

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 823 Disciplinary Docket No. 3
: :
: Nos. 22 DB 1999 & 48 DB 2000
JAMES L. HEIDECKER, JR. : :
: Attorney Registration No. 19596
: :
PETITION FOR REINSTATEMENT : (Lehigh 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 June 26, 2003, by Order of the Supreme Court of Pennsylvania, James L. Heidecker, Jr., was suspended from the practice of law for one year and one day. Mr. Heidecker filed a Petition for Reinstatement on November 21, 2006. On February 6, 2008, Petitioner requested leave to withdraw the Petition, which was granted without prejudice. On February 14, 2011, Petitioner filed a second Petition for Reinstatement. Office of

Disciplinary Counsel filed a Response on May 25, 2011 and identified several matters of concern.

A reinstatement hearing was held on September 1, 2011, before a District II Hearing Committee comprised of Chair Stewart J. Greenleaf, Jr., Esquire, and Members John F. Cordisco, Esquire, and Sharon H. McKenna, Esquire. Petitioner was represented by Robert H. Davis, Jr., Esquire. Petitioner introduced 29 exhibits and the testimony of 13 witnesses and testified on his own behalf. Office of Disciplinary Counsel introduced 21 exhibits and offered the testimony of two witnesses.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on January 30, 2012 and recommended that the Petition for Reinstatement be granted with the condition that Petitioner first resolve a judgment against him.

By letter of March 14, 2012, Petitioner provided proof to the Disciplinary Board that he affirmatively fulfilled the condition set forth by the Hearing Committee.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Board at the meeting on March 21, 2012.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner is James L. Heidecker, Jr. He was born in 1947 and was admitted to the practice of law in Pennsylvania in 1974. His current business address is 1555 N. 18th Street, Allentown PA 18104.

2. On June 26, 2003, the Pennsylvania Supreme Court suspended Petitioner for one year and one day.

3. Petitioner's one year and one day suspension arose from his failure to file a brief in the Superior Court, resulting in dismissal of his client's criminal appeal. Petitioner also failed to document his fee arrangement with his client and upon termination of the representation, required his client's representative to sign a receipt containing release language in exchange for the client's file. Petitioner also failed to return to his client \$1,440 of an unearned retainer, despite representing that a refund would be forwarded.

4. Prior to his suspension in 2003, Petitioner was suspended for three months in 1997, and received a Private Reprimand in 1990 and an Informal Admonition in 1986.

5. On November 21, 2006, Petitioner filed his first Petition for Reinstatement and a hearing was conducted on April 30, 2007 and August 30, 2007.

6. On January 22, 2008, the Hearing Committee reviewing the first Petition recommended against reinstatement.

7. The Hearing Committee reviewing the first Petition found that:

a. Petitioner violated RPC 8.4(c) and Pa.R.D.E. 217(j)(4)(iv), (v) and (vi) during his term of suspension;

b. Petitioner violated Pa.R.D.E. 217(j) in 2006, by having contact with a client of the supervising attorney, after gaining entrance to the Monroe County Correctional Facility by producing his former bar association identification card that identified him as an attorney;

c. Petitioner violated Pa.R.D.E. 217(j) in 2004 by conducting an intake meeting with potential clients without supervision;

d. Petitioner filed inaccurate tax returns with the IRS;

e. Petitioner continued to use his attorney bank account with his Supreme Court identification number for more than a year and a half after his suspension;

f. Petitioner failed to present evidence that he was properly supervised as required by Pa.R.D.E. 217(j);

g. It appeared that Petitioner's supervising attorney was paying Petitioner's salary from a client trust account;

h. Petitioner failed to present evidence of a good faith effort to make payments on his outstanding tax and civil judgment liabilities; and

i. Petitioner's testimony was inconsistent and misleading.

8. On February 5, 2008, Petitioner moved to withdraw his first Petition.

The Board granted Petitioner's Motion on February 12, 2008.

9. Petitioner filed his second Petition for Reinstatement on February 14, 2011.

10. Petitioner has now been suspended from the practice of law for over eight years.

11. During the majority of his suspension, Petitioner has worked as a full-time legal assistant with the Karoly Law Office in Allentown, starting in August or September of 2003. Petitioner continued to work as a legal assistant when the Karoly Law Office became the Karoly Law Firm.

12. John P. Karoly, Jr., Esquire acted as Petitioner's supervising attorney until March 31, 2009.

13. On March 31, 2009, Joshua Karoly, Esquire assumed responsibility for Petitioner's supervision.

14. Petitioner's work involves drafting briefs, motions and pleadings, legal research, synopsising testimony, formatting witness examination, preparing openings, closings, and strategizing witness examinations.

15. Joshua Karoly, Esquire testified at the hearing that he closely supervises Petitioner's work and that Petitioner is extremely knowledgeable in the law. Mr. Karoly described the small size of the law firm, which made it convenient to conduct daily interaction with Petitioner and check on his work. Everyone in the office is aware of Petitioner's status as a suspended lawyer and is aware of the limits on Petitioner's actions.

16. Petitioner's former supervisor, John P. Karoly, Jr., did not testify at either of Petitioner's reinstatement hearings. Mr. Karoly is currently disbarred and in prison.

17. Joseph Welsh, Esquire is an employee of the Karoly Law Firm and testified that John Karoly closely monitored Petitioner's work during the time period that he was Petitioner's supervisor, and Joshua Karoly continues to closely supervise Petitioner.

18. John Karoly's supervision was described as "micromanaging", and after Mr. Karoly became the subject of a federal criminal indictment, the supervision actually intensified.

19. Donald R. Pugh is a private investigator who was employed at the Karoly Law Offices from 2003 until 2007, during the time frame that John Karoly

supervised Petitioner. Mr. Pugh credibly testified that John Karoly kept close contact with Petitioner's tasks and work product.

20. Petitioner acknowledged that he acted improperly by having client contact on two occasions in 2004 and 2006. Since that time, Petitioner has had no client contact and has taken precautions so that he will not be perceived as an attorney.

21. Petitioner does not have business cards representing himself as an attorney; Petitioner has no email address at the Karoly Law Firm; Petitioner has no diplomas or court certificates anywhere in the office; Petitioner purposely works in a remote area of the building away from client access; Petitioner does not sign legal documents; and Petitioner dresses casually, as opposed to wearing a suit.

22. Petitioner has begun to address his past financial obligations.

23. Petitioner repaid a \$25,000 income advance to John P. Karoly, Jr.; satisfied federal tax liens in the amount of \$72,000 by entering an Offer in Compromise with the IRS and paying approximately \$30,000; filed amended tax returns for 2004 and 2005 to correct inaccurate reporting of the \$25,000 income advance and paid \$9,100 in additional tax caused by the amendments; entered into a settlement agreement with the Pennsylvania Department of Revenue; paid \$3,630 and arranged a payment schedule over two years; and paid the costs of the previous reinstatement proceeding in the amount of \$6,120.91 to the Disciplinary Board.

24. In 2000, Jaroslaw Zbaudin obtained a judgment of \$25,000 against Petitioner in a legal malpractice claim. As of the first reinstatement proceeding, Petitioner had not paid the judgment, which Petitioner conceded was valid.

25. By letter of March 14, 2012, Petitioner provided proof that he settled the dispute and paid the sum of \$18,000 to Mr. Zbaudin.

26. Petitioner has completed 211 hours of Continuing Legal Education credits since 2004.

27. If reinstated, Petitioner intends to practice law in Allentown with the Karoly Law Firm.

28. Petitioner expressed sincere remorse for his past misconduct. He has learned the lessons of honesty, candor and client loyalty during the long period of his suspension. He is eager to return to the practice of law.

29. Numerous witnesses testified on behalf of Petitioner as to his good reputation for honesty and truthfulness. These witnesses include a former judge of the Court of Common Pleas of Lehigh County, and attorneys in the community as well as outside Petitioner's geographical area.

III. CONCLUSIONS OF LAW

Petitioner has satisfied his burden, by clear and convincing evidence, that he has the moral qualifications, competency and learning in the law required for admission to practice law in this Commonwealth and the Petitioner's resumption of the practice of law within the Commonwealth will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subversive of the public interest. Pa.R.D.E. 218(c)(3).

IV. DISCUSSION

Petitioner seeks reinstatement to the bar from suspension of one year and one day imposed on June 26, 2003. Pursuant to Rule 218(a), Pa.R.D.E., 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. Petitioner carries 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 administration of justice nor subversive of the public interest. Rule 218(c)(3), Pa.R.D.E.

A reinstatement proceeding 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 rehabilitation efforts the lawyer has made since the time that 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).

This is Petitioner's second reinstatement proceeding. He voluntarily withdrew his first Petition in 2008 in order to correct issues that were raised in the Hearing Committee Report. It is appropriate for the Board to address whether Petitioner has in fact rectified the questionable areas of his first petition for reinstatement. After review of the record, the Board is satisfied that Petitioner has done so.

At the first reinstatement hearing, evidence was presented that Petitioner had violated Pa.R.D.E. 217(j) by holding himself out as an attorney and having contact with clients on two separate occasions. In 2006, Petitioner met with a client of John Karoly, Jr., Esquire in the Monroe County Correctional Facility. In that instance, Petitioner used his old bar association identification card that identified him as an attorney in order to gain entrance to the prison. In 2004, Petitioner conducted an intake interview with potential clients without attorney supervision. Petitioner acknowledged these incidents. Petitioner has not had contact with any clients since the withdrawal of his first petition of reinstatement, and has not held himself out as an attorney.

The record demonstrates that Petitioner has not signed legal documents; does not have any business cards representing himself as an attorney; does not have an email address at the Karoly Law Firm; does not have diplomas or court certificates anywhere in the law office; purposely works in a remote area of the office building away from client access; and dresses casually as opposed to wearing a suit.

The first Hearing Committee found that Petitioner had improperly “turned a blind eye” to certain actions of his former supervising attorney, John Karoly, Jr., Esquire. Mr. Karoly was indicted and facing federal criminal charges during some portion of his supervision of Petitioner and is currently disbarred and in prison. An issue was raised at the first hearing that Mr. Karoly paid Petitioner from a client trust account and Petitioner did not report this unethical behavior. We are not currently tasked with determining Mr. Karoly’s conduct in that matter. As discussed more fully below, we find that since the first reinstatement hearing, the supervision of Petitioner has been proper, both on the part of

Petitioner and his supervisor, either John Karoly or Joshua Karoly. Any improper actions on the part of John Karoly should not be ascribed to Petitioner.

Another issue raised was that John Karoly did not provide Petitioner with W-2 or 1099 tax forms and Petitioner took no action. However, Petitioner began receiving 1099 forms for tax year 2010 and had requested such forms in prior years. Petitioner reported all of his income even though he did not receive 1099 forms prior to 2010.

Intertwined with the issue of Petitioner's knowledge of his supervising attorney's improper behavior was the first Hearing Committee's conclusion that Petitioner failed to show that he was properly supervised, as required by Pa.R.D.E. 217(j). During the instant reinstatement hearing, Petitioner presented evidence that he was properly supervised.

John Karoly, Jr., Esquire acted as Petitioner's supervising attorney until March 31, 2009. Petitioner and two employees of the Karoly Law Firm credibly testified that John Karoly closely monitored Petitioner's work, to the point of micromanaging the work. Office of Disciplinary Counsel suggests that because John Karoly continued to be Petitioner's supervising attorney for some months following the first hearing in 2008, when Mr. Karoly's criminal difficulties were ongoing, somehow Petitioner is not fit to practice law. We find no evidence that Petitioner was improperly supervised by Mr. Karoly during this time, or that Petitioner engaged in activities outside the scope of Rule 217(j), Pa.R.D.E.

Joshua Karoly assumed responsibility for Petitioner's supervision on March 31, 2009 and testified at the instant hearing. Mr. Karoly described Petitioner's wide range of duties, including drafting briefs, motions and pleadings, legal research, formatting

examinations, and preparing openings and closings, among other things. Mr. Karoly finds Petitioner to be a valuable source of legal knowledge to himself and the firm in general.

The Hearing Committee reviewing the first petition recommended against reinstatement based in part on inaccuracies in Petitioner's tax filings. At the instant hearing, Petitioner credibly testified that he filed amended tax returns for 2004 and 2005, correcting inaccuracies in those returns. Petitioner also satisfied the \$9,100 in additional tax caused by the amendments.

A related concern was that at the time of the first reinstatement hearing, Petitioner had made no effort to satisfy his tax debts and multiple judgments against him. The instant record is clear that Petitioner has made a good faith effort to satisfy these obligations. At the September 1, 2011 hearing, Petitioner presented evidence that he repaid to John Karoly, Jr., Esquire a \$25,000 income advance; satisfied federal tax liens in the amount of \$72,000 by entering into an Offer in Compromise and paying about \$30,000; entered into a settlement agreement with the Pennsylvania Department of Revenue; paid \$3,630 and arranged a payment plan over two years; paid the costs of the previous reinstatement proceedings in the amount of \$6,120.91 to the Board; and filed amended tax returns for 2004 and 2005 as noted above.

The Committee in its Report in the instant matter noted that Petitioner has not satisfied a \$25,000 judgment that a former client, Jaroslaw Zbaudin had received against him in a malpractice claim. Subsequent to the filing of the Report, Petitioner paid the judgment in full.

A good faith effort to repay debts has been sufficient to recommend reinstatement in other cases. In re Anonymous No. 99 DB 92, 31 Pa.D. & C. 4th 294

(1995); In re Anonymous No. 76 DB 82, 14 Pa.D. & C. 4th 317 (1991). A good faith effort does not require complete extinguishment of the outstanding debts; the Board looks at the matter in its totality to determine how Petitioner has addressed the situation. Office of Disciplinary Counsel v. Lucarini, 472 A.2d 186 (Pa. 1982). Petitioner has already satisfied over \$100,000 of his outstanding obligations and has made settlement agreements and offers in compromise. This is sufficient to show a good faith effort.

Petitioner testified on his own behalf. He is remorseful for his prior misconduct. He is eager to return to the practice of law and it appears that his reinstatement would be welcomed in the Lehigh County legal community. Petitioner presented credible character testimony from numerous witnesses who testified that Petitioner has a reputation for good character and honesty in his community.

Petitioner has met the requirements of Continuing Legal Education and has kept apprised of the law through his continuous employment as a legal assistant since his suspension in 2003.

Petitioner has met his burden pursuant to Rule 218(c)(3), Pa.R.D.E., and the Board recommends that he be reinstated to the practice of law.

V. RECOMMENDATION

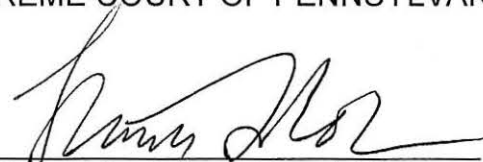
The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Petitioner, James L. Heidecker, Jr., be reinstated to the practice of law.

The Board further recommends that, pursuant to Rule 218(f), 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:


Stewart L. Cohen, Board Chair

Date: May 18, 2012

Board Members Buchholz and Bevilacqua did not participate in the adjudication.