

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

In the Matter of

[Anonymous]

PETITION FOR REINSTATEMENT

: No. 36, Disciplinary Docket
: No. 3 - Supreme Court
:
: No. 49 DB 92 - 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 submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Reinstatement.

I. HISTORY OF PROCEEDINGS

[Petitioner] ("Petitioner") filed a Petition for Reinstatement on September 23, 1996, from a three year suspension directed by the Supreme Court of Pennsylvania which became effective on June 19, 1994.

A hearing on the Petition was held on November 19, 1996 before Hearing Committee [redacted] comprised of [redacted], Chairman, [redacted], Esquire and [redacted], Esquire. The Committee filed its Report with the Secretary of the Board on June 26, 1997. No Briefs on Exceptions were filed by the parties.

This matter was adjudicated by the Disciplinary Board at its meeting held on August 13, 1997.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner was born on April 18, 1956. He received a B.A. degree from [redacted] University in 1978 and a J.D. degree from [redacted] University School of Law in 1981. He was admitted to the Bar of the Commonwealth of Pennsylvania on October 30, 1981.

2. Petitioner's parents are both deceased (his father having been a member of the bar of this Court). Petitioner is the oldest of their five children, the youngest of whom is also deceased. Petitioner is separated from his wife and as of the Reinstatement Hearing were in the process of divorce. They are the parents of one daughter, age nine.

3. Following graduation from law school, Petitioner served for one year as a law clerk to the Honorable [redacted] of the United States Court of Appeals for the [redacted] Circuit. From September 1982 until January 30, 1990 Petitioner was employed by the firm of

[redacted] as an associate attorney.

4. From February 1, 1990 until approximately April 15, 1991, when he resigned as a result of the events which led to his suspension, Petitioner was employed by the firm of [C] [C] [] as an associate attorney. Petitioner continues to be employed by the [C] [C] [] firm as a law clerk.

5. Throughout his practice, with both the [C] [B] [] and [C] [C] [] firms, Petitioner has concentrated his work in the field of labor and employment law and related counseling and litigation.

6. With the single exception of a 1985 conviction for Driving While Impaired in the State of [C] [] [], Petitioner has never been convicted of a crime other than a minor traffic violation.

7. Petitioner has never been the subject of a professional malpractice claim, a defendant in a civil action of any kind or had any judgments taken against him.

8. Other than the instant suspension (and a reciprocal suspension in the United States District Court for the [C] [] District of Pennsylvania), Petitioner has not been the subject of any professional complaint or discipline nor any other accusation of dishonest or unethical behavior.

9. Between 1987 and 1991, while an associate and partner of the [C] [B] [] firm, Petitioner converted \$54,082 to his own use through various means principally involving the submission of inflated or fictitious expense reports and/or inflated client bills.

10. Petitioner used the converted funds to support his use of sadomasochistic prostitutes.

11. In early April 1991, after questions were raised by the [C] [B] [] firm concerning Petitioner's billing of one client, Petitioner immediately disclosed the full range of his misconduct

and cooperated with the [CB] firm in performing a comprehensive audit of all of his expenses and client billings for a five year period.

12. Petitioner resigned from the [CB] firm in April 1991 and reported his own misconduct to the Office of Disciplinary Counsel.

13. By July 1991, the [CB] firm had made full restitution, with interest, to all affected clients and by September 1991, Petitioner had made full restitution to the [CB] firm.

14. On May 20, 1994, the Supreme Court suspended Petitioner for a period of three years, effective June 19, 1994.

15. Petitioner timely sent to clients and filed with the Board the Notices of Suspension required by Pa. R.D.E. 217(a) and Disciplinary Board Rule 91.91.

16. Petitioner timely filed with the Board the Affidavit of Compliance required by Pa. R.D.E. 217(e) and Disciplinary Board Rule 91.95.

17. Petitioner timely paid the costs taxed by the Supreme Court in its suspension order.

18. Since his suspension, Petitioner has been employed as a law clerk. He has had no unsupervised client contact and such supervised client contact as he has had has been limited to fact gathering with a clear explanation to the client that he was not functioning as a lawyer. His office location and telephone number were changed, he removed all indicia of attorney status from his office, his name was removed from all internal and external listings or directories of firm attorneys and his activities were supervised closely (including supervision by a firm partner in another department with whom Petitioner had no personal relationship) to ensure his compliance with the terms of his suspension.

19. Since his suspension, Petitioner has been involved in insurance claims arising out of a motor vehicle accident and in a commercial dispute; in both cases, Petitioner retained counsel and in neither case did he purport to represent himself or suggest to his opponents that he was an attorney.

20. During the period of his suspension, Petitioner has regularly reviewed a total of 23 advance sheets, looseleaf services and legal periodicals.

21. During the period of his suspension, Petitioner attended the Pennsylvania Basic Legal Practice Course at [] University in [] and [] (the latter course meeting the requirements of Disciplinary Board Rules 89.275(a)(15) & 89.279(a)) as well as a comprehensive list of other external and in-house continuing legal education programs.

22. During the period of his suspension, Petitioner was actively employed as a law clerk and performed extensive legal research and writing assignments on a broad range of legal topics.

23. At the Reinstatement Hearing, Petitioner presented testimony from many attorneys, including current [C] partners, [B] partners, partners in other large and small [] firms and the Associate Dean for Academic Affairs at the [] University School of Law, all of whom attested to the belief that Petitioner's legal skill and ability is of the highest order.

24. Petitioner testified unequivocally at the Reinstatement Hearing that his actions were wrong; that they betrayed the trust of his employers, partners and clients; that they were fundamentally inconsistent with the practice of law and that he was fairly treated by the disciplinary system in its response to them. Petitioner further testified that he is ashamed of his

actions, has done all in his power to make amends for them and is committed to ensuring that they do not recur if he is reinstated.

25. Petitioner presented the testimony of [D] M.D. Dr. [D] is a Board-Certified Psychiatrist and attending physician at the [E] Hospital. Dr. [D] testified that he assumed care of Petitioner in September 1993 when his colleague, [F]

[G], M.D., who had treated Petitioner since April 1991 relocated. Dr. [D] testified that, as a result of the extraordinary series of events which occurred to Petitioner and his family over a 12 year period, Petitioner developed a major depression, which condition was, in a variety of ways explained by Dr. [D] directly and causally related to Petitioner's misconduct. Dr. [D] further testified that Petitioner has recovered from his depression, is aware of its symptoms, has managed subsequent stressful events (including his suspension and the end of his marriage) without any recurrence of it and is fully capable of returning to practice without fear of recurrence of his misconduct.

26. Dr. [D] also testified that Petitioner has never sought to minimize or avoid responsibility for his misconduct, but rather has always been truthful and straightforward in all of his dealings.

27. [G], Esquire, a partner in the [C] firm and currently Petitioner's direct supervisor, testified at length concerning both Petitioner's legal ability and moral qualifications, stating that Petitioner has always been completely candid, honest and straightforward in all respects and that in his opinion Petitioner possesses the requisite moral character for reinstatement.

28. [H], Esquire, the managing partner of the [C] firm, testified that he was directly involved in that Firm's hiring of Petitioner in 1991; that Petitioner was completely candid concerning his misconduct; that, with the exception of that misconduct, Petitioner's reputation for both legal ability and moral character are excellent; and that, should Petitioner be reinstated, the [C] firm intends to re-employ him as an attorney.

29. [I], Esquire, a partner of the [C] firm, testified that he was assigned by that firm to monitor Petitioner's compliance with the terms of his suspension and the restrictions upon his activities and that Petitioner complied with those terms and restrictions in all respects.

30. [J], Esquire, a partner in the firm of [B] and currently Chairman of the [K] testified that he has known Petitioner since he was a teenager and was directly responsible for hiring Petitioner into the [B] firm, serving thereafter as Petitioner's direct supervisor and, ultimately partner. [J] testified that Petitioner's legal ability and character are of the highest order and the Petitioner enjoyed, and continues to enjoy that reputation both within and without the [B] firm. [J] testified further that he was directly involved when Petitioner's misconduct came to light and that, both during that process and thereafter, Petitioner was at all times candid and forthcoming and never sought to minimize or escape responsibility for his actions. [J] testified that, if Petitioner is reinstated, he would not hesitate to refer clients to him. In response to a question from the Hearing Committee, [J] further testified that he would not hesitate to recommend Petitioner's return to the [B] firm.

31. [L], Esquire, a partner in the firm of [M], testified that he has known Petitioner since Petitioner's childhood, having been for many years a partner of Petitioner's late father and is fully familiar both with Petitioner's personal and his professional history and reputation. He testified further that he has close and continuing contact with Petitioner with whom he serves as co-executor and co-trustee of Petitioner's late father's estate and the trusts thereunder. [L] testified that Petitioner sought him out in 1991 after his misconduct had come to light and candidly disclosed the entire situation to him, without minimizing or seeking to escape responsibility for it. [L] testified that Petitioner's legal ability and moral character are of the highest order.

32. [N], Esquire, a partner in the firm of [O], testified that he has known Petitioner since the Ninth Grade and that he and Petitioner attended high school, college and law school together. He testified that he has had close personal contact with Petitioner since that time and is fully familiar with the family tragedies which Petitioner has suffered. He further testified that Petitioner came to him immediately upon the discovery of his misconduct and was then and continued to be candid and forthcoming concerning his misconduct and never sought to minimize or excuse it. [N] testified further that Petitioner's legal ability and moral character are of the highest order and that, if Petitioner is reinstated, he would not hesitate to refer clients to him.

33. [P], Esquire, Professor of Law and Associate Dean for Academic Affairs at the [U] University School of Law, testified that she has known Petitioner since they were law school classmates, that Petitioner's legal ability and moral character are of the

highest order, that Petitioner has been completely candid with her concerning his misconduct and has never attempted to excuse or minimize it and that she believes that misconduct to have been an aberration totally inconsistent with Petitioner's character.

34. Petitioner is fully aware of the gravity of his misconduct and its utter incompatibility with the practice of law.

35. The uncontradicted medical testimony is that the major depression suffered by Petitioner is resolved, that Petitioner is able to recognize and deal promptly and effectively with any future depressive symptoms and that there is no medical reason to doubt Petitioner's capacity to return to the practice of law.

36. Petitioner recognizes that the substantial, public discipline imposed upon him serves clear and unambiguous notice upon the bar and the public that Petitioner's misconduct will not be tolerated and will be subject to severe sanction.

37. No person or entity submitted any opposition to Petitioner's Reinstatement.

38. The Petitioner and Disciplinary Counsel stipulate that the firm of [CB] was specifically questioned on this point and is not opposed to Petitioner's reinstatement.

39. The Office of Disciplinary Counsel does not oppose Petitioner's reinstatement.

III. DISCUSSION

The sole issue to be resolved by the Board relative to the Petitioner's conduct relates to whether it should recommend the reinstatement of the Petitioner to the Court. As in all matters of reinstatement, the issue that must be squarely faced is whether the record, as it now stands,

demonstrates by clear and convincing evidence that the Petitioner is fit to practice law such that he does not pose any danger to the public nor would his future actions be in derogation of the integrity of the legal system. Office of Disciplinary Counsel v. Keller, 509 Pa. 573, 506 A.2d 872 (1986). It is the Petitioner's burden to demonstrate, that he has both the moral qualifications and competency and learning in the law required for admission to practice law, and that the resumption of the practice of law within this Commonwealth will be neither detrimental to the integrity of the Bar nor subversive to the public interest. In re Anonymous No. 3 DB at 89, 23 D. & C. 4th 512, 519 (1994), Rule 218(c) (3) (i), Pa. R.D.E.

The record in the instant proceeding reflects convincing testimony that the Petitioner's competency as a practitioner of law is not a concern that requires any analysis. His educational background and practice prior to the instant suspension demonstrates a lawyer with innate talent to practice his profession and a drive to excel. The record further demonstrates that during the period of his suspension his efforts^{to} remain current in the law meet or exceed those routinely found by the Board to be sufficient to meet the requirement of the Rules. The Board was particularly impressed by the fact that, due to the recognition of his ability by a noted law firm, the Petitioner was able to remain in the environment which permitted him to remain current in the practice of law while not violating the precepts of his suspension. The Board found it of note that the attorneys who presented evidence to the Hearing Committee on the issue of the moral character of the Petitioner and his competency, stated, without hesitancy, that they would be comfortable in referring clients to the Petitioner. Among those witnesses was a partner in the firm directly involved in the matters which gave rise to the Petitioner's suspension.

With the issue of legal competency being overwhelmingly resolved in the Petitioner's favor, the sole issue left for determination is whether the Petitioner now possesses the moral fitness to resume the practice of law taking into consideration the nature of the underlying offenses in light of the rehabilitative efforts engaged in since his suspension. Philadelphia Newspapers, Inc. v. Disciplinary Board of the Supreme Court, 468 Pa. 382, 363 A2d 779 (1976). The matter which led to Petitioner's suspension related to the misappropriation of funds which were ultimately utilized, by Petitioner's admission, to retain the services of sadomasochistic prostitutes. Based upon a review of the record and the observations of the Hearing Committee the Board believes that Petitioner truly appreciates the gravity of his actions as it relates to his misappropriation of funds such that it is not likely to recur. Secondly, the catalyst for his actions has been removed such that the Board is comfortable that it is unlikely that he will be placed in a position of challenge once more.

The Board was struck initially by the Petitioner's openness concerning his misconduct once it had been brought to light and the fact that he was frank and candid with other counsel and clients in explaining the nature and reason for his suspension. The Board has concluded that the Petitioner's original conduct was directly linked to an underlying mental problem and that Petitioner, under normal circumstances, would not be given to such conduct.

The undisputed testimony of Dr. [redacted] reflects that at the time of the offense causing his suspension, the Petitioner suffered from a major depression by virtue of multiple family tragedies which apparently triggered the Petitioner's aberrant behavior ultimately funded by his misappropriations. Dr. [redacted] testified that the Petitioner has, through himself and a prior

colleague, received appropriate treatment and psychiatric monitoring over an extensive period of time as a result of which it was Dr. [D's] opinion that the Petitioner is now able to recognize the signs of his depressive disease and to handle the effects thereof without returning to his prior anti-social behavior. Based upon Dr. [D's] opinion and the strong supportive testimony of other members of this Bar, the Board concludes that there is little threat to the public by virtue of the resumption of the Petitioner's practice and his reinstatement would not be prejudicial to the integrity of the Bar.

IV. CONCLUSION OF LAW

The Board finds that the Petitioner has met his burden by showing through clear and convincing evidence that he has the moral qualifications, competency and learning in the law required for the admission to practice law in this Commonwealth and that his resumption of practice will be neither detrimental to the integrity and standing of the Bar or the Administration of Justice nor would it be subversive to the public interest.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Petitioner, [redacted], 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: 

M. David Halpern, Esquire

Dated: October 20, 1997

Board Members Elliott and Aronchick did not participate in the August 13, 1997 adjudication.

O R D E R

AND NOW, this 30th day of December, 1997, upon consideration of the Report and Recommendations of the Disciplinary Board of the Supreme Court of Pennsylvania dated October 20, 1997, 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.