

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 691, Disciplinary Docket
: No. 2 - Supreme Court
:
[ANONYMOUS] : No. 74 DB 1989 -
: Disciplinary Board
:
: 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.

1. HISTORY OF PROCEEDINGS

On August 3, 1994, Petitioner, [], filed a Petition for Reinstatement. Petitioner was suspended for five years retroactive

to July 25, 1989, pursuant to Order of the Supreme Court of Pennsylvania of April 28, 1994. This matter was referred to Hearing Committee [] comprised of Chairperson [], Esquire, and Members [], Esquire, and [], Esquire. The Reinstatement Hearings were held on February 13 and March 9, 1995. Petitioner was represented by [], Esquire, and co-counsel [] Esquire. Office of Disciplinary Counsel was represented by [], Esquire.

On November 22, 1995, the Committee filed its Report and recommended that the Petitioner file a Brief on Exceptions on February 15, Office of Disciplinary Counsel filed a Brief Opposing Petition for Reinstatement be denied. Petitioner filed a Brief on Exceptions on February 15, 1996, and requested oral argument. Office of Disciplinary Counsel filed a Brief Opposing Exceptions on March 5, 1996. Oral argument was held before a three member panel of the Board on April 12, 1996. This matter was scheduled to be adjudicated at the meeting of April 30, 1996, but was tabled and ultimately adjudicated by the Board at the meeting of June 28, 1996. Motion was made, seconded and passed unanimously to reopen the record to introduce the fact that Petitioner paid in full the costs incurred in the disciplinary matter, which totaled \$4,909.25.

II. FINDINGS OF FACT

The Board adopts the following findings of fact.

1. On August 3, 1994, Petitioner filed a Petition for Reinstatement.

2. On November 8, 1994, Petitioner filed a Reinstatement Questionnaire and Exhibit List. Reinstatement hearings were held on February 13 and March 9, 1995.

3. Petitioner was born on July 7, 1948, and was admitted to the practice of law in Pennsylvania on October 1, 1972. Petitioner's most recent office for the practice of law was located at [].

4. On March 14, 1989, Petitioner was indicted in the United States District Court for the [] District of Pennsylvania.

5. After his indictment, Petitioner suffered a mental breakdown that resulted in a twenty-six day hospitalization.

6. On July 6, 1989, Petitioner pleaded guilty to twenty-six counts of the Indictment charging him with fourteen counts of Mail Fraud, two counts of Wire Fraud, one count of Transferring and concealing Property of Bankrupt Estate, one count of Willful

Failure to Pay Tax, and eight counts of Willful Failure to File Tax Returns. Petitioner was also convicted of Aiding and Abetting as charged in sixteen of the previous counts.

7. On the date that Petitioner entered his guilty plea, Petitioner filed a Petition for Immediate Suspension with the Supreme Court of Pennsylvania. In his Petition, Petitioner alleged that he was suffering from psychological problems, was currently being medicated, and was under the supervision of a psychiatrist.

8. By Order dated July 25, 1989, the Supreme Court of Pennsylvania granted Petitioner's Petition for Immediate Suspension.

9. On November 14, 1989, the Honorable [A] sentenced Petitioner on seventeen felony counts and sixteen counts of Aiding and Abetting, to a term of incarceration of two years, all sentences to run concurrently. On nine misdemeanor counts of the Indictment, Judge [A] suspended the imposition of sentence and placed Petitioner on probation for five years with mandatory special conditions, including paying to the IRS all sums determined to be due and owing and providing 1,000 hours of community service.

10. Petitioner served his time in [B] Federal Prison and was released in December 1990, after ten months of incarceration. He filed a Motion for Early Termination of Probation, which was granted by Order of the District Court dated May 30, 1995. At the time this Motion was granted, Petitioner had not fully paid his tax obligation or completed his community service.

11. A Petition for Discipline was filed on December 28, 1989. Disciplinary hearings were held before Hearing Committee [] on July 30, October 28, and October 29, 1991.

12. Petitioner presented evidence that he suffered from a mixed personality disorder and that absent this disorder, it would be highly unlikely that Petitioner would have engaged in criminal activity. The Disciplinary Board found that Petitioner's psychiatric condition was a factor in causing the misconduct and was an appropriate consideration as a mitigating factor.

13. The Board recommended and the Court imposed a five year suspension retroactive to July 25, 1989.

14. During his suspension, Petitioner kept current on developments in the law by subscribing to and reading the Criminal

Law Reporter and the advance sheets.

15. On August 4, 5, and 6, 1993, Petitioner attended the Pennsylvania Legal Practice Course at [] University, which satisfies the requirements of Disciplinary Board Rule ' 89.279(a).

16. Petitioner's counsel of record has offered Petitioner employment upon reinstatement.

17. Since his suspension, Petitioner has worked with various attorneys on criminal cases performing computer litigation support services through [C], a corporation Petitioner formed after his release from prison.

18. Petitioner presented character evidence in the form of testimony and letters from family members and attorneys in the community attesting to the positive change in Petitioner's personality during the past five years. The witnesses uniformly agreed that Petitioner has achieved balance in his life, and he is ready to return to the practice of law.

19. Petitioner testified that he was in psychiatric therapy for his condition from January 1989 until approximately December

1994. (N.T. 2-13-95, 54) He testified that he has learned to deal with insecurities and live within the limits set by society. (N. T. 57)

20. Dr. [D], Petitioner's treating psychiatrist since January 1989, expressed the opinion that Petitioner has recovered sufficiently to practice law without recurrence of his previous symptoms. (Exhibit List Tab 2)

21. Dr. [E], a psychiatrist who examined Petitioner three times in 1991 and in August 1994, expressed his opinion that Petitioner has undergone significant changes in his attitude and behavior that signify he is ready to resume the practice of law.

Dr. [E] did not note the existence of the personality disorders that were prevalent in the past. (Exhibit List Tab 3)

22. Petitioner expressed his shame and embarrassment for what he did to his family and the disdain he brought upon the legal community and profession. He understands that he was wrong to set his own standards of ethics and morality, and he has a new sense of his obligations to the community at large, not just his clients. (Exhibit List, Tab 4, N.T. 2-13-95, 58)

23. The Petitioner has been assessed in excess of \$700,000 in Federal Taxes for the years 1981 to 1989, 1992, and 1993. (N.T. 2-13-95, 122, Installment Agreements dated 3-31-95)

24. Petitioner has negotiated for the compromise of these tax obligations to \$378,492, on which he will pay \$250 per month until February 15, 1997. At that time he will begin paying \$500 per month, subject to a provision for renegotiation six months after reinstatement to the Bar. (2-13-95, 121-123, letter and exhibit submitted 4-4-95)

25. During his suspension, Petitioner reported \$166,576 in personal income on his 1992 federal income tax return but failed to pay his federal taxes in full when due, and, in fact, only paid \$4,212 of the \$44,846 in taxes due. (N.T. 2-13-95, 133-135).

26. Petitioner reported \$111,425 in personal income on his federal 1993 tax income return but failed to pay his federal taxes in full when due and, in fact, only paid \$3,159 of the \$29,223 in taxes due.

26. Petitioner defaulted on numerous credit card obligations in or around 1993, some of which had been opened and obligations

incurred thereon during the period he was suspended from the practice of law.

28. During his suspension, Petitioner and his family lived in a residence at [] in [] that is titled to [F], a family friend. Petitioner pays the monthly obligations on the house, although there is no written agreement between Petitioner and [F].

29. Petitioner has the use of a 1990 Pontiac Transport titled to his mother. Petitioner makes payments on this vehicle. Petitioner also has the use of a leased 1995 Chevrolet Suburban which a business client gave to him. Petitioner does not make payments on this vehicle.

30. Under the terms of Petitioner's probation which commenced in October 1990 and terminated in May 1995, Petitioner's finances were under the scrutiny of the United States Probation Office and the IRS. Petitioner had to file monthly statements of his expenses, income, assets and liabilities. The accuracy of these disclosures was never challenged and the Petitioner's probation was terminated.

31. An Opinion and Order was entered by the United States

District Court of the [] District of Pennsylvania on May 30, 1995, granting Petitioner's Motion for Early Termination of Probation.

At the time of the Order, Petitioner had not fully satisfied the condition of probation requiring payment of outstanding tax obligations.

32. Petitioner owed costs to the Disciplinary Board in the amount of approximately \$11,509. Petitioner initially entered into a payment plan with the Office of the Secretary in the amount of \$300 per month. At the time of the reinstatement hearing, Petitioner still owed costs.

33. Petitioner paid the balance of the costs owed to the Disciplinary Board in the amount of \$4,909.25 on June 10, 1996.

III. CONCLUSIONS OF LAW

Petitioner has demonstrated, with 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.

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

interests of the public.

IV. DISCUSSION

The principal objectives of the disciplinary system are to determine whether an attorney possesses the requisite fitness to practice law and to protect the public from unfit attorneys. Office of Disciplinary Counsel v. Keller, 509 Pa. 573, 506 A.2d 872 (1986). Pursuant to Rule 218(a), Pa.R.D.E., an attorney who is suspended 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 reinstatement to the practice of law in this Commonwealth after suspension, he has the burden of demonstrating by clear and convincing evidence that he possesses the moral qualifications, competency and learning in the law required for admission to practice law. In addition, Petitioner has the burden of demonstrating that his resumption of the practice of law will not be detrimental to the integrity and standing of the bar or the administration of justice, nor subversive of the public interest. (Rule 218(c)(3)(i), Pa.R.D.E.)

In determining whether Petitioner clearly demonstrated his present fitness to practice law, the Board must consider the nature of Petitioner's misconduct, his present competence and legal

abilities, his character, his 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 as a result of his conviction for mail fraud, wire fraud, concealing property in a bankruptcy, willful failure to pay taxes, and willful failure to file tax returns. A causal factor in his illegal conduct was his personality disorder. Petitioner was sentenced to serve a prison term and spent ten months at [B]. As part of his probation, he was directed to pay the IRS the sums he owed and to perform community service. Although he did not fulfill these conditions, his probation was terminated by Order of the District Court in 1995.

After serving his sentence in 1990, Petitioner started a litigation support business in which he provided computer assisted support to attorneys involved in complex litigation. Petitioner remained in psychiatric therapy for his personality disorder until December 1994. His medical prognosis for the future is positive.

Dr. [D], the psychiatrist who treated Petitioner, expressed his opinion that Petitioner has recovered sufficiently to practice law without recurrence of his previous symptoms. Dr. [E], who examined Petitioner on various occasions, expressed his opinion that

Petitioner is psychologically ready to resume the practice of law, as Petitioner has made significant changes in his attitude and behavior. The personality disorders that negatively affected his ability to practice law in the past are not evident. Petitioner has placed his family as his first priority and is strengthening his relationships with his wife and teenage children. He also has a new found interest in the Jewish religion. Petitioner admits that his actions were wrong and that he allowed his practice of law to become the driving force in his life, along with the feelings of power and control he derived from practicing. He understands that he embarrassed and shamed his family and brought disgrace to the legal profession through his actions. With the help of therapy, he has modified his behavior and changed his priorities. Family members, friends, and fellow practitioners wrote letters to express the positive changes in Petitioner they have witnessed over the past years. All of these character witnesses believe that he has tempered the obsessive, perfectionist traits that led to his misconduct. These witnesses believe Petitioner's competence to practice law was never in question and he would be a benefit to the profession if he is reinstated. Petitioner has received an offer of employment upon reinstatement from his attorney in this matter.

The Hearing Committee recommended denial of the Petition for

Reinstatement as they were not satisfied that Petitioner "had gotten his financial house in order." Further, the Hearing Committee felt that Petitioner had not made a good faith effort to pay his credit card debts and his liabilities to the IRS since the facts show that during his suspension he was able to earn Asignificant income in certain years." The Hearing Committee was also suspicious of the fact that Petitioner's personal residence is titled in a friend's name, and he has use of automobiles titled in the names of third parties. Finally, the Hearing Committee cited the fact that at the time of the reinstatement hearing, Petitioner owed costs to the Disciplinary Board, as further evidence that the Petitioner had not met his burden in demonstrating his entitlement to reinstatement. The Committee believed that the Petitioner lacked the proper moral qualifications for readmission.

After due consideration of the Committee's concerns, the Board, however, based upon its review of the record, is unable to agree with the Committee's recommendation. The Petitioner claims, in response to the Committee's concerns, that his failure to satisfy the debts in question stems from his inability to pay, not his desire to avoid paying his lawful obligations. The Petitioner further claims that he is addressing his substantial obligation to the IRS, through a compromise agreement and he is currently paying

monthly installments in accordance with that agreement. Significantly, the payments under this agreement are subject to upward modification if the Petitioner is reinstated.

While the Hearing Committee was justifiably suspicious of the fact that Petitioner does not own the house he lives in or the vehicle he drives, there is no evidence of record to support a finding that these actions were taken in an unlawful attempt to avoid the payment of a legal obligation. Further, the United States District Court was aware of these facts and nevertheless terminated Petitioner's probation even though he had not satisfied fully his IRS obligations.

Accordingly, based upon the record before it, the Board cannot agree with the Committee's determination that the Petitioner lacks the moral qualifications necessary for readmission. There is no per se rule to deny reinstatement to an attorney who has not paid his taxes. The Board is persuaded that owing back taxes to the government, while a significant factor for consideration in reinstatement matters, does not, in and of itself, so undermine a Petitioner's moral qualifications so as to preclude his readmission to the bar. The case law supports this conclusion.

In the case of Office of Disciplinary Counsel v. Anonymous No. 99 DB 92, an attorney was suspended for thirty months after conviction for two counts of income tax evasion. When he petitioned for reinstatement, the Board found that he demonstrated remorse and enjoyed an excellent reputation in the community. Evidence was presented that the attorney owed \$1 million to the IRS, but he had reached an agreement and was paying sums each month towards his obligation. The Board concluded that the attorney had met his burden under Rule 218(c)(3)(i) and recommended reinstatement. The Supreme Court accepted this recommendation and granted reinstatement.

In the case of In re Anonymous No. 20 DB 80, 36 Pa. D. & C. 3d 575 (1985), an attorney who petitioned for reinstatement owed \$19,000 in back taxes. The facts revealed that his income dropped dramatically during the time frame that he was not able to practice and he was unable to pay his debt, although he made an effort to make small payments towards the amount he owed. This petitioner was reinstated.

In a similar case, an attorney who failed to satisfy judgments against him was not penalized for that occurrence when he petitioned for reinstatement. In re Anonymous No. 82 DB 84, 8 Pa.

D. & C. 4th 514 (1990). The attorney therein testified that he had been financially unable to make payments on the judgments but expected to satisfy them in two years. The Board found that although there was a legitimate interest in having the judgments satisfied expeditiously, the attorney's testimony was credible that he was unable to pay. The Petition for Reinstatement was granted.

The common denominator in cases where unpaid debts did not preclude readmission is that the attorneys were found to have an inability to pay, rather than an intent not to pay. The record did not provide a basis for concluding that Petitioner intentionally failed to pay his lawful obligations. The record did show, however, that in the view of the United States District Court, the Petitioner's financial affairs did not preclude Petitioner's early release from probation. Accordingly, the Board accepts Petitioner's claim that his failure to pay back taxes was due to an inability to pay as opposed to a wilful intent not to pay. For these reasons, we find that the fact Petitioner owes back taxes does not reflect so negatively on Petitioner's moral qualifications so as to preclude his readmission.

Petitioner's strong character testimony as to his change in personality, as well as his own testimony as to rehabilitation,

also supports a finding that he is morally qualified. He has demonstrated that he is competent to return to the practice of law. The psychiatric authority presented is persuasive that Petitioner does not suffer from the personality disorder that troubled him in the past and he is ready to handle the stresses of a legal practice. Petitioner has demonstrated that he possesses the appropriate learning in the law necessary to make his readmission to the law a smooth transition. Finally, the evidence clearly establishes that Petitioner's 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.

For all of the above reasons, 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: _____
Gregory R. Miller, Member

Date: October 17, 1996

Board Members Kerns and Carson did not participate in the June 28,
1996 adjudication.

O R D E R

PER CURIAM:

AND NOW, this 20th day of March, 1997, the request for oral argument and Motion to Strike Reply Brief of Disciplinary Counsel are denied. A Rule having been issued upon [Petitioner] on December 30, 1996, to show cause why an order denying reinstatement should not be entered, upon consideration of the responses filed, the Rule is made absolute and the Petition for Reinstatement is hereby denied.

Pursuant to Rule 218(e), Pa.R.D.E., petitioner is directed to pay the expenses incurred by the Disciplinary Board in the investigation and processing of the Petition for Reinstatement.