

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 141 Disciplinary Docket No. 3
: :
ANDREW KEITH FINE : No. 115 DB 1995
: :
PETITION FOR REINSTATEMENT : Attorney Registration No. 54194
: :
: (Delaware County)

ORDER

PER CURIAM:

AND NOW, this 23rd day of May, 2014, upon consideration of the Report and Recommendations of the Disciplinary Board dated January 24, 2014, the Petition for Reinstatement is granted.

Pursuant to Rule 218(f), 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 5/23/2014

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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: Attorney Registration No. 54194
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PETITION FOR REINSTATEMENT : (Delaware 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 Petition for Reinstatement filed December 11, 2012, Andrew K. Fine seeks readmission to the bar following his disbarment by Order of the Supreme Court of Pennsylvania dated October 27, 1997. Office of Disciplinary Counsel filed a Response to Petition on February 25, 2013.

A reinstatement hearing was held on April 3, 2013, before a District II Hearing Committee comprised of Chair Denis A. Gray, Esquire, and Members Margaret J. Amoroso, Esquire, and Teresa A. Mallon, Esquire. Petitioner was represented by Steven

D. Costello, Esquire. In addition to the Petition for Reinstatement with Exhibits A - H and Exhibits A - N, Petitioner submitted P-1 through P-10 with no objections. Office of Disciplinary Counsel submitted ODC 1 through ODC 8 with no objections. Petitioner presented the testimony of four witnesses. Office of Disciplinary Counsel presented one witness.

Following the submission of Petitioner's amended brief, the Hearing Committee filed a Report on September 19, 2013 and recommended that the Petition for Reinstatement be granted.

No Exceptions were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on October 9, 2013.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner is Andrew Keith Fine. He was born in 1962 and was admitted to practice law in the Commonwealth of Pennsylvania in 1988. His attorney registration address is 15 Stevens Court, Villa Hills, Kentucky 41017. He is subject to the disciplinary jurisdiction of the Supreme Court of Pennsylvania.

2. From October 1988 through December 1990, Petitioner was employed as an associate with Kalman E. Fine, P.C.

3. Petitioner was a sole practitioner from October 1990 through October 1994 with offices located in Philadelphia and Marcus Hook, Pennsylvania.

4. Petitioner was the subject of four disciplinary complaints during the period of late 1993 through early 1995. (ODC-1; N.T. 196)

5. A complaint by Dianne Welcome involved a situation where Ms. Welcome attempted to cash her settlement check, on a date earlier than the date written on the check, and the bank was unable to cash her check at that time due to the settlement draft funds not being cleared in Petitioner's escrow account and the account was subsequently closed. (ODC-1)

6. Ms. Welcome received her settlement funds. Payment to some of the medical providers who had treated Ms. Welcome in connection with the injuries for which she was compensated also was delayed. (ODC-1)

7. A complaint by Maria Carango involved improper commingling of funds by Petitioner and failure to timely pay Ms. Carango her share of a settlement. Ms. Carango did receive the proceeds albeit belatedly. (ODC-1)

8. Petitioner was addicted to cocaine during 1993, 1994, and into early 1995. (N.T. 89-91)

9. Petitioner voluntarily sought treatment in early 1995 at Rehab After Work with Dr. Robert Forman. (N.T. 143-144)

10. On September 23, 1997, Petitioner resigned from the practice of law in Pennsylvania (ODC-1)

11. On October 27, 1997, Petitioner was disbarred on consent by Order of the Supreme Court of Pennsylvania. (ODC-1)

12. Petitioner has been sober since 1995. (N.T. 129-130; Report of Dr. Robert Forman, Appendix, Exhibit Q)

13. The outpatient treatment with Dr. Forman and Rehab After Work lasted into 1996. (N.T. 204)

14. Petitioner participated in individual treatment, group therapy, family therapy, drug testing, and AA meetings/12 step program methods. (Report of Dr. Forman, Appendix, Exhibit Q; N.T. 143)

15. Petitioner has not had any relapses since commencing treatment over 17 years ago. (N.T. 142-143, 205; N.T. 38-40; N.T. 67; N.T. 82-84)

16. Petitioner has been an effective husband, father and member of society since his disbarment. (Appendix, letters in support of reinstatement: Exhibits A-F, Appendix, Exhibit G; N.T. 25-29; N.T. 38-47; N.T. 64-75; N.T. 83-94 and 100-106).

17. Petitioner has assisted his son in attaining the status of an Eagle Scout, and he has supported his son in attaining and maintaining an excellent academic record. Petitioner has functioned as a leader in Boy Scouts for many years. (N.T. 152-158)

18. Petitioner was appointed to, and served as a member of the Board of Governors on the Kentucky Association of Site-Based Council, a state-wide committee which decides on policy, funding, allocation of resources and other important matters relating to public schools. Prior to his appointment, Petitioner served in the same capacity at the local level for many years. (N.T. 158-160).

19. Petitioner is married to Diane Skinner, who is the mother of their son and who has supported Petitioner through his drug use and disbarment. (N.T. 139)

20. Petitioner has been gainfully employed for most of the period of his disbarment, initially working as a busboy, then in restaurant management.

21. In 1999, Petitioner began working in a nonlawyer capacity for Robert Katz, Esquire for several years before moving to Kentucky. Since moving to Kentucky,

Petitioner has worked for a law firm as a real estate department supervisor and has done consulting work in the mortgage business. (Appendix, Exhibits E and F; N.T. 130, 135-139)

22. At the time of the hearing for reinstatement, Petitioner had been unemployed for approximately seven months. (N.T. 135)

23. Petitioner has not committed any infraction or transgression of a professional or criminal nature since his disbarment. (Appendix, Exhibit O)

24. Petitioner presented the testimony of four witnesses.

25. Petitioner's parents, Kalman E. Fine, Esquire, and Suzan W. Fine, MSN, RN, GNP-BC, offered credible testimony that Petitioner has not had any drug relapse issues nor have they witnessed any behaviors consistent with substance abuse or poor judgment. (N.T. 38-39, 67)

26. Gerald Jay Pomerantz, Esquire is a Pennsylvania attorney who has known Petitioner since Petitioner was a young man. (N.T. 23-24) Mr. Pomerantz credibly testified that Petitioner has learned from his experience and will be a real asset to the bar. (N.T. 26)

27. Robert Katz, Esquire is a Pennsylvania attorney who first met Petitioner in the late 1990s when Petitioner was employed at a restaurant. Mr. Katz contracted with Petitioner to do legal research. (N.T. 76-80) Petitioner never held himself out as a lawyer and individuals and potential clients were explicitly advised that Petitioner was not practicing law and Mr. Katz was the sole attorney in the practice. (N.T. 96-97)

28. Petitioner worked for Mr. Katz from April of 1999 through October of 2004. Mr. Katz never witnessed any indication of substance abuse. According to Mr. Katz, Petitioner did quality work and met deadlines, and was consistently honest and trustworthy while in his employ. (N.T. 84, 90-91,100)

29. While Petitioner was in his employ, Mr. Katz believed he and Petitioner were in compliance with Rule 217, Pa.R.D.E. in a substantive, if not technical way. (N.T. 98-99)

30. Mr. Katz believes that clients would be well-served by Petitioner being reinstated to the practice of law. (N.T. 106)

31. In the jobs Petitioner had after leaving Pennsylvania and moving to Kentucky, neither Petitioner nor his employers ever stated, implied or otherwise represented Petitioner was an attorney at law. (Appendix, Exhibit J; N.T. 135-139)

32. During the period Petitioner was struggling with his drug dependency, he did not satisfy certain financial obligations to others, and there were numerous default judgments entered against him. (Appendix, Exhibit L; N.T. p. 165-187)

33. Petitioner became aware of many of the judgments when Petitioner and his counsel performed docket searches as part of the reinstatement application process. As part of its investigation, Office of Disciplinary Counsel uncovered additional judgments that Petitioner and his counsel were not aware of, despite having done appropriate docket searches. (N.T. 165-166)

34. Most of these obligations have been satisfied, including an IRS lien. (Appendix, Exhibit K; N.T. 165-187)

35. Petitioner has contacted or has tried to make contact with all entities and persons to whom he owes money in an effort to satisfy the remaining judgments. (Appendix, Exhibit M; N.T. 178-187)

36. At the time of the reinstatement hearing, there were outstanding judgments (before interest) in the amount of \$20,308.00. (N.T. 215)

37. A former client, Nicholas Borsello contended that he was overcharged for legal services rendered by Petitioner and Mr. Borsello obtained a default judgment of \$1,000. (N.T. 184)

38. Mr. Borsello was incarcerated for murder for many years before and after he obtained that judgment and Petitioner sent letters to Mr. Borsello at his last known address and has made reasonable efforts to continue to locate him in an effort to resolve the judgment. (N.T. 183-184; Appendix Exhibit M)

39. Former clients who obtained a default judgment against Petitioner were James and Gloria Fultz. (ODC-2 through ODC 8; N.T. 118-123, 186-187; 197, 209)

40. There is still an unsatisfied judgment against Petitioner from the Delaware County matter of Fultz v. Fine that started in 1995. (Exhibit I, N.T. 119)

41. The amount of the compensatory damages judgment entered in that matter was \$5,279.74 and punitive damages in the amount of \$8,000. That balance and the accrued interests remain unpaid. (N.T. 120)

42. Ronald Ashby, Esquire testified at the reinstatement hearing. He represented Mr. and Mrs. Fultz. Since 2003, he has not done anything to try to collect the judgment until he saw the Reinstatement Hearing Notice in the Delaware County Law Journal. (N.T. 121)

43. Mr. Ashby contacted Petitioner, through counsel, to try to settle the Fultz matter, even up through the morning of the hearing. (N.T. 122)

44. Petitioner has made efforts to resolve the Fultz judgment. (N.T. 197-198)

45. Petitioner testified on his own behalf.

46. He has been sober for many years and is confident he can maintain his sobriety. He waited to seek reinstatement because he wanted to demonstrate to himself and others that there is no chance of a relapse. (N.T. 1460)

47. Petitioner has completed his Continuing Legal Education requirements for reinstatement and has maintained his professional learning during his disbarment. (Appendix Exhibit N; N.T. 131)

48. Petitioner presented character reference letters from nine individuals, including his wife. (Appendix, Exhibits A - H)

49. Petitioner is deeply sorry and ashamed that he caused former clients injury and caused many family members and friends embarrassment. (Reinstatement Questionnaire)

III. CONCLUSIONS OF LAW

1. Petitioner's misconduct is not so egregious as to preclude reinstatement. Office of Disciplinary Counsel v. Keller, 506 A.2d 872 (Pa. 1986).

2. Petitioner has been disbarred for sixteen years. He has demonstrated by clear and convincing evidence that a sufficient period of time has passed since the misconduct. In re Verlin, 731 A.2d 600 (Pa. 1999).

3. Petitioner has demonstrated by clear and convincing evidence that he possesses the moral qualifications, competency and learning in the law required to practice law in the Commonwealth of Pennsylvania, and his resumption of the practice of law within the Commonwealth will not be detrimental to the integrity and standing of the bar and the administration of justice, nor will it subvert the public interest. Pa.R.D.E. 218(c)(3).

IV. DISCUSSION

Petitioner seeks reinstatement to the bar of the Supreme Court of Pennsylvania following his disbarment on October 27, 1997. Petitioner's request for readmission is initially governed by the standard set forth in Office of Disciplinary Counsel v. Keller, 506 A.2d 872 (Pa. 1986). The Keller standard provides that when reinstatement is sought by a disbarred attorney, the threshold question must be whether the magnitude of the breach of trust would permit resumption of practice without a detrimental effect upon the integrity and standing of the bar or the administration of justice, nor be subversive of the public interest. This inquiry recognizes that some forms of misconduct are so egregious that they will bar the attorney from successfully gaining reinstatement. As a threshold matter, therefore, the Board must determine whether Petitioner's breach of trust was so egregious as to preclude his reinstatement. See In re Verlin, 731 A.2d 600 (Pa. 1999); Office of Disciplinary Counsel v. Costigan, 664 A.2d 518 (Pa. 1995).

The breach of trust in this case arose from Petitioner's acts of misconduct as contained in disciplinary complaints filed between late 1993 and 1995. The complaints chiefly dealt with negligent acts which occurred during Petitioner's drug addiction. Upon review of the underlying offenses and the case law, the Board concludes that Petitioner's misconduct, while serious and regrettable, does not serve to impede his request for reinstatement. See In re Perrone, 777 A.2d 413 (Pa. 2001) (filing false fee petitions to the court); In re Greenberg, 749 A.2d 434 (Pa. 2000); Office of Disciplinary Counsel v. John Gabriel DiLeonardo 42 DB 1999 (Pa. 2011) (client neglect, criminal convictions for drug offenses); Office of Disciplinary Counsel v. Robert S. Teti, 30 DB 1999 (Pa. 2013) (misappropriation of entrusted funds).

A related question in reinstatement from disbarment matters is whether Petitioner has met his burden of proving by clear and convincing evidence that his resumption of the practice of law would not have a detrimental impact on the integrity and standing of the bar, the administration of justice, or the public interest. Office of Disciplinary Counsel v. Keller, 506 A.2d 872 (Pa. 1986). In order to make this determination the Board must consider the amount of time that has passed since Petitioner was disbarred, as well as his efforts at rehabilitation. In re Verlin, 731 A.2d 600 (Pa. 1999).

Petitioner was disbarred in 1997 and has been removed from the practice of law for more than 16 years. The only firm timetable set by the Supreme Court in disbarment matters is the five year waiting period after the disbarment order is entered. Pa.R.D.E. 218(b). Whether sufficient time has passed must be determined by the unique circumstances of each case. The record in this case demonstrates that the 16 year period of disbarment has been qualitative and meaningful to Petitioner's rehabilitation and has dissipated the impact of the original conduct on the public trust.

Petitioner has accepted full responsibility for his misconduct and has expressed obvious and sincere remorse and regret. Petitioner's misconduct occurred at a time in his life when he was dependent on drugs. Petitioner does not allow this drug abuse to become his excuse, however; he acknowledges his misconduct in full.

Petitioner sought recovery from his drug addiction and the record supports a finding that he has been successful in these efforts. He entered treatment for his addiction and completed all aspects of the programs. Petitioner participated in various types of therapy, drug testing and 12 step programs methods. He has not had a relapse since his treatment began. He has been sober for approximately 17 years. His parents and former

employer Katz testified that to their knowledge, observation and belief, Petitioner has not engaged in the use of alcohol or drugs.

Petitioner has worked steadily since his disbarment, starting with restaurant employment and then paralegal work for Attorney Katz. He relocated to Kentucky in 2004 and has since acted as a foreclosure consultant. An issue arose during testimony as to whether Petitioner was in compliance with Pa.R.D.E. 217(j), which governs law-related activities by formerly admitted attorneys. Petitioner has demonstrated that neither he nor his employers ever held out or suggested to anyone in an express or implied manner that Petitioner was functioning as an attorney. Attorney Katz credibly testified that at all times he made it clear to his firm's clients and others that Attorney Katz was the sole attorney in the practice and Petitioner assisted him strictly in a nonlawyer capacity.

The collective testimony of Petitioner's character witnesses and the letters in support of reinstatement demonstrate that he has been an effective husband, father, and member of society since his disbarment. Petitioner has functioned as a Boy Scout leader for many years and assisted his son in attaining Eagle Scout status. He has been heavily involved in public school matters in Kentucky.

Petitioner has had numerous monetary judgments entered against him. During the period that he was struggling with his drug addiction, he did not satisfy financial obligations to others. At the start of the reinstatement application process Petitioner was unaware of most of these judgments; however, he has satisfied most of the judgments and has contacted or tried to make contact with all entities and persons to whom he owes money.

The record demonstrates a good faith effort on Petitioner's part to satisfy the remaining outstanding judgments. Two of the judgments involve former clients of

Petitioner. Nicholas Borsello obtained a default judgment of \$1,000 after he complained that Petitioner overcharged for legal services. Petitioner explained that Mr. Borsello has been incarcerated for many years. Petitioner sent letters to Mr. Borsello at his last address, and has made reasonable efforts to continue to locate Mr. Borsello. James and Gloria Fultz obtained a larger judgment against Petitioner. Efforts to resolve this matter are ongoing and a conditional offer to settle has been made to the Fultz' counsel. Based upon the evidence presented, the nonpayment of judgments should not prevent Petitioner's reinstatement, as it is clear he has paid the majority of the judgments and is making good faith efforts to resolve the rest.

The complete record of evidence in this matter supports the conclusion that Petitioner has clearly and convincingly shown that he is fit to practice law, in that he is morally qualified, competent and learned in the law, and further, that his resumption of the practice of law will not be detrimental to the integrity and standing of the bar or the administration of justice nor subversive of the public interest.

For these reasons we recommend that the Petition for Reinstatement be granted.

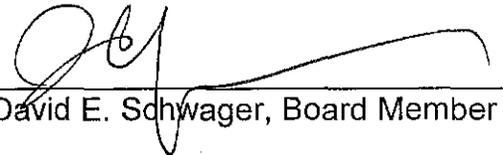
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that Petitioner, Andrew K. Fine, 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: 
David E. Schwager, Board Member

Date: January 24, 2014

Board Member Penny dissented.