

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 2645 Disciplinary Docket No. 3
: :
RICHARD P. KIMMINS : No. 1 DB 2019
: :
: Attorney Registration No. 84864
PETITION FOR REINSTATEMENT :
FROM DISABILITY INACTIVE STATUS : (Allegheny County)

ORDER

PER CURIAM

AND NOW, this 12th day of January, 2024, the Petition for Reinstatement is granted. 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 01/12/2024

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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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 From Disability Inactive Status.

I. HISTORY OF PROCEEDINGS

By Petition for Discipline filed on May 14, 2019 at No. 1 DB 2019, Office of Disciplinary Counsel (“ODC”) charged Richard P. Kimmins with professional misconduct in violation of Rules of Professional Conduct (“RPC”) 1.3, 1.16(d), 8.4(c), and 8.4(d). On August 15, 2019, Mr. Kimmins filed a Certificate of Admission of Disability with the Supreme Court of Pennsylvania pursuant to Pennsylvania Rule of Disciplinary Enforcement (“Pa.R.D.E.”) 301(e). By Order dated September 3, 2019, the Court

transferred Mr. Kimmins to disability inactive status for an indefinite period and until further order of the Court.

On September 9, 2022, Mr. Kimmins filed a Petition for Reinstatement from disability inactive status. ODC filed a response on December 6, 2022 and stated that after investigation, it was not aware of a basis to oppose reinstatement. ODC further noted that the disciplinary charges at No. 1 DB 2019 were pending and it did not object to Mr. Kimmins being given time to file an Answer to Petition for Discipline in accordance with Pa.R.D.E. 208.

On December 14, 2022, ODC filed a request to consolidate the disciplinary matter and the reinstatement matter to be heard by the same Hearing Committee. Mr. Kimmins did not object to the request, and on December 21, 2022, the Board ordered that the matters be consolidated for hearing and directed Mr. Kimmins to file an Answer to Petition for Discipline by January 10, 2023. On January 10, 2023, Mr. Kimmins filed his Answer to Petition for Discipline.

A prehearing conference was held on April 13, 2023. On May 23, 2023, a District IV Hearing Committee ("Committee") conducted a consolidated hearing. ODC offered ODC Exhibits 1 through 11, which were admitted into evidence. Mr. Kimmins appeared pro se, testified on his own behalf, and offered Kimmins Exhibits 1 through 4. At the hearing, as to the Petition for Discipline, the parties agreed to proceed under the abbreviated procedure set forth in Board Rule § 89.181, which resulted in the parties endorsing and consenting to a determination that Mr. Kimmins violated Rules of

Professional Conduct 1.3, 1.16(d), 8.4(c), and 8.4(d), and that the appropriate discipline to be imposed is a public reprimand.¹

The parties did not file post-hearing briefs to the Committee. By Report filed on September 15, 2023, the Committee set forth its summary determination with the parties' attached endorsements that Mr. Kimmins engaged in misconduct that warrants a public reprimand. As to the Petition for Reinstatement, the Committee concluded that Mr. Kimmins met his burden by clear and convincing evidence that his disability has been removed and he is fit to resume the practice of law. The parties did not take exception to the Committee's Report and recommendation. The Board adjudicated this matter at the meeting on October 28, 2023.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Richard P. Kimmins was born in 1950 and was admitted to practice law in the Commonwealth of Pennsylvania in 1999. His mailing address is in Weirton, West Virginia. Mr. Kimmins is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

2. Mr. Kimmins has a prior history of discipline consisting of an informal admonition administered in 2011.

¹ Under Board Rule § 89.181, the abbreviated procedure may be invoked at the conclusion of a hearing when all participants agree that dismissal or some form of private discipline or a public reprimand is appropriate. Under such circumstances, the court reporter does not prepare the transcript and the hearing committee submits to the Board a summary determination and stipulation of discipline. The Board may accept the determination or remand the record to the committee for preparation of the transcript and to fix a briefing schedule.

Petition for Discipline at No 1 DB 2019

3. On May 14, 2019, ODC filed a Petition for Discipline against Mr. Kimmins charging him with violation of RPC 1.3, 1.16(d), 8.4(c), and 8.4(d) for misconduct in one client matter.

4. Before the time to file an Answer to Petition had expired, on August 15, 2019, Mr. Kimmins sought disability inactive status by filing with the Court a Certificate of Admission of Disability pursuant to Pa.R.D.E. 301(e).

5. By Order dated September 3, 2019, the Court placed Mr. Kimmins on disability inactive status for an indefinite period and until further action by the Court.

6. Upon the entry of the Court's Order, the pending disciplinary proceedings were held in abeyance.

7. Mr. Kimmins filed a Petition for Reinstatement on September 9, 2022, and an Answer to Petition to Discipline on January 10, 2023.

8. At the consolidated hearing on May 23, 2023, the parties agreed to proceed under the abbreviated procedure, resulting in an endorsement by the parties that Mr. Kimmins violated RPC 1.3, 1.16(d), 8.4(c), and 8.4(d). The parties agreed to a public reprimand, and in its Report and recommendation filed on September 15, 2023, the Committee submitted to the Board its determination that a public reprimand was appropriate discipline for Mr. Kimmins' misconduct.

9. The Board adjudicated this matter at the October 28, 2023 meeting and unanimously determined to impose a public reprimand.

Petition for Reinstatement at No. 1 DB 2019

10. Mr. Kimmins was an inpatient at Weirton Medical Center in West Virginia from June 1, 2019 through June 10, 2019, for complications of diabetes that required surgeries and for a heart condition. N.T. 6-7.

11. Due to these conditions, Mr. Kimmins sought disability inactive status because he was unable to prepare an adequate defense to the disciplinary charges pending against him set forth in the Petition for Discipline filed on May 14, 2019.

12. In the Certificate for Admission of Disability filed with the Court, Mr. Kimmins attached two letters from Dr. Anthony Grant, his health care provider, who gave his medical opinion that due to Mr. Kimmins' physically disabling conditions, he was unable to prepare an adequate defense to the disciplinary charges. ODC-6.

13. Mr. Kimmins testified at his reinstatement hearing that his diabetes required two surgeries on his feet and prolonged treatment that lasted through 2019 and into 2020. N.T. 7, 8.

14. Mr. Kimmins required antibiotics, home nurse care, and physical therapy, all of which have been completed. N.T. 7, 8.

15. Mr. Kimmins sees Dr. Grant every three months to monitor his condition and his prognosis is good. N.T. 8, 28.

16. Mr. Kimmins testified that he has no new or expanded disability and no health restrictions. While he has neuropathy in his lower extremities, the physical therapy he received has enabled him to move around and from a physical standpoint, Mr.

Kimmins testified he can adequately and competently pursue the practice of law. N.T. 13, 28.

17. By letter dated November 1, 2022, Dr. Grant stated that Mr. Kimmins continues to have neuropathy in both lower legs but is able to practice law on a full-time basis without medical restriction. ODC-7.

18. Mr. Kimmins testified that he complied with all of the restrictions placed upon him as a disability inactive status attorney. He resigned his position as conflicts counsel with the Allegheny County juvenile court, his cases were transferred to another attorney, and he has had no new clients during his inactive status. N.T. 10, 12. Mr. Kimmins closed his website, shut down his email that referred to “Kimmins Law” and closed his physical office, which had been located in Green Tree, Pennsylvania. N.T. 12.

19. During his disability inactive status, Mr. Kimmins completed the required Continuing Legal Education courses for reinstatement. N.T. 10-11; ODC-6.

20. While on disability inactive status, Mr. Kimmins read and reviewed the Pennsylvania Lawyer, Pennsylvania Bar News, and Pittsburgh Legal Journal. He also conducted independent research on tax liability and prisoner rights. ODC-6.

21. Mr. Kimmins testified that prior to his disability inactive status, he worked in the Juvenile Division of Allegheny County from 2001 to 2019. N.T. 25. Mr. Kimmins testified that his focus within that system was representing parents who had their children removed. N.T. 14, 25. He described the shortage of people who want to work in the juvenile court system, as he explained that it is not financially attractive but can be

time-consuming. N.T. 13. If reinstated, Mr. Kimmins plans to establish a law office and pursue work in the juvenile system in Allegheny County. N.T. 13, 18-19, 26.

22. Mr. Kimmins expressed an interest in applying for admission to practice in West Virginia in order to practice juvenile law in that jurisdiction. N.T. 13-14, 19.

23. Mr. Kimmins contacted his professional liability provider to ascertain the steps necessary for coverage if he is reinstated. ODC-6.

24. Mr. Kimmins' testimony is credible.

25. ODC does not oppose Mr. Kimmins' reinstatement.

III. CONCLUSIONS OF LAW

1. Mr. Kimmins met his burden of proof by clear and convincing evidence that his disability has been removed and he is fit to practice law. Pa.R.D.E. 301(h).

IV. DISCUSSION

This matter is before the Board for consideration of Mr. Kimmins' request for reinstatement to the practice of law from the Order of the Supreme Court of September 3, 2019, transferring him to disability inactive status pursuant to Pa.R.D.E. 301(e). Mr. Kimmins bears the burden of proof 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).

Mr. Kimmins sought and was granted disability inactive status in 2019, as his physical disabilities related to surgeries for diabetes complications and long-term recovery made it impossible for him to prepare an adequate defense to disciplinary charges that had been brought against him by Petition for Discipline filed on May 14, 2019. Upon this record, the Board concludes that Mr. Kimmins has clearly and convincingly demonstrated that his disability has been removed and he is fit to practice law. Mr. Kimmins presented unrefuted evidence consisting of a letter from his health care provider and his own testimony to demonstrate that his physical disability has been treated, his prognosis is good, and he has the physical ability to pursue the practice of law.

Dr. Anthony Grant, who is Mr. Kimmins' treating physician and who provided letters to support Mr. Kimmins' admission of disability in 2019, provided a letter dated November 1, 2022, wherein he stated that Mr. Kimmins has some neuropathy in his lower legs but is able to practice law full-time without medical restriction. Through his testimony, Mr. Kimmins elaborated on his medical history of foot surgeries due to complications of diabetes, his treatment and recovery from those surgeries, his residual neuropathy, his meetings with Dr. Grant every three months to monitor his condition, the fact that he has no new or expanded disability, and his good prognosis.

Mr. Kimmins offered credible testimony that following the Court's order placing him on disability inactive status, he closed his law office, shut down his website and email, resigned his position with the Allegheny County juvenile court, transferred his

cases to another attorney, and ceased practicing law. In order to maintain his competency and learning in the law during his inactive status, Mr. Kimmins completed the required Continuing Legal Education credits and reviewed several different legal journals, as well as conducted independent legal research.

Mr. Kimmins offered credible testimony as to his plans to practice law if reinstated. Prior to his disability inactive status, Mr. Kimmins practiced for many years in the Juvenile Division of Allegheny County and testified that he hopes to resume that same position. As Mr. Kimmins explained, his particular focus in the juvenile court system was representing parents who had their children removed, and he expressed a sincere desire to resume that work, as he believes it is an underserved area of the law. Mr. Kimmins lives in Weirton, West Virginia, near Pennsylvania, but is not admitted to practice law in West Virginia and expressed an interest in gaining admission to that jurisdiction so he can pursue work in the juvenile courts. In anticipation of reinstatement, Mr. Kimmins made inquiries to his professional liability carrier.

The disciplinary matter that formed the basis for Mr. Kimmins seeking disability inactive status was addressed at the May 23, 2023 hearing through the abbreviated procedure. By that procedure, the parties and the Committee agreed that Mr. Kimmins violated the rules charged in the Petition for Discipline and that a public reprimand is appropriate discipline. The Board independently reviewed the matter and agreed to the imposition of a public reprimand, which does not affect Mr. Kimmins' ability to be reinstated to active status.

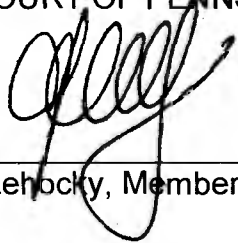
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Petitioner, Richard P. Kimmins, be reinstated to the practice of law from disability inactive status.

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: 
Jerry M. Lehigh, Member

Date: 11/14/2023