

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 689 Disciplinary Docket No. 3
: :
: No. 135 DB 2001
DAVID ASSAD, JR. : :
: Attorney Registration No. 36121
: :
PETITION FOR REINSTATEMENT : :

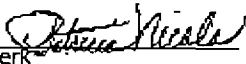
ORDER

PER CURIAM:

AND NOW, this 29th day of December, 2011, upon consideration of the Report and Recommendations of the Disciplinary Board dated August 1, 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 pursuant to Rule 218(f), Pa.R.D.E.

Mr. Justice McCaffery dissents.

A True Copy Patricia Nicola
As Of 12/29/2011

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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PETITION FOR REINSTATEMENT : (Formerly Philadelphia)

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.

1) HISTORY OF PROCEEDINGS

By Order of September 24, 2001, David Assad, Jr. was disbarred on consent by Order of the Supreme Court of Pennsylvania. Mr. Assad had been previously disbarred on consent on May 24, 2001, by Order of the New Jersey Supreme Court due to his misappropriation of client and third party funds.

On March 26, 2010, Mr. Assad filed a Petition for Reinstatement. Office of

Disciplinary Counsel filed a Response to Petition on June 29, 2010 and opposes reinstatement.

A reinstatement hearing was held on September 28, 2010, before a District I Hearing Committee comprised of Chair Mark G. Lionetti, Esquire, and Members Cynthia A. Clark, Esquire, and Barry I. Gross, Esquire. Respondent was represented by Samuel C. Stretton, Esquire.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on January 12, 2011 and recommended that the Petition for Reinstatement be denied.

Petitioner filed a Brief on Exceptions on January 28, 2011 and requested oral argument before the Disciplinary Board.

Office of Disciplinary Counsel filed a Brief Opposing Exceptions on February 14, 2011.

Oral argument was held on March 28, 2011, before a three-member panel of the Disciplinary Board.

This matter was adjudicated by the Disciplinary Board at the meeting on April 13, 2011.

2) FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner is David Assad, Jr. He was born in 1956 and was admitted to practice law in the Commonwealth of Pennsylvania in 1982. His current

business address is 25 Commerce Ave., Cranford NJ 07016. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

2. Petitioner was admitted to practice law in the State of New Jersey in 1983. He was admitted to practice in the United States District Court for the Eastern District of Pennsylvania, the United States District Court for the District of New Jersey, and the United States Third Circuit Court of Appeals.

3. In Pennsylvania, prior to his disbarment, Petitioner had never been disciplined. In New Jersey, Petitioner was disciplined in 1998 in the form of a reprimand for not having a bona fide office and for not paying his \$200 attorney dues on a timely basis.

4. Following his admission to the bar in Pennsylvania, Petitioner was employed with attorney Dennis Haggerty for several years. Petitioner began a solo practice in 1984 or 1985, and continued as a solo practitioner until the time of his disbarment in 2001. His practice was evenly split between Pennsylvania and New Jersey.

5. Petitioner was disbarred by consent by Order of the New Jersey Supreme Court dated May 11, 2001.

6. He was disbarred based upon his misappropriation of trust funds in three separate instances:

a. In September 1997, Petitioner deposited funds of a minor in the amount of \$12,881.40 into his trust account and over the following three years fully depleted the funds for his own use. After the minor turned 18 years of age, Petitioner paid the minor the money due him along with additional interest;

b. In July 1999, Petitioner deposited funds of a client in the amount of \$20,800 (of which \$16,100 was the client's money) into his trust account and over the following three weeks depleted substantially all of the client's funds for his own use. Petitioner was out of trust for 31 days and used the money as a down payment for the purchase of a new house. The client was later fully reimbursed for the misused funds; and

c. In October 1999, Petitioner deposited mortgage proceeds of a client in the amount of \$185,859.96 into his trust account and over the next week converted more than \$16,000 for his own use. He permitted the client's mortgage to remain unpaid until January 2000, when he paid off the mortgage with the proper amounts.

7. During the late 1990s, Petitioner was suffering financial difficulties after he married his second wife and wanted to provide his family with a lifestyle higher than he was able to afford. The misappropriated funds were used to pay bills and purchase a new house.

8. Petitioner filed an initial Petition for Reinstatement in Pennsylvania on December 21, 2007. A hearing was held and completed on June 12, 2008. On June 13, 2008, Petitioner withdrew the Petition.

9. At the time of the first reinstatement, Petitioner:

a. failed to include in his Petition two of the cases that initially led to his disbarment in New Jersey;

b. failed to include in his Petition the fact that he had filed for bankruptcy in the 1990s on three separate occasions;

c. failed to reveal a civil domestic matter;

d. failed to acknowledge that he was involved in a real estate settlement which required him to pay off the seller's mortgage;

e. held himself out as employed in legal services on certain on-line dating services; and

f. failed to give accurate information on an employment application regarding his disbarred status.

10. At the reinstatement hearing on the current Petition, Petitioner corrected his first reinstatement Petition and some of his testimony from that first hearing. Petitioner testified that:

a. there is no doubt he was disbarred for misconduct in three client matters and he has accepted full responsibility for his misconduct in all three matters;

b. the failure to disclose the multiple bankruptcy filings was an oversight and he simply forgot;

c. he does not recall his involvement in the real estate settlement matter;

d. he should not have chosen the legal services category on the on-line dating sites as it might have misled people;

e. a former girlfriend told him not to disclose his disbarment on the employment application, but he later explained his actual situation to the employer, which resulted in him not receiving the position.

11. Since his Pennsylvania disbarment, Petitioner has never practiced law or given any legal advice, nor has he acted as a paralegal.

12. Since his disbarment, Petitioner has primarily worked for Wackenhut Corporation, which provides security. Petitioner started at the basic security level and was ultimately either a captain or a supervisor at the various job sites. He is currently a "Flex Officer." which means he is assigned to various trouble spots. He has worked for Wackenhut for more than eight years and has not missed a single day of work.

13. Petitioner has custody of his minor daughter, who has lived with him during most of his disbarment. He has two other daughters who are adults. Petitioner paid child support for all of his children through the years and assisted in paying for college for his eldest daughter.

14. At the time of his disbarment, Petitioner owed the IRS approximately \$100,000 in taxes due to his failure to make the appropriate quarterly and yearly payments to the IRS while he was self-employed. Petitioner paid approximately \$25,000 to \$30,000 of these taxes over the last nine years, and the rest were discharged in bankruptcy.

15. At the time of the reinstatement hearing in September 2010, Petitioner still owed \$3,100 to the IRS.

16. Since his disbarment, Petitioner has filed and timely paid his taxes. He has had no tax arrearages on his tax returns.

17. Petitioner currently has outstanding credit card bills in the amount of approximately \$2,800.

18. Petitioner completed all of the required Continuing Legal Education courses, including 12 hours of ethics. Petitioner has completed over 70 CLE courses in the last two and a half years.

19. Petitioner keeps apprised of the law by reviewing the Legal Intelligencer, as well as other legal magazines and articles.

20. If reinstated, Petitioner plans to practice law in Philadelphia with a small firm or corporation.

21. Petitioner presented the testimony of eight character witnesses.

22. Dennis Haggerty, Esquire, Jack Briscoe, Esquire, and Dino Mantzas, Esquire, have all known Petitioner for many years. They credibly testified to

Petitioner's excellent reputation in the community as a truthful, honest and law abiding person. Each of these witnesses indicated that Petitioner expressed full remorse for his misconduct and never tried to justify his wrongdoing.

23. Thomas Cartwright is Petitioner's former supervisor at Wackenhut and worked with him on a daily basis between June of 2009 and June of 2010. Mr. Cartwright indicated that Petitioner was a "super employee." He is aware that Petitioner has been disbarred, but testified that there was never any problems with Petitioner on issues of dishonesty or deceit.

24. Several family members testified on Petitioner's behalf. David Assad is Petitioner's father. He is an internationally renowned peace activist. Maryam Levan is Petitioner's sister and is a Deputy Chief Officer with the United States Customs and Border Control. Valerie Assad is Petitioner's adult daughter. These witnesses testified by stipulation as to Petitioner's excellent reputation in the community as a truthful, honest, and law abiding person.

25. Ingrid Feggulis is Petitioner's girlfriend and has known him for approximately three or four years. She confirmed that Petitioner is very hard-working and has an excellent reputation in the community as a peaceful and law abiding person.

26. Petitioner testified on his own behalf. He believes that he has done everything he can to change and reform. He has maintained a responsible job and supported his children. He is currently raising his minor daughter.

27. Petitioner expressed sincere remorse for his past misconduct.

28. Petitioner agrees that he violated his clients' trust by misusing the clients' funds. He has accepted full responsibility for his actions.

29. Office of Disciplinary Counsel opposes reinstatement.

3) 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, 506 A.2d 872 (Pa. 1986).

2. Petitioner 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 Pennsylvania, and his 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).

4) DISCUSSION

Petitioner seeks reinstatement to the bar of the Supreme Court of Pennsylvania following his disbarment on consent by Order of the Supreme Court dated

September 24, 2001. Petitioner initially sought reinstatement by Petition dated December 21, 2007, but withdrew his request on June 13, 2008.

The threshold issue in this matter is 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. Office of Disciplinary Counsel v. Keller, 506 A.2d 872 (Pa. 1986).

Petitioner was disbarred because he misappropriated client funds in three separate instances. On each occasion Petitioner returned the money he had wrongfully taken before his clients learned of his misconduct. Petitioner's conversion of funds was serendipitously discovered as a result of an audit that was conducted by the New Jersey Board of Ethics.

There is no doubt that Petitioner's misconduct was serious and that his disbarment was the appropriate sanction. Nevertheless, we find that his misconduct was not so egregious that it should standing alone prohibit Petitioner's reinstatement. See 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 to 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 of qualitative rehabilitation were sufficient to disipate the detrimental impact of his misconduct on the public trust. In re Verlin, 731 A.2d 600 (Pa. 1999).

Petitioner was disbarred on consent by the Supreme Court of New Jersey on May 11, 2001 and received reciprocal discipline in Pennsylvania by his disbarment on consent on September 24, 2001. Thus, at the time of his reinstatement hearing Petitioner had been removed from the practice of law for nine years.

During that time, Petitioner worked fifty to seventy hours a week for the Wackenhut Corporation, initially as a security guard and then as a captain or supervisor of other security guards. The record reveals that Petitioner never missed a day of work in the eight and one half years of his employment at Wackenhut and demonstrated a work ethic so strong that he refused to stay home even on the day he was injured in a car accident. Significantly, Petitioner's site supervisor at Wackenhut, Scott Finklestein, testified at the reinstatement hearing that Petitioner's performance was exemplary and that he enjoyed a very good reputation for honesty among his co-workers.

As the record further reveals Petitioner supported his children both financially and emotionally during his post disbarment years. Despite his meager earnings Petitioner gave substantial financial assistance to his college age daughter,

Valerie, and had custody of his eleven year old daughter, Melanie. Both his daughter Valerie and former wife Sandra Casperson testified that Petitioner was a "great father" who unfailingly met all of his paternal responsibilities during his post disbarment years.

When Petitioner was disbarred he owed the IRS approximately \$100,000.00 because of his failure to pay his quarterly estimated taxes while he was a solo practitioner. In his post disbarment years Petitioner paid \$25,000.00 to \$30,000.00 of his tax obligations and had the balance discharged in bankruptcy. While Petitioner owed the IRS \$3,100.00 at the time of his September 2010 reinstatement hearing the record reveals that since his disbarment Petitioner has timely filed and paid all of his taxes and that his tax returns reveal no arrearages.

Petitioner also presented eight character witnesses who were from all walks of his life. These witnesses were former legal employers and colleagues, family members, a former wife, Petitioner's current companion, Petitioner's supervisor at Wackenhut, and Petitioner's best friend since second grade. All testified that Petitioner accepted full responsibility for his misconduct, did not attempt to conceal his wrongdoing from them, and expressed sincere remorse for his breaches of trust. All testified that notwithstanding Petitioner's misconduct he enjoys an excellent reputation for being an honest, peaceful and law abiding citizen.

Finally, Petitioner testified that he accepts full responsibility for his misconduct and is truly remorseful for his behavior. He also acknowledged the flaws in his character that led to his disgrace and convincingly detailed the steps he has taken

over the last nine years to correct these flaws. As detailed above, the record fully supports Petitioner's claims of rehabilitation.

Petitioner's misconduct arose from his desire to live a lifestyle that his earnings could not support. On each occasion that Petitioner misappropriated client funds he did so to pay his bills or pay a down payment on a house that he could not afford. Therefore, in Petitioner's case qualitative rehabilitation required him to demonstrate the ability to meet all of his financial responsibilities while living within his means. The record clearly demonstrates that Petitioner in the last nine years has accomplished that goal. Moreover, it has long been recognized that character evidence is probative of a Petitioner's moral qualifications for reinstatement to the bar, provided it is of sufficient strength and quality. In re Verlin, supra; In re Lord, 910 A.2d 1 (Pa. 2006). We find that the character witnesses here, as discussed above, were particularly impressive.

Finally, Petitioner held a position of trust at Wackenhut for most of the period of his disbarment. In fact, Petitioner was so highly regarded by his employers that over time he was appointed supervisor over eight security personnel whose responsibility was to guard computer laptops valued in the tens of millions of dollars. During Petitioner's two year tenure in that assignment no thefts occurred. (Record p. 137). Given that Petitioner's misconduct involved the misappropriation of client funds we find that his exemplary performance in his job is further substantial evidence of his qualitative rehabilitation.

Under these circumstances we find that Petitioner has met his burden of proving by clear and convincing evidence that his post disbarment conduct¹ and efforts at qualitative rehabilitation were sufficient to dissipate the detrimental impact of his misconduct² on the public trust. In re Verlin, supra, and that he therefore possesses

1 We note that the hearing committee found that Petitioner's post disbarment conduct did not warrant reinstatement and referred specifically to his first reinstatement hearing wherein he appeared to the committee to have been less than candid in some of his responses. Overall, they believed that Petitioner was not as forthcoming as he should have been about the events that led to his disbarment, did not give complete information about his bankruptcy filings, did not reveal his status as a disbarred lawyer to a potential employer for a job unrelated to the law, and was misleading in an on line dating service profile about his employment. To his credit Petitioner recognized the issues that his responses created with the first hearing committee and voluntarily withdrew his Petition. He waited two years to reapply for reinstatement and amended his responses to the best of his ability. While the hearing committee was unpersuaded by Petitioner's amplified responses at the second reinstatement hearing we do not believe that they should prohibit his reinstatement. It was clear to us that Petitioner's earlier objectionable responses were not intended to intentionally deceive the committee or conceal his past conduct but rather were the result of, in some instances, Petitioner's failure to understand what information the question sought and in other instances honest oversight or innocent failure of memory. The initial responses and subsequent corrections are set forth in full detail in Paragraphs 8 and 9, supra.

2 The hearing committee placed great emphasis on Petitioner's failure to engage in meaningful community service as justification for finding that Petitioner failed to meet his burden of proving qualitative rehabilitation. We have consulted both the rules and the decisional law and cannot conclude that community service is a *sine qua non* for qualitative rehabilitation. While community service can certainly be a factor that is considered it is by no means required. See e.g. Office of Disciplinary Counsel v. Kenneth S. Barish, Jr., 50 D3 1996, 221 Disciplinary Docket No. 3 (Pa. Aug. 25, 2005) - like the instant Petitioner, Barish misappropriated funds from an estate to pay office bills, was disbarred for nine years at the time of his hearing and worked steadily at non legal employment during his disbarment. Like Petitioner here, Barish demonstrated remorse and introduced no evidence of community service. Unlike the instant Petitioner, Barish presented only two character witnesses on his behalf. Nevertheless, Barish was found to have met his burden and was reinstated. See also Office of Disciplinary Counsel v. A. Claudia Johnson, 27 DB 1992, 862 Disciplinary Docket No. 2 (Pa. Dec. 29, 2003) where Johnson was disbarred for eleven years at the time of the hearing for commingling and converting funds in her attorney trust account.

the moral qualifications required for admission to the bar.

Our final inquiry is whether Petitioner has met his burden of proving that he has the competency and learning in the law required for admission to the bar. We find that he has met this burden as well.

Petitioner completed all of the required CLE courses including twelve hours of ethics. In fact, Petitioner has completed over 70 CLE courses in the past two and one half years. Moreover, Petitioner stays current with the law by regularly reading *The Legal Intelligencer* and other legal periodicals. Additionally, Petitioner's competence as a litigator was attested to by his former employer and colleague Dennis Haggerty, Esquire, as well as Attorneys Jack Briscoe and Dino Mantzas. Finally, Office of Disciplinary Counsel concedes Petitioner has met his burden on these issues.

We conclude based upon our review of the record as well as the relevant case law that Petitioner has met his burden of proving that he possesses the moral qualifications, competency and learning in the law required for admission to the bar, and that his resumption of the practicing of law will be neither detrimental to the integrity or standing of the bar or the administration of justice nor subversive of the public interest.

Johnson worked as a school teacher but held several jobs in order to support her two children, much like Petitioner here. Johnson presented evidence of remorse, only one character witness and no evidence of community involvement. Notwithstanding her lack of community service Johnson was found to have met her burden of proof and was reinstated. See further Office of Disciplinary Counsel v. Robert B. Hulnick, 89 DB 1993, 980 Disciplinary Docket No. 2 (Pa. Dec. 18, 2003) - where like Petitioner, Kulnick misappropriated client funds to pay personal debts. Even though Hulnick introduced no evidence of community service his demonstration of remorse and production of six character witnesses were sufficient to meet his burden of proving he was morally qualified to be reinstated.

Pa.R.D.E. 218 (c) (3).

5) RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Petitioner, David Assad, 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: 

Howell K. Rosenberg, Board Member

Date: August 1, 2011

Board Member Jefferies did not participate in the adjudication.