entered pleas of no contest. Petitioner indicated that he entered the no contest pleas to spare himself the emotional and mental turmoil, which he believed he would not be able to handle. Petitioner was not formally disciplined by the Chief Public Defender, nor did these incidents impact his performance evaluations. Petitioner was not required to report such citations to the Disciplinary Board as a matter of law. Pa.R.D.E. 214(a)(1). The fact that these incidents occurred more than three years ago persuades the Board, as it did the Hearing Committee, that they are too remote in time to have probative value in determining Petitioner's present moral qualifications. The Board also accepts as credible and candid Petitioner's explanation that he failed to disclose the summary charges when asked at his disciplinary hearing due to his nervous condition and the passage of time. Petitioner did report the summary disorderly conduct on his Reinstatement Questionnaire.

Another area of concern to Office of Disciplinary Counsel regards the circumstances of Petitioner's resignation from the Office of Public Defender. Petitioner was asked to resign following reports that he was seen touching a client. Upon careful examination of all the evidence, it appears that the facts of this incident do not establish any current lack of moral character on Petitioner's part that would prevent him from being reinstated. The client in question was an 18 year old female who at the time of the touching incident was accompanied by her mother. The touching comprised a rub on the

client's back and the touching of Petitioner's wrist to the client's knee while he was kneeling to talk to the client. Both the client and the mother have stated, with the mother testifying under oath, that no inappropriate or sexual touching occurred. The Chief Public Defender did not question the client or her mother about the incident.

Since his termination from the Public Defender's Office, Petitioner has worked as a law clerk for a sole practitioner, Paul Herbein, and currently works as a law clerk for the law firm of Merow & Jacoby. Mr. Herbein and Mr. Merow both testified to Petitioner's good moral qualities, as well as his very competent legal work. Petitioner submitted numerous character letters from attorneys and members of the community in support of his reinstatement. Petitioner has been active in the community for many years as a volunteer with Big Brothers/Big Sisters, and is active in the Elks Club and his church. Petitioner has kept apprised of the law and is competent in all respects. Petitioner has expressed sincere remorse for his wrongdoing and believes he has learned from his experiences.

The record demonstrates that Petitioner has met his burden by clear and satisfactory evidence that he is fit to resume the practice of law. It is the recommendation of the Disciplinary Board that Petitioner be reinstated to the bar of the Supreme Court of Pennsylvania.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Petitioner, Michael Keith Hollinger, 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: _____
Smith Barton Gephart, Board Member

Date: June 21, 2006

ORDER

PER CURIAM:

AND NOW, this 28th day of August, 2006, upon consideration of the Report and Recommendations of the Disciplinary Board dated June 21, 2006, 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.