IN RE: DAVID D. CURTIS, JR.

NO. BD-2000-057

S.J.C. Judgment of Reinstatement entered by Justice Duffly on April 14, 2016.[1]

Page Down to View Hearing Panel Report

[1] 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	)	
DAVID. D. CURTIS, JR.,	)	SJC No. BD-2000-057
Petition for Reinstatement	)	

HEARING PANEL REPORT

I. Introduction

Represented by counsel, on September 18, 2015, David D. Curtis, Jr. filed with the Supreme Judicial Court a petition for reinstatement from an order of indefinite suspension the Court entered on July 26, 2001, effective that date. Matter of Curtis, S.J.C. No. BD-2000-057, 17 Mass. Att'y Disc. R. 157 (2001).

A hearing was held on December 14, 2015. Bar counsel did not oppose the petitioner's reinstatement, but requested certain conditions. The petitioner testified on his own behalf and called five additional witnesses: four attorneys and his sponsor in Alcoholics Anonymous. Bar counsel called no witnesses. Nineteen numbered exhibits were admitted into evidence, including exhibit two, which consisted of eleven letters of recommendation.

After considering the evidence and testimony, and for the reasons set forth below, this panel recommends that the petition for reinstatement be allowed on certain conditions.

II. Standard

A petitioner for reinstatement to the bar 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 (1988). Rule 4:01, § 18(5) establishes two distinct requirements focusing, respectively, on (i) the personal characteristics of the petitioner; and (ii) 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 making these determinations, a panel considering a petition for reinstatement "looks to '(1) the nature of the original offense for which the petitioner was [suspended], (2) the petitioner's character, maturity, and experience at the time of his [suspension], (3) the petitioner's occupations and conduct in the time since his [suspension], (4) the time elapsed since the [suspension], and (5) the petitioner's present competence in legal skills.'" Daniels, 442 Mass. at 1038, 20 Mass. Att'y Disc. R. at 122-123, quoting Matter of Prager, 422 Mass. 86, 92 (1996), and Matter of Hiss, 368 Mass. 447, 460, 1 Mass. Att'y Disc. R. 122, 133 (1975).

III. Disciplinary Background

The petitioner was indefinitely suspended based on his stipulation to facts and rules violations. Under that stipulation, the petitioner admitted the following: From January 1991 until November 1993, before becoming a lawyer, the petitioner was employed as a worker's compensation adjuster by an insurance company. He was authorized to hire private investigative firms to determine the validity of disability claims. In about December 1991, he entered into an agreement with the principals of two different private investigation firms in which the petitioner agreed to employ the firms in return for a substantial fee for each such assignment. Between December 1991 and February 24, 1993, the petitioner referred over 400 compensation investigations to one of these firms alone. The vast majority of these investigations were unnecessary and cost the insurer over $400,000. The petitioner received approximately $31,000 from the two principals in 1992, but he did not report this income on the 1992 Massachusetts income tax return he filed jointly with his then wife in 1993.

Additionally, the petitioner was required to code each expenditure he authorized by the

insurer. In addition to expenses for investigation, the petitioner was authorized to make indemnity payments on behalf of claimants. The coding for indemnity payments differed from the coding used to record expenses. To conceal the substantial expenses being paid for investigations by the private investigation firm, the petitioner coded them as indemnity payments, thereby committing the crime of false entry in a corporate book or record.

The petitioner was indicted on February 17, 1999, on thirty counts of commercial bribery, 30 counts of false entry in a corporate book or record, and one count of larceny over $250. The indictments were sealed until April 1, 1999, at which time the petitioner was summoned to appear on April 20, 1999, at the Norfolk Superior Court to answer the charges in the inducement.

Because of the foregoing conduct, on September 18, 2000, the petitioner was convicted in the Norfolk Superior Court of larceny over $250, false entry in a corporate book, corporate bribery, and willful filing of false income tax returns. The conviction for corporate bribery concerned the petitioner's conduct from February 17, 1993, to February 24, 1993. During that time, he solicited or agreed to accept money from one of the principals as a condition of assigning investigations to the principal's firm. In return for kickbacks of $100 to $200 per case, the petitioner assigned thirty different investigations to the firm.

He was sentenced on the larceny conviction to two years in the house of correction with thirty days to serve; he was placed on four years' probation. For the remaining crimes, the petitioner was sentenced to concurrent terms of imprisonment for two and a half years in the house of correction with thirty days to serve and four years of probation. In addition, he pleaded guilty in September of 2000 to charges of tax evasion and making a false statement, for which he was sentenced to probation. All of his probation terminated by 2004.

On April 5, 1999, Curtis petitioned the Supreme Judicial Court for admission to the Massachusetts bar. Along with the petition, the petitioner completed and filed the required questionnaire, which asked him to disclose whether or not he had "ever been charged with or been the subject of any investigation for a felony or misdemeanor other than a minor traffic charge..." The petitioner intentionally did not disclose the pending felony indictments in Norfolk

County. Nor did he amend his questionnaire once he was charged with the Suffolk County felonies. In addition, the petitioner was subsequently charged in Suffolk County with one count of tax evasion and one count of willfully filing a false tax return under oath. These crimes are also felonies, and the petitioner failed to disclose them on his bar application. Before his admission to the bar, the petitioner never notified the Board of Bar Examiners or the Supreme Judicial Court that there were criminal charges pending against him. The petitioner was admitted to the bar on December 13, 1999. He was temporarily suspended from the practice of law on October 5, 2000.

On May 23, 2014, the Court granted the petitioner leave to be employed as a paralegal by certain attorneys, which was amended on September 15, 2014, to permit the petitioner to work for different attorneys. He did so at least through the date of the reinstatement hearing. (Tr. 97-98, Carbone; Tr. 126-128, Flynn).

IV. Findings

A. Moral Qualifications

We find that the petitioner has demonstrated "the moral qualifications . . . required for admission to practice law in this Commonwealth. . . ." S.J.C. Rule 4:01, § 18(5).

At the outset, we acknowledge the petitioner did not appear before us attempting to qualify his stipulation to discipline, to shift blame, or to suggest that his stipulation was a mere pragmatic concession that he now feels free to disavow. Compare Matter of Ascher, S.J.C. No. BD-2006-020, panel report at 4-7, order denying reinstatement entered May 28, 2015. The petitioner's stipulation to discipline fully admitted the truth of certain charges (Ex. 1, p. 2), and he has not taken a different position before us. He freely testified to the nature of his wrongdoing. (Tr. 151-152, 158, 174, Curtis). In stark contrast to the panel's findings in Ascher, we do credit the petitioner's expressions of remorse and acceptance of responsibility. (Tr. 151-152, 158, 174, Curtis). We find that the petitioner has accomplished true reform, and that he fully appreciates that the practice of law is a privilege he must earn. (Ex. 1 at pp. 13-14).

We credit that the petitioner faced a number of personal tragedies as a young man that led, as he said, to a distortion of his moral compass, leading to a sense of self-justification and entitlement ("the world owed me something because I was deprived"), resulting in selfishness and greed that were fueled by alcoholism and depression. (Ex. 1 at p. 13; Tr. 147-152, Curtis). In turn, these contributed to his misconduct, before becoming a lawyer, that resulted in his criminal convictions. The petitioner has been sober since 2008 and has remained so with the assistance of, and his participation in, Lawyers Concerned for Lawyers, Alcoholics Anonymous, and psychotherapy. (Tr. 160-65, Curtis). Moreover, we credit that the petitioner now recognizes the danger of trying to handle all of his problems unassisted and note that he has developed a support system. (Tr. 160-165, 173-174, Curtis; Tr. 102-116, Twomey). He has also met with the Law Office Management Assistance Program and will continue to work with them. (Tr. 186, 221, Curtis). Attorney Peter Flynn has agreed to mentor the petitioner if he is reinstated (Ex. 1 at p. 12) and bar counsel is amenable to this. (Tr. 227, 230). In part because of this support system, we find that the misconduct is not likely to be repeated.

Other matters confirm our conclusion that the petitioner now is generally a person of good moral character in contrast to his character prior to his suspension.[1] While battling for his sobriety and since becoming sober in 2008, the petitioner has also found time to engage in charitable work of various sorts, including assisting other people in recovery. (Exs. 1 at pp. 5-6, 2-A, 2-I, 4; Tr. 166-168, Curtis).

To earn a responsible living, he delivered newspapers and later found employment working for real estate companies. (Ex. 1, pp. 3-5; Tr. 191, 196-199, 219, Curtis). He subsequently applied for leave to be employed as a paralegal, albeit for no compensation. (Tr. 174-175, Curtis).

The petitioner is a reminder that a "fundamental precept of our system is that a person

[1] While the petitioner's order of indefinite suspension makes no reference to matters in mitigation, we credit his testimony about his tragic family history (Tr. 147-148, 192-193, Curtis), the role that his alcohol abuse has played in his life (Tr. 147-149, 155-158, 160-165, Curtis) and that he is now in recovery (Exs. 5, 7; Tr. 102-116, Twomey).

can be rehabilitated." Matter of Ellis, 457 Mass. 413, 414, 26 Mass. Att'y Disc. R. 158, 163 (2010). The conduct giving rise to the petitioner's suspension was "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 before us it "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, and to same effect, see Matter of Centracchio, 345 Mass. 342, 346 (1963), Matter of Waitz, 416 Mass. 298, 304, 9 Mass. Atty. Disc. R. 336, 342 (1993). As described above, however, the petitioner presented ample evidence of "[r]eform . . . a 'state of mind' that must be manifested by some external evidence . . . ." 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. He "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 Matter of Ellis, 457 Mass. at 414, 26 Mass. Att'y Disc. R. at 163-164. 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. "The act of reinstating an attorney involves 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. at 348, and we have been persuaded to make that certification.

B. Learning in the Law

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

During his suspension, the petitioner has attended forty-four continuing legal education seminars. (Tr. 171, Curtis; Exs. 1 at pp. 8-9, 3, 10 and 18). These covered topics in civil

litigation, family law, personal injury litigation, ethics, trial evidence and practice, family law, business and employment law, real estate, and estate planning. (Tr. 171-172, Curtis; Exs. 3, 10 and 18). They had a substantial relationship to the areas of practice the petitioner plans to resume upon reinstatement (primarily personal injury litigation and criminal defense). (Tr. 206-208, Curtis; Ex. 8).

In addition, the petitioner reviews various MCLE publications at the law library and articles posted by the Office of the Bar Counsel. (Ex. 10). He also reviews the Massachusetts Lawyers Weekly. (Tr. 158-159, 202, 203, Curtis).

The petitioner's misconduct occurred before he was admitted to practice law, although part of it stemmed from failing to disclose his criminal conduct on his bar application.

Before being admitted to practice as an attorney, the petitioner worked as a paralegal for about three years in plaintiff's personal injury litigation. (Tr. 184-185, 212-213, Curtis). He was "highly effective" and "highly competent" in that work. (Tr. 13-15, 29-30, Born). As indicated above, in 2014, the petitioner received permission from the Court to work as a paralegal. (Ex. 9). Pursuant to that Court order, the petitioner has worked primarily in plaintiffs' personal injury litigation. (Tr. 23-26, Born; Tr. 49-52, 56-61, Gregoire), but has also assisted in some criminal matters (Tr. 88-91, Carbone).

His work in and after 2014 was highly regarded by the attorneys for whom he worked. (Tr. 23-27, 39-40, Born; Tr. 49-52, 56-62, 72-74, Gregoire; Tr. 91-94, Carbone; Tr. 129-135, Flynn). Accordingly, his competence in researching, writing, and preparing cases for settlement negotiation appears to remain intact.

This panel was also favorably impressed by the petitioner's thoughtful approach to resuming practice upon reinstatement, including his detailed business plan for returning to the practice of law (Ex. 8; Tr. 186-187, 206-209, 219-221, Curtis).

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 petitioner's 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 [with] the reaction to his reinstatement by the bar and public." Matter of Gordon, 385 Mass. at 53, 3 Mass. Att'y Disc. R. 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. We are satisfied, however, that "the petitioner has proved himself trustworthy, that his resumption of practice poses no threat to the public welfare, and that the integrity of the bar will not be compromised by the reinstatement of an individual who, despite serious [] misconduct nearly fifteen years ago, has experienced the 'chastening effect of a severe sanction.'" Matter of Pool, 401 Mass. at 468, 5 Mass. Att'y Disc. R. at 299 (citations omitted).

In our judgment, reinstating the petitioner will not erode public confidence in the profession. To be sure, his misconduct violated fundamental duties to his employers (albeit before he was admitted to the bar) and to the profession. Still, we have received compelling evidence that the petitioner allowed himself to succumb to circumstances, evidenced by conduct for which he accepts responsibility, and that he has reformed himself by effective affirmative efforts, including real changes to how he approaches his life. In our judgment, the public will recognize, as do we, that the petitioner has earned the privilege of once again practicing law in Massachusetts. Among other things, the letters from the petitioner's witnesses (Ex. 2), who also testified on his behalf, indicated that his reinstatement to the bar would not be detrimental to the profession and the public. The petitioner's witnesses all testified as to his current honesty and good moral character. (Tr. 28, Born; Tr. 60, Gregoire; Tr. 93, Carbone; Tr. 114-115, Twomey; Tr. 139-140, Flynn).

For the same reasons, we conclude that the bar will not be adversely affected by the petitioner's reinstatement. The petitioner did not merely wait out his suspension; he waited until

he had been clean and sober for several years and had worked with LCL and AA before applying for reinstatement.

Finally, the petitioner's readmission is fully in line with the principles and rules governing reinstatement; we do no violence to the even-handed administration of justice by concluding that reinstatement is fully warranted here.

V. Conclusions and Recommendation

For the foregoing reasons, we recommend that the petition for reinstatement filed by David D. Curtis, Jr., be allowed, on the following conditions:

a. Before resuming practice, the petitioner shall enter into a mentoring agreement, on customary terms and reasonably satisfactory to bar counsel, calling for the general supervision of his practice and the performance of his office systems for two years after reinstatement; and

b. In a separate agreement, the petitioner shall agree to continue therapy and to continue counseling with LCL, for two years after reinstatement.

Respectfully submitted,
by the Hearing Panel,

Erin K. Higgins /pr
Erin K. Higgins, Esq., Chair

David B. Krieger, M.D. /pr
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