

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 771, Disciplinary Docket
: No. 2 - Supreme Court
:
: No. 58 DB 1989 - Disciplinary Board
[ANONYMOUS] :
: Attorney Registration No. []
:
PETITION FOR REINSTATEMENT : ([])

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 ("Board") submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Reinstatement.

I. HISTORY OF PROCEEDINGS

[Petitioner] was suspended from the practice of law in the Commonwealth of Pennsylvania for a period of three years by Order of the Supreme Court of Pennsylvania dated September 10, 1990. A Petition for Reinstatement was filed by Petitioner with the Board on August 24, 1993. On August 28, 1995, Petitioner filed with the Board a Request for Leave to Withdraw Petition. By Order dated August 29, 1995, the Board granted the Request for Withdrawal.

Petitioner filed a second Petition for Reinstatement on November 19, 1997. Reinstatement hearings were held on November 19, 1998 and February 2, 1999 before Hearing Committee [] comprised of Chair [], Esquire, and Members [], Esquire, and [], Esquire. Petitioner was represented by [], Esquire. Office of Disciplinary Counsel was represented by [], Esquire. The parties submitted Joint Stipulations of Fact and Joint Exhibits. Petitioner

testified at the hearing and presented one witness, an attorney for whom Petitioner works as a paralegal. Petitioner offered exhibits in addition to the Joint Exhibits. Office of Disciplinary Counsel called one witness, a former client of Petitioner, and offered twenty-two exhibits.

The Hearing Committee filed a Report on August 30, 1999 and found that Petitioner did not meet his burden of proof for reinstatement pursuant to Pennsylvania Rule of Disciplinary Enforcement 218(c)(3)(i). The Committee recommended to the Board that the Petition for Reinstatement be denied.

Petitioner filed a Brief on Exceptions to the Hearing Committee's Report on September 20, 1999. Office of Disciplinary Counsel filed a Brief Opposing Petitioner's Exceptions on October 12, 1999.

This matter was adjudicated by the Disciplinary Board at the meeting of November 17, 1999.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner was born in 1953 and was admitted to practice law in Pennsylvania in 1979. Petitioner currently resides at [].

2. Petitioner was suspended from the practice of law in Pennsylvania for a period of three years by Order of the Supreme Court of Pennsylvania dated September 10, 1990.

3. Petitioner's suspension resulted from findings that during a period of two years beginning in September 1985, Petitioner commingled client funds on 27 occasions in a general office account in which he deposited client and personal funds. Petitioner also failed to release entrusted funds in the amount of \$1,380.00 to a medical provider and failed to respond to telephone

calls or letters from the medical provider. All clients and their creditors were made whole prior to the commencement of disciplinary proceedings.

4. During Petitioner's suspension, he worked as a paralegal for various attorneys. He is currently employed by [A], Esquire through [B], Inc, a paralegal service company founded by Petitioner.

5. Petitioner works for Attorney [A] on a daily basis. He prepares drafts of pleadings, trial briefs, appellate briefs, and schedules for bankruptcies, among other things.

6. Petitioner keeps apprised of trends in the law by reading on a regular basis the [], [], [], **Pennsylvania Reporter**, and the **ABA Journal**.

7. Attorney [A] testified that Petitioner is very intelligent and he has great respect for Petitioner's legal skills and ability to carry out legal activities. (N.T. 11/19/98 p. 29).

8. Although Attorney [A] opined that Petitioner was competent in the law, he was unable to offer any insight into Petitioner's character and fitness in general as he stated that "my style is not to pry into people's personal affairs". (N.T. 11/19/98, p. 49)

9. Petitioner offered no other witnesses or character letters in support of his moral qualifications.

10. Petitioner has met the credit requirements of the Continuing Legal Education Courses for reinstatement. He completed 21 substantive credit hours and 15.50 ethics credit hours.

11. Petitioner filed an earlier Petition for Reinstatement on August 24, 1993. Petitioner withdrew this Petition by Motion to Withdraw filed with the Board on August 25, 1995. Prior to this withdrawal, the parties entered into a stipulation that if Petitioner withdrew his Petition for Reinstatement and waited one year, Office of Disciplinary Counsel would consider this a significant step in Petitioner's rehabilitation process.

IRS OBLIGATION

12. Petitioner has an Internal Revenue Service obligation of approximately \$66,359.00.

FIRE DAMAGE TO PETITIONER'S HOME

13. On August 19, 1990, a fire caused extensive damage to Petitioner's home.

14. Petitioner requested his insurer, [C], to make payment in the amount of \$89,400 in settlement of his claim for damages.

15. The insurance company disbursed \$31,500.00.

16. In November of 1991, Petitioner brought suit against [C] for payment of \$42,000.00.

17. The jury found in favor of [C] and returned a special verdict finding that Petitioner or others acting on his behalf intentionally set the fire.

18. Petitioner appealed the verdict, but the appeal was dismissed because Petitioner failed to file a full set of trial transcripts.

19. Petitioner failed to file the transcripts because he could not afford the \$1,500 fee.

[D] MATTER

20. In July 1989, [D] retained Petitioner to represent her in a claim for compensation under the National Vaccine Injury Compensation Program, as a result of the death of her infant daughter.

21. Petitioner notified [D] in a letter of May 31, 1990 of a \$250,000 cap on recovery under the Vaccine Program. He informed her that her case was difficult. The letter also stated that [D] agreed to conclude her case at the special master review level. This letter had [D's] signature on it. (Ex. ODC-8)

22. [D] testified that she did not sign the letter and she did not authorize Petitioner to conclude her case after an adverse ruling. (N.T. 11/19/98 p. 125)

23. Petitioner hired Dr. [E] as an expert witness. The doctor testified by speaker phone, although Petitioner stated that this was not the agreement they had.

24. Dr. [E] sent an itemized statement to Petitioner for \$2,900 on September 21, 1990.

25. At this point in time, Petitioner had been suspended by Order of the Supreme Court dated September 10, 1990, and effective October 10, 1990. Petitioner did not inform his client or the expert of his suspension in the courts of Pennsylvania. Petitioner was not yet suspended in the United States Claims Court (renamed the United States Court of Federal Claims in 1992), wherein [D's] case was pending.

26. By written decision of November 2, 1990, compensation was denied to [D].

27. Petitioner filed an Election to Accept Judgment on November 13, 1990.

28. Petitioner filed a motion pursuant to the Vaccine Act for attorney fees and costs. In January of 1991 he was awarded attorney fees and costs in the amount of \$11,426.

29. In March of 1991, Petitioner received a check payable to [D] and Petitioner. He did not notify his client of the receipt of the check.

30. Petitioner negotiated the check; however, his client claims she did not sign it.

31. Petitioner did not pay Dr. [E's] fee at that time. He paid him in 1997, prior to the filing of the current Petition for Reinstatement.

32. Although [D] claims that she never authorized Petitioner to terminate her case without an appeal she never contacted Petitioner after 1991 to check on the status of her case.

33. Petitioner testified at the reinstatement hearing that he had discussed with his client pursuing the case if they lost at the initial hearing level and that she signed an agreement not to pursue the case beyond the initial August 1990 hearing if the decision was adverse. (N.T. 11/19/98 p. 226)

1997 REINSTATEMENT QUESTIONNAIRE

34. Petitioner's questionnaire contained various inaccuracies and omissions:

- A. He did not list some civil actions.
- B. He did not list some judgments against him.
- C. He did not include specifics concerning his substitute teaching position.
- D. He did not reveal that a jury found that he or someone else had set the fire at his house intentionally.
- E. He did not indicate that he was admitted to practice before the U.S. District Court for the [] District.

CHAPTER 7 BANKRUPTCY FILING

35. On January 15, 1997, Petitioner filed a *pro se* Chapter 7 Bankruptcy Petition.

36. Petitioner was granted an Order of Discharge on June 11, 1997. The Court entered a Final Decree on August 20, 1997. The Court entered a Judgment dated December 28, 1997 excepting [C's] judgment from debtor's discharge.

III. CONCLUSIONS OF LAW

1. Petitioner has failed to meet his burden of proving by clear and convincing evidence that he has the moral qualifications required to practice law in Pennsylvania.

2. Petitioner has failed to demonstrate that his resumption of the practice of law will neither be detrimental to the integrity and standing of the bar or the administration of justice nor subversive of the public interest.

IV. DISCUSSION

This matter comes before the Disciplinary Board on a Petition for Reinstatement from a suspension. Pursuant to Pa.R.D.E. 218(a), an attorney who is suspended from the practice of law for a period exceeding one year may not resume practice until reinstated by order of the Supreme Court of Pennsylvania.

In order for Petitioner to gain readmission to the bar, it is his burden to prove by clear and convincing evidence that he possesses the moral qualifications, competence and learning in the law necessary to practice law in Pennsylvania, and that the resumption of the practice of law by Petitioner 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)(i).

In determining whether Petitioner clearly demonstrated his present fitness, the Board must consider the nature of Petitioner's misconduct, his present competence and legal abilities, his character and rehabilitation, and the degree of remorse expressed. *Philadelphia News, Inc., v. Disciplinary Board of the Supreme Court*, 468 Pa. 382, 363 A.2d 779 (1976).

Petitioner was suspended for three years by Order of the Supreme Court dated September 10, 1990, as a result of commingling client funds with his own personal funds in a general office account, failing to release funds entrusted to him for payment of a client's medical expenses, and failing to respond to calls or letters from a medical provider.

Petitioner filed an initial Petition for Reinstatement on August 24, 1993. This Petition was withdrawn by Petitioner in 1995 with the understanding between Petitioner and Office of Disciplinary Counsel that if Petitioner waited one year before re-filing, Office of Disciplinary Counsel would consider this as a significant step towards rehabilitation. Petitioner waited until November 1997 to re-file his Petition for Reinstatement. After

two lengthy hearings, the Hearing Committee found that Petitioner did not meet his burden under Pa.R.D.E. 218(c)(3)(i) and recommended that the Petition be denied.

The Hearing Committee set forth several justifications for this decision. In the [D] matter, the Committee found that Petitioner's testimony, which conflicted with that of his former client, was not credible. Petitioner testified that he explained to his client the difficulty of the case and they discussed not pursuing the matter if they were not awarded compensation under the Vaccine Act. [D] signed an agreement to that effect. Petitioner's reasons for not pursuing the case were contradicted by [D], and his testimony regarding her signature on the agreement purporting termination of her claim was also refuted by [D], who claimed that the signature was a forgery. Review of the record shows that Petitioner's explanation of events makes sense in light of [D's] actions subsequent to the conclusion of the claim. [D] never attempted to contact Petitioner concerning the status of her case. This seems very unusual if, in fact, she was still laboring under the belief that she was entitled to compensation.

The age of this litigation must be noted by the Board. Petitioner commenced litigation of this matter in 1990, immediately prior to his suspension. Although we are not convinced that Petitioner's version of events lacks credibility, even if Petitioner handled the matter inappropriately, it happened nine years ago. This issue is not relevant to the question of Petitioner's current fitness to practice law.

The Hearing Committee found fault with Petitioner in his handling of the litigation concerning his house fire. After Petitioner's house was extensively damaged by fire in 1990, he received monies from his insurance company. The amount disbursed was less than half of what Petitioner had requested. Petitioner sued the insurance company for the remainder, while

putting the amount he received towards repairing the house. A jury found for the insurance company and further found that Petitioner or someone acting on his behalf intentionally set the fire. Petitioner appealed the verdict, but the appeal was eventually dismissed due to Petitioner's failure to file a full set of trial transcripts with the appellate court. Petitioner's reason for not filing the transcripts was that he could not afford the \$1,500 fee. This is supported by the record. The Committee found that Petitioner did not pursue the appeal properly, and made no mention of financial hardship. The Committee found that the dismissal of the appeal emphasized Petitioner's deficiencies as a lawyer. The Committee also determined that Petitioner should have presented corroborating evidence at the reinstatement hearing to refute the jury's finding that he intentionally set the fire and to bolster his testimony that he did not set the fire. Finally, the Committee found that publicity surrounding the fire reflected adversely on Petitioner's demonstration that his reinstatement would not be harmful to the standing and integrity of the bar.

Once again, the issue of the fire is remote in time and relevance to the current issue of Petitioner's fitness. Petitioner was certainly not obligated to prove to the Hearing Committee that he did not start a fire nine years ago. The fact that Petitioner used all of the insurance monies for repairs weighs against an inference that financial gain was a motive for arson.

Furthermore, the issue of the non-perfection of the appeal can be explained by Petitioner's lack of funds, not his incompetent legal skills. As well, the publicity on which the Committee relies occurred in several newspaper articles in 1992 and 1993, over six years ago. An inordinate amount of time was spent litigating this issue and the [D] matter before the Hearing Committee in proportion to the relevance of the issues to the question of Petitioner's present fitness to practice law.

As part of the Committee's findings of fact, it detailed inaccuracies in Petitioner's initial Petition for Reinstatement filed in 1993.

The Board finds this to be totally without relevance in the instant proceeding. Petitioner withdrew the 1993 Petition and filed a new Petition in 1997, which is the subject of the current proceeding. The Committee examined inaccuracies and omissions pertaining to the 1997 Petition as well. While there were various inaccurate responses, the Board finds that this imprecise information was not submitted with the intent to deceive the Board. Petitioner fully explained all discrepancies at the hearing. As has been found in prior cases, mistakes and omissions in a Petition for Reinstatement will not prevent readmission to the bar if they are explained or are of little consequence to the substance of the petition. *In re Anonymous No. 6 DB 83*, 26 Pa. D. & C. 4th 61 (1994); and *In re Anonymous No. 19 DB 81*, 4 PA. D. & C. 4th 155 (1989).

Lastly, the Committee referred to Petitioner's conduct in failing to timely pay the expert fee in the [D] case, his tax obligation and his discharge in bankruptcy as evidence that he has not rehabilitated himself during his period of suspension, thus indicating an ongoing lack of integrity and competence. The record shows that though Petitioner did not timely pay Dr. [E] when requested to do so, he paid him in full prior to filing his 1997 Petition for Reinstatement. Petitioner's tax obligation and discharge in bankruptcy are not substantial issues that reflect adversely on Petitioner's present competence to practice law.

As discussed above, the Board does not agree with the Hearing Committee that the above issues should prevent Petitioner's reinstatement. However, the Board finds that one particular prong of Petitioner's burden has not been met. Petitioner did not present sufficient evidence of his moral qualifications. A petitioner may sustain his or her burden of proving moral fitness through the presentation of favorable character testimony. *In re Anonymous No. 90 DB 85*, 17 Pa. D. & C. 4th 548 (1992); and *In re Anonymous No. 45 DB 84*, 15 Pa. D. & C. 4th 321 (1992). This Petitioner presented one character witness, Attorney [A], who testified solely to Petitioner's legal

competency. When probed on the issue of Petitioner's character and reputation in the community, Attorney [A] stated that he made it a policy not to get involved in affairs of his employees. Petitioner presented no other character witnesses or letters in support of moral fitness. As the record is devoid of any evidence of character, it is extremely difficult for the Board to make a conclusion as to what Petitioner has been doing in the past nine years to rehabilitate himself. The record as reviewed by the Board indicates Petitioner's lack of organization and his inability to get his personal life in order. This need not have been fatal to Petitioner's case if it had been counteracted with strong character testimony as to reputation and positive testimony regarding the changes Petitioner has made since his suspension. Conspicuously absent from Petitioner's case is a witness familiar with his activities outside of the law. While Petitioner has proven his legal competence, that is not the sole criterion for reinstatement.

The Board recommends that the Petition for Reinstatement be denied as Petitioner has not met his burden of proof that he is morally qualified to resume practice. We emphasize that this denial is not based on any of the reasons set forth by the Hearing Committee.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Petitioner, [], be denied reinstatement to the practice of law.

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: Christine L. Donohue, Member

Date: May 30, 2000

Board Members George, Schultz and Morris did not participate in the November 17, 1999 adjudication.

PER CURIAM:

AND NOW, this 1st day of August, 2000, upon consideration of the Report and Recommendations of the Disciplinary Board of the Supreme Court of Pennsylvania dated May 30, 2000, 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.