

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 1372 Disciplinary Docket No. 3
:
STEPHEN BRUCE LAVNER : No. 55 DB 2008
:
: Attorney Registration No. 17904
:
PETITION FOR REINSTATEMENT : (Montgomery County)

ORDER

PER CURIAM:

AND NOW, this 16th day of April, 2010, upon consideration of the Report and Recommendations of the Disciplinary Board dated February 16, 2010, the Petition for Reinstatement is granted.

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 Patricia Nicola

As of: April 16, 2010

Attest:

Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

In the Matter of	:	No. 1372 Disciplinary Docket No. 3
	:	
	:	No. 55 DB 2008
STEPHEN BRUCE LAVNER	:	
	:	Attorney Registration No. 17904
	:	
PETITION FOR REINSTATEMENT	:	(Montgomery County)

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 July 29, 2008, Stephen Bruce Lavner was transferred to disability inactive status pursuant to Pa.R.D.E. 301(e), for an indefinite period. Mr. Lavner filed a Petition for Reinstatement from Inactive Status on January 26, 2009. By Response to Petition dated March 16, 2009, Office of

Disciplinary Counsel stated its opposition to reinstatement for the reason that Petitioner had not met his burden of proof.

A reinstatement hearing was held on July 24, 2009, before a District II Hearing Committee comprised of Chair Christine F. Cannon, Esquire, and Members Owen J. Kelly, Esquire, and Michael J. Malloy, Esquire. Petitioner was represented by Samuel C. Stretton, Esquire. Petitioner presented the testimony of three fact witnesses and two character witnesses. He also testified on his own behalf.

Following the submission of a brief by Petitioner, the Hearing Committee filed a Report on November 4, 2009, and recommended that the Petition for Reinstatement from Inactive Status be granted.

No Briefs on Exceptions were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on January 20, 2010.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner is Stephen Bruce Lavner. He was born in 1949 and was admitted to the practice of law in the Commonwealth in 1973. He is subject to the jurisdiction of the Disciplinary Board of the Supreme Court.

2. Petitioner was transferred to disability inactive status by Order of the Supreme Court dated July 29, 2008. This transfer was at Petitioner's request as Petitioner suffered from mental disability as a result of a 2001 automobile accident.¹

3. The automobile accident caused Petitioner to suffer injuries to his back, neck, shoulder, leg and head.

4. After the accident, Petitioner experienced cognitive difficulties, including reduced memory function, attention deficit, and a reduced ability to multitask.

5. After the accident, the demands and responsibilities of running a solo law practice became difficult for Petitioner.

6. Petitioner received an Informal Admonition in 2005 as a result of failing to diligently represent and communicate with a client. An audit revealed that his IOLTA account was out of trust in various amounts.

7. Petitioner realizes in retrospect that he should have hired a bookkeeper or accountant to assist him with running his office, but he still wanted to believe that he could do these things himself, as he had prior to the accident.

8. Commencing in 2002, Petitioner treated with Maureen Daley Schreiber, Ph.D., a licensed psychologist. Petitioner underwent psychological testing and cognitive therapy.

9. Petitioner's treatment focused on strategies to help him develop memory, retention and concentration, including mental exercises which Petitioner has

¹ This request arose during the pendency of a disciplinary matter against Petitioner, as he felt he could not participate in his defense. The Order of July 29, 2008 held the pending disciplinary matter in abeyance. Office of Disciplinary Counsel has not pursued this matter at this time.

practiced daily as part of his therapy. Dr. Schreiber implemented therapies to improve Petitioner's organizational skills, cognitive abilities and memory.

10. Dr. Schreiber also treated Petitioner for difficulties he was experiencing with depression and anxiety.

11. Dr. Schreiber testified credibly that in her professional psychological opinion, Petitioner was in the final phase of recovery; his depression is resolved; his anxiety is almost resolved; his memory, attention and concentration have returned to normal; his ability to organize is good; and his judgment is good.

12. Dr. Schreiber testified credibly that Petitioner has overcome his disability and has the cognitive ability, psychological ability, memory and retention capacity, and intellect to function in the practice of law, including solo practice.

13. Dr. Schreiber sent Petitioner to Dr. Ruben C. Gur for an objective neuropsychological evaluation. Dr. Gur's report was admitted by stipulation at the reinstatement hearing.

14. Dr. Gur's report indicates that Petitioner has the capacity to perform the functions of his legal occupation and that it is unlikely that Petitioner's anxiety would return to a level that would interfere with the practice of law.

15. Petitioner continues to see Dr. Schreiber approximately once per week for therapy and will continue treatment for at least the next six months.

16. Petitioner has noticed differences in himself since he has had the benefit of therapy. The clarity of his thought process has returned and his depression has disappeared. Petitioner is able to fully analyze, perceive and make connections. His

organization skills have improved, particularly since he has learned to use specific techniques, such as note-taking.

17. Petitioner has been employed as a paralegal at the law firm of Sprague & Sprague since August 2008, performing research, gathering information, interviewing witnesses, preparing memoranda, summarizing depositions and trial transcripts, and suggesting strategies.

18. Petitioner has been fully supervised by Thomas Sprague, Esquire, and other members of the Sprague firm according to the requirements and limitations set forth in Rule of Disciplinary Enforcement 217(j).

19. Thomas Sprague, Esquire, and Richard Sprague, Esquire, have both practiced law in the Commonwealth for many years. Both testified credibly that they had no hesitation in recommending Petitioner's reinstatement to the active practice of law. Their observations were such that Petitioner would have no difficulty practicing law, even as a sole practitioner.

20. Petitioner has been offered a position as an attorney with the law firm of Sprague & Sprague and intends to accept this offer.

21. Two witnesses testified credibly as to Petitioner's character. Kathy Haldeman and Richard Rosenau are members of Petitioner's community and have known Petitioner for more than 20 years. They know Petitioner's reputation in the community to be truthful, honest, and law-abiding.

22. Office of Disciplinary Counsel has dropped its opposition to reinstatement.

III. CONCLUSIONS OF LAW

Petitioner has met his burden of proof by clear and convincing evidence that his disability has been removed and he is fit to resume the practice of law.

IV. DISCUSSION

This matter is before the Board for consideration of Petitioner's request for reinstatement to the practice of law from the Order of the Supreme Court of July 29, 2008, transferring him to disability inactive status pursuant to Pa.R.D.E. 301(e). Petitioner bears the burden of proof by clear and convincing evidence that the disability has been removed and he is fit to resume the practice of law. Pa.R.D.E. 301(h).

Petitioner sought and was granted inactive status due to disability, as his disability made it impossible for him to prepare an adequate defense to disciplinary charges that had been brought against him. His disability was cognitive in nature and negatively impacted his attention, concentration, memory and ability to multi-task. He further developed depression and anxiety. The disability developed after a serious motor vehicle accident in 2001 wherein Petitioner suffered many physical injuries.

The Board concludes that Petitioner has clearly and convincingly demonstrated that his disability has been removed and he is fit to practice law. Petitioner presented unrefuted evidence from a number of witnesses on his behalf to demonstrate he has overcome his disability and has the cognitive and intellectual ability to pursue the practice of law.

Petitioner has treated with Dr. Maureen Daley Schreiber since 2002 and has been examined by Dr. Ruben Gur. Dr. Schreiber opined that the depression has disappeared and the anxiety is mostly situational. Petitioner has made substantial strides in learning how to organize and cope with his memory deficits. Dr. Schreiber gave Petitioner mental exercises to develop his memory, retention and concentration. According to Dr. Schreiber, Petitioner's memory, attention and concentration have returned to normal standards and his judgment is good. Petitioner's disability has been removed and he has the cognitive ability to practice law. Dr. Gur's report, admitted by stipulation, confirmed this opinion.

The testimony of Richard Sprague, Esquire, and Thomas Sprague, Esquire was persuasive as to Petitioner's mental fitness. Petitioner has worked full time as a paralegal for the Sprague law firm since August 2008, and Messrs. Sprague have seen Petitioner on a daily basis and reviewed his work product. Both Richard Sprague and Thomas Sprague spoke highly of Petitioner's abilities and intellect. They both noted the insightful contributions Petitioner has made to cases. Both of these experienced attorneys support Petitioner's return to active status and have offered Petitioner an attorney position at their firm.

The Board recommends that the Petition for Reinstatement from Inactive Status be granted.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Petitioner, Stephen Bruce Lavner, 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: 

William A. Pietragallo, Board Chair

Date: February 16, 2010

Board Member Momjian did not participate in the adjudication of this matter.