

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 1619 Disciplinary Docket No. 3
: :
CHARLES G. GENTILE : No. 87 DB 2010
: :
PETITION FOR REINSTATEMENT : Attorney Registration No. 18237
: :
: (Fayette County)

ORDER

PER CURIAM

AND NOW, this 27th day of April, 2017, the Petition for Reinstatement is granted. 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 4/27/2017

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 1819 Disciplinary Docket No. 3
: :
: No. 87 DB 2010
CHARLES C. GENTILE : :
: Attorney Registration No. 18237
: :
PETITION FOR REINSTATEMENT : (Allegheny 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 19, 2010, the Supreme Court of Pennsylvania disbarred Charles C. Gentile on consent. On December 17, 2015, Mr. Gentile filed a Petition for Reinstatement to the bar. On February 3, 2016, Office of Disciplinary Counsel filed a Response in opposition to the Petition for Reinstatement.

A reinstatement hearing was held on April 7, 2016, before a District IV Hearing Committee comprised of Chair Philip K. Kontul, Esquire, and Members Angela M.

Heim, Esquire and Regina C. Wilson, Esquire. Petitioner was represented by Craig E. Simpson, Esquire. Petitioner presented the testimony of five witnesses, testified on his own behalf, and introduced four exhibits into evidence. Office of Disciplinary Counsel introduced five exhibits into evidence, but did not present any testimonial evidence.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on August 29, 2016, and recommended that the Petition for Reinstatement be denied.

Petitioner filed a Brief on Exceptions to the Hearing Committee Report on September 15, 2016, and requested oral argument before the Board.

Office of Disciplinary Counsel filed a Brief Opposing Petitioner's Exceptions on September 23, 2016.

A three-member panel of the Board held oral argument on January 5, 2017.

The Board adjudicated this matter at the meeting held on January 12, 2017.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner is Charles C. Gentile. He was born in 1947 and was admitted to the practice of law in the Commonwealth of Pennsylvania in 1973. Petitioner's attorney registration address is 333 Chalkhill-Ohiopyle Road, Ohioopyle, Fayette County, PA 15470. Petitioner is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

2. On April 30, 2010, Petitioner submitted a Statement of Resignation pursuant to Pa.R.D.E. 215. Reinstatement Questionnaire ("RQ").

3. By Order dated July 19, 2010, effective August 18, 2010, the Supreme Court of Pennsylvania disbarred Petitioner on consent. RQ, Attachments 1 and 2.

4. Petitioner's disbarment on consent was based upon his misappropriation of entrusted funds from his PNC Bank IOLTA Account on numerous dates throughout 2008, such that it was deficient in amounts ranging from \$753.04 to \$106,571.77 of the total entrustments, and from his Centra Bank Escrow Account, such that it was deficient on numerous dates throughout 2008 and 2009 in amounts ranging from \$3,239.94 to \$8,487.18 of the total entrustments. RQ No. 3.

5. Following Petitioner's disbarment, he notified his clients of his inability to practice law, as required by the Pennsylvania Rules of Disciplinary Enforcement. N.T. 34.

6. Petitioner filed a required compliance statement with the Secretary of the Board on August 25, 2010, indicating that he complied with the provisions of the July 19, 2010 Order of the Supreme Court of Pennsylvania and with applicable provisions of the Pennsylvania Rules of Disciplinary Enforcement and Disciplinary Board Rules. N.T. 34; RQ No. 6(c).

7. Petitioner testified credibly on his own behalf.

8. Prior to his disbarment, Petitioner had a law office located in Uniontown, Fayette County, from which he engaged in a general practice of law. N.T. 13.

9. At the time of the reinstatement hearing, Petitioner and his wife had been married for forty-four years. In July 2005, Petitioner's wife was diagnosed with non-Hodgkin's follicular lymphoma, a rare cancer, which required surgery and a lengthy treatment period. Much of Petitioner's wife's treatment was not covered by Petitioner's basic health insurance plan, and in order to pay for the treatment, Petitioner testified that

he exhausted his savings accounts, retirement savings, and a Certificate of Deposit, and charged the maximum amount on his credit cards. Petitioner and his wife refinanced their house and sold a building they owned. Petitioner estimated that he spent in excess of \$300,000.00 to \$400,000.00 in out-of-pocket costs for his wife's treatment. N.T. 25-28.

10. Petitioner contemplated filing for bankruptcy but was hesitant to do so because "some of the creditors were people that were treating my wife." N.T. 26.

11. Because he was in dire financial circumstances, Petitioner decided to use entrusted funds in his escrow accounts to keep up with medical bills. N.T. 26, 30.

12. At the time he was engaged in the misconduct, Petitioner tried to justify his actions to himself by not withdrawing funds from the escrow account unless he was certain that money that was coming in a very short period of time to cover the funds he was withdrawing. N.T. 28.

13. Although Petitioner misappropriated funds, none of Petitioner's clients were denied their entrusted funds or otherwise suffered any loss or delay in the disposition of their funds. N.T. 14-16, 28-29; RQ No. 5.

14. The Pennsylvania Lawyers Fund for Client Security did not pay any claims to Petitioner's clients. RQ No. 5.

15. Petitioner admitted that he misappropriated entrusted funds for his own personal use and knew his actions were wrong. N.T. pp. 26, 28-29, 58. He understands that his wife's illness and his financial circumstances do not excuse his actions. N.T. 29-30.

16. Petitioner decided to resign from the practice of law and accept disbarment on consent because he did not want to face disciplinary proceedings while

under the strain of caring for his wife and because he did not want to bring disgrace upon the bar. N.T. 33–34; RQ No. 3.

17. Petitioner was previously suspended from the practice of law for six months by Order of the Supreme Court of Pennsylvania dated June 30, 1987, for misappropriation of client funds when he forged checks and releases, failed to give monies due to clients, misrepresented facts to clients, and failed to keep client money in an identifiable bank account. N.T. 21; ODC-1 and 2.

18. Petitioner was reinstated to the practice of law from his 1987 suspension by Order of the Supreme Court of Pennsylvania dated November 29, 1988. N.T. 22; ODC 2.

19. After reinstatement in 1988, Petitioner engaged in the private practice of law for twenty years, during which time he was active in his church and community. N.T. 23-24.

20. Following his disbarment in 2010, Petitioner obtained full-time employment as an over-the-road truck driver for Estes Express Lines, which included health insurance benefits. In this employment, Petitioner is away from home five days each week, drives an average of 550 to 600 miles per day and has logged over 600,000 safe driving miles. N.T. 35-38.

21. Petitioner's current income consists of a net take home pay of approximately \$4,100.00 per month and Social Security benefits of \$1,800.00 per month. His wife receives approximately \$800.00 per month in Social Security benefits. N.T. 60-61; RQ Nos. 12-13.

22. Petitioner has financial obligations of at least \$4,280.00 per month, which include: \$2,206.00 per month payment to First Niagara Bank for a building loan;

\$1,580 per month payment to First Federal Savings & Loan Association of Greene County for a mortgage; and, \$494.00 per month payment to PNC Bank for an automobile loan. N.T. 61-62; RQ No. 15.

23. During his period of disbarment, Petitioner filed timely tax returns and paid his taxes. He pays approximately \$100 to \$150 per month for a federal income tax repayment program, and \$50 per month for one of his wife's medical bills. N.T. 40, 62, 68.

24. Petitioner's wife continues to receive treatment for her cancer. N.T. 25-26, 38.

25. Petitioner desires reinstatement in order to resume working in a field that he enjoys and to be home with his wife more frequently. N.T. 38, 42, 62.

26. If reinstated, Petitioner is interested in doing legal work involving truck drivers. In that regard, he has studied the transportation industry, attended a trucking seminar, and has stayed current on industry regulations and legislation, including the Federal Motor Carrier Safety Act. N.T. 42-44, 71.

27. Petitioner intends to remain employed by Estes Express Lines after reinstatement because of the health insurance benefits and anticipates that he would practice law in a scaled back, part-time capacity, particularly in light of the fact that he is nearly 70 years old. N.T. 42-43, 62-63.

28. Petitioner fulfilled his Continuing Legal Education requirements by receiving 40 Continuing Legal Education credits in 2015, more than the required 36 credit hours necessary for reinstatement. RQ No. 19.

29. Petitioner maintained his currency in the law by reading the American Bar Association Journal, Pennsylvania Bar Association Journal/Newsletter, Pennsylvania Disciplinary Board Newsletter, and the Federal Motor Carrier Safety Act and related

materials. He purchased and reviewed the PBI publication on Truck Accident Litigation. N.T. 71; RQ No. 19(b) and (d).

30. Petitioner described his disbarment period as a very difficult time in his life, but acknowledged it has been a learning experience for him. He is ashamed of his misconduct and has had to absorb the impact of his actions on the clients who trusted him, as well as his family, friends, and members of the bar. N.T. 45; RQ No. 21.

31. Petitioner expressed genuine remorse for his actions and apologized to the Hearing Committee. N.T. 46.

32. Petitioner presented the credible testimony of five character witnesses, all of whom were aware of the conduct underlying Petitioner's disbarment on consent. N.T. 85, 87, 90, 92, 95-96,101.

33. James McChesney, a resident of Fayette County, Pennsylvania, is a former commercial airline pilot and businessman who has known Petitioner for thirty years on a personal and professional basis. Mr. McChesney testified credibly that Petitioner is well-respected in the community and is a person of honesty and integrity. N.T. 81-86.

34. Mr. McChesney testified that his knowledge of Petitioner's misconduct and disbarment does not affect his assessment of Petitioner's character and honesty, and he would permit Petitioner to handle his money and would refer friends to Petitioner for legal work. N.T. 81-86.

35. John Lear, a resident of Fayette County, Pennsylvania, is a self-employed businessman who has known Petitioner for nearly 40 years on a personal and professional basis. Mr. Lear testified credibly that Petitioner has gone through a difficult time, and if Petitioner is reinstated, Mr. Lear would trust Petitioner to hold money for him and would refer other people to use Petitioner for legal services. N.T. 88-91.

36. Ira Seaton, Jr., a Fayette County resident, is a business owner who has known Petitioner since 1990 on a personal and professional basis. He considers Petitioner's character to be "above reproach," and considers Petitioner to be "one of the finest men I know." He has no hesitation in entrusting monies to Petitioner. N.T. 93-97.

37. Adrienne Gouker, a resident of Fayette County, is a former special education teacher who has known Petitioner for many years. She testified credibly that she would "trust him with anything." She would not hesitate to use Petitioner as her attorney. As to how other people in the community view Petitioner, Ms. Gouker stated, "People love him, people miss him, and we need him back." N.T. 97-102.

38. John Fonzo, Esquire, has been a Pennsylvania-licensed attorney since 1980 and is General Counsel for Commonwealth Marketing Groups. He has known Petitioner since 2003 and worked with Petitioner on legal matters prior to Petitioner's disbarment. He testified that his knowledge of Petitioner's misconduct does not affect his assessment of Petitioner's truthfulness and honesty, and he would "absolutely" work with Petitioner again if Petitioner is reinstated to the practice of law. Mr. Fonzo would not hesitate to entrust money to Petitioner in the future. N.T. 102-108.

39. Petitioner submitted letters of reference from Mary Warman Terry, Esquire, and James Terry, Esquire, both of whom are Fayette County attorneys who have known Petitioner for forty years and consider him to be a well-respected, competent and knowledgeable attorney. PE 2, PE 3.

III. CONCLUSIONS OF LAW

1. The misconduct for which Petitioner was disbarred is not so egregious as to preclude reinstatement. *Office of Disciplinary Counsel v. John J. Keller*, 506 A.2d 872 (Pa. 1986).

2. Petitioner demonstrated by clear and convincing evidence that a sufficient period of time has passed since the misconduct during which he engaged in a qualitative period of rehabilitation. *In re Jerome J. Verlin*, 731 A.2d 600 (Pa. 1999).

3. Petitioner demonstrated by clear and convincing evidence that he possesses the moral qualifications, competency and learning in the law required to practice law in Pennsylvania and 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).

IV. DISCUSSION

Petitioner seeks readmission to the practice of law in Pennsylvania following his disbarment on consent by Order of the Supreme Court of Pennsylvania dated July 19, 2010. The misconduct giving rise to Petitioner's resignation was his misappropriation of entrusted funds.

Petitioner's burden of proof with respect to his request for reinstatement from disbarment is heavier than the burden of proof following a suspension. As the Supreme Court of Pennsylvania held in *Keller*, "[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." *Id* at 875. The threshold issue in a disbarment matter is whether the misconduct that

resulted in Petitioner's disbarment was of such magnitude so as to preclude the Board's consideration of his reinstatement. *Id.*

In light of the Supreme Court's previous holdings, we cannot say Petitioner's misconduct was so great that his reinstatement is precluded. There are numerous examples where the threshold question has been met in cases involving conversions of substantial amounts of client funds and other misconduct. See *In re Lawrence D. Greenberg*, 749 A.2d 434 (Pa. 2000) (misappropriation of two million dollars and commission of perjury in bankruptcy proceeding); *In the Matter of Michael K. Simon*, 49 DB 2005 (D. Bd. Rpt. 3/4/14) (S. Ct. Order 6/16/14) (conversion of nearly half a million dollars of client funds); *In the Matter of Grahame P. Richards, Jr.*, 43 DB 1996 (D. Bd. Rpt. 8/23/16) (S. Ct. Order 9/21/16) (misappropriation of more than one million dollars of client funds).

The above-cited cases are examples of serious and deplorable acts by Pennsylvania lawyers, all of whom were able to meet the threshold standard for reinstatement. The Board concludes that Petitioner's acts of misconduct, while extremely serious and violative of the trust placed in Petitioner by his clients, were not so egregious as to prevent reinstatement.

Following our analysis of the *Keller* threshold, we next consider whether Petitioner has established that he has the moral qualifications, competency and learning in the law required for admission to practice law in Pennsylvania and 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). 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.

The Hearing Committee concluded that Petitioner's disbarment period of six years is not sufficient and his reinstatement at this time would be detrimental to the integrity and standing of the bar, the administration of justice, and the public interest. Specifically, the Committee based its recommendation to deny reinstatement on Petitioner's history of similar discipline, and its conclusions that Petitioner has not come to terms with his misconduct and his financial status is the same as it was prior to his disbarment, but for his employment at Estes Express Lines.

Following a careful examination of the record, and after due consideration of the parties' recommendations and the Hearing Committee's Report and Recommendation, we conclude that Petitioner has met his reinstatement burden.

Petitioner has been removed from the practice of law for more than six years. Whether a sufficient period of time has passed must be determined by the circumstances of each reinstatement case. *In the Matter of Lisa Reo Jenkins*, 81 DB 2006 (D. Bd. Rpt. 11/4/15) (S. Ct. Order 12/10/15) (reinstatement from disbarment after eight years; conviction of forgery and tampering with public records); *In the Matter of Robert Eric Hall*, 171 DB 2006 (D. Bd. Rpt. 2/19/15) (S. Ct. Order 3/17/15) (reinstatement from disbarment after seven and one-half years; conviction for homicide by vehicle, DUI related); *In the Matter of Mark Allan Kovler*, 172 DB 2002 (D. Bd. Rpt. 5/15/09) (S. Ct. Order 7/24/09) (reinstatement from disbarment after five years and eleven months; fraudulent conveyance of home to insulate from judgment in a pending malpractice action); *In the Matter of Gerard Emmett Evans*, No. 10 DB 2001 (D. Bd. Rpt. 10/3/08) (S. Ct. Order 12/15/08)

(reinstatement from disbarment after seven years; mail and wire fraud conviction). The record in this case demonstrates that the period of disbarment has been qualitative and meaningful to Petitioner's rehabilitation and has dissipated the impact of the original misconduct on the public trust. During this time period, Petitioner maintained steady and productive employment, acted as a caregiver to his ill wife, and developed a concrete plan for his return to the practice of law.

Petitioner testified credibly, expressing sincere remorse for his misconduct and fully acknowledging his wrongdoing, as evidenced by his voluntary resignation of his law license and agreement to be disbarred on consent. Petitioner chose to resign so that his wife would not have to endure Petitioner's potentially lengthy disciplinary proceedings, and because he did not want to bring further discredit to the profession. Petitioner has regretted his misconduct and his period of disbarment has afforded him the opportunity to reflect on his egregious acts. We find no basis in the record to support the Committee's finding that Petitioner marginalized his misconduct. Petitioner's explanations on the record as to the financial situation surrounding his wrongful decision to use entrusted funds were not given in order to justify his actions, but to describe his mindset at the time. We conclude from the record that Petitioner fully appreciates the impropriety of his actions.

Furthermore, Petitioner acknowledged his misconduct that occurred in 1987. We conclude that this prior discipline, being remote in time, is not of sufficient weight to influence our current reinstatement analysis. In the recent matter of *Office of Disciplinary Counsel v. Randal E. McCamey*, No. 43 DB 2014 (D. Bd. Rpt. 11/23/15) (S. Ct. Order 1/22/16), McCamey was suspended for a period of one year and one day for convictions related to driving under the influence of alcohol. McCamey had a history of discipline for

engaging in criminal conduct in 1991. Nonetheless, the Board stated, 'We note this disciplinary sanction for the record but give it little weight, having occurred more than 20 years ago.' *Id.* at 10.

Following his disbarment, Petitioner, at the age of 63, secured employment as an over-the-road truck driver in order to make a living and receive health care benefits. His experiences driving a truck have fostered his interest in the trucking industry, such that he has sought out educational opportunities with a goal of performing legal work for the trucking industry upon his readmission to the bar. Petitioner's current financial obligations are under control, although Petitioner intends to continue his employment with Estes Express Lines in order to receive health care coverage. Based on this record, we disagree with the Committee's conclusion that Petitioner's current financial picture is similar to his pre-disbarment status and should prevent him from reinstatement. We note that Office of Disciplinary Counsel has never contested or disputed Petitioner's finances, after undertaking an investigation of Petitioner following the filing of his Petition for Reinstatement. Moreover, we conclude from the record that Petitioner has acted in a financially responsible manner post-disbarment by his willingness to take an arguably physically strenuous job in order to provide a living for himself and his wife with comprehensive health benefits, the lack of which played a critical role in Petitioner's serious misconduct.

Petitioner has shown his commitment to the practice of law by fulfilling his Continuing Legal Education credits and by maintaining his currency in the law through reviewing legal periodicals and attending trucking seminars. If reinstated, Petitioner

envisions a part-time law practice, acknowledging that at 69 years of age and in light of his wife's continuing health issues, a full-time practice is not feasible.

The credible testimony of Petitioner's character witnesses and the character letters offered into evidence confirm Petitioner's current positive reputation in his community and underscore the support he enjoys as he seeks reinstatement. The testimonial evidence came from community members ranging from businessmen to an attorney and a teacher, most of whom have known Petitioner for decades. Contrary to the conclusion reached by the Hearing Committee, the record demonstrates that the witnesses were aware that Petitioner mishandled funds of clients in amounts up to \$106,000.00. N.T. 87, 90, 92, 95-96. These witnesses respect Petitioner and appreciate the work he has done for the community. None of the witnesses voiced any hesitation in referring others to Petitioner for legal help or entrusting funds to him. These witnesses believe that the community needs Petitioner to return to the practice of law and are confident in his abilities as a legal practitioner. The two character letters were submitted by attorneys who have known Petitioner for forty years and who hold him in high regard. We conclude from this evidence that the negative impact of Petitioner's conduct on the public trust has dissipated.

The Board is aware of the serious nature of Petitioner's misconduct and the basis for his disbarment. He is 69 years of age and has been disbarred since July of 2010. We conclude that no valid purpose is served by prolonging Petitioner's disbarment, as the totality of the record before us demonstrates that he has been rehabilitated, has learned from his actions, is fit to practice law in Pennsylvania, and will not pose a threat to the public interest.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Petitioner, Charles C. Gentile, 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: 
Tracey McCants Lewis, Board Member

Date: 03/02/2017