

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 408, Disciplinary Docket
: No. 3 - Supreme Court
:
:
[ANONYMOUS] : No. 36 DB 1997 - 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

On December 15, 1998, Petitioner, [], filed a Petition for Reinstatement. Petitioner filed an Amended Petition for Reinstatement on January 19, 1999. Petitioner was suspended for a period of three months pursuant to the Supreme Court Order of May 21, 1998. Although Petitioner's suspension was for a period of less than one year, he

was required to file a Petition for Reinstatement pursuant to Rule 218(f)(2), Pa.R.D.E., because Petitioner had additional formal charges pending against him at No. 93 DB 1998. The instant matter was referred to Hearing Committee [] comprised of Chair [], Esquire, and Members [], Esquire, and [], Esquire. The reinstatement hearing was held on February 24, 1999. Petitioner appeared pro se. Office of Disciplinary Counsel was represented by [], Esquire.

On March 3, 1999, the Hearing Committee filed its Report and recommended that the Petition for Reinstatement be granted. No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting of March 10, 1999.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner was born in 1949 and was admitted to practice law in the Commonwealth of Pennsylvania in 1983. His current home address is []. His current business address is [].

2. By Supreme Court Order dated May 21, 1998, Petitioner was

suspended from the practice of law for a period of three months, effective June 20, 1998.

3. Petitioner's suspension resulted from his failure to take any action in furtherance of a client's PCRA Petition, thereby violating Rules of Professional Conduct 1.3, 1.4(a), and 8.4(d).

4. Petitioner has an extensive record of discipline, which was considered in the determination of the three month suspension. Petitioner received four Informal Admonitions in 1994 and three Private Reprimands in 1996.

5. Pursuant to Rule 217(a), Pa.R.D.E., Petitioner was required to send notices to non-litigation clients informing them of his suspension. Petitioner did not send any notices.

6. On June 16, 1998, Office of Disciplinary Counsel received a complaint from [A] involving, among other things, Petitioner's failure to notify [A] that he had been suspended from the practice of law. That complaint is the subject of an ongoing investigation.

7. On July 2, 1998, Petitioner filed with the Disciplinary Board his Statement of Compliance pursuant to Rules 217(e), Pa.R.D.E., including providing proof

of notices sent to litigation clients pursuant to Rule 217(b), Pa.R.D.E.

8. The three month term of suspension imposed by the Supreme Court was to have expired on September 21, 1998, but the Office of Disciplinary Counsel filed a Petition for Discipline at No. 93 DB 1998 on September 1, 1998. Pursuant to Rule 218(f)(2), Pa.R.D.E., Petitioner was required to petition for reinstatement and remains under suspension.

9. The aforementioned Petition for Discipline filed at No. 93 DB 1998 consists of charges of misconduct involving three clients. The hearing on that Petition was held on November 18, 1998 before Hearing Committee []. This is the same Committee that heard the instant Petition for Reinstatement.

10. Petitioner stipulated to the facts of the misconduct and stipulated that he violated Rules of Professional Conduct 1.3, 1.4(a), 1.4(b), 1.16(d), 3.2, and 8.4(d). Petitioner's misconduct in this matter is substantially similar to the misconduct for which he was suspended in 1998 and for which he received private discipline in 1994 and 1996.

11. The Hearing Committee in the matter of No. 93 DB 1998 recommended, contingent upon Petitioner's reinstatement from his suspension imposed at No. 36 DB 1997, that Petitioner be subjected to a two year suspension, stayed in its

entirety, and that he be placed on probation for a period of two years, subject to conditions, including the appointment of a practice monitor.

12. The Board adjudicated the matter at No. 93 DB 1998 at the meeting of March 10, 1999.

13. In a separate Report and Recommendation in the matter of No. 93 DB 1998, the Disciplinary Board is recommending that Petitioner be suspended from the practice of law for a period of one (1) year and one (1) day, retroactive to May 21, 1998.

III. CONCLUSIONS OF LAW

Petitioner's qualifications for reinstatement to the bar of Pennsylvania pursuant to Rule 218(c)(3)(i) were not addressed by the Board, as the Board finds that Petitioner's pending discipline matter at No. 93 DB 1998 precludes such an analysis at this time.

IV. DISCUSSION

Petitioner was suspended for a period of three months by Order of the Supreme Court dated May 21, 1998. This suspension was imposed, in part, for his violations of the Rules of Professional Conduct based on Petitioner's inaction on a PCRA Petition to which he had been court-appointed, and in part on his extensive history of prior

discipline for substantially similar infractions of the Rules.

This case presents an unusual procedural posture. Ordinarily, Petitioner would not be required to file a Petition for Reinstatement for a three month suspension; however, Office of Disciplinary Counsel filed a Petition for Discipline at No. 93 DB 1998 against Petitioner in a separate matter shortly before the expiration of Petitioner's suspension. Rule 218(f)(2), Pa.R.D.E., requires an attorney suspended for less than one year and one day to file a petition for reinstatement if formal disciplinary proceedings are pending against that attorney at the time the suspension expires.

The Petition for Discipline filed at No. 93 DB 1998 contains three charges alleging that Petitioner failed to act with diligence and promptness in furtherance of clients' matters, failed to inform clients of the status of their cases, and failed to protect his clients' interests. These charges, in each of three cases, are virtually the same as the violations found in the suspension matter and the violations found in Petitioner's private discipline proceedings. The Board adjudicated this matter at the meeting of March 10, 1999 and recommended a suspension for a period of one year and one day, retroactive to May 21, 1998. This recommendation is presently before the Court for review and final determination.

The Board's consideration of a Petition for Reinstatement involves an

analysis of evidence to determine whether the petitioner demonstrated that he or she has the moral qualifications, competence and learning in the law required for admission to practice law in Pennsylvania. Pa.R.D.E. 218(c)(3)(i). In the instant reinstatement proceeding, the Board is of the opinion that such an analysis cannot be undertaken as the Board has recommended a suspension of one year and one day, retroactive to May 21, 1998, in the pending matter at No. 93 DB 1998. The existence of this other disciplinary proceeding effectively moots Petitioner's ability to prove he is qualified to resume practicing law. If the recommendation of a one (1) year and one (1) day suspension is imposed by the Supreme Court in the disciplinary matter, Petitioner would be required to file a Petition for Reinstatement pursuant to Rule 218(a), Pa.R.D.E. and demonstrate his fitness in order to resume the practice of law. All questions concerning his qualifications, competency and learning in the law would be addressed at such time. In light of this pending disciplinary proceeding and the Board's recommendation it is not appropriate at this time to consider Petitioner's qualifications for reinstatement. The Board recommends that the Petition be denied.

The Board notes, pursuant to ?89.272(c) of the Disciplinary Board Rules and Procedures, that where a Petition for Reinstatement is finally denied by Order of the Court, the Board will not entertain a second Petition for Reinstatement until after the expiration of at least one year from the time the immediately preceding Petition was finally denied. In this particular case, if the Court denies the instant Petition for Reinstatement,

the earliest the Petitioner would be eligible to petition for reinstatement is one year from the date of the final Order. If, however, the Court waives the requirements of ?89.272(c), Petitioner would be eligible to petition for reinstatement immediately upon conclusion of any further period of suspension. This waiver is fair considering the length of time Petitioner has been on suspension and the amount of time necessary to process a Petition for Reinstatement.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Petition of [] for Reinstatement be denied as moot because of the Petitioner's pending disciplinary matter at No. 93 DB 1998. The Board further recommends that the requirements of Disciplinary Board Rule ?89.272(c) be waived.

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: July 2, 1999

PER CURIAM:

AND NOW, this 20th day of July, 1999, upon consideration of the Report and Recommendations of the Disciplinary Board of the Supreme Court of Pennsylvania dated July 2, 1999, the Petition for Reinstatement is denied, and the requirements of Disciplinary Board Rule Section 89.272(c) are hereby waived.

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.