

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.

I. HISTORY OF PROCEEDINGS

Petitioner, [], filed a Petition for Reinstatement to the bar of Pennsylvania on May 24, 2000. By Order of the Supreme Court of Pennsylvania dated

April 28, 1994, Petitioner was suspended from the practice of law in Pennsylvania for five years retroactive to July 25, 1989. This is Petitioner's third request for reinstatement. His first Petition for Reinstatement was denied by Order of the Supreme Court dated March 20, 1997. Petitioner withdrew his second request in April 1999.

A reinstatement hearing was held on February 22, 2001 before Hearing Committee [] comprised of Chair [], Esquire, and Members [], Esquire, and [], Esquire. Petitioner was represented by [], Esquire.

The Committee filed a Report on September 21, 2001 and recommended that the Petition for Reinstatement be granted.

No Exceptions were filed by the parties to this Report.

This matter was adjudicated by the Disciplinary Board at the meeting of December 6, 2001.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner was born in 1948 and was admitted to practice law in Pennsylvania in 1972. His address is [].

2. Petitioner was suspended from the practice of law by Order of the Supreme Court dated April 28, 1994. This suspension was for a period of five years retroactive to July 25, 1989.

3. Prior to Petitioner's suspension, he practiced commercial law and white collar criminal defense. Petitioner also sub-specialized in defending tax prosecutions.

4. The misconduct underlying Petitioner's suspension was his conviction of mail fraud, wire fraud, transferring and concealing property of a bankrupt estate, willful failure to pay tax, willful failure to file tax returns, and aiding and abetting.

5. Petitioner was sentenced to a term of incarceration of two years. He served ten months of incarceration at [] Prison and was released at that time.

6. Following Petitioner's incarceration, he worked with various attorneys on cases performing computer litigation support services through [A], a corporation Petitioner formed after his release from prison.

7. Although this corporation did well initially, Petitioner's net income decreased starting in 1995 and he averaged \$30,000 for the years 1997 to 1999.

8. In 1999, Petitioner's apartment was destroyed by Hurricane Floyd and his computer equipment, software and business records were also destroyed. As of the date of the reinstatement hearing, [A] was not a viable business concern.

9. Petitioner has tax problems that reach back to the 1980's. Petitioner presently owes the IRS approximately \$2 million in back taxes, including interest and penalties.

10. In 1995, Petitioner entered into two Installment Agreements with the IRS concerning the payment of back taxes. At that time, the tax liability totaled approximately \$383,000, plus interest and penalties.

11. Pursuant to the agreements, Petitioner was to pay down his liability at the rate of \$500 per month and in 1997 the rate would increase to \$750 per month. The agreements were to be renegotiated after Petitioner was reinstated to the Pennsylvania bar.

12. Petitioner made payments under the Agreements for a period of twelve to eighteen months and then defaulted on his obligation.

13. From 1998 to August 2000, Petitioner, through his CPA and his attorney, attempted to reach an offer in compromise of his tax liability.

14. The offer was for \$30,000, which was rejected by the IRS as inadequate in December of 1999.

15. Petitioner appealed the rejection in January 2000. In August 2000, the IRS rejected the appeal and informed Petitioner that he should pay his account in full as soon as possible.

16. From April 1999 until October 2000, Petitioner made ten payments to the IRS totaling \$1,900. There is no evidence of record of any further payments sent to the IRS in satisfaction of his liability.

17. Petitioner, together with his wife, timely filed tax returns for the years 1997, 1998, and 1999 and timely paid all taxes due and owing thereon.

18. The IRS has taken no steps to collect any part of Petitioner's outstanding tax liability.

19. Petitioner has made no other compromise offers to the IRS since the one made in 1998 and believes that his problems with the IRS are beyond his control. (P-10)

20. Petitioner acknowledged that an important issue in his first reinstatement proceeding was the disarray of his financial affairs.

21. Petitioner responded to these concerns by moving in September of 1997 from a house owned by a friend to an apartment.

22. Petitioner does not borrow money from friends or family to meet his living expenses, but instead lives on the money he and his wife earn. Petitioner stated that he is no longer faced with the constant stress of having to find money from every possible source in an attempt to meet financial obligations. (Reinstatement Questionnaire)

23. Petitioner's apartment and belongings were destroyed by Hurricane Floyd in 1999. Petitioner and his family were forced to live with his sister for a time until they established a new home.

24. Subsequent to Petitioner's misconduct, he began receiving psychiatric treatment from [B], M.D. Petitioner treated with Dr. [B] from 1989 until 1995. Petitioner was diagnosed with a mixed personality disorder.

25. In its Report and Recommendation of October 28, 1993, the Disciplinary Board found that absent this personality disorder, it would be highly unlikely that Petitioner would have engaged in criminal activity.

26. In preparation for the instant hearing, Petitioner was examined by [C], M.D. Dr. [C] examined Petitioner on four prior occasions regarding his disciplinary and reinstatement matters.

27. Dr. [C] opined that it is unlikely Petitioner will have difficulties such as he had in the past because of his personality dynamics. Petitioner does not suffer from any mental or emotional disturbances at the present time and Dr. [C] believes that Petitioner is strong enough to handle the problems associated with the practice of law. Dr. [C] views Petitioner as a changed man in that he has reset his priorities and has developed positive, sensitive relationships with others. (P-10)

28. Petitioner presented the testimony of his sister, his wife, and his two adult children. These witnesses support Petitioner's reinstatement based on the fact that they believe he has undergone a transformation from the self-centered individual he was at the time of the misconduct into a caring, sensitive person.

29. Petitioner testified to the changes he has experienced. Petitioner acknowledged responsibility for his prior misconduct and further acknowledged that he was not ready for reinstatement at the previous times when he applied.

30. Petitioner restructured his priorities and cut his expenses, forcing his family to give up material things that had been important to them. Petitioner believes he previously tried to live by appearances and was jealous of the material possessions of

others. He has made efforts to change these attitudes and credits Dr. [B] for his help in making this transformation.

31. Petitioner fulfilled his Continuing Legal Education requirements for reinstatement.

32. Petitioner has kept up his currency in the law by reading the Criminal Law Reporter and Third Circuit opinions.

33. Petitioner works in a paralegal capacity for two friends who are attorneys, [D] and [E]. He works approximately 20 hours per week. He has not sought other full time employment.

34. Petitioner plans to pursue the general practice of law if reinstated.

III. CONCLUSIONS OF LAW

1. Petitioner has failed to prove that he has the moral qualifications, competency and learning in the law required to practice law in Pennsylvania.

IV. DISCUSSION

This matter is before the Disciplinary Board on a Petition for Reinstatement from suspension. By Order of the Supreme Court of Pennsylvania dated April 28, 1994, Petitioner was suspended for five years retroactive to July 25, 1989.

Pursuant to Rules 218(a), Pa.R.D.E., an attorney who is suspended for a period exceeding one year may not resume practice until reinstated by the Supreme Court of Pennsylvania. In order for Petitioner to gain reinstatement, he has 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 in this Commonwealth. 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.

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 to the lawyer's suspension, but rather the nature and extent of the rehabilitation efforts the lawyer has made since the time the sanction was imposed, and the degree of success achieved in the rehabilitative process. Philadelphia News., Inc. v. Disciplinary Board of the Supreme Court, 468 Pa. 382, 363 A.2d 779 (1976).

Petitioner was convicted of mail fraud, wire fraud, transferring and concealing property of a bankrupt estate, willful failure to pay tax, willful failure to file tax returns, and aiding and abetting. This is Petitioner's third attempt at reinstatement. At issue in the first reinstatement proceeding in 1996 was the disordered state of his finances, which evidenced that he was not fully rehabilitated from his original misconduct. The Hearing Committee in that first proceeding found that Petitioner's financial house was not in order and recommended to the Board that the Petition be denied. The Board recommended reinstatement. However, the Supreme Court agreed with the Hearing Committee's recommendation and denied Petitioner's reinstatement. Petitioner of his own accord

withdrew his second Petition in April 1999, in light of on-going tax problems and negotiations with the IRS. Petitioner acknowledged that at that time he recognized that these problems would pose a deterrent to his reinstatement.

The record currently before the Board evidences that Petitioner made some lifestyle changes in an effort to address these financial concerns and to get his finances in order. These changes include living within his earnings and not borrowing money from family and friends to support an overblown lifestyle. Petitioner and his wife rent an apartment and his wife went back to work for a day camp. The record evidences that Petitioner works approximately 20 hours per week in a paralegal capacity for several attorney friends. He has not sought other full-time employment in either a legal or non-legal capacity. Petitioner's business, [A], is experiencing hard times.

Petitioner and his wife lease two vehicles and own a third. Petitioner testified he has given up material things to which his family was accustomed. Petitioner and his wife have timely filed and timely paid taxes for the years 1997, 1998, and 1999. However, the record evidences that the same tax problems exist as existed in the 1996 and 1999 reinstatement attempts. In 1998, Petitioner attempted a compromise agreement with the IRS for \$30,000. At the time he owed nearly \$400,000, excluding interest and penalties. The IRS rejected the offer and his subsequent appeal. Petitioner now owes approximately \$2 million in back taxes, including interest and penalties. Between April 1999 and October 2000, Petitioner made payments totaling \$1,900. There is no evidence that he has made

further payments to satisfy his liability. The IRS has not taken action to collect the monies, nor has Petitioner attempted another offer in compromise.

Generally, a tax liability does not prevent a petitioner from reinstatement. In re Anonymous No. 56 DB 1994, 47 Pa. D. & C. 4th (1999), (wherein the Board stated that where a petitioner has unpaid debts due to an inability to pay, rather than an intent not to pay, the unpaid debts do not preclude readmission to the bar); In re Anonymous No. 99 DB 92 (No.2), 31 Pa. D. & C. 4th 294 (1995) (Petitioner was reinstated from suspension after conviction for tax evasion and willful failure to pay taxes. Petitioner reached agreement with the IRS on the liability and paid \$900,000. Even though he still owed \$1 million, he presented evidence of substantial efforts to fulfill his obligation). However, the facts of this case must be examined closely. The very misconduct for which Petitioner was suspended was a conviction for, among other things, willful failure to pay tax and willful failure to file tax returns. At the very least, Petitioner should have presented evidence of a good faith effort to make payment on the liability, enormous as it is. Instead, Petitioner presented ten checks ranging in amounts from \$100 to \$250, the last of which was paid to the IRS in October of 2000, as his evidence that he is working to pay off his liability. The IRS rejection of Petitioner's \$30,000 compromise offer appears to have stopped any effort by Petitioner to address this tax problem. Understandably, Petitioner is not in a financial position to make large payments; however, a good faith effort is crucial to demonstrate that

Petitioner has changed his ways. The Board is not persuaded that Petitioner has shown a good faith effort.

Petitioner presented evidence that he has undergone a change in character that is evidence of his rehabilitation. Petitioner presented testimony from his sister, wife, and two adult children regarding this change. These witnesses testified that Petitioner used to be a selfish person, jealous of the material acquisitions of others and frantic in his efforts to achieve these same items at any cost to his relationships with others, including his family. He had a bad temper and was prone to blow-ups. According to the witnesses, Petitioner is now more sensitive to other people. He accepts the blame for what has happened in his life. [F], Petitioner's wife, observed that these changes really started to become apparent after Petitioner was denied reinstatement in 1997. Petitioner began to realize how inappropriate his behavior was and how it had hurt him and his family. While the Board has no reason to discount the testimony presented by the Petitioner's family, it should be noted that the record is devoid of any evidence relating to Petitioner's current professional competence and demeanor. The Petitioner testified that he works in a paralegal capacity for two attorneys, [D] and [E]. The Board notes that these witnesses could have been a source of supportive testimony for the Petitioner and further notes the absence thereof.

Dr. [C] examined Petitioner in preparation for the reinstatement hearing. Dr. [C] has examined Petitioner on four previous occasions in conjunction with disciplinary and

reinstatement proceedings. Dr. [C] observed that Petitioner appeared thoughtful and considerate. Petitioner talked about the importance of self-discipline. Petitioner maintained an awareness of his prior difficulties and the steps he must take to avoid such problems in the future. Petitioner told Dr. [C] that his troubles with the IRS are “beyond his control” and he does not feel they should be a hindrance to his returning to the practice of law. Dr. [C] opined that Petitioner has made significant changes in his life and in his attitude. It is Dr. [C’s] opinion that Petitioner is capable of practicing law at this time.

While it is clear that Petitioner has made some positive changes in his attitude and has mended fences in his personal relationships, these changes have not carried forward to other aspects of his life, including Petitioner’s resolution of his tax difficulties. Petitioner feels his tax problems are beyond his control, even though he is well aware that they are the root of his original misconduct and his failure to achieve reinstatement on two previous occasions. He does not believe that he can ever pay back the amount that is owed, so he has stopped paying anything. Additionally, Petitioner provided scant evidence of any eleemosynary activities which might demonstrate rehabilitative efforts and bolster his claim that he is no longer a self-centered individual. In the Board’s view, it is not enough for this particular Petitioner to voice these changes; he must be prepared to take action. This he has not done to his fullest extent.

For the above reasons, the Board finds that Petitioner has not met his burden of proving that he is rehabilitated. The Board recommends that the Petition for Reinstatement be denied.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Petitioner, [], Petition for Reinstatement be denied.

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: June 7, 2002

Board Members Donohue and Watkins dissented and would grant reinstatement.

Board Members Schultz and Morris did not participate in the December 6, 2001 adjudication.

PER CURIAM:

AND NOW, this 8th day of August, 2002, upon consideration of the Report and Recommendations of the Disciplinary Board of the Supreme Court of Pennsylvania dated June 7, 2002, 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.