

**IN THE SUPREME COURT OF PENNSYLVANIA**

In the Matter of : No. 1932 Disciplinary Docket No. 3  
: :  
PETER JOSEPH PAYNE, JR. : No. 197 DB 2012  
: :  
: Attorney Registration No. 68902  
PETITION FOR REINSTATEMENT : :  
: (Allegheny County)

**ORDER**

**PER CURIAM**

**AND NOW**, this 22<sup>nd</sup> day of July, 2019, 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 07/22/2019

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

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PETITION FOR REINSTATEMENT : (Allegheny 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 May 1, 2013, the Supreme Court of Pennsylvania disbarred Peter Joseph Payne, Jr., on consent. Petitioner filed a Petition for Reinstatement on May 14, 2018. Office of Disciplinary Counsel (“ODC”) filed a Response to Petition for Reinstatement on July 12, 2018.

A District IV Hearing Committee ("Committee") conducted a reinstatement hearing on September 18, 2018. Petitioner appeared pro se. He testified on his own behalf, offered the testimony of two witnesses, and introduced into evidence the Affidavit of one witness who was unable to appear at the hearing, marked as Exhibit P-1. ODC did not present witness testimony and offered into evidence a praecipe and entry of judgment, marked as Exhibit ODC-1.

On October 19, 2018, Petitioner filed a Brief to the Committee and requested that the Committee recommend to the Board that he be reinstated from disbarment.

On November 7, 2018, ODC filed a Brief to the Committee and requested that the Committee recommend to the Board that Petitioner be reinstated.

The Committee filed a Report on January 4, 2019 and recommended that the Petition for Reinstatement be denied on the basis that Petitioner's period of disbarment is insufficient to demonstrate rehabilitation.

The parties did not take exception to the Committee's Report and recommendation.

The Board adjudicated this matter at the meeting on April 10, 2019.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner is Peter Joseph Payne, Jr., born in 1968 and admitted to practice law in the Commonwealth of Pennsylvania in 1993. Petitioner's attorney registration address is 108 Laurel Valley Drive, Pittsburgh, PA 15229. Petitioner is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

2. Subsequent to Petitioner's admission to the bar, he practiced law in Allegheny County and in May 2002 founded the law firm of Payne, Welsh and Klingensmith, LLC, in Turtle Creek, Pennsylvania. N.T. 6-7.

3. In August 2006, Petitioner began experiencing financial pressures related to an earlier divorce and cash flow problems at his law firm. N.T. 7-8

4. Petitioner misappropriated client funds held in his firm's IOLTA account and continued this conduct through late 2010. In total, Petitioner misappropriated client funds in excess of \$500,000.00, which were used to pay draws for the three partners and other firm expenses. N.T. 8-9.

5. Petitioner's law firm dissolved in February 2011, after which Petitioner practiced as a sole practitioner until February 2013. N.T. 10-11.

6. Petitioner executed a resignation statement on March 13, 2013, and the Supreme Court of Pennsylvania disbarred him on consent by Order dated May 1, 2013. N.T. 11-12; Reinstatement Questionnaire ("RQ").

7. Since his disbarment, Petitioner has not engaged in the practice of law.

8. Petitioner reimbursed the majority of the misappropriated monies prior to ODC's involvement in the matter. N.T. 9-10.

9. In order to reimburse the stolen funds, Petitioner and his wife cashed in their retirement plans and college savings plans for their children, took cash advances from their credit cards and borrowed money from friends. All of the misappropriated funds were repaid. N.T. 9, 45.

10. Petitioner cooperated with ODC's investigation and fully acknowledged his wrongdoing. N.T. 10.

11. In 2013, a judgment was entered against Payne, Welsh and Klingensmith, LLC and the named partners, individually, in the amount of \$118,000.00 for defaulting on their line of credit with Citizens Bank. N.T. 24-25; ODC - 1.

12. Petitioner testified that he had been the only one of his former partners paying on the line of credit, so he ceased doing that. N.T. 25.

13. In February 2013, when Petitioner realized that he would lose his license to practice law, he transitioned to a career selling cars. Petitioner became employed at Jim Shorkey Chrysler Plymouth in North Huntingdon, Pennsylvania, became top salesman in the organization and rose to the top ten in his territory. In October 2013, Petitioner was promoted to Sales Manager. Over the ensuing years, Petitioner worked for several other car dealerships in Pennsylvania and West Virginia. N.T. 12-14.

14. In December 2017, Petitioner obtained a Pennsylvania Bureau of Motor Vehicles sales license. To obtain the license, Petitioner disclosed his disbarment.

Upon receiving said license, in March 2018, Petitioner and his wife opened their own car lot, B and P Motors in Glenshaw, Pennsylvania. N.T. 15, 23.

15. Since Petitioner's disbarment, he has volunteered in several capacities, including running the Divorce Care Ministry at his church, conducting a weekly car care clinic to assist people who cannot afford car repairs, serving as an on-call volunteer with Lawyers Concerned for Lawyers, supporting Genre's Kids with Cancer Fund, and donating time to mission work. N.T. 16, 17-18, 46-47.

16. Petitioner completed his Continuing Legal Education credits required for reinstatement. N.T. 18; RQ No. 19.

17. If reinstated, Petitioner does not intend to earn a living practicing law, but is interested in working in a pro bono capacity, as he has a sincere desire to help people. N.T. 16, 23- 24.

18. Petitioner accepted "100 percent" responsibility for his misconduct and expressed sincere and genuine remorse. As to his conduct, Petitioner testified that he had no excuse for what he did and "It was completely wrong. It was shameful." N.T. 8, 20.

19. Petitioner testified that he told his wife about his misconduct when he felt so stressed about what he did that he could no longer keep it a secret, and told her that he needed to pay back the funds. Ms. Payne agreed that they needed to find a way to pay back the monies. N.T. 9.

20. Petitioner found it very difficult to know that he let down his children and family, as well as other people close to him. N.T. 8.

21. Petitioner testified that he understands he has a “stain on my law practice, and it’s a big stain, okay, and it probably will never go away,” but he hopes to benefit people in the future by performing pro bono services, as it will help his community and reflect well on the bar. N.T. 19-20.

22. Petitioner’s testimony is credible.

23. Petitioner presented the credible testimony of two character witnesses.

24. Douglas Gerwick, Esquire, has been a Pennsylvania attorney since 1993 and a magisterial district judge for eighteen years before retiring. Mr. Gerwick and Petitioner were law school classmates. N.T. 29.

25. Mr. Gerwick testified that he is aware of the misconduct that led to Petitioner’s disbarment. N.T. 32

26. Mr. Gerwick testified that he believes Petitioner is sincere in his interest in resuming the practice of law and has worked to rebuild himself from his misconduct and deserves another opportunity. N.T. 32.

27. Mr. Gerwick is aware that Petitioner is interested in performing pro bono services. N.T. 31-32.

28. Mr. Gerwick is aware of the charitable contributions Petitioner has made during his disbarment and believes Petitioner is morally qualified to resume the practice of law. N.T. 34.

29. Mr. Gerwick testified that he believes Petitioner is competent to resume the practice of law. N.T. 30.

30. Bonnie Payne testified on behalf of Petitioner. Ms. Payne has been married to Petitioner since December 2005. N.T. 40.

31. Ms. Payne testified that Petitioner kept his misconduct a secret from her until February 2011. Upon learning of the misappropriated funds, Ms. Payne agreed with Petitioner that the money needed to be reimbursed, and they would do what it took to accomplish that. Ms. Payne confirmed that they cashed in retirement funds and their children's college funds, took cash advances on their credit cards and borrowed funds to make good the misappropriated funds. N.T. 41-42.

32. Ms. Payne testified that after Petitioner's law firm dissolved, she worked as Petitioner's office manager at Payne & Associates, handling the financial aspects of the firm. Ms. Payne ensured that there were no issues with the escrow account. N.T. 42, 44.

33. Ms. Payne testified that Petitioner's career in the car sales business has been successful, and the car lot they own is doing well. Ms. Payne works for B and P Motors and ensures that the finances are accurate. N.T. 45-46, 50.

34. Ms. Payne testified that she and Petitioner are still paying back some of the loans they took to reimburse the stolen funds. N.T. 45.

35. Ms. Payne testified that Petitioner is a "completely different person now" than before his disbarment, when she described Petitioner as miserable and arrogant. N.T. 47-48. Ms. Payne described Petitioner currently as a caring person who wants to help people. According to Ms. Payne, Petitioner realizes he made a mistake and is very remorseful for what he did. N.T. 48.

36. Petitioner submitted an Affidavit from Edward C. Flynn, Esquire, a partner at Eckert Seamans Cherin & Mellott, LLC. Mr. Flynn's Affidavit stated that he has known Petitioner for more than three decades. While their interactions were mostly in a personal capacity, they worked on "various legal matters" during that time period. Mr. Flynn described Petitioner's community activity in a general sense and Petitioner's "continuing efforts to recover from the damage to his reputation and harm to others." Petitioner's Exhibit-A.

37. ODC does not oppose Petitioner's reinstatement.

### III. CONCLUSIONS OF LAW

1. The misconduct for which Petitioner was disbarred is not so egregious as to preclude consideration of his Petition for Reinstatement. ***Office of Disciplinary Counsel v. John Keller***, 506 A.2d 872 (Pa. 1986).

2. Petitioner has met his burden of proof by clear and convincing evidence that a sufficient period of time has passed since the misconduct, during which he engaged in qualitative rehabilitation. ***In the Matter of Jerome J. Verlin***, 731 A.2d 600 (Pa., 1999).

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

4. Petitioner has met his burden of proof by clear and convincing evidence that his resumption of the practice of law in the Commonwealth of Pennsylvania 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 disbarment on consent by Order of the Supreme Court of Pennsylvania dated May 1, 2013. The misconduct giving rise to Petitioner's disbarment was his misappropriation of entrusted funds of clients in his law firm's IOLTA account, in the amount of \$500,000.00, which he converted for his personal use.

When a disbarred attorney seeks reinstatement, the Board and the Court must examine whether the magnitude of the breach of trust was so egregious as to preclude further reconsideration of the petition for reinstatement. As the Court held in **Keller**, "[i]n the case of disbarment, there is no basis for an expectation by the disbarred attorney of the right to resume practice at some future point in time." **Keller** at 875.

Petitioner's conduct that led to his disbarment was egregious. Theft of client funds is the type of misconduct that erodes the public's confidence in the legal profession. However, in light of the Supreme Court's previous holdings, we cannot say Petitioner's misconduct was so great as to preclude his reinstatement. There are numerous examples where the threshold question has been met in cases involving conversion of entrusted funds. See **In the Matter of Lawrence D. Greenberg**, 749 A.2d 434 (Pa. 2000)

(misappropriation of two million dollars and commission of perjury in bankruptcy proceeding); *In the Matter of William James Perrone*, 777 A.2d 413 (Pa. 2001) (improperly obtaining public funds allocated for indigent legal representation by filing false fee petitions); *In the Matter of Grahame P. Richards, Jr.*, No. 43 DB 1996 (D. Bd. Rpt. 8/23/2016) (S. Ct. Order 9/21/2016) (misappropriation of more than one million dollars in client funds); *In the Matter of John Louis D'Intino, Jr.*, No. 48 DB 2009 (D. Bd. Rpt. 1/4/2019) (S. Ct. Order 3/13/2019) (misappropriation of \$250,000 in client funds).

The above-cited cases contain examples of serious and deplorable acts by Pennsylvania lawyers, all of whom met the threshold standard for reinstatement. The Board concludes that Petitioner's acts of misconduct, while extremely serious and a breach of his ethical responsibilities, are not so egregious as to prevent reinstatement.

Following our analysis of the *Keller* threshold, we next consider whether Petitioner has met his burden of proving that his current resumption of the practice of law would not be detrimental to the profession, the courts or the public. *Perrone* at 416. To that end, Petitioner must demonstrate that a sufficient period of time has passed since his misconduct, during which he engaged in qualitative rehabilitation. Petitioner must prove that his post-disbarment conduct and efforts at rehabilitation were sufficient to dissipate the detrimental impact of his conduct on the public trust. *Verlin* at 602.

The Committee considered the facts of record and concluded that Petitioner did not meet his heavy burden, based on its determination that Petitioner's disbarment period is insufficiently short to dissipate the detrimental impact on the public trust

occasioned by Petitioner's wrongdoing. Under Rule 218(b), Pa.R.D.E., "[a] person who has been disbarred may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment..." Here, Petitioner was disbarred on May 1, 2013 and applied for reinstatement on May 14, 2018, shortly after the five-year waiting period expired. He has not practiced law for more than six years.

The Committee was troubled by "the limited testimony" provided by Petitioner's character witnesses; the lack of detail relative to Petitioner's plans to practice law in a pro bono capacity; and the testimony that Petitioner "could not be trusted" to write checks on behalf of B and P Motors. These concerns, when considered in the context of Petitioner's period of disbarment, led the Committee to recommend that Petitioner's reinstatement be denied.

Contrary to the Committee's conclusion, upon our analysis of the record, we conclude that Petitioner established that his period of disbarment has been one of qualitative rehabilitation. Petitioner misappropriated a large amount of funds for his own use and thereafter recognized that he had to reimburse the funds in order to make good his wrongdoing. Even prior to complaints being filed with ODC pertaining to Petitioner's misconduct, Petitioner began the process of reimbursement. Petitioner and Ms. Payne made reimbursing the stolen funds a priority and agreed to use whatever means they had available, which included retirement funds, college funds for their children, credit card advances and funds borrowed from friends. Petitioner ensured that he reimbursed the

stolen funds in full prior to seeking reinstatement. Petitioner and his wife are still paying back loans they took to reimburse the monies.

Petitioner's actions demonstrated that he accepted responsibility for his misconduct and has remorse for what he did. Petitioner conveyed his contrition at the reinstatement hearing, accepting "100 percent" responsibility for the misappropriated funds. Petitioner described how ashamed he felt and how difficult it was to accept that by his actions, he let down his family and other people important to him. He further recognizes he has a "stain" on his law practice, which "may never go away," and he has to live with the consequences of his actions.

After losing his law license, Petitioner changed course and began a successful career in the car sales business, eventually obtaining a motor vehicle sales license and opening his own car lot. Petitioner takes pride in his success and intends to continue working for his dealership, along with his wife. Petitioner does not intend to practice law as a way to earn a living but is very interested in providing pro bono services in Allegheny County, where he resides and owns a business. While he did not name a specific organization for whom he would perform pro bono work, Petitioner has volunteered for a variety of community organizations during his disbarment, including LCL, divorce care ministry, car care clinics, cancer fundraising and mission work. Petitioner's desire to help others in his community is borne out by his charitable endeavors, and will inform his pro bono service opportunities in the future.

The testimony of Petitioner's two character witnesses, Mr. Gerwick and Ms. Payne, along with Mr. Flynn's Affidavit, prove that he is morally qualified and competent. Mr. Gerwick, an attorney and former magisterial district judge, credibly testified that he was familiar with Petitioner's misconduct and believed that Petitioner was serious in his desire to resume his legal practice doing pro bono work. Knowing Petitioner for many years since law school, Mr. Gerwick believed that despite the underlying misconduct, Petitioner deserved a second chance to rebuild himself, and described Petitioner as morally qualified and competent.

Ms. Payne has been married to Petitioner since 2005 and has supported Petitioner through the stress of his disbarment and career change. She credibly testified and gave valuable insight into the positive changes Petitioner has experienced in his life since his disbarment. According to Ms. Payne, Petitioner was arrogant and miserable prior to his disbarment, and is now in a much better place, as a caring person who wants to help his community. She confirmed that he is ashamed of his past actions but is trying to move forward and be a better person. As far as their car lot, Ms. Payne explained that she and Petitioner are the only people who work there; they have no employees. While the Committee was troubled by Ms. Payne's testimony that she monitors the checkbook and that Petitioner has to tell her when he writes checks, we find that this testimony is indicative of the division of labor at the car dealership and the level of support Ms. Payne gives to her husband, rather than a criticism of Petitioner's trustworthiness.

Mr. Flynn, an attorney at the Eckert Seamans law firm, stated in his Affidavit that he has had a personal and professional relationship with Petitioner for thirty years. Mr. Flynn is aware of the conduct that led to Petitioner's disbarment, and has witnessed a change for the better in Petitioner since disbarment. Mr. Flynn stated that Petitioner has the moral qualifications and competency necessary to practice law in Pennsylvania, and his readmission would enhance the integrity and standing of the bar and further the public interest.

Petitioner has been disbarred since May 1, 2013. Our review of other reinstatement matters leads us to conclude that Petitioner's six years of disbarment has been a sufficient period of time to demonstrate rehabilitation. ***In the Matter of Gerard Emmett Evans***, No. 10 DB 2001 (D. Bd. Rpt. 10/3/2008) (S. Ct. Order 12/15/2008) (reinstatement from disbarment after seven years; mail and wire fraud conviction); ***In the Matter of Mark Allen Kovler***, 172 DB 2002 (D. Bd. Rpt. 5/15/2009) (S. Ct. Order 7/24/2009) (reinstatement from disbarment after five years and eleven months; fraudulent conveyance of home to insulate from judgment in a pending malpractice action); ***In the Matter of Stephen Greg Doherty***, 69 DB 2010 (D. Bd. Rpt. 9/13/2017) (S. Ct. Order 10/27/2017) (reinstatement from disbarment after seven years; criminal conviction for mail fraud, wire fraud, bankruptcy fraud, and money laundering). Despite the relatively short length of time that Petitioner has been disbarred, upon this record we conclude that he has met his burden to prove that he is fit to resume the practice of law.

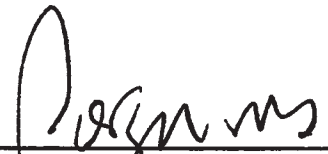
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Petitioner, Peter Joseph Payne, Jr., 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:   
Stefanie B. Porges, Member

Date: 6/3/19