

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of : Nos. 1658, 1663 and 1746 Disciplinary
: Docket No. 3
JAMES D. HAYWARD, JR. :
: Nos. 123 DB 2009 & Nos. 32, 83 and
: 202 DB 2010
: PETITION FOR REINSTATEMENT : Attorney Registration No. 93618
: (Luzerne County)

ORDER

PER CURIAM

AND NOW, this 12th day of March, 2020, upon consideration of the Report and Recommendations of the Disciplinary Board, the Petition for Reinstatement is denied.

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

A True Copy Patricia Nicola
As Of 03/12/2020

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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JAMES D. HAYWARD, JR. : No. 123 DB 2009 & Nos. 32, 83 and
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: Attorney Registration No. 93618

PETITION FOR REINSTATEMENT : (Luzerne 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

In 2011, the Supreme Court of Pennsylvania issued three separate orders imposing discipline upon Petitioner, resulting in a total suspension period of approximately five years. By Order dated January 19, 2011, the Court suspended Petitioner from the practice of law for a period of one year and one day. This suspension

was based on misconduct in a bankruptcy matter from 2008. By Order dated October 25, 2011, the Court suspended Petitioner for a period of four years, to run consecutive to his one year and one day suspension. This suspension was based on Petitioner's misconduct in four client matters from 2007 through 2010. By Order dated October 25, 2011, the Court suspended Petitioner on consent for a period of five years, reciprocal to a five-year suspension from practice before the United States Bankruptcy Court for the Middle District of Pennsylvania. The suspension before the Bankruptcy Court was based on Petitioner's mishandling of nine bankruptcy cases.

Petitioner filed a Petition for Reinstatement on November 8, 2018. Office of Disciplinary Counsel filed a response to Petition on February 5, 2019. Following a prehearing conference on March 20, 2019, a District III Hearing Committee ("the Committee") conducted a reinstatement hearing on May 2, 2019.

At the hearing, Petitioner testified on his own behalf and presented the testimony of two witnesses. Petitioner submitted into evidence one exhibit. Office of Disciplinary Counsel did not offer the testimony of any witnesses or introduce any exhibits, but relied on the cross-examination of Petitioner and the witnesses he presented.

On June 13, 2019, Petitioner filed a brief to the Committee and recommended that his reinstatement petition be granted.

On July 2, 2019, Office of Disciplinary Counsel filed a brief to the Committee and recommended that the reinstatement petition be denied.

By Report filed on August 28, 2019, the Committee recommended that the Petition for Reinstatement be denied.

The parties did not file exceptions to the Committee's Report and recommendation.

The Board adjudicated this matter at the meeting on October 17, 2019.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner is James D. Hayward, Jr., born in 1951 and admitted to practice law in the Commonwealth in 2004. His attorney registration address is 264 N. Main Street, Wilkes-Barre PA 18702. Petitioner is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

2. Prior to attending law school in the mid-1990s, Petitioner served four years in the Navy and two years in the Army Reserves, and was employed as a firefighter for the City of Wilkes-Barre for approximately thirteen years. N.T. 37-39.

3. Petitioner retired as a firefighter as a result of multiple injuries he experienced to his back and shoulder. While employed as a firefighter, Petitioner witnessed traumatic events that impacted him in his life. N.T. 39, 45-46.

4. Petitioner attended law school at Widener University School of Law from 1993 through 1997. In his last semester, he turned in an incomplete paper and was accused of plagiarism. The Dean of Students rendered a decision on the matter and issued a one year suspension and required Petitioner to complete his paper and retake the ethics class. Petition for Reinstatement ("P for R"); N.T. 43.

5. After graduation from law school in 1997, Petitioner delayed taking the Pennsylvania bar examination and worked for the City of Wilkes-Barre in various capacities, including as Community Development Director and as the City Administrator. Petitioner took the bar examination in July 2004 and was admitted to the bar later that year. N.T. 43, 50, 66.

6. Petitioner took out loans to finance his legal education, and currently owes approximately \$245,000 to the Pennsylvania Higher Education Assistance Agency. N.T. 59.

7. Petitioner has not made any payments towards this debt, but recently applied for the income-based repayment program. At the time of the hearing, Petitioner had not received a response to his application. N.T. 59.

8. After becoming licensed to practice in 2004, Petitioner worked part-time for North Penn Legal Services and part-time as a solo practitioner focusing primarily on consumer law, including mortgage foreclosure and credit card defense litigation. N.T. 46, 50-51, 68.

9. In 2009, Petitioner was terminated from North Penn Legal Services based on his failure to properly close files. P for R, No. 2(d).

10. In or about 2007, Petitioner's misconduct that led to his suspensions began.

11. In the matter at 123 DB 2009, Petitioner mishandled the bankruptcy matter of his client by failing to provide a written fee agreement; improperly depositing advanced filing fees directly into his operating account and converting the funds to his

own use; failing to pay the client's filing fee; misrepresenting to the court his client's ability to pay the filing fee; and failing to communicate with his client or provide a refund until he was notified of Office of Disciplinary Counsel's investigation into the matter. **Office of Disciplinary Counsel v. James D. Hayward, Jr.**, No.123 DB 2009 (D. Bd. Rpt. 9/27/2010 (S. Ct. Order 1/19/2011)).

12. The Court suspended Petitioner for a period of one year and day, by Order dated January 19, 2011. **Id.**

13. In the matter at 32 DB 2010 & 83 DB 2010, Petitioner failed to provide written fee agreements; engaged in neglect; failed to communicate; improperly handled client funds; and failed to return unearned fees and client files in four matters during the time frame 2007-2010. **Office of Disciplinary Counsel v. James D. Hayward, Jr.**, Nos. 32 DB 2010 & 83 DB 2010 (D. Bd. Rpt. 6/9/2011) (S. Ct. Order 10/25/2011).

14. By Order dated October 25, 2011, the Court suspended Petitioner for a period of four years, consecutive to the one year and one day suspension previously imposed. **Id.**

15. On that same day, the Court suspended Petitioner for five years, reciprocal to his five-year suspension on consent in the United States Bankruptcy Court for the Middle District of Pennsylvania. Petitioner's suspension before the Bankruptcy Court was based on his mishandling of nine bankruptcy cases, wherein he failed to timely file documents with the court; failed to timely remit filing fees to the court; failed to appear and represent clients at Section 342 meetings; failed to appear and represent clients at hearings before the court; failed to promptly communicate with clients regarding the status

of their cases; and exhibited a general lack of diligence. Petitioner's misconduct led to the dismissal of many of his clients' cases. *United States Trustee v. James D. Hayward, Jr.*, 5:10-mp-00003 (M.D. Pa.); *In the Matter of James D. Hayward, Jr.*, 202 DB 2010 (S. Ct. Order 10/25/2011).

16. Petitioner acknowledged that he failed to pay proper attention to his clients' matters when his mother became sick and eventually died. Petitioner described his deep connection to his mother, who as a single parent raised him and his brothers. N.T. 37, 46, 49, 56.

17. Petitioner attributed his misconduct to a combination of events that rendered him unable to cope. N.T. 67.

18. Petitioner credibly expressed deep remorse and sorrow for his misconduct. N.T. 54.

19. Petitioner testified, "I wish I could live those years over again and change things." N.T. 54.

20. Following his suspension, Petitioner was unemployed from late 2011 through April 2017. Petitioner testified that during his first year of suspension, he sought employment, but was unsuccessful, and attributed his inability to find a job to his age. P for R; N.T. 57-59.

21. During his suspension, Petitioner and his brother purchased tax-sale properties for the purpose of resale. Petitioner testified that he made some money doing this, but did it "mostly...to keep busy." N.T. 51, 59.

22. Since April 2017, Petitioner has been employed at YTC, Inc., located in West Wyoming, Pennsylvania, performing a variety of functions, including financial, computer and support services. P for R, No. 11(a); N.T. 51-52.

23. Petitioner has not engaged in any law-related employment during his suspension. N.T. 60

24. Petitioner failed to disclose on his Reinstatement Questionnaire that he worked from March 2018 to August 2018 for the City of Wilkes-Barre. N.T. 58.

25. Petitioner testified that he took the position with the City in order to qualify for his pension, and then went back to his employment at YTC, Inc. N.T. 52.

26. During its investigation, Office of Disciplinary Counsel requested on numerous occasions full copies of Petitioner's tax returns during his period of suspension; however, Petitioner did not provide his full tax returns and instead, only provided copies of his W-2s. N.T. 61.

27. Petitioner failed to list income of \$5,000 on his Reinstatement Questionnaire, although his 2016 tax documents evidenced that income. Petitioner testified that he is not sure why he did not report it on the Questionnaire, but believes he discovered it afterwards. N.T. 58.

28. During his suspension, Petitioner kept abreast of the law by completing close to one hundred Continuing Legal Education hours and reading legal periodicals and blogs. P for R, No. 19; N.T. 69 -70.

29. If reinstated, Petitioner intends to practice consumer law. N.T. 69.

30. In one of the prior disciplinary proceedings, Petitioner was represented by a law firm, who later obtained a judgment against him in the amount of \$31,408.77 for unpaid legal fees. Petitioner has not made any payments on the judgment. N.T. 59-60.

31. Petitioner offered the testimony of Dr. Steven Timchak, who is a Board-certified psychologist and Board-certified cognitive behavioral therapist. N.T. 14-15.

32. Dr. Timchak regularly works with attorneys referred to him through Lawyers Concerned for Lawyers. N.T. 13.

33. Petitioner has treated with Dr. Timchak from September 2013 through the time of the reinstatement hearing. N.T. 9.

34. Initially, Petitioner met with Dr. Timchak twice monthly. Currently, he meets every four to six weeks, and will continue to do so for the foreseeable future. N.T. 21.

35. Dr. Timchak diagnosed Petitioner with post-traumatic stress disorder ("PTSD"). N.T. 9.

36. Throughout his treatment of Petitioner, Dr. Timchak observed improvement in Petitioner's mood but has also found Petitioner to become more withdrawn in treatment around Christmas, when Petitioner previously experienced particularly traumatic events as a firefighter. Despite treating with Dr. Timchak since 2013, Petitioner did not reveal the details of the traumatic experiences he had while working as a firefighter to Dr. Timchak until sometime around 2016. N.T. 11-12, 60-61.

37. There was a period of time lasting three or four months in late 2018 when Petitioner lost touch with Dr. Timchak. Dr. Timchak believed this happened because Petitioner was facing some significant medical issues, and testified that Petitioner returned to treatment after resolving those issues. N.T. 19

38. Dr. Timchak testified that the signs and symptoms that originally produced Petitioner's functional impairment have subsided, but he was unable to render a definitive opinion as to Petitioner's psychological ability to resume practicing law. N.T. 12, 17-18.

39. Edward Delaney credibly testified on behalf of Petitioner. Mr. Delaney is a licensed clinical psychologist by profession and has known Petitioner for at least twenty-five years as a friend and relative by marriage. N.T. 22, 25, 26.

40. Mr. Delaney described Petitioner as honest, hard-working and dedicated to his family. N.T. 28-29.

41. Mr. Delaney testified that he was not aware of the details of Petitioner's misconduct, but was aware that Petitioner became distracted and overextended in his practice when his mother became ill and eventually died. N.T. 33-34.

42. Mr. Delaney testified that Petitioner has changed in that prior to his suspension, he took on too much work and now he is not allowing himself to be overwhelmed by work demands. N.T. 34.

43. Mr. Delaney testified that Petitioner has demonstrated the ability to learn from his experiences and should be allowed to resume the practice of law. N.T. 32-33.

44. Petitioner has been eligible to apply for reinstatement for several years; however, he did not apply at that time because he felt he was not ready. N.T. 55.

45. Office of Disciplinary Counsel opposes Petitioner's reinstatement.

46. Petitioner did not take exception to the Committee's recommendation to deny his reinstatement.

III. CONCLUSIONS OF LAW

Petitioner failed to demonstrate by clear and convincing evidence that he is morally qualified and competent to resume the practice of law in Pennsylvania and that his resumption of the practice of law 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 practice of law in Pennsylvania from three separate suspension orders, which collectively imposed suspension of approximately five years. Pursuant to Rule 218(a)(1), 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's burden of proof with respect to his request for reinstatement requires that he prove by clear and convincing evidence, that he presently is morally qualified, competent and learned in the law and that his resumption of practice at this time will not have a detrimental effect on the integrity

and standing of the bar or the administration of justice nor be subversive of the public interest.

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 that gave rise to the lawyer's suspension, but rather, the nature and extent of the rehabilitative efforts made since the time the sanction was imposed and the degree of success achieved in the rehabilitative process. ***Philadelphia News, Inc. v. Disciplinary Board of the Supreme Court of Pennsylvania***, 363 A.2d 779, 780-781 (Pa. 1976).

For the reasons set forth below, we conclude that Petitioner has failed to meet his reinstatement burden.

In this matter, approximately eight years have passed since Petitioner's initial suspension was imposed on January 19, 2011. Petitioner's misconduct consisted of multiple acts of neglect in numerous client matters. Petitioner credibly testified that he feels deep remorse and wishes that he would have done things differently. Petitioner's character witness, who has known Petitioner for more than two decades, credibly described Petitioner as an honest, dedicated family man who is hard-working. Although Mr. Delaney was unaware of the details of Petitioner's misconduct, he recognized that Petitioner overextended himself and had personal issues that interfered with his practice. Mr. Delaney testified generally to the change he has witnessed in Petitioner over the past few years, whereby Petitioner understands that he overextended himself in the past and is now careful not to be come overwhelmed.

At the hearing, Petitioner testified to a variety of traumatic events in his life related to his work as a firefighter for thirteen years, his childhood growing up with a single mother, and his mother's illness and death. During his suspension, beginning in approximately 2013, Petitioner sought psychological treatment with Dr. Timchak for PTSD, which treatment continues to the present time. Although Petitioner revealed events in his life that led to the PTSD diagnosis, Petitioner did not share with Dr. Timchak the emotionally distressing events he experienced as a firefighter until sometime around 2016. Dr. Timchak opined that Petitioner has made progress and that the symptoms that originally produced his functional impairment have subsided. However, Dr. Timchak was unable to opine to a reasonable degree of medical certainty that Petitioner is psychologically able to return to the practice of law. Troublingly, Dr. Timchak testified that there was a period of three or four months in the latter part of 2018 where Petitioner was not in touch with him. Also concerning to the Board is the lack of specific evidence regarding Petitioner's treatment. Petitioner made reference to medication, but there is no testimony or documentary evidence of his medicine regimen, nor did Dr. Timchak reference medication.

The record evidences that during the first year of his suspension, Petitioner attempted to gain employment, but was unable to do so, and cited his age as a factor. Petitioner remained unemployed until 2017, when he obtained work at YTC, Inc., performing financial, computer and other support services. Petitioner also worked for a brief period of time for the City of Wilkes-Barre in order to qualify for his pension. Petitioner's other source of income was buying and selling real estate with his brother,

essentially "flipping" houses. Petitioner testified that while he earned some income with this endeavor, he did it primarily for something to do.

At this time, Petitioner remains employed with YTC, Inc. and intends to continue employment in addition to a legal practice, if he is reinstated. Petitioner has not been employed in a legal capacity since his suspensions, but kept abreast of the law through CLE courses, of which he took more than one hundred credit hours, and by reviewing legal blogs and periodicals. If reinstated, Petitioner intends to return to solo practice with a concentration on consumer law, the same area of law he used to practice. Petitioner's misconduct that led to his suspension was caused at least in part by over-extending himself and being unable to handle the rigors of practicing law as a solo practitioner. Although Petitioner has indicated a desire to return to solo practice, he presented no evidence to show the steps he would take to avoid committing misconduct in the future and why he would not encounter the same difficulties he previously experienced. We note that Petitioner was admitted to practice in 2004 and his misconduct began in 2007, a mere three years later. Bearing in mind that Petitioner has been suspended for more years than he actually practiced law, we are troubled that if reinstated, Petitioner will run afoul of the same problems he once faced because he does not have a concrete plan to run his practice differently than before.

Petitioner has a large amount of debt, primarily student loans incurred more than fifteen years ago. Petitioner has allowed this debt to accumulate and has not made payment on these student loans. He testified at the hearing that he had very recently applied for an income-based repayment plan and had not received an answer. Petitioner

has a judgment against him for legal fees owed to the law firm that represented him in one of his prior disciplinary matters. Petitioner has made no payments on the judgment and did not offer evidence that he intends to do so.

In order to be reinstated to the practice of law, Petitioner must present clear and convincing evidence that he is fit to practice and will not harm the public. While it is clear that Petitioner is very remorseful for his misconduct, is addressing the underlying issues that led to his suspension, and has made progress in that regard, the totality of the evidence establishes that Petitioner has not reached the point that he should be allowed to resume practice. Most persuasive to the Board, as it was to the Committee, is the fact that Dr. Timchak, Petitioner's treating psychologist, was unable to provide an opinion to a reasonable degree of medical certainty that Petitioner is psychologically able to resume practicing law. This factor weighs against reinstatement at this time.

For all of the foregoing reasons, we conclude that Petitioner did not meet his reinstatement burden under Pa.R.D.E. 218(c)(3), and we recommend that the Petition for Reinstatement be denied.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the reinstatement of Petitioner, James D. Hayward, Jr., be denied.

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: S/John C. Rafferty, Jr.
John C. Rafferty, Jr., Member

Date: January 6, 2020