IN RE: JAMES F. BOUDREAU, JR.

NO. BD-2000-002

S.J.C. Judgment of Reinstatement With Conditions entered by Justice Botsford on July 7, 2014.[†]

(Page Down to View Memorandum of Decision)

[†] The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

COMMONWEALTH OF MASSACHUSETTS
BOARD OF BAR OVERSEERS
OF THE SUPREME JUDICIAL COURT

In the Matter of	)	
JAMES F. BOUDREAU, JR.,	)	**SJC No. BD-2000-002**
Petition for Reinstatement	)	

RECEIVED
MAY - 2 2014
BOARD OF BAR OVERSEERS

HEARING PANEL REPORT

I. Introduction

Represented by counsel, on December 9, 2013, James F. Boudreau filed with the Supreme Judicial Court a petition for reinstatement from the Court's order, entered on March 3, 2000, and retroactive to December 31, 1999, accepting his resignation from the bar and disbarring him. Matter of Boudreau, S.J.C. No. BD-2000-002. The petition was not opposed by Bar Counsel, subject to certain conditions being placed on the petitioner's reinstatement.

We received evidence under the petition at an evidentiary hearing on Wednesday, April 2, 2014. The petitioner testified on his own behalf and called four witnesses. Bar Counsel called no witnesses. Thirty exhibits were admitted into evidence, including the petitioner's responses to parts one and two of the reinstatement questionnaire (Exs. 1 & 2), ten letters supporting the

petitioner's reinstatement (Exs. 12-21), and proposed mentoring agreements with two attorneys willing to support the petitioner's efforts to resume the practice of law (Exs. 10 & 11). After considering the evidence, the Panel recommends that the petition for reinstatement be allowed on the conditions set forth below.

II. Standard

The petitioner bears the burden of proving that he possesses "the moral qualifications, competency, and learning in the law required for admission to practice law in this Commonwealth, and that his or her resumption of the practice of law will not be detrimental to the integrity and standing of the bar, the administration of justice, or to the public interest." S.J.C. Rule 4:01, § 18(5); Matter of Daniels, 442 Mass. 1037, 1038, 20 Mass. Att'y Disc. R. 120, 122-123 (2004) (rescript). See Matter of Dawkins, 432 Mass. 1009, 1010, 16 Mass. Att'y Disc. R. 94, 95 (2000) (rescript); Matter of Pool, 401 Mass. 460, 463, 5 Mass. Att'y Disc. R. 290, 293 (1998). S.J.C. Rule 4:01, § 18(5) establishes two distinct requirements, focusing, respectively, on the personal characteristics of the petitioner and the effect of reinstatement on the bar and the public. Matter of Gordon, 385 Mass. 48, 52, 3 Mass. Att'y Disc. R. 69, 73 (1982).

In determining whether the petitioner has met his burden of proof, we consider (1) the nature of the original offense for which the petitioner was disbarred, (2) the petitioner's character, maturity, and experience at the time of his disbarment, (3) the petitioner's occupations and conduct in the time since his disbarment, (4) the time elapsed since the disbarment, and (5) the petitioner's present competence in legal skills. Daniels, 442 Mass. at 1038, 20 Mass. Att'y Disc. R. at 122-123, Matter of Prager, 422 Mass. 86, 92 (1996), Matter of Hiss, 368 Mass. 447, 460, 1 Mass. Att'y Disc. R. 122, 133 (1975).

III. Disciplinary Background

The petitioner was disbarred following the Court's acceptance of his affidavit of resignation. In that affidavit, the petitioner agreed that the following matters, if litigated, would be established by a preponderance of the evidence: The petitioner intentionally misused funds he had collected under appointment as a guardian, resulting in deprivation to the ward's estate when, after the ward died, the petitioner failed to turn over to the estate fiduciary about $70,000 due. The petitioner also failed to render required accountings until ordered to do so, and when finally he did account he overstated the amount of funds he still held. Reinstatement Questionnaire, Part One (Ex. 1), at App. 1; Ex. 3; Ex. 4.

The petitioner pleaded guilty to criminal charges stemming from this and other misconduct involving misuse of trust funds, including charges of larceny and forgery. Tr. 21-22, 85-91 (Boudreau); Ex. 1, at 2; Ex. 5; Ex. 6. The district attorney's office acknowledged the petitioner's admission that he used at least some of the money to support a drug habit. Ex. 6. The petitioner was sentenced to five years of probation, conditioned on his making restitution of about $70,000, participation in a drug/alcohol program, attendance at AA meetings, and random drug testing. Id.; Tr. 22 (Boudreau). He fulfilled all the terms of his probation and has been discharged. Tr. 22-23 (Boudreau); Ex. 1, at App. 2, App. 6; Ex. 7.

As discussed further below, we credit the petitioner's testimony that he converted trust funds to fuel his cocaine and alcohol addictions; that when he began misusing trust funds he intended to take advances against future earnings; and as his practiced spiraled downwards he continued to misuse trust funds, rationalizing to himself that he would pay them back. Tr. 14-18, 91-92, 97-98 (Boudreau).

IV. Findings

A. Moral Qualifications

The petitioner has rehabilitated himself, and now has the moral qualifications to resume the practice of law.

From the petitioner's admission to the bar in 1983 until 1999, he was a solo general practitioner who did not receive discipline for professional misconduct, Tr. 13-14, 149 (Boudreau), yet during this time he regularly used cocaine.[1] Tr. 14-16 (Boudreau). His addiction progressed over time, despite warnings and suggestions that he seek help. Tr. 16, 147-148 (Boudreau). At least in part because of the petitioner's abuse of illegal drugs and alcohol, he converted trust funds while deceiving himself into thinking that he would earn or repay the money, even as his practice dwindled to almost nothing.[2] Tr. 16-18, 65, 91-92, 97-98, 109-111 (Boudreau). When the petitioner's misconduct came to light 1999 in connection with the probate of the estate of his elderly ward, he was compelled to confront his addictions. Tr. 18-21 (Boudreau).

The petitioner first stopped using alcohol and crack cocaine in the fall of 1999. Tr. 83 (Boudreau). He backslid on one or two occasions since then, Tr. 83 (Boudreau), but he has maintained his sobriety since April 28, 2001. Tr. 24-25, 26 (Boudreau); see also Tr. 180 (Martin). He is active in Alcoholics Anonymous, where he finds a support network among his fellow members; he has also sponsored other participants in that program. Tr. 26, 30 (Boudreau); Ex. 1, at 2; Ex. 13. He began attending meetings at Lawyers Concerned for Lawyers in 1999, Ex. 22, and he intends to continue attending meetings after reinstatement. Tr. 41-45 (Boudreau); Ex. 1, at 2; Ex. 22. Based on our assessment of the petitioner and his testimony, and the documents and other testimony before us, we credit that, because of the

---

[1] The petitioner started using cocaine in 1977. Tr. 15, 83-84 (Boudreau).

[2] The petitioner estimates that during the last two years of his addiction, he spent three to four thousand dollars a month to feed his crack cocaine habit, in which days of drug binging punctuated periods of sobriety. Tr. 65-67 (Boudreau).

petitioner's support system and the recovery tools he has acquired, the prospects for his continued sobriety and a successful return to practice are good. Tr. 107-109, 140-142 (Boudreau); Tr. 207 (Costello); Tr. 221-223, 229, 230-232 (Lunt); Ex. 22; Ex. 28.

The petitioner expressed credible remorse and understanding of his wrongdoing and the harm he inflicted on the people whose money he misused.[3] Tr. 17, 18 (Boudreau); Tr. 220-221 (Lunt); Ex. 13. During the years since his disbarment the petitioner came to recognize that his life was "dishonest" and "miserable," and he has gained increased insight into himself and his misconduct.[4] Tr. 27-30, 101 (Boudreau). He credibly described the corrosive effect of his alcohol and drug abuse on his judgment and his ethics, Tr. 98-100 (Boudreau), while nonetheless accepting his own responsibility for his misconduct. Tr. 82-83, 98 (Boudreau); Tr. 216-219, 220-221, 226 (Lunt); Exs. 13, 14, 17, 22, 28. He further credibly described how attaining sobriety brought in him a "sea change" (Tr. 101) from "a con man ... a cheat ... a liar" (Tr. 101), plagued by fear, doubt and insecurity and whose sole focus was on how to attain relief with his next high[5] (Tr. 98-100, 103-104), to basic contentment with his life even while he faces some continued financial instability, Tr. 29, 77-79, 101-103 (Boudreau); cf. Tr. 224-226 (Lunt), and with a sense of gratitude to those who assisted his recovery – his wife, and his fellow participants in AA and LCL. Tr. 101 (Boudreau).

The petitioner accepted work as a laborer during his disbarment, eventually establishing his self-employment over the last eleven years as a sales rep, handyman, carpenter and sweeper

---

[3] "I'd say that I've hurt enough people for several lifetimes and it's just something that I wouldn't want to do again." Tr. 63 (Boudreau). About the people whose money he converted, the petitioner said: "They're all good people. Good, honest people. They trusted me. I was holding a substantial amount of money that belonged to them." Tr. 17 (Boudreau).

[4] According to the author of one of the letters supporting the petitioner's reinstatement, he "manifests the kind of insight and integrity about his experience that dives deep and produces true healing." Ex. 12.

[5] We credit the petitioner's testimony that his addictive behavior was not merely the result of the stresses of practice. Tr. 103-104, 124. We also credit that he has a realistic understanding of the demands of private practice. Tr. 104-107 (Boudreau). Cf. Tr. 204-205 (Costello)(the petitioner handled the pressures of his paralegal assignments).

operator.[6] Tr. 23-24, 30-31 (Boudreau); Ex. 1, at 2; Ex. 28. Since 2011 he has also worked as a paralegal. Ex. 1, at 2, and App. 3. He found his paralegal work personally rewarding, complementing his desire for the financial benefits of a resumed practice with a sense of purpose in serving others. Tr. 54-56 (Boudreau).

The letters the petitioner submitted in support of his reinstatement -- their authors aware of the petitioner's addiction and his misuse of client funds, Tr. 60-61 (Boudreau) -- further attest to his rehabilitation and to his current good moral character. Exs. 12-20; see also Tr. 178-180, 182-183 (Martin); Tr. 202-203 (Costello). They also portray a person committed to helping others. Exs. 13, 14, 15, 17, 19, 20, 22, 28; cf. Tr. 106-107 (Boudreau); Tr. 171-172, 176 (Martin); Tr. 226-227 (Lunt).

By recommending reinstatement, we make "what amounts to a certification to the public that the attorney is a person worthy of trust." Daniels, 442 Mass. at 1039, 20 Mass. Att'y Disc. R. at 123; Matter of Centracchio, 345 Mass. 342, 348 (1963). The petitioner has shown that he has led "'a sufficiently exemplary life to inspire public confidence once again, in spite of his previous actions.'" Matter of Prager, 422 Mass. at 92, quoting Matter of Hiss, 368 Mass. at 452, 1 Mass. Att'y Disc. R. at 126. While the conduct giving rise to the petitioner's disbarment is "conclusive evidence that he was, at the time, morally unfit to practice law...." Dawkins, 432 Mass. at 1010-1011, 16 Mass. Att'y Disc. R. at 95 (citations omitted) and that misconduct "continued to be evidence of his lack of moral character ... when he petitioned for reinstatement," Dawkins, 432 Mass. at 1010-1011, 16 Mass. Att'y Disc. R. at 95 (to same effect, see Centracchio, 345 Mass. at 346, Matter of Waitz, 416 Mass. 298, 304, 9 Mass. Atty. Disc. R. 336, 342(1993)), we find that the petitioner has overcome the presumption arising from his

[6] The panel has some lingering concern over the petitioner's thin work history since his disbarment, but we credit that IRS liens, the problems facing a job applicant with the petitioner's criminal and disciplinary history, and the petitioner's apparent inability to obtain state licensing while owing back taxes contributed to this. Tr. 134-139 (Boudreau). We also credit that much of the petitioner's time and effort has been directed towards recovering from his addictions. Tr. 237-239 (Lunt).

disbarment. He has clearly demonstrated "[r]eform ... manifested by some external evidence..." going far beyond "the passage of time alone [which] is insufficient to warrant reinstatement." Waitz, 416 Mass. at 305, 9 Mass. Att'y Disc. R. at 343; see also Daniels, 442 Mass. at 1038, 20 Mass. Att'y Disc. R. at 123. A "fundamental precept of our system is that a person can be rehabilitated." Matter of Ellis, 457 Mass. 413, 414, 26 Mass. Att'y Disc. R. 158, 163 (2010). The petitioner has "establish[ed] affirmatively that, during his suspension period, he [has] redeemed himself and become 'a person proper to be held out by the court to the public as trustworthy.'" Dawkins, 432 Mass. at 1010-1011, 16 Mass. Att'y Disc. R. at 95 (citations omitted); see also Ellis, 457 Mass. at 414, 26 Mass. Att'y Disc. R. at 163-164.

B. Learning in the Law

The petitioner has also met his burden under S.J.C. Rule 4:01, § 18 of establishing that he possesses the "competency and learning in the law required for admission to practice law in this Commonwealth."

We start by noting that the petitioner, who practiced for about sixteen years before his disbarment, obviously has the basic competency to practice law. We focus primarily on whether he has maintained his learning during the fourteen years since his disbarment.

From 2004 to the present, the petitioner has attended seventeen continuing legal education seminars or training programs in general practice skills, probate law, bankruptcy, guardianship, Medicaid planning, litigation, and ethics.[7] Tr. 45-46 (Boudreau); Ex. 1, at 4. He has also taken nine online training courses in various subjects. Id. He subscribed to Massachusetts Lawyers Weekly and the MCLE online library. Both the in person and the online courses appear properly centered around the petitioner's plan ultimately to focus on probate and

[7] The petitioner also attended a trust accounting course presented by Bar Counsel. Tr. 46, 113-114 (Boudreau). The members of this panel, having sat on a number of reinstatement matters, were favorably impressed by this petitioner's ability to recall and explain the requirement under Mass. Rule Prof. C. 1.15 for a periodic three-way reconciliation of the trust account check register, individual ledgers, and bank statement.

bankruptcy law, along with some real estate and personal injury matters. Tr. 46-47, 114-117, 120-121, 122-123 (Boudreau); Ex. 1, at 6.

In July 2011, the Court allowed the petitioner's request for permission to work as a paralegal. Tr. 52, 121 (Boudreau); Ex. 1, at 2; Ex. 8. He then worked for James Costello, one of his proposed mentors, Tr. 52, 130 (Boudreau), on civil cases, probate matters, and at least one criminal matter. Tr. 53, 121-123, 125-127, 129-130 (Boudreau); Tr. 196-197 (Costello); Ex. 9. During this work the petitioner demonstrated general competence in civil litigation matters, as well as a depth of knowledge in probate law. Tr. 197-199, 200, 204-205, 211 (Costello); Ex. 16.

While we find that the petitioner has satisfied the learning and competency requirement for reinstatement given the length of time he has not practiced law, in section (C) below we recommend that the petitioner attend continuing education courses more specifically related to his chosen practice areas.

C. Effect of Reinstatement on the Bar, the Administration of Justice and the Public Interest

The public's perception of the legal profession as a result of the reinstatement and the effect on the bar and the administration of justice must be considered. "In this inquiry we are concerned not only with the actuality of the petitioner's morality and competence, but also on the reaction to his reinstatement by the bar and public." Matter of Gordon, 385 Mass. at 53, 3 Mass. Att'y Disc. at 73. "The impact of a reinstatement on public confidence in the bar and in the administration of justice is a substantial concern." Matter of Waitz, 416 Mass. at 307, 9 Mass. Att'y Disc. R. at 345. The panel must consider whether the public will perceive the bar as viewing the original offense with sufficient gravity and find confirmation of the seriousness with which the board and the court take their obligation to assure the protection of the public above all else, along with the deterrent effect of the decision whether or not to reinstate in this case. Matter of Ellis, 457 Mass. at 418, 26 Mass. Att'y Disc. R. at 168; Matter of Pool, 401 Mass. at

464, 5 Mass. Att'y Disc. R. at 298, Matter of Gordon, 385 Mass. at 55, 3 Mass. Att'y Disc. R. at 77-78.

Based on our foregoing findings, we also find that the petitioner has met his burden in this regard. Still, we recommend that the petitioner's reinstatement be conditioned on certain terms to protect the public and to ensure that the public appreciates that its protection is foremost. Matter of Ellis, 457 Mass. at 417-418, 26 Mass. Att'y Disc. R. at 167-168. Specifically, we incorporate the statement of terms set forth in the attached letter from Bar Counsel and its exhibits (with the modifications mentioned below) and here briefly discuss these terms.

> AA and LCL: The petitioner shall for two years following his reinstatement continue regularly to attend meetings of Alcoholics Anonymous and Lawyers Concerned for Lawyers. As noted above, the petitioner intends to continue his participation in those programs.
>
> CLE: During the two years after his reinstatement, the petitioner shall attend forty hours of continuing legal education in areas of the law in which he intends to practice. Because the petitioner plans to concentrate his practice in specific fields of law, Tr. 120-121 (Boudreau), he should attend more focused courses, cf. Tr. 114-120, 146-147 (Boudreau), appropriate to an experienced practitioner. The petitioner has indicated his willingness to do so. Tr. 49 (Boudreau).
>
> Mentoring: Before the effective date of his reinstatement, the petitioner shall enter into the two mentoring agreements attached to Bar Counsel's letter. The petitioner has agreed to this, as have the two attorneys named there as mentors. Tr. 48-49, 57, 130 (Boudreau); Tr. 174, 183-189 (Martin); Tr. 200-201, 208 (Costello); Ex. 11. However, paragraph 6 of the mentoring agreements shall be amended to provide that the petitioner use his best efforts to obtain malpractice insurance. See Tr. 49-50 (Boudreau), and cf. Tr. 58-60.
>
> Financial Probation: Before the effective date of his reinstatement, the petitioner shall enter into a financial probation agreement with Bar Counsel in the form attached to Bar Counsel's letter, for the purpose of ensuring his compliance with the rules of professional responsibility concerning trust funds. In addition, during the petitioner's disbarment he went through two bankruptcies. Tr. 34, 138-140 (Boudreau). His first, in 2000, sought to

discharge significant tax debt[8] that accrued over the years as the petitioner filed tax returns without paying all taxes owed. Tr. 31-34 (Boudreau); Ex. 29. The second filing, in 2009, sought to discharge additional tax liabilities not discharged in the 2000 bankruptcy, and in that way also to remove the petitioner's ineligibility for state licensing because of taxes were owed.[9] Tr. 35-37 (Boudreau); Ex. 23; Ex. 30. While the petitioner is now up-to-date on his taxes and other debt, Tr. 38-39, 41 (Boudreau); Tr. 164 (Dee), until recently he failed to pay quarterly estimated income taxes. Tr. 68 (Boudreau). Also, his failure to pay taxes timely occurred as recently as 2009. Tr. 80 (Boudreau). Therefore, the public interest would be best served by requiring the petitioner to include the following additional terms in his financial probation agreement with Bar Counsel: He shall report to Bar Counsel every six months for two years after reinstatement to confirm that he has implemented the necessary withholding and quarterly payment accounts and procedures to meet his obligations to any employees, the IRS and the Mass. DOR, and that he has paid all taxes due.

In addition, we add the requirement that within sixty days after his reinstatement the petitioner seek an audit of his proposed office practices from the Law Office Management Assistance Program, and adopt its recommendations.

---

[8] We note that, while the petitioner attributed his bankruptcy filing in 2000 to tax liabilities and wage attachments, Tr. 34-35 (Boudreau), his schedules also listed unsecured debt that far exceeded his tax liability. Ex. 29 (listing $125,000 in tax liability and $454,000 in other unsecured debt, including $160,000 apparently owed as a result of his misuse of funds, and $294,000 in notes and loans outstanding). The petitioner has indicated that he intends to satisfy his non-tax obligations notwithstanding his discharges in bankruptcy. Ex. 23. Two sets of the victims of the petitioner's misuse were made whole by financial institutions, which have not recovered over against him. Tr. 73-74, 95-96 (Boudreau). He has been financially unable to make restitution in those cases, but he recognizes his moral obligation to do so and to compensate others whose claims against him were discharged in bankruptcy. Tr. 96-97, 139 (Boudreau); and see also Tr. 248-249 (Boudreau) (the petitioner attempted to reaffirm some of his non-tax debts in his bankruptcy).

[9] The petitioner's bankruptcy in 2000 could not discharge his liability for about $77,000 in taxes, etc., for the three years before he filed his bankruptcy petition. Tr. 161-162, 163 (Dee).

The panel notes some concern that the petitioner's 2009 bankruptcy might have been strategically timed to protect an upcoming inheritance of between $90,000 and $100,000, received from his late father's estate in 2011, but we also note that the petitioner used at least some of this inheritance to make restitution and to pay tax liabilities. Tr. 38-41 (Boudreau); Tr. 164-165 (Dee); Ex. 24.

V. Conclusions and Recommendation

Based on the foregoing, we recommend that the petition for reinstatement filed by James F. Boudreau be allowed on the conditions set forth above.

Respectfully submitted,
By the Hearing Panel,

W. Lee H. Dunham /pmr
W. Lee H. Dunham, Esq., Chair

Francis P. Keough /pmr
Francis P. Keough, Member

Lisa Arrowood /pmr
Lisa Arrowood, Esq., Member

Filed: May 2, 2014