

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of	:	No. 1183 Disciplinary Docket No. 3
	:	
RICHARD J. McCAGUE	:	No. 64 DB 2005
	:	
	:	Attorney Registration No. 58106
	:	
PETITION FOR REINSTATEMENT	:	(Allegheny County)

**ORDER**


**PER CURIAM:**

AND NOW, this 22<sup>nd</sup> day of October, 2012, upon consideration of the Report and Recommendations of the Disciplinary Board dated July 18, 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.

Mr. Justice McCaffery dissents.

A True Copy Patricia Nicola  
As Of 10/22/2012

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 November 30, 2006, the Supreme Court suspended Richard J. McCague for a period of two years. On June 2, 2011, Mr. McCague filed a Petition for Reinstatement to the bar of the Supreme Court of Pennsylvania. Office of Disciplinary Counsel filed a Response to Petition for Reinstatement and stated its objections to reinstatement.

A reinstatement hearing was held on November 15, 2011 before a District IV Hearing Committee comprised of Chair David S. Posner, Esquire, and Members Susan M. LaPenta, Esquire, and Neva L. Stanger, Esquire. Petitioner was represented by David A. Strassburger, Esquire. Petitioner offered the testimony of four witnesses and testified on his own behalf. Petitioner offered 23 exhibits. Office of Disciplinary Counsel offered no witnesses and 15 exhibits.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on March 14, 2012. The majority recommended that the Petition for Reinstatement be denied.

Petitioner filed a Brief on Exceptions and request for oral argument on April 3, 2012.

Office of Disciplinary Counsel filed a Brief Opposing Exceptions on April 23, 2012.

Oral argument was held before a three-member panel of the Disciplinary Board on May 4, 2012.

This matter was adjudicated by the Disciplinary Board at the meeting on May 23, 2012.

## II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner is Richard J. McCague. He was born in 1954 and was admitted to practice law in the Commonwealth of Pennsylvania in 1989. His current

address is 550 Beverly Place, Pittsburgh PA 15206. He is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

2. Following his admission to the bar, Petitioner was employed as a judicial law clerk. He obtained employment with the Allegheny County Public Defender's Office in January 1991 and continued with that employment until December 2006. Simultaneously, Petitioner had his own office for the practice of law from May 1996 to December 2006. He operated as a sole practitioner.

3. In December 2002, Respondent received an Informal Admonition for violations of Rules of Professional Conduct 1.3, 1.4(a) and 1.5(b).

4. On March 1, 2006, by Order of the Supreme Court, Petitioner was subjected to Public Censure as a result of a criminal conviction for attempting to smuggle marijuana into the Allegheny County Jail.

5. By Order of the Supreme Court dated November 30, 2006, Petitioner was suspended for a period of two years. Petitioner engaged in misconduct in two client matters, including failing to turn over a file to successor counsel, failing to comply with an order of court, failing to timely file documents with the court, failing to keep a client informed of the status of his matter, and failing to refund the unearned portion of his fee to his client.

6. Petitioner admitted his misconduct, expressed remorse for his actions, and stated that the suspension was the proper remedy for his actions. (N.T. 80, 83-86, 114, 117)

7. Petitioner paid a high price both professionally and personally for his past misconduct. (N.T. 78, 80, 91-93). He is committed to conducting his future practice in a careful, competent manner so as to avoid any further ethical problems. (N.T. 111-114)

8. Since his suspension, Petitioner has worked full-time for Public Interest Communication LLC, a fund-raising business. He has not engaged in any legal work.

9. Petitioner does volunteer work for his church, local Scout troops and the Knights of Columbus.

10. Petitioner has, since 2009, completed 98 credit hours of Continuing Legal Education; 67 of these were in 2011. 26.5 hours of the CLE related to criminal law. 10 hours of CLE related to law practice management.

11. Petitioner presented the testimony of four witnesses.

12. Father Benedetto P. Vaghetto was Petitioner's parish priest at St. Raphael's in Morningside from 2004 to 2010 and during that time he met with Petitioner and his wife in preparation for their son's confirmation, chose Petitioner to serve as a Eucharistic minister, and worked with Petitioner at the church bazaar fundraiser.

13. Father Vaghetto credibly attested to Petitioner's trustworthiness in his dealings with him during that time period. (N.T. 14, 19)

14. Johnnie Joseph, Esquire, is a licensed Pennsylvania attorney since 1999 who worked in the Allegheny County Office of the District Attorney from 1999 until 2003 or so. As a district attorney, Ms. Joseph was familiar with Petitioner's work as a public defender and interacted with him on a regular basis. Ms. Joseph offered credible testimony that she found Petitioner to be an outstanding attorney, a zealous advocate for

his clients, and well-prepared. (N.T. 25, 26, 30) At the time they were working together, Ms. Joseph knew Petitioner's reputation around the courthouse to be as a fair and zealous attorney. (N.T. 24) She never had cause to question Petitioner's honesty or integrity. (N.T. 26)

15. Ms. Joseph has not had contact with Petitioner since 2006 or 2007.

16. Leann Kowalski, Esquire, is a licensed Pennsylvania attorney since 1980. She began employment with the Public Defender's Office in Pittsburgh in 2002 and has known Petitioner since the fall of 2003. She worked with him on a regular basis. She credibly testified that Petitioner was an excellent lawyer who had a good rapport with the police, the district attorneys and with private attorneys. (N.T. 38) She believes that the profession would be well served if Petitioner was reinstated. (N.T. 46-47). Ms. Kowalski has had occasional contact with Petitioner since his suspension.

17. Frank McWilson, Esquire, is a licensed Pennsylvania attorney since 1987. He is presently the Chief Juvenile Counsel at the Public Defender's Office and the president-elect of the Juvenile Defenders' Association of Pennsylvania. He has known Petitioner since 2006. Mr. McWilson credibly testified that Petitioner took his work extremely seriously and was a zealous advocate. (N.T. 59-60) Further, Petitioner was "absolutely competent and dedicated to remaining so." (N.T. 60)

18. Mr. McWilson would have no hesitation in hiring Petitioner back, if given the opportunity. (N.T. 65) He believes that the bar would be better served if Petitioner was readmitted to practice. (N.T. 60)

19. Petitioner introduced into evidence five letters of reference from fellow attorneys and community members who support his reinstatement. These include Clarke

C. Carmody, Petitioner's supervisor at Public Interest Communications, LLC, and Attorneys Hugh McGough and Mark Coulson.

20. If reinstated, Petitioner intends to practice in Allegheny County with an emphasis on criminal law.

21. Office of Disciplinary Counsel raised discrepancies in the Reinstatement Questionnaire, including:

a. Petitioner referenced that he incorrectly believed he was admitted to federal courts and the Third Circuit;

b. Petitioner provided no information on civil actions he was involved in as a party;

c. Petitioner did not include work he did for Hugh F. McGough, Esquire;

d. Petitioner did not list income from rental property;

e. Petitioner responded in the negative to a question concerning fixed financial obligations or other notable requirements for payments such as for alimony or support.

22. Petitioner rebutted these discrepancies at the hearing:

a. Petitioner thought he was admitted to those courts but acknowledged he was wrong;

b. Petitioner did not know the answer to the civil actions, which included a suit by his former legal counsel for fees and a suit by his mortgage company;

c. Petitioner included letters from Mr. McGough (Exhibit I and J) but did not list him as an employer on the Questionnaire;

d. Petitioner acknowledged he had a rental property on Jancey Street in Pittsburgh.

e. Petitioner answered the question as to fixed financial obligations as he believed the question directed him.

23. Office of Disciplinary Counsel offered no witnesses in opposition to the Petition for Reinstatement.

### III. CONCLUSIONS OF LAW

Petitioner demonstrated by clear and convincing evidence that he has the moral qualifications, competency and learning in the law required for admission to practice law within the Commonwealth and that his reinstatement 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 reinstatement to the bar from a suspension of two years imposed on November 30, 2006. 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 has the burden of demonstrating that his resumption of the practice law will not be detrimental to the integrity and standing of the bar or administration of justice or 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 of 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 was suspended for a period of two years in 2006 and seeks reinstatement some five years later. Following a reinstatement hearing, a majority of the Hearing Committee concluded that Petitioner failed to demonstrate by clear and convincing evidence that he had the competency and learning in the law required for admission to practice. Specifically, the majority noted Petitioner's failure to review or subscribe to legal periodicals or newspapers, purchase law books or perform legal research. Further, the Committee concluded that Petitioner failed to demonstrate by clear and convincing evidence that his practice of law would be neither detrimental to the integrity and standing of the bar or the administration of justice, nor subversive of the public interest. Based on these conclusions, the Committee recommended that Petitioner's reinstatement be denied. Office of Disciplinary Counsel agrees with this recommendation.

Upon careful review of the totality of the record, the Board concludes that Petitioner met his burden of proof pursuant to Pa.R.D.E. 218(c)(3).

Pursuant to Disciplinary Board Rule §89.279(d), evidence that a formerly admitted attorney has registered for and attended required courses and lectures or has viewed videotapes of them shall be considered in determining whether the formerly admitted attorney possesses the required competency and learning in the law, but shall not be conclusive on the issue. The record demonstrates that Petitioner took 98 hours of Continuing Legal Education between April 2009 and September 2011, 67 of which were obtained during the time period February 2011 to September 2011. 26.5 hours directly related to the practice of criminal law, which Petitioner expects to undertake. 10 hours related to law practice management. Petitioner's choice of courses reflects an effort to refresh his memory in the areas important to his future practice, as well as an effort to educate himself in the areas where he lacked knowledge in the past.

Other evidence of Petitioner's competency comes in the form of witness testimony. The testimony of Petitioner's former colleagues was credible with regard to his work in the Public Defender's Office up to his suspension, and particularly persuasive was that of Frank McWilson, Esquire, who is presently the Chief Juvenile Counsel for the Public Defender's Office in Allegheny County. Mr. McWilson described Petitioner as an extremely dedicated attorney, who Mr. McWilson would not hesitate to rehire if the opportunity presented itself. Petitioner achieved a reputation as a hard-working, competent and zealous advocate for his clients. This evidence, in tandem with the evidence of CLE credits, supports the conclusion that Petitioner is competent and learned in the law. Petitioner's failure to read legal periodicals, purchase law books or perform

legal research while suspended is not a compelling basis on which to conclude that he is not competent or learned in the law.

Petitioner met his burden of demonstrating that he is morally qualified. His live witnesses and the letters of reference support Petitioner's return to the practice of law. He is thought of in the community as moral, dependable and hard-working and as such will be an asset to the community. Petitioner's testimony was sincere and credible. He forthrightly admitted to making serious mistakes in his practice. His suspension extracted both a financial and emotional toll from him and his family. He is remorseful for his past misconduct and is committed to practicing law in a more careful manner in the future. During his suspension Petitioner worked full-time for Public Interest Communication, LLC and remained involved in community endeavors. He looks forward to regaining his active license, and intends to practice criminal law.

Petitioner has met his burden of proving that he is fit to practice law, and that his readmission will not harm the public or the legal system. For the above reasons, the Board recommends that Petitioner be reinstated to the practice of law.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Petitioner, Richard J. McCague, 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: 

Stephan K. Todd, Board Member

Date: July 18, 2012