

**IN RE: STEVEN L. OSTROVITZ**

**NO. BD-2008-076**

**S.J.C. Judgment of Reinstatement entered by Justice Cordy on May 6, 2015.<sup>1</sup>**

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<sup>1</sup> 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**

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In the Matter of )

STEVEN L. OSTROVITZ, )

Petition for Reinstatement )  
\_\_\_\_\_ )

SJC No. BD-2008-076

**HEARING PANEL REPORT**

**I. Introduction**

On November 14, 2014, represented by counsel, Steven L. Ostrovitz filed with the Supreme Judicial Court a petition seeking reinstatement from term suspension. See Matter of Ostrovitz, S.J.C. No. BD-2008-076 (July 29, 2008) (a copy is attached to the petitioner's original responses to the reinstatement Questionnaire, Part One, and included in Ex. 2).

We received evidence on February 24, 2015 at an evidentiary hearing. The petitioner testified on his own behalf and called two additional witnesses, a lawyer and the petitioner's psychologist. Bar counsel called no witnesses. Nine exhibits were admitted into evidence. The petition was not opposed by Bar Counsel, who recommended, with the petitioner's assent (Tr. 234), that the petitioner be reinstated with three conditions: (1) that he continue therapy with his psychologist for two years and that the therapist report to bar counsel three times a year; (2) that the respondent continue with group meetings of Lawyers Concerned for Lawyers (LCL) for two years and that LCL report to bar counsel twice a year; and (3) upon reinstatement, the respondent participate in two years of accounting probation. (Tr. 232-233).

After considering the documentary evidence and the testimony, this panel finds that the petitioner has met his burden in these proceedings. He has demonstrated the required competence and learning in the law. He has demonstrated moral reform, as well as a support system to assist in maintaining his recovery from the depression and substance abuse that was at

the root of his misconduct. He has provided ample evidence he is again worthy of the public trust. Based on these findings and our conclusion that the petitioner's reinstatement will not be detrimental to the public welfare, the standing of the bar, and the administration of justice, we recommend that the petition for reinstatement of Steven L. Ostrovitz 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 "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 admitted to practice in 1994. On July 28, 2008, following a

stipulation, the petitioner received a suspension for two and a half years. *Matter of Ostrovitz*, 24 Mass. Att’y Disc. R. 533 (2008). The order of suspension was based on the petitioner’s neglect of a client matter after settling a personal injury case. He negotiated down and paid one of four medical liens but did not pay the other three. He then unintentionally misused the money saved on the reduced lien and the monies allocated to the three unpaid liens for purposes unrelated to the client, for a total of \$4,093.73 in client funds. When the client was later contacted by a collection agency for one of the unpaid providers, the petitioner told the client he would pay the outstanding medical bills; however, he did not do so, nor did he remit the funds to the client. Over the next several months, the petitioner failed to respond to at least fifteen calls and several letters from the client. During this time, the petitioner also deposited personal funds into his IOLTA account.

He also failed to respond to the bar counsel’s inquiry about the client’s grievance, resulting in bar counsel’s subpoena for the petitioner to appear; he failed to comply with that subpoena as well. After bar counsel filed a petition for discipline, the petitioner failed to file an answer and was defaulted; he did not contact bar counsel until after a hearing was scheduled on the issue of disposition. During this time, the petitioner also continued to use as his registered office address an office with which he no longer had a connection and at which he could not be reached.

The situation was exacerbated by the petitioner’s failure to register and pay his bar dues in 2007, resulting in an administrative suspension with which he failed to comply.

We credit the testimony by and on behalf of the petitioner as follows: The petitioner’s wife was diagnosed with stage 4 breast cancer in the fall of 2003. (Tr. 19-20, Krell; Tr. 62, petitioner). At the time, the wife was 36 years old. (Tr. 101, petitioner). The petitioner and his wife had a daughter who was then just under the age of two. (Tr. 63, petitioner). Around 2009, the cancer metastasized to her brain. (Tr. 23, Krell; Tr. 73, petitioner). Because of this, the petitioner became depressed, which he recognized in 2005 or 2006. (Tr. 64-65, 68-69, petitioner). As a result, he was “sticking his head in the sand” and not paying attention to the

fact that he was not getting mail in his cases.<sup>1</sup> In 2006, the petitioner began using his wife's opiates, which continued until shortly after her death in 2013. (Tr. 183-184, 192-194, petitioner).<sup>2</sup> During that time, he tried several times to stop using drugs; each time was with the assistance of a physician and at least one occasion included an in-patient hospitalization. (Tr. 82-83, 197-198, petitioner; Tr. 228-229, Cherney).

The petitioner's wife died on September 18, 2013. Within two weeks, he was receiving treatment from a physician, Dr. Goldbaum, and has not taken any opiates since September of 2013. (Tr. 196, 82-83, petitioner). To assist the petitioner in becoming free of opiate use, Dr. Goldbaum prescribed Suboxone. The petitioner was gradually weaned off of Suboxone and has not used it since June of 2014. (Tr. 83-85, petitioner). The petitioner also sought the assistance of LCL, which referred him to Dr. Robert Cherney, a licensed psychologist and certified drug and alcohol counselor. (Tr. 85, petitioner; Tr. 204-205, 207, Cherney).

When he began seeing Dr. Goldbaum, the petitioner threw out all of his wife's leftover medications that he found. He continued to do so over a period of several months as he found more of her medications around the house<sup>3</sup> and reported his actions to Dr. Cherney. He has not found any more in the last several months. (Tr. 179-180, petitioner).

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<sup>1</sup> We credit the petitioner's testimony as follows: after their daughter was born in 2002, the wife stopped working outside the home and assisted the petitioner in his solo law practice. The wife collected the mail, which went to the law office located a mile from their home. Whether because of her brain cancer or otherwise, the wife "hoarded" the petitioner's office mail and "stashed" it in bags around the house instead of delivering it to him; he learned this later. (Tr. 70-72, 148-149, petitioner). The petitioner assumes responsibility for not having realized he was not receiving his mail. (Tr. 71-72). We credit his testimony that his depression and overwhelming responsibilities—including running the household, being the sole caregiver for his wife and their daughter, and taking his wife to her "complex schedule" of appointments for multiple clinical trials for her treatment, and managing the schedule of her taking over 30 different medications at one time, and later her being bedridden before her death—all contributed to causing his misconduct. (Tr. 72-76, petitioner).

<sup>2</sup> We credit the testimony of the petitioner and Attorney Joshua Krell, who has been his friend since high school, that the petitioner never abused alcohol. (Tr. 40, Krell; Tr. 196, petitioner).

<sup>3</sup> We credit the petitioner's testimony that his wife used to "prepackage" her medications for herself and place bags for herself in her purse and clothes. The petitioner began finding them a few months after her death when he began going through the house and cleaning. (Tr. 180; petitioner).

#### **IV. Findings**

##### **A. Moral Qualifications**

The petitioner met his burden under S.J.C. Rule 4:01, § 18 to demonstrate that he now has the moral qualifications for admission to practice in Massachusetts.

The petitioner was depressed and abused his wife's prescription pain medicines. We credit the testimony that he is no longer depressed and unlikely to relapse. Specifically, we credit the testimony of Dr. Cherney, who has been treating the petitioner since March of 2014 and sees him regularly; the petitioner has been very consistent in his appointments. (Tr. 207-209, Cherney; Tr. 87, petitioner; weekly appointments).

We credit Dr. Cherney's testimony and find that the petitioner is no longer depressed, that his depression was situational and is very unlikely to occur. (Tr. 211, 214-215, 224-225, 231, Cherney). As evidence that the petitioner's depression was situational and unlikely to recur, Dr. Cherney pointed to the following: since beginning therapy, the petitioner has faced "triggers" within the past year, which would have caused a major depressant episode in someone who is likely to become depressed.<sup>4</sup> (Tr. 215-216, Cherney).

We likewise credit Dr. Cherney's testimony and find that the petitioner is unlikely to return to abusing medications. As Dr. Cherney pointed out, if someone is relapsing, he will not be consistent in attending his appointments in an effort to hide the relapse from the therapist. Moreover, if someone is going to relapse, it usually occurs in the first year; if he stays in therapy he is much less likely to relapse. (Tr. 209-210, Cherney). The petitioner's prior efforts to overcome his drug use failed because he did not have the skills needed to address his problems, was not in individual psychotherapy, and did not have support systems in place.<sup>5</sup> Now the

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<sup>4</sup> These include the fact that the petitioner's daughter required extensive back surgery in July of 2014 and major leg surgery in December of 2014; he faced but overcame impending foreclosure of his house; and his repeated efforts to find a job have been unsuccessful. (Tr. 219, Cherney; Tr. 114-116, 129-131, 169-170, 196-197, petitioner; Ex. 6, Jacobson letter).

<sup>5</sup> We likewise credit the petitioner's testimony that he began to deal with his depression when he learned of cognitive behavioral therapy from reading a book in 2009 or 2010, where he discovered he could learn techniques to help him prevent a recurrence of his depression; that prior (and unsuccessful)

petitioner has learned cognitive behavior coping strategies, is in weekly therapy sessions with Dr. Cherney, and has a large family and social support network for support. (Tr. 210-212, 226-227, Cherney; Tr. 184-187, petitioner).

As evidence that the petitioner was committed to overcoming his addiction and is unlikely to relapse, Dr. Cherney pointed to the following: when the petitioner's wife died, it would have been very easy for him to continue taking drugs. (Tr. 230-231, Cherney; Tr. 198-199, petitioner; when his wife died, there was a "huge stockpile" of her drugs in the house). Likewise, when the petitioner's daughter was sent home with drugs after both of her surgeries, he did not use them. (Tr. 180-181, petitioner).

We credit the testimony and therefore find that he is in recovery from his substance abuse.

Generally, the petitioner is remorseful for all of his misconduct, for which he takes full responsibility. (Questionnaire, part I, pp. 2-3; Tr. 67-68, petitioner). The petitioner also forthrightly acknowledged the wrongfulness of his neglecting matters, not paying his dues and not responding to bar counsel. (Tr. 67-68, 72, 131-132, petitioner; 224-225, Cherney). Further, his misconduct occurred in the depths of his depression, which caused him to withdraw. (Tr. 72, 173-174, petitioner; Tr. 224-225, Cherney).

Our conclusion that the petitioner is currently a person of good moral character is buttressed by other points. While his participation in charitable activities is limited by his obligations as a single parent of a young child, he created a charity that provides support to young women diagnosed with breast cancer and has fundraised for it. (Tr. 100-102, petitioner; Tr. 38, Krell; Questionnaire, part 1, pp. 5-6). He has also done volunteer fund-raising for the capital campaign of his daughter's school, which is fairly involved and requires a considerable amount of time. (Tr. 102-103, petitioner). He has also engaged in a number of event-oriented

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efforts to quit drugs did not include individual psychotherapy; that Narcotics Anonymous did not assist him; and that he benefited more from individual therapy and LCL group sessions. (Tr. 77-78, 133, 197-198, 200-201, petitioner).

charitable activities. (Questionnaire, part 1, pp. 5-6).

In addition to the matters that led to the petitioner's suspension, there was a second client matter he had neglected after being paid a flat fee. (The second matter was not the subject of his discipline.) The petitioner learned, in preparing for his reinstatement, that the client had been reimbursed by the Clients' Security Board. (Tr. 172, petitioner; Questionnaire, part 1, pp. 6-7). He then promptly repaid that amount to the CSB. (Tr. 172-173, petitioner; Ex. 3, petitioner's letter and check to the CSB).

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). To be sure, the conduct giving rise to the petitioner's suspension 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). 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, 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). "Reform is 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. "It was incumbent on [the petitioner] \* \* \* to establish 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. 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. We find that this petitioner has persuasively and amply demonstrated such reform, and therefore find that the petitioner has the moral qualifications for reinstatement to practice in Massachusetts.

## **B. Learning in the Law**

The petitioner has met 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.”

The petitioner’s witness, who has known him since high school, and was therefore acquainted with the petitioner’s practice before his suspension, testified as to his learning in the law. (Tr. 31, Krell; Ex. 7, Krell letter; Ex. 6, Jacobson letter).

The petitioner has demonstrated commitment to continued learning. Between June 2012 and October 2014, the petitioner attended thirty-three continuing legal education courses in Massachusetts and studied the course materials. (Ex. 5; Tr. 106-111, petitioner; Questionnaire, part 1, pp. 7-11). He maintains a subscription to MCLE Online Pass and plans to continue taking seminars either in person or on line. (Tr. 106-107, petitioner). He also regularly reads the *Massachusetts Lawyers Weekly*. (Tr. 106, petitioner). We note with approval that two of the courses he has taken are "How to Make Money & Stay Out of Trouble" and "Accounting and Finance for Lawyers." (Tr. 111-112, petitioner; Questionnaire, part 1, p. 9). We also note that many of the courses he has taken involve his intended areas of practice if reinstated; viz., real estate and representing small businesses. (Questionnaire, part 1, pp. 7-9).

We are also favorably impressed with the petitioner’s thoughtful approach to resuming the practice of law, including consultation with the Law Office Management Assistance Program (Tr. 118-119, petitioner), and arranging for monitoring by other lawyers. (Tr. 26-29, Krell; Tr. 124-127, petitioner). While the petitioner was able to describe the requirements under rule 1.15 and a three-way reconciliation, he has nevertheless arranged for a CPA to assist him in setting up his practice, after which he intends to engage a professional bookkeeper. (Tr. 120-123, petitioner). The petitioner has already arranged for Attorney Krell and the CPA to confer directly on a monthly basis. (Tr. 122-12, petitioner).

Considering the number of continuing legal education courses the petitioner has attended and their relation to his past and proposed practice, as well as the information before us that

before his suspension the petitioner was a capable practitioner, we find that he has the required competence and learning.

**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.

Given the quality and quantity of the petitioner's evidence of current moral fitness and learning and our findings based on that evidence, nothing more need be said to demonstrate that neither the public nor the bar nor the administration of justice would be affected adversely by the petitioner's reinstatement.

**V. Conclusions and Recommendation**

Based on the foregoing, we recommend that the petition for reinstatement filed by Steven L. Ostrovitz be allowed on the following conditions:<sup>6</sup>

- (a) As recommended by bar counsel and agreed by the petitioner, he will continue in therapy for two years with Dr. Cherney, who has agreed to report to bar counsel every four months concerning the petitioner (Tr. 231-232, Cherney);
- (b) As recommended by bar counsel and agreed by the petitioner, he will continue in LCL group sessions for two years and Barbara Bowe, LICSW, will report to bar counsel twice a year; and

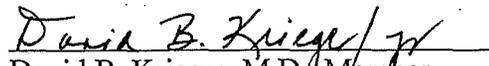
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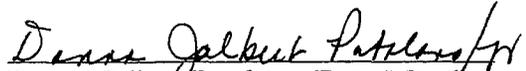
<sup>6</sup> We credit the testimony of Joshua Krell that he will serve as a mentor for the petitioner for at least two years if he is reinstated (Tr. 26-29, Krell; Tr. 124-127, petitioner) and therefore do not require a formal mentoring agreement.

(c) As recommended by bar counsel and agreed by the petitioner, he will be subject to accounting probation for two years; the wording of which will be determined by bar counsel.<sup>7</sup>

Respectfully submitted,  
By the Hearing Panel,

  
Erin K. Higgins, Esq., Chair

  
David B. Krieger, M.D., Member

  
Donna Jalbert Patalano, Esq., Member

Filed: 4/7/15

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<sup>7</sup> In *Matter of O'Leary*, 25 Mass. Att'y Disc. R. 461 (2009), the Court ordered that, on reinstatement, "the respondent [shall] enter into and, for the period of one year; abide by the terms of a peer review or monitoring agreement, the terms of which are to be determined by bar counsel." We understand that bar counsel has similar standard agreements for accounting probation.