

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 344 , Disciplinary Docket
: No. 3 – Supreme Court
:
: Nos. 61 DB 1997 and 107 DB 1997
DAVID WAYNE TURMAN : Disciplinary Board
:
: Attorney Registration No. 73655
:
PETITION FOR REINSTATEMENT : (Allegheny 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, David Wayne Turman, filed a Petition for Reinstatement to the bar of Pennsylvania on May 21, 2002. Petitioner was Suspended from the practice of law for

one year and one day by Order of the Supreme Court of Pennsylvania dated August 9, 1999.

A reinstatement hearing was held on October 29, 2002, before Hearing Committee 4.04 comprised of Chair Timothy R. Bonner, Esquire, and Members Christopher E. Mohny, Esquire, and Patrick J. Thomassey, Esquire. Petitioner appeared pro se.

The Committee filed a Report on March 21, 2003 and recommended that the Petition for Reinstatement be denied.

This matter was adjudicated by the Disciplinary Board at the meeting of May 14, 2003.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner is David Wayne Turman. He was born in 1958 and was admitted to practice law in Pennsylvania in 1994. His current address is 1503 North Murtland Street, Pittsburgh, PA 15208.

2. By Order of the Supreme Court dated August 9, 1999, Petitioner was suspended from the practice of law for a period of one year and one day.

3. The misconduct forming the basis of this suspension is as follows:
 - a. By Order of the Supreme Court dated August 7, 1997, Petitioner was held in contempt for willful violation of a Supreme Court Order transferring him to inactive status and directing him to comply with requirements of the Pennsylvania Rules of Disciplinary Enforcement.
 - b. After holding Petitioner in contempt, the Court referred the matter to the Disciplinary Board for recommendation of an appropriate sanction,
 - c. The Board recommended a Public Censure to the Court, and the Court, by Order of April 14, 1998, ordered that Petitioner be subjected to a Public Censure.
 - d. The Censure was scheduled for September 17, 1998. Petitioner failed to appear before the Court.
 - e. In a separate matter, by notice letter of November 18, 1997, Petitioner was directed to appear before Chief Disciplinary Counsel on December 16, 1997, to receive an Informal Admonition with Condition as a result of misconduct in handling a client matter.
 - f. Petitioner failed to appear on December 16, 1997 for his Informal Admonition, nor did he show good cause for his absence.
 - g. Petitioner was ordered to appear before the Board to receive a Private Reprimand with conditions scheduled for November 14, 1997 as a result of his misconduct in handling three client matters.
 - h. Petitioner failed to appear for the Private Reprimand and failed to provide proof that he fulfilled the conditions.
 - i. Petitioner did not establish good cause for his failure to appear for the private reprimand.

4. Petitioner indicated that he abused alcohol during the time frame of the misconduct.

5. Petitioner has a history of convictions for Driving Under the Influence of Alcohol, having pleaded guilty to four separate charges in 1991, 1994, and 1997. No formal disciplinary proceedings were initiated resultant to these convictions.

6. Petitioner considers himself to be an alcoholic. He stopped drinking in June 2001 but does not attend any formal treatment, counseling or Alcoholics Anonymous–style meetings. Petitioner did attend approximately 20 Alcoholics Anonymous meetings that were Court-mandated after his 1997 conviction for DUI but did not stop drinking at that time.

7. During the course of his suspension, Petitioner worked for one year at Medrad Company assembling and packing medical supplies, followed by a four month stint with the United States Census Bureau. At the time of the reinstatement hearing, he was employed by Sony Technology, Inc. as a factory worker.

8. Petitioner did not offer evidence of community service or charitable activity during his suspension.

9. Petitioner did not offer character testimony from friends, family or co-workers.

10. Petitioner apologized for his misconduct. He explained that his failure to appear for the various disciplinary sanctions was a matter of trying to ignore the inevitable.

11. Petitioner reimbursed his clients either personally or through the Lawyers Fund for Client Security, which he subsequently repaid. The Lawyers Fund repayment was made prior to the filing of his Petition for Reinstatement. The other reimbursements were made one week prior to the date of the reinstatement hearing.

12. If reinstated, Petitioner hopes to find employment in the area of child advocacy. He does not intend to engage in solo practice.

13. Petitioner fulfilled his CLE requirements for reinstatement.

14. Petitioner did not respond to the question in the Reinstatement Questionnaire regarding law-related reading he has done during his suspension, nor did he respond to the question regarding legal research performed while suspended. He provided no testimony on these subjects at the hearing.

III. CONCLUSIONS OF LAW

1. Petitioner has failed to meet his burden under Pa.R.D.E. 218(c)(3)(i) that he has the moral qualifications, competency and learning in the law required to practice law in Pennsylvania.

IV. DISCUSSION

This matter is before the Disciplinary Board on a Petition for Reinstatement filed by David Wayne Turman. By Order of the Supreme Court of Pennsylvania dated August 9, 1999, Petitioner was suspended from the Bar of this Commonwealth for a period of one year and one day.

Pursuant to Rule 218(a), 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. In order for Petitioner to gain reinstatement, he has the burden of proving by clear and convincing 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 the administration of justice, nor be subversive of the public interest. Rule 218(c)(3)(i), Pa.R.D.E.

A reinstatement hearing is a searching inquiry into a lawyer's present professional and moral fitness to resume the practice of law. The object of concern is not solely the transgressions which gave rise to the lawyer's suspension, but rather the nature and extent of the rehabilitative efforts the lawyer has made since the time the sanction was imposed, and the degree of success achieved in the rehabilitative process. Philadelphia News, Inc., v. Disciplinary Board of the Supreme Court, 363 A.2d 779 (Pa. 1976).

Petitioner was suspended as a result of his failure to appear for a Public Censure before the Supreme Court, failure to appear for a Private Reprimand before the Board, and his failure to appear for an Informal Admonition before the Chief Disciplinary Counsel. Petitioner explained that some of his misconduct occurred while he was in the midst of criminal proceedings due to a guilty plea to DUI in 1997 and he was not able to focus on the disciplinary problems he was having. He began to ignore these disciplinary problems in the misplaced hope they would go away.

During his period of suspension, Petitioner worked at several factory jobs and as a census taker, but performed no work of a legal nature. The record does not provide insight into the substance of Petitioner's life during his suspension. There is no evidence of any community service, pro bono work or charitable activity. The record indicates Petitioner did no legal reading or research to keep himself apprised of the current state of the law. Petitioner did not answer specific questions in the Reinstatement Questionnaire regarding his learning in the law. Petitioner presented no witnesses to attest to his

character and abilities as a lawyer and his moral fitness in general.

Petitioner admitted he has a problem with alcohol consumption, which he believes contributed to his misconduct. During his suspension, he received no treatment or counseling of any kind for this problem, nor did he attend any programs such as Alcoholics Anonymous or Lawyers Concerned for Lawyers. He stopped drinking alcohol in June 2001 and is self-treating at this time. Besides Petitioner's own testimony, there was no evidence presented, through friends, family or employers, as to Petitioner's cessation of the use of alcohol and his rehabilitation from his self-described alcohol abuse.

Petitioner made restitution to the Lawyers Fund for Client Security prior to the filing of his Petition for Reinstatement and later made restitution to three other clients approximately one week prior to the hearing in October 2002. Petitioner admitted he was aware that he owed these clients money, as failure to repay in the first instance precipitated some of the disciplinary proceedings against him. Petitioner had no explanation for why he waited so long to repay the clients.

The focus of this reinstatement matter is on the time frame of Petitioner's suspension and his attempts to rehabilitate himself. The record does not contain sufficient evidence demonstrating any such attempts. Petitioner provided little insight into his activities since his suspension in August 1999. To his credit, Petitioner maintained employment where he was able to find it, but little else is revealed about his lifestyle. Petitioner admits to abusing alcohol in the past, but offered only his own statements that

he is now sober. As Petitioner, by his own admission, linked his self-described alcohol abuse to his professional misconduct, the Board feels it necessary to see a more fully developed picture of Petitioner's rehabilitation from that alcohol abuse before recommending reinstatement. Because of unresolved issues concerning Petitioner's alcohol use and abuse, the Board is not persuaded that Petitioner is competent at this time to resume the practice of law, with its concomitant stresses and pressures.

Based on the above findings and conclusions, the Board is persuaded that Petitioner has not met his burden of proving that he is morally qualified, competent and learned in the law. Often times when reinstatement is denied, it is because a petitioner has done a particular act during suspension or disbarment that weighs against reinstatement. In this case, the fact that Petitioner has done virtually nothing of substance to demonstrate his competence and fitness as a lawyer is evidence against his reinstatement at this time.

The Board recommends that the Petition for Reinstatement be denied.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Petitioner, David Wayne Turman, be denied reinstatement 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: _____
Laurence H. Brown, Member

Date: August 21, 2003

Board Member Sheerer did not participate in the May 14, 2003 adjudication.

“PER CURIAM:

AND NOW, this 14th day of November, 2003, upon consideration of the Report and Recommendations of the Disciplinary Board of the Supreme Court of Pennsylvania dated August 21, 2003, the Petition for Reinstatement is DENIED.

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.”