

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 171, Disciplinary Docket
: No. 3 - Supreme Court
:
[ANONYMOUS] : No. 3 DB 1996 - 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

By Order of the Supreme Court of Pennsylvania dated July 2, 1997, Petitioner, [], was suspended from the practice of law in Pennsylvania for a period of two years, retroactive to January 18, 1996. On March 20, 1998, Petitioner filed a Petition for Reinstatement. A hearing on this matter was held on July 14, 1998 before Hearing Committee [] comprised of Chairperson [], Esquire, and Members [], Esquire, and [], Esquire. Petitioner was represented by [],

Esquire. Office of Disciplinary Counsel was represented by [], Esquire.

The Committee filed its Report on September 1, 1998 and recommended that the Petition for Reinstatement be granted. No Briefs on Exception were filed by either party. This matter was adjudicated by the Disciplinary Board at the meeting of October 5, 1998.

II. FINDINGS OF FACT

The Board makes the findings of fact:

1. Petitioner, [], was born on March 18, 1956 and was admitted to practice law in Pennsylvania on November 12, 1987. He is married with four children. Petitioner resides at [].

2. On August 11, 1995, Petitioner pleaded guilty to making a false statement to a federally insured financial institution in order to secure a mortgage loan, in violation of 18 U.S.C. §§1014 and 2.

3. Petitioner was sentenced to a term of three years probation, four months of which was home confinement, a fine of \$2,000, and restitution of \$169,715.

4. By Order of the Supreme Court issued January 18, 1996, Petitioner was placed on temporary suspension from the practice of law. This suspension resulted from his

conviction in the U.S. District Court in New Jersey.

5. Petitioner was suspended from the practice of law for a period of two (2) years by Order of the Supreme Court of Pennsylvania on July 2, 1997. This order was made retroactive to January 18, 1996.

6. When Petitioner was suspended, he went back to work in sales and formed his own company, [A], selling and delivering perishable and non-perishable goods.

7. Under the same company, Petitioner went to work as a contractor for a friend's company, [B]. It was during this period that Petitioner assisted this friend in setting up a portion of his business.

8. During this period (1996), Petitioner was having financial difficulties. He sold his home, all the assets from the home, and saved the cash from the sales. He sold everything from his law practice, his computers, his desks and even the pictures on the walls. He did without health insurance for a year and cashed in his life insurance policy.

9. In order to remain current in his knowledge of the law, Petitioner reads the "[C]" and has taken in excess of 50 CLE credits from the period of 1996 through the present (1998). He looked for classes where there was only a processing fee ([]), a minimal fee, or credits free of charge to meet his requirements.

10. The Hearing Committee found omissions in the Petitioner's Reinstatement Questionnaire. The Petitioner never conducted a judgment search and omitted five civil actions and one judgment case. The judgment was actually entered after the reinstatement was filed, but Petitioner never supplemented the questionnaire. The judgment was, however, disclosed as a debt. As for the five civil actions, none of these cases were ongoing and all were dismissed.

11. In order to make restitution, Petitioner sold his possessions to settle the suit with the bank, [D] Bank, in the amount of \$175,000. The government also imposed an additional \$169,000 in restitution on Petitioner whereby Petitioner is making payments at a rate of \$100 per month. Petitioner has executed a Confession of Judgment relating to his obligation to make full restitution.

12. The substantial amount of debt was a concern of the Hearing Committee. Petitioner, however, has not filed for bankruptcy. He has been making an effort to do what he can given his current financial situation. He stated that he would rather pay off his debts and try to restore his credit than file for personal bankruptcy protection.

13. As a practicing lawyer, Petitioner provided a great deal of pro bono work. He also went to schools to work with students and plans to go back and speak with students on the topic of ethics and professional propriety.

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

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 Pennsylvania Supreme Court. In order for Petitioner to gain reinstatement to the practice of law in the Commonwealth of Pennsylvania after suspension, he has the burden of demonstrating by clear and convincing evidence that he possesses both the moral qualifications and the competency and learning in the law required for admission to practice 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 the administration of justice, nor subversive of the public interest. Pa.R.D.E. 218(c)(3)(i), Pa.R.D.E.

In determining whether Petitioner has demonstrated his present fitness to practice law, the Board considered the nature of Petitioner's misconduct, his present competence and legal abilities, his character, his accomplishments, and the degree of remorse he has 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 on August 11, 1995 of making a false statement to a federally insured financial institution in order to secure a mortgage loan, in violation of 18 U.S.C. §§1014 and (2). Since his suspension, Petitioner is fully aware of the mistakes he made and the magnitude of his offense. Petitioner has indicated by his words and actions that he does not intend to engage in such conduct again. Although there is no doubt that the misconduct that led to the Petitioner's suspension was detrimental to the integrity of the bar, it is apparent that Petitioner has learned about propriety and his profession. Other than the misconduct that led to his suspension, Petitioner has an unblemished disciplinary record. Petitioner has no unsatisfied judgments or Client Security Fund Claims against him. Petitioner paid the costs in his disciplinary proceeding and is currently paying all fines associated with his criminal proceedings. At no time during his suspension has Petitioner practiced law or held himself out to be an attorney. Petitioner, instead, found employment where he was able and utilized other skills in order to help himself, as well as other people. Petitioner is anxious to practice law again in the Commonwealth of Pennsylvania. He testified that he has now been reinstated to practice law in New Jersey and has opened a small New Jersey office.

Petitioner has a very good reputation in the community and is respected among his colleagues. Three character witnesses, including one lawyer, one former District Attorney and a Roman Catholic priest, testified to Petitioner's present moral qualifications and reputation in the community. All three witnesses were familiar with the criminal conviction, testified to the embarrassment and suffering endured by the Petitioner and his family and testified to the changes

in Petitioner's personality and maturity since his conviction. None of the witnesses expressed any concern over Petitioner's ability to practice law and to be an asset to the Bar. In addition to the three witnesses that testified, two hundred and sixty additional people submitted character letters and over two hundred people attended Petitioner's sentencing hearing ready to testify on his behalf. The Board finds that Petitioner possesses the requisite moral qualifications to be reinstated to the practice of law in Pennsylvania.

During his suspension, Petitioner completed in excess of 50 CLE credits. Petitioner has met the educational requirements under the Pennsylvania Disciplinary Rules and the annual requirements for continuing legal education. In addition, as previously stated, Petitioner is currently practicing law in the jurisdiction of New Jersey.

Disciplinary Counsel raised concerns regarding the number of inaccuracies in the Reinstatement Questionnaire prepared and filed by the Petitioner and the current financial status of the Petitioner. The Questionnaire failed to include lawsuits that had been filed and later dismissed against the Petitioner and a number of debts including tax debts. Petitioner testified convincingly that he had never been served with a number of the Complaints filed against him and that he was not even aware of the lawsuits until receipt of the Disciplinary Counsel's Investigators Report. Petitioner's failure to list a number of debts was inadvertent and was not an attempt on his part to conceal or misrepresent the facts. While the inaccuracies on the Reinstatement Questionnaire and current financial status are of relevant concern, we find that these areas are not sufficient to deny reinstatement in this matter.

In the case of *In re Anonymous No. 20 DB 85*, 493 Disciplinary Docket No. 2 - Supreme Court (1996) (as yet unpublished), the committee found errors and omissions on the questionnaire. At the hearing, the Petitioner testified to the correct answers and sufficiently explained any omissions. A defective questionnaire should not be a bar to readmission where Petitioner testified at the hearing and fully explained any discrepancies. Reinstatement was granted. In the case of *In re Anonymous No. 1 DB 73*, 29 Pa. D. & C.3d 407 (1984), a Hearing Committee recommended that the attorney not be reinstated because he neglected to list his outstanding judgments. The Board rejected this recommendation because it found that the attorney supplemented this information in the questionnaire. In the case of *In re Anonymous No. 19 DB 81*, 4 Pa. D.& C.4th 155 (1989), an attorney failed to list a civil suit in which the judgment was discharged in bankruptcy, and he failed to include a copy of the bankruptcy docket entry, as well as an IRS lien. The Board determined that the omission constituted form, not substance, and as such would not adversely affect his reinstatement. In the case of *In re Anonymous No. 26 DB 81*, 7 Pa D. & C.4th 260 (1990), an attorney failed to include his involvement in three partnerships, several sources of income, misstated his income as being lower than it really was, and misstated the percentage of shares he owned in a corporation. These omissions and mistakes did not prevent the attorney from gaining readmission to the bar. In the case of *In re Anonymous No. 60 DB 75*, 18 Pa. D. & C. 3d 640 (1981), the petitioner omitted from his questionnaire three civil actions to which he was a party and failed to include certain sources of income. The Board determined that such omissions were not relevant to the issue.

However, as stated in *In re Anonymous No. 16 DB 80*, 20 Pa. D. & C. 3d 309 (1981), although these cases indicate that discrepancies will not be an obstacle for an attorney seeking readmission, the Board emphasizes that it does not condone or encourage inaccurate or incomplete answers on the questionnaire. These cases reflect the position that every mistaken response or oversight will not automatically disqualify a petitioner from regaining the privilege to practice law in this Commonwealth.

There is no doubt that Petitioner's past misconduct that led to his suspension was improper and detrimental to the integrity of the legal system. However, Petitioner has shown sincere remorse for this misconduct. He appears to have a greater understanding of his responsibilities as an attorney and blames no one but himself for his wrongdoing. Petitioner's recognition of his misconduct is an important factor in determining his fitness to practice under the terms of Pa.R.D.E. 208(c)(3)(i). The Board finds that Petitioner is fit to practice and 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 will it be subversive of the public interest.

In light of Petitioner's compliance with the requisites of Rule 218, Pa.R.D.E., and his sincere remorse, the Board recommends that the Petition for Reinstatement be granted.

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: _____
J. Michele Peck, Member

Date: December 2, 1998

Board Vice-Chairman Caroselli did not participate in the consideration and disposition of this matter.

Board Member Schultz did not participate in the October 5, 1998 adjudication.

PER CURIAM:

AND NOW, this 22nd day of January, 1999, upon consideration of the Report and Recommendations of the Disciplinary Board of the Supreme Court of Pennsylvania dated December 2, 1998, 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.