

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 197, Disciplinary Docket
[ANONYMOUS] : No. 1 - Supreme Court
PETITION FOR REINSTATEMENT : No. 42 DB 1978 - Disciplinary Board
: Attorney Registration No. []
: ([])

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 ("Board") herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Reinstatement.

I. HISTORY OF PROCEEDINGS

Petitioner, [], was disbarred by Supreme Court Order effective May 31, 1979, following his resignation pursuant to Pa.R.D.E. 215. Petitioner was convicted by a jury on March 23, 1978 of racketeering, conspiracy, interference with commerce by extortion, mail fraud, obstruction of justice by influencing a witness generally, obstruction of criminal investigation, fraud and false statements, and declaration under penalties of perjury. He was suspended on September 8, 1978 and resigned when all appeals were exhausted.

Petitioner was sentenced to prison for a term of three (3) years and fined \$10,000.00. Petitioner's sentence was reduced by the District Court to two years and Petitioner was paroled on June 10, 1981.

In August 1989, Petitioner filed his Petition for Reinstatement to the Bar, without retaining counsel. Petitioner later secured counsel and submitted an Amended Reinstatement Questionnaire. The Petition was assigned to Hearing Committee [], consisting of [], Esquire, designated Chair; [], Esquire, Chair; and, [], Esquire, Member. Hearings were held on October 22, 1990, February 1, 1991, May 7, 1991 and, May 29, 1991. Oral arguments before the Hearing Committee were held on June 5, 1991. Petitioner's brief in support of reinstatement was filed on August 13, 1991 and Assistant Disciplinary Counsel's brief opposing reinstatement was filed on September 16, 1991. A reply Brief was filed by Petitioner and a Letter Memorandum response to the Reply Brief was filed by Assistant Disciplinary Counsel.

On July 9, 1992, the Hearing Committee filed its Report and recommended that the Petition for Reinstatement be granted.

On July 30, 1992, a Brief on Exceptions was filed by Office of Disciplinary Counsel opposing the grant of the Petition for Reinstatement. Petitioner filed a Brief Opposing Exceptions on August 31, 1992.

The matter was adjudicated at the October 22, 1992 meeting of the Disciplinary Board of the Supreme Court of Pennsylvania.

II. FINDINGS OF FACT

The Board adopts the findings of fact which are contained in the Report and Recommendations of Hearing Committee [] and supported by documentary and testimonial evidence:

1. Petitioner is a 53 year old resident of [], Pennsylvania, who was admitted to practice law in Pennsylvania in 1963 (N.T. II 12).

2. Petitioner practiced law in [] until his suspension following his conviction in 1978. He was disbarred on consent effective May 31, 1979 (N.T. II 16-18).

3. Petitioner was a partner in the law firm of [A] and was also a solicitor for the School District of [] Township (N.T. II 14; J.E. 6).

4. The indictment charged that Petitioner conspired to obtain money from architectural and engineering firms seeking to be retained by the School Board and related charges (J.E. 3).

5. Petitioner was convicted in March 1978 of racketeering, conspiracy, interference with commerce by extortion, mail fraud, obstruction of justice by influencing a witness generally, obstruction of criminal investigation, fraud and false statements, and declarations under penalties of perjury (J.E. 3; J.E. 20, para. 2).

6. The Supreme Court suspended Petitioner on September 18, 1978 in accordance with Pa.R.D.E. 214(a) (N.T. II 16-17).

7. Petitioner complied with the requirements of Pa.R.D.E. 217(d) and notified existing clients of his suspension (N.T. II 17).

8. Petitioner was disbarred on consent following exhaustion of his appeals (N.T. II 18).

9. Petitioner's sentence was reduced from three years to two following his petition for reduction of sentence. Petitioner served the two year sentence (N.T. II 15-16).

10. During his incarceration, Petitioner served as a volunteer prison fireman, and as an officer of the prison Jewish community, assisting in arranging religious services and in a kosher kitchen (N.T. II 18-19).

11. Although Petitioner never admitted engaging in the criminal acts for which he was convicted, Petitioner testified that he recognized the very serious and grievous nature of the offenses (N.T. II 20).

12. Reciprocal disbarments were entered by the United States District Court for the [] District of Pennsylvania, the Third Circuit Court of Appeals, and the United States Supreme Court (N.T. II 22).

13. Petitioner requested that his attorney listings be removed from the telephone directories, but did not check to verify the removal. While Petitioner's attorney designation was removed from the yellow pages, Bell telephone did not change the white pages listing. Petitioner did not check the next directory because he was imprisoned when it was released. Upon notification by Assistant Disciplinary Counsel of the continued listing, Petitioner acted promptly to correct the mistake (N.T. II 38-40).

14. After completion of his parole, Petitioner moved to Florida and purchased a mobile home development company (N.T. II 24-25).

15. The business venture did not succeed and, in 1984, Petitioner sold the company (N.T. II 29).

16. Petitioner transferred his rights, title and interest, subject to a variety of obligations, to the buyers (N.T. II 29).

17. [B] and [C] respectively invested \$12,500.00 and \$37,500.00 in Petitioner's enterprise. The funds were returned upon request of [B] and [C] (N.T. III 12-14).

18. Petitioner's company entered into a sale and leaseback agreement of the company's water sewage plant funded by \$100,000.00 from the Estate of [D] of which Petitioner was executor, trustee and a 25% lifetime beneficiary, and \$15,745.00 from Petitioner's own funds (N.T. II 160-161).

19. Petitioner obtained appropriate consent from the other beneficiaries of the estate for the transaction (N.T. II 161).

20. The tax deductions taken by Petitioner for the sewage treatment plant were approved by the IRS after an audit (N.T. III 151, 153).

21. Petitioner's father-in-law, [E], purchased a mobile home from Petitioner's company and made a down payment of \$24,271.58 (N.T. II 172).

22. The company's buyers refused to deliver the mobile home to [E]. Therefore, [E] demanded return of his deposit or delivery of the house (R-19; N.T. II 127-128).

23. An action in mortgage foreclosure was filed against Petitioner and 20-some other defendants by the successor in interest to [F] Association, [G] Association. The action was stayed by the bankruptcy proceeding initiated by the company's buyers (N.T. III 57, 95-96).

24. Petitioner used the office of [H] as a mailing address for litigation involving the company after its sale, because there was a waiting list for post office boxes in his zip code (N.T. III 97-99).

25. Subsequently, Petitioner obtained a post office box (N.T. III 99, 112).

26. [I] Excavating sued Petitioner's corporation under a contract between the parties for land improvements. [J], Vice President of [K], drafted and filed an answer on behalf of the corporation. The answer was stricken and judgment was entered by default against the corporation. Petitioner retained counsel to represent the corporation upon learning of the pending default. (R-23; R-57; N.T. II 211; N.T. III 117-118, 130-131).

27. Petitioner's corporation was sued by [L] in a dispute over a construction loan finder's fee. Petitioner may have evaluated the allegations of the complaint and the amended complaint, but there was nothing improper in the president of the defendant corporation with the skills of Petitioner doing so (N.T. III 115-118, 124-126; FOF 28).

28. A letter and proposed "circular" complaining that the development was causing damage to an access road to [M's] residence and making disparaging remarks about Petitioner was received in December 1983. Petitioner instructed the excavating crew to repair the damage. (N.T. III 158-160).

29. Petitioner's local counsel in Florida filed a reply to a request for Petitioner's deposition in the bankruptcy proceedings during May 1985 which stated that Petitioner had no ongoing relationship with the corporation and was residing in Pennsylvania. Said reply was filed without consultation with Petitioner and Petitioner was physically in Pennsylvania at the time.

Petitioner's employment contract with the buyers provided for a period of six months or until the Note was paid. The request for deposition was more than six months after the sale of the corporation and the Note has never been paid (N.T. III 105-109).

30. Petitioner actively monitored, through local counsel, the bankruptcy proceeding filed by buyers (N.T. II 48).

31. Petitioner, members of his family, and other never received a return and lost portions of their investments in Florida (N.T. II 244-247).

32. [N], Assistant Disciplinary Counsel's primary witness, who was employed by the corporation which purchased the corporation from Petitioner, was biased and vengeful against Petitioner (FOF 33).

33. In 1986, the bankrupt buyers of the corporation received various notices of payments due plus interest and penalties in the respective amounts of \$424.59, \$221.33, \$1,882.51, \$268.00, \$1,307.54, and \$204.63 for tax periods in 1982, 1983, and 1984. Petitioner was unaware of these notices as they were sent to the corporation, which was then controlled by the buyers. To Petitioner's knowledge all taxes had been paid when due (N.T. II 187-192).

34. Petitioner failed to itemize and detail information supplied on his Reinstatement Questionnaire. However, Petitioner's preparation of the Questionnaire does not evidence an attempt to conceal information from the Disciplinary Board (FOF 35).

35. After retaining counsel, Petitioner filed an amended Reinstatement Questionnaire (N.T. III 197)

36. Petitioner failed to pay [] School District taxes on dividends, distribution of income, etc. because Petitioner did not know of the existence of the tax. Immediately upon being notified of his failure to pay the tax, Petitioner filed tax returns for and paid all applicable taxes (N.T. II 41-43).

37. Petitioner did not violate the Pennsylvania Motor Vehicle Code by having a limited Florida license, effective only in the State of Florida (N.T. III 101-102)

38. During his disbarment, Petitioner attempted to establish a financial consulting business from his home in [] but was not able to do so (N.T. II 35-36).

39. From 1981 to 1987, Petitioner served as an unpaid coach for the [O] Academy Debating Team, during which time Petitioner was involved in traveling with the team and during which the team enjoyed a certain measure of success (N.T. II 32-33).

40. Petitioner helped run a book fair to raise funds for [P] Academy, a school for children with severe learning and emotional problems; he spoke to classes on investing; and, acted as a chaperone at the Academy at certain events (N.T. II 34-35).

41. Petitioner has taken all the required courses which are necessary before reinstatement is allowed (N.T. II 48).

42. Petitioner has engaged in numerous discussions involving the law with his daughter who is now an attorney (N.T. II 48).

43. No evidence was produced by Disciplinary Counsel that Petitioner conducted his business in an immoral or illegal manner such that his reinstatement should be refused (FOF 43).

44. Petitioner conveyed to the Hearing Committee a deep and reverent commitment to the law (FOF 44).

III. CONCLUSIONS OF LAW

1. The misconduct for which Petitioner was disbarred is not so egregious as to preclude immediate consideration of the Petition for Reinstatement.

2. Petitioner's resumption of the practice of law will neither compromise the integrity of the bar nor subvert the interests of the public.

3. Petitioner has sustained his burden of proving he possesses the moral qualifications, competency and learning in the law required of an attorney licensed to practice law in the Commonwealth of Pennsylvania.

IV. DISCUSSION

It is the Board's duty to determine whether petitioner has met the necessary criteria for reinstatement. Petitioner bears the burden of proving by clear and convincing evidence that he has met the two tests for reinstatement. *Office of Disciplinary Counsel v. [Q]*, 4 D.B. 76 (1989); Pa.R.D.E. 218(c)(3)(i). The Board must first determine whether "the misconduct which led to the disbarment is so egregious as to preclude reinstatement." *In Re Anonymous*, 45 D.B. 84 (1992); *Office of Disciplinary Counsel v. Keller*, 509 Pa. 573, 506 A.2d 872, 875 (1976). The second question which must be answered by the Board is whether the petitioner has proven by clear and convincing evidence that he has the moral qualifications, competency and learning in the law that is required of all practicing attorneys in the Commonwealth of Pennsylvania. Pa.R.D.E. 218(c)(3)(i).

A. Keller Threshold

In *Office of Disciplinary Counsel v. Keller*, *supra* 506 A.2d at 875 the Court stated:

"When reinstatement is sought by the disbarred attorney, the threshold question must be whether the magnitude of the breach of trust would permit the resumption of practice without a detrimental effect upon 'the integrity and standing of the bar or the administration of justice nor subversive of the public interest.'"

This determination is made by reviewing the conduct for which petitioner was disbarred and then determining whether a sufficient quantitative period of

time has elapsed since petitioner's misconduct during which petitioner has engaged in qualitative rehabilitation. *In Re Anonymous*, 90 D.B. 85 (1992).

The petitioner was convicted of racketeering, conspiracy, obstruction of commerce, attempted extortion, mail fraud, obstruction of justice, and making fraudulent and false statements on federal income tax returns. The offenses occurred between 1972 and 1977. The conduct for which the petitioner was convicted involved the taking of kickbacks from contractors doing work for the school board for which the petitioner was the solicitor. The petitioner was convicted by a jury in the United States District Court for [] District of Pennsylvania and was sentenced to two years incarceration.

A review of prior cases supports the Board's opinion that petitioner's misconduct is not so repugnant to the integrity of the bar or the public interest as to preclude reinstatement. See *Office of Disciplinary Counsel v. [R]*, 26 D.B. 81 (1990) (attorney granted reinstatement despite past violations of delivery a bribe to a public official, giving false testimony under oath after a grant of immunity, failing to make appropriate disclosure to a federal grand jury and law enforcement officers, and "laundering" checks for a public official); *In Re Anonymous*, 49 Pa.D&C3d 298 (1988) (petitioner reinstated after numerous convictions for offering materially untrue statements to the Office of Housing and Urban Development, fraudulent lot sales, and mail fraud.); *In Re Anonymous*, 2 D.B. 76, 35 Pa.D&C3d 143 (1984) (petitioner reinstated after pleading guilty to various counts of security fraud). As the Board is of the opinion that respondent's conduct which led to disbarment does not preclude reinstatement we must now consider whether a sufficient quantitative period of time has elapsed during which time petitioner has engaged in qualitative rehabilitation. *Keller, supra*. Petitioner was disbarred on consent on May 31, 1979. While disbarred, petitioner engaged in various civic activities. He served in a leadership capacity and as a volunteer fireman while incarcerated. After his release petitioner volunteered his time to coach the [0] Academy

Debate Team. He also assisted in a book fair at [P] Academy, a school for learning disabled and emotionally disturbed children. In addition, he spoke on numerous occasions to various classes at [P] Academy and chaperoned various events.

Petitioner has never admitted that he committed the crimes for which he was convicted. He did state, however, that he realizes the serious nature of the offenses. The Board agrees with petitioner that he should not be required to admit to a crime he honestly believes he did not commit. As the Board stated in *In Re Anonymous*, 30 Pa.D&C3d 352, 361 (1984)(quoting *In re Hiss*, 368 Mass. 467, 333 N.Ed2d 429 (1975)):

"Simple fairness and fundamental justice demand that the person who demands that he is innocent though convicted should not be requested to confess guilt to a criminal act he honestly believes he did not commit."

The Board is satisfied that petitioner appreciates the serious nature of the offenses.

The petitioner has engaged in qualitative rehabilitation over the past thirteen years. The Board is of the opinion that the misconduct which occurred between fifteen and twenty years ago is not so repugnant to the integrity of the bar as to foreclose the possibility of reinstatement.

B. Moral Qualifications Competency and Learning

1. Moral Qualifications

Once the Keller threshold has been met, the Board is obligated to determine whether the petitioner possesses the necessary moral character to practice law in the Commonwealth of Pennsylvania. Pa.R.D.E. 218(c)(3)(i). The petitioner has the burden of proving his moral character by clear and convincing evidence.

Prior to the misconduct which led to petitioner's disbarment, petitioner had an unblemished record and a good professional reputation. Petitioner presented numerous character witnesses at his reinstatement hearings. The

hearing committee heard from thirteen witnesses, including family members, friends, colleagues and a former judge of the Court of Common Pleas of [] County. The petitioner also submitted a character reference letter from a current judge of the United States Court of Appeals for the Third Circuit. Each of the witnesses attested to the defendant's good moral qualifications and integrity.

Office of Disciplinary Counsel challenges petitioner's moral qualifications for reinstatement. ODC cites petitioner's "lack of candor" in some of the answers to his reinstatement questionnaire and to some statements made during his testimony. They also contend that various business dealings which petitioner was involved in after he was disbarred reflected adversely upon his moral qualifications to be reinstated. The Board has conducted an extensive review of the record and agrees with the hearing committee that the assertions raised by Office of Disciplinary Counsel do not preclude reinstatement.

2. Competency and Learning in the Law

Petitioner must also prove that he has the learning in the law necessary to resume practice. Pa.R.D.E. 218(c)(3)(i). Petitioner has complied with the requirements of Disciplinary Board Rule Section 89.279 by completing the Pennsylvania Legal Practice Seminar. In addition, petitioner attended a [S] School Seminar and engaged in regular discussions of legal issues with his daughter who is an attorney. He also testified that he conducted legal research into issues involving trusts which he administers. Petitioner has therefore satisfied the competency requirement.

V. Recommendations

The Disciplinary Board of the Supreme Court of Pennsylvania respectfully recommends that the petition for reinstatement be granted.

The Board further recommends pursuant to Pa.R.D.E. 218(e) that Petitioner be directed to pay the necessary expenses incurred in the investigation and processing of the petition for reinstatement.

DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By _____
Philip B. Friedman, Esquire
Member

DATE: March 11, 1993

Board members Hill, Schiller, Lieber, Flaherty and Saltz did not participate in the adjudication.

SUPPLEMENTAL 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 and your Honorable Court's Order dated May 14, 1993, the Disciplinary Board of the Supreme Court of Pennsylvania ("Board") herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Reinstatement.

I. HISTORY OF PROCEEDINGS

Petitioner, [], was disbarred by Supreme Court Order effective May 31, 1979, following his resignation pursuant to Pa.R.D.E. 215. In August 1989, Petitioner filed his Petition for Reinstatement. Petitioner later secured counsel and submitted an amended Reinstatement Questionnaire. The Petition was assigned to Hearing Committee [], consisting of [], Esquire, designated Chair; [], Esquire and [], Esquire. Hearings were held on October 22, 1990, February 1, 1991, May 7, 1991 and May 29, 1991. On July 9, 1992 the Hearing Committee filed its report and recommended that the Petition for Reinstatement be granted. On March 11, 1993 the Disciplinary Board of the Supreme Court of Pennsylvania issued its report to your Honorable Court recommending that the Petition be granted.

On May 14, 1993 your Honorable Court issued an Order remanding the matter to the Disciplinary Board for an expedited hearing addressing certain incomplete responses in the Petitioner's Reinstatement Questionnaire. On May 25, 1993 a hearing was held before the Hearing Committee consisting of [], [] and []. On February 22, 1994 the Hearing Committee filed a supplemental report which again recommended that the Petition for Reinstatement be granted.

The matter was adjudicated at the April 17, 1994 meeting of the Disciplinary Board of the Supreme Court of Pennsylvania.

II. SUPPLEMENTAL FINDINGS OF FACT

The Board adopts the findings of fact which are contained in the Supplemental Report and Recommendations of Hearing Committee [] and supported by documentary and testimonial evidence:

1. Petitioner testified that he took the required courses and then set about completing the Questionnaire. (N.T. 11)

2. Petitioner related that responding to the inquiries was traumatic, that it forced him to come face to face with the seriousness of the crimes he had committed. He found it emotionally difficult to complete the form, and, he admitted that he procrastinated until he realized that the rule requires the Questionnaire to be filed within one year of taking the course. It was at that time that he realized he didn't have all the information necessary to complete questions 10 and 12. (N.T. 11-12)

3. As to the information regarding the trusts requested in paragraph 12, Petitioner testified that the information was no longer required under the IRS rules. He also testified there had been two floods in his house which destroyed a number of his records, so he no longer had the information concerning the amounts received from each trust for the years requested. (N.T. 12-13)

4. Petitioner did list the trusts on the original Questionnaire, only the amounts received were omitted. (N.T. 13)

5. On October 17, 1989, Assistant Disciplinary Counsel, [], wrote to Petitioner inquiring about a number of aspects of the Reinstatement Questionnaire. See Exhibit "C" to Petitioner's Special Exhibit which was admitted into evidence at the expedited hearing on May 25, 1993. (N.T. 13-14)

6. Less than 10 days later, on October 26, 1989, Petitioner responded in detail to Assistant Disciplinary Counsel's inquiry. See Exhibit "D" to

Petitioner's Special Exhibit. See in particular paragraph 15 - 18 of Exhibit "D".

7. Petitioner provided copies of his tax returns for the years 1985, 1986, 1987 and 1988 as an attachment to his letter of October 26, 1989.

8. Petitioner listed his position as President of [K] Development Corp. on his Reinstatement Questionnaire. (N.T. 16)

9. Petitioner attached a copy of the "Stock Purchase, Indemnity and Guarantee Agreement" by which he became a consultant to the purchasers of his interest in [K] Development Corp. to his letter of October 26, 1989. See Exhibit "E" to Petitioner's Special Agreement. (N.T. 19, 20)

10. "[T]" was a separate sales corporation in which Petitioner had no interest prior to the sale to [U], Inc. (N.T. 17)

11. Petitioner testified that the few checks he did receive pursuant to the Stock Purchase Agreement were written on the account of a company other than [T]. (N.T. 18)

12. The Stock Purchase Agreement provided for Petitioner's interest in [K] Development to be transferred to [T] and then for that interest to be transferred to [U], Inc.

13. Petitioner listed one legal malpractice action in which he was a named Defendant. (N.T. 21). See also, N.T. 31.

14. Petitioner listed thirteen additional cases in his Amended Reinstatement Questionnaire all of which were accident cases, suits for fees or suits concerning [K] Development Corp.

15. Assistant Disciplinary Counsel states in his exceptions that "Petitioner failed to identify approximately 22 lawsuits..." (N.T. 6); Brief on Exceptions, paragraph 8a.

16. The Hearing Committee reviewed each of the so-called "suits" Assistant Disciplinary Counsel alleges were not listed from a memo written in 1984 by Petitioner and which was admitted at the first hearing as Exhibit

"J.E.6". The list was admitted as Respondent's Exhibit "E.H.R1" and the Committee found as follows:

[V]: listed on Petitioner's Amended Reinstatement Questionnaire.

[W] & [X]: part of the [V] litigation.

[Y] Paving: part of the [V] litigation.

[Z] Pools: part of the [V] litigation and filed in a separate suit against [K].

[AA] Excavating: part of the [V] litigation and filed in a separate suit against [K].

[BB]: part of the [V] litigation and filed in a separate suit against [K].

[CC]: part of the [V] litigation.

[DD] Filters: part of the [V] litigation.

[EE] Electric: part of the [V] litigation.

[FF] Company: part of the [V] litigation, but was dismissed.

[GG] Electric: sued [K].

[HH] Advertising Service: sued [T].

[II] Engineering: claim against [K]. No suit was ever filed.

[JJ]: Petitioner was named nominally, but the suit was dismissed for failure to prosecute.

[KK]: listed on Amended Reinstatement Questionnaire.

[LL]: sued [K] Development, Inc.

[MM] Insurance, et al.: a claim [K] held against these entities. No suit was ever filed.

[NN]: a claim [K] held against this entity. No suit was ever filed.

[OO], et al.: a claim [K] held against these entities. No suit was ever filed.

[PP]: mutual claims of [K] against [QQ] against [K]. No suit was ever filed.

In addition, Petitioner hired counsel and filed a Proof of Claim in the subsequent bankruptcy of the Purchaser of [K] and [T] in 1984. The bankruptcy was not listed on the Questionnaire.

17. Other than the [U] bankruptcy, the "suits" which Respondent claims were omitted by Petitioner were all part of the [K] mortgage foreclosure suit ([V]), were suits against [K], or were claims held by [K] or others on which suit was never filed.

III. DISCUSSION

Your Honorable Court has directed the Board to address three aspects of the Petitioner's Reinstatement Questionnaire. After careful reviews of the record and the Hearing Committee's report the Board is of the view that reinstatement should be granted.

The first question involves the Petitioner's failure to identify in his Reinstatement Questionnaire approximately twenty-two lawsuits in which he had allegedly been involved. The Court's concern evolved from Respondent's contention that Petitioner had failed to list these lawsuits. The Hearing Committee reviewed each lawsuit and found that "other than the [U] Bankruptcy, the 'suits' which Respondent claims were omitted by Petitioner were all part of the [K] mortgage foreclosure suit ([V]), were suits against [K] or were claims held by [K] or others on which suit was never filed." (Finding of fact no. 17). See also Finding of Fact no. 16. The Board concurs with the Hearing Committee's findings concerning these lawsuits. The Petitioner provided appropriate information and documentation to Respondent in a timely manner. As the Hearing Committee noted, Petitioner's omissions were neither material nor were they calculated to prevent Respondent from properly investigating the Petition for Reinstatement.

Your Honorable Court also requested the Board address Petitioner's failure to list his employment with [T] in his Reinstatement Questionnaire. Petitioner indicated in his original Reinstatement Questionnaire that he worked for [K] Development, Inc. from 1982 to 1985. In fact, he actually served in that position from 1982 to approximately August 1, 1984. The company was sold at that time and he obtained a consulting contract from [T] for approximately six

months. He did receive several checks but they were not written from [T] as [T] did not have the funds to pay him. Rather, the checks came from another entity. As the Hearing Committee noted, the Petitioner provided Respondent with a copy of the Agreement providing for consultation with [T] for a period of six months. That Agreement was provided to Respondent on or about October 26, 1989.

Your Honorable Court also requested the Board to address Petitioner's omission of income received from the [D] trust and the [RR] trust from his Reinstatement Questionnaire. As the Hearing Committee noted, Respondent did list the existence of the trusts in his original Reinstatement Questionnaire but failed to identify the amounts received. On October 17, 1989 Assistant Disciplinary Counsel requested that Petitioner identify the specific or approximate amounts of income received from the trusts. (Respondent's letter dated October 17, 1989). Petitioner responded by letter dated October 26, 1989 in which he indicated that he received approximately Two Thousand (\$2,000.00) Dollars to Two Thousand Five Hundred (\$2,500.00) Dollars per year from the [D] trust and approximately Fifteen Thousand (\$15,000.00) Dollars to Twenty Thousand (\$20,000.00) Dollars per year from the [RR] trust. He also provided copies of his tax returns for the years 1985 through 1988 as an attachment to his letter.

Petitioner acknowledged that he had a very difficult time filling out his Reinstatement Questionnaire. Most of the omissions from his original Reinstatement Questionnaire were remedied in his Amended Reinstatement Questionnaire which was done with the assistance of counsel. The omissions, as the Hearing Committee found, were neither material nor calculated to mislead Respondent. The Hearing Committee has again recommended reinstatement. Petitioner has filed no exceptions. The Board unanimously recommends reinstatement.

IV. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Petition for Reinstatement be granted.

The Board further recommends pursuant to Pa.R.D.E. 218(e) that Petitioner be directed to pay the necessary expenses incurred in the investigation and processing of the Petition for Reinstatement.

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

Philip B. Friedman, Esquire
Chairman

DATED: April 22, 1994

Board Member Schiller did not participate in the adjudication.

PER CURIAM:

AND NOW, this 27th day of May, 1994, upon consideration of the Report and Supplemental Report and Recommendations of the Disciplinary Board of the Supreme Court of Pennsylvania dated March 11, 1993 and April 22, 1994, 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.

Messrs. Justice Flaherty and Papadakos dissent.

Mr. Justice Frank J. Montemuro is sitting by designation as Senior Justice pursuant to Judicial Assignment Docket No. 94 R1800, due to the unavailability of Mr. Justice Larsen, see No. 127 Judicial Administration Docket No. 1, filed October 28, 1993.