

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 2054 Disciplinary Docket No. 3
: :
LYNN MARIETTA NICHOLS : No. 49 DB 2014
: :
: Attorney Registration No. 64598
: :
: (Philadelphia)
PETITION FOR REINSTATEMENT

ORDER

PER CURIAM

AND NOW, this 15th day November, 2018, 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 11/15/2018

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

By Order dated December 19, 2016, the Supreme Court of Pennsylvania suspended Lynn Marietta Nichols, Petitioner, from the practice of law for a period of thirty months, retroactive to July 17, 2014. On July 3, 2017, Petitioner filed a Petition for Reinstatement to the bar. Office of Disciplinary Counsel filed a Response to Petition for Reinstatement on September 26, 2017.

A reinstatement hearing was held on November 16 and December 11, 2017, before a District I Hearing Committee. Petitioner was represented by counsel and called ten witnesses, including an expert psychologist, and testified on her own behalf. Petitioner introduced Exhibits P-1 through P-4 into evidence. Office of Disciplinary Counsel presented one witness and introduced Exhibits ODC-2 through ODC-4 into evidence.

Petitioner filed a Brief in Support of Petition for Reinstatement on January 25, 2018. Office of Disciplinary Counsel filed a Reply Brief on February 13, 2018.

The Hearing Committee filed a Report on May 14, 2018, and recommended that Petitioner be reinstated to the practice of law.

The parties did not file exceptions to the Hearing Committee's Report and recommendation.

The Board adjudicated this matter at the meeting on July 20, 2018.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner is Lynn Marietta Nichols, born in 1966 and admitted to practice law in the Commonwealth of Pennsylvania in 1992. Petitioner is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

2. Subsequent to her admission to the bar in 1992, Petitioner became employed with the Philadelphia District Attorney's Office and over the course of twenty years, rose to the position of Assistant Chief of Homicide. N.T. 12/11/17 at 138-155.

3. During this same time period, Petitioner was the sole parent of her son, who presently is a college student in Ohio. N.T. 12/11/17 at 122.

4. In 2012, in order to benefit her then boyfriend, Petitioner wrongfully convinced a Philadelphia police detective to remove a vehicle from stolen status. ODC-4, Ex. 2 at ¶¶ 9-14.

5. Subsequently, upon learning that her boyfriend was involved with another woman, Petitioner assisted the other woman in filing a false police report in Philadelphia relating to the aforesaid vehicle, and she also filed a false report in New Jersey. ODC-4, Ex. 2 at ¶¶ 18-28.

6. On February 21, 2014, Petitioner entered a plea of guilty to Criminal Mischief under 18 Pa.C.S. §3304(3). She was sentenced to twelve months of non-reporting probation, restitution and court costs. Petitioner met all requirements of her probation, which was terminated early on December 18, 2014. ODC-4, Ex. 4.

7. Petitioner consented to a temporary suspension of her law license, effective July 17, 2014. ODC-4, Ex. 2.

8. By Order of the Supreme Court dated December 19, 2016, retroactive to July 17, 2014, Petitioner was suspended for a period of thirty months from the practice of law in the Commonwealth of Pennsylvania. ODC-4, Ex. 1.

9. Petitioner testified credibly at the reinstatement hearing on December 11, 2017.

10. Petitioner acknowledged her wrongdoing and accepted full responsibility for her actions. N.T. 12/11/2017 at 188 -193.

11. Petitioner expressed sincere regret and remorse regarding her misconduct by testifying that “it is something that I am completely ashamed of. I mean, completely.” N.T. 12/11/17 at 188.

12. Petitioner testified that she “absolutely” understands that she violated the public’s trust in her. N.T. 12/11/17 at 281

13. Petitioner testified that in or about 1999 through 2009, she underwent psychological counseling for anxiety issues with Clara Perkins, PhD. In addition to talk therapy, Dr. Perkins suggested that Petitioner use yoga, meditation, and nutritional supplements to help her deal with anxiety and stress. N.T. 12/11/17 at 160-161.

14. After her misconduct, Petitioner resumed treatment with Dr. Perkins and underwent therapy until 2014. N.T. 12/11/17 at 156-163.

15. Dr. Perkins testified at Petitioner’s underlying disciplinary proceeding in 2015 and had opined that Petitioner “should undergo a rigorous treatment regimen for her [Post-Traumatic Stress Disorder] for a period of at least two years with a reassessment at its completion to determine if [Petitioner] is a further risk.” ODC-4, Ex. 2 at 55.

16. For financial reasons, and because Petitioner believed she was successful managing her mental health through her own treatment regimen, Petitioner did not follow the recommendation of Dr. Perkins. N.T. 12/11/17 at 161, 166-172, 187.

17. During her suspension, Petitioner used a combination of church counseling and support, meditation, yoga, nutritional supplements, and the support of her husband, Dennis Lee, whom she married in 2017, to bring herself to a new level of emotional and mental stability. N.T. 12/11/17 at 67-69, 124, 179-187.

18. Petitioner testified that she has had the opportunity to reflect on her actions and has learned a lot about herself, including what her stressors are and how to manage them. N.T. 12/11/17 at 248-249.

19. Petitioner testified that she understands the importance of using professional therapy if stressors in her life increase. N.T. 12/11/17 at 179-187.

20. Petitioner testified that she has gone through a life transformation and that she is committed to ensuring that if she is reinstated, she will never be in the same position again. N.T. 12/11/17 at 248-249.

21. Petitioner is an active member of the Enon Tabernacle Baptist Church, where she serves as a Congregational Caregiver and participates in various support groups. N.T. 12/11/17 at 175, 183-187.

22. In December of 2015, while a suspended attorney, Petitioner was hired as a legal secretary by Leonard Hill & Associates in Philadelphia and remains employed in that capacity to the present day. N.T. 12/11/17 at 195-197; N.T. 11/16/17 at 136-145.

23. At the inception of her employment, Petitioner notified the Board by letter of her engagement as a legal secretary with Mr. Hill's firm, in accordance with Rule 217, Pa.R.D.E. N.T. 12/11/17 at 261. Petitioner was aware that she was not allowed to do any legal work, other than administrative functions. *Id.* at 262.

24. At the time of her employment in December of 2015, Petitioner did not advise Mr. Hill that he needed to send a letter to the Board, as she testified she was unaware of that requirement. N.T. 12/11/17 at 261-262. Mr. Hill's firm sent a letter to the Board in September of 2017, after Petitioner was advised by Office of Disciplinary Counsel of the necessity of doing so. *Id.*; P-3.

25. Petitioner has not engaged in the unauthorized practice of law while suspended.

26. Petitioner fulfilled the requirements for Continuing Legal Education necessary for reinstatement. ODC-4, Ex. 10.

27. While suspended, Petitioner read the Philadelphia Lawyer and the Legal Intelligencer, and reviewed the Pennsylvania Rules of Civil Procedure in order to become familiar with the rules regarding civil cases. ODC-4, No. 19(b).

28. Petitioner presented the expert testimony of Kirk Heilbrun, PhD, a board-certified psychologist. Dr. Heilbrun's Report dated November 14, 2017 was admitted into evidence. P-2.

29. Dr. Heilbrun met with Petitioner on October 20, 2017 for approximately six hours. He evaluated her and administered standard tests for symptoms

of mental and emotional functioning. He also conducted collateral interviews of Dennis Lee and Leonard Hill. N.T. 11/16/17 at 31.

30. Dr. Heilbrun credibly testified that Petitioner does not currently suffer from Post-Traumatic Stress Disorder or any other active mental disorder that would currently cause a loss of her functional capabilities, and she has developed appropriate coping mechanisms to handle stress. N.T. 11/16/17 at 44-45, 59.

31. Dr. Heilbrun concluded that Petitioner's current mental and physical health regimen is sufficient for her to maintain good mental health and allow her to work effectively as an attorney. N.T. 11/16/17 at 45-47; P-2.

32. Petitioner presented the credible testimony of nine character witnesses.

33. Leonard Hill, Esquire, has practiced law in Pennsylvania since 1998. Since December of 2015, Mr. Hill has employed Petitioner to handle administrative duties at his office. Mr. Hill did not know Petitioner prior to that time, but after learning that Petitioner was looking for employment, he talked to at least ten people about Petitioner's situation as a suspended attorney, interviewed her, and felt comfortable hiring her. N.T. 11/16/17 at 132, 136, 140, 142.

34. Mr. Hill testified that Petitioner is organized, meets deadlines, takes initiative and has done very well. N.T. 11/16/17 at 140, 142.

35. Mr. Hill testified that Petitioner is able to handle the stress of a busy practice in her capacity as a secretary. N.T. 11/16/17 at 146. He understands that this is

different stress than that of a practicing attorney, but in his opinion, Petitioner will be able to manage the stress of trial practice and do it well. *Id.* at 148.

36. If Petitioner is reinstated, Mr. Hill intends to employ her as an attorney with his firm. N.T. 11/16/17 at 165.

37. David Maselli, Esquire, has been practicing law in Pennsylvania since 1993 and is a senior attorney at Leonard Hill & Associates. He has known Petitioner for approximately two years in her capacity as a secretary at the firm. N.T. 11/16/17 at 172.

38. Mr. Maselli testified that Petitioner is completely trustworthy and has the highest integrity and moral qualifications to be a lawyer. N.T. 11/16/17 at 180.

39. Mr. Maselli testified that it would reflect very well on the profession if Petitioner was reinstated, as she is intelligent, honest, and calm. N.T. 11/16/17 at 181.

40. Mr. Maselli testified that Petitioner talked with him about her misconduct and took full responsibility for her actions. N.T. 11/16/17 at 191.

41. Pauline Manos, Esquire, has practiced law in Pennsylvania since 2000 and knows Petitioner because they are neighbors. N.T. 11/16/17 at 196-197.

42. Ms. Manos testified that Petitioner immediately took responsibility for her actions, showed remorse and has worked very hard to regain her reputation in the legal community. N.T. 11/16/17 at 196-202, 214.

43. Ms. Manos testified that Petitioner's reinstatement would reflect well on the profession, as she is hard-working and honest. N.T. 11/16/17 at 204-206.

44. Thomas McGill, Esquire, has practiced criminal law in Philadelphia for forty-two years and has known Petitioner for twenty-five years. N.T. 11/16/17 at 218-219, 227.

45. Mr. McGill testified that Petitioner has a good reputation in the legal community and that she expressed tremendous remorse for her misconduct. N.T. 11/16/17 at 219-221.

46. Mr. McGill testified that Petitioner has the moral qualifications and the talent to be a credit to the legal profession. N.T. 11/16/17 at 223.

47. Carol Sweeney, Esquire, was admitted to practice in Pennsylvania in 1977 and currently is retired. She has known Petitioner since the 1990s, when they worked together at the Philadelphia District Attorney's Office, and they remain close friends. N.T. 11/16/17 at 230-231, 236.

48. Ms. Sweeney testified that during her years at the District Attorney's Office, Petitioner had an outstanding reputation. N.T. 11/16/17 at 234-235.

49. Ms. Sweeney testified that Petitioner took responsibility for her misconduct and continues to have a good reputation in the legal community. N.T. 11/16/17 at 238.

50. Ms. Sweeney testified that if reinstated, Petitioner would be a "phenomenal" addition to the bar. N.T. 11/16/17 at 239.

51. Charlotte Nichols, Esquire, was admitted to the bar in Pennsylvania in 1973 and currently is retired. Although Ms. Nichols has the same last name as Petitioner, she is not a relative. Ms. Nichols met Petitioner when Ms. Nichols was an

adjunct professor at Temple University Law School and Petitioner was a student. N.T. 11/16/17 at 265-266.

52. Ms. Nichols testified that after Petitioner's misconduct, Petitioner reached out to Ms. Nichols to express remorse and to take responsibility for her actions. N.T. 11/16/17 at 268, 270.

53. Ms. Nichols testified that Petitioner has the intellectual and moral qualifications to perform well as an attorney. N.T. 11/16/17 at 272.

54. Kevin Harden, Jr., Esquire, has practiced law in the Commonwealth since 2010 and is currently an attorney at the law firm of Ross Feller Casey, LLP in Philadelphia. He holds several leadership positions on legal committees. Mr. Harden worked for Petitioner at the Philadelphia District Attorney's Office, where she was his chief. N.T. 11/16/17 at 295-298.

55. Mr. Harden testified that Petitioner is well-respected and an excellent trial lawyer. N.T. 11/16/17 at 303-308.

56. After her misconduct, Petitioner reached out to apologize to Mr. Harden. N.T. 11/16/17 at 309.

57. Mr. Harden testified that Petitioner has the moral qualifications to be reinstated and that her reinstatement would reflect well on the profession. N.T. 11/16/17 at 313, 315.

58. Carmen Lineberger, Esquire, is an Assistant United States Attorney in Florida. Ms. Lineberger is a very close friend of Petitioner, and has known her since

1991, when they were co-workers at the Philadelphia District Attorney's Office. N.T. 12/11/17 at 7-8.

59. Ms. Lineberger testified that Petitioner is a hard-working, diligent and trustworthy individual who was devastated by the impact of her misconduct. N.T. 12/11/17 at 9, 12.

60. Ms. Lineberger testified that Petitioner expressed remorse and sorrow to her regarding the misconduct. N.T. 12/11/17 at 15.

61. Ms. Lineberger testified that Petitioner is "at the best place she has been in her life right now in a lot of different ways." N.T. 12/11/17 at 13.

62. Dennis Lee is Petitioner's husband. Mr. Lee met Petitioner in 2015 and they have been married since 2017. N.T. 12/11/17 at 60.

63. Mr. Lee testified that Petitioner's current mental health is "great." N.T. 12/11/17 at 69, 110. In addition to Petitioner's ability to receive counseling from their church, Petitioner and Mr. Lee communicate regularly and exercise together to relieve stress. *Id.* at 72 – 78.

64. Mr. Lee testified that he has no concerns about Petitioner's ability to handle the stress of law practice, as she has a strong support system. N.T. 12/11/17 at 77.

65. V. Jon Sherman testified on behalf of Office of Disciplinary Counsel. He is an auditor-investigator employed by the Office. Mr. Sherman has been a practicing accountant for forty-two years, but he is not a CPA nor does he have prior experience with 457(b) retirement plans.

66. After reviewing Petitioner's 2014 and 2015 tax returns, Mr. Sherman testified that in his opinion, Petitioner should have declared revenue received for a 457(b) retirement plan as taxable income on her Pennsylvania return. Mr. Sherman's opinion was based primarily on the fact that he found no proof that the funds were taxed at the time the investments were made. N.T. 12/11/17 at 289-309.

67. Petitioner testified that it was her understanding that the investments were taxed when invested in the 1990s but she no longer had those documents. N.T. 12/11/17 at 269.

68. Mr. Sherman testified that he does not know whether the investments were taxed at the time the investments were made. N.T. 12/11/17 at 312.

III. CONCLUSIONS OF LAW

1. Petitioner demonstrated by clear and convincing evidence that she has the moral qualifications, competency and learning in the law required for admission to the practice of law in this Commonwealth. Rule 218(c)(3), Pa.R.D.E.

2. Petitioner demonstrated by clear and convincing evidence that her 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 in Pennsylvania following her suspension for a period of thirty months, imposed by the Supreme Court of Pennsylvania on December 19, 2016, retroactive to July 17, 2014. Petitioner's misconduct involved her February 21, 2014 conviction for criminal mischief.

Petitioner bears the burden of proving by evidence that is clear and convincing, that she is morally qualified, competent and learned in the law and that her 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 has met her reinstatement burden and we recommend that the Petition for Reinstatement be granted.

Petitioner was suspended as a result of her conviction for criminal mischief, for which she was sentenced to twelve months of non-reporting probation, restitution and costs. Petitioner, a former Assistant Chief of Homicide in the Philadelphia District Attorney's Office, fully acknowledged her criminal misconduct and that her actions

warranted suspension of her license to practice law. Petitioner served her probation without incident and it was terminated early. Petitioner never tried to minimize or justify her criminal conduct and fully appreciates that in her capacity as a public official, she violated the public's trust in her.

Petitioner presented credible and substantial evidence to show her remorse, rehabilitation, good character, competency and learning in the law. Throughout the reinstatement process, Petitioner repeatedly expressed her sincere regret and remorse for her misconduct, and repeatedly accepted full responsibility for her actions.

The record demonstrates that Petitioner was at a very low point in her life following her misconduct and the suspension of her law license, but has been able to rehabilitate herself and is by all accounts a stronger individual who is fit to practice law and whose reinstatement will not harm the public or be detrimental to the integrity of the profession.

Office of Disciplinary Counsel raised several concerns in response to Petitioner's request for reinstatement: Petitioner's failure to inform her present employer of the requirement under Rule 217(j), Pa.R.D.E., to file a notice with the Board of her engagement as a legal secretary; an allegation that Petitioner failed to properly report income acquired through retirement plans; and, Petitioner's current mental health status. The Board concludes from the evidence of record that Petitioner satisfactorily addressed each concern and these issues do not constitute an impediment to reinstatement.

We find no merit to Office of Disciplinary Counsel's concerns regarding the employment notice and the tax issue. Petitioner submitted the appropriate notification

letter to the Board upon her employment with Mr. Hill's law firm. Although she did not advise Mr. Hill to send a separate engagement letter at that time, upon being advised by Office of Disciplinary Counsel in September of 2017 that a letter from Mr. Hill was required under the rules, Petitioner ensured that the letter was submitted. Further, there is no evidence that Petitioner engaged in the impermissible practice of law while suspended. As to Office of Disciplinary Counsel's allegation that Petitioner failed to properly report income acquired through retirement plans, we find no support for this allegation in the record.

Office of Disciplinary Counsel questioned Petitioner's current mental health and ability to withstand the rigors and stresses of practicing law, emphasizing that Petitioner did not follow the recommendation of Dr. Clara Perkins, her former therapist, who opined at the disciplinary hearing in 2015 that Petitioner should undergo a treatment regimen for Post-Traumatic Stress Disorder for two years, with a reassessment thereafter. We find that Petitioner was not required to undergo therapy, as Dr. Perkins' recommendation was not mandated in the Supreme Court's Order of December 19, 2016. However, while Petitioner did not participate in formal treatment during her suspension, she credibly testified at the reinstatement hearing that she recognized the need to manage stress and anxiety during her suspension and employed other forms of therapy recommended by Dr. Perkins, including yoga, meditation, and nutritional supplements. In addition, Petitioner received pastoral counseling through her church and became involved in church support groups and other activities, which she found very beneficial to her overall emotional health. Petitioner developed a strong support system consisting of her

husband, family and friends, all of whom are aware of and appreciate the difficulties she went through and who stand ready to assist her.

Petitioner's expert witness, Dr. Kirk Heilbrun, provided credible testimony at the reinstatement hearing that Petitioner's mental health is good, that she currently does not suffer from Post-Traumatic Stress Disorder or any other active mental disorder and does not presently need psychological therapy, and that Petitioner has established habits and routines as well as a support system to maintain good mental health, which would allow her to absorb the stress that occurs as a practicing attorney. Upon this record, we conclude that Petitioner has satisfactorily addressed her mental health issues and has clearly and convincingly demonstrated her fitness to practice law.

The credible testimony of Petitioner's character witnesses supports the conclusion that Petitioner is rehabilitated from her misconduct and is professionally and morally fit. Petitioner presented testimony from eight attorneys and her husband, most of whom have known Petitioner for many years. The testimony of these witnesses as to Petitioner's competency, moral character, acceptance of responsibility and remorse is very compelling. All of the character witnesses described Petitioner's genuine expressions of sorrow and shame for her actions and her determination never to repeat the misconduct of the past. The witnesses described Petitioner's reputation in the community as well-respected by her colleagues for her skill, preparation and integrity, qualities which will serve her well upon reinstatement. These witnesses provided clear and convincing evidence that Petitioner has the moral qualifications and competency in the law to be reinstated.

During her suspension, Petitioner obtained employment as a legal secretary at Leonard Hill & Associates and used her considerable organizational skills and diligence to become a valued employee. Upon reinstatement, Petitioner will have an employment opportunity with Mr. Hill that will provide her with challenges in a collaborative and supportive setting.

In addition to working as a legal secretary, Petitioner fulfilled her Continuing Legal Education requirements necessary for reinstatement, and kept apprised of the law by reading various legal periodicals and the Pennsylvania Rules of Civil Procedure.

Upon this record, Petitioner has met her reinstatement burden by clear and convincing evidence that she is morally qualified, competent and learned in the law, and of equal importance, that her reinstatement will not be detrimental to the public or to the profession. Petitioner is fit to resume the practice of law. For all of the above reasons, we recommend that the Petition for Reinstatement be granted.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Petitioner, Lynn Marietta Nichols, 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: Andrew J. Trevelise
Andrew J. Trevelise, Vice-Chair

Date: 10/9/2018