

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of	:	No. 486 Disciplinary Docket No. 2
	:	(No. 10 RST 2007)
	:	
JOHN M. KERR	:	No. 44 DB 1985
	:	
	:	Attorney Registration No. 26414
	:	
PETITION FOR REINSTATEMENT	:	(Dauphin County)

ORDER

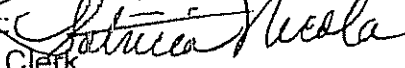
PER CURIAM:

AND NOW, this 18th day of June, 2007, upon consideration of the Report and Recommendations of the Disciplinary Board dated April 27, 2007, 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.

A True Copy Patricia Nicola

As of: June 18, 2007

Attest: 
Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 486 Disciplinary Docket
: No. 2
: :
JOHN M. KERR : No. 44 DB 1985
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PETITION FOR REINSTATEMENT : Attorney Registration No. 26414
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: (Dauphin 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

By Order of February 2, 1988, the Supreme Court accepted John M. Kerr's Statement of Resignation and disbarred Mr. Kerr on consent. The disbarment was a result of his conviction of 139 specific charges including bribery in official and political matters; violation of the Pennsylvania Conflict of Interest Act; criminal attempt to obstruct

administration of law or other governmental function; obstructing administration of law or governmental function; demanding property to secure employment; and criminal conspiracy.

On October 6, 1993, Mr. Kerr filed a Petition for Reinstatement to the bar of the Supreme Court of Pennsylvania. Following a hearing, the Hearing Committee recommended that the Petition for Reinstatement be denied based upon, inter alia, Petitioner's failure to timely file state and federal income tax returns and its conclusion that insufficient time had elapsed in order for the taint of Petitioner's misconduct to have dissipated. Petitioner filed a Brief on Exceptions and requested oral argument before the Board. Before a decision was rendered by the Board, Petitioner withdrew his Petition for Reinstatement.

On April 21, 2006, Mr. Kerr filed a second Petition for Reinstatement to the bar of the Supreme Court of Pennsylvania. Office of Disciplinary Counsel filed a Response to Petition for Reinstatement on June 28, 2006 and stated it did not intend to oppose the reinstatement. On August 15, 2006, an Amended Reinstatement Questionnaire was filed in order to supplement certain information which was included in the original Reinstatement Questionnaire.

A reinstatement hearing was held on September 11, 2006, before a District III Hearing Committee comprised of Chair Henry Amos Goodall, Jr., Esquire, and Members John H. Reed, Esquire, and Victor A. Neubaum, Jr., Esquire. Petitioner was represented

by James G. Morgan, Jr., Esquire. The parties submitted a jointly-agreed stipulation as to findings of fact. Petitioner introduced the testimony of nine witnesses and testified on his own behalf.

The Hearing Committee filed a Report on December 28, 2006 and recommended that reinstatement be granted.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on March 20, 2007.

II. FINDINGS OF FACT

The Board finds that the jointly-agreed findings of fact are accurate:

1. Petitioner, John M. Kerr, was born in 1950 and was admitted to practice law in Pennsylvania in 1977. His current address is 226 Bailey Street, New Cumberland PA 17070.

2. On May 20, 1985, Petitioner was temporarily suspended from the practice of law in Pennsylvania, on the basis of various criminal convictions in the Court of Common Pleas of Dauphin County, Pennsylvania.

3. On January 13, 1988, Petitioner filed an amended verified Statement of Resignation. On February 2, 1988, the Supreme Court entered an Order accepting this resignation and disbaring Petitioner on consent.

4. Petitioner, following a June 1984 jury trial in the Dauphin County Court of Common Pleas, was convicted of 139 out of 216 specific charges, including bribery in official and political matters in violation of the Pennsylvania Conflict of Interest Act; criminal attempt to obstruct administration of law or other governmental function; obstructing administration of law or governmental function; demanding property to secure employment; and criminal conspiracy.

5. From January 1, 1985 through February 1, 1996 (excepting a period of incarceration from August 8, 1988 through December 3, 1989), Petitioner performed paralegal/law clerk duties for William R. Balaban, Esquire and the offices of Balaban and Balaban, in Harrisburg, Pennsylvania.

6. During the period prior to October 5, 1993, Petitioner also performed paralegal/law clerk duties on behalf of Costopoulos, Foster & Fields in Lemoyne, Pennsylvania; Herschel Lock, Esquire in Harrisburg, Pennsylvania; Joshua Lock, Esquire in Harrisburg, Pennsylvania; and William Kollas, Esquire in Camp Hill, Pennsylvania.

7. On October 5, 1993, Petitioner filed with the Disciplinary Board a Petition for Reinstatement, Reinstatement Questionnaire, and exhibits.

8. A hearing was held before a Hearing Committee and on October 3, 1994, the Hearing Committee issued a Majority Report and Dissenting Opinion. Concluding that "Petitioner ha[d] presented a strong, but ultimately unpersuasive case for reinstatement," the Majority Report recommended that the Petition for Reinstatement be denied based upon, inter alia, Petitioner's failure to timely file state and federal income tax returns in the

years 1990, 1991 and 1992 and its conclusion that insufficient time had elapsed in order for the taint of Petitioner's misconduct to have dissipated "to the extent that his resumption of the practice of law would not have any detrimental effect upon the integrity and standing of the bar or the administration of justice, nor be subversive of the public interest."

9. On October 27, 1994, following the entry of the Hearing Committee Report, Petitioner filed a Brief on Exceptions To Majority Opinion of Hearing Committee and requested oral argument before a panel of the Disciplinary Board. After oral argument had been conducted, but before a decision was rendered, Petitioner withdrew his petition for reinstatement.

10. Following the close of the record for the first Petition for Reinstatement, Petitioner's 1993 federal, state and local tax returns were timely filed. All subsequent tax returns were timely filed.

11. On October 1994, Petitioner and his accountant, Robert Newbury, CPA, discussed with the Internal Revenue Service amounts owing in federal income taxes. A check in the amount of \$10,000 was delivered and a payment plan was entered into with the IRS.

12. For approximately 18 months to two years, Petitioner made payments directly to the IRS. As time went on, these amounts became onerous, and Petitioner began to have discussions with Lawrence Frank, Esquire, a Harrisburg attorney specializing in bankruptcy.

13. Eventually, Attorney Frank filed a Chapter 13 Petition in the Bankruptcy Court for the Middle District of Pennsylvania on behalf of Petitioner and his spouse.

14. As of the date of the reinstatement hearing on September 11, 2006, all outstanding issues with regard to the bankruptcy filing and amounts due to the IRS have been satisfied.

15. The formal date of discharge of the Chapter 13 proceeding was March 16, 2006.

16. Since the time of the first reinstatement hearing in 1994, Petitioner has continued to perform paralegal /law clerk duties for Herschel Lock, Esquire. Notices of Employment, pursuant to Pa.R.D.E. 217(j)(5), have been filed by Petitioner and Supervising Attorney with the Disciplinary Board.

17. On April 21, 2006, Petitioner filed a second Petition for Reinstatement, together with Reinstatement Questionnaire and various exhibits. An Amended Reinstatement Questionnaire was filed on August 15, 2006, in order to supplement certain information included in the original Questionnaire.

18. Petitioner was 26 years of age when he went to work as Executive Deputy Auditor General for former Auditor General Al Benedict, after having managed his 1976 campaign for that office.

19. As part of his responsibilities in working for Benedict, Petitioner would work with political figures on a regular basis, including involvement in national politics; was

in charge of fund-raising for Benedict and the entire State Democratic Party; and essentially "ran" the Department of the Auditor General. (N.T. 9/11/06, p. 62)

20. Petitioner found the political excitement to be more than intriguing, terming it "addicting". (N.T. 9/11/06, p. 63)

21. Petitioner's fund-raising activities for Benedict involved both legitimate and non-legitimate fund-raising. Petitioner knew that some of these activities were "wrong". (N.T. 9/11/06 p. 63)

22. The illegitimate fund-raising activities began in 1978, when Benedict asked Petitioner to raise approximately \$30,000 - \$35,000 so that Benedict could avert a business bankruptcy in Erie. The money was requested to be in the form of cash.

23. Petitioner responded to an offer by one Michael Hanna, former Democratic Chairman of Washington County, Pennsylvania, suggesting that cash be provided in exchange for hiring applicants in the Department of the Auditor General, so as to retire a loan taken in order to provide the \$30,000 - \$35,000 requested by Benedict.

24. Petitioner was also asked to raise cash money for Benedict's purchase of a condominium and furnishings in West Palm Beach, Florida; a hospitality suite at the Democratic National Convention in 1980 in New York City; and numerous costs not expressly authorized by the Election Code.

25. Although he knew it was criminal, Petitioner later realized that he had been completely addicted with politics and power after becoming Executive Deputy Auditor General; he knew Benedict was a certain gubernatorial candidate and that he could "rise

up the ladder" with him; and that Benedict's known charisma and Petitioner's loyalty all led him to subvert his integrity and personal judgment in favor of ambition. (N.T. 2/1/94, p. 169)

26. Although Petitioner realized that this meant he would be lying, he denied the underlying facts of the job-selling scheme during three grand jury appearances and at trial. He was expected, by Benedict and Benedict's main legal advisor, not to assert his Fifth Amendment privilege against self-incrimination. (N.T. 9/11/06, p. 64)

27. In a subsequent appearance before a federal grand jury meeting in Harrisburg, Pennsylvania in June or July of 1987, Petitioner corrected and truthfully testified about all the events he had previously testified falsely about during three prior grand jury appearances and at his trial in 1984.

28. This federal grand jury appearance was during a period in which Petitioner had begun cooperating with representatives of the United States Justice Department. Petitioner decided to undertake this cooperation because his life had hit rock bottom and was out of balance, and as a result of his infuriation with Al Benedict's publicly telling people that he did not know jobs were being sold in the Auditor General's Office. (N.T. 9/11/06, p. 103)

29. A direct result of Petitioner's cooperation with the federal government was the prosecution of Al Benedict and Harold Imber, a Deputy Auditor General and Benedict aide.

30. During his time of disbarment, Petitioner has been involved in various community activities, including serving on the Board of Directors of the Highland Area

Baseball Association and coaching at three levels; participating in the Western and Central Pennsylvania Epilepsy Foundation Walk; serving on the Social Justice Committee at his parish, St. Theresa's Roman Catholic Church in New Cumberland, as well as participating in its annual Oktoberfest; and contributing to the Bethesda Mission, Central Pennsylvania Food Bank, and York Rescue Mission.

31. After Petitioner withdrew his first Petition for Reinstatement, he returned to school to pursue a Master's Degree in History from Villanova University. He was admitted to a PhD program at Lehigh University and took further graduate courses at Temple and Villanova. He presented papers at several history conferences and engages in research and writing on the overlap between history and law.

32. Petitioner has been employed in a variety of positions through the years. He has been continually involved with the law, serving as a paralegal to several Harrisburg area attorneys.

33. Petitioner was employed by PrimeCare Medical, Inc., from 1993 until 1998 as an independent contractor, and from 1998 to 2005 as a full-time employee. Petitioner engaged in risk management for the company. Since August 2005 Petitioner has been employed by York College of Pennsylvania as a member of the adjunct faculty in the Department of History and Political Science.

34. Petitioner presented the testimony of nine witnesses, each of whom was credible.

35. Michele Grinberg, Esquire, was a member of the West Virginia firm that was counsel to PrimeCare Medical of West Virginia, Inc, which provided health care to all inmates in regional jails. Petitioner served as the company's risk manager. As such, he met with Ms. Grinberg in connection with claims brought by inmates. In addition he would conduct seminars with nurses providing services to inmates. Ms. Grinberg testified that Petitioner has moral fitness to act as an attorney and that the standing of the bar in Pennsylvania would not be diminished if he were reinstated.

36. Herschel Lock, Esquire, is a solo practitioner in Harrisburg who employed Petitioner as a paralegal to work on various matters. Mr. Lock characterized Petitioner as diligent, having a good intellect and a probing mind. He does not have any concerns about Petitioner relative to his moral fitness in practicing law if he were reinstated.

37. Robert Newbury, CPA, has an accounting practice in Camp Hill, Pennsylvania and testified that Petitioner filed all past due tax returns in late 1993 to early 1994 and has filed all returns since that date as well.

38. Lawrence Frank, Esquire, is a Harrisburg attorney practicing bankruptcy law. He testified that Petitioner paid all past due taxes as required and completed a Chapter 13 bankruptcy plan.

39. Julio Diodonet-Rivera is a retired Sergeant-Major in the United States Army. He attends the same church as Petitioner and sees Petitioner on a regular basis. He does not believe that the legal profession would be diminished if Petitioner were reinstated to practice law in Pennsylvania.

40. Marybeth K. Jackson, M.D., is a family physician and sister of Petitioner. She and Petitioner both worked at PrimeCare Medical for a time. Petitioner was the Vice-President of Risk Management and Human Resources and managed personnel issues, was responsible for writing many of the policies and procedures for the company and handled all the risk management issues.

41. Dr. Jackson described the changes she observed in Petitioner. After his conviction and incarceration, he became more dedicated to his family.

42 . James J. West, Esquire, was initially involved in the investigation of Petitioner and the Auditor General's Office and later prosecuted Al Benedict while serving as Acting United States Attorney for the Middle District of Pennsylvania. Mr. West employed Petitioner to assist in legal research when Mr. West established a private practice in Harrisburg. He does not believe that Petitioner's readmission to the bar would diminish the legal profession.

43. George Delaney was an investigator assigned to the Benedict investigation by the Federal Bureau of Investigation. He is presently the Chief Investigator for the Judicial Conduct Board in Pennsylvania. Mr. Delaney first met Petitioner as Petitioner was beginning his cooperation with the government, sometime in late 1986. Mr. Delaney described Petitioner at the time he first met him as a "man who was trying to turn his life around, a man who was dedicated to his family, a man who knew that the future

was not bright for him.” (N.T. 9/11/06 p. 88) Mr. Delaney does not believe that the legal profession would be diminished by Petitioner's reinstatement, and further stated that he would go to Petitioner if he needed an attorney. (N.T. 9/11/06 p. 89)

44. Steven Canterbury is the Administrative Director of the Courts of West Virginia and met Petitioner through Petitioner's employment with PrimeCare Medical. Mr. Canterbury was aware of Petitioner's history and stated he did not have the least doubt about Petitioner's integrity and honesty or his ability to do the job. Mr. Canterbury described Petitioner as a person who has extraordinary character, uprightness, and moral fortitude. He would trust Petitioner with a legal case.

45. Petitioner testified on his own behalf. Following his conviction and incarceration, he tried to achieve a balance between his personal and professional lives consistent with demonstrating proper remorse. He deliberately kept a low profile, focusing on his wife and three children in their endeavors. He expressed sincere remorse for his misconduct.

46. Petitioner fulfilled the Continuing Legal Education credits necessary for readmission to the bar.

47. Petitioner has kept apprised of the law through many hours of research and writing performed while employed as a paralegal.

48. If reinstated, Petitioner plans to practice law in Cumberland County, Pennsylvania, as a sole practitioner with an emphasis on employment, labor and civil rights.

III. CONCLUSIONS OF LAW

1. The conduct for which Petitioner was disbarred is not so egregious as to preclude reinstatement. Office of Disciplinary Counsel v. Keller, 506 A.2d 872 (Pa. 1986)

2. A sufficient time has elapsed since the misconduct and subsequent disbarment in 1988. Petitioner has engaged in a significant period of qualitative rehabilitation. The taint arising from Petitioner's misconduct which first came to light over two decades ago has effectively dissipated.

3. Petitioner has demonstrated through clear and convincing evidence that he possesses the moral qualifications, competency and learning in the law necessary to practice law in the Commonwealth of Pennsylvania. Pa.R.D.E. 218 (c)(3)(i)

4. Petitioner's resumption of the practice of law will not be detrimental to the integrity and standing of the bar and administration of justice nor subversive of the public interest. Pa.R.D.E. 218(c)(3)(i)

IV. DISCUSSION

This matter comes before the Disciplinary Board on a Petition for Reinstatement to the bar of the Supreme Court of Pennsylvania. Petitioner was disbarred on consent by Order of the Supreme Court dated February 2, 1988, as a result of his involvement in a series of criminal transactions, including a job selling scheme, while acting in his capacity as Executive Deputy Auditor General for former Auditor General Al Benedict. Office of Disciplinary Counsel does not oppose Petitioner's reinstatement.

The first issue to consider in a reinstatement from disbarment is whether Petitioner's misconduct was so egregious as to preclude any consideration of reinstatement and whether or not sufficient time has passed that readmission would not be detrimental to the integrity and standing of the bar.

Petitioner's conduct as set forth above was outside the bounds of acceptable conduct under any circumstances, as Petitioner concedes. Disbarment is an extreme sanction which must be imposed only in the most egregious cases. Office of Disciplinary Counsel v. Kissel, 442 A.2d 217 (Pa. 1982); Matter of Leopold, 366 A.2d 227 (Pa. 1976). Disbarment represents a termination of the license to practice law without a promise of its restoration at any future time. Office of Disciplinary Counsel v. Keller, 506 A.2d 872 (Pa. 1986). Every petition for reinstatement from disbarment must pass a threshold established by the Supreme Court, since there may exist conduct for which an attorney should never be permitted to return to the practice of law. As the Court noted in Matter of William James Perrone, 899 A.2d 1108 (Pa. 2006), "Our threshold inquiry in a [disbarment] reinstatement matter is whether the petitioner has demonstrated that his breach of trust was not so egregious that it precludes us from ever considering his petition for reinstatement." Id., 899 A.2d at 1113.

At the time of the misconduct, Petitioner was a young man, caught up in the atmosphere of high level Pennsylvania politics. Although reprehensible, his conduct should not prevent him from being considered for reinstatement more than twenty years later. The Board's support for this statement lies in the Court's analysis of the issue of

egregious conduct. In Matter of William James Perrone, 777 A.2d 413 (Pa. 2001), Perrone was disbarred for improperly obtaining public funds allocated for indigent legal representation. While the Court found that Perrone's misconduct was not so egregious as to prejudice his request for readmission, the Court denied Perrone's first petition for reinstatement on the grounds that he did not perform adequate community service, and because eight years of disbarment was insufficient to dissipate the detrimental effect that the misconduct had upon the integrity and standing of the bar and on the administration of justice. Five years later, the Court considered Perrone's second reinstatement petition. Matter of William James Perrone, 899 A.2d 1108 (Pa. 2006). The Court determined that the amount of time was sufficient and that Perrone had engaged in significant pro bono and community activities since the last reinstatement petition.

Herein, more than twenty years have passed since Petitioner engaged in the misconduct, and approximately nineteen years have passed since Petitioner was disbarred. The record is replete with instances of Petitioner's rehabilitation, starting with his voluntary cooperation with law enforcement authorities and extending through his many services to the community. Petitioner used his time of disbarment to further his education and is currently an adjunct professor at York College. Petitioner resolved his tax issues, which were a critical part of the reason why his previous reinstatement was denied by the first Hearing Committee. No less important to his rehabilitation is Petitioner's

acknowledgment of responsibility and remorse, as well as the perception of community members that Petitioner is a person of integrity and honesty who would not bring disrepute to the legal profession by his reinstatement.

Petitioner has ably demonstrated that he is competent and learned in the law. His record of employment shows his continuous contact with the legal profession as a paralegal who performed a variety of legal research and writing duties. Petitioner fulfilled his Continuing Legal Education requirements.

Based on the totality of the record in this matter, the Board recommends that the Petition for Reinstatement be granted.

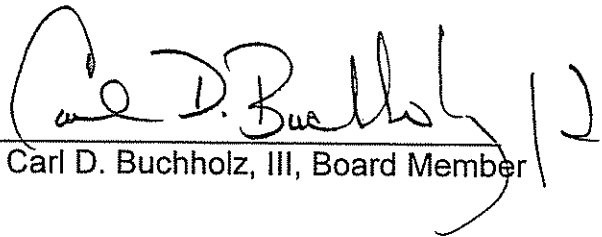
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Petitioner, John M. Kerr, 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: 
Carl D. Buchholz, III, Board Member

Date: April 27, 2007



THE DISCIPLINARY BOARD
OF THE
SUPREME COURT OF PENNSYLVANIA

First Floor
Two Lemoyne Drive
Lemoyne, PA 17043-1226
(717) 731-7073

April 27, 2007

In the Matter of	:	No. 486 Disciplinary Docket No. 2
	:	
	:	No. 44 DB 1985
JOHN M. KERR	:	
	:	Attorney Registration No. 26414
	:	
PETITION FOR REINSTATEMENT	:	(Dauphin County)

**Expenses Incurred in the Investigation and Processing
of the above Petition for Reinstatement***

02-02-1988	16 copies of Supreme Court Order of February 2, 1988	\$ 8.00
04-21-2006	16 copies of Petition for Reinstatement and Amended Reinstatement Questionnaire	392.00
06-28-2006	16 copies of ODC's Response to Petition for Reinstatement	8.00
10-24-2006	16 copies of Petitioner's Post-Hearing Brief to Hearing Committee	312.00
12-28-2006	16 copies of Hearing Committee Report	208.00
10-12-2006	Transcript of Hearing held on September 11, 2006	<u>550.25</u>

TOTAL AMOUNT DUE \$ 1478.25

**Make Check Payable to PA Disciplinary Board
PAYMENT IS REQUIRED UPON RECEIPT OF ORDER**

* Submitted pursuant to Rule 208(g) of the Pa.R.D.E. and §93.111 of the Disciplinary Board Rules.