

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 1150 Disciplinary Docket No. 3
: :
: No. 39 DB 2005
RONALD I. KAPLAN : :
: Attorney Registration No. 34822
: :
PETITION FOR REINSTATEMENT : (Philadelphia)

ORDER

PER CURIAM:

AND NOW, this 24th day of July, 2009, the Petition to Withdraw Reinstatement Application is hereby denied and, upon consideration of the Report and Recommendations of the Disciplinary Board dated April 22, 2009, the Petition for Reinstatement is denied.

Pursuant to Rule 218(e), Pa.R.D.E., petitioner is directed to pay the expenses incurred by the Board in the investigation and processing of the Petition for Reinstatement.

A True Copy John A. Vaskov

As of: July 24, 2009

Attest:

Deputy Prothonotary

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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PETITION FOR REINSTATEMENT : :
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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 the Supreme Court of Pennsylvania dated August 2, 2006, Ronald I. Kaplan was suspended for a period of one year and one day. Mr. Kaplan filed a Petition for Reinstatement to the bar of the Supreme Court of Pennsylvania on April 21,

2008. Office of Disciplinary Counsel conducted an investigation of the Petition and by Response dated June 23, 2008, stated its opposition to the reinstatement.

A reinstatement hearing was held on September 8, 2009, before a District I Hearing Committee comprised of Chair Paul J. Gontarek, Esquire, and Members Edward F. Shay, Esquire, and Alexandra C. Gaugler, Esquire. Petitioner was represented by Samuel C. Stretton, Esquire. Petitioner testified on his own behalf and presented the testimony of three witnesses. He presented the testimony of 12 witnesses via stipulation. Office of Disciplinary Counsel presented the testimony of one witness.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on January 16, 2009, and recommended that the Petition for Reinstatement be denied.

Petitioner filed a Brief on Exceptions on February 11, 2009 and requested oral argument before the Disciplinary Board.

Office of Disciplinary Counsel filed a Brief Opposing Exceptions on March 3, 2009.

Oral argument was held on March 26, 2009, before a three-member panel of the Disciplinary Board.

This matter was adjudicated by the Disciplinary Board at the meeting on March 31, 2009.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner is Ronald I. Kaplan. He was born in 1957 and was admitted to the practice of law in Pennsylvania in 1981. His current business address is 1337 Wolf Street, Philadelphia PA 19148.

2. On August 2, 2006, Petitioner was suspended from the practice of law for a period of one year and one day by Order of the Supreme Court of Pennsylvania.

3. The underlying misconduct consisted of violations of Rules of Professional Conduct 1.15(a), 1.15(b) and 8.4(c). Petitioner's IOLTA account was out of trust for certain periods of time. On several occasions, the end-of-the-day balances in the IOLTA account were negative and on numerous occasions the end-of-the-day balances were minimal in comparison to the amount that Petitioner was required to hold in trust at that time. During the time his IOLTA was out of trust, Petitioner made 16 unidentified withdrawals and issued checks for his own use. Petitioner used fiduciary funds for his own use and commingled personal funds. He failed to maintain complete records of fiduciary funds. Petitioner indicated that he misused approximately \$30,000 during the time frame of the misconduct.

4. During the time period of the misconduct, Petitioner had not filed income tax returns for four years. As a result, the Internal Revenue Service froze Petitioner's operating account, and he began using his escrow account.

5. At the disciplinary hearing on the underlying misconduct, Petitioner proved that he suffered from a serious depressive condition that either caused or significantly contributed to his misconduct. This fact was considered in mitigation.

6. Petitioner was disbarred by reciprocal discipline in New Jersey. Because of the misuse of funds, New Jersey requires disbarment.

7. After his suspension in 2006, Petitioner ceased practicing law. He notified all clients of his suspension and filed a timely Certificate of Compliance with the Secretary of the Disciplinary Board.

8. Petitioner has not held himself out as a practicing lawyer.

9. Petitioner's name appeared in the 2007 Philadelphia Legal Directory, even though Petitioner had notified the Directory that he was no longer a lawyer. Petitioner was not aware that his name had still appeared.

10. While Petitioner is listed as an attorney on copies of his tax returns, he did advise his accountant of his status as a suspended attorney. Petitioner crossed out the word "attorney" when he filed the returns.

11. Since October 2006, Petitioner has worked as a secretary/legal assistant for Eric Linder, Esquire. Mr. Linder's office is located in South Philadelphia at 1337 Wolf Street.

12. Petitioner's responsibilities are that of a secretary as well as assisting Attorney Linder with drafting pleadings, scheduling depositions, and performing legal research.

13. Petitioner failed to timely file the notice of engagement with Secretary of the Disciplinary Board as required by Rule 217(j)(5), Pa.R.D.E.

14. Petitioner indicated that the notice was supposed to be sent in 2006, but for some reason, was not mailed to the Secretary until 2008 due to an oversight.

15. In April 2008, Petitioner filed the notice of engagement along with the Petition for Reinstatement.

16. While employed by Attorney Linder, Petitioner has been fully supervised by Attorney Linder and has not appeared in court or at depositions.

17. Petitioner's name is listed on Mr. Linder's letterhead as a legal assistant.

18. Petitioner receives a salary of \$25,000. He receives no other income.

19. Petitioner has received some referral fees from a law firm to which he had referred a client prior to his suspension. The referral fees were approximately \$15,000.

20. On April 21, 2008, Petitioner filed a Petition for Reinstatement and Reinstatement Questionnaire with the Disciplinary Board.

21. Petitioner failed to list two open judgments in the Court of Common Pleas of Philadelphia County in response to Question 10(c) of the Reinstatement Questionnaire.

22. Petitioner failed to list one open judgment in the Court of Common Pleas of Delaware County in response to Question 10(c) of the Reinstatement Questionnaire.

23. Petitioner failed to list three open judgments in Philadelphia Municipal Court in response to Question 10(c) of the Reinstatement Questionnaire.

24. Petitioner explained that in preparing his Questionnaire, there were several judgments that he missed and several which he thought had been satisfied. Petitioner did not explain why he did not perform a more thorough search.

25. After Disciplinary Counsel advised Petitioner of the additional judgments, he supplemented his Questionnaire.

26. Petitioner failed to list a criminal conviction for retail theft in response to Question 9 of the Reinstatement Questionnaire. He entered a plea of guilty to one count of retail theft on September 6, 1983. This conviction occurred two years after Petitioner was admitted to the bar in Pennsylvania.

27. Petitioner admitted that he failed to list the conviction and explained that the omission was unintentional and he had forgotten about it.

28. A suit was filed against Petitioner by Attorney David Denenberg for monies that were owed to a medical provider. The case was marked settled. A Motion to Enforce the Settlement was filed in September of 2006 and an Order was entered on October 16, 2006, for the original amount of judgment of \$602, plus attorney's fee of \$350. As of the date of the reinstatement hearing, the amount was still not paid.

29. Petitioner admitted that he inadvertently paid the client instead of the medical provider. Petitioner spoke to Attorney Denenberg after the case was settled and

told him that he was not in a financial position to pay the bill, but would do so when he was able.

30. By letter dated December 8, 2006, to Petitioner, Attorney Denenberg requested payment of the judgment entered against Petitioner.

31. By letter of May 14, 2007, to Petitioner, Attorney Denenberg again requested that Petitioner contact him in regard to the judgment.

32. By letter dated August 30, 2007, to Petitioner, Mr. Denenberg requested that Petitioner contact him to resolve the matter.

33. Petitioner did not contact Mr. Denenberg in response to the December 8, 2006, May 14, 2007, or August 30, 2007 letters or at any time in 2008 in regard to the judgment.

34. While Attorney Denenberg indicated it was possible that he might have received and forgotten about a telephone conversation with Petitioner, he usually would have entered a note in his file about such a call. His file has no note of a phone call.

35. Petitioner indicated that he would try to pay Mr. Denenberg \$50 per month.

36. Petitioner owes money to the Internal Revenue Service, Pennsylvania Department of Revenue and Philadelphia Revenue Department.

37. Since his suspension, Petitioner has filed all of his tax returns on a current basis, does not owe any money on most of them and owes no current taxes.

38. Some of Petitioner's past due taxes have been paid from his tax refunds.

39. Petitioner complied with Disciplinary Counsel's request for additional tax information and sent his tax returns as requested. He failed to provide copies of the actual tax returns he filed.

40. Other than the monies owed to Mr. Denenberg, Petitioner has paid all monies due to clients and medical providers for whom he was holding money out of personal injury settlements.

41. Petitioner paid all costs for the prior disciplinary proceeding.

42. Petitioner no longer suffers from the depression that was a significant cause of his underlying misconduct. He takes the medications Paxil and Wellbutrin and sees his physician on a monthly basis. Other family problems that contributed to the depression have been resolved.

43. If reinstated, Petitioner would most likely practice with Attorney Linder.

44. Petitioner fulfilled his Continuing Legal Education credits necessary for reinstatement and has performed research on a variety of legal topics and has reviewed legal journals and advance sheets.

45. Petitioner presented the testimony of three witnesses. Glenn Morris, Esquire, John D'Lauro, Esquire, and Eric Linder, Esquire, are all attorneys licensed to practice law in Pennsylvania and support Petitioner's reinstatement.

46. Office of Disciplinary Counsel opposes reinstatement.

III. CONCLUSIONS OF LAW

1. Petitioner has not met his burden of proving by clear and convincing evidence that he is competent to practice law in Pennsylvania.

2. Petitioner has not demonstrated 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.

IV. DISCUSSION

Petitioner seeks reinstatement to the bar of the Supreme Court of Pennsylvania following his suspension for a period of one year and one day, which was imposed by Order of the Court dated August 2, 2006. In support of his Petition, Petitioner filed a Reinstatement Questionnaire, testified on his own behalf, and presented the testimony of three witnesses, as well as 12 additional witnesses via stipulation.

Pursuant to Rule 218(a), an attorney who is suspended for a period exceeding one year may not resume the practice of law until reinstated by the Supreme Court of Pennsylvania. In order for Petitioner to gain reinstatement, he has the 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 this Commonwealth. In addition, Petitioner has the burden of demonstrating that his

resumption of the practice of law will not be detrimental to the integrity and standing of the bar or administration of justice nor subversive of the public interest. Rule 218(c)(3)(i), Pa.R.D.E.

The 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 but rather the nature and extent of the rehabilitative efforts the lawyer 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, 363 A.2d 779 (Pa. 1976).

Petitioner's suspension was the result of his misconduct involving failing to hold client funds separate from his own, failing to notify clients upon the receipt of funds and failing to promptly deliver the funds, and engaging in conduct involving dishonesty or misrepresentation. Petitioner commingled funds in his escrow account and converted them to his own use. The discipline imposed took into account mitigating evidence of severe depression from which Petitioner had suffered at pertinent times.

Following the close of the record, the Hearing Committee found that Petitioner lacked current competency, which would be detrimental to the integrity and standing of the bar and not in the best interests of the public. The Committee found that Petitioner had multiple defects in his case for reinstatement, which he could not persuasively explain. The Committee recommended that the Petition for Reinstatement be denied.

The Board has thoroughly reviewed the record and heard oral argument from Petitioner and Office of Disciplinary Counsel. The Board concludes that Petitioner did not meet his burden of proving by clear and convincing evidence that he has the competence required for admission to practice law in this Commonwealth.

Petitioner omitted information on his Reinstatement Questionnaire. The Questionnaire is a lengthy document which requests detailed information regarding Petitioner's history and activities. In its totality, it provides information to Office of Disciplinary Counsel and the Board critical to the determination of Petitioner's fitness. Petitioner omitted a retail theft conviction which occurred after he was admitted to the practice of law in Pennsylvania. His explanation was that he forgot about it and did not purposefully fail to reveal the conviction on his Questionnaire. The Hearing Committee found that Petitioner's answer was not intentionally misleading, and the Board concurs with the Committee's finding. However, the Board finds that Petitioner's response was inadequate and not persuasive as to his failure to list his conviction. The fact that Petitioner could forget about a criminal conviction that happened while he was a lawyer is troubling. Such negligence in connection with an important personal matter raises questions as to Petitioner's competence.

Petitioner omitted six unsatisfied judgments which could have been found by a more thorough records search. Petitioner did not convincingly explain why he did not conduct a more thorough search. Again, issues of his competence are raised by his failure

to perform a diligent judgment search in response to a direct question on the Questionnaire.

Petitioner failed to properly handle communications concerning his debt to Attorney Denenberg. A judgment was entered against him, which he did not list on his Questionnaire. Over the course of approximately eight months, Attorney Denenberg sent three letters to Petitioner regarding the judgment, but Petitioner never responded in writing or by telephone. As of the time of the reinstatement hearing, the monies were still owed to Mr. Denenberg. While Petitioner explained that he did not have the funds to pay Attorney Denenberg, he should have demonstrated more responsiveness and professional courtesy towards the repeated requests to address the matter.

Post-suspension, in October 2006, Petitioner obtained employment as a secretary/legal assistant to Attorney Eric Linder in South Philadelphia. While Petitioner believed that he had properly notified the Disciplinary Board regarding this employment, pursuant to Rule 217(j)(5), Pa.R.D.E., in fact he had not done so. The notice of employment was not sent to the Secretary of the Board until April 2008, some 18 months after Petitioner was employed by Attorney Linder. This failure was explained as an oversight.

It has been previously held that a defective questionnaire should not be a bar to reinstatement where the petitioner testified at the hearing and fully explained the discrepancies. In re Anonymous No. 1 DB 73, 29 Pa. D. & C. 3d 407 (1995), Matter of Creem, No. 118 DB 2004, 1166 Disciplinary Docket No. 3 (Pa. Nov. 21, 2008).

Conversely, the Board has concluded that a petitioner lacks current competency when he engages in a pattern of inaccuracies pertaining to the Questionnaire and exhibits an inability to answer questions pertaining to the Questionnaire at the reinstatement hearing. Matter of Marvin F. Galfand, 25 DB 2004, 1083 Disciplinary Docket No. 3 (Pa. Nov. 5, 2008).

In the instant matter, Petitioner did not fully explain the various discrepancies in the Questionnaire to the satisfaction of the Hearing Committee and the Board. In addition, Petitioner's mishandling of his debt to Attorney Denenberg and his mishandling of the notice of employment to the Disciplinary Board do not provide any level of comfort as to Petitioner's competence. Taken alone, each instance may not have warranted denying reinstatement. However, when viewed together, the appropriate conclusion is that Petitioner lacks the competence to return to the practice of law at this time.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the petition for reinstatement of Petitioner, Ronald D. Kaplan, be denied.

The Board further recommends that, pursuant to Rule 218(e), 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: 

Stewart L. Cohen, Board Member

Date: April 22, 2009

Board Member Gentile did not participate in the adjudication.

Board Member Jefferies was absent and did not participate in the adjudication.