

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 1019 Disciplinary Docket No. 3
: :
E. NKEM ODINKEMERE : No. 129 DB 2005
: :
: Attorney Registration No. 60064
: :
PETITION FOR REINSTATEMENT : (Philadelphia)

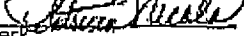
ORDER

PER CURIAM:

AND NOW, this 18th day of July, 2012, upon consideration of the Report and Recommendations of the Disciplinary Board dated March 14, 2012, the Petition for Reinstatement is denied.

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 7/18/2012

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 August 25, 2005, the Supreme Court of Pennsylvania disbarred E. Nkem Odinkemere, reciprocal to the disbarment order entered in New Jersey against Mr. Odinkemere on January 19, 2005. Mr. Odinkemere filed a Petition for Reinstatement in Pennsylvania on November 8, 2010. Office of Disciplinary Counsel filed a Response on April 4, 2011 and opposes reinstatement.

A reinstatement hearing was held on June 20, 2011 before a District I Hearing Committee comprised of Chair Butler Buchanan, Esquire and Members Maria-

Louise Perri, Esquire, and Dion G. Rassias, Esquire. Petitioner appeared pro se. Petitioner offered his own testimony in support of his request for reinstatement. At the conclusion of the hearing he submitted a three page document representing a portion of a transcript from a civil proceeding, and a response. Office of Disciplinary Counsel offered 26 exhibits and Petitioner's testimony on cross-examination.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on October 21, 2011 and recommended that the Petition for Reinstatement be denied.

Petitioner filed a Brief on Exceptions on November 14, 2011.

Office of Disciplinary Counsel filed a Brief Opposing Exceptions on November 23, 2011.

This matter was adjudicated by the Disciplinary Board at the meeting on January 18, 2012.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner is E. Nkem Odinkemere. He was born in 1958 and was admitted to the practice of law in Pennsylvania in 1990. He was admitted to the bar in New Jersey in 1993. Petitioner's current address is 5 Quail Ridge Court, Medford NJ 08055. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

2. By Order of January 19, 2005, the Supreme Court of New Jersey disbarred Petitioner.

3. On August 25, 2005, the Supreme Court of Pennsylvania entered a reciprocal disbarment Order.

4. Petitioner's misconduct in New Jersey consisted of the knowing misappropriation of funds in three client matters, as well as on occasions when Petitioner issued checks to himself unrelated to client matters and to which he was not entitled. He assisted others in the unauthorized practice of law, failed to safeguard client funds, failed to supervise staff, and engaged in improper fee-sharing with non-attorneys.

5. Following Petitioner's disbarment in Pennsylvania, he failed to file with the Office of the Secretary certain documents that all disbarred attorneys must submit upon disbarment.

6. During his disbarment, Petitioner was sanctioned three times by the court in a civil case he filed on his own behalf in the Philadelphia Court of Common Pleas.

7. On May 30, 2006, the court sanctioned Petitioner for failing to appear for his deposition pursuant to a court order dated April 25, 2006.

8. Petitioner was directed to pay \$300 to opposing counsel for opposing counsel's appearance at the deposition and to pay \$500 to opposing counsel for having to bring the Motion for Sanctions.

9. On July 11, 2006, the court sanctioned Petitioner for failing to answer interrogatories in accordance with a court order dated May 23, 2006.

10. Petitioner was directed to pay \$500 to opposing counsel for having to bring the Motion for Sanctions.

11. On August 16, 2006, the court sanctioned Petitioner for failing to comply with the April 25, 2006, May 23, 2006 and May 30, 2006 Orders and for failing to prosecute the lawsuit.

12. The court dismissed the lawsuit with prejudice.
13. Before August 16, 2006, Petitioner had decided not to pursue the Philadelphia lawsuit; however, he failed to advise the court and to withdraw the lawsuit.
14. Petitioner has not satisfied the monetary sanctions imposed by the court in its April 25, 2006 and May 30, 2006 Orders.
15. Petitioner's Questionnaire contained errors, false information and documents, and omitted requested information.
16. In response to Question 2(d), Petitioner failed to identify all of the employment positions he held prior to his Pennsylvania disbarment.
17. Petitioner failed to attach to the Questionnaire a copy of the New Jersey disbarment decision as requested by Question 3(b)(iii).
18. Petitioner answered "None" in his response to Question 5(a), which requested certain information relating to clients whose funds Petitioner improperly handled.
19. Petitioner's response to Question 5(a) was false, as Petitioner knew that New Jersey had found that Petitioner and his staff had misappropriated client funds.
20. In response to Questions 6(a), (b) and (c), which inquired if Petitioner had filed certain requested documents with the Secretary's Office following disbarment, Petitioner answered "Yes" and stated that to the best of his knowledge and /or recollection, the required documents were filed on or about August 31, 2005 or between August 10, 2005 and August 31, 2005.
21. Petitioner did not file the requested documents, and did not contact his attorney or the Secretary's Office to verify that his response was correct prior to filing the Questionnaire.

22. In response to Question 6(c), which requested that Petitioner attach a copy of the affidavit that was filed with the Secretary's Office in accordance with Pa.R.D.E. 217(e) and D.Bd. Rule 191.95, Petitioner attached to the Questionnaire a "Statement of Compliance."

23. Petitioner prepared the "Statement of Compliance" on October 27, 2010, but did not file such a statement with the Secretary's Office on August 31, 2005.

24. Petitioner failed to identify his reciprocal disbarment in the United States District Court for the District of New Jersey and to attach a copy of that Court's May 24, 2005 reciprocal disbarment Order to the Questionnaire as requested by Questions 7(a) and (b).

25. Petitioner checked off the box marked "Yes" in response to Question 10(a), which inquired if Petitioner had "been involved in a civil action as a party or as one who claimed an interest."

26. Petitioner checked off the box marked "Yes" in response to Question 10(b), which inquired if any malpractice actions had been filed against Petitioner.

27. Petitioner checked off the box marked "No" in response to Question 10(c), which inquired if there were any current court records showing unsatisfied judgments entered against Petitioner.

28. If Petitioner answered "Yes" to Questions 10(a), (b), or (c), Petitioner was required to provide certain identifying information about each case, as well as docket entries for each case.

29. Petitioner provided some identifying information for one case, a malpractice action filed against him.

30. Petitioner failed to identify and provide docket entries for 23 civil cases filed in the Superior Court of New Jersey for Essex County, seven civil cases filed in the Superior Court of New Jersey for Burlington County, and one civil case filed in the Philadelphia Court of Common Pleas, all of which listed Petitioner as a party.

31. Petitioner failed to identify and provide docket entries for one civil case filed in the Superior Court of Essex County that shows an unsatisfied judgment entered against Petitioner in the amount of \$3,847.66

32. Petitioner knew that he had been named as a party in civil actions filed in the Superior Court of New Jersey; nevertheless, Petitioner did not contact the court in those counties to obtain a list of those cases and their docket entries so that he could provide a complete and accurate response to Question 10.

33. Petitioner checked off the box marked "Yes" in response to Question 10(d), which inquired if Petitioner had any debts that were 90 days past due.

34. Question 10(d) requested that Petitioner provide the amount due to any creditors.

35. Petitioner failed to list the amounts due to Petitioner's two creditors.

36. Petitioner did not contact his creditors to ascertain the amount of the debts or seek to obtain a free credit report, as previously requested by Office of Disciplinary Counsel, so that he could provide the information requested by Question 10(d).

37. Petitioner checked off the box marked "Yes" in response to Question 10(e), which inquired if Petitioner had timely filed state and federal tax returns for each and every year since his disbarment.

38. Petitioner's response to 10(e) was false because Petitioner did not file federal tax returns for the years 2005 and 2006 and a New Jersey tax return for the year 2006.

39. Petitioner claimed he did not have copies of his and his wife's federal and state tax returns when he answered Question 10(e) because the returns were damaged in two separate floods occurring in his home between 2006 and 2008.

40. Petitioner and his wife had an accountant prepare their federal and state tax returns.

41. Petitioner did not contact the accountant to obtain information and documents before answering Question 10(e).

42. Petitioner testified at the hearing that:

a. He was required to complete the Questionnaire "to the best of [his] ability and recollection";

b. He had no obligation to "go back to the history of [his] life and search every record and every court system";

c. He did not think the information requested in Question 10 "was relevant"; and

d. He was only obligated to "complete the application [the Questionnaire] based on what [he] could remember in answering the question, and [he] did that. That's all [he was] supposed to do."

43. Petitioner claimed that he devoted no more than two hours toward completing the Reinstatement Questionnaire.

44. Petitioner was uncooperative with Office of Disciplinary Counsel's investigation.

45. Petitioner failed to review all of Office of Disciplinary Counsel's proposed exhibits prior to the reinstatement hearing.

46. Petitioner lacks an understanding of the rules and case law that relate to reinstatement cases as shown by Petitioner's:

a. filing of the Response in which he sought reinstatement without the convening of a hearing as required by Pa.R.D.E. 218(c)(2) and (3); and

b. hearing testimony, in which he stated that it is "unfair to continue to delay my reinstatement. This has been five years and ten months and counting, and it's unfair to wait this long." He further stated that the "records from New Jersey should not be relevant." (N.T. 10, 13, 36-27, 130)

47. At the hearing and in the Response, Petitioner testified that:

a. his disbarment in New Jersey was the product of a "race-based action" initiated by that state's Office of Attorney Ethics;

b. there was "no foundation" for the findings of misconduct made by the New Jersey Board;

c. the disciplinary process in New Jersey was "unfair";

d. there was no "evidence that money was taken from [sic] trust account for personal use" and he had "never misappropriated client funds. I've never compromised my ability to represent my clients as an attorney", and

e. "there's nothing in my life or my character that is detrimental to the bar to the integrity or standing of the bar or Pennsylvania. There's

nothing that I have done that will affect the administration of justice or be subversive to the public's interest." (N.T 12-13, 15, 48, 119-120)

48. Petitioner's characterization of the New Jersey investigation and prosecution as being racially motivated, his refusal to acknowledge that he was afforded due process in those proceedings, and his rejection of the New Jersey Board's findings that he engaged in misconduct establish that Petitioner does not acknowledge nor exhibit remorse for his misconduct in New Jersey.

49. Petitioner's testimony was less than completely candid.

50. Petitioner has not been employed since his disbarment in Pennsylvania.

51. Petitioner explained that he has been taking care of his children while his wife was working and he has spent time doing church and volunteer activities.

52. Petitioner offered no details regarding his volunteer or church activities.

53. Petitioner's son currently attends college and his daughter is a college graduate.

54. Petitioner presented no character witnesses.

III. CONCLUSIONS OF LAW

1. The misconduct for which Petitioner was disbarred is not so egregious as to preclude reinstatement. Office of Disciplinary Counsel v. Keller, 509 A.2d 872 (Pa. 1986).

2. Petitioner failed to prove by clear and convincing evidence that he has engaged in a sufficient period of qualitative rehabilitation during his disbarment. In re Verlin, 731 A.2d 600 (Pa. 1999).

3. Petitioner failed to prove by clear and convincing evidence that he has the moral qualifications, competency and learning in the law required for reinstatement to the bar, and that the 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

This matter comes before the Disciplinary Board on a Petition for Reinstatement filed by E. Nkem Odinkemere. Petitioner was disbarred on August 25, 2005, by Order of the Supreme Court of Pennsylvania. This disbarment was reciprocal discipline based on Petitioner's disbarment from the practice of law in New Jersey on January 19, 2005. While Petitioner may not seek reinstatement in the State of New Jersey pursuant to that jurisdiction's rules, he is permitted to seek reinstatement in Pennsylvania. Pa.R.D.E. 218(b).

Petitioner's request for reinstatement from 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). As a threshold matter, the Board must determine whether the misconduct that resulted in Petitioner's disbarment was so egregious that his reinstatement would have a detrimental effect upon the integrity and standing of the bar or would be subversive to the public interest.

Petitioner's disbarment in New Jersey was based on his misconduct consisting of knowing misappropriation of the funds of three clients as well as on occasions when Petitioner issued checks to himself unrelated to client matters; sharing legal fees with non-attorneys; failing to properly supervise staff; forging of a client's signature on a release; failing to maintain required financial books and records pertinent to his trust account; and, settling a client's case without the client's knowledge and consent.

Upon review of the underlying offenses and the case law, the Board concludes that the misconduct is not so egregious that it should preclude Petitioner from reinstatement. The Court has previously found that conversion of client funds and related misconduct, while serious ethical offenses, do not prohibit an attorney from reinstatement. In re Greenberg, 749 A.2d 434 (Pa. 2000) (misappropriation of two million dollars and commission of perjury in a bankruptcy not so egregious as to warrant permanent disbarment); In re Costigan, 664 A.2d 518 (Pa. 1995) (theft conviction is not a breach of trust of sufficient magnitude to forever bar an attorney seeking readmission).

Once the Keller threshold is passed, Petitioner bears 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 the Commonwealth, and that his readmission would not have a detrimental impact on the integrity and standing of the bar, the administration of justice or be subversive of the public interest. Keller, supra; Pa.R.D.E. 218(c)(3). To that end, Petitioner must prove that his post-disbarment conduct and efforts at qualitative rehabilitation were sufficient to dissipate the detrimental impact of his conduct on the public trust. In re Verlin, 731 A.2d 600 (Pa. 1999).(Pa. 2001).

Petitioner has been disbarred in Pennsylvania since August 25, 2005. Thus, at the time of his reinstatement hearing, Petitioner had been removed from the practice of

law for five years and ten months. The record is devoid of any compelling evidence to demonstrate that during his disbarment Petitioner has rehabilitated himself. Petitioner's Reinstatement Questionnaire and testimony at the reinstatement hearing establish that Petitioner is not fit to practice law.

Petitioner submitted false information on the Questionnaire and gave false testimony at the hearing, which demonstrate Petitioner's dishonesty. Petitioner answered "None" to Question 5(a), which requested information relating to clients whose funds Petitioner improperly handled, despite Petitioner knowing that the New Jersey Board had concluded that he had misappropriated client funds. Petitioner falsely testified at the hearing that he did not contest his reciprocal disbarment, although he had; had not misappropriated client funds, although he was found to have done so in New Jersey; and, had been disbarred based principally on the misuse of funds.

In completing the Questionnaire, Petitioner disregarded his obligation to provide accurate and truthful information and to submit certain requested documents. Aside from obtaining a copy of the reciprocal disbarment order, Petitioner took no other affirmative steps to gather information. Petitioner stated that he was not obligated to "search every record and every court system" and was entitled to rely on his recollection of events.

After Office of Disciplinary Counsel reviewed and investigated the Questionnaire, it provided Petitioner the opportunity to complete missing information and details, but Petitioner did not fully comply with these requests. An example of Petitioner's lack of diligence is his failure to provide docket entries for numerous civil cases in which Petitioner was a named party. Petitioner's method of responding to Disciplinary Counsel's basic requests was to simply disregard them. Knowing that the restoration of his

professional license was at issue, Petitioner's evasiveness is inexplicable and can reasonably be interpreted as unfitness to practice law.

During the disbarment Petitioner pursued a civil action in the Philadelphia Court of Common Pleas. He was sanctioned three times by the court for failure to appear, failure to answer interrogatories in accordance with a court order, and failure to comply with court orders. Petitioner was sanctioned and eventually the court dismissed the lawsuit with prejudice. Petitioner's conduct in litigating this lawsuit is troubling and indicates a lack of fitness.

During the hearing itself, Petitioner vehemently denied that he had done anything wrong despite the abundance of competent, credible evidence against him. He failed to acknowledge that the New Jersey investigation and prosecution was proper and that the findings of misconduct were substantiated. He attempted to minimize the scope and severity of the misconduct by describing his actions as bookkeeping mistakes. It is clear that Petitioner has not accepted that his actions were wrong, unprofessional and unbecoming of a member of the bar.

Petitioner presented no evidence of any employment during his disbarment. When asked what he had been doing for the past five years, Petitioner answered that he took care of his two children while his wife worked. Petitioner further explained that his daughter was a college graduate and his son was in college at the time of the reinstatement hearing. Petitioner made a passing reference to time spent engaged in church and volunteer activities but did not elaborate on these activities. Petitioner did not present any character witnesses.

Simply put, Petitioner squandered his opportunity to prove that he is qualified to resume practice in this Commonwealth. He has failed to convince the Hearing

Committee and this Board that he understands the nature of his wrongdoing and that he is not predisposed to commit further misconduct. Under these circumstances, we find that Petitioner has not met his burden by clear and convincing evidence that he engaged in a sufficient period of qualitative rehabilitation during disbarment. Nor did Petitioner prove that he is morally qualified, competent and learned in the law 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.

The Board recommends that the Petition for Reinstatement be denied.

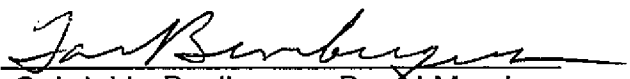
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the reinstatement of Petitioner, E. Nkem Odinkemere 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: 
Gabriel L. Bevilacqua, Board Member

Date: March 14, 2012