

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 1696 Disciplinary Docket No. 3  
: :  
: No. 257 DB 2010  
ROBERT NEIL WILKEY : :  
: Attorney Registration No. 92443  
: :  
PETITION FOR REINSTATEMENT : (Chester County)  
: :  
: :

ORDER

**PER CURIAM:**

**AND NOW**, this 7<sup>th</sup> day of July, 2015, upon consideration of the Report and Recommendations of the Disciplinary Board dated June 10, 2015, 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. Pa.R.D.E. 218(f).

A True Copy Patricia Nicola  
As Of 7/7/2015

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 of November 15, 2013, the Supreme Court of Pennsylvania suspended Robert Neil Wilkey from the practice of law for a period of 30 months, retroactive to February 17, 2011. Mr. Wilkey filed a Petition for Reinstatement on July 3, 2014. Office of Disciplinary Counsel filed a Response to Petition on September 2, 2014 and does not oppose reinstatement.

A reinstatement hearing was held on November 7, 2014, before a District II Hearing Committee comprised of Chair Michael J. O'Connor, Esquire, and Members Dara Rosenthal, Esquire, and Jeffrey A. Krawitz, Esquire. Petitioner appeared *pro se*.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on March 4, 2015 and recommended that the Petition for Reinstatement be granted.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on April 23, 2015.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner is Robert Neil Wilkey. He was born in 1975 and was admitted to the practice of law in Pennsylvania in 2004. His attorney registration address is 200 Cambridge Way, Coatesville PA 19320. Petitioner is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

2. By Order dated November 15, 2013, the Supreme Court of Pennsylvania suspended Petitioner for a period of 30 months, retroactive to February 17, 2011. This suspension arose from Petitioner's conviction of three counts of Identity Theft, in violation of 18 Pa. C.S.A. §4120.

3. On May 24, 2010, Upper Saucon Township Police filed an Affidavit of Probable Cause alleging that Petitioner had committed three violations of Identity Theft. Specifically, the Affidavit of Probable Cause described three attempts made by Petitioner to obtain credit cards in the name of one Marco Orellana. During a police interview,

Petitioner admitted that he utilized Mr. Orellana's personal information in an effort to obtain three credit cards in Mr. Orellana's name, intended for Petitioner's personal financial use. Petitioner further acknowledged that he obtained Mr. Orellana's personal information through a lawyer-client relationship, although Mr. Orellana was not a retained client of Petitioner's then-employer, Pogust, Braslow & Millrood or any other law firm that employed Petitioner.

4. Petitioner had been issued a single Capital One credit card based on the identity theft and upon receiving the card, although he did not activate it or use the credit card or put any charges on the card, he had the intent to do so.

5. On November 22, 2010, Petitioner entered a written guilty plea to all counts in the Lehigh County Court of Common Pleas.

6. On December 9, 2010, Petitioner notified the Office of the Secretary to the Disciplinary Board, in writing, of his criminal matter. Further, he stated that from on or about June 23, 2010, he had been on involuntary inactive status. Finally, Petitioner explained that in November of 2009, he had been referred by Lawyers Concerned for Lawyers to Sharon M. Richter, Psy.D, ICADC, CAC, and had pursued treatment related to a gambling addiction.

7. On December 20, 2010, the Honorable William H. Platt sentenced Petitioner to probation for a period of 30 months with supervision transferred to Chester County, and imposed a fine of \$1,250.00. As a condition, the Court required Petitioner to remain in the gambling program and to strictly follow any treatment plan determined by the providers.

8. At the time Petitioner committed his crimes, he was associated with the law firm of Pogust, Braslow & Millrood, LLC, located in Conshohocken, Pennsylvania.

9. The investigation into these crimes began in 2009.
10. In or around July of 2009, Petitioner realized that he was under investigation.
11. Petitioner engaged an attorney to represent him, who called the investigating officer and requested a meeting.
12. On July 16, 2009, Petitioner and his attorney met with the officer, and Petitioner acknowledged that he was responsible for the fraudulent credit card application.
13. At around that same time, Petitioner's employment with the Pogust firm ended.
14. Shortly thereafter, Petitioner found employment with the law firm of Villari, Brandes & Giannone, P.C. in Conshohocken, as a senior associate.
15. Although Petitioner's crimes did not occur during the time he worked at the Villari Firm, he was employed by the firm at the time of his arrest and guilty plea.
16. As a result of his arrest, guilty plea, voluntary inactive status and eventual suspension from the practice of law, the Villari Firm could no longer employ Petitioner as an associate.
17. The Villari Firm employs Petitioner as an independent contractor, handling clerical and administrative functions on an as-needed basis. Firm partners were in communication with the Office of Disciplinary Counsel and the Executive Office of the Disciplinary Board, and have made all necessary efforts to comply with applicable provisions of Pa.R.D.E. 217, including filing the required Notice of Employment with the Secretary to the Disciplinary Board pursuant to Rule 217(j)(5), Pa.R.D.E.

18. In December 2010, Petitioner and Office of Disciplinary Counsel entered into a Joint Petition for Temporary License Suspension which the Court granted by Order dated February 17, 2011.

19. Petitioner cooperated with Office of Disciplinary Counsel throughout the process and expressed his willingness to accept discipline arising from his criminal conviction. Petitioner's cooperation resulted in a Joint Petition in Support of Discipline on Consent, which the Supreme Court approved.

20. Petitioner had no record of discipline prior to the suspension arising out of his conviction.

21. Since November 17, 2009, Petitioner has been involved in extensive programs focused on treatment for a gambling addiction, rehabilitation, volunteerism and outreach, all to further and strengthen his recovery.

22. According to Dr. Sharon Richter, Petitioner's formal treatment commenced by an evaluation on November 17, 2009 resulting from a Lawyers Concerned for Lawyers ("LCL") request regarding a gambling problem. Petitioner was given a DSM-IV-TR diagnosis of pathologic gambler. Hearing Transcript Exh. 4

23. At the time of Dr. Richter's June 10, 2014 letter, it was noted that Dr. Richter had met with Petitioner twenty-two (22) times. She noted Petitioner's progress in terms of recovery and treatment, all relating to Petitioner's maintaining full-time employment, being an active member of Gamblers Anonymous ("GA") and benefitting from LCL since November 2009, and serving as an LCL volunteer since August 2012, as well as being an active participant and volunteer with his church.

24. Accordingly, Dr. Richter opined that, "In my professional opinion, Mr. Wilkey continues working a significant recovery program... has an excellent support

network in place...is proactive in all the right areas and I very strongly support him in his desire to return to practicing law." Hearing Transcript, Exh. 4.

25. Dr. Richter's opinions are supplemented by the testimony of Charles P. Mirarchi, Esquire and Nova Wilkey, Petitioner's spouse.

26. Mr. Mirarchi is a licensed professional counselor with a certification in gambling, as well as a licensed Pennsylvania attorney. N.T. 55-56. He provided credible testimony on behalf of Petitioner.

27. Mr. Mirarchi evaluated Petitioner as a pathological gambler, which assessment is consistent with that of Dr. Richter. N.T. 67-68.

28. In discussing Petitioner's progress in recovery over the past five years, Mr. Mirarchi observed that, "Robert has made a tremendous stride in his behavioral change." N.T. 69

29. Mr. Mirarchi emphasized how Petitioner gives back to his community, is devoted to his wife and son, works for his church and volunteers for LCL. N.T. 69

30. According to Mr. Mirarchi, Petitioner has made and continues to make recovery a first priority, has been open and honest about his recovery, maintains a number of coping and treatment skills, and has not exhibited any symptoms of relapse. Mr. Mirarchi opined that Petitioner is going to continue to make an excellent person in society as well as an excellent attorney. N.T. 71, 75, 78-79, 82

31. Mrs. Nova Wilkey credibly testified on behalf of her husband. She confirmed that Petitioner has abstained from gambling and related activities since 2009 and goes weekly to Gamblers Anonymous. N.T. 94

32. Mrs. Wilkey has not observed any relapses by Petitioner during this time frame. N.T. 94

33. Mrs. Wilkey indicated that she continues to observe a character change in Petitioner during his recovery, specifically noting that they are closer as a family, spending more quality time together and focusing on communication. N.T. 100-101

34. Peter Villari, Esquire is the managing shareholder at the firm of Villari, Brandes & Giannone, P.C. He provided credible testimony on behalf of Petitioner.

35. Petitioner was originally hired as a senior associate by the Villari firm in July 2009. After his inactive status and through his suspension period, he has been employed as a law clerk/administrative assistant. N.T. 25-31

36. With regard to Petitioner's work as a senior associate, Mr. Villari stated that there were "no complaints whatsoever...Robert turned out to be, from a capability point of view, exactly what he said he was and exactly what his prior employer said he was [and] the personality fit, he fit very, very well within the firm, he was very respectful of other people, intellectually was at a level we wanted [and] we were very pleased, we were very pleased." N.T. 27-28

37. Petitioner's work performance as a law clerk continued to be "very acceptable, exemplary, meticulous." N.T. 36, 37

38. During the period of inactivity and suspension starting in June 2010 to present, Petitioner has not entered or made any court appearances; has not been involved in any negotiations or settlements; has not handled client funds; and, has not been engaged in the practice of law. N.T. 35-36; 44

39. Mr. Villari further expressed his beliefs in Petitioner's fitness and character to resume the practice of law, noting that, "I think Robert, watching what he's gone through in four years, particularly accepting responsibility and being a father,



eminently qualifies him to again accept responsibility of being a lawyer...And I saw, you know – beyond wanting to be a lawyer again and doing everything that was asked of him, he has this – he's driven again to want to practice. And the work he does for us is meticulous at the level it's at." N.T. 39

40. The Villari firm plans to hire Petitioner as an associate upon reinstatement. N.T. 40

41. Petitioner testified on his own behalf.

42. Petitioner has been in recovery for five years from a gambling addiction. He first became active in LCL and GA in 2009. N.T. 9

43. Petitioner's involvement in GA has been an integral and necessary part of his recovery process, including his transition to being able to assist others. Petitioner continues to attend GA meetings once per week. N.T. 107

44. Petitioner is grateful that he has not experienced a relapse since entering recovery. N.T. 125

45. Petitioner's involvement through the years with respect to GA and LCL has transitioned to where "he is at the level now where he feels comfortable enough to sponsor people... and a sponsor is someone who is a mentor and takes the new gambler under his wing and imparts the knowledge to him that he has learned and hopefully made a difference in their life." Petitioner has been a sponsor to several people. N.T. 74

46. The scope and involvement in assisting others has been significant, whereby Petitioner has "had an opportunity since 2010, to serve as a Chapter secretary and call volunteer with GA in the Broomall and East Goshen Chapters, working with

priests, bankers, financial planners, housewives, IT consultants, and even medical professionals, all whom have suffered from compulsive gambling." N.T. 12-13

47. As an LCL volunteer, Petitioner has "had the opportunity to assist a countless number of lawyers in recovery, including providing them one-on-one recovery support, counseling and providing them various financial and pressure relief-related services." Petitioner continues to participate in national and in-state LCL trainings and conferences. N.T. 13-14.

48. Petitioner describes LCL as "a blessing" and is committed to being an active participant for the rest of his life in LCL and GA. N.T. 109-110.

49. Petitioner expressed sincere remorse for his misconduct and recognition for the impact his wrongdoing had on the profession.

50. Prior to his recovery, Petitioner did not feel accountable to anyone in his life, but feels accountable now to his recovery, his family and his employer. N.T. 122

51. Petitioner acknowledged that he has a strong support network that has enabled his recovery. N.T. 129

52. Petitioner maintained his competency in the law by reading weekly legal periodicals, journals and law review articles, and keeping up-to-date with the federal, Pennsylvania and local rules.

53. Petitioner has fulfilled the requisite number of continuing legal education courses in support of his reinstatement.

54. Office of Disciplinary Counsel does not oppose reinstatement.

### III. CONCLUSIONS OF LAW

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

IV. DISCUSSION

Petitioner seeks readmission to the practice of law in Pennsylvania following suspension for a period of 30 months, retroactive to February 17, 2011. A reinstatement proceeding is an 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, 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 Newspapers, Inc. v. Disciplinary Board of the Supreme Court*, 363 A.2d 779 (Pa. 1976).

Petitioner was suspended for his criminal conviction of three counts of identity theft. This misconduct occurred while Petitioner was an active gambling addict. Petitioner is extremely remorseful for his misconduct and has fully acknowledged his wrongdoing as evidenced by his cooperation with the Office of Disciplinary Counsel during the disciplinary phase of this proceeding and his consensual acceptance of discipline.

Petitioner has taken measures to seek and receive appropriate treatment for his gambling addiction. These measures date back to November 2009 and include evaluation and counseling with Dr. Sharon Richter, as well as active participation in

Gamblers Anonymous and Lawyers Concerned for Lawyers. Dr. Richter's letter and the testimony of Charles Mirarchi, a licensed gambling counselor, indicate that Petitioner has made significant progress in his rehabilitation and recovery, and has suffered no relapses. Both of these professionals have concluded that Petitioner is fit to resume the practice of law.

Petitioner's persuasive testimony demonstrated his readiness to resume the practice of law. He credibly described the clear changes in his life since entering recovery from gambling. Petitioner has been unwavering in his efforts to rehabilitate himself. Not only has he actively worked his own recovery, he has transitioned to a place where he is able to assist other gamblers in recovery, both in GA and LCL. Petitioner called LCL and GA "blessings." Petitioner explained that he never felt accountable for his actions when he was gambling but now the opposite is true. He testified that he feels accountable to his family and employer and relies on that strong sense of responsibility to help him maintain his recovery. According to Petitioner, recovery is his first priority. He fully understands the dire consequences of losing his job and his family if he relapses.

Petitioner's wife attested to the positive changes in Petitioner's character since 2009 and wholeheartedly supports his reinstatement. Petitioner's impressive relationship with his wife and young son evidence a family support system that has positively contributed to his continuing recovery.

Also supportive of reinstatement is Petitioner's employer, Peter Villari, Esquire. Mr. Villari and members of his firm have been impressed with Petitioner since the inception of his employment as a senior associate. They were willing to take a chance with Petitioner and maintain his employment as a law clerk/assistant despite his past

wrongdoing because his work was meticulous and exemplary. The Villari firm intends to employ Petitioner as an associate upon reinstatement.

Petitioner has fulfilled his Continuing Legal Education requirements and has maintained his currency in the law by reading and reviewing legal periodicals, journals and law reviews.

We conclude from the evidence of record that Petitioner has met his burden pursuant to Rule 218(c)(3) and we recommend that he be reinstated to the practice of law.

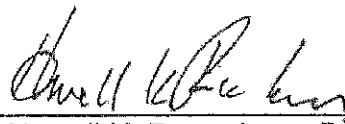
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Petitioner, Robert Neil Wilkey, 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:   
Howell K. Rosenberg, Board Chair

Date: June 10, 2015