

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 1551 Disciplinary Docket No. 3
: :
WAYNE D. BOZEMAN : No. 183 DB 2009
: :
PETITION FOR REINSTATEMENT : Attorney Registration No. 200258
: :
: (Chester County)

ORDER

PER CURIAM

AND NOW, this 19th day of March, 2018, the Petition for Reinstatement is granted. Petitioner is directed to pay the expenses incurred by the Board in the investigation and processing of the Petition for Reinstatement. See Pa.R.D.E. 218(f).

A True Copy Patricia Nicola
As Of 3/19/2018

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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PETITION FOR REINSTATEMENT : (Chester 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

By Order dated October 3, 2011, the Supreme Court of Pennsylvania suspended Petitioner, Wayne D. Bozeman for a period of five years on consent, retroactive to December 16, 2009.

On September 29, 2014, Petitioner filed a Petition for Reinstatement ("First Petition"). By Order dated April 13, 2016, the Supreme Court denied the First Petition.

On April 20, 2017, Petitioner filed a second Petition for Reinstatement. Petitioner filed a Supplement to Petition on June 8, 2017. Office of Disciplinary Counsel filed a Response on July 11, 2017.

A reinstatement hearing was held on September 8, 2017, before a District II Hearing Committee. Petitioner testified on his own behalf and presented the testimony of four witnesses and documentary evidence. Petitioner and Office of Disciplinary Counsel submitted Stipulations of Fact. Office of Disciplinary Counsel did not offer the testimony of any witnesses and did not introduce any exhibits.

Following the submission of Petitioner's brief, the Hearing Committee filed a Report on December 12, 2017, and recommended that the Petition for Reinstatement be granted.

The parties did not file exceptions to the Hearing Committee's report and recommendation.

The Board adjudicated this matter at the meeting on January 11, 2018.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner is Wayne D. Bozeman, born in 1947 and admitted to practice in the Commonwealth of Pennsylvania in 2005 and in the State of New Jersey in 2006. He is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

2. Petitioner joined the United States Marine Corps in 1967 and received an honorable discharge under medical conditions in 1970. P-5.

3. Petitioner worked in business for 28 years before attending law school. P-5.

4. Following his admission to the bar in Pennsylvania, Petitioner was employed by a law firm in Camden, New Jersey. From January 2008 to September 2009, Petitioner was self-employed as a partner in a professional association with Ralph A. Powell, Esquire called Powell Bozeman, P.A., a practice that focused on Fair Labor Standards Act ("FLSA") cases in federal court. P-5.; N.T. 18.

5. On June 17, 2008, a federal grand jury for the Eastern District of Pennsylvania returned an indictment charging Bernard J. Bagdis, Esquire and eleven other defendants, including Petitioner, with tax crimes for the years 2000 through 2007. According to the documents, Attorney Bagdis presented, and Petitioner knowingly signed and filed, false tax returns that failed to include additional income earned by Petitioner and paid to him by Advanced Game Concepts, Inc. P-5.

6. On March 3, 2009, before the Honorable J. Curtis Joyner, in the United States District Court for the Eastern District of Pennsylvania, Petitioner entered a guilty plea to one count of conspiracy to defraud the United States of taxes in violation of 18 U.S.C. §371. P-5.

7. On September 17, 2009, Judge Joyner sentenced Petitioner to a twenty-two (22) month term of imprisonment followed by a three-year term of supervised release. Judge Joyner further ordered Petitioner to pay restitution of \$137,635.00 to the

Internal Revenue Service (“IRS”), to satisfy all penalties and interest owing to the IRS as a result of Petitioner’s misconduct, and to pay the Pennsylvania Department of Revenue any state taxes and penalties due as a result of Petitioner’s misconduct. P-5.

8. The criminal tax offense to which Petitioner plead guilty was unrelated to his law practice activities. N.T. 19-20.

9. By Order dated December 16, 2009, the Supreme Court of Pennsylvania temporarily suspended Petitioner from the bar of the Commonwealth. P-5.

10. On March 10, 2010, Petitioner paid the restitution ordered by the federal court, and in 2014, Petitioner fully satisfied his remaining obligations to the IRS and to the Pennsylvania Department of Revenue resulting from his conviction. P-5.

11. While in prison, Petitioner used his free time to teach other inmates how to conduct legal research using the prison’s law library and electronic research system, and after receiving permission from the prison’s administration, he conducted classes in legal research for groups of inmates. P-3; N.T. 22-23.

12. While in prison, Petitioner assisted in the care of a severely diabetic inmate by waking the inmate at 5:00 a.m. each day, making sure that the inmate received his insulin injections and ate all of his meals, and making sure the inmate kept all scheduled medical and dental appointments. P-3; N.T. 23-24.

13. Petitioner received the maximum amount of credit for good conduct while incarcerated, and in February 2011, he was released from prison and placed on home confinement. P-5.

14. While on home confinement, Petitioner was monitored by a half-way house, permitted to work as a paralegal, and required to pay the half-way house twenty-five percent of his weekly gross earnings to offset the monitoring costs. P-5.

15. Petitioner was released in May 2011, after serving nineteen of the twenty-two month sentence that had been imposed. P-5.

16. Shortly before Petitioner was released, during a prison visit with Richard Myers, Esquire, Petitioner's former law professor, Petitioner accepted a job as a paralegal working for Mr. Myers on collective action cases under the FLSA at a salary of \$1,600 bi-weekly, with responsibility for conducting legal research and preparing written drafts of pleadings, motions, responses to motions and discovery documents. P-5.

17. Ralph A. Powell, Esquire, with whom Petitioner was formerly associated, also worked with Mr. Myers on the same collective action cases as Petitioner, with responsibility for communicating with the class member-plaintiffs. P-5.

18. Mr. Myers paid Petitioner for his paralegal work by sending money to Mr. Powell, who paid Petitioner and also provided Petitioner with all required documentation for tax purposes. P-5.

19. At no time did Mr. Powell have supervisory responsibility for the law-related activities that Petitioner performed as a paralegal. P-1; N.T. 30, 31, 93.

20. Mr. Myers made the decision to have Mr. Powell administer Petitioner's pay as a paralegal by sending money to Mr. Powell for that purpose. N.T. 72, 110-111, 112-113.

21. In May 2011, Petitioner filed a Chapter 7 bankruptcy petition that involved a debt from a business he had closed in 2008, and he was granted bankruptcy discharge in August 2011. P-5.

22. On October 3, 2011, the Supreme Court of Pennsylvania suspended Petitioner on consent for a period of five years retroactive to his temporary suspension on December 16, 2009. P-5.

23. On November 4, 2011, Petitioner filed a statement of compliance as required by Pa.R.D.E. 217. P-5.

24. Petitioner began working as a paralegal for Mr. Myers on the "Driveline" FLSA collective action case in March 2011 and the "Crossmark" FLSA case in August 2011, but he did not file a notice of engagement and certification with the Disciplinary Board until February 2012. P-5.

25. Petitioner's Notice of Engagement filed in February 2012 also identified one other matter, known as "Smith". P-5.

26. On May 28, 2014, Petitioner completed his three-year term of supervised release. P-5.

27. On August 27, 2014, Petitioner and Mr. Myers filed an "Updated Notice of Engagement" with the Disciplinary Board notifying the Board that Petitioner would also be working in the "Gruenwald" matter, a case filed in the Bucks County Court of Common Pleas. P-5.

28. Mr. Myers was the lead attorney in the Gruenwald matter and Mr. Powell was an attorney of record. P-5.

29. On September 29, 2014, Petitioner filed the First Petition and accompanying questionnaire. P-5.

30. A reinstatement hearing was held on April 17, 2015, and on September 8, 2015, the Hearing Committee filed a report and recommended that the First Petition be denied. P-3, P-5.

31. By Report filed on February 18, 2016, the Board found that Petitioner violated Pa.R.D.E. 217(j)(4) by working on matters as a suspended attorney that also involved Mr. Powell, with whom Petitioner was associated prior to his suspension. The Board recommended to the Supreme Court that the First Petition be denied.

32. By Order dated April 13, 2016, the Supreme Court denied Petitioner's First Petition. P-5.

33. On September 23, 2015, shortly after the Hearing Committee filed its report recommending the denial of the First Petition, Petitioner ceased performing any paralegal work for Mr. Myers in the "Gruenwald" matter, and Petitioner and Mr. Myers filed an "Updated Notice of Engagement" with the Disciplinary Board reflecting that Petitioner had ceased work on that case. P-3, P-5.

34. On September 23, 2015, Mr. Powell withdrew as attorney of record from the "Driveline" FLSA collective action case. P-3, P-5.

35. On May 23, 2016, Petitioner paid all costs associated with his First Petition, as ordered by the Supreme Court. P-5.

36. With regard to his second reinstatement petition, Petitioner successfully completed 36 hours of Continuing Legal Education credits required for reinstatement. P-3, P-5.

37. There are no disputes concerning the validity of Petitioner's IRS tax forms for 2011, 2012, 2013, 2014, 2015 and 2016, which Petitioner produced as part of his Reinstatement Questionnaire. P-3.

38. Prior to his conviction, Petitioner focused on his legal work and did not participate in any charitable activities or volunteer work. N.T. 23, 50-51, 135, 147.

39. In the fall of 2011, Petitioner began volunteering at the La Mancha Animal Rescue, where he walked dogs for approximately three months until a back injury forced him to stop. N.T. 26-27.

40. Since January 2012, Petitioner has engaged in a substantial amount of charitable and volunteer activities: he has purchased food and cooked meals for AID for Friends, a non-profit organization sponsored through his church; he has accepted additional administrative responsibility for the Aid for Friends program that includes tracking meals received at the church to be picked up and distributed; he serves as a Sacristan at his church for worship services and funerals, which involves being given a key to open the church and prepare for services as well as clean up; he helps handle monetary donations for the church. N.T. 43-45, 48, 149-151.

41. Petitioner testified credibly that he has accepted full responsibility for the conduct which caused his criminal prosecution and led to the suspension of his law

license. He deeply regrets the pain he caused his family and the disrepute his actions brought to the legal profession. P-1; N.T. 19, 20, 83-84, 97-98, 122, 128, 138, 147.

42. Petitioner has learned from his experience and would not engage again in dishonest or improper conduct. P-1; N.T. 49-52.

43. With regard to the previous Pa.R.D.E. 217(j) violation, Petitioner accepted the determination that his First Petition should be denied and testified credibly that he took immediate steps to correct those circumstances, by filing the proper notices with the Board and removing himself from paralegal work for Mr. Powell, with whom he was associated prior to his suspension. N.T. 32.

44. At the reinstatement hearing, Petitioner presented the testimony of four witnesses.

45. Richard Myers, Esquire, has practiced law in Pennsylvania since 1975. He is Petitioner's former law professor at Temple University and is Petitioner's supervising attorney. N.T. 79, 82, 89.

46. Mr. Myers testified credibly that Petitioner's legal work product is very good and his substantive research is excellent. N.T. 85, 90.

47. Mr. Myers testified that if Petitioner is reinstated, he wants Petitioner to continue to work for him on the "Driveline" matter and other similar cases as they arise, and he plans to refer cases to Petitioner. P-1, P-3; N.T. 102.

48. Mr. Myers acknowledged that as Petitioner's supervisor, he misinterpreted Pa.R.D.E. 217(j) and wished that he had handled Petitioner's employment in a different manner. N.T. 108-109, 114-115.

49. Rosemary Bozeman is Petitioner's wife. The Bozemans have been married for 48 years and have three children. N.T. 118. Mrs. Bozeman testified credibly that Petitioner is very sorry for his wrongdoing and takes full responsibility for his actions. N.T. 120-121.

50. Mrs. Bozeman testified that prior to Petitioner's misconduct, he was a workaholic and focused solely on what he needed to do to accomplish his work. After his conviction and incarceration, Mrs. Bozeman observed that Petitioner's priorities changed and he wanted to make amends for what he did by working and helping other people. N.T. 122.

51. Charles Klose is a senior ERISA consultant for Vanguard. He was Petitioner's neighbor and has known Petitioner for twenty years. N.T. 131-133.

52. Mr. Klose testified credibly that Petitioner's conviction and incarceration changed him for the better and gave Petitioner a new outlook on life. N.T. 136.

53. Mr. Klose testified that during his suspension, Petitioner has been very involved in volunteer work and family activities. N.T. 136-137.

54. Mr. Klose testified that Petitioner's reinstatement to the bar would not be detrimental to the legal profession, and he has no hesitation in using Petitioner as a lawyer. N.T. 138-139.

55. Martha Harris is the full-time parish services director at Saints Simon and Jude church in West Chester, Pennsylvania. Ms. Harris has known Petitioner since 1991, as a neighbor and a fellow parishioner at the church. N.T. 144-145.

56. Ms. Harris testified credibly that before Petitioner was incarcerated, he was a wonderful neighbor and friend, but was guarded in his demeanor. Now, Ms. Harris has observed that Petitioner is caring and has a passion to help people. N.T. 153.

57. Ms. Harris testified that Petitioner truly regrets what he did in the past and has learned a valuable lesson. N.T. 154.

58. Ms. Harris testified that Petitioner is not a danger to the public and if he is reinstated, she would use his legal services and refer him to others. N.T. 155-156.

59. Office of Disciplinary Counsel does not oppose Petitioner's reinstatement.

III. CONCLUSIONS OF LAW

1. Petitioner demonstrated by clear and convincing evidence that he has the moral qualifications, competency and learning in the law required for admission to the practice of law in this Commonwealth. Rule 218(c)(3), Pa.R.D.E.

2. Petitioner demonstrated by clear and convincing evidence that his resumption of the practice of law will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subversive of the public interest. Rule 218(c)(3), Pa.R.D.E

IV. DISCUSSION

Petitioner seeks readmission to the practice of law in Pennsylvania following his suspension for a period of five years on consent, imposed by the Supreme Court of Pennsylvania on October 12, 2011, retroactive to December 16, 2009. Petitioner bears the burden of proving by evidence that is clear and convincing, that he is morally qualified, competent and learned in the law and 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. Pa.R.D.E. 218(c)(3). A reinstatement proceeding is a

searching inquiry into a lawyer's present professional and moral fitness to resume the practice of law. The object of concern is not solely the transgressions that gave rise to the lawyer's suspension, but rather, the nature and extent of the rehabilitative efforts made since the time the sanction was imposed and the degree of success achieved in the rehabilitative process. *Philadelphia News, Inc. v. Disciplinary Board of the Supreme Court of Pennsylvania*, 363 A.2d 779, 780-781 (Pa. 1976).

We conclude from the evidence of record that Petitioner has met his reinstatement burden and we recommend that the Petition for Reinstatement be granted.

Petitioner offered substantial and credible evidence that he is morally qualified, competent and learned in the law. Petitioner's underlying misconduct was his conviction of one count of conspiracy to defraud the United States of taxes, resulting from his knowingly signing and filing false tax returns for the years 2000 through 2007. The criminal tax offense to which Petitioner pled guilty was unrelated to his law practice activities. Petitioner was sentenced to twenty-two months imprisonment and three years of supervised release, restitution of \$137,635.00 and satisfaction of all penalties and interest owed to the IRS and the Pennsylvania Department of Revenue.

Petitioner completed his prison sentence and paid all restitution and fees ordered to be paid associated with his criminal conviction. Petitioner demonstrated through his own testimony that he has accepted full responsibility for the actions which led to his conviction and he has expressed sincere remorse for his actions to his family and friends. Petitioner stated repeatedly throughout the hearing that he was guilty of the criminal offense, that no one else was to blame, and that he took complete responsibility.

N.T. 18-19, 20. Petitioner further stated that he has done his best to make amends for the pain he caused his family and the legal profession. N.T. 18-19. To that end, starting during his time in prison, Petitioner has attempted to help others. While in prison, he assisted a diabetic inmate and taught inmates how to conduct legal research. After his release from prison, Petitioner became increasingly involved in his community, donating substantial time and personal resources toward helping others, in particular with food programs for the needy. Petitioner also serves his church as a Sacristan, a special role of trust which requires Petitioner to have keys to the church and to count monetary donations to the church.

Petitioner offered the credible testimony of witnesses who appeared on Petitioner's behalf to attest to his remorse, rehabilitation, character and competence as a legal practitioner and to confirm his current positive reputation in the community.

Rosemary Bozeman, Petitioner's wife of 48 years, testified that Petitioner deeply regrets his misconduct and has made positive changes to his life. Long-time friends and neighbors Charles Klose and Martha Harris confirmed noticeable changes in Petitioner since his misconduct. They both have observed that Petitioner's focus in life has shifted since his conviction and now he is more concerned with the needs of his family and helping others. Mr. Klose and Ms. Harris testified as to Petitioner's acceptance of responsibility and expressions of remorse. These witnesses testified that Petitioner has regained his reputation in the community and they would hire him as their attorney or refer him to others if he is reinstated.

Richard Myers, Esquire, has been a licensed lawyer in Pennsylvania since 1975. Mr. Myers is Petitioner's former law professor at Temple University and Petitioner's employer for the last six years. Mr. Myers testified credibly that Petitioner has always accepted responsibility for his actions and very much regretted his misconduct. Mr. Myers does not believe that Petitioner would ever engage again in anything illegal or dishonest. Mr. Myers testified credibly as to the superior quality of Petitioner's work product.

Although Petitioner has been suspended since 2009, he has nonetheless maintained a connection to the legal profession for much of that time by providing paralegal services to Mr. Myers. It was this relationship that caused Petitioner's First Petition to be denied, as he was also conducting paralegal services for Ralph A. Powell, Esquire, an attorney with whom Petitioner had been associated prior to his suspension, in violation of Pa.R.D.E. 217(j). In the present matter, it is undisputed that the Rule 217(j) violation was promptly remedied in 2015. Petitioner testified credibly that he had not given adequate consideration to Rule 217(j) and agreed that he violated the rule. Petitioner established that he severed his professional relationship with Mr. Powell after the 2015 reinstatement proceedings and has not performed paralegal work on behalf of Mr. Powell since that time. Mr. Powell withdrew from all cases in which Petitioner was involved. Further, Petitioner and Mr. Myers immediately filed the necessary engagement notices with the Disciplinary Board and Mr. Myers directly pays Petitioner for his work. Upon this record, we conclude that Petitioner acknowledged his violation of Rule 217(j), accepted responsibility for the violation, and corrected the problems.

Petitioner demonstrated his learning in the law through his activities as a paralegal, conducting research and drafting legal documents in connection with collective action cases under FLSA. Petitioner completed his Continuing Legal Education requirements necessary for reinstatement. If reinstated, Petitioner intends to continue working with Mr. Myers and pursue a criminal defense practice in the Philadelphia area.

Petitioner is seventy-two years of age and has been suspended from the practice of law for eight years. During his suspension, he has demonstrated sincere remorse, acceptance of responsibility, and a commitment to serve his community. He has complied with all administrative and educational requirements for reinstatement. Petitioner has the moral qualifications, competency and learning in the law required for admission to practice law, and 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.

Based on the totality of the record, we recommend that the Petition for Reinstatement be granted.

V. RECOMMENDATION

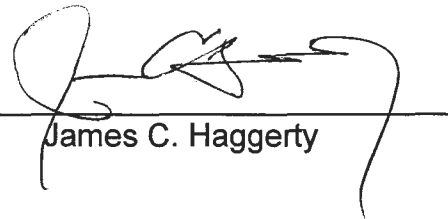
The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Petitioner, Wayne D. Bozeman, be reinstated to the practice of law.

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: _____



James C. Haggerty

Date: 2/28/18