

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

In the Matter of	:	No. 581, Disciplinary Docket
	:	No. 3 – Supreme Court
	:	
JAMES J. GILLESPIE, JR.	:	No. 125 DB 1999 - Disciplinary Board
	:	
	:	Attorney Registration No. 37254
PETITION FOR REINSTATEMENT	:	
	:	(Montgomery 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 August 22, 2005, James J. Gillespie, Jr., filed a Petition for Reinstatement to the bar of the Supreme Court of Pennsylvania. By Order of the Supreme Court dated April 10, 2000, Petitioner was disbarred on consent. Following an investigation, Office of

Disciplinary Counsel filed a Response to Petition for Reinstatement on November 18, 2005, stating there was no basis to oppose the Petition.

A reinstatement hearing was held on February 22, 2006, before a District II Hearing Committee comprised of Lawrence R. Scheetz, Esquire, and Members Denis A. Gray, Esquire, and Paul C. Troy, Esquire. Respondent appeared pro se.

The Hearing Committee filed a Report on March 27, 2006 and recommended that the Petition for Reinstatement be granted.

This matter was adjudicated by the Disciplinary Board at the meeting on May 10, 2006.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner is James J. Gillespie, Jr. He was born in 1957 and was admitted to the bar of the Commonwealth of Pennsylvania in 1982. His current business address is 74 East Second Street, Moorestown NJ 08057.

2. Petitioner was disbarred on consent from the bar of Pennsylvania on April 10, 2000.

3. From the time of his admission to the Pennsylvania bar until his disbarment, Petitioner was engaged in the active practice of law with various law firms and insurance companies.

4. Petitioner was staff attorney with TIG Insurance in Philadelphia from January of 1995 until March of 1999.

5. As staff counsel for TIG, Petitioner represented Hawthorne Farms, Inc, t/a TCBY Yogurt of Willow Grove, who was a defendant in a lawsuit filed in the Montgomery County Court of Common Pleas.

6. Plaintiffs Toby and George Yollin alleged that Toby had slipped and fell on the premises of Hawthorne Farms, Inc. t/a TCBY Yogurt of Willow Grove, on October 3, 1993.

7. Plaintiffs by their attorney Leonard Konefsky also sued the Federal Realty Investment and Trust in the same litigation.

8. Hawthorne Farms, Inc. t/a TCBY Yogurt of Willow Grove took possession of the Willow Grove store on April 1, 1995.

9. It was the intention of Petitioner to file a Motion for Summary Judgment on behalf of Hawthorne Farms t/a TCBY and in fact in May of 1998 he had prepared the Motion and was awaiting the executed Affidavit from his client before filing the Summary Judgment Motion.

10. In July 1998, Mr. Konefsky had an informal settlement conference with Pamela Hinton, Esquire, an attorney from CNA who represented Federal Realty Investment and Trust and a partial settlement of the case was reached.

11. On July 6 through July 17, 1998, Petitioner was on reserve duty with the Judge Advocate General School of the United States Army.

12. When Petitioner returned to his office he read a letter in which he mistakenly believed that the entire case had been settled. In fact the case had only been partially settled.

13. Petitioner informed the claims representative for TIG Insurance, William Martincic, that the case had been closed because he had won his Motion for Summary Judgment.

14. The Motion for Summary Judgment had never been filed.

15. Petitioner fabricated an Order and dated it July 24, 1998, and he signed Judge Albert Subers' name to the Order granting a Motion for Summary Judgment in favor of Hawthorne Farms, Inc. t/a TCBY Yogurt of Willow Grove.

16. Petitioner sent the fabricated Order to Mr. Martincic.

17. On March 12, 1999, Mr. Konefsky contacted Mr. Martincic to attempt to settle the matter against TCBY Yogurt.

18. Mr. Martincic provided the Order purportedly signed by Judge Subers to Mr. Konefsky.

19. On March 19, 1999, TIG Insurance contacted Petitioner to inquire about the alleged Order of Judge Subers.

20. Petitioner called Mr. Konefsky and advised him that he had fabricated the Order and it had not been signed by Judge Subers on July 24, 1998.

21. Petitioner then contacted Judge Subers and advised him of what he had done and on March 21, 1999, Petitioner prepared a letter to Judge Subers with a copy to Mr. Konefsky and Mr. Martincic to outline what had occurred.

22. Petitioner resigned from his position as an attorney with TIG Insurance on March 22, 1999 and was subsequently disbarred on consent by the Supreme Court of Pennsylvania in April 2000.

23. Petitioner was suspended by the Supreme Court of New Jersey for two years effective April 10, 2000.

24. In January 2003 Petitioner was reinstated to practice law in New Jersey.

25. Petitioner has been gainfully employed since his disbarment. Until 2003 he worked as a Territory Representative for Wyeth Pharmaceuticals in Radnor, Pennsylvania. He sold newspapers for the New York Times and the Philadelphia Inquirer for several years, and from 2003 to 2004 he was the division director of legal recruiting for Robert Half International in Philadelphia.

26. Since 2004, Petitioner has worked as a sole practitioner in the State of New Jersey and in the Federal District Court for the District of New Jersey.

27. Petitioner fulfilled his requirements for Continuing Legal Education necessary for reinstatement.

28. Petitioner routinely reviews the Legal Intelligencer and the New Jersey Law Journal to keep apprised of the current state of the law.

29. If reinstated, Petitioner intends to continue his general practice of law in New Jersey, with a significant portion of his practice devoted to disability and education law, which is of interest to him due to his son's autism.

30. Petitioner has served his church as a Catechist in the CCD program for several years, and has been involved in Boy Scouts, Little League and basketball in his community.

31. Petitioner received a Certificate of Appreciation from the 101 Airborne Division of the United States Army for his work as trial counsel.

32. Petitioner received a letter of appreciation from the United Nations for his service in the Office of Prosecutor for war crimes.

33. Petitioner has expressed sincere remorse for his misconduct, which he has labeled incredibly stupid and thoughtless.

34. Petitioner derived no financial, professional or personal gain from his misdeed, and the position of the parties in the underlying litigation was not prejudiced.

### III. CONCLUSIONS OF LAW

1. The misconduct for which Petitioner was disbarred is not so egregious as to preclude immediate consideration of his Petition for Reinstatement.

2. Petitioner has demonstrated with 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.

3. Petitioner's resumption of the practice of law will not be detrimental to the integrity of the Bar nor will it be subversive of the interests of the public.

#### IV. DISCUSSION

Petitioner's request for reinstatement to the bar following disbarment is initially governed by the standard set forth by the Supreme Court of Pennsylvania in Office of Disciplinary Counsel v. Keller, 506 A.2d 872 (Pa. 1986). The Keller opinion articulates a threshold question which must be addressed before the requirements of Pa.R.D.E. 218(c)(3)(i) pertaining to reinstatement are considered. This threshold inquiry is whether the magnitude of the breach of trust would permit the resumption of practice without a detrimental effect upon the integrity and standing of the bar or the administration of justice, nor be subversive to the public interest. Keller thus requires a determination that the original misconduct is not so offensive as to preclude reinstatement.

The issue in the instant matter is whether Petitioner's fabricating and forging the name of Judge Subers on an Order of Court is so egregious in its very nature that it precludes any consideration of reinstatement. The examination of prior case law demonstrates that this misconduct is not so fundamentally repugnant to the integrity of the

bar or the public interest that Petitioner may not be reinstated. Office of Disciplinary Counsel v. Tumini, 7 D. & C. 4<sup>th</sup> 260 (1990) (attorney disbarred for delivery of bribe to a public official, giving false testimony under oath after a grant of immunity and failing to make appropriate disclosure to a federal grand jury and law enforcement officers, and laundering checks for a public official; reinstated to the bar).

Having determined that Petitioner's misconduct was not so egregious as to prohibit his reinstatement, the Board must now consider whether Petitioner has met his burden of proving by clear and convincing evidence that his resumption of the practice of law at this time would not have a detrimental impact on the integrity and standing of the bar, the administration of justice or the public interest, and that he has the moral qualifications, competency and learning in the law required for admission to practice law in Pennsylvania. Pa.R.D.E. 218(c)(3)(i). In order to make this determination the Board must consider the quantity of time that has passed since Petitioner was disbarred and his efforts at a qualitative rehabilitation. In re Verlin, 731 A.2d 600 (Pa. 1999).

Petitioner has been removed from the practice of law in Pennsylvania for over five years. Even prior to his disbarment on consent, Petitioner showed signs of his remorse by personally contacting Judge Subers and informing him of his wrongdoing, as well as opposing counsel. Petitioner resigned his position as staff attorney with TIG Insurance. He did these things of his own accord. Following his disbarment in 2000 his absence from the practice of law was a period of qualitative rehabilitation. Petitioner worked steadily during his disbarment, finding employment at Wyeth Pharmaceuticals,



delivering newspapers, and working for a legal recruiting business. Petitioner continued volunteer work with his church, the Boy Scouts, and sports programs. Petitioner used his legal background to educate himself about the needs of his autistic son and the programs available. Petitioner was able to work as a sole practitioner in New Jersey, as he was reinstated from his suspension in that jurisdiction in 2003. A sampling of other reinstatement cases illustrates that the length of disbarment is subjective and case specific. While Petitioner's five year absence from the bar is not as lengthy as in other cases, the Board is persuaded that Petitioner is rehabilitated.

Petitioner bears the burden of proving that he possesses the moral character, competency and learning in the law to resume practice of law in the Commonwealth, as required by Rule 218(c)(3)(i). Petitioner presented no character testimony, which is somewhat unusual in reinstatement matters. However, the balance of the evidence of record supports a finding that Petitioner is morally qualified to resume practicing law. He made every effort during his disbarment to work and provide for his family while continuing his involvement with his church and the community. There is no evidence that he engaged in any immoral, improper behavior during his disbarment.

Petitioner fulfilled his requirements for Continuing Legal Education and kept apprised of the law. He attended 72 hours of CLE in the year prior to the filing of his Petition for Reinstatement. He performed legal research and reading in various areas, including mental health. He is currently practicing law in New Jersey. Petitioner is competent and learned in the law.

Based on the clear and convincing evidence of record, the Board recommends that Petitioner be reinstated to the bar of Pennsylvania.

V.           RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Petitioner, James J. Gillespie, Jr., 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: \_\_\_\_\_  
Francis X. O'Connor, Board Member

Date: June 8, 2006

ORDER

PER CURIAM:

AND NOW, this 19<sup>th</sup> day of September, 2006, upon consideration of the Report and Recommendations of the Disciplinary Board dated June 8, 2006, 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.