

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 210, Disciplinary Docket
: No. 3 - Supreme Court
:
: No. 95 DB 1996 - Disciplinary Board
[ANONYMOUS] :
: 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

Petitioner, [], filed a Petition for Reinstatement on May 14, 1998. Petitioner was suspended from the practice of law for eighteen months retroactive to July 26, 1996, by Order of the Supreme Court dated March 25, 1998. Petitioner was suspended as a result of his conviction of one count of accessory after the fact to mail fraud, in violation of 18 U.S.C. § 3.

A reinstatement hearing was held on July 24, 1998 before Hearing Committee []

comprised of Chair [], Esquire, and Members [], Esquire, and [], Esquire. Petitioner was represented by [], Esquire. Office of Disciplinary Counsel was represented by [], Esquire.

The Committee filed a Report on August 17, 1998 and recommended that the Petition for Reinstatement be granted. No Briefs on Exceptions were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting of October 5, 1998.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner was born on May 18, 1953 and was admitted to practice law in Pennsylvania on May 5, 1981. He resides at [].

2. A 60 count indictment was filed against Petitioner and others in the United States District Court for the [] District of New York. Petitioner waived the indictment against him and a felony information was filed against him; he pleaded guilty to one count of the felony information (accessory after the fact in violation of the federal mail fraud statute 18 U.S.C. § 3). On July 26, 1996, Petitioner was placed on temporary suspension from the practice of law by Order of the Supreme Court pursuant to Rule 214(d), Pa.R.D.E.

3. As a result of his guilty plea Petitioner was sentenced to a period of two

months home confinement, probation of one year, and a \$3,000 fine.

4. The matter was referred to the Disciplinary Board pursuant to Rule 214(f)(1), Pa.R.D.E.

5. Disciplinary proceedings commenced against Petitioner and he was eventually suspended for eighteen months by the Supreme Court by Order of March 25, 1998. This suspension was made retroactive to the temporary suspension on July 26, 1996.

6. Petitioner filed for reinstatement on May 14, 1998.

7. The events leading to Petitioner's conviction are as follows:

a. Petitioner represented a client in an administrative matter before the Environmental Hearing Board regarding the shutdown of a landfill in [] Pennsylvania.

b. Central to the administration proceedings was whether certain previously deposited municipal waste was removed and replaced with construction and demolition waste. Petitioner hired an expert whose report concluded the offending waste was not removed. The conclusions of the expert report conflicted with his client's story, and while he began to suspect his client had not removed the waste, Petitioner submitted the report to the Department of Environmental Protection ("DEP") without reconciling it with this client's account.

c. While preparing for a deposition Petitioner questioned his client about the inconsistencies between his story and the expert's report. For the first time his client disclosed that he really had to get the landfill opened because the true party having a financial interest in the landfill was the [A] organized crime family of New York. (N.T. 62)

d. Petitioner's client lied during his deposition regarding the identity of the landfill ownership. At a deposition break Petitioner told his

client to correct the record, but his client refused to do so because of his stated fear of retaliation from the organized crime family.

- e. After the deposition Petitioner told his client he thought the case was a loser, his perjury would make it worse, and he should get a new lawyer.
- f. After Petitioner told his client he intended to withdraw from the case, his client told him for the first time that he submitted falsified documents to DEP to make it appear that the offending waste was removed from the landfill when in fact it was not.

8. During the period of Petitioner's suspension, Petitioner attended 39 hours of CLE and is in compliance with the requirements of the current schedule required for reinstatement.

9. In addition to attending CLE courses, Petitioner engaged in legal research and writing with Attorneys [B], [C], [D], [E], and [F].

10. Petitioner testified that he regularly read legal newspapers and journals. (N.T. 20)

11. During his period of suspension, Petitioner testified that he made 15-20 visits of varying lengths to the courthouse during which he observed motions practice and trials. (N.T. 15-16)

12. During his suspension, Petitioner helped to found a youth hockey organization comprised of 160 youths. Petitioner testified that he spends between 10-15 hours a week involved in this community service.

13. Petitioner is also involved in the [] School District [] program for exceptional

children.

14. Petitioner offered into evidence 17 character reference letters from lawyers in the [] area. Each of these individuals supported Petitioner's reinstatement.

15. Petitioner presented character testimony from five attorneys, each of whom testified that Petitioner is a man of integrity who has maintained a high level of legal competence and skill.

16. Petitioner testified that if reinstated he intends to be a sole practitioner with an emphasis on personal injury and contract law. (N.T. 22, 23)

17. Petitioner testified that he would establish procedures to follow if faced with an ethical dilemma in the future. These include calling other attorneys or the Ethics Hotline.

18. Petitioner has no history of discipline prior to the instant matter.

III. CONCLUSIONS OF LAW

Petitioner has demonstrated, by clear and convincing evidence, that he possesses the moral qualifications, competency, and learning in the law necessary to practice law in Pennsylvania.

Petitioner's resumption of the practice of law will not be detrimental to the integrity of the bar or subversive of the interests of the public.

IV. DISCUSSION

The sole question to be determined in this matter is whether Petitioner's request for reinstatement to the bar of the Supreme Court of Pennsylvania should be granted. In order for Petitioner to gain reinstatement he must prove, by clear and convincing evidence, that he has the moral qualifications, competency and learning in the law required for admission to practice law, and that the resumption of the practice of law will neither be detrimental to the integrity of the bar or administration of justice, nor subversive of the public interest. Pa.R.D.E. 218(c)(3)(i).

In determining whether Petitioner clearly demonstrated his present fitness to practice law, the Board considered the nature of Petitioner's misconduct, his present competence and legal abilities, his character, rehabilitation, and the degree of remorse expressed. *Philadelphia News, Inc. v. Disciplinary Board of the Supreme Court*, 468 Pa. 382, 363 A.2d 779 (1976).

Petitioner pleaded guilty to one count (accessory after the fact to mail fraud) of a criminal information in the United States District Court for the [] District of New York. The relevant facts are set forth herein at pp. 3-4 and will not be repeated. It is important to remember that those facts are significant only to describe the conduct upon which the federal criminal charges were brought against Petitioner; that conduct itself was not the basis for the discipline from which Petitioner seeks reinstatement. The sole basis for Petitioner's discipline is the fact that he was convicted of a serious crime. Rule 214(f)(1), Pa.R.D.E. The nature of the conduct to which the plea was entered is one of the relevant factors considered in reinstatement.

Petitioner's license to practice law was suspended for eighteen months retroactive to

July 26, 1996, the date of his temporary suspension. Petitioner has been suspended for more than two years at the present time. He has fulfilled his CLE requirements. During Petitioner's suspension he performed legal writing and research for various attorneys in the [] area. He also read legal periodicals and attended trials and motions court. Petitioner remained involved in the community, helping to form a youth hockey league and devoting time to the [] School District [] program.

Character witnesses who have known Petitioner for many years testified to Petitioner's excellent legal abilities and his high moral integrity. These witnesses wholeheartedly endorsed Petitioner's reinstatement to the practice of law.

Petitioner demonstrated an understanding of the steps he needs to take if he perceives himself caught in an ethical dilemma in the future. He understands his responsibilities and his role in the attorney-client relationship.

Petitioner engaged in criminal conduct for which he was disciplined by the Supreme Court through an eighteen month suspension of his license to practice law. Petitioner served this suspension and demonstrated by clear and convincing evidence that he has the requisite moral character, competency and learning in the law necessary for reinstatement. It is equally clear that Petitioner's resumption of the practice of law will not be detrimental to the profession or the public interest.

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: _____
Thomas J. Elliott, Member

Date: January 11, 1999

Board Vice-Chair 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 4th day of March, 1999, upon consideration of the Report and Recommendations of the Disciplinary Board of the Supreme Court of Pennsylvania dated January 11, 1999, the Petition for Reinstatement is granted.

Pursuant to Rule 218(a), 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.

Mr. Justice Cappy did not participate in this matter.