

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 733 Disciplinary Docket No. 3
: :
: No. 53 DB 2002
DAN W. SUSI : :
: Attorney Registration No. 41829
: :
PETITION FOR REINSTATEMENT : (Erie County)


ORDER

PER CURIAM:

AND NOW, this 22nd day of August, 2012, upon consideration of the Report and Recommendations of the Disciplinary Board dated May 25, 2012, the Petition for Reinstatement is granted.

Pursuant to Rule 218(f), 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 Patricia Nicola
As Of 8/22/2012

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 the Supreme Court dated October 9, 2003, Dan W. Susi was suspended from the practice of law for a period of five years, retroactive to July 9, 2003. Mr. Susi filed a Petition for Reinstatement on August 27, 2009. Office of Disciplinary Counsel filed a Response on December 4, 2009 and opposed the reinstatement. A reinstatement hearing was held on February 16, 2010, after which time the Committee recommended that the Petition be denied. As a result of this recommendation, Petitioner

requested leave to withdraw the Petition which was granted without prejudice by Board Order of July 6, 2010.

Petitioner filed a second Petition for Reinstatement on March 30, 2011. Office of Disciplinary Counsel filed a Response on June 3, 2011.

A reinstatement hearing was held on August 30, 2011, before a District IV Hearing Committee comprised of Chair Eric G. Soller, Esquire, and Members William D. Phillips, Esquire, and Elizabeth J. Hughes, Esquire. Petitioner was represented by Peter J. Sala, Esquire. Petitioner testified on his own behalf and offered the testimony of five witnesses. He introduced eight exhibits. Office of Disciplinary Counsel introduced four exhibits.

The Hearing Committee filed a Report on January 19, 2012 and recommended that the Petition for Reinstatement be granted.

This matter was adjudicated by the Disciplinary Board at the meeting on March 21, 2012.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner is Dan W. Susi. He was born in 1958 and was admitted to the practice of law in the Commonwealth of Pennsylvania in 1984. His current address is 714 Sassafra Street, Erie PA 16506. Petitioner is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

2. Following his admission to the Pennsylvania bar, Petitioner practiced law in Erie as a sole practitioner. He served as an Assistant Public Defender from 1988 to 1992.

3. Petitioner served as Solicitor of LeBeouf Township from 1995 to 2000, Solicitor for the Erie County Board of Assessment Appeals from 1993 until 2000, and was employed by the Pennsylvania Department of Revenue from 1988 through 1996.

4. Petitioner was suspended for a period of five years as a result of a 2001 conviction for two counts of indecent assault and one count of furnishing alcohol to a minor.

5. Petitioner was sentenced in 2001 to 90 days to one year imprisonment, with work release for the first 30 days and electronic monitoring for 60 days thereafter, a \$300 fine, 100 hours of community service, completion of the Sex Offenders Program and two years of probation.

6. While on probation, Petitioner attended 46 out of 48 Integrated Adult Sex Offenders' Program (IASOP) sessions, with Petitioner obtaining permission to be excused from the other two sessions.

7. Petitioner's probation was revoked on April 8, 2003 for technical violations, meaning no new charges. He was incarcerated continuously from March 6, 2003 to November 6, 2004.

8. After release from incarceration on November 6, 2004, Petitioner participated in and successfully completed his remaining four months in the IASOP at which point he was discharged from probation in March of 2005.

9. Since his release from incarceration on November 6, 2004, Petitioner has had no further involvement with the criminal system.

10. Petitioner received counseling from Manuel J. Manolios, LCSW, BCD, CCGC, of Pittsburgh for over two years beginning January 30, 2001.

11. Mr. Manolios died in the fall of 2003, and Petitioner discontinued treatment at that time.

12. Petitioner was evaluated by Dr. Robert Dowling, a licensed clinical and forensic psychologist, during meetings on August 17, 2010, August 24, 2010, September 7, 2010, September 16, 2010 and August 5, 2011, with each meeting lasting two to three hours. (P.E. 2)

13. Dr. Dowling administered to Petitioner a variety of personality tests, and two tests designed to estimate an individual's recidivism potential. Dr. Dowling administered to Petitioner one test that specifically tested for denial of issues related to an individual's offense.

14. Dr. Dowling credibly testified at the reinstatement hearing. He opined that both recidivism tests administered to Petitioner "indicated a relatively low level of recidivism potential." (N.T. 85)

15. Dr. Dowling opined that the sincerity of Petitioner's remorse is "very sincere, and I think deeply felt, as best I can judge it." (N.T. 93).

16. Dr. Dowling opined that, "The personality test results taken together showed, I thought, a pretty well-adjusted individual without any evidence of any psychopathology or psychopathy or any adjustment problems that I saw needed - that would require any mental health treatment." (N.T. 94)

17. Dr. Dowling opined that he "did not find the presence of any diagnosable mental disorder or adjustment problems," or any drug or alcohol problems. (N.T. 94)

18. Dr. Dowling opined that Petitioner does not have a narcissistic personality disorder, although he does have certain narcissistic traits. (N.T. 96-97)

19. Dr. Dowling opined that Petitioner does not have any psychological impairment that would indicate the need for psychological treatment. (N.T. 94, 97, 126)

20. Dr. Dowling opined that he found no moral deficiency with Petitioner. (N.T. 98)

21. Dr. Dowling opined that Petitioner's probable recidivism rate is low. (N.T. 98)

22. Dr. Dowling opined that it is "highly unlikely" that Petitioner would engage in behaviors that would be detrimental to the integrity of the bar, or would behave in a manner that would subvert the public interest. (N.T. 98-99).

23. Dr. Dowling opined that Petitioner is fit to resume the practice of law. (N.T. 99)

24. Petitioner offered the testimony of four character witnesses.

25. Donald L. Wright, Jr., Esquire is a licensed Pennsylvania attorney who has known Petitioner for approximately 25 years. Mr. Wright offered credible testimony that Petitioner had a sterling reputation as a legal practitioner and his reinstatement would not diminish the reputation of the bar.

26. John Carlson, Esquire is a licensed Pennsylvania attorney who has known Petitioner since 1996. Mr. Carlson offered credible testimony that Petitioner has "come a long way" since his criminal conviction and is now a stable family man. (N.T. 16-17, 23). Petitioner personally expressed remorse to Mr. Carlson, who believes that Petitioner's readmission to the bar would not be detrimental to the integrity of the bar.

27. Robert Casillo has known Petitioner for more than 25 years. Mr. Casillo worked with Petitioner on a professional basis when he was a Department of Revenue enforcement agent and Petitioner was its counsel. Mr. Casillo characterized Petitioner's work for the Department of Revenue as "excellent." He offered credible testimony that Petitioner has accepted responsibility for his actions and his resumption of the practice of law would be an asset to the community. (N.T. 74-76)

28. Shelly Sharp is Petitioner's fiancée and the mother of his young daughter. They have lived together for approximately seven years. She described him as a caring, kind and helpful person who is devoted to their daughter.

29. Petitioner introduced four letters of reference in support of his reinstatement. (P.E. 3,4,6,7) Thomas Talarico, Esquire, Jack Daneri, Esquire, and John R. Falcone, Esquire, are licensed Pennsylvania attorneys who practice law in Erie and have known Petitioner for many years. Each believes that Petitioner's reinstatement would not be detrimental to the reputation of the legal profession in Erie. Mr. Talarico, in particular, noted positive changes in Petitioner. Mr. Talarico testified at Petitioner's first reinstatement hearing and believed that Petitioner had difficulty in accepting responsibility for his actions. Currently, Mr. Talarico has had opportunities to meet with Petitioner and to discuss the subject of remorse. He described Petitioner as remorseful and accepting of the harm he caused. Charlesea Sharp is the college-aged daughter of Petitioner's fiancée and wrote movingly of Petitioner's supportive role in her life.

30. Petitioner testified on his own behalf. He is very remorseful for the underlying misconduct and has accepted responsibility for his actions. He apologized to the victim of his crime in open court at his original sentencing in November of 2001.

31. Petitioner regrets the way he handled the circumstances of his probation violation, which led to his incarceration.

32. Petitioner has had no arrests since his release from incarceration on November 6, 2004.

33. During his suspension, Petitioner did not engage in the practice of law. He was a landlord and spent a large amount of time remodeling investment properties, as well as doing remodeling projects for friends and relatives.

34. Petitioner was able to spend quality time with his daughter and fiancée, as well as his mother, who has supported him both financially and emotionally during his suspension.

35. Petitioner fulfilled the requirements necessary for his Continuing Legal Education obligations.

36. Petitioner read the Erie County Legal Journal and other topical news magazines and newspapers to keep current in the law and legal trends.

37. If reinstated, Petitioner intends to return to private practice in Erie in the areas of real estate, wills, estate administration, civil litigation and basic criminal defense.

38. Petitioner was unanimously appointed to the Erie City Sewer Authority in April 2011. The Authority reviews all capital projects and makes bonding decisions.
(P.E. 5)

39. Office of Disciplinary Counsel does not oppose reinstatement.

III. CONCLUSIONS OF LAW

1. Petitioner established by clear and convincing evidence that he possesses the moral qualifications, competency and learning in the law required for admission to the practice of law in Pennsylvania. Pa.R.D.E. 218(c)(3).

2. Petitioner established 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. Pa.R.D.E. 218(c)(3).

IV. DISCUSSION

Petitioner seeks readmission to the bar from a suspension of five years imposed on October 9, 2003, made retroactive to July 19, 2003. Pursuant to Rule 218(a), 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 Supreme Court of Pennsylvania. Petitioner carries 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 must establish 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), Pa.R.D.E.

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, but rather the nature

and extent of the rehabilitation efforts the lawyer has made since the time that 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 underlying misconduct consists of his conviction of two counts of indecent assault and one count of selling or furnishing liquor to a minor. This was serious misconduct that resulted in a lengthy suspension. Petitioner has been eligible to apply for reinstatement since 2008 and filed his first Petition for Reinstatement in 2009. He voluntarily withdrew that Petition in 2010 after a hearing committee recommended denying his reinstatement based on a failure to demonstrate moral qualifications necessary for reinstatement. That committee noted Petitioner's lack of expert testimony on his mental health issues, which had been identified in his criminal conviction matter. The evidence submitted at the second reinstatement hearing demonstrates that Petitioner has come to terms with his misconduct, understands the nature of his errors, and is not predisposed to future ethical wrongdoings.

Subsequent to the first reinstatement hearing, Petitioner was evaluated by Dr. Robert Dowling, a licensed clinical and forensic psychologist, on five occasions, each lasting several hours. Dr. Dowling administered numerous personality tests and recidivism tests to Petitioner. Dr. Dowling credibly testified that these tests, taken as a whole, showed a well-adjusted individual without any evidence of problems that would indicate the necessity for any mental health treatment. Further, the chance of Petitioner engaging in recidivistic behavior is on a low level, and it is highly unlikely that Petitioner would engage in behavior detrimental to the integrity of the bar. Dr. Dowling opined that Petitioner is fit to resume the practice of law.

Petitioner offered the testimony of four character witnesses. The testimony of Donald L. Wright Jr., Esquire, Robert Casillo and John Carlson, Esquire was especially persuasive as each of these witnesses has known Petitioner for some length of time and is personally aware of Petitioner's expressions of remorse. These witnesses support Petitioner's return to the legal profession in Erie. Additionally, Petitioner submitted letters of reference from individuals. The letter submitted by Thomas Talarico, Esquire, is compelling as Mr. Talarico testified at Petitioner's first reinstatement hearing as to doubts he had of Petitioner's remorse at that time. Currently, Mr. Talarico finds Petitioner to be remorseful and accepting of responsibility. Petitioner's unanimous appointment to the Erie Sewer Authority is indicative of the support Petitioner has in the community.

Petitioner's testimony was credible as to his sincere remorse and regret. He accepts full responsibility for his actions and has had ample opportunity during his suspension to reflect on his behavior. Petitioner has not performed any legal work during his suspension and has devoted his time to making improvements to his investment properties and spending time with family, particularly his young daughter and his mother. Petitioner kept current in the law by reading various legal journals and taking required Continuing Legal Education courses. If reinstated, Petitioner plans to resume a solo practice in Erie, with an emphasis on real estate, wills, civil litigation and general criminal defense.

Petitioner has met his burden pursuant to Rule 218(c)(3), Pa.R.D.E., and the Board recommends that he be reinstated to the practice of law.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Petitioner, Dan W. Susi, 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: *Charlotte S. Jefferies*
Charlotte S. Jefferies, Board Member

Date: MAY 25, 2012

Board Members Buchholz and Bevilacqua did not participate in the adjudication.