

**IN THE SUPREME COURT OF PENNSYLVANIA**


In the Matter of : No. 2610 Disciplinary Docket No. 3  
: :  
: No. 236 DB 2018  
BRIAN JOSEPH SMITH : :  
: Attorney Registration No. 68911  
: :  
PETITION FOR REINSTATEMENT : (Montgomery County)

**ORDER**

**PER CURIAM**

**AND NOW**, this 18<sup>th</sup> day of March, 2022, upon consideration of the parties' responses to the Court's rule to show cause dated January 6, 2022, the rule is made absolute, and 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 Nicole Traini  
As Of 03/18/2022

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

By Order dated June 20, 2019, the Supreme Court of Pennsylvania suspended Brian Joseph Smith for a period of one year and one day on consent. By Petition filed on July 21, 2020, Petitioner seeks reinstatement to the bar of the

Commonwealth of Pennsylvania. Office of Disciplinary Counsel (“ODC”) filed a response on October 13, 2020.

Following a prehearing conference, a District II Hearing Committee (“Committee”) conducted a reinstatement hearing on January 5, 2021. Petitioner appeared pro se, testified on his own behalf and presented the testimony of three witnesses. ODC presented a joint stipulation of facts and exhibits ODC-1 through ODC-10, which were admitted into evidence. At the conclusion of the hearing, the parties were advised that Petitioner would have 20 days from receipt of the transcript to file a post-hearing brief and ODC would have 20 days after receipt of Petitioner’s brief to file its post-hearing brief. Petitioner did not file a post-hearing brief. ODC submitted a letter brief on March 29, 2021, 68 days after receipt of the hearing transcript. The Committee did not consider the letter brief, as it concluded that it was untimely submitted.

By Report dated April 28, 2021, the Committee concluded that Petitioner failed to meet his reinstatement burden and recommended that the Petition for Reinstatement be denied. On June 30, 2021, Petitioner filed a Brief on Exceptions to the Committee’s Report and recommendation. ODC filed a Brief Opposing Exceptions on July 28, 2021.

The Board adjudicated this matter at the meeting on October 25, 2021.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner is Brian Joseph Smith, born in 1964 and admitted to practice law in the Commonwealth in 1993. Petitioner is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

2. In July 2005, Petitioner started his own law practice, Brian J. Smith & Associates, P.C., and maintained an office in Huntingdon Valley, Pennsylvania. N.T. 30, 86; Joint Petition in Support of Discipline on Consent (“Joint Petition”).

3. By Order dated June 20, 2019, the Supreme Court of Pennsylvania suspended Petitioner from the practice of law for a period of one year and one day, effective July 21, 2020.

4. Petitioner’s suspension was based on his misconduct in two separate matters.

5. In the first matter, Petitioner filed a frivolous lawsuit in violation of New Jersey’s frivolous litigation statute. On April 13, 2018, the New Jersey court imposed sanctions on Petitioner in the amount of \$3,500 to cover a portion of attorney’s fees. Petitioner failed to pay the monies and on July 6, 2018, the court found Petitioner in contempt for violating the April 13, 2018 order, reduced to judgment the \$3,500 of sanctions, and required Petitioner to pay counsel fees in the amount of \$1,332.50 within ten days. Petitioner failed to comply and failed to respond to ODC’s DB-7 letter request for statement of his position. Joint Petition.

6. In the second matter, Petitioner failed to respond to the Pennsylvania Lawyers Fund for Client Security's request for an explanation of a shortfall in Petitioner's IOLTA. The Fund referred the matter to ODC, which requested records from Petitioner. Petitioner provided partial and incomplete records on several occasions but failed to provide complete records. Petitioner thereafter failed to respond to ODC's DB-7 request for statement of position. Joint Petition.

7. As of the date of the reinstatement hearing, Petitioner had not paid any amount of the sanctions, counsel fees or costs in connection with the July 6, 2018 New Jersey court order. N.T. 52.

8. Commencing in July 2019 and continuing to the present, Petitioner has been employed at Interstate Abstract, a title insurance company. Petitioner's initial role was to record deeds and mortgages. He later assumed a larger role as a licensed title agent and chief compliance officer, whereby he ensures that at each step of the process, the company is complying with the underwriter's best practices. These positions do not require a law license. N.T. 15, 16, 17, 62, 71.

9. Petitioner hand-delivered to his employer his notice of suspension with a copy of the order. N.T. 21.

10. Petitioner's name is not on the company letterhead and his signature and business cards do not include "Esquire." N.T. 63.

11. Petitioner does not have contact with individuals under circumstances where there is a reasonable probability that the individuals would infer he is an attorney in good standing. N.T. 64-65.

12. Petitioner's employment does not involve work of a legal nature and he does not engage in the unauthorized practice of law nor does he hold himself out as a lawyer. N.T. 17, 21-22, 65.

13. Interstate Abstract uses outside counsel for legal issues. N.T. 21.

14. Petitioner's salary earned from his work at Interstate Abstract is \$1,000 per week. N.T. 17.

15. Petitioner is married with three minor children. Due to the COVID-19 pandemic, Petitioner's wife did not work outside the home in order to homeschool the children. N.T. 18.

16. Petitioner testified about a judgment against his law firm and himself arising from a 2016 malpractice action filed by Mr. and Mrs. Margulies. ODC-2.

17. On October 25, 2018, the parties agreed to the terms of a settlement where Petitioner would pay \$2,000 to the Margulies and their attorneys before November 30, 2018, followed by 32 monthly payments in the amount of \$250.00. ODC-6, ODC-7.

18. Petitioner acknowledged receipt of the Margulies' signed settlement agreement, but did not execute the agreement or forward the initial \$2,000.00 payment. ODC-7.

19. On December 26, 2018, the Margulies filed a Petition to Enforce the settlement. *Id.*

20. Petitioner did not appear at the February 5, 2019 hearing on the Petition to Enforce and the court granted the Petition. The court ordered Petitioner

to pay the agreed amount of \$20,000.00 to the Margulies and an additional \$5,000 in attorney's fees within seven days of the order. ODC-8.

21. As of the date of the reinstatement hearing, Petitioner had not paid any amount of the settlement or attorney's fees owed in the Margulies matter. N.T. 56.

22. Petitioner carried malpractice insurance at the time of the malpractice action but did not turn over the claim to his carrier. N.T. 87.

23. Petitioner acknowledged his outstanding financial obligations and further testified that he has limited income and does not have the funds to pay the monies he owes relative to the malpractice action and the New Jersey action. N.T. 17-18, 26-28, 50, 55-56.

24. Petitioner credibly testified that he has not made attempts to communicate with those he owes money about a payment plan because he is reluctant to enter into conversations of payment plans when he does not have an ability to pay. He emphasized that he is not trying to avoid his obligations. N.T. 56, 77-79, 80-82.

25. Petitioner testified that he intends to resolve the judgments once he has financial ability to do so. N.T. 52, 57-58.

26. Petitioner testified that he has no one to blame but himself for his suspension and he has learned a difficult lesson. N.T. 29, 31.

27. Petitioner described his misconduct and acknowledged that he compounded his disciplinary problems by failing to respond to ODC's requests for

information. Petitioner testified that he understands his actions violated the ethical rules. N.T. 29-30, 34-42.

28. Petitioner described his experience as “devastating” and further testified, “I’m embarrassed that I brought this on not only myself, but the institution of the attorneys. I have so much respect for the bar and always have, and I did not hold up my end of the bargain.” N.T. 32, 45.

29. Petitioner also acknowledged that his actions brought shame and embarrassment on his family, which impacted him greatly. N.T. 29, 44.

30. Petitioner expressed extreme remorse and assured the Committee that he understands what he did and takes responsibility for his actions. N.T. 33, 44-45.

31. Petitioner testified that during his suspension he did a lot of “soul-searching” and realized that he has limitations and that running a law firm is not something he should be doing anymore, as he was overwhelmed by responsibilities, which in turn contributed to his misconduct. He expressed interest in a different career in the title insurance area and feels confident that this is an area where he can maintain the ethical standards expected of Pennsylvania attorneys. N.T. 30-31, 33-34, 43, 44, 80.

32. If reinstated, Petitioner desires to work in the capacity of general counsel for Interstate Abstract and its affiliated company, Realty Mark. Reinstatement Questionnaire (“R.Q.”) No. 18; N.T. 28, 73. Petitioner testified that



discussion with his employer as to income has to wait until he is reinstated. N.T. 76.

33. Petitioner completed the Continuing Legal Education requirements necessary for reinstatement. R.Q. No. 19(a); N.T. 46.

34. Petitioner remains current on all First American and Fidelity Insurance title insurance legal interpretations as well as other legal updates in conjunction with his title insurance work. R.Q. No. 19(b); N.T. 47.

35. Petitioner is admitted to practice in the State of New Jersey and notified that jurisdiction of his suspension in Pennsylvania. N.T. 58. There is currently a proceeding in New Jersey for reciprocal discipline. N.T. 61-62

36. Petitioner's testimony was credible.

37. Petitioner presented three witnesses, who testified credibly on his behalf.

38. Ramon Gaber has known Petitioner for approximately five years. Petitioner previously represented Realty Mark, a company owned by Mr. Gaber. N.T. 95, 100.

39. Mr. Gaber also owns Interstate Abstract and hired Petitioner in July 2019 to perform a variety of functions, including title recordings and updating the computer system to increase efficiency. Petitioner later became chief compliance officer. N.T. 92-94.

40. Mr. Gaber testified that he has been aware at all times of Petitioner's suspended law license, as Petitioner informed him of his status. N.T. 94, 100.

41. Mr. Gaber confirmed that Petitioner has not performed any law-related activities or provided any legal consultation or advice during his employment. N.T. 95, 96.

42. Mr. Gaber testified that Petitioner has been a good employee with an excellent quality of work. N.T. 102-103.

43. Mr. Gaber testified that he and Petitioner have not engaged in any discussions regarding salary or change in job duties because Petitioner has not been reinstated. Mr. Gaber testified that he would certainly visit that option, if the time comes. N.T. 99, 104.

44. Mr. Gaber testified that he thinks Petitioner is someone who would benefit the legal community if he was able to practice law again. N.T. 97.

45. Mr. Gaber believes that Petitioner possesses moral qualifications and character to practice law. N.T. 98.

46. Brian Bortner is the director of operations for Interstate Abstract and works closely with Petitioner. In the hierarchy of the company, Mr. Bortner described their positions as being on the same level, in that they both report to Mr. Gaber. N.T. 113-115, 119. Mr. Bortner confirmed that Petitioner does not provide legal advice to him or to Interstate Abstract. N.T. 115.

47. Mr. Bortner testified that Petitioner takes pride in his job. N.T. 117-118.

48. Mr. Bortner is aware that Petitioner is a suspended attorney because Petitioner told him around the time that Petitioner began working for Interstate Abstract. N.T. 120-121.

49. Joseph Diorio, Esquire has been a member of the Pennsylvania bar for 32 years and has known Petitioner for decades. N.T. 122-123.

50. Mr. Diorio worked for Petitioner as senior counsel at Petitioner's law firm for approximately six years. N.T. 123, 130.

51. Mr. Diorio is aware that Petitioner is a suspended attorney and is aware of the reasons for the suspension. N.T. 124, 132.

52. Following Petitioner's suspension, Petitioner sought Mr. Diorio's advice about the types of activities he could engage in and they agreed that he could not engage in any law-related activities. N.T. 125-126.

53. Mr. Diorio advised Petitioner to review his communications and whether or not they said "Esquire" and make sure everything was "cleansed" so that no one could form the impression that Petitioner was holding himself out as an attorney. N.T. 126-127.

54. Mr. Diorio testified that Petitioner is highly skilled in the law, based on his observations from when they practiced together. N.T. 127.

55. Mr. Diorio testified that Petitioner has shown contriteness for his actions, has been humbled by his disciplinary experience, and is an honest person worthy of trust who will be a benefit to the profession. N.T. 128, 134.

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 practice law in the 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 following his suspension for a period of one year and one day on consent, ordered by the Supreme Court of Pennsylvania on June 20, 2019. Petitioner was suspended for filing a frivolous lawsuit in New Jersey in violation of New Jersey statute, for which he was sanctioned by the court. Additionally, Petitioner failed to cooperate with ODC during its investigation of a separate matter by failing to produce complete records and failing to respond to requests for information.

Before the Board are the Committee's recommendation to deny Petitioner's reinstatement for failure to meet his burden under Pa.R.D.E. 218(c)(3), Petitioner's exceptions to the Committee's recommendation and his request that the Board recommend reinstatement and ODC's opposition to Petitioner's exceptions.

Pursuant to Rule 218(a)(1), Pa.R.D.E., an attorney who is suspended for a period exceeding one year may not resume the practice of law until reinstated by the Court. In order to gain reinstatement, Petitioner must prove 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 which gave rise to the lawyer’s suspension or disbarment, but rather, the nature and extent of the rehabilitative efforts he has 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).

The Board is not bound by the Committee’s recommendation to deny reinstatement. Pa.R.D.E. 218(c)(5). Upon an independent review of the record and all the facts therein, we conclude that Petitioner met his reinstatement burden and recommend that the Petition for Reinstatement be granted. Petitioner presented clear and convincing evidence that he spent his suspension period engaged in genuine rehabilitation and is fit to be reinstated to the practice of law through demonstration of his moral qualifications, competence and knowledge in the law. See, ***In the Matter of Stacy Parks Miller***, No. 32 DB 2017 (D. Bd. Rpt. 8/3/2021) (S. Ct. Order 8/31/2021); ***In the***

***Matter of Benjamin Hart Perkel***, No. 23 DB 2014 (D. Bd. Rpt.1/28/2021) (S. Ct. Order 3/15/2021).

The record demonstrated that Petitioner met his burden by clear and convincing evidence to show that he is morally qualified, competent and learned in the law. Petitioner offered credible testimony to explain the circumstances of his misconduct, but did not minimize his wrongful actions. Petitioner credibly and forthrightly accepted full responsibility for his underlying misconduct. Throughout the reinstatement hearing, Petitioner repeatedly expressed genuine remorse, shame and embarrassment, not only for himself, but for how his actions impacted his family and the legal profession. Moreover, the record demonstrated that Petitioner used his period of suspension from the legal profession as a time of self-reflection to assess what led to his misconduct and to determine how he can remedy those circumstances for the future. Petitioner realized that he was overwhelmed in his law practice and that there were limitations to what he could do. Petitioner ultimately reached the conclusion that a change of environment is necessary, as running a law practice is not a good option for him in the future. This self-assessment demonstrates genuine rehabilitation. Petitioner repeatedly testified that he does not want to find himself in similar disciplinary circumstances again, as they were devastating to him, and he assured the Committee that he will not repeat his misconduct in the future.

Petitioner frankly acknowledged his outstanding financial obligations resulting from the New Jersey matter and the Margulies lawsuit and conceded that he does not have the funds to pay those obligations, due to his limited income. Currently,

Petitioner earns \$1,000 per week and is the sole breadwinner for his family, as his wife has not worked outside the home during the COVID-19 pandemic in order to homeschool their three minor children. Petitioner further acknowledged that he has not reached out to make payment plans, but credibly testified that he intends to do so when he has an increased salary that would result from regaining his law license. Petitioner explained that he is reluctant to engage in conversations about payment plans until he actually has some ability to make payments and currently, he does not. Petitioner reiterated that he is not trying to avoid his obligations but needs to arrive at the point where he has income to begin repayment.

The Committee concluded that Petitioner's failure to take steps to set up payment plans to address his outstanding judgments evidenced his lack of rehabilitation and formed a basis to deny his reinstatement. While we understand the Committee's concerns, we find that the record established Petitioner's credible acknowledgment of his obligations and credible explanation for not having a payment plan. There is no evidence of record to suggest that Petitioner tried to conceal the circumstances surrounding his financial obligations.

Our review of prior matters reveals that nonpayment of outstanding financial obligations does not act as a bar to reinstatement. See, *In the Matter of Robert P. Maizel*, No. 26 DB 214 (D. Bd. Rpt. 10/15/2018) (S. Ct. Order 11/16/2018) (Court reinstated petitioner who had outstanding debt, failed to disclose debt related to taxes and omitted judgments on reinstatement questionnaire, established that he maintained continuous employment and arranged for payment plans in order to address debt); *In the*

***Matter of Bruce R. Akins, Sr.***, No. 58 DB 1989 (D. Bd. Rpt. 4/4/2017) (S. Ct. Order 5/12/2017) (Court reinstated petitioner who established that he was attempting to resolve his obligations by entering into repayment agreements); ***In the Matter of Richard M. Corcoran***, No. 74 DB 2009 (D. Bd. Rpt. 6/22/2016) (S. Ct. Order 8/11/2016) (Court reinstated petitioner who had significant debt and testified to attempts to satisfy obligation, maintained continuous employment during period of suspension, Board found that reinstatement would increase petitioner's opportunities for greater income to help pay off debt); ***In the Matter of Andrew Keith Fine***, No. 115 DB 1995 (D. Bd. Rpt. 1/24/2014) (S. Ct. Order 5/23/2014) (Court reinstated petitioner who had numerous judgments and made a good faith effort to try to resolve the debt).

In the cited matters, the petitioners took steps to address their debt; here, Petitioner has not arranged any payment plans but has credibly explained the basis for not doing so. Similar to the petitioners in the cited matters, Petitioner has maintained continuous employment during his suspension. We agree with the reasoning in ***Corcoran*** that reinstatement will increase Petitioner's opportunities to increase his income and address his judgments. Upon the totality of the circumstances of this matter, where Petitioner has been honest and forthright about his financial obligations, we conclude that Petitioner's failure to enter into a payment plan should not act as a bar to his reinstatement.

Throughout the duration of his suspension, Petitioner has been employed at Interstate Abstract. He is currently a licensed title agent and the chief compliance officer of the company, tasked with ensuring that at each step of the process, the company is



complying with the underwriter's best practices. In addition to these roles, Petitioner contributed his expertise to update Interstate Abstract's computer system. Petitioner expressed his intent to continue his employment with Interstate Abstract and expand that role to general counsel, if reinstated. Petitioner explained that discussions as to income are premature since he is not reinstated. Mr. Gaber, Petitioner's employer, confirmed that no such discussions have taken place due to the fact that Petitioner is not reinstated, but he would be willing to visit the topic when the time comes.

Petitioner's testimony was a point of contention for the Committee, who found Petitioner less than candid because it was "dubious" that Petitioner was "assured that if his law license was restored, he would be general counsel of Interstate Abstract and its affiliate, Realty Mark, yet Petitioner and Mr. Gaber had no discussion about what his potential income would be or his responsibilities in his new role." Hearing Committee Report at p. 10. Upon review, we have a different interpretation and find that the testimony of Petitioner and Mr. Gaber was not inherently contradictory. We find that Petitioner never testified that he was assured of the general counsel position, simply that he desired to move in that direction and that the discussion would wait until such time as Petitioner is reinstated. Mr. Gaber's testimony dovetails with that of Petitioner as Mr. Gaber testified he was agreeable to discussing options if Petitioner is reinstated.

The record established that during his period of suspension and while employed at interstate Abstract, Petitioner did not engage in the unauthorized practice of law and ensured that others did not form the impression that he was eligible to practice law. To that end, Petitioner sought advice as to the types of activities he could undertake

and was careful to avoid portraying himself as a lawyer in his communications. Further, Petitioner informed his employer and co-worker that he was a suspended attorney who was prohibited from practicing law. While suspended, Petitioner maintained his legal knowledge by completing required Continuing Legal Education courses and reviewing legal updates in the title insurance field.

Petitioner presented the uncontradicted testimony of three witnesses to support his position that he is fit to practice law. Mr. Gaber and Mr. Bortner, his co-worker at Interstate Abstract, credibly testified that Petitioner candidly discussed his suspension with them and that he is not permitted to practice law. Both witnesses confirmed that Petitioner has not engaged in the practice of law nor has he held himself out to others as a practicing lawyer. Mr. Gaber and Mr. Bortner offered credible testimony that Petitioner is a good employee with an excellent work ethic who takes pride in his job. Mr. Gaber and Mr. Bortner credibly testified that Petitioner's reinstatement would benefit the legal community, as he has the character and morals to be a lawyer.

Mr. Diorio has been a licensed Pennsylvania lawyer for more than three decades and has known Petitioner for many years. Mr. Diorio credibly testified that Petitioner is a highly skilled legal practitioner, based on Mr. Diorio's observations during the six-year time frame he worked with Petitioner at Petitioner's former law firm. Mr. Diorio credibly testified that Petitioner is an honest, trustworthy person who has shown contrition and humbleness. These characteristics reflect Petitioner's remorse and rehabilitation.

Petitioner has been suspended from the practice of law since June 20, 2019. Upon this record, we conclude that Petitioner is a moral, competent individual with

learning in the law whose reinstatement will be neither detrimental to the integrity and standing of the bar nor subversive of the public interest. Petitioner has demonstrated clearly and convincingly that he is fit to practice law. The Board recommends that the Petition for Reinstatement be granted.


V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Petitioner, Brian Joseph Smith, 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:   
Hon. Eugene F. Scanlon, Jr., Member

Date: 11-10-21