

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 441, Disciplinary Docket  
: No. 2 - Supreme Court  
:  
: No. 60 DB 1984 - 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 submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Reinstatement.

I. HISTORY OF PROCEEDINGS

[Petitioner] filed a Petition for Reinstatement to the bar of this Commonwealth on June 5, 1997. Petitioner was disbarred retroactive to July 13, 1984 by Opinion of Supreme Court of Pennsylvania issued December 26, 1990. Petitioner was disbarred as a result of his conviction of two counts of theft by deception, two counts of theft by failure to make required disposition of funds received, two counts of theft, one count of

criminal conspiracy, and one count of aiding in the consummation of a crime.

This is Petitioner's second attempt at reinstatement. He previously petitioned for reinstatement in January 1993. The Disciplinary Board recommended reinstatement; however, the Supreme Court denied the Petition after considering briefs and oral argument. *Matter of [Petitioner]*, [ ]. The Court based its action on Petitioner's failure to recognize the legal and ethical significance of the misconduct demonstrated by undisputed facts in the criminal proceeding.

A reinstatement hearing on the instant Petition was held on October 15, 1997 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 Committee filed a Report on August 3, 1998 and recommended that the Petition be granted. No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Board at the meeting of October 5, 1998.

II. FINDINGS OF FACT

1. Petitioner was born on July 29, 1931 and was admitted to the bar in 1957. His current address is [ ].

2. Petitioner was disbarred retroactive to July 13, 1984, by Opinion of the Supreme Court issued December 26, 1990.

3. Petitioner's disbarment grew out of his representation of the siblings and alleged heirs of one [A], a reputed drug dealer and mob figure who was murdered on May 27, 1981. Petitioner's conduct during this representation led to his criminal conviction in the [ ] Court of Common Pleas on December 4, 1982, on eight counts of theft, conspiracy, and aiding in the commission of a crime. The specific facts that led to the conviction are set forth in *Office of Disciplinary Counsel v. [Petitioner]*, [ ] and *Matter of [Petitioner]*, [ ].

4. Petitioner was sentenced to a prison term of two to five years and a fine of \$5,000. Petitioner served his sentence from October 1987 to October 1989 and was on parole until October 9, 1992.

5. Petitioner filed his first petition for reinstatement in January 1993. The Supreme Court denied reinstatement in an opinion issued August 22, 1995. *[Petitioner]*, [ ]. The Court

concluded that although the magnitude of Petitioner's breach of trust did not in and of itself prevent reinstatement, and that Petitioner, accordingly, met the threshold inquiry of *Office of Disciplinary Counsel v. Keller*, 509 Pa. 573, 506 A.2d 872 (1986), Petitioner failed to meet the requirements of Pa.R.D.E. 218(c)(3)(I) and was not qualified for readmission.

6. Petitioner filed his second Petition for Reinstatement on June 5, 1997.

7. Post disbarment, Petitioner has been employed as a legal assistant at the law firm of [B], performing legal research and writing for attorneys of the firm. Petitioner has also done consulting work for other attorneys in the nature of preparing pleadings or briefs in the estate field, which is the field of law Petitioner practiced prior to his disbarment.

8. In addition to the paralegal work performed, Petitioner kept apprised of the law by attending CLE courses and reading the [ ] and the advance sheets.

9. Petitioner presented the testimony of four character witnesses at the hearing; [C], Esquire, (Register of Wills for the City of [ ]), [D], Esquire (a former Prothonotary of the [ ] Court of Common Pleas), [E], Esquire (Petitioner's friend

and colleague, for whom Petitioner works as a legal assistant) and [F], Esquire (a friend of Petitioner's). These witnesses testified that Petitioner's reinstatement to the bar would not be harmful to the public's perception of the bar. These witnesses believed that Petitioner has a reputation for honesty and trustworthiness among those who know him.

10. Petitioner testified at the hearing. He expressed his remorse for his actions (N.T. 101) and admitted he made a serious error and committed wrongdoing. (N.T. 82, 88, 96-97, 131)

11. In contrast to his testimony at the first reinstatement hearing, Petitioner states that it is now clear that his conduct justified the inference that he intentionally committed the wrongdoing charged and this brought discredit upon himself and the bar. Petitioner testified that if faced with a similar situation today, he would walk away. (N.T. 82-83)

12. Petitioner makes clear that he was wrong in what he did at the time the misconduct occurred, and he was wrong when he testified at the first reinstatement hearing, and he has a heightened appreciation of his ethical obligations. (N.T. 86)

### III. CONCLUSIONS OF LAW

1. The misconduct for which Petitioner was disbarred

is not so egregious as to preclude immediate consideration of his Petition for Reinstatement.

2. Petitioner has demonstrated by clear and convincing evidence that he possesses the moral qualifications, competency and learning in the law necessary to practice law in the Commonwealth of Pennsylvania.

3. Petitioner's resumption of the practice of law will not be detrimental to the integrity of the bar nor subversive to the interests of the public.

#### IV. DISCUSSION

This matter is before the Disciplinary Board on a Petition for Reinstatement from disbarment filed by Petitioner, [ ], on June 5, 1997. Petitioner was disbarred on December 26, 1990, retroactive to July 13, 1984, as a result of his conviction of two counts of theft by deception, two counts of theft by failure to make required disposition of funds received, two counts of theft, one count of criminal conspiracy, and one count of aiding in the consummation of a crime.

The facts underlying the convictions and the circumstances that led to Petitioner's disbarment are set forth in Office of Disciplinary Counsel v. [Petitioner], [ ]. In ordering

the disbarment, the Supreme Court found that "the actions which resulted in [Petitioner's] criminal convictions reflect wrongdoing and a serious lack of judgment. At the very least, [Petitioner] allowed himself to be manipulated by his clients into the commission of unethical and criminal acts." Id at 300.

Petitioner previously filed a Petition for Reinstatement in January 1993. After hearings, the Hearing Committee and Disciplinary Board recommended reinstatement. The Supreme Court entered a Rule to Show Cause why an order denying reinstatement should not be entered, considered briefs and oral argument, and denied the Petition for Reinstatement. *Matter of [Petitioner]*, [ ]. The Court decided the issue of the *Keller* inquiry in Petitioner's favor, stating that his conviction for theft and conspiracy, while very serious, did not constitute such an egregious breach of trust as to bar his reinstatement. However, the Court found that Petitioner's denial of any wrongdoing was inconsistent with his burden to prove restored moral character pursuant to Pa.R.D.E. 218(c)(3)(i). The opinion made clear that although no fault was to be found with Petitioner's continued maintenance of his innocence, this did not justify his failure to recognize that the circumstance which he either created or allowed to take place justified an inference of criminal intent, whether or not Petitioner subjectively harbored one.

The Supreme Court's opinion in *Matter of [Petitioner]* frames the discrete issue for this Board in considering Petitioner's second Petition for Reinstatement. Petitioner and Office of Disciplinary Counsel agree that the opinion resolves the *Keller* threshold question in Petitioner's favor. Accordingly, the question the Board must determine is whether Petitioner demonstrated, clearly and convincingly, that he has met the requirements of Pa.R.D.E. 218(c)(3)(I) and is morally qualified, competent and learned in the law. Central to determining Petitioner's attainment of these requirements is a showing by Petitioner that he has come to terms with the legal and ethical consequences of his conduct, that he understands and appreciates that his own conduct reflected adversely on the bar and brought discredit to the bar, and that Petitioner is not predisposed to commit future ethical violations.

The Hearing Committee filed a report recommending that the Petition be granted. The Committee found that Petitioner now understands that despite his subjective belief in his lack of criminal intent, to an objective observer his conduct was wrong and reflected negatively on the integrity of the bar and administration of justice. The Committee credited both Petitioner's testimony regarding his awakened recognition and the testimony of his character witnesses who testified at the hearing



to Petitioner's good reputation within the community. The Committee found that Petitioner's reinstatement would not harm the standing and integrity of the bar nor subvert the public interest.

Careful review of the record persuades the Board that the Committee is correct in its assessment of the evidence. The required proof of moral qualifications relates specifically to Petitioner's personal rehabilitation during his disbarment. A comparison of Petitioner's testimony from the first Petition for Reinstatement with his testimony before the Hearing Committee in the instant Petition evidences changes signaling Petitioner's recognition of the wrongdoing as well as his bad judgment involved in his criminal conduct, and his heightened ethical sensitivity in consequence of his experiences.

In the 1995 opinion, the Court found that Petitioner viewed himself as innocent of wrongdoing, and that if there was any wrongdoing, it was on the part of his clients. Essentially, Petitioner at that time passed the blame onto his clients while holding himself out as guilt-free. At the hearing on the instant Petition, Petitioner was asked what he felt he did wrong. Petitioner responded that he was wrong to allow his clients to take from the estate. He was wrong to fail to inform the attorney for the missing heir of the status of the case. (N.T. 82) Petitioner admitted he made a misrepresentation to that attorney,

and also that his actions were prejudicial to the administration of justice. (N.T. 158) He further admitted his conduct reflected adversely on his fitness to practice. (N.T. 159) Petitioner testified that if faced with the same situation today, he would not handle the case. (N.T. 88). When questioned concerning his failure to include his fee in the ledger, Petitioner testified that it was a terrible thing to do and he would not do it again. (N.T. 96-97). Petitioner testified that he accepts the Court's criticism of his failure to recognize that the facts clearly show an appearance of wrongdoing. (N.T. 97-98) Petitioner demonstrated an appreciation of how on reflection, his conduct is viewed by the public and the reasoning he used at the time of the misconduct would not look good to others. (N.T. 101)

Petitioner was questioned concerning his belief that the wrongdoing was solely on his clients' part. Petitioner responded that he did not agree with that anymore and stated that he thought some of the things he did were wrong. (N.T. 131) Petitioner specifically stated that he failed to avoid the appearance of impropriety. (N.T. 134).

The cumulative nature of this testimony indicates that Petitioner clearly acknowledges the wrongdoing which led to his conviction and his failure at the first reinstatement hearing to recognize the impact of this wrongdoing on the bar and

administration of justice.

Friends and colleagues of Petitioner testified at the reinstatement hearing as character witnesses. These witnesses supported Petitioner's readmission to the bar based on his good reputation for honesty and trustworthiness and his excellent legal skills and stated that such readmission would not be harmful to the bar. Petitioner's able work as a legal assistant at [B], as well as his attainment of CLE credits, underscore his legal skills and his competence to resume practice.

Petitioner has been disbarred for approximately fourteen years. This very lengthy period of time acts as a buffer and helps to soften the current impact of the underlying acts. Prior to the disbarment he had an unblemished career spanning nearly thirty years. In spite of the negative publicity generated by his conviction and his unsuccessful first attempt at reinstatement to the bar, Petitioner has persisted in pursuing a career in the legal field. At the age of sixty-seven Petitioner is still employed as a legal assistant. If reinstated, he plans to practice in the area of estate administration and litigation.

The Board finds that Petitioner met his burden of proof pursuant to Pa.R.D.E. 218(c)(3)(I) with clear and convincing evidence. The Board recommends that the Petition for

Reinstatement be granted.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Petitioner, [ ], be reinstated 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: \_\_\_\_\_  
M. David Halpern, Member

Date: March 9, 1999

Board Member Cunningham recused himself.

Board Member Schultz did not participate in the October 5, 1998 adjudication.

PER CURIAM:

AND NOW, this 4th day of May, 1999, upon consideration of the Report and Recommendations of the Disciplinary Board of the Supreme Court of Pennsylvania dated March 9, 1999, 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.