

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of	:	No. 1200 Disciplinary Docket No. 3
	:	
JOSEPH A. DIORIO	:	No. 153 DB 2006
	:	
	:	Attorney Registration No. 52601
	:	
PETITION FOR REINSTATEMENT	:	(Montgomery County)

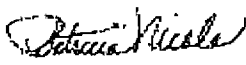
ORDER

PER CURIAM

AND NOW, this 17th day of February, 2011, upon consideration of the Report and Recommendations of the Disciplinary Board and Dissenting Opinion dated December 3, 2010, 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 2/17/2011

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

In the Matter of	:	No. 1200 Disciplinary Docket No. 3
	:	
	:	
JOSEPH A. DIORIO	:	No. 153 DB 2006
	:	
	:	Attorney Registration No. 52601
	:	
PETITION FOR REINSTATEMENT	:	(Montgomery County)

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 218(c)(5) of the Pennsylvania Rules of Disciplinary Enforcement, The Disciplinary Board of the Supreme Court of Pennsylvania submits its findings and recommendations to your Honorable Court with respect to the above captioned Petition for Reinstatement.

I. HISTORY OF PROCEEDINGS

On October 23, 2006, the Supreme Court of Pennsylvania entered an Order wherein Joseph A. Diorio was immediately transferred to disability inactive status, pursuant to Rule 301(e), Pa.R.D.E., for an indefinite period and until further order of the Court. On

October 26, 2009, Mr. Diorio filed a Petition for Reinstatement from Inactive Status. Office of Disciplinary Counsel filed a Response on January 11, 2010.

A reinstatement hearing was held on March 5, 2010 before a District II Hearing Committee comprised of Chair Ronald H. Levine, Esquire, and Members Kelly S. Sullivan, Esquire, and George P. Wood, Esquire. Respondent was represented by John Rogers Carroll, Esquire.

The Hearing Committee filed a Report on July 20, 2010 and recommended that the Petition for Reinstatement from Inactive Status be granted.

This matter was adjudicated by the Disciplinary Board at the meeting on October 11, 2010.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner is Joseph A. Diorio. He was born in 1962 and was admitted to the practice of law in the Commonwealth of Pennsylvania in 1988. His current business address is 426-428 E. Baltimore Pike, Media, Pennsylvania.

2. On May 30, 2006, Petitioner sustained a stroke, secondary to a congenital arteriovascular sigmoid dural fistula ("AVM"). An AVM is a lesion formed by an abnormal connection between the venous and artery systems and can be associated with memory and cognitive dysfunction.

3. As a result of Petitioner's AVM, he suffered bleeding in his brain, which directly affected Petitioner's ability to walk and speak. It compromised his memory, caused

partial paralysis of the left leg area, specifically from the left hip to the left foot and caused partial focal seizures.

4. Petitioner requested and was granted transfer to disability inactive status by Order of the Supreme Court on October 23, 2006.

5. At the time Petitioner was transferred to disability inactive status, an Informal Admonition had been approved but not yet administered for violations of Rules of Professional Conduct 1.3, 1.16(d) and 3.2 relating to a client matter. During this same time period, Petitioner was ineligible to practice law in the State of New Jersey due to a failure to pay the annual fee. He was reinstated on June 18, 2007 in New Jersey.

6. Petitioner's treatment following his stroke included four embolization procedures between May and August 2006 to reduce the size and extent of the AVM, two craniotomies in September and November 2006, and two subsequent diagnostic angiograms conducted to determine if any fistula remained. The angiograms exhibited no residual fistula.

7. Following his final brain surgery, Petitioner underwent physical and occupational therapy at the Moss Rehabilitation Center in Elkins Park, Pennsylvania.

8. Petitioner's program of exercise and physical rehabilitation, in addition to his medical care, has restored his physical health. The primary remaining effect of Petitioner's stroke is numbness in his left leg. Petitioner is able to control additional seizures through the use of anti-convulsant medication.

9. Petitioner has been treated for his AVM by Eric L. Zager, M.D., a professor within the Department of Neurosurgery at the Hospital of the University of Pennsylvania.

10. Dr. Zager reports that he is "...quite pleased with Mr. Diorio's recovery and I believe his prognosis is excellent...From my standpoint he has been restored to normal intellectual functioning and physical health..." (Exh. 1)

11. In addition to treatment for his AVM, Petitioner has been a patient of Ronald Coleman, PhD since 2000 due to past depression. Dr. Coleman provides cognitive psycho-therapy to Petitioner and has assisted Petitioner with recovery from the loss of cognition.

12. Dr. Coleman opined that Petitioner's memory, cognition and all other issues associated with the stroke have been resolved, that Petitioner has recovered "remarkably well," and that "within a reasonable degree of psychological certainty...Mr. Diorio has fully recovered from the effects of his stroke and is now entirely fit to practice law." (Exh. 3)

13. Prior to the stroke, Petitioner had a substance abuse problem. He has maintained complete abstinence from alcohol and narcotics for 15 years. Petitioner attends Alcoholics Anonymous meetings four to five times per week.

14. Petitioner maintains frequent contact with his AA sponsor, James Vernile, Esquire. Mr. Vernile testified credibly at the hearing that Petitioner is fit to practice law.

15. On February 1, 2007, Petitioner returned to work. His first position was with Whole Foods Market as a seafood sales clerk.

16. Shortly thereafter, in March 2007, Petitioner obtained employment as a law clerk/legal assistant in the law office of Harrison Ross Byck, Esquire, in Morrisville, Pennsylvania.

17. Mr. Byck filed the appropriate Notice of Engagement and acted as Petitioner's supervising attorney pursuant to the Rules of Disciplinary Enforcement.

18. Starting in June 2007, Petitioner was able to practice law in Mr. Byck's office on New Jersey matters, as he was reinstated to the practice of law in New Jersey at that time.

19. In March 2009, Petitioner was "downsized" from Mr. Byck's office. Mr. Byck prepared and Petitioner filed the notice of supervisory termination.

20. After leaving Mr. Byck's employment, Petitioner was employed by Lee M. Herman, Esquire, as law clerk in Media and also practiced law in New Jersey in the office of Michael A. Tier, Esquire, of Baysville, New Jersey.

21. Mr. Herman filed the requisite Notice of Engagement as Petitioner's supervising attorney.

22. Mr. Herman offered credible testimony on behalf of Respondent that Respondent's legal work is very satisfactory and Respondent is physically and mentally fit to practice law. Mr. Herman also submitted a letter in support of Petitioner.

23. Attorneys Byck and Tier submitted letters in support of Petitioner's request to return to active status.

24. Petitioner's law practice in New Jersey has consisted of trying a juvenile criminal case, arbitrations and motions, legal research and drafting of forms.

25. Petitioner has taken 36 hours of Continuing Legal Education courses from approved providers.

26. Petitioner reviews and reads new case law on the Internet on a daily basis.

27. If reinstated, Petitioner plans to practice law at an office that specializes in bankruptcy, consumer and collection law.

28. Petitioner is currently divorced and has two teenage children for whom he pays support. Petitioner and his former wife currently enjoy a stable relationship for the benefit of their children.

29. Office of Disciplinary Counsel does not oppose the Petition for Reinstatement.

III. CONCLUSIONS OF LAW

Petitioner has presented clear and convincing evidence that his disability is removed and he is fit to resume the practice of law. Pa.R.D.E. 301(h).

IV. DISCUSSION

Petitioner seeks readmission to the bar following his transfer to disability inactive status as a result of a stroke sustained on May 30, 2006, which rendered him unable to practice law. In order to be reinstated, Petitioner must prove by clear and

convincing evidence that his disability has been removed and he is fit to resume the practice of law. Pa.R.D.E. 301(h).

The record demonstrates that Petitioner has met his burden of proof. Since his stroke in 2006, Petitioner has undergone substantial medical treatment and therapy. His program of exercise and physical rehabilitation has restored his physical health. Petitioner adheres to the instructions of his medical providers, including taking any required medications and undergoing follow-up diagnostic tests. Petitioner introduced evidence from his medical providers as to his current state of health. Dr. Eric Zager provides treatment for the AVM. He reported that Petitioner's prognosis is excellent and Petitioner has been restored to normal intellectual functioning and physical health. Dr. Ronald Coleman provides cognitive therapy and opined that Petitioner's memory, cognition and all other issues related to the stroke have been resolved and Petitioner is entirely fit to practice law. The totality of this evidence supports the conclusion that Petitioner's disability has been removed.

Petitioner demonstrated his fitness to resume the practice of law by introducing evidence of his work history. Petitioner returned to work in 2007. Following a brief stint at a grocery store, Petitioner was hired as a law clerk for Harrison Ross Byck, Esquire. Petitioner has continuously worked in a law office setting since that time. He was reinstated to the practice of law in New Jersey in June 2007 and has practiced law in that jurisdiction, handling such work as arbitrations, motions, and a juvenile matter.

Petitioner provided letters of reference from all of his legal employers, as well as testimony from Lee Herman, Esquire, for whom he currently is employed. Mr. Herman

wholeheartedly endorses Petitioner's return to the practice of law and finds his legal work to be satisfactory and sound.

Petitioner has fulfilled 36 hours of Continuing Legal Education courses from approved providers and keeps apprised of the law by reviewing cases on the Internet.

Petitioner offered testimony that he is a recovering alcoholic and has been sober for 15 years. Petitioner is committed to his sobriety and actively attends Alcoholics Anonymous meetings and has frequent contact with his sponsor, James Vernile, Esquire. Mr. Vernile testified at the reinstatement hearing that Petitioner is currently fit to practice law.

Having considered the evidence of record, the Report of the Hearing Committee and the lack of opposition to this Petition by Office of Disciplinary Counsel, the Board recommends that the Petition for Reinstatement from Inactive Status be granted.


V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that Petitioner, Joseph A. Diorio, 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: 
Carl D. Buchholz, III, Board Chair

Board Members Bevilacqua and McLemore dissented.

Board Member Baer did not participate in the adjudication.

Date: December 3, 2010

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

In the Matter of	:	No. 1200 Disciplinary Docket No. 3
	:	
JOSEPH A. DIORIO	:	No. 153 DB 2006
	:	
	:	Attorney Registration No. 52601
	:	
PETITION FOR REINSTATEMENT	:	(Montgomery County)

DISSENTING OPINION

The Recommendation of the Disciplinary Board is that Petitioner be reinstated from inactive status. I write in dissent because I do not believe that Petitioner met the burden of proof required by the Rules to justify reinstatement.

Petitioner was transferred to "*disability inactive status*" by Order of the Supreme Court of Pennsylvania dated October 23, 2006. Petitioner filed a Petition for Reinstatement from Inactive Status on October 26, 2009, more than three years after the date of the Order. I respectfully submit that it is this period of inactive status *in excess of three years* that placed a greater burden of proof upon a petitioner seeking reinstatement; a burden that was not met.

Pa.R.D.E. 218 deals with the general subject of reinstatement. Rule 218(a) references the following categories of attorneys, all in the same paragraph: attorneys

suspended for in excess of one year; attorneys who have transferred to inactive status for more than three years; attorneys transferred to inactive status as the result of the sale of the practice, per Pa.R.P.C. 1.17; and disbarred attorneys. It seems clear, therefore, that the Rules intended to place all attorneys transferred to inactive status for periods in excess of three years into a particular category or class, if you will, requiring a higher level of scrutiny prior to reinstatement.

Rules 218(c)(3)(i) and (ii) then delineate the burdens of proof resting on these individuals: those disbarred or suspended for in excess of one year must meet the highest burden of proof, and must prove, inter alia, the moral qualifications, competency and learning in the law required for admission to practice in the Commonwealth 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. On the other hand, formerly admitted attorneys who have been on inactive status have the “burden of demonstrating that such person has the moral qualifications, competency and learning in the law required for admission to practice in the Commonwealth”.

It should be noted that the Rules provide a different standard for attorneys who have been on inactive status for three years or less: Pa.R.D.E. 218(g) provides that attorneys who have been on “inactive status for three years or less may be reinstated pursuant to Enforcement Rule 219(h) or (j) (relating to periodic assessment of attorneys) as appropriate” (emphasis added).

It is this apparently clear distinction set forth in the Rules between those who have been on inactive status for three years *or more* or three years *or less* which I believe was not observed either by the hearing committee or by the majority. While a technicality for sure, the words of the Rules must be given their necessary meaning and interpretation. Otherwise, the Rules should be rewritten or dispensed with altogether.

The majority granted reinstatement based upon Pa.R.D.E. 301(h), which relates to reinstatement of disabled or incapacitated attorneys. Pursuant to that Rule, *any* Petitioner on *disability* inactive status must demonstrate by clear and convincing evidence that his disability is removed and that he is fit to resume the practice of law. The majority of the Board determined that Petitioner met this burden of proof, and I concur that the evidence was sufficient on this point. I part company with the majority Opinion, however, based upon my belief that when an attorney (such as Petitioner here) has been on disability inactive status for *more than three years*, he must meet the *additional* requirements imposed by Pa.R.D.E. 218(d)(3)(ii) to prove that he "has the moral qualifications, competency and learning in the law required for admission to practice in the Commonwealth". No finding in this regard was made by the hearing committee; nor did the record demonstrate that evidence on these points was adduced. I note that the language of Enforcement Rule 301(h) specifically references reinstatement under the general Enforcement Rule 218, and contend that these Rules must be read together, thereby imposing this burden of proof on *disabled* attorneys who have been on inactive status for periods *in excess of three years*. Otherwise, a *disabled* inactive attorney who

has been inactive for a period in excess of three years would be held to a *lesser* standard of proof that any other inactive attorney who has been inactive for the same period of time. In short, I contend that all inactive attorneys—disabled or otherwise—must meet the same burden imposed by Pa.R.D.E. 218(c)(3)(ii).

Since Petitioner did not present evidence sufficient to meet his burden pursuant to Rule 218(d)(3)(ii), his Petition for Reinstatement from Inactive Status should be denied. In the alternative, I would refer the matter back to the hearing committee to allow Petitioner the opportunity to submit evidence necessary to meet his burden of proof.

Respectfully submitted,

By: 

R. Burke McLemore, Jr., Board Member

Date: December 3, 2010

Board Member Bevilacqua joins in this Dissent.