

**IN THE SUPREME COURT OF PENNSYLVANIA**

In the Matter of	:	No. 1214 Disciplinary Docket No. 3
	:	
	:	No. 149 DB 2005
MICHAEL K. SIMON	:	
	:	Attorney Registration No. 9967
	:	
PETITION FOR REINSTATEMENT	:	(Philadelphia)

**ORDER**

**PER CURIAM:**

**AND NOW**, this 16<sup>th</sup> day of June, 2014, upon consideration of the Report and Recommendations of the Disciplinary Board dated March 4, 2014, the Petition for Reinstatement is granted.

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

A True Copy Patricia Nicola  
As Of 6/16/2014

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

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MICHAEL K. SIMON	:	
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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 Supreme Court Order dated November 28, 2006, Michael K. Simon was disbarred on consent from the practice of law in the Commonwealth of Pennsylvania. Mr. Simon filed a Petition for Reinstatement on September 19, 2012. Office of Disciplinary Counsel filed a Response to Petition on December 18, 2012.

A reinstatement hearing was held on March 12, 2013 before a District I Hearing Committee comprising Barry I. Gross, Esquire, and Members Cynthia M. Certo, Esquire and Nolan G. Shenai, Esquire. Petitioner was represented by Samuel C. Stretton, Esquire. Petitioner and Office of Disciplinary Counsel submitted Joint Stipulations of Fact and Exhibits on March 11, 2013. Petitioner submitted 18 additional exhibits at the hearing, without objection. Petitioner presented the testimony of five character witnesses and testified on his own behalf. No witnesses were presented by Office of Disciplinary Counsel.

Following the submission of post-hearing briefs by the parties, the Hearing Committee filed a Report on August 16, 2013 and recommended the Petition for Reinstatement be denied.

Petitioner filed a Brief on Exceptions on September 5, 2013 and requested oral argument before the Disciplinary Board.

Office of Disciplinary Counsel filed a Brief Opposing Exceptions on September 25, 2013.

Oral argument was held on September 30, 2013, before a three-member panel of the Disciplinary Board.

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

## II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner is Michael K. Simon. He was born in 1946 and was admitted to the practice of law in the Commonwealth of Pennsylvania in 1971. His current registered address is 1515 Market Street, Suite 14910, Philadelphia, PA 19102. Petitioner

is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

2. By Supreme Court Order dated November 28, 2006, Petitioner was disbarred on consent from the practice of law in the Commonwealth of Pennsylvania.

3. Petitioner's disbarment resulted from his conduct involving the misappropriation of fiduciary funds over a period of approximately 28 months. (Joint Stipulation of Fact No. 6)

4. Between January 1, 2004 and May 15, 2006, Petitioner's IOLTA account was "out of trust" 807 days in amounts ranging from \$1,455.63 to \$443,313.63. (Joint Stipulation of Fact No. 6)

5. Office of Disciplinary Counsel notified Petitioner of an investigation by DB-7 letter dated May 23, 2005. In June 2005, Petitioner deposited into his IOLTA account his personal funds in the amount of \$395,000. Petitioner's IOLTA account records showed multiple transfers of funds between his IOLTA account and his business checking account. Petitioner did not identify his business account on his annual attorney registration statements covering the period January 1, 2004 to May 1, 2006. (Joint Stipulation of Fact No. 6)

6. Petitioner borrowed money from his mother to obtain the \$395,000 in funds deposited into his IOLTA account on or about June 8, 2005. (N.T. 194) Petitioner described his actions as "borrowing against his inheritance" from his mother. (N.T. 194)

7. Petitioner used the \$395,000 to make restitution to clients whose funds he had misused. Petitioner estimated that approximately 41 clients were affected by his misconduct. (N.T. 189)

8. In the summer of 2006, Petitioner discovered another client who had not received restitution when he was contacted about a settlement for Vi Gian, which had occurred some three years earlier. (N.T. 195)

9. On July 27, 2006, Petitioner distributed \$4,257 to Ms. Gian, which included \$649 in interest. (N.T. 195,196; Exhibit P-16)

10. Petitioner had no excuse for the delay in paying Ms. Gian, other than he had somehow not noticed the case when he made the initial round of restitution. (N.T. 196)

11. By letter dated April 21, 2010, from Attorney James Vernile, Petitioner discovered another client who had not received restitution when he was contacted about a settlement for Yolanda Amodei, which had occurred in 2000. (N.T. 196-197, 280) Petitioner made restitution in the Amodei case on April 21, 2010 for \$7,700.

12. Petitioner failed to advise Mr. Vernile he was disbarred and prohibited from practicing law in the Commonwealth. (Joint Stipulation 29, 32)

13. Petitioner's reason for the delay was that he had not found the file in his initial round of restitution. (N.T. 200-202)

14. Petitioner took it upon himself to determine the identity of clients owed restitution, and did so by reviewing files in 2005 and "looking at whatever records he had" in storage. (N.T. 250, 251, 253)

15. Following Petitioner's disbarment, he properly notified all clients by letter that he was disbarred on consent and he filed a Certificate of Compliance with the Disciplinary Board. The only client he did not notify was Yolanda Amodei because he had misplaced her file and did not have her on the client list. (N.T. 200-202).

16. Petitioner used client funds between January 1, 2004 and May 15, 2006 because he was financially overextended. He used the monies to pay personal bills, including living expenses for two adult children in graduate school. (N.T. 268-270)

17. Court records indicate that Petitioner also had significant tax debt during the 2004-2005 period: a \$315,553 IRS lien (satisfied February 8, 2005); \$279,554 in unpaid City Business Privilege and Net Profits taxes (satisfied February 10, 2005); and a \$14,851 Pennsylvania Department of Revenue lien for Personal Income taxes (satisfied September 6, 2006).

18. Petitioner has not practiced law since the effective date of his disbarment. (N.T. 220)

19. From February 2007 to January 2012, Petitioner worked as a paralegal at Spear, Greenfield & Richman, P.C., a personal injury law firm in Philadelphia, where he earned an annual salary, plus medical benefits and participation in a profit-sharing plan. (Reinstatement Questionnaire)

20. Starting in January 2012, Petitioner has worked as a paralegal at Simon & Simon, P.C. in Philadelphia. He works three or four days per week and earns an annual salary. He is supervised by Marc I. Simon, Esquire, his son and CEO of the firm. The firm name refers to Marc Simon and Michelle Skalsky-Simon, Esquire, who is Petitioner's wife. (N.T. 132, 144; Reinstatement Questionnaire)

21. The Simon & Simon firm has 1,800 active cases comprising automobile and slip and fall work for plaintiffs. The firm employs 17 full time paralegals and 6 lawyers. (N.T. 147- 48, 163)

22. Petitioner and his supervising attorneys filed proper notice with the Disciplinary Board as to his employment. [N.T. 210-213, Pet. Exhibit 10(a), 10(b) and 10(c); N.T. 219, 220, Pet. Exhibit 11(a)]

23. Since the time of his disbarment, Petitioner has had other sources of non-salary income, including referral fees from cases prior to his disbarment, social security benefits beginning in 2010, and \$1,600 monthly "advances" from his mother which Petitioner described as "loan[s] to be deducted from [her] Estate." (N.T. 227-229; Reinstatement Questionnaire)

24. Petitioner sold his residence in Rydal, Pennsylvania in 2006 and moved with his wife to their residence in Margate, New Jersey. In 2007, Petitioner and his wife transferred ownership of the Margate residence to their adult children. (N.T. 114-117) Petitioner's wife owns an efficiency apartment in Philadelphia. (N.T. 239-240) She previously owned a townhouse in Florida but transferred ownership to her children. Petitioner and his wife stay in Florida at various times during the year. (N.T. 113)

25. Since his disbarment, Petitioner has become involved with the Golden Slipper Club and Charities, of which his wife is a Permanent Member of the Board of Governors. He assisted with a camp for children and helped organize and run an annual Passover service for senior citizens. (N.T. 221, 222)

26. Petitioner was recently elected to the Board of Directors of the Golden Slipper Club for a term that will last until 2016. (N.T. 226)

27. Since his disbarment, Petitioner has been involved with an organization called JAFCO, which is a Jewish Federation Organization. That organization is primarily in Florida and supports foster care programs and emergency shelter programs. Petitioner is attempting to open a similar program in Philadelphia. Petitioner and his wife

bring several children every year to reside with them and to go to camp. Petitioner and his wife have worked directly with 15 to 18 children. (N.T. 222-224)

28. On October 27, 2012, a JAFCO Recognition Award was given to Petitioner and his wife in recognition of their commitment to neglected and special needs children.

29. Petitioner's wife has suffered from two serious illnesses, including cancer, over the last several years, and he has consistently cared for her and helped her handle these illnesses. (N.T. 74-99, 220,221)

30. Petitioner presented the testimony of five character witnesses. All confirmed his good or excellent reputation in the community as a truthful, honest, peaceful and law-abiding citizen.

31. Two family members testified on Petitioner's behalf: Marc Simon, Esquire, who is Petitioner's son and CEO of Simon & Simon, P.C., and Michelle Skalsky-Simon, Esquire, who is Petitioner's wife.

32. Mrs. Simon confirmed the extreme remorse her husband has for his serious misconduct. (N.T. 93, 94)

33. Mrs. Simon indicated that Petitioner has undergone extensive changes, in that he has become humbled. He no longer has a big ego and is a "softer, gentler, kinder person." (N.T. 96)

34. Marc Simon indicated his father has spent the years of his disbarment trying to gain back the trust and respect he used to enjoy before he engaged in the misconduct. (N.T. 133, 136)

35. Harris T. Bock, Esquire, has been practicing law for 40 years in Pennsylvania. He has known Petitioner since 1975 or 1976. Over the years, Mr. Bock has



served as a mediator or arbitrator on cases presented by Petitioner, and found Petitioner's presentations were competent and well-prepared. Mr. Bock knew of Petitioner's misuse of clients' funds, confirmed Petitioner's remorse for his misconduct and supports his request for reinstatement. (N.T. 26-30)

36. Burton Rose, Esquire, has been practicing law for 40 years in Pennsylvania and came to know Petitioner approximately 20 years ago. Mr. Rose knew of Petitioner's misconduct and supports his reinstatement. (N.T. 46-47)

37. Sherry Lynne Horowitz, Esquire, has practiced law in Pennsylvania since 1979 and has known Petitioner since the 1980s. She knows Petitioner in both legal and social settings. She confirmed that Petitioner has expressed to her his remorse for the misconduct that led to his disbarment. (N.T. 60)

38. Petitioner submitted a letter dated February 26, 2013, from Daniel E. Bacine, Esquire. Mr. Bacine has known Petitioner for over 40 years. Mr. Bacine wrote, "Mr. Simon truly regrets and is embarrassed by his conduct that resulted in his disbarment." (Exh. P-7)

39. Petitioner testified on his own behalf. He explained that "It was really just an aberration. Just a real mistake. Stupidity, foolish pride, greed and too materialistic, too selfishness... Obviously, I had more expenses than income, but it's not an excuse and a justification. I shouldn't have done it. I'm going to look the panel right in the eye and tell them if you gave me a chance, I would never do it again. " (N.T. 268-269)

40. Petitioner described himself since his misconduct as less materialistic. He stated: "I think I'm more spiritual. I think I'm a better person, a kinder person. I'm more open to other people and not so egotistical and willing to share with my wife and my friends and kids, and it's not about me..." (N.T. 241)

41. During his disbarment period, Petitioner continued to have unpaid tax debts.

42. On or about July 11, 2012, Petitioner satisfied the following liens filed by the Pennsylvania Department of Revenue for Personal Income taxes: \$14,853, \$16,106 and \$6,114 (for a total of \$37,073).

43. On or about July 23, 2012, Petitioner satisfied a Judgment in favor of the City of Philadelphia for \$5,082 for failure to file a 2006 Business Privilege Tax return.

44. Petitioner paid the tax monies he owed out of funds he received from a termination of a family trust fund set up by his parents, the beneficiaries of which were himself and the two sons of his deceased sister. (N.T. 234-235)

45. At the time of the reinstatement hearing Petitioner was current in all of his filings for federal, state, and local taxes and has no delinquent tax obligations.

46. Petitioner completed 36 required Continuing Legal Education courses, including 12 hours of ethics.

47. In the last six years, Petitioner completed 46 CLE hours.

48. Petitioner keeps apprised of the law by working at his son's law firm, regularly reviewing the Pennsylvania Advance Sheets and reading the *Legal Intelligencer*.

49. If reinstated, Petitioner plans to work as a salaried attorney at his son's law firm. (N.T. 242)

50. Office of Disciplinary Counsel opposes reinstatement on the basis that the amount of time Petitioner has been disbarred is insufficient, and his rehabilitative efforts are insufficient.

### 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, 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 the Commonwealth of Pennsylvania, and his resumption of the practice of law within the Commonwealth will not be detrimental to the integrity and standing of the bar and the administration of justice, nor will it subvert the public interest. Pa.R.D.E. 218(c)(3).

### IV. DISCUSSION

Petitioner seeks reinstatement to the bar of the Supreme Court of Pennsylvania following his disbarment on November 28, 2006. Petitioner's request for readmission from disbarment is initially governed by the standard in Office of Disciplinary Counsel v. Keller, 506 A.2d 872 (Pa. 1986). The Keller standard provides that when reinstatement is sought by a disbarred attorney, the threshold question must be whether the magnitude of the breach of trust would permit resumption of practice without a detrimental effect upon the integrity and standing of the bar or the administration of justice, nor be subversive of the public interest. This inquiry recognizes that some forms of misconduct are so egregious that they will bar the attorney from successfully gaining

reinstatement. As a threshold matter, therefore, the Board must determine whether Petitioner's breach of trust was so egregious as to preclude his reinstatement. See In re Verlin, 731 A.2d 600 (Pa. 1999); Office of Disciplinary Counsel v. Costigan, 664 A.2d 518 (Pa. 1995).

Petitioner's misconduct is of the type that damages the public's confidence in both the legal profession and the administration of justice in the Commonwealth. However, Petitioner's breach of trust in misappropriating funds is not as egregious as to act as an outright bar to consideration of his reinstatement request. See In re Greenberg, 749 A.2d 434 (Pa. 2000); In re Perrone, 777 A.2d 413 (Pa. 2001); Office of Disciplinary Counsel v. Robert S. Teti, 30 DB 1999 (Pa. 2013).

A related question in a reinstatement from disbarment matter is whether Petitioner has met his burden of proving by clear and convincing evidence that his resumption of the practice of law would not have a detrimental impact on the integrity and standing of the bar, the administration of justice, or the public interest. Office of Disciplinary Counsel v. Keller, 506 A.2d 872 (Pa. 1986). The answer to this question rests on the Board's consideration of the amount of time that has passed since Petitioner was disbarred, as well as his efforts at rehabilitation. In re Verlin, 731 A.2d at 602.

Petitioner was disbarred on November 28, 2006, and at the time of the reinstatement hearing in March of 2013, had been removed from the practice of law for over six years. The only firm timetable set by the Supreme Court in disbarment matters is the five year waiting period after the disbarment order is entered. Pa.R.D.E. 218(b). Whether sufficient time has passed must be determined by the unique circumstances of each case. Office of Disciplinary Counsel v. Lucarini, 472 A.2d 186 (Pa. 1983). See In re Verlin, 731 A.2d 600 (Pa. 1999) (Reinstatement from disbarment after a period of nearly

seven years); Office of Disciplinary Counsel v. Mark Allan Kovler, 172 DB 2002 (Pa. 2009) (Reinstatement from disbarment after a period of nearly six years); In re Greenberg, 749 A.2d 434 (Pa. 2000) (Reinstatement denied after a disbarment period of nine and one half years).

In the instant matter, the Hearing Committee concluded Petitioner's length of disbarment was not sufficient and that he has not engaged in a successful qualitative rehabilitation during his disbarment. Office of Disciplinary Counsel takes the same position. The Board disagrees and concludes that Petitioner's disbarment of six years has been a time of qualitative and meaningful rehabilitation which dissipated the negative impact of his original misconduct.

The Committee concluded that Petitioner's original misconduct arose from his desire to live a lifestyle that his earnings could not support, including paying living expenses and graduate school tuition for his two adult children. Petitioner does not deny this conclusion and fully admits he was financially overextended and misappropriated funds of clients to pay personal obligations. Petitioner described himself as being "too materialistic and selfish, stupid and greedy." (N.T. 268-269) He also fully admits he should not have engaged in his acts of misconduct and he has no excuse for what he did.

Petitioner made restitution to nearly all of the clients he wronged within months of his initial contact by Office of Disciplinary Counsel, and he made prompt restitution to two subsequently discovered clients. Petitioner borrowed \$395,000 from his mother, explaining it was an advance against his inheritance. While the Hearing Committee noted it was "commendable" that Petitioner made restitution so quickly to most clients, it criticized the manner in which Petitioner made the restitution. Specifically, the Committee found that Petitioner "depleted" his mother's future estate. We hesitate to

judge Petitioner's actions so harshly. There is no indication that Petitioner engaged in any improper dealing to acquire the funds to reimburse his clients, the arrangement he made with his mother to forego inheritance is personal. What is clear is that Petitioner recognized the importance of making prompt restitution to his clients, and found the means to do so.

As noted above, Petitioner did not make restitution to every client in his initial round of restitution in June of 2005. In the summer of 2006, Petitioner discovered a client who had not received restitution when he was contacted about a settlement for Vi Gian. He made restitution of \$4,257, including \$649 in interest, to Ms. Gian in July of 2006. In April 2010, Petitioner discovered he had not made restitution to Yolanda Amodei when he was contacted by letter. He hand-delivered a check for \$7,700 restitution under cover of a letter dated April 29, 2010. Petitioner explained he determined the identity of clients owed restitution by reviewing his files and checking whatever records he had in storage. He admitted he somehow missed the Gian and Amodei files. There is no evidence that Petitioner's delay in making restitution to these clients was intentional. When he was made aware, Petitioner immediately reimbursed those clients.

The Committee found fault with Petitioner's testimony he now lives modestly and within his means, as opposed to the former lifestyle which resulted in his misconduct. The Committee noted that Petitioner "lived in a beach house...[had] the convenience of an apartment in Philadelphia, and a property in Florida" all of which could lead the public to perceive Petitioner had not learned his lesson. Again, we disagree with the Committee's view of the evidence. Petitioner sold his main residence in 2006 and moved to a home in Margate, New Jersey, which is titled in the names of Petitioner's children. The Florida property where Petitioner sometimes stays is owned by his children, and the Philadelphia

efficiency apartment is owned by Petitioner's wife, herself a successful attorney. The fact that Petitioner sometimes stays in these homes is not an indication of an extravagant lifestyle.

Petitioner is current in all of his filings for federal, state and local taxes, having satisfied tax debts in 2012. While the Committee noted Petitioner was in arrears until shortly before filing his reinstatement petition, and satisfied the debts out of funds he received from a termination of a family trust fund, the fact remains that as of the date of filing the petition, Petitioner was current, and remains current in his obligations.

The Committee accurately noted that Petitioner must "come to terms with the conduct" that ultimately led to disbarment. In re Costigan, 664 A.2d at 520. The Committee found that Petitioner had not done so. Review of the record suggests otherwise. Petitioner accepted full responsibility and demonstrated sincere remorse for his misconduct, and was fully cognizant of his personal failings which led him to engage in unethical behavior. He discussed his "stupidity, foolish pride, greed," as well as his materialism and selfishness. These are difficult labels to pin on oneself, yet Petitioner analyzed his actions and admitted his faults. He describes his post-disbarment character as much less materialistic, more spiritual, and a better and kinder person.

Petitioner engaged in many charitable activities during his disbarment. He is heavily involved in the Golden Slipper Club and Charities, where he is on the Board of Directors, and is active with JAFCO, an organization devoted to aiding children. Petitioner and his wife help several children each summer by having them at their home and sending them to camp. JAFCO recently presented an award to Petitioner and his wife in recognition of their commitment to neglected and special needs children.

Petitioner's character witnesses support the conclusion that Petitioner has come to terms with his misconduct and is rehabilitated. Petitioner's wife and son credibly conveyed Petitioner's sincere remorse for the pain his disbarment brought to his family. Three non-family character witnesses, all of whom are distinguished long-term members of the Philadelphia legal community, credibly testified as to Petitioner's excellent reputation as an honest, truthful, law-abiding citizen, and gave their unqualified support for his reinstatement.

Petitioner has continued to work during his disbarment. He was employed as a paralegal at a personal injury firm in Philadelphia for approximately five years, and is working as a paralegal at his son's law firm. Petitioner and his supervising attorneys filed the proper notices with the Disciplinary Board, and at no time did Petitioner practice law or hold himself out as a lawyer permitted to practice in Pennsylvania. Besides the legal assistant work he has performed, Petitioner reviews the Advance Sheets and the *Legal Intelligencer* as part of his effort to maintain his knowledge of the law. Petitioner has fulfilled the Continuing Legal Education requirements for reinstatement. Petitioner plans to work as a salaried attorney for his son's firm upon reinstatement.

The complete record of the evidence supports the conclusion that the six or more years that Petitioner has been disbarred have been a time of reflection and rehabilitation. Petitioner has clearly and convincingly shown that he is fit to practice law, in that he is morally qualified, competent and learned in the law, and further, that his resumption of the practice of law will not be detrimental to the integrity and standing of the bar or the administration of justice nor subversive of the public interest.

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



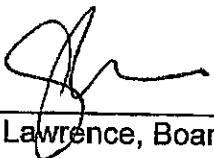
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Petitioner, Michael K. Simon, 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:   
Gerald Lawrence, Board Vice-Chair

Date: March 4, 2014