

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 999 Disciplinary Docket No. 3
: :
: No. 22 DB 2004
BRIAN P. RANEY : :
: Attorney Registration No. 86898
: :
PETITION FOR REINSTATEMENT : (Out Of State)


ORDER

PER CURIAM:

AND NOW, this 8th day of December, 2011, upon consideration of the Report and Recommendations of the Disciplinary Board and Dissenting Opinion dated July 26, 2011, the Petition for Reinstatement is granted.

Petitioner is directed to pay the expenses incurred by the Board in the investigation and processing of the Petition for Reinstatement. Pa.R.D.E. 218(f).

A True Copy Patricia Nicola
As Of 12/8/2011

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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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 April 6, 2005, the Supreme Court suspended Brian P. Raney for a period of five years. Mr. Raney filed a Petition for Reinstatement on July 14, 2010. Office of Disciplinary Counsel filed a Response to Petition on September 13, 2010.

A reinstatement hearing was held on November 16, 2010 before a District I Hearing Committee comprised of Chair Nicholas M. Centrella, Esquire, and Members Dena

Zakaria, Esquire, and Zachary S. Davis, Esquire. Petitioner appeared pro se. Petitioner offered eight exhibits into evidence and testified on his own behalf. Office of Disciplinary Counsel offered five exhibits into evidence.

The Hearing Committee filed a Report on March 14, 2011 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 on April 13, 2011.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner is Brian P. Raney. He was born in 1971 and was admitted to practice law in the Commonwealth of Pennsylvania in 2001. His current business address is 1480 Drawbridge Circle, Virginia Beach VA 23453. He is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

2. Following Petitioner's admission to the bar in Pennsylvania in 2001, he worked in Pennsylvania as an associate attorney for Abeln Law Offices in Carlisle.

3. In 2002, Petitioner's mother became terminally ill and Petitioner moved to Virginia to care for her. Petitioner requested inactive status in Pennsylvania due to his move and his financial status as he was unemployed.

4. By Order dated April 6, 2005, the Supreme Court of Pennsylvania suspended Petitioner for a period of five years.

5. The acts and omissions which formed the basis of Petitioner's suspension occurred from 2002 through 2004 and involved Petitioner's unauthorized practice of law in Virginia while not a member of the bar of Virginia and while on inactive status in Pennsylvania, and multiple and repeated misstatements to the Virginia Board of Law Examiners as well as to Pennsylvania bar authorities concerning his status.

6. On July 23, 2002, Petitioner filed with the Disciplinary Board in Pennsylvania his 2002-2003 Attorney's Annual Fee Form, in which he requested a transfer to inactive status. Petitioner was subsequently placed on inactive status, effective July 1, 2002.

7. On May 10, 2002, Petitioner filed a sworn Application for Re-examination with the Virginia Board of Law Examiners for the July 2002 bar examination which was scheduled for July 30-31, 2002. In the sworn Supplemental Questionnaire, Petitioner answered "no" to the following questions:

a. in response to Question 2(C) - Have you permitted a business, trade or professional license to expire?

b. In response to Question 3 - Have you been disqualified from practicing law?

c. in response to Question 5 - Have there been any charges filed, proceedings initiated or complaints made involving allegations that you have committed any act which may constitute the unauthorized practice of law?

8. At no time prior to the July 2002 bar examination did Petitioner advise the Virginia Board of Law Examiners of his transfer to inactive status in Pennsylvania. Petitioner did not pass the July 2002 bar examination.

9. On December 11, 2002 and May 5, 2003, Petitioner filed sworn Applications for Re-Examination with the Virginia Board of Law Examiners. Both times he answered the above questions in the same manner as for the July 2002 examination. Petitioner did not pass the February 2003 bar examination.

10. On June 5, 2003, Petitioner signed his 2003-2004 Pennsylvania Annual Fee Form on which he identified that he was covered by a policy of professional liability insurance. However, Petitioner was not a named insured or listed employee under the referenced policy.

11. On June 27, 2003, Petitioner appeared as "special counsel" to the Titus Law Group in the Virginia Beach Circuit Court before Judge H. Thomas Padrick, Jr., in the matter of the Estate of Ruby Swanson. Petitioner was not a member of the Virginia Bar and did not file a motion to appear pro hac vice, as required by Virginia law. Judge Padrick reported the incident to the Virginia Bar.

12. By letter of July 8, 2003, the Committee on Unauthorized Practice of Law of the Virginia State Bar notified Petitioner of allegations that he had engaged in the unauthorized practice of law.

13. On July 10, 2003, by letter to the Virginia Board of Law Examiners, Petitioner asked to transfer his July 2003 Bar Application to the February 2004 examination. At that time, he failed to notify the Virginia Board of Law Examiners of the disciplinary proceedings initiated against him in Virginia.

14. On September 9, 2003, Petitioner was notified by Office of Disciplinary Counsel of the allegations of misconduct relating to the Swanson matter. He did not notify

the Virginia Board of Law Examiners of the Pennsylvania disciplinary proceedings until December 2003.

15. Petitioner cooperated with the investigation of Virginia Bar officials and the Bar did not institute formal proceedings against him.

16. Petitioner left the Titus Law Group in January 2004 as a result of the Swanson incident and has not practiced law since that time.

17. With the exception of the Swanson incident, Petitioner has never been the subject of any other ethical complaints.

18. During his suspension, Petitioner has worked in the construction and real estate markets. He bought and sold real estate properties for a profit, until the collapse of the market.

19. Currently, Petitioner works for Precision General Commercial Contractors in Virginia Beach. He has recently been offered a promotion, which would involve a move to California.

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

21. Petitioner subscribes to legal periodicals such as the Legal Intelligencer and Pennsylvania Lawyer.

22. Petitioner does not presently intend to practice law in Pennsylvania due to current career circumstances. He would like to do so in the future and expressed willingness and interest in keeping informed as to changes and developments in the law.

23. Petitioner offered credible testimony on his own behalf.

24. Petitioner apologized to the legal community and the Disciplinary Board for his past actions. He expressed regret that he did not appear or defend himself against the earlier Petition for Discipline and related proceedings. Petitioner was going through a difficult time due to his mother's health problems, and he believes this contributed to his failure to participate.

25. Petitioner expressed sincere remorse and recognition of his wrongdoing. He admitted that his actions were due in part to ignorance of his responsibilities and ignorance of the fact that his inactive status in Pennsylvania prohibited him from practicing in Virginia, where he was not admitted.

26. Petitioner did not present any character witnesses.

27. Office of Disciplinary Counsel does not oppose reinstatement.

III. CONCLUSIONS OF LAW

1. Petitioner demonstrated by clear and convincing evidence that he has the moral qualifications, competency and learning in the law required for admission to practice law in the Commonwealth of Pennsylvania. Pa.R.D.E. 218(c)(3).

2. Petitioner demonstrated by clear and convincing evidence that the resumption of his 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 readmission to the bar of the Supreme Court of Pennsylvania following his suspension for a period of five years, imposed on April 6, 2005.

In order for Petitioner to gain reinstatement, he must prove by clear and convincing evidence that he possesses the moral qualifications, competency and learning in the law required for admission to practice law in Pennsylvania. Further, Petitioner must prove by clear and convincing evidence that his 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). In determining whether Petitioner has met his burden to be reinstated, the inquiry is on the lawyer's present professional and moral fitness to resume the practice of law. Philadelphia News, Inc. v. Disciplinary Board of the Supreme Court, 363 A.2d 779 (Pa. 1976).

The basis for Petitioner's suspension was his unauthorized practice of law in Virginia and his various misstatements to bar authorities in Virginia and Pennsylvania. Petitioner expressed sincere remorse for his misconduct and admitted that much of the misconduct was the result of his own ignorance, which he acknowledged was no excuse for his actions. Petitioner regrets that he did not appear for the disciplinary proceedings which resulted in his suspension, and revealed that he was engaged in personal difficulties at the time, primarily resulting from his mother's ill health and subsequent death. Again, Petitioner recognizes that his personal problems are not an excuse for his misconduct, and he was obligated to abide by the rules and procedures governing his profession.

Subsequent to his suspension, Petitioner has not engaged in the practice of law and has worked in the areas of real estate and construction. He is currently employed

at Precision General Commercial Contractors as a senior project manager and has been offered a promotion, which would involve a move to California.

Petitioner has completed Continuing Legal Education credits necessary for reinstatement and subscribes to various legal periodicals to keep current in the law.

Petitioner did not offer any character testimony to advance his claim that he is qualified for reinstatement. However, the Board notes that not every petitioner who has been reinstated from suspension or disbarment has offered character testimony. In the matter of Office of Disciplinary Counsel v. James J. Gillespie, Jr., 125 DB 1999, 581 Disciplinary Docket No. 3 (Pa. Sept. 19, 2006), Mr. Gillespie was disbarred after he fabricated an order of court and forged the name of a judge. The evidence showed that following his disbarment Mr. Gillespie worked steadily, did volunteer work, and did not engage in any improper activities. Although he offered no character witnesses, the balance of the record supported the conclusion that Mr. Gillespie was morally qualified and the Court reinstated Mr. Gillespie. Similarly, in the matter of Office of Disciplinary Counsel v. Walter D. Deliman, 91 DB 1990, 852 Disciplinary Docket No. 2 (Pa. Nov. 15, 2010), Mr. Deliman sought reinstatement from a one year and one day suspension. During his suspension, Mr. Deliman attended Alcoholics Anonymous and became sober, obtained employment with the IRS as a tax law specialist, fulfilled his CLE requirements, and expressed sincere remorse for his actions. He did not present any evidence of community activities nor did he offer character testimony. The Board found that Petitioner was qualified for reinstatement, and the Court reinstated him.

The totality of the record before us demonstrates that Petitioner is qualified for reinstatement to the bar. He has remained steadily employed, has not engaged in the

unauthorized practice of law, nor has he been involved in any improper activities. He fulfilled his CLE requirements and keeps apprised of the current law. He has demonstrated recognition of the underlying misconduct and has expressed true remorse. The Board concludes that Petitioner is morally qualified, competent and learned in the law. Furthermore, his readmission to the bar will not be detrimental to the public or the profession.

The Board recommends that the Petition for Reinstatement be granted.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that Petitioner, Brian P. Raney, 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: _____
Gerald Lawrence, Board Member

Date: July 26, 2011

Board Members Bevilacqua and Todd dissented.

Board Member Jefferies did not participate in the adjudication.



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DISSENTING OPINION

I respectfully dissent from the majority's recommendation that the Petition for Reinstatement be granted.

Petitioner was suspended for a period of five years by Order of the Supreme Court of Pennsylvania dated April 6, 2005. Petitioner filed a Petition for Reinstatement on July 14, 2010. Pursuant to Pa.R.D.E. 218(c)(3), Petitioner must demonstrate by clear and convincing evidence that he possesses the moral qualifications, competency and learning in the law required for admission to practice law in Pennsylvania. Further, Petitioner must prove that his 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. The majority of the Board concluded that Petitioner met his burden of proof.

It is my respectful opinion that Petitioner did not show by clear and convincing evidence that he is qualified for reinstatement. The record demonstrates that Petitioner

worked steadily and expressed remorse for his misconduct, but shows little else. The record is basically silent as to any substantial efforts made toward rehabilitation during suspension. Philadelphia News, Inc. v. Disciplinary Board of the Supreme Court, 363 A.2d 779 (Pa. 1976). Petitioner put forth no evidence of any involvement in community or charitable activities, nor did he present even one character witness or letter of reference to demonstrate his good reputation in the community. Although there is no absolute requirement that a petitioner for reinstatement must present such evidence, this kind of evidence is important to the reinstatement process as it gives depth to the overall picture of a petitioner, particularly when the petition for reinstatement contains only the bare minimum information as in this case. In the instant matter, it is difficult to assess the character of Petitioner based on the slim record presented. Given the fact that Petitioner was suspended for five years after he engaged in the unauthorized practice of law and made misstatements to bar authorities, he should have provided more substantial evidence of his moral character and qualifications.

The instant record stands in contrast with numerous reinstatement cases wherein petitioners have demonstrated clear and convincing evidence of moral qualifications through extensive character testimony and community activities. Some recent cases are Office of Disciplinary Counsel v. Andrew F. Malone, 131 DB 2004, 953 Disciplinary Docket No. 3 (Pa. Oct. 4, 2010); Office of Disciplinary Counsel v. John A. Havey, 42 DB 2006, 1137 Disciplinary Docket No. 3 (Pa. Sept. 28, 2010); Office of Disciplinary Counsel v. Michael Sedor, 225 DB 2005, 1116 Disciplinary Docket No. 3 (Pa. Feb. 16, 2010); Office of Disciplinary Counsel v. Mark Anthony DeSimone, 11 DB 2002, 719 Disciplinary Docket No. 3 (Pa. Dec. 16, 2009).

This Petitioner did not present evidence sufficient to meet his burden of proof under Rule 218(c)(3), and accordingly, his Petition for Reinstatement should be denied.

Respectfully submitted,

By: 
Gabriel L. Bevilacqua, Board Member

Date: July 26, 2011

Board Member Todd joins in this Dissent.