

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 2036 Disciplinary Docket No. 3
:
BENJAMIN HART PERKEL, : No. 23 DB 2014
:
: Attorney Registration No. 308095
:
PETITION FOR REINSTATEMENT : (Philadelphia)
:
:

ORDER

PER CURIAM

AND NOW, this 15th day of March, 2021, 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 03/15/2021

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 May 27, 2015, the Supreme Court of Pennsylvania suspended Benjamin Hart Perkel for a period of two years on consent, retroactive to June 12, 2014, the date of Mr. Perkel's temporary suspension. By Petition filed on December 16, 2019, Mr. Perkel seeks reinstatement to the bar in Pennsylvania. Office of Disciplinary Counsel filed a Response to Petition on May 19, 2020.

Following a prehearing conference, a District I Hearing Committee held a reinstatement hearing on September 2, 2020. Petitioner testified on his own behalf and presented four witnesses. Petitioner offered five exhibits, which were admitted into evidence. Office of Disciplinary Counsel did not present any witnesses or introduce any exhibits.

Petitioner filed a post-hearing brief in support of his reinstatement on October 30, 2020. Office of Disciplinary Counsel filed a letter on November 2, 2020, stating that it did not oppose Petitioner's reinstatement.

The Board adjudicated this matter at the meeting on January 21, 2021.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner is Benjamin Hart Perkel, born in 1983 and admitted to practice law in the Commonwealth of Pennsylvania in 2010. Petitioner's attorney registration address is 120 S. Mansfield Blvd., Cherry Hill NJ 08034.
2. From November 2011 until November 2012, Petitioner was employed as an independent staff attorney by Drinker Biddle & Reath, LLP ("the firm"). Ex. 3C, ¶ 10.
3. During his employment, Petitioner submitted inaccurate timesheets misrepresenting the number of hours he worked. Ex. 3C.

4. Petitioner over reported the time he spent reviewing documents and performing related tasks. Ex 3C, ¶¶ 16 - 28.

5. For the period November 28, 2011 through November 14, 2012, the actual time Petitioner spent reviewing documents and performing related tasks totaled 1,303 hours. Ex. 3C, ¶ 29.

6. For the period November 28, 2011 through November 14, 2012, Petitioner reported that he had spent time totaling 1,721.5 hours reviewing documents and performing related tasks. Ex. 3C, ¶ 30.

7. For the period November 28, 2011 through November 14, 2012, Petitioner over-reported his time by 418.5 hours. Ex. 3C, ¶ 31.

8. When the firm discovered the discrepancies, Petitioner acknowledged that a substantial portion of the time at issue was over-reported and thereafter, he was terminated from his employment. Ex. 3C, ¶¶ 33 - 36.

9. In March 2013, the firm and Petitioner, represented by counsel, agreed that Petitioner would pay \$12,250.00 to the firm to compensate for wages that Petitioner had received but not earned. At that time, Petitioner's counsel advised the firm that Petitioner would repay the monies when he had income. Ex. 3 C, ¶ 38.

10. When the firm discovered that Petitioner had over-reported the time he spent in performing his tasks, the firm had already billed the client for part of the over-reported time entries Petitioner had submitted. The amount

of Petitioner's over-reported time entries that was billed to and paid by the client totaled \$49,752.00. Ex. 3C, ¶ 41.

11. Petitioner self-reported his misconduct to Office of Disciplinary Counsel Ex. 3C, ¶ 45(g).

12. Petitioner voluntarily entered into a Joint Petition to Temporarily Suspend an Attorney, filed with the Court on February 21, 2014. Ex. 3C, ¶ 45(f).

13. By Order dated May 13, 2014, the Court placed Petitioner on temporary suspension from the practice of law.

14. Petitioner voluntarily entered into a Joint Petition in Support of Discipline on Consent for a two year suspension, wherein he acknowledged that he violated Rules of Professional Conduct 1.5(a), 4.1(a), 8.4(a) and 8.4(c). Ex. 3C.

15. In the Joint Petition, Petitioner attributed as a cause of his misconduct that he was suffering from, and receiving treatment for, Attention Deficit Disorder ("ADD") and depression. Ex. 3C, ¶ 46(a), (b), (c).

16. By Order dated May 27, 2015, the Court granted the Joint Petition and suspended Petitioner for a period of two years, retroactive to June 12, 2014.

17. In January 2015, Petitioner began making monthly \$100.00 payments to the firm. Ex. 3C, ¶¶ 39, 46(f). Petitioner repaid the firm in full for wages received as a result of his misconduct. Ex 3D.

Witness Testimony at Reinstatement Hearing

18. Allen Rubin, M.D. credibly testified as Petitioner's treating physician.

Dr. Rubin is board-certified in psychiatry and neurology. N.T. 11; Ex. 4C.

19. Dr. Rubin diagnosed Petitioner with ADD, executive system disorder, depression, anxiety, and mood disorder. N.T. 12-15. Ex. 4C; Ex 4D.

20. Dr. Rubin has treated Petitioner for these psychiatric conditions since 2001. Ex. 4D.

21. Dr. Rubin prescribed the medications Adderall, Zoloft and Xanax, which Petitioner took as prescribed during the course of treatment. N.T. 16-17.

22. Over the last two years, Dr. Rubin's treatment of Petitioner focused on continuity of medications and a review of Petitioner's status in order to determine any need for reconsideration of treatment, and Dr. Rubin testified that during that time, there has not been any reason to reconsider diagnosis or strategy. N.T. 42.

23. Over the past several years, Petitioner met with Dr. Rubin approximately two to three times per year for medication maintenance. N.T. 43-44.

24. Dr. Rubin testified that Petitioner's treatment has been supportive, and the diagnosed conditions have been stabilized and managed to the

extent that they have abated and require only maintenance therapy. N.T. 18; Ex. 4C.

25. Dr. Rubin testified that Petitioner's treatment has been very successful and he did not foresee a return to difficulties that would interfere with Petitioner's law practice or with his day-to-day interpersonal functions. Dr. Rubin described Petitioner's prognosis as excellent. N.T. 18-19; Ex. 4C.

26. Dr. Rubin testified that he "does not have any reservations" about Petitioner's ability to practice law and further testified that Petitioner is "very capable, conscientious, careful, considerate, moral and ethical." N.T. 49.

27. Dr. Rubin recently retired from practice and Petitioner's treatment will be overseen by Petitioner's primary care physician. Dr. Rubin has no concerns about this scenario. N.T. 29-30.

28. Frank Allen, Esquire credibly testified. Mr. Allen is a practicing attorney at Archer & Greiner and has been a member of the Pennsylvania bar since 1974. He has known Petitioner for fifteen years through Petitioner's father, who operates a litigation consulting business. N.T. 51-52.

29. Mr. Allen testified that Petitioner was employed as a law clerk at Archer & Greiner during Petitioner's law school years. Following Petitioner's ethical issues, Petitioner, as part of his father's litigation consulting business, worked in an administrative capacity in technology support. N.T. 53, 57.

30. Mr. Allen observed Petitioner's work product to be very good, describing Petitioner as creative and flexible. N.T. 62.

31. Mr. Allen testified that Petitioner was "very remorseful, humiliated, and shattered," as a result of his misconduct. N.T. 60.

32. Mr. Allen testified that he believes Petitioner's ethical issues were an anomaly, he trusts Petitioner, and he has no hesitation about Petitioner's return to the practice of law. N.T. 53.

33. According to Mr. Allen, Petitioner has taken responsibility for his actions and will be a service to the bar and an asset to any law firm and to the public. N.T. 53, 65.

34. Bruce Stern, Esquire credibly testified. Mr. Stern has been a member of the Pennsylvania bar since 1982 and currently practices primarily in New Jersey with the firm of Stark & Stark. N.T. 68.

35. Mr. Stern has known Petitioner for approximately six years through Petitioner's father, who acted as a litigation consultant for Stark & Stark. Petitioner assisted his father with technical support. N.T. 69.

36. Mr. Stern is aware of Petitioner's disciplinary history following conversations with Petitioner. N.T. 74, 75.

37. Mr. Stern testified that he would recommend Petitioner's reinstatement to practice because he has always found Petitioner to be honest and professional. N.T. 70.

38. Mr. Stern would recommend Petitioner as an attorney to others because Petitioner is "extremely bright and creative." N.T. 77.

39. Dr. Steven Perkel credibly testified. Dr. Perkel testified as a father, observer and as a work supervisor in support of his son's reinstatement. N.T. 81-91.

40. Following Petitioner's suspension, Petitioner joined Dr. Perkel's litigation consulting business in 2014. N.T. 81.

41. Dr. Perkel explained that the timing was good for Petitioner to join the business because the business was growing, and Dr. Perkel had been called away from some of his responsibilities in order to care for his ill wife. Petitioner was able to step in and assist in a number of areas. N.T. 81.

42. Upon Petitioner's joining the business, Dr. Perkel made it clear to Petitioner that there would be full disclosure of Petitioner's disciplinary status to clients. N.T. 82.

43. Currently, Petitioner acts as an operations manager for Dr. Perkel's business and among other duties is responsible for billing and supervising the bookkeeping. N.T. 84-85, 92.

44. Dr. Perkel testified that Petitioner's misconduct was a surprise, as Petitioner had been routinely and regularly honest and trustworthy throughout his life. N.T. 83.

45. Dr. Perkel described his son as reliable, trustworthy, and very bright. N.T. 84.

46. Dr. Perkel testified that Petitioner felt shame, remorse, and embarrassment as a consequence of his misconduct, and has worked hard to address his behavior. N.T. 86.

47. Dr. Perkel testified that Petitioner showed his remorse for his misconduct by apologizing numerous times and rebuilding his personal life and professional life in a transparent way. N.T. 97.

48. According to Dr. Perkel, Petitioner has changed since his misconduct in that he is more mindful of what it means to be a licensed professional. Dr. Perkel has also observed that Petitioner is more willing to seek advice about the work he is engaged in. N.T. 98-99.

49. Dr. Perkel has no concerns about how Petitioner is currently managing his ADD. N.T. 100.

50. Based on his observations these past years, Dr. Perkel feels assured that Petitioner's misconduct will not occur in the future and that Petitioner will be an asset to the legal community in Pennsylvania. N.T. 87.

51. Petitioner credibly testified on his own behalf.

52. Petitioner expressed sincere remorse, embarrassment and shame for his misconduct. N.T. 110.

53. Petitioner described his over-reporting of hours as a function of his poor timekeeping practices and realizes that he should have been more self-aware and should have known that his timekeeping had gotten too sloppy. N.T. 110-111.

54. Petitioner fully acknowledged that his misconduct was not just a mistake involving a simple discrepancy and the magnitude elevated it to the level of dishonest conduct. Petitioner further agreed that he displayed a “callous disregard for his responsibilities.” N.T. 115.

55. Petitioner has given a great deal of thought to the period of his life when he engaged in misconduct and has learned that being a lawyer is not just being part of a profession, but is about being held to a high standard of conduct. N.T. 111.

56. Petitioner has used his suspension as an opportunity to grow and to develop processes that will prevent similar misconduct in the future. Petitioner assured the Hearing Committee that the misconduct will not happen again. N.T. 111-112.

57. During his suspension, Petitioner utilized various techniques to be more self-aware of his conduct and he became better at seeking out assistance when needed. N.T. 119-120.

58. On January 12, 2017, Petitioner was suspended from the bar in New Jersey for three months, retroactive to May 27, 2015, as reciprocal discipline for the underlying misconduct. Petitioner was readmitted in New Jersey in 2017. Reinstatement Questionnaire, No. 7.

59. Even though eligible, Petitioner has not practiced law in New Jersey as he believed it was not a good time to return to practice. Petitioner wants to be more selective in how he proceeds with his career. N.T. 123-125.

60. If reinstated, Petitioner plans to practice in the Philadelphia area in a small setting, focusing on areas of interest such as intellectual property and elder law. N.T. 126; Reinstatement Questionnaire, No. 18.

61. Petitioner's work for Dr. Perkel's litigation consulting business has demonstrated that Petitioner has the ability to function in a professional capacity. N.T. 117.

62. Petitioner believes that some of the skills and experience he gained working with his father will translate well to opening a solo practice. N.T. 127.

63. During his suspension, Petitioner completed his Continuing Legal Education requirements for reinstatement and maintained currency in the law by reviewing numerous legal newsletters and publications. Reinstatement Questionnaire, No. 19.

64. Petitioner became involved in the American Society of Trial Consultants during his suspension period and has taken on active voluntary committee duties for that organization. N.T. 99.

65. During his suspension, Petitioner engaged in charitable activities by participating in Multiple Sclerosis fundraisers and making charitable donations to various causes, such as the SPCA and Brielle's Butterflies. N.T. 128-129.

66. In addition to letters from Mr. Stern, Mr. Allen and Dr. Perkel, Petitioner submitted two character reference letters in support of his reinstatement. Petition for Reinstatement, Ex. P.

67. 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 practice 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 following his suspension on consent for a period of two years, ordered by the Supreme Court of Pennsylvania on May 27, 2015, retroactive to June 12, 2014. 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. For the following reasons, the Board recommends that Petitioner's request for reinstatement be granted.

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). This burden is not light, and reinstatement is not automatic. 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 spent his suspension period engaged in genuine rehabilitation from his past transgressions. See, ***In the Matter of Robert Turnbull Hall***, No. 49 DB 2011 (D. Bd. Rpt. 6/8/2020) (S. Ct. Order 7/6/2020); ***In the Matter of Robert Toland, II***, No. 104 DB 2009 (D. Bd. Rpt. 11/1/2019) (S. Ct. Order 12/3/2019); ***In the Matter of Peter C. Ibe***, No. 7 DB 2014 (D. Bd. Rpt. 10/28/2019) (S. Ct. Order 12/3/2019); ***In the Matter of Robert P. Maizel***, No. 26 DB 2014 (D. Bd. Rpt. 10/15/2018) (S. Ct. Order 11/16/2018). Petitioner met the requirements of Rule 218(c)(3), Pa.R.D.E., by presenting credible evidence of his moral qualifications, competency and learning in the law. Although Petitioner's original dishonest conduct caused his suspension, he has clearly and convincingly demonstrated via his own testimony, the testimony of his witnesses, his character letters and other exhibits, that his reinstatement will not harm the public or be detrimental to the integrity of the profession.

Petitioner's suspension resulted from his submission of inaccurate timesheets to his employer whereby he over-reported the number of hours he billed by 418.5 hours. Upon the firm's discovery of the over-reporting, Petitioner admitted his

misconduct and subsequently reimbursed the firm in the amount of \$12,250.00 to compensate the firm for wages that Petitioner had received but had not earned.

After acknowledging his misconduct to the firm, who terminated his employment, Petitioner self-reported his transgressions to Office of Disciplinary Counsel. His cooperative actions continued when he agreed to a temporary suspension of his license and later consented to a two year period of suspension.

In the Joint Petition in Support of Discipline on Consent, Petitioner attributed as a cause of his ethical misconduct that he was suffering from psychiatric disorders and further indicated that he was receiving treatment for these disorders. A large portion of the reinstatement proceeding delved into these issues and the significant question of whether Petitioner has addressed his mental health disorders to the degree that he is able to meet his burden for reinstatement.

The record established that during his suspension, Petitioner concentrated on resolving his mental health issues and continued treatment for ADD, depression and related disorders. Dr. Rubin's credible testimony demonstrated that Petitioner has adhered to his treatment regimen of prescription medication and therapy and his disorders have been managed and have abated. Petitioner currently sees his physician several times a year for medication maintenance. Dr. Rubin offered that Petitioner's prognosis is excellent and he finds no reason that prevents Petitioner's return to the practice of law. Petitioner's own testimony reinforces that his mental health disorders are well in control. The evidence supports the conclusion that the psychiatric disorders raised

by Petitioner during his disciplinary proceedings have been appropriately addressed and do not pose an obstacle to Petitioner's reinstatement.

The evidence of record supports the conclusion that Petitioner is morally qualified and competent. Petitioner fully acknowledged his misconduct as a "callous disregard for his responsibilities" and clearly demonstrated genuine shame, embarrassment and remorse for his actions. Petitioner's suspension period has allowed him the opportunity to consider his unethical actions and address the behaviors that led to his misconduct. Petitioner directly assured the Committee, and by extension the profession, that his prior misconduct will not occur in the future.

During his suspension, Petitioner did not engage in the practice of law or in any other illegal or unethical activity. He worked for his father's litigation consulting business as an operations manager, handling billing, bookkeeping, technology issues, and other support tasks. During his time employed at his father's business, clients were informed up front of Petitioner's status as a suspended attorney. While suspended, Petitioner engaged in charitable efforts and was active in the American Society of Trial Consultants.

In addition to his own credible testimony communicating his contrition, the testimony of Petitioner's witnesses established that Petitioner has accepted full responsibility for his serious conduct and is remorseful. Attorneys Allen and Stern credibly testified on Petitioner's behalf. These attorneys utilized Dr. Perkel's consulting services and were favorably impressed with Petitioner's demeanor, intelligence, and creativity. Both attorneys found Petitioner to be honest and trustworthy, support

Petitioner's return to practice, and would not hesitate to recommend him as an attorney to others. Dr. Perkel credibly testified on Petitioner's behalf as to Petitioner's work endeavors, highlighting Petitioner's professionalism and reliability, and further testified on a more personal level to the positive changes Dr. Perkel has observed in his son since his misconduct. Consistent with the testimony of Messrs. Allen and Stern, Dr. Perkel testified that Petitioner is morally and ethically qualified for reinstatement and his past misconduct was an anomaly that would not be repeated, based on knowledge of Petitioner's character.

Petitioner demonstrated learning in the law by completing his required Continuing Legal Education credits and reviewing numerous legal periodicals. He has formulated a plan to resume practice in and around Philadelphia in the areas of law that interest him, namely intellectual property and elder law. Petitioner believes the skills and experiences he has gained working for his father's business will translate well to his return to legal practice. Although Petitioner has been eligible to practice law in New Jersey since 2017, he chose to delay resumption of practice until he solidified his career plans.

Petitioner has been suspended from the practice of law for more than six years. Upon this record, we conclude that Petitioner has met his burden of proof that his resumption of the practice of law within the Commonwealth 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.

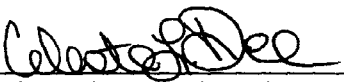
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Petitioner, Benjamin Hart Perkel, 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: 
Celeste L. Dee, Member

Date: 01/28/2021