

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 2963 Disciplinary Docket No. 3
VINCENT JAMES : No. 163 DB 2021
PETITION FOR REINSTATEMENT : Attorney Registration No. 25214
: (Out of State)

ORDER

PER CURIAM

AND NOW, this 28th day of June, 2023, upon consideration of the parties' responses to the Board's Report and Recommendations, the Application for Leave to File Amended Petition for Review and the Petition for Reinstatement are denied. Petitioner is ordered 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 Nicole Traini
As Of 06/28/2023

Attest: Nicole Traini
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 163 DB 2021
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VINCENT JAMES : Attorney Registration No. 25214
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PETITION FOR REINSTATEMENT : (Out of State)

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 December 8, 2021, Petitioner, Vincent James, filed a Petition for Reinstatement from retired status pursuant to Pa.R.D.E. 218(d), a Special Reinstatement Questionnaire, Petitioner's Motion for Waiver of Continuing Legal Education Online Limit, and Motion for Waiver of Three Letters of Recommendation Requirement. On January 19, 2022, Petitioner submitted supplemental information to the Special Reinstatement

Questionnaire. On February 2, 2022, Office of Disciplinary Counsel (ODC) filed its response to the Petition for Reinstatement and raised several concerns bearing on whether Petitioner could meet his reinstatement burden. ODC advised that it did not oppose the CLE Waiver Motion, and opposed the Recommendation Waiver Motion on the basis that the Pennsylvania Rules of Disciplinary Enforcement and Disciplinary Board Rules do not have provisions to permit the filing of such a motion.

By Reference for Special Reinstatement Hearing dated February 10, 2022, a Hearing Committee Member (“Member”) was appointed to conduct a special reinstatement hearing.

On March 14, 2022, Petitioner filed a second set of supplemental information to the Special Reinstatement Questionnaire.

Following a pre-hearing conference on April 5, 2022, the Member issued a Pre-Hearing Order, which, *inter alia*, established deadlines for the parties to identify proposed witnesses and exchange exhibits (May 13, 2022), identify any proposed expert witness and exchange expert witness reports (May 13, 2022); submit objections to proposed witnesses, expert witnesses, exhibits, and expert reports (May 20, 2022); submit responses to any objections filed (May 27, 2022); file motions of any nature (May 20, 2022); and submit any responses to any motions filed (May 27, 2022).

The Member conducted a special reinstatement hearing on June 2, 2022. Petitioner appeared pro se, testified on his own behalf, and introduced four exhibits without objection. ODC cross-examined Petitioner and introduced 17 exhibits without objection. The record was held open until July 1, 2022, for Petitioner to submit an

additional exhibit. At Petitioner's request and without objection by ODC, the Member entered an Order on June 27, 2022, that extended the date for holding the record open until July 29, 2022, so that Petitioner could supplement the record with the additional exhibit. On June 28, 2022, Petitioner submitted the additional exhibit.

On July 18, 2022, Petitioner filed a post-hearing brief to the Committee in support of reinstatement. On July 22, 2022, ODC filed a post-hearing brief and requested that the Member recommend to the Board that the Petition for Reinstatement be denied.

By Report filed on September 21, 2022, the Member concluded that Petitioner failed to meet his reinstatement burden as to his competency and learning in the law and recommended that the Petition for Reinstatement be denied. On October 11, 2022, Petitioner filed a Brief on Exceptions to the Member's Report and recommendation.¹ On October 24, 2022, ODC filed a Brief Opposing Petitioner's Brief on Exceptions.

The Board adjudicated this matter at the meeting on January 19, 2023.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner is Vincent James, born in 1948 and admitted to the bar of the Commonwealth of Pennsylvania on May 25, 1977. Petitioner elected retired attorney status in May 1983. Petitioner currently resides in Sugar Land, Texas. ODC-2, R.Q. 1(e) and (f), 3(a) and (b).

¹ Petitioner's brief is missing p. 3.

2. Prior to assuming retired status, Petitioner was employed as an attorney in Pennsylvania for three years, with a total of four years of employment as an attorney overall. N.T. 25-26.

3. After Petitioner graduated from law school in 1976, but before he assumed retired status in Pennsylvania, Petitioner held the following positions in the legal field:

- a. from 1976-1977, an associate position in a law firm in Silver Springs, Maryland;²
- b. from 1977-1979, an associate position with the Public Interest Law Center of Philadelphia; and
- c. from 1979-1980, an associate position with the Southeastern Pennsylvania Legal Services for the Deaf.

N.T. 14-21; ODC-17, pp. 3A and 3B; R.Q.II 6.

4. Petitioner's legal experience consisted primarily of legal research and writing, and did not involve litigation. N.T. 18.

5. Between 1980 and 1983, Petitioner was employed in two non-legal positions: a sales associate for an insurance company that offered potential clients annuities, mutual funds, equities, and life insurance policies; and an assistant manager at a residential site for disabled veterans. N.T. 21-25; ODC-17, p. 3B; R.Q.II 6.

6. After Petitioner retired from the practice of law, he attended the University of Houston, obtained a Master's in Education, and worked as a teacher and counselor in

² Petitioner stated he was a "real property associate." R.Q. II 6. It is unclear from the record if this was a legal position, as Petitioner does not indicate he was admitted to the Maryland bar or any other bar in 1976.

Texas before moving to California in 1992. N.T. 26, 28-29; ODC-17, p. 4; R.Q.II 2 and 7(a).

7. From 1992 through 1996, Petitioner lived in California and worked in either group homes or residential facilities for children. N.T. 29-32; ODC-17, p. 4A; R.Q.II 7(a).

8. From 1996 through 1998, Petitioner lived in China. He was employed by Southwest Law School for one year as a visiting lecturer teaching comparative law and advanced English as a second language. During his second year in China, Petitioner was employed by an educational institution as an instructor teaching English as a second language. N.T. 32-34; ODC-17, p. 4B; R.Q.II 7(a)

9. Petitioner returned to California in 1999 and remained there until 2004, during which period he worked at a relief staff company and a residential facility for children. N.T. 35; ODC-17, p. 4C; R.Q.II 7(a).

10. In 2004, Petitioner relocated to Texas and worked as a standardized test statistics developer from 2006 through 2007. N.T. 35-36; ODC-17, p. 4C; R.Q.II 7(a).

11. Petitioner listed self-employment from 2007 through 2022 as a small business developer and consultant in the non-profit area; however, Petitioner did not earn any income from those ventures. N.T. 49-53, 57-58; ODC-17, p. 4D; R.Q.II 7(a).

12. From 2007 through the present time, Petitioner's sources of income have been either disability payments or Social Security retirement benefits. N.T. 56-58.

13. The last time Petitioner held a full-time position as an attorney in Pennsylvania was in 1980.

14. Petitioner began considering having his Pennsylvania law license reinstated approximately a year before he filed the Questionnaire. He attributed his interest in reinstatement to his observation that there was a great increase in public interest law. N.T. 79-80.

15. Since Petitioner elected retired status in 1983, he has not worked as a paralegal or legal assistant for a law firm, a legal services organization, or a lawyer. During his time on retired status, Petitioner did not engage in any volunteer opportunities in the legal field. N.T. 80-81, 86-87.

16. Petitioner testified that since 2016, he has sought paid employment as a teacher or counselor in Texas, but has been unable to secure a position. N.T. 86-88.

17. Sometime after 2016, Petitioner began conducting voluntary legal research using several online websites. N.T. 88-90.

18. Petitioner's legal research has principally focused on United States Supreme Court practice and property law, although he has periodically reviewed opinions issued by the Supreme Court of Pennsylvania. N.T. 89, 91-92, 109, 111.

19. Approximately two and one-half to three years prior to the reinstatement hearing, Petitioner purchased and began periodically reviewing the Pennsylvania Rules of Evidence, the Pennsylvania Rules of Civil Procedure, and the Pennsylvania Rules of Appellate Procedure. N.T. 90-91.

20. If Petitioner is reinstated, he hopes to secure a position in the public interest sector in Pennsylvania. N.T. 92-93.

21. Petitioner contacted three public interest law firms in Philadelphia to obtain information and to explain that he was applying to be reinstated, but he has not received a reply from those firms. N.T. 93.

22. Petitioner does not have a relationship with anyone who is a Pennsylvania lawyer. N.T. 93.

23. If Petitioner is reinstated and unable to secure employment with a public interest law firm, Petitioner would not be interested in private practice but would consider offering his services as a consulting attorney for pleadings filed with the United States Supreme Court. N.T. 94-95, 96.

24. Petitioner did not offer any witness testimony concerning his prior work performance in legal or non-legal positions or his competency and learning in the law. N.T. 9-11.

25. Petitioner did not submit any letters of reference addressing, *inter alia*, his competency and learning in the law during the period of his retired status. N.T. 76-77; ODC-2, 17; R.Q. 16; R.Q.II 16.

26. Petitioner made omissions on the Special Reinstatement Questionnaire.

27. In response to Question 7(a) on the Questionnaire, Petitioner provided an incomplete employment history that ceased at the year 1990. N.T. 36-37; ODC-2, p. 4; PFOF 6-10; R.Q. 7(a).

28. In January 2022, Petitioner submitted to ODC a second Special Reinstatement Questionnaire ("the January 2022 Questionnaire") that provided supplemental information in response to Question 7(a); however, Petitioner's

employment history remained incomplete because he omitted his employment in China from 1997 through 1998, his employment in California from 1999 through 2004, and his employment in Texas from 2006 through 2007. N.T. 39-42; ODC-11, pp. 4A and 4B; PFOF 8-10.

29. On March 14, 2022, Petitioner filed with the Board Prothonotary a third Special Reinstatement Questionnaire (“the March 2022 Questionnaire”) that provided supplemental information in response to Question 7(a); the March 2022 Questionnaire included the employment history that Petitioner omitted from the January 2022 Questionnaire. ODC-11, pp. 4A-4B; ODC-17, pp. 4A-4C.

30. Petitioner testified that he mistakenly omitted several pages related to Petitioner’s employment history when he filed the Questionnaire with the Board Prothonotary in December 2021. N.T. 37-39.

31. Petitioner testified that his continued omission of several employment positions he held from 1998 through 2007 in response to Question 7 on the January 2022 Questionnaire was due to Petitioner not having good records and needing to devote more time to researching and investigating his employment history. N.T. 39-40, 42-46.

32. Petitioner stated that he had devoted a “month and a half of almost full-time work” in answering questions on the Questionnaire, that “more time was needed” to provide a response that accurately listed his employment history, and that the “overall process was so demanding that [he] simply wasn’t able to give employment the amount of time it needed initially.” N.T. 46-47.

33. In response to Question 11(a) on the Questionnaire, Petitioner omitted that he was a plaintiff in two civil cases that were filed in 1990 in Santa Clara, California, and that in 2008 and 2017, he had filed Chapter 7 bankruptcy petitions in the United States Bankruptcy Court for the Southern District of Texas. ODC-2, 5-7, 17; R.Q. 11(a); R.Q.II 11(a).

34. Petitioner testified that in responding to Question 11(a) on the Questionnaire, he had conducted an internet search for civil cases in which he appeared as a party with negative results, he had forgotten about the two civil cases he had filed in Santa Clara, California, and he should have listed the two bankruptcy cases, but he had relied on the negative internet search result when he answered “No” in response to Question 11(a). N.T. 63-68.

35. Petitioner retained records related to the two bankruptcy cases, but he did not research his personal documents before answering Question 11(a) on the Questionnaire. N.T. 67-68.

36. Petitioner did not provide satisfactory explanations for his omission of portions of his employment history from 1998 through 2007 and the two bankruptcy cases from 2008 and 2017 in response to Questions 7(a) and 11(a) on the Questionnaire. PFOF 31-33, 35-36.

37. Petitioner fulfilled his Continuing Legal Education (“CLE”) requirements for seeking reinstatement by taking 36 credit hours of CLE courses, which courses exposed Petitioner to some areas of Pennsylvania law. N.T. 108-109; ODC-2.

III. CONCLUSIONS OF LAW

1. Petitioner has failed to demonstrate by a preponderance of the evidence that he has the competency and learning in the law required for admission to practice in the Commonwealth. Pa.R.D.E. 218(d)(3).

IV. DISCUSSION

Petitioner seeks reinstatement to the practice of law in Pennsylvania following his voluntary assumption of retired status in 1983. Pursuant to Rule 218(d)(3), Pa.R.D.E, a formerly admitted attorney who has been on retired status for more than three years bears 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.

Before the Board is the Hearing Committee Member's Report recommending denial of Petitioner's reinstatement request, Petitioner's Brief on Exceptions to the Report, and ODC's Brief Opposing Petitioner's Exceptions. Petitioner objects to the Member's conclusion that he lacks competency and learning, and further objects to the Questionnaire itself, positing that it is unconstitutional and unreasonable. Following review of the record before us, we find no merit to Petitioner's exceptions and conclude that Petitioner failed to meet his reinstatement burden under Pa.R.D.E. 218(d)(3) by a preponderance of the evidence as to his competency and learning in the law. For the reasons set forth below, we recommend that the Petition for Reinstatement be denied.

As an initial matter, we address Petitioner's exceptions related to his contentions that the Special Reinstatement Questionnaire is unconstitutional and unreasonable. We find it unnecessary to devote any significant time to this argument, as the Special Reinstatement Questionnaire has not been found legally defective in any of the federal and state cases cited by Petitioner.

Moving to the issue of Petitioner's reinstatement qualifications, the record establishes that Petitioner is a resident of Texas, was born in 1948 and was admitted to practice law in Pennsylvania on May 25, 1977. Prior to his admission in Pennsylvania, Petitioner was employed at a Maryland law firm as an associate for one year. Following his Pennsylvania admission, Petitioner practiced law for three years in the public interest sector, primarily engaged in legal research and writing. Petitioner ceased practicing law in 1980 and assumed retired status in 1983. Petitioner has not been employed as a lawyer since 1980, more than four decades ago. Since 1980, Petitioner has been employed in a myriad of nonlegal positions, both in this country and internationally. These employment positions included a sales associate for an insurance company; an assistant manager at a residential facility for veterans; a two-year stint in China teaching an American-Chinese comparative law course and advanced English as a second language; a teacher and counselor in Texas; employment in either group homes or residential facilities for children in California; a standardized test statistics developer; and, since 2007, a small business developer and consultant. Petitioner has not held documented employment since 2007 and his sources of income since 2007 are disability and Social Security retirement.

In support of his current competency and learning in the law, Petitioner contends that during the 43 years he was employed in nonlegal positions, he had occasion to use his legal training, such as when he was employed with the insurance company as a sales associate and at the veterans' residential facility where he claims he helped a veteran in danger of losing benefits. N.T. 21-24, 27-28. We note that Petitioner held these positions between 1980 and 1983, and so we accord this evidence no weight as to Petitioner's current competency and learning in the law, because the employment Petitioner highlights as indicative of his qualifications for resumption of practice is far removed in time and did not involve a legal position. Likewise, Petitioner's employment as a legal instructor in China some 25 years ago, while related to the legal field, is accorded very limited weight as to his current competency and learning in the law, as such legal instruction is removed in time and there is no evidence that the instruction involved any aspect of Pennsylvania law.

Petitioner is given credit for completion of his required 36 hours of Continuing Legal Education. In support of his current competency and learning in the law, Petitioner offered evidence that in addition to the required CLE credits, he conducted legal research on United States Supreme Court practice and property law; however, he did not offer any evidence on the quality of his legal research or the beneficial use made of his research. Likewise, Petitioner did not offer evidence demonstrating that his periodic review of Pennsylvania Supreme Court opinions and his purchase and review of several books on Pennsylvania procedural rules has provided him with sufficient competency and learning in the law to resume practice in the Commonwealth.

The totality of the record shows that Petitioner: last worked as a Pennsylvania lawyer 43 years ago; was employed as a Pennsylvania lawyer for only three years before he retired from the practice of law; has never held a paid or unpaid position as a paralegal or legal assistant since he retired from the practice of law; and has not had documented employment since 2007. Petitioner offered no letters of reference or witness testimony to support his claim that he has the competency and learning in the law to be reinstated, nor did he put forth evidence that he has legal employment prospects in Pennsylvania or even knows a single Pennsylvania lawyer.

The record establishes other facts that reflect adversely on Petitioner's competency. On his first Special Reinstatement Questionnaire, Petitioner omitted his employment history and civil cases in response to Questions 7(a) and 11(a). Petitioner credibly testified that it was a challenge to identify each employment position he held since 1969, and that he had forgotten about the two lawsuits he filed in California in 1990. However, these explanations do not account for Petitioner's omitted employment history from 1998 through 2007 on either his first Questionnaire or the supplemental Questionnaire filed in January 2022, or his omission of two Chapter 7 bankruptcy cases Petitioner filed in 2008 and 2017 on his initial Questionnaire. It is reasonable to expect Petitioner to be able to identify employment positions held during the past 25 years and to list bankruptcy cases he filed within the past 15 years. The manner in which Petitioner completed his initial Questionnaire and the supplemental Questionnaire shows a lack of attention to detail that reflects negatively on the issue of his current competency. See, *In the Matter of Sabrina L. Spetz*, No. 31 DB 2011 (D. Bd. Rpt. 1/3/2020, p. 15) (S. Ct. Order

2/28/2020) (“A lawyer seeking reinstatement must be prepared to provide detailed answers to questions posed on the Questionnaire, and can expect to be subjected to an extensive investigation of his or her financial and personal circumstances. Providing less than complete answers on the Questionnaire is the first indication that a lawyer may not be fit to resume practice.”)

We analyze these factual circumstances in the context of attorney reinstatement matters in Pennsylvania and find that the case law supports our recommendation to deny reinstatement. The case law contains very few reinstatement matters premised on Pa.R.D.E. 218(d)(3), and we found no cases filed under that provision of the reinstatement rules that have been denied due to a lack of competency and learning in the law, leaving the Board to be guided by matters where attorneys sought reinstatement from discipline. In a matter involving a disbarred attorney seeking reinstatement under Pa.R.D.E. 218(c)(3), the Court accepted the Board’s recommendation and denied reinstatement. *In the Matter of James Daniel Harrison*, No. 54 DB 2000 (D. Bd. Rpt. 8/19/2020) (S. Ct. Order 10/21/2020). Therein, the Board concluded that Harrison, who had been disbarred for 20 years in Pennsylvania, failed to show by clear and convincing evidence that he had the competency and learning in the law required for admission to practice in the Commonwealth. Harrison had never practiced law in Pennsylvania since his admission in 1978; had not worked as a paralegal or legal assistant in Pennsylvania but for five days at the Innocence Project shortly before the reinstatement hearing; had not subscribed to legal periodicals or official reporters while disbarred; had been unemployed for approximately ten years prior to applying for

reinstatement, with Social Security as his primary source of income; and had no legal employment prospects in Pennsylvania. The Board weighed this background with Harrison's completion of his 36 CLE hours and his occasional observance of Philadelphia civil and criminal trials and concluded Harrison had not met his burden as to current competency and learning in the law.

While *Harrison* involved the application of the more rigorous clear and convincing reinstatement standard, *Harrison* and the instant matter are similar when comparing the weakness of the evidence presented on competency and learning in the law in that both petitioners: had not practiced law in Pennsylvania for over 40 years at the time they sought reinstatement; had not worked as a paralegal or legal assistant during the lengthy period they were without a law license; had not worked in any capacity for many years and relied primarily on Social Security for income when they applied for readmission; lacked viable employment prospects if reinstated; and had little exposure to Pennsylvania law and Pennsylvania lawyers.

In the Matter of Kirk Douglas Rhodes, No. 170 DB 2002 (D. Bd. Rpt. 4/22/2014) (S. Ct. Order 9/30/2014), also invites comparison. In that case, Rhodes was denied reinstatement from disbarment for, *inter alia*, his lack of competency as borne out by never having practiced law in Pennsylvania since his admission in 1984, failing to suggest mentors or practitioners in Pennsylvania to support his commencement of practice in the Commonwealth, failing to have a Pennsylvania lawyer testify on his behalf or offer a letter of reference, and failing to offer a plan for entering the practice of law in Pennsylvania. As was the case in *Harrison*, the petitioner in *Rhodes* had a higher burden

of proof for reinstatement than in the instant case. Nevertheless, *Rhodes* has similar facts to the matter at bar and is instructive, in that like *Rhodes*, Petitioner did not offer witness testimony from a Pennsylvania lawyer, or anyone else, concerning his competency and learning in the law; did not submit letters of reference; did not have a plan to reenter the legal profession in Pennsylvania; and had no relationship with any Pennsylvania lawyer or law firm.

The record before the Board demonstrates that Petitioner last practiced law 43 years ago; lacks any record of employment since 2007; offered no independent, objective evidence that he is presently competent and learned in the law to resume practicing law; made omissions on reinstatement paperwork; and presented no plan for returning to the practice of law. We are cognizant that Petitioner's absence from the legal profession for so many years was due solely to his voluntary election of retired status, and was not premised on any misconduct, which is why Petitioner's reinstatement burden under Pa.R.D.E. 218(d)(3) is a preponderance of the evidence, rather than the more stringent clear and convincing evidence standard for suspended and disbarred lawyers who seek resumption of practice. Yet even after carefully weighing the evidence under this lesser burden, on this record, we conclude that Petitioner failed to prove he is competent and learned in the law, and we recommend that the Petition for Reinstatement be denied.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Petitioner, Vincent James, be denied reinstatement to the practice of law.

The Board further recommends that, pursuant to Rule 218(f), Pa.R.D.E., Petitioner be directed to pay all of 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: */s/ Robert L. Repard*
Hon. Robert L. Repard, Member

Date: 02/21/2023