

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 1556 Disciplinary Docket No. 3
: :
ANDREW J. OSTROWSKI : No. 135 DB 2008
: :
PETITION FOR REINSTATEMENT : Attorney Registration No. 66420
: :
: (Dauphin County)

ORDER

PER CURIAM

AND NOW, this 22nd day of March, 2017, 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. See Pa.R.D.E. 218(f).

A True Copy Patricia Nicola
As Of 3/22/2017

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 dated February 9, 2010, the Supreme Court of Pennsylvania suspended Andrew J. Ostrowski from the practice of law for a period of one year and one day. Mr. Ostrowski filed a Petition for Reinstatement on September 4, 2015. Office of Disciplinary Counsel filed a Response to Petition for Reinstatement on November 2, 2015.

A prehearing conference was held on December 10, 2015. A reinstatement hearing was held on January 28, 2016, before a District III Hearing Committee comprised

of Chair Joanne C. Ludwikowski, Esquire, and Members Larry S. Keiser, Esquire and Jeffrey J. Malak, Esquire. Petitioner appeared *pro se*.

Following the submissions of briefs by the parties, the Hearing Committee filed a Report on June 8, 2016, and recommended that the Petition for Reinstatement be denied.

Petitioner filed a Brief on Exceptions on June 29, 2016, and requested oral argument before the Disciplinary Board.

Office of Disciplinary Counsel filed a Brief Opposing Petitioner's Exceptions on July 14, 2016.

A Motion to Reopen the Record was filed by Petitioner on August 2, 2016.

Office of Disciplinary Counsel filed a Response to Motion to Reopen Record on August 23, 2016.

By Order dated August 29, 2016, the Board denied the Motion to Reopen the Record.

On September 27, 2016, Petitioner filed a Motion for Reconsideration of the Board's August 29, 2016 Order.

Oral argument was held before a three-member panel of the Disciplinary Board on September 28, 2016.

Petitioner filed an Application to Reopen/Supplement the Record on September 29, 2016 and an Addendum on October 7, 2016.

On October 11, 2016, Office of Disciplinary Counsel filed a Response to Petitioner's Motion for Reconsideration and Application to Reopen/Supplement the Record.

Bu Order dated October 13, 2016, Petitioner's Motion to Reopen/Supplement the Record was denied by the Board.

The Disciplinary Board adjudicated this matter at the meeting on October 13, 2016.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner is Andrew J. Ostrowski. He was born in 1965 and was admitted to practice law in the Commonwealth in 1992. His attorney registration address is P.O. Box 61335, Harrisburg, PA 17106. Petitioner is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

2. After admission to the bar, Petitioner practiced at law firms for approximately nine years and thereafter practiced either as a solo practitioner or in partnership with another lawyer until 2010. ODC-24; Reinstatement Questionnaire No. 2(d); N.T. 17.

3. By Order dated February 9, 2010, the Supreme Court of Pennsylvania suspended Petitioner from the practice of law for a period of one year and one day. ODC-6.

4. Petitioner was suspended for failing to provide competent representation to a client, failing to provide an accounting to that client or refund the unearned fees until contacted by Office of Disciplinary Counsel, and failing to stay current with Continuing Legal Education ("CLE") credits, resulting in his transfer to inactive status, following which he did not meet his obligation to file a statement of compliance with the Board, pursuant to Pa.R.D.E. 217(e). ODC-1.

5. Petitioner was reciprocally suspended in the United States District Court for the Eastern, Middle and Western Districts of Pennsylvania, and the United States Court of Appeals for the Third Circuit. ODC-24.

6. Prior to the disciplinary matter from which he seeks reinstatement, Petitioner received informal admonitions in 2004 and 2006 based upon clients' claims of neglect. ODC-1.

7. Petitioner has demonstrated no remorse and has failed to recognize the misconduct that led to his suspension. He has denied that his misconduct and the subsequent discipline rendered him unfit to practice law. ODC-24.

8. Subsequent to his suspension and prior to filing his Petition for Reinstatement in 2015, Petitioner ran for Congress in 2014. On his campaign materials, Petitioner wrote, "I was suspended because I am a civil rights lawyer who became a target of a corrupt attorney disciplinary system because of the nature of the cases I handled, and the people I represented and worked with." He went on to state, "I did nothing for which I should have been disciplined." ODC-29.

9. Petitioner has asserted that his culpability should be lessened because of an alleged mitigating medical diagnosis of Post-Traumatic Stress Disorder ("PTSD"). He attempted to blame his misconduct on a former medical provider's failure to diagnose this disorder, as he stated during his reinstatement testimony:

[h]ad Dr. Kruszewski disclosed to me in 2003 that he knew about this PTSD and talked to me and gave me a chance to engage and connect with that issue and incorporate that into my healing, I wouldn't be sitting here today.

N.T. 96.

10. At the reinstatement hearing, Petitioner did not present expert testimony to support his claim that he suffered from PTSD which caused his misconduct. He submitted a medical note of Dr. Schwartz dated May 3, 2013, who commented that Petitioner is "quite early in treatment, he has been responding well, and appears to be doing the appropriate things to get his life back on track." ODC-9; N.T. 26.

11. Petitioner questioned the conclusion that he violated the Rules of Professional Conduct in accepting a flat-fee payment from his client and placing it directly into his personal account and stated his understanding that it was a very common practice in the profession. ODC -24; N.T. 37.

12. Petitioner has disputed that his conduct prejudiced his client. ODC-11 at 127.

13. Petitioner continued to dispute that appropriate discipline was imposed by the Supreme Court's February 9, 2010 Order, and alleged the discipline was imposed on him solely because of the type of work he had done and his affiliation with various individuals.

14. During the reinstatement hearing, Petitioner testified that, "I believe that there was some disparate administration of discipline based upon the identity of who is being disciplined." N.T. 96.

15. Petitioner further testified that, "there is a motive at play that underlies my prior discipline that wasn't communicated." N.T. 88.

16. Petitioner claims that he has always been fit to practice law, stating in his Petition for Reinstatement, "I believe that I am now, and always have been, morally fit to serve as an instrument of justice in this system" (ODC-24 at 30) and elsewhere in the Petition, "Petitioner is now, and always has had, the moral fitness, competency, and

learning to appear before the courts of the Commonwealth of Pennsylvania...” ODC-24 at 2.

17. During his testimony in his reinstatement hearing, Petitioner expressed the same sentiment, stating, “You know, I’m a competent, dedicated professional. I’ve always conducted myself professionally.” N.T. 128.

18. In or around 2010, Petitioner founded an organization entitled The Pennsylvania Civil Rights Law Network (“PCRLN”), as its principal and director. ODC-25 at 5.

19. In his Petition for Reinstatement, Petitioner represented that since 2011, as part of his work with PCRLN, he has remained very much engaged in the law and judiciary system and

...has provided consulting and advocacy work for hundreds, if not thousands, of people through those efforts. Petitioner has received remuneration for services from some sources....

ODC-24 at 10; Reinstatement Questionnaire No. 19(b).

20. During Petitioner’s testimony at the reinstatement hearing, he elaborated that:

...during my period of suspension, I have remained very engaged in the legal field. I have become an advocate for, you know, people who have felt disenfranchised by the court system and mistreated by lawyers and judges. N.T. 21.

21. Petitioner further acknowledged providing legal advice to at least three known individuals, Gary Powell, Robert Leone and Andrew Kandratic, during the period of his suspension (N.T. 49-51), for which he received payment although he did not have any formal agreements with these individuals. N.T. 56-57.

22. Petitioner was not supervised by an active member of the Pennsylvania bar in any of his employment pursuits. N.T. 118.

23. During his testimony in the instant reinstatement matter and also during the 2013-2014 reinstatement proceeding before the United States District Court for the Middle District of Pennsylvania, as well as in Petitioner's various written statements, Petitioner disclosed that he has used marijuana regularly throughout his life and went through a period wherein he abused amphetamines. N.T. 28, 57; ODC-11 at 109, 113, 116; ODC-24 at 20.

24. Petitioner sought treatment at a rehabilitation facility in August of 2003 and at an inpatient psychiatric facility in 2006. N.T. 58-59.

25. Although Petitioner represented that he is not presently in treatment with any sort of mental health provider and has not received treatment since 2013, he claims that he remains in contact with a representative from Lawyers Concerned for Lawyers (N.T. 59) and claims to "treat [himself] every day." N.T. 115.

26. Petitioner disclosed extensive debt in his Reinstatement Questionnaire, including a judgment for a student loan default, a judgment for failure to pay a line of credit through M & T bank, an unpaid debt to Wells Fargo, unpaid medical bills to Holy Spirit hospital, a defaulted bank loan for an automobile, and a delinquent utility bill balance. ODC-24 at 9.

27. Petitioner's other debt includes: \$25,478.82 to Manufacturers and Traders Trust Company; \$2,035.00 to the Commonwealth of PA Department of Revenue; \$11,142.87 to the US Treasury Department; \$554.45 to the Commonwealth of PA Department of Revenue; \$37,927.02 to the United States of America; and \$51,973.00 to the US Treasury Department. ODC-24, Exhibit 8.

28. During his reinstatement, Petitioner acknowledged his debt, estimated that such exceeded \$100,000.00, and explained that many of his obligations predated his period of suspension. He has not made repayment as he has been "broke." N.T. 40-41, 55.

29. During Petitioner's period of suspension and prior to the filing of the Petition for Reinstatement, Petitioner made false statements and inappropriate comments about the Honorable John E. Jones and the Honorable Bruce F. Bratton and questioned the ability of the Honorable Matthew Brann. ODC-24, Exhibit 1 at 12; ODC-31A; ODC-34; N.T. 74-77, 77-78, 83, 86.

30. At the reinstatement hearing, Petitioner chose not to call any witnesses other than himself. He explained that he "didn't need to call people in" as he claimed there was never an issue with his character or integrity so he did not feel it necessary to rehabilitate those areas with character witnesses. N.T. 40, 127-128.

31. The Hearing Committee permitted Petitioner to submit two witness statements post-hearing, over objection by Office of Disciplinary Counsel. Neither statement revealed an awareness of the prior discipline nor what rehabilitation had been undertaken by Petitioner to assure that he would abide by the conduct rules in the future.

32. Petitioner attempted to reopen the record to submit witness statements to the Disciplinary Board prior to and after the oral argument. The Board denied these motions.

33. Petitioner was denied reinstatement in the United States District Court for the Middle District of Pennsylvania in 2014.

34. Office of Disciplinary Counsel opposes reinstatement.

III. CONCLUSIONS OF LAW

1. Petitioner failed to meet his burden under Pa.R.D.E. 218(c)(3) that he is qualified to resume the practice of law in the Commonwealth of Pennsylvania.

IV. DISCUSSION

In a reinstatement proceeding, a suspended attorney bears the burden of demonstrating by clear and convincing evidence that such person has the moral qualifications, competency and learning in the law required for admission to practice law in Pennsylvania 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).

The reinstatement process is a searching inquiry focused on the nature and extent of the petitioner's rehabilitative efforts made since the time that the sanction was imposed and the degree of success achieved in the rehabilitative process. *Philadelphia Newspapers, Inc. v. Disciplinary Board of the Supreme Court*, 363 A.2d 779, 780-781 (Pa. 1976). This inquiry necessarily involves thorough examination of a wide range of issues relevant to a petitioner's fitness to resume the practice of law. *Id.*

Following a hearing and after consideration of the briefs submitted by the parties, the Hearing Committee found that Petitioner failed to demonstrate genuine remorse, failed to accept responsibility for his prior wrongdoing, failed to show rehabilitation, failed to make attempts to pay his outstanding debts, and engaged in conduct during his suspension that threatened the legal system by his baseless statements

about members of the judiciary. Petitioner contends that the Committee failed to consider the entirety of the record.

After review of the record and the parties' briefs and arguments, we conclude that Petitioner has failed to meet his reinstatement burden.

Petitioner was suspended in 2010 for rule violations related to his abandonment of a client matter, failure to provide an accounting to the abandoned client, failure to stay current with CLE credits, and failure to file a compliance statement with the Board pursuant to Pa.R.D.E. 217(e). Petitioner's burden is to show that he is reformed from the person who committed the misconduct. However, Petitioner was unable to demonstrate that he has changed, as his posture from the outset of the reinstatement process was not one of remorse and acceptance, but of indignation that he found himself in the position of having to request reinstatement from discipline he did not believe was warranted.

Consideration of a petitioner's genuine remorse is essential to the reinstatement inquiry. *In re Robert W. Costigan*, 464 A.2d 518, 520 (Pa. 1995). A demonstration of sincere remorse shows that a petitioner understands the nature of his wrongdoing and consequently will not commit future ethical infractions.

Petitioner's reinstatement testimony and written statements from his time of suspension indicated his continuing belief that he was a victim of the disciplinary system rather than an attorney who was appropriately disciplined, as he believed his discipline was the result of a corrupt disciplinary system which had targeted him. Petitioner also attempted to minimize his misconduct by providing alleged, unsubstantiated mitigating circumstances concerning his mental health and blaming his misconduct on a former

medical provider's failure to diagnose a mental health issue. Petitioner's discussion of his misconduct shows that he failed to grasp the seriousness of his actions, as he described his mishandling of client funds as something done by many lawyers, and further described his abandonment of his client as something that caused his client no prejudice.

Petitioner contends that his testimony bears out his acceptance of responsibility and expressions of remorse; however, the sincerity of any expressions of remorse made on the record by Petitioner is fatally weakened by his overarching claims that his discipline was attributable to sources other than his own actions. We conclude that Petitioner does not accept full responsibility for his unethical conduct.

Petitioner chose not to produce any character evidence or submit letters of support at the reinstatement hearing to show that he is rehabilitated. Petitioner's explanation for his decision was that he "didn't need to call people in" because his character or integrity was never at issue and did not need rehabilitation. However, the Board and the Supreme Court consider the testimony of character witnesses as highly relevant to a petitioner's demonstration of his fitness to reenter the bar. The Board and the Court look to the testimony of others for a sense of a petitioner's reputation in the community and his rehabilitation. *In re Jerome J. Verlin*, 731 A.2d 600 (Pa. 1999); *Matter of Grahame P. Richards, Jr.*, No. 43 DB 1996 (D. Bd. Rpt. 8/23/2016) (S. Ct. Order 9/21/2016). Unfortunately, Petitioner came too late to the realization that such evidence was indeed relevant to his reinstatement, as demonstrated by his several fruitless attempts to reopen the record for the admission of witnesses statements that he failed to timely submit during his reinstatement hearing.

Petitioner failed to substantiate that he is recovered from his prior drug use, even though he admitted that he used marijuana regularly throughout his life and had abused amphetamines in the past. Petitioner merely offered that he stopped using drugs in 2013. Similarly, Petitioner represented that currently he is not receiving treatment from a medical provider for his alleged PTSD diagnosis and treats himself. The Board considers evidence of a petitioner's efforts to treat and recover from drug addiction and mental health disorders as relevant to the issue of rehabilitation. ***Matter of Chrystyna M. Fenchen***, No. 9 DB 2014 (D. Bd. Rpt. 11/23/2016) (S. Ct. Order 12/28/2016); ***Matter of Thomas S. Roman, Jr.***, No. 121 DB 2005 (D. Bd. Rpt. 10/3/2016) (S. Ct. Order 10/26/2016).

During his suspension, Petitioner by his own admission, "remained very involved in the legal field." N.T. 21. At the reinstatement hearing, Petitioner was closely questioned as to his activities in the legal arena and he offered that he provided legal advice to at least three known individuals during his suspension, for which he received payment. In his Petition for Reinstatement, Petitioner represented that he had provided unspecified consulting and advocacy work for "hundreds, if not thousands, of people..." ODC-24. This was done without supervision by an active member of the Pennsylvania bar. As to his employment in general and the manner in which he has supported himself during his suspension, Petitioner provided vague and evasive answers. Petitioner made clear, however, that he has felt free to conduct himself without regard to the parameters of Pa.R.D.E. 217 applicable to formerly admitted attorneys, stating, "It's freedom of contract and free exchange of ideas in the pursuit of justice." N.T. 119. This attitude further demonstrates Petitioner's unfitness, since he is unwilling to abide by rules designed to protect the public from attorneys who engage in the unauthorized practice of law.

Although Petitioner was less than forthcoming as to his employment circumstances, he admitted that his finances were in difficult straits and he has outstanding debt of at least \$100,000.00. He offered no evidence that he has attempted to satisfy his obligations. A review of a petitioner's financial situation is relevant to the reinstatement inquiry. The Board discussed a petitioner's outstanding tax debts and judgments against him in ***Matter of James L. Heidecker, Jr.***, Nos. 22 DB 1999 & 48 DB 2000 (D. Bd. Rpt. 5/18/201 at 11-12) (S. Ct. Order 1/30/2013), making special note of whether the petitioner had made a "good faith effort to satisfy these obligations." A good faith effort does not require complete extinguishment of an outstanding debt; the Board examines the matter in its totality to determine what credible efforts a petitioner has made to address the situation. ***In the Matter of Richard M. Corcoran***, No. 74 DB 2009 (D. Bd. Rpt. 6/22/2016) (S. Ct. Order 8/11/2016).

Petitioner's conduct and statements during the period of his suspension demonstrate that he has not used his time away from legal practice as one of reflection and rehabilitation. The record reveals that Petitioner has made outlandish and baseless accusations and statements concerning jurists, which he published widely. At the reinstatement hearing, Petitioner did not substantiate with facts or witnesses the statements he made, and the Hearing Committee noted that his explanations concerning these statements were incoherent and rambling. Hearing Committee Report at 10. The Supreme Court has explained that scandalous accusations by an attorney can erode public confidence in the legal system. ***Office of Disciplinary Counsel v. Neil Werner Price***, 732 A.2d 599, 606-607 (Pa. 1999) Petitioner's conduct in making these statements during his period of suspension evidences his lack of respect for the judiciary and a general lack of fitness as a practitioner.

For the reasons set forth above, the Board concludes that Petitioner failed to meet his reinstatement burden by clear and convincing evidence. Petitioner has not come to terms with his past misconduct, has not rehabilitated himself, and has not convinced the Board that his resumption of practice will not result in future ethical wrongdoing and detriment to the public, the profession and the courts. 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, Andrew J. Ostrowski, 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: 
James C. Haggerty, Board Member

Date: 01/18/2017

Board Member Fitzsimons recused.
Board Members Leonard and Goodrich did not participate.

