

IN THE SUPREME COURT OF PENNSYLVANIA

IN THE MATTER OF : No. 1578 Disciplinary Docket No. 3
:
WILLIAM JAY GREGG : No. 210 DB 2009
:
: Attorney Registration No. 32711
:
PETITION FOR REINSTATEMENT : (Crawford County)

ORDER

PER CURIAM

AND NOW, this 5th day of February, 2018, the Petition for Reinstatement is denied. 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 2/5/2018

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.

I. HISTORY OF PROCEEDINGS

On January 14, 2010, pursuant to Pennsylvania Rule of Disciplinary Enforcement ("Pa.R.D.E.") 215, Petitioner, William Jay Gregg, executed a resignation statement. By Order dated March 25, 2010, the Supreme Court of Pennsylvania disbarred Petitioner on consent. On June 30, 2016, Petitioner filed a Petition for Reinstatement to

the bar of Pennsylvania. On August 29, 2016, Office of Disciplinary Counsel filed a Response to Petition.

Following a prehearing conference on November 4, 2016, a reinstatement hearing was held on March 8, 2017, before a District IV Hearing Committee. Petitioner testified on his own behalf and introduced into evidence Petitioner's Exhibits ("PE") A-E. Office of Disciplinary Counsel introduced into evidence Administrative Exhibits ("AE") 1-5 and ODC Exhibits 1-9. Office of Disciplinary Counsel did not present any witnesses.

Following the submission of the parties' post-hearing briefs, the Hearing Committee filed a Report on September 5, 2017, and recommended that the Petition for Reinstatement be denied.

On September 25, 2017, Petitioner filed a Brief on Exceptions.

On October 13, 2017, Office of Disciplinary Counsel filed a Brief Opposing Exceptions.

The Board adjudicated this matter at the meeting on October 19, 2017.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner is William Jay Gregg, who was born in 1955 and admitted to practice law in the Commonwealth in 1980. He is subject to the jurisdiction of the Disciplinary Board of the Supreme Court.

2. Following his admission to the bar, Petitioner maintained a general law practice in Conneaut Lake, Crawford County, Pennsylvania, until 2010. While

practicing law, Petitioner maintained two escrow accounts. Reinstatement Questionnaire (“RQ”) No. 2(d); N.T. 24, 34.

3. On August 20, 2008, Office of Disciplinary Counsel sent a DB-7 Request for Statement of Position to Petitioner regarding three nonsufficient funds dishonored checks from Petitioner’s escrow account. AE-1; N.T. 52.

4. As the issues raised in the August 20, 2008 letter were not satisfactorily resolved, on September 30, 2009, Office of Disciplinary Counsel sent a supplemental letter of inquiry to Petitioner raising allegations of escrow account irregularities and dishonest conduct. AE-1.

5. Thereafter, Petitioner failed to fully comply with a subpoena issued by Office of Disciplinary Counsel for banking records, with the result that Disciplinary Counsel filed a petition for issuance of a rule to show cause why Petitioner should not be temporarily suspended. AE-1; N.T. 52-54.

6. On January 14, 2010, Petitioner voluntarily resigned from the practice of law, and by Order dated March 25, 2010, the Supreme Court accepted Petitioner’s resignation and he was disbarred on consent. AE-1.

7. Petitioner’s Resignation Statement contained, as exhibits, two DB-7 Requests for Statement of Respondent’s Position letters, to which Petitioner admitted his violation of the specific Rules of Professional Conduct set forth in each, as evidenced by the signature on the Resignation. Therein, Petitioner acknowledged that he mishandled his escrow accounts and engaged in dishonest conduct. AE-1.

8. There is no evidence that Petitioner's improper handling of funds resulted in client loss; the Pennsylvania Lawyers Fund for Client Security did not make any disbursements to Petitioner's former clients. RQ No. 5(a) – (e).

9. In its March 25, 2010 Order, the Court directed Petitioner to comply with provisions of Pa.R.D.E. 217. AE-1.

10. On March 26, 2010, the Secretary of the Board sent a letter to Petitioner, providing him with information for disbarred lawyers, information regarding compliance with Pa.R.D.E. 217, and various forms required to be filed with the Board. These documents included a "Standard Guidance to Lawyers Who Have Been Disbarred," which placed Petitioner on notice that he was required to close every IOLTA, trust, client and fiduciary account. ODC-1.

11. Petitioner filed a Petition for Reinstatement and Reinstatement Questionnaire on June 30, 2016. AE-2.

12. In the Questionnaire, Petitioner certified that all of the answers contained therein were true and correct to the best of his knowledge, information and belief. AE-2.

13. In the Questionnaire, Petitioner failed to list a civil malpractice action against him that had been reduced in 2006 to a \$40,448.36 judgment in the Court of Common Pleas of Crawford County. AE-2; ODC-9.

14. At the reinstatement hearing, Petitioner testified that he did not disclose the malpractice default judgment on the Questionnaire because he did not know about it. N.T. 47, 58.

15. On cross-examination, Petitioner admitted that he never checked the courthouse records, and described the judgment as “a small matter.” N.T. 58.

16. Petitioner testified that he resolved the matter, but produced no evidence other than his own testimony. N.T. 47-48, 59.

17. The official Crawford County record indicates the judgment remains unsatisfied. ODC-9.

18. Petitioner’s testimony that he did not remember a \$44,000 judgment entered against him is not credible.

19. After the date of his disbarment, Petitioner failed to promptly close two escrow accounts. He closed one account in November 2010, approximately eight months after the disbarment order, and closed the other account (PNC Bank IOLTA account ending in number 8120) in January 2011, approximately 10 months after the disbarment order. N.T. 55-56.

20. While the first escrow account had no activity between Petitioner’s disbarment and the time it was closed, subsequent to the date of his disbarment, Petitioner accepted money from multiple former clients for deposit into the PNC IOLTA account and placed his personal funds into the account. Petitioner admitted that he bounced a check. N.T.34, 36, 66-67, 69-70, 75-81; ODC-3.

21. By letter dated March 30, 2011, Office of Disciplinary Counsel sent Petitioner a DB-7 Request for Statement of Position. The request pertained to Petitioner’s PNC IOLTA account 8120. ODC-6.

22. On April 11, 2011, Petitioner responded to the allegations contained in the letter of March 30, 2011, by explaining that he had “no recollection that this account was listed as an IOLTA Account.” ODC-6.

23. This was the same account that Petitioner mishandled in 2008 and which led to his disbarment on consent. AE-1.

24. At the reinstatement hearing, Petitioner testified that he did not know the account he used post-disbarment was an escrow account, although he also testified that “I mean, I have no excuse, because it [the escrow account] had been part of the proceeding, but I didn’t, I did not know.” N.T. 39. Petitioner further testified “I can’t explain it. I had lost sight of the fact that it was an IOLTA account, and I know that’s hard to believe ...I wasn’t aware that I was using an IOLTA account.” N.T. 70.

25. On cross-examination, Petitioner admitted that he knew as far back as 2008 that the PNC account ending in 8120 was an escrow account. N.T. 64, 68.

26. Petitioner’s testimony concerning the PNC IOLTA account is not credible.

27. Petitioner did not express genuine remorse for his underlying misconduct. He explained his misconduct as “mistakes” and emphasized that he did not have a bookkeeper at the time. N.T. 44.

28. During his period of disbarment, Petitioner has been continuously employed as an independent contractor in the capacity of an abstractor for Jim Bourbeau Land Services, located in Conneaut Lake. N.T. 13-14.

29. During his disbarment, Petitioner has remained involved in community activities, such as the Conneaut Lake Lions club, the Knights of Columbus, and the Conneaut Lake Volunteer Fire Department. N.T. 17.

30. Petitioner fulfilled the Continuing Legal Education requirements necessary for reinstatement. N.T. 17-19.

31. In support of his reinstatement, Petitioner introduced into evidence four letters: a joint letter from Jim Bourbeau and Johna Oates, for whom Petitioner works; a letter from Amy Leonardo, Esquire, for whom Petitioner previously worked; a letter from Fr. Jeffrey J. Lucas, Petitioner's pastor; and a letter from Dale Funkhauser, a former client.. PE A–E.

32. These letters described Petitioner as honest and competent, but did not describe any rehabilitative efforts engaged in by Petitioner.

33. Office of Disciplinary Counsel opposes reinstatement.

III. CONCLUSIONS OF LAW

1. The conduct 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, 875 (Pa. 1986)

2. Petitioner failed to prove by clear and convincing evidence that he has the moral qualifications required for admission to the practice of law in the Commonwealth. Pa.R.D.E. 218(c)(3).

3. Petitioner failed to meet his burden of demonstrating by clear and convincing evidence that his 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. Pa.R.D.E. 218(c)(3).

IV. DISCUSSION

Petitioner seeks reinstatement to the bar of the Supreme Court of Pennsylvania following disbarment on consent by Order dated March 25, 2010.

Petitioner's burden of proof with respect to his request for reinstatement from disbarment is heavier than the burden of proof following a suspension from the practice of law. The Supreme Court has held, "[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. The threshold issue in this matter is whether the misconduct that resulted in Petitioner's disbarment was so egregious that his reinstatement would have a detrimental effect upon the integrity and standing of the bar or would be subversive of the public interest. *Id.*

Petitioner was disbarred on consent because he engaged in conduct violative of the Rules of Professional Conduct concerning mishandling trust accounts and dishonesty.

There is no doubt that Petitioner's misconduct was egregious and that disbarment was the appropriate sanction. Nevertheless, consistent with case law, we conclude that Petitioner's misconduct was not so egregious that it should prohibit his

reinstatement.¹ Other attorneys who have been disbarred and who have sought and been granted reinstatement have engaged in conduct similar to or more serious in magnitude than Petitioner's misconduct. *See, In re Lawrence Greenberg*, 749 A.2d 434 (Pa. 2000) (misappropriation of two million dollars and commission of perjury in a bankruptcy not so egregious as to warrant permanent disbarment); *In re Jerome Verlin*, 731 A.2d 600 (Pa. 1999) (conviction of criminal conspiracy, perjury, false swearing and theft by deception stemming from assisting a client in impersonating a dead man at a deposition, not so egregious as to warrant permanent disbarment); *In re Robert Costigan*, 664 A.2d 518 (Pa. 1995) (theft conviction is not a breach of trust of significant magnitude to forever bar an attorney seeking readmission). Accordingly, Petitioner has satisfied the *Keller* threshold and is not barred from seeking reinstatement.

The Board next considers whether Petitioner met his burden of proving by clear and convincing evidence that he possesses the moral qualifications, competency and learning in the law required for admission to practice law in the Commonwealth and that his readmission would not have a detrimental impact on the integrity and standing of the bar, the administration of justice or be subversive of the public interest. Pa.R.D.E. 218(c)(3). To that end, Petitioner must prove that his post-disbarment conduct and efforts at qualitative rehabilitation were sufficient to dissipate the detrimental impact of his conduct on the public trust. *Verlin* at 602.

¹ Office of Disciplinary Counsel does not challenge whether Petitioner has satisfied the *Keller* standard and does not argue that Petitioner should be forever barred from seeking reinstatement.

Upon this record, and after due consideration of the parties' recommendations and the Hearing Committee's Report and recommendation, we conclude that Petitioner has failed to meet his burden.

Following his disbarment, Petitioner failed to comply with the requirements of Pa.R.D.E. 217, governing formerly admitted attorneys. A critical provision of the rule requires that a disbarred attorney close and cease use of every IOLTA, trust, client and fiduciary account. Petitioner was notified of this requirement, but failed to close two escrow accounts and continued to use his PNC IOLTA account for nearly ten months after he had been disbarred on consent. Petitioner made deposits into the IOLTA account of not only his personal money, but funds of individuals who were former clients. Petitioner's testimony on this issue was not credible. Initially, he claimed he was unaware that the account was an IOLTA account; he later admitted on cross-examination that he knew the account was an IOLTA account in 2008. In fact, the account in question was the same account at the heart of Petitioner's resignation and disbarment on consent. We are troubled by Petitioner's conduct, as it demonstrates his lack of insight into the underlying offenses that resulted in his disbarment. It is inexplicable that Petitioner, disbarred for trust account improprieties, would not take the necessary steps to deal properly with such accounts post-disbarment.

In his Reinstatement Questionnaire, Petitioner failed to list an unsatisfied malpractice judgment. On cross-examination, Petitioner testified that he did not remember the judgment, did not check the courthouse records for judgments against him when completing his Questionnaire, and described the judgment as "a small matter," even

though it was a judgment against Petitioner in the amount of \$40,448.36. According to the Crawford County docket, the judgment remains unsatisfied and Petitioner offered no evidence other than his own assertions that the matter had been resolved. Petitioner's explanations regarding the unsatisfied judgment and his failure to include it in his Questionnaire were not credible

Petitioner's evidence of his rehabilitative efforts during disbarment consisted of his own, brief testimony as to his employment as an abstractor and his involvement in community activities. The record is devoid of any testimony expressing genuine remorse and demonstrating Petitioner's acceptance of responsibility for his underlying misconduct.

Petitioner did not present witness testimony as to his character, instead choosing to introduce four letters. Two letters were submitted by individuals for whom Petitioner works at Jim Bourbeau Land Services; one letter was submitted by Petitioner's pastor; and one letter was submitted by Petitioner's former client. These individuals described Petitioner as competent, honest, and knowledgeable. None of these letters made mention of the details of Petitioner's misconduct or described any rehabilitative efforts Petitioner made during disbarment.

Petitioner's post-disbarment conduct, his unreliable testimony at the reinstatement hearing, and his failure to demonstrate remorse for his misconduct lead the Board to conclude that Petitioner is not fit to resume the practice of law.

In summary, based upon the evidence presented, Petitioner's reinstatement at this time would be detrimental to the integrity and standing of the bar and the administration of justice, and would be subversive of the public interest. Petitioner has failed to meet his burden of proof as to his moral qualifications to resume the practice of law; additionally, he has failed to show that he has made significant rehabilitative efforts since the time of his disbarment. ***Philadelphia News Inc. v. Disciplinary Board of the Supreme Court***, 363 A.2d 779, 78-81 (1976). Consistent with the Board's responsibility to protect the public, the profession and the courts from unfit attorneys, the Board recommends that the Petition for Reinstatement be denied. ***Office of Disciplinary Counsel v. Robert Lucarini***, 472 A.2d 186, 190 (Pa. 1983).

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that reinstatement of Petitioner, William Jay Gregg, be denied.

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:


Lawrence M. Kelly, Member

Date: 12/5/2017