

IN THE SUPREME COURT OF PENNSYLVANIA

IN THE MATTER OF : No. 1493 Disciplinary Docket No. 3
:
ANTHONY C. CAPPUCCIO : No. 79 DB 2009
:
PETITION FOR REINSTATEMENT : Attorney Registration No. 89512
:
: (Bucks County)

ORDER

PER CURIAM

AND NOW, this 22nd day of January, 2018, the Petition for Reinstatement is denied. Petitioner is directed to pay the expenses incurred by the Board in the investigation and processing of the Petition for Reinstatement. See Pa.R.D.E. 218(f).

A True Copy Patricia Nicola
As Of 1/22/2018

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

In the Matter of	:	No. 1493 Disciplinary Docket No. 3.
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	:	No. 79 DB 2009
ANTHONY C. CAPPuccio	:	
	:	Attorney Registration No. 89512
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PETITION FOR REINSTATEMENT	:	(Bucks County)

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 dated July 17, 2012, the Supreme Court of Pennsylvania disbarred Petitioner, Anthony C. Cappuccio, retroactive to July 30, 2009. Petitioner filed a Petition for Reinstatement on September 2, 2016. Office of Disciplinary Counsel filed a Response to Petition on November 3, 2016.

Following a prehearing conference conducted on December 12, 2016, a District II Hearing Committee conducted a reinstatement hearing on January 13, 2017 and March 6, 2017. Petitioner was represented by Samuel C. Stretton, Esquire. At the January 13, 2017 hearing, Petitioner presented the testimony of fifteen witnesses and testified on his own behalf. Office of Disciplinary Counsel did not present any witnesses. Petitioner's Exhibits P-1 through P-6 and Office of Disciplinary Counsel's Exhibits ODC-1 through ODC-7 were admitted into evidence without objection. At the March 6, 2017 hearing, Petitioner presented the testimony of two witnesses. Petitioner stipulated to the testimony of Office of Disciplinary Counsel's witness, after which time the record was closed.

Following the submission of the parties' post-hearing briefs, the Hearing Committee filed a Report on August 10, 2017, concluding that Petitioner failed to meet his reinstatement burden and recommending that the Petition for Reinstatement be denied.

On August 31, 2017, Petitioner filed a Brief on Exceptions and requested oral argument before the Board.

Office of Disciplinary Counsel filed a Brief Opposing Exceptions on September 7, 2017.

On October 4, 2017, a three-member panel of the Board heard oral argument.

The Board adjudicated this matter at the meeting on October 19, 2017.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner is Anthony C. Cappuccio. He was born in 1977 and admitted to practice law in the Commonwealth in 2002. Petitioner is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

2. Following his admission to the Pennsylvania bar, Petitioner worked for the Bucks County District Attorney's Office from 2002 until September 2008. 1/13/17 N.T. 194.

3. Petitioner's highest position in the District Attorney's Office was Chief Deputy District Attorney with responsibilities for the Homicide by Vehicle Division and the Grand Jury Division. 1/13/17 N.T. 195.

4. On December 4, 2008, following a criminal investigation that commenced on September 5, 2008, a Criminal Information was filed against Petitioner in the matter of ***Commonwealth v. Anthony C. Cappuccio***, Docket No. CP-09-CR-0008182-2008, Court of Common Pleas of Bucks County. Stipulation ("Stp.") 6.

5. On March 10, 2009, Petitioner entered a guilty plea before the Honorable C. Theodore Fritsch, Jr. to 18 Pa.C.S.A. §4304(a)(1) Endangering the Welfare of Children (F3)(3 counts); 18 Pa.C.S.A. §7512(a) Criminal Use of Communication Facility (F3); 18 Pa.C.S.A. §6301(a)(1) Corruption of Minors (M1)(3 counts); and Pa.C.S.A. §6301(a) Furnishing Liquor or Malt or Brewed Beverages to Minors (M3)(3 counts). Stp. 7.

6. During the time period in which his crimes were committed, Petitioner was the Chief Deputy District Attorney for the Bucks County District Attorney's Office. Stp. 10

7. During his tenure with the District Attorney's Office, Petitioner personally prosecuted criminal defendants for charges of corruption of minors and furnishing alcohol to minors.

8. The underlying facts of Petitioner's criminal conduct are set forth below.

9. From January 2005 until June 2008, Petitioner was a "Youth Fellowship Group Leader" ("Youth Group Leader") for the First United Methodist Church of Perkasio, Pennsylvania. In that role, Petitioner was a mentor of juveniles, including the three juvenile victims. Stp. 13.

10. On several occasions from approximately March 2007 through July 2008, Petitioner supervised youths under the age of eighteen and took them to rock concerts. At these concerts, Petitioner purchased and supplied alcoholic beverages to three minors, and also smoked marijuana with them. During this time period, Petitioner also attended football games, played pool and went to restaurants with members of the youth group. Stp. 14.

11. The juvenile victims were allowed to attend the concerts because their parents trusted Petitioner in light of his position as a Youth Group Leader and Chief Deputy District Attorney. The mother of Victim #1 "knew [Petitioner] was an Assistant

District Attorney, attended [their] church regularly, and was one of the youth group leaders. [She] thought [she] was leaving her son in good hands.” Stp. 15; ODC-7 p.3

12. Petitioner and the juvenile victims discussed and made plans to attend the concerts while they were at the weekly youth group meetings, as well as outside of those meetings. Stp. 16.

13. On March 24, 2007, Petitioner escorted Victim #1, Victim #2, and other youth group members to a Meatloaf concert in Upper Darby, Pennsylvania. During the concert, when other youth group members were not present, and at the request of Victim #1 and Victim #2, Petitioner took money from Victim #1, 15 years of age at the time, and Victim #2, 17 years of age at the time, and purchased alcoholic beverages. Petitioner provided the alcoholic beverages to Victim #1 and Victim #2, who consumed the beverages. Stp. 17.

14. The Petitioner first furnished alcohol to Victim #1 when the boy was 15 years of age, Petitioner knew he was sexually attracted to the victim and Petitioner was interested in having sexual relations with him. Petitioner thought providing alcohol to the juveniles and smoking marijuana with them would make him look “cool” and “further cement that relationship” with Victim #1. Petitioner saw Victim #1 as an “opportunity” and he “offended and committed criminal activity” and eventually “sexually exploited” the youth. Petitioner believed his relationship with Victim #1 was an “opportunity” for him to “explore” his homosexual preferences “without anyone knowing and without getting caught and [still maintaining] all the statuses [he] had achieved career wise, [his] position

in the DA's office, [his] marriage, [his] relationship with [his] children." 1/13/17, N.T. 200-201, 206-208, 262-263.

15. On June 1, 2007, Petitioner took Victim #1, who was 15 years of age at the time, to a Roger Waters concert in Philadelphia. At the request of Victim #1, Petitioner bought beer and provided it to Victim #1, who consumed it. Stp. 18.

16. On April 3, 2008, Petitioner attend an REO Speedwagon/Styx/Def Leppard concert with Victims #1, #2, and #3. Victim #3 brought marijuana and Petitioner, Victim #1 and Victim #3 went into a public bathroom and smoked the marijuana. At the time, Victim #1 was 16 years of age and Victim #3 was 17 years of age. Stp. 19.

17. On July 14, 2008, prior to attending an Eagles concert in Philadelphia, Victim #1, with Petitioner's knowledge and consent, prearranged to obtain marijuana from a source known by Victim #1, which they planned to smoke at the concert. Petitioner knowingly drove Victim #1 to the source's location, where Victim #1 obtained the marijuana. Petitioner also stopped on the way to the concert and purchased two six-packs of Corona beer, and drank one of the six-packs of beer with the juvenile victims. Petitioner, Victim #1 and Victim #3 smoked the marijuana outside the concert stadium. At the time, Victim #1 was 16 years of age, and Victim #3 was 18 years of age. Stp. 20.

18. From approximately May 2008 through September 2008, Petitioner, 31 years of age at the time, engaged in a sexual relationship with Victim #1, who was 16 years of age at the start of the relationship. The physical relationship started with kissing and escalated to mutual oral sex. During this time period, Petitioner told Victim #1 not to tell anyone about their relationship due to the victim's age, Petitioner's marriage, and their

mutual sexual orientation. At all times, the relationship was consensual and both participants were over the legal age of consent relating to sexual offenses, as defined by 18 Pa.C.S.A. §3101 et seq. Stp. 21.

19. Petitioner admitted that he used his position as an attorney and prosecutor to sexually exploit Victim #1. 1/13/17, N.T. 286; P-3.

20. In or about April 2008, Petitioner's spouse confronted Petitioner about his relationship with the minor. Stp. 22.

21. Petitioner engaged in sexual relations with the juvenile victim for several months after being confronted by his spouse. Stp. 23.

22. Petitioner had sexual relations with Victim #1 approximately twelve times. These relations took place in various public parking lots, in the victim's home, and in Petitioner's home. Stp. 25.

23. In July 2008, Petitioner prearranged for Victim #1, who was 17 years of age at the time, to sleep overnight at Petitioner's home. Petitioner and his spouse had been vacationing at the beach and Petitioner came home by himself because he was scheduled to be the prosecuting attorney at a preliminary hearing the following morning. Petitioner instructed Victim #1 to park his vehicle in a different neighborhood. Petitioner then picked up Victim #1 and drove him back to Petitioner's residence. Petitioner and Victim #1 sat in the living room and consumed alcoholic beverages, then went to a second floor bedroom and engaged in sexual activity. Stp. 26.

24. A criminal investigation against Petitioner was initiated on September 5, 2008, after a police officer found Petitioner and Victim #1 partially clothed

in a vehicle parked in a public shopping center parking lot, engaged in sexual activity.
Stp. 27.

25. On September 6, 2008, Petitioner resigned from his position with the Bucks County District Attorney's Office. Stp. 28.

26. On September 15, 2008, Petitioner engaged in sexual activity with Victim #1 at Petitioner's residence. Stp. 29.

27. Following the entry of Petitioner's guilty plea on March 10, 2009, he was sentenced on that date to house arrest for a period of 6 to 23 months followed by probation. Stp. 8.

28. On April 6, 2009, Petitioner was re-sentenced by Judge Fritsch as follows:

- a. Count 1 (Endangering the Welfare of Children): 6-23 months imprisonment in Bucks County Correctional Facility;
- b. Counts 2 & 3 (Endangering the Welfare of Children): 6-23 months imprisonment in Bucks County Correctional Facility concurrent to Count 1;
- c. Count 4 (Criminal Use of a Communication Facility): 5 years probation consecutive to counts 1-3;
- d. Count 5 (Corruption of Minors): 2 years probation consecutive to prior counts;
- e. Counts 6 & 7 (Corruption of Minors): 2 years probation concurrent to Count 5;

f. Counts 8, 9, &10 (Furnishing Liquor or Malt or Brewed Beverages to Minors): No further penalty; and

g. Petitioner was ordered to obtain an Independent Mental Health Evaluation. Stp. 9.

29. At Petitioner's sentencing hearing, victim impact statements were submitted to Judge Fritsch.

a. The mother of victim #1 wrote:

... Words cannot do justice to describe what our family has been through over the past few months...I thought however that (Petitioner) was an upstanding young man who related well to the boys. I knew he was an Assistant District Attorney attended our church regularly, and was one of the youth group leaders. I thought I was leaving my son in good hands. To learn that over the next two years Anthony was buying beer for them and smoking pot with them was shocking. I allowed my son to be friends with him because I thought he was a good Christian man who would help to keep him away from this behavior. I was wrong...Anthony betrayed me as well as the other parents who trusted our young impressionable sons to him. He took these kids down a bad road. The effect of his influence cannot be easily reversed....He fooled us all; parents and church leaders alike, and I feel it's imperative that he never does this to anyone else ever again. ODC-7; p.3-4.

b. Victim #1 wrote:

Throughout this entire ordeal, I have been through a roller coaster of emotions that ranges from anger, to sadness, to confusion. I have never been so emotional for such a long period of my life...I want the confusion to end desperately because it is taking a huge psychological toll on me. Hopefully today will be the day it ends. ODC-7, p. 1-2.

c. Victim #3 wrote:

My friend and I never saw this coming. We met what we thought was a good man. Anthony Cappuccio gave us advice, he was our

friend. But when all was said and done, he had a hidden agenda...All of our innocence has been affected by him.

He bought us alcohol. I accept the fact that we accepted it and encouraged it at times, but he was the adult, he was supposed to know better when we didn't...We smoked marijuana with him, again we take some of the blame. But I can remember a time when he encouraged us to smoke it in a public bathroom, and I was the responsible one that refused to do it. How is it that a 31 year old man was more willing to publicly use drugs than a 16 year old kid?

I feel like a pawn in a game too complicated for my own understanding, and especially my understanding at the age of 16. I feel manipulated and used. This has affected my ability to trust and the security I felt I was given by the adults around me. I've felt lost, angry and great and terrible sadness all due to Anthony Cappuccio....ODC-7, p. 5.

- d. A youth fellowship leader of the First United Methodist Church in Perkasio and the parent of two teenage sons who were members of the youth group wrote:

...After discovering the behavior that Anthony not only enabled, but encouraged, I was devastated...My heart goes out to the children that were looking for guidance and assistance from an adult that they admired and trusted, but instead were directed into damaging behavior. Only time will tell the true impact that Anthony's behavior will have on them.

Knowing that Anthony was an Assistant District Attorney for Bucks County and was working with him directly in the Youth Fellowship I let my parental guard down thinking he was a safe individual to allow to have social contact outside of Youth Fellowship with my children. I felt if anyone knew the laws and would abide by them it would be someone in the law enforcement service. Since learning the details of Anthony's actions, I am left with vicarious guilt. I was unable to protect our children from what I can only describe as a predator. I have not been able to participate with our Youth Fellowship since this incident because of the overwhelming guilt and feelings of betrayal...Anthony's actions have left many people including the young children he worked with, having the feeling of disbelief, and most of all betrayal. I pray that all the children and the

families involved will be able to heal from this destructive experience.
ODC-7, p. 6.

30. Petitioner's arrest and sentencing were highly publicized. Petitioner acknowledged that his case received attention because Petitioner was a prosecutor who "hurt a lot of people." ODC-1 through ODC-5; 1/13/17 N.T. 266-268.

31. Petitioner was incarcerated at Northampton County Prison from April 2009 until he was released to house arrest on October 15, 2009. 12/11/09 N.T. 171-177.

32. On May 15, 2009, Office of Disciplinary Counsel and Petitioner jointly petitioned the Supreme Court of Pennsylvania for the entry of an order temporarily suspending Petitioner from the practice of law in the Commonwealth of Pennsylvania. Stp. 3.

33. By Order dated July 30, 2009, the Supreme Court placed Petitioner on temporary suspension. Stp. 4.

34. On August 27, 2009, Office of Disciplinary Counsel filed a Petition for Discipline against Petitioner.

35. A disciplinary hearing was held on December 11, 2009.

36. By Report dated April 20, 2011, the Board recommended that Petitioner be suspended for a period of five years.

37. The Supreme Court issued a rule to show cause why Petitioner should not be disbarred.

38. The Court heard oral argument on May 8, 2012.

39. On July 17, 2012, the Court issued its published opinion, *Office of Disciplinary Counsel v. Anthony C. Cappuccio*, 48 A.3d 1231 (Pa. 2012), and disbarred Petitioner, retroactive to July 30, 2009.

40. Petitioner is still serving his probationary sentence, which is scheduled to be completed on February 10, 2018. 1/13/17 N.T. 50-51.

41. Because Petitioner is considered a sex offender, he is required to see his probation officer at least once per month. 1/13/17 N.T. 68.

42. Petitioner's probation officer is Deana Welch, a state parole agent for the Pennsylvania Board of Probation and Parole. Ms. Welch credibly testified that she started supervising Petitioner in 2012. She meets Petitioner at his home once per month and randomly administers drug tests. The meetings last from 15 minutes to 45 minutes. 1/13/17 N.T. 44-45, 51-52.

43. Under the terms of his probation, Petitioner is required to avoid contact with the victims, must receive permission to travel, is not allowed to consume or possess alcohol, must report any changes in the status of his employment, must report any contact he has with the police, and must follow a prescribed safety plan. 1/13/17 N.T. 56. If reinstated prior to the completion of probation in February 2018, Petitioner's probation prohibits him from meeting with clients who have children with them, or representing children. 1/13/17 N.T. 302-303.

44. Ms. Welch credibly testified that Petitioner has been compliant with all of this probationary requirements. 1/13/17 N.T. 46-47.

45. Petitioner has completed his mental health treatment program, but Ms. Welch could require him to resume treatment if necessary. Prior to February 10, 2018, if Petitioner violates the safety plan that was designed to keep the public safe, he would violate his probation. 1/13/17 N.T. 58-60.

46. Aileen Sabol is a state parole agent for the Pennsylvania Board of Probation and Parole and was Petitioner's probation officer from 2010 until 2012. 1/13/17 N.T. 62-63.

47. Ms. Sabol credibly testified that Petitioner complied with the requirements of his probation during the time frame that she supervised him. N.T. 67,

48. Since his arrest, Petitioner has undergone extensive psychological treatment. From 2008 to 2010, he treated with Dean Dickson, a member of the Sex Offenders Board of Pennsylvania, and from 2010 through 2014, he treated with Dr. Veronique Valliere and Vickie Moyer. 1/13/17 N.T. 216, 217, 222-224.

49. During his four-year treatment, Petitioner participated in individual and group therapy sessions. Dr. Valliere headed the group sessions, which lasted approximately three hours, while Ms. Moyer conducted the individual sessions, which lasted approximately one hour. 3/6/17 N.T. 43, 44.

50. Dr. Valliere testified at the reinstatement hearing. She is a forensic psychologist who specializes in treating individuals with sexual issues. 3/6/17 N.T. 39-41.

51. Dr. Valliere began treating Petitioner in 2010. She testified that initially Petitioner was very arrogant and very dismissive, but over a four-year treatment time, as he participated and confronted his issues, his behavior and demeanor changed

in a positive way. Dr. Valliere testified that Petitioner successfully completed all aspects of the treatment program. 3/6/17 N.T. 41, 42; P-2, P-3.

52. Dr. Valliere testified that she discharged Petitioner from the program in April 2014. Although she diagnosed him with narcissistic personality disorder, he was never diagnosed with pedophilia or any sexual disorder. 3/6/17 N.T. 44, 45; P-2, P-3.

53. Dr. Valliere testified that Petitioner accepted full and complete responsibility for his actions and at the end of his treatment, he was able to see and understand how he not only exploited and took advantage of the victim[s], but also violated his positions of trust and responsibility. Petitioner was able to not only have remorse for the immediate victim[s], but also for his profession and the collateral damage he caused. 3/6/17 N.T. 48, 49.

54. Dr. Valliere testified in detail as to the misconduct and how Petitioner's prognosis was very good, considering his insight and understanding of the issues, as well as his management of his issues. N.T. 3/6/17 52-54, 55.

55. Dr. Valliere testified that since Petitioner's discharge from treatment, he has used his insights to not only educate people, but help other offenders benefit from treatment. Petitioner has periodically attended group sessions to share his experiences and has helped Dr. Valliere with conferences and continuing education, such as developing forensic training services videos. Petitioner has presented at conferences and openly discussed his crimes and has otherwise publicly talked about his misconduct. 3/6/17 N.T. 49, 50; 1/13/17 N.T. 224 – 227.

56. Vickie Moyer is a forensic counselor who works with sex offenders. Ms. Moyer counseled Petitioner from 2010 to 2014, in conjunction with the psychological counseling Petitioner received from Dr. Valliere. 3/6/17 N.T. 6-8.

57. Ms. Moyer testified credibly that initially, she counseled Petitioner on a weekly basis. As he improved, the sessions were moved to bi-weekly, then monthly. 3/6/17 N.T. 10.

58. Ms. Moyer testified that Petitioner became more humble as his treatment progressed and worked hard at self-reflection. 3/6/17 N.T. 12-14.

59. Petitioner credibly testified on his own behalf.

60. Petitioner accepted full responsibility for his misconduct, entered a guilty plea, never denied his misconduct, and fully cooperated with the district attorney and Office of Disciplinary Counsel. 1/13/17 N.T. 227, 228.

61. Petitioner testified about what he went through and the process of learning and understanding what he did, beyond simply accepting responsibility. Petitioner learned how manipulative, controlling and narcissistic he was, and now understands how he betrayed everyone's trust, and the impact of his actions on his then-wife and family. 1/13/17 N.T. 231, 232.

62. Petitioner testified that he has grown in maturity and no longer hides his sexuality. 1/13/17 N.T. 234-237.

63. Petitioner and his former wife divorced in early 2010 and share physical custody of their two sons on an equal basis. 1/13/17 N.T. 198.

64. Petitioner and his former wife are on good terms and communicate regularly about their children. 1/13/17 N.T. 199.

65. During his disbarment, Petitioner has supported himself and his children by working at TGI Fridays and Ruby Tuesday restaurants and as a paralegal for Jason Rubenstein, Esquire; the Law Office of Brian K. Wiley, Esquire; and the Law Offices of Kelly A. Ohlert, Esquire. 1/13/17 N.T. 242, 243; Reinstatement Questionnaire ("RQ") No. 11(a).

66. As a paralegal, Petitioner complied with all the requirements of Pa.R.D.E. 217(j). He testified that he filed the proper notices with the Board, had no client contact and never held himself out as an attorney. 1/13/17 N.T. 245-247.

67. Petitioner completed the Continuing Legal Education requirements necessary for reinstatement. In addition, he maintained his currency in the law through his paralegal work, conducting online legal research, and reading legal periodicals. N.T. 1/13/17 N.T. 249-251.

68. Petitioner has no judgments or liens against him and has not been sued. 1/13/17 N.T. 252.

69. Petitioner testified he is current on his taxes and owes no money to the Internal Revenue Service or any taxing authority. 1/13/17 N.T. 252, 253.

70. Petitioner is in full compliance with his child support obligations and has no major debts. 1/13/17 N.T. 253.

71. Petitioner desires reinstatement because he misses helping people as a practicing lawyer and he wants to be able to provide for his children. 1/13/17 N.T. 256-258.

72. Petitioner understands that he hurt many people, but he would like a second chance to do things differently. 1/13/17 N.T. 258.

73. Petitioner presented the credible testimony of numerous character witnesses.

74. Kelly Ohlert, Esquire, is a member of the Pennsylvania bar. Ms. Ohlert testified that she employed Petitioner as a paralegal at her solo practice for approximately two years. 1/13/17 N.T. 79-80.

75. Ms. Ohlert was Petitioner's supervising attorney and she ensured that she and Petitioner complied with Pa.R.D.E. 217(j). She confirmed that Petitioner never held himself out as a practicing attorney and never met with clients unless she was present. Petitioner's primary work at Ms. Ohlert's firm was legal research and writing. 1/13/17 N.T. 80-81.

76. Ms. Ohlert testified that Petitioner was a very competent employee and his paralegal work was excellent. 1/13/17 N.T. 84.

77. Ms. Ohlert testified that Petitioner has a good reputation in the community as a truthful, honest, peaceful and law abiding individual. 1/13/17 N.T. 82.

78. Perry J. Ferrara, Jr., Nancy Evans, Stephen Benko, and Jennifer Murphy testified on Petitioner's behalf. These witnesses are members of Petitioner's community who were all aware of Petitioner's misconduct. They gave credible testimony

as to Petitioner's acceptance of responsibility for his misconduct and his current good reputation in the community as a peaceful and law abiding person and as a truthful and honest person. 1/13/17 N.T. 106-171.

79. Petitioner presented witness testimony by stipulation. These witnesses included Karen Cappuccio, Gloria Cappuccio, Vincent Cappuccio, Constance Bruno, Robert Cappuccio, Nicholas Cappuccio, Eileen Dress and Robert Dress. These witnesses are all Petitioner's family members. The witnesses testified as to Petitioner's excellent reputation as a truthful and honest person and as a peaceful and law-abiding person in the community. 1/13/17 N.T. 185-190.

80. Office of Disciplinary Counsel presented the stipulated testimony of Michelle Henry, Esquire, who was employed by the Bucks County District Attorney's Office at the time that Petitioner engaged in his misconduct. The parties stipulated that Ms. Henry would testify that when Petitioner was arrested, she and her colleagues in the district attorney's office were shocked and stunned, and that Petitioner's conduct brought great disgrace upon the office because of the violation of trust., and that Petitioner's conduct hurt the integrity of the office in the eyes of the public. 3/6/17 N.T. 86-88.

81. Office of Disciplinary Counsel opposes reinstatement.

III. CONCLUSIONS OF LAW

1. The conduct for which Petitioner was disbarred is not so egregious as to preclude consideration of his Petition for Reinstatement. ***Office of Disciplinary Counsel v. John Keller***, 506 A.2d 872, 875 (Pa. 1986)

2. Petitioner failed to meet his burden of demonstrating by clear and convincing evidence that his resumption of the practice of law within the Commonwealth 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); ***Office of Disciplinary Counsel v. Jerome Verlin***, 731 A.2d 600, 602 (Pa. 1999).

3. Fewer than eight years of disbarment is insufficient time to dissipate the detrimental impact Petitioner's egregious misconduct had on the public trust.

IV. DISCUSSION

Petitioner seeks reinstatement to the bar of the Supreme Court of Pennsylvania following disbarment by Order dated July 17, 2012, retroactive to July 30, 2009.

Petitioner's burden of proof with respect to his request for reinstatement from disbarment is heavier than the burden of proof following a suspension from the practice of law. The Supreme Court has held, "[i]n the case of disbarment, there is no basis for an expectation by the disbarred attorney of the right to resume practice at some future point in time." ***Keller*** at 875. The threshold issue in this matter is whether the misconduct that resulted in Petitioner's disbarment was so egregious that his reinstatement would have a detrimental effect upon the integrity and standing of the bar or would be subversive of the public interest. ***Id.***

Petitioner was disbarred because during the time that he was a chief deputy district attorney, he committed multiple criminal acts involving the exploitation of minor boys he was charged with mentoring in his role as a church youth leader.

There is no doubt that Petitioner's misconduct was egregious and that disbarment was the appropriate sanction. Nevertheless, consistent with case law, we conclude that Petitioner's misconduct was not so egregious that it should prohibit his reinstatement.¹ Petitioner's misconduct is similar to that of other attorneys who have been disbarred and who have sought and been granted reinstatement. *See, In re Lawrence Greenberg*, 749 A.2d 434 (Pa. 2000) (misappropriation of two million dollars and commission of perjury in a bankruptcy not so egregious as to warrant permanent disbarment); *In re Jerome Verlin*, 731 A.2d 600 (Pa. 1999) (conviction of criminal conspiracy, perjury, false swearing and theft by deception stemming from assisting a client in impersonating a dead man at a deposition, not so egregious as to warrant permanent disbarment); *In re Robert Costigan*, 664 A.2d 518 (Pa. 1995) (theft conviction is not a breach of trust of significant magnitude to forever bar an attorney seeking readmission). Accordingly, Petitioner has satisfied the **Keller** threshold and is not barred from seeking reinstatement.

The Board next considers whether Petitioner met his 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 the Commonwealth and

¹ Office of Disciplinary Counsel does not challenge whether Petitioner has satisfied the **Keller** standard and does not argue that Petitioner should be forever barred from seeking reinstatement.

that his readmission would not have a detrimental impact on the integrity and standing of the bar, the administration of justice or be subversive of the public interest. Pa.R.D.E. 218(c)(3). To that end, Petitioner must prove that his post-disbarment conduct and efforts at qualitative rehabilitation were sufficient to dissipate the detrimental impact of his conduct on the public trust. *Verlin* at 602. To make this determination, the Board weighs the amount of time that has passed since Petitioner's disbarment against the gravity of the breach of trust. *In re William Perrone*, 777 A.2d 413, 416-417 (Pa. 2001); *Greenberg* at 436-438.

Upon this record, and after due consideration of the parties' recommendations, the Hearing Committee's Report and recommendation, and oral argument, we conclude that Petitioner has failed to meet his burden. Given the severity of Petitioner's misconduct, Petitioner's resumption of the practice of law after less than eight years would harm the public interest and negatively impact the integrity and standing of the bar and the administration of justice.

The gravity of Petitioner's breach of trust is significant. At the time of his crimes against the minor victims, Petitioner was a high ranking law enforcement official in a position of leadership and authority, as well as a church youth group leader, which allowed him to gain access to the minor victims. The nature of his position as a district attorney involved prosecuting members of the public for the very laws Petitioner knowingly violated. As such, Petitioner led a deceitful double life, cultivating a professional reputation in his community at odds with his private, personal conduct. Community members, in particular the parents of the minors he was entrusted to

supervise as a youth group leader, relied on Petitioner's upstanding professional reputation and unhesitatingly placed their trust in him to guide and supervise their children. Petitioner flagrantly betrayed this trust by repeatedly furnishing the minors with alcohol, smoking marijuana with them, and engaging in sexual relations with a 16 year old minor boy on approximately twelve occasions in a five-month period of time. Petitioner, a 31 year old adult at the time of the criminal conduct, abandoned all sense of responsibility, maturity and self-control when he engaged in these illegal activities. Even after Petitioner was discovered by the police engaged in unlawful sexual relations with the minor in a public parking lot, Petitioner displayed an egregious lack of judgment by engaging in yet additional clandestine sexual activity with the minor.

After assessing the facts of this case in the underlying disciplinary proceeding, the Supreme Court recognized the seriousness of the breach of trust and emphasized the following:

This Court takes this opportunity to make clear what should be self-evident: the fact that a lawyer holds a public office, or serves in a public capacity, as here, is a factor that properly may be viewed as aggravating the misconduct in an attorney discipline matter. This aggravation arising from public status is strong where the public position is that of a prosecutor, and the misconduct involves criminal actions, and it is particularly strong where, as here, the conduct involves crimes against individuals (minors, in this case). We realize that many attorneys hold positions of trust with respect to individual clients. But, that trust is not the same as the broader public trust reposed in judges, prosecutors and the like. Indeed, the facts of this case bear out the consequences that may arise when a position of trust is involved.

Office of Disciplinary Counsel v. Anthony C. Cappuccio, 48 A.3d 1231, 1240 -1241 (Pa. 2012).

Petitioner filed his reinstatement petition on September 2, 2016. At the time of the reinstatement hearing in January and March of 2017, Petitioner had been removed from the practice of law for approximately seven and one-half years. The record is essentially unrefuted, and replete with evidence that during that time frame, Petitioner engaged in qualitative rehabilitation. Petitioner cooperated with prosecuting and disciplinary authorities, served his criminal sentence and has been compliant with all aspects of his probation, which he is on track to complete on February 10, 2018. Petitioner completed a four-year psychological treatment program consisting of individual and group therapy. Dr. Valliere provided credible evidence that Petitioner is a changed person from when he commenced treatment. Petitioner is extremely remorseful and fully accepts responsibility for his actions. He was completely credible, even when it required painful self-examination of his actions. Petitioner has gained new insights into himself and has grown and matured. He openly shares his experiences with others, in an effort to help individuals going through the treatment process. Petitioner's prognosis is very good, due to his management of issues and the insight he gained during therapy.

Although currently divorced, Petitioner maintains a good relationship with his former wife, which has allowed him to focus on raising his young sons, of whom he shares physical custody.

During his disbarment, Petitioner has held continuous employment at restaurants and as a paralegal for several attorneys. In connection with his paralegal work, Petitioner complied with all requirements of the Pennsylvania Rules of Disciplinary Enforcement and has not engaged in the unauthorized practice of law. Attorney Ohlert,

Petitioner's most recent supervisor, confirmed Petitioner's competency as a paralegal and opined that his reputation in the community is good. In addition to his paralegal work, Petitioner maintained his competency in the law by fulfilling his Continuing Legal Education requirements and reviewing legal periodicals.

Petitioner's many character witnesses gave credible testimony concerning his excellent reputation in the community and have no hesitation supporting his reinstatement to the practice of law, despite their knowledge of Petitioner's misconduct.

Notwithstanding these rehabilitative efforts, it is clear to the Board that less than eight years of disbarment is wholly insufficient to dissipate the detrimental impact of Petitioner's misconduct on the public trust. The victim impact statements placed into sharp relief the damage that Petitioner deliberately inflicted on his community, a betrayal that community members are not likely or willing to easily dismiss. Victims were left with feelings of confusion and shame. Parents of victims were left with deep feelings of guilt that they failed to protect their children from a man they trusted. ODC-7.

The testimony of Petitioner's witnesses underscored the severity of his misconduct. Dr. Valliere referenced the "profound breach of trust" Petitioner caused to the legal profession and characterized Petitioner's actions as a "huge transgression." 3/6/17 N.T. 71-72, 76-80. Nancy Evans testified that she felt "outraged" when she learned of Petitioner's misconduct. 1/13/17 N.T. 140. Petitioner acknowledged that he betrayed the trust of many people, including the victims, church leaders, the community, his family, and the district attorney's office. 1/13/17 N.T. 231-233. Petitioner admitted that he hurt people and that his actions were "horrible." 1/13/17 N.T. 256. The stipulated testimony

of Office of Disciplinary Counsel's witness highlighted the disgrace Petitioner inflicted upon the legal system and how his actions hurt the integrity of the district attorney's office. 3/6/17 N.T 87-88.

In addition, we have the benefit of the Court's previous assessment of the enormity of Petitioner's breach of trust. The Court's opinion made clear that Petitioner's egregious misconduct and his status as a public official required the Court to disbar him, as anything less would have "threaten[ed] the integrity of the legal system, undermine[ed] [the Court's] very serious duty to protect the public, and fail[ed] to give appropriate weight to Petitioner's status as a public official." *Cappuccio* at 1241.

Two Supreme Court cases guide the Board in the instant matter. The petitioners in *Perrone* and *Greenberg* each presented compelling evidence of rehabilitation, but the Court denied their petitions for reinstatement because the petitioners' breach of trust had been so serious that insufficient time had passed to dissipate the detrimental impact on the integrity and standing of the bar, the administration of justice and the public interest.

Perrone's misconduct involved criminal convictions, which stemmed from his filing false and misleading fee petitions over a period of three years requesting payment of approximately \$345,000.00 for legal services purportedly provided to indigent defendants in the City of Philadelphia. In examining the gravity of the misconduct, the Court emphasized that Perrone's actions were "both deliberate and committed solely for his own personal profit." *Perrone* at 416. Moreover, the misconduct was longstanding and the Court observed that Perrone "would not have come forward on his own to report

his conduct had he not been directly and indisputably confronted with it.” *Id.* During Perrone’s less than eight years of disbarment, he completed his probationary period, paid court ordered restitution, volunteered for charitable organizations, maintained employment as a record keeper and as paralegal, maintained his currency in the law, expressed genuine remorse, and presented many character witnesses in support of his reinstatement. The Court acknowledged Petitioner’s rehabilitative efforts, but denied Perrone’s petition because it “believe[d] that allowing Perrone to resume the practice of law at the present time [less than eight years] would have a detrimental effect upon the integrity and standing of the bar and on the administration of justice and would subvert the public interest.” *Id.*

Greenberg’s misconduct involved fraudulent financial transfers. In the face of bankruptcy, Greenberg transferred more than two million dollars to a shell company, using some of the money for personal debts, and deliberately concealed the transfers from the bankruptcy court by repeatedly filing false documents. In emphasizing the gravity of Greenberg’s crimes, the Court stated that “to reinstate an attorney who has committed major felonies by concealing more than \$2 million from creditors, and then provide false information in court about it, would tarnish the legal profession and adversely affect the public’s confidence in lawyers.” *Greenberg* at 437. Notwithstanding that Greenberg presented evidence that demonstrated he was “on the road to rehabilitation,” including 42 character letters, the Court was not satisfied that the eight years Greenberg spent on disbarment had ameliorated the impact of his misconduct. *Id.* Given the severity of Greenberg’s misdeeds, the Court declined to reinstate him, noting that Greenberg had

“brought great dishonor upon the legal profession” and “[t]o reinstate his license to practice law after eight years of disbarment would only tarnish the image of the legal profession further.” *Id.* at 438.

Similar to the petitioners in the cited cases, the instant Petitioner has demonstrated that he is rehabilitated. However, also similar to Perrone and Greenberg, Petitioner’s breach of trust was extreme and brought dishonor to the legal profession, particularly due to his high ranking position as a prosecutor. Like Perrone and Greenberg, Petitioner’s actions were deliberate. Perhaps even more treacherous than the greed for money that propelled Perrone and Greenberg to commit misconduct, Petitioner was motivated by sexual desire of a minor, whom he viewed as an “opportunity” to “sexually exploit.” 1/13/17 N.T. 207-208, 286. Similar to Perrone and Greenberg, Petitioner’s misconduct occurred over a long period of time and would have continued even longer had he not been discovered by the police.

At the time of their reinstatement requests, Perrone and Greenberg had fulfilled all the terms of their respective criminal sentences. Here, Petitioner remains on probation for his crimes until February 10, 2018, assuming he does not violate probation before that time. While we believe that this factor is relevant to our consideration, it is not a deciding factor in this matter. This date may come and go before this matter reaches its ultimate conclusion before the Supreme Court. However, we are aware that Petitioner’s underlying misconduct received extensive media coverage. Should Petitioner be readmitted to the bar prior to the completion of probation, there is no doubt that this fact would appear, in part, to trivialize Petitioner’s reprehensible conduct.

Upon this record and in light of the decisional law, the Board concludes that despite Petitioner's qualitative rehabilitation and transformational changes, the magnitude of his criminal acts involving the exploitation of three minor victims, aggravated by the fact that he committed his crimes while holding a position of trust as a high ranking prosecutor, was so great that his reinstatement at this time, would be detrimental to the integrity and standing of the bar and the administration of justice, and would subvert the public interest. Consistent with the Board's responsibility to protect the public, the profession and the courts, the Board recommends that the Petition for Reinstatement be denied. ***Office of Disciplinary Counsel v. Lucarini***, 472 A.2d 186, 190 (Pa. 1983).

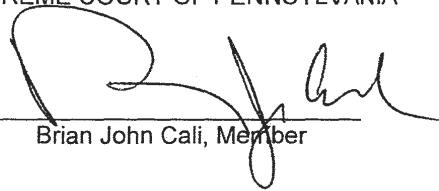
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that reinstatement of Anthony C. Cappuccio, Petitioner, be denied.

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: 
Brian John Cali, Member

Date: 11/27/17