

IN RE: GARRISON STUART CORBEN

NO. BD-2009-113

S.J.C. Order Denying Reinstatement entered by Justice Botsford on October 13, 2015.¹

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)
)

GARRISON S. CORBEN,)

SJC No. BD-2009-013

Petition for Reinstatement)
)

HEARING PANEL REPORT

I. Introduction

Represented by counsel, on February 14, 2014, Garrison S. Corben filed with the Supreme Judicial Court a petition for reinstatement from an order of a suspension of a year and a day, entered by the Court on December 30, 2009. *Matter of Corben*, 26 Mass. Att’y Disc. R. 115 (2010). Bar Counsel opposed the petition.

We received evidence under the petition at a hearing on June 2, 2014. The petitioner testified on his own behalf and called one witness; bar counsel called none. Thirteen exhibits were admitted into evidence and, by order of the hearing panel chair, the record was expanded on June 20, 2014, to include a letter from a judge on behalf of the petitioner. These exhibits included, by agreement, the petitioner’s responses to part one of the reinstatement questionnaire. In addition, the petitioner submitted for the panel’s consideration his responses to part two of the reinstatement questionnaire.

After considering the evidence and testimony, the panel recommends that the petition for reinstatement be denied.

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 (1998). SJC 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’s term suspension of a year and a day, to which he had stipulated, was based on a vote of the board and an order by a single justice of the Court. 26 Mass. Att’y Disc. R. 115. We summarize those findings.

Between 1998 and 2001, the petitioner provided legal services to the family of a severely disabled child. Each of the child’s parents (who divorced in 2005) had a copy of a disability placard issued by the Registry of Motor Vehicles. Sometime before 2005, the mother’s copy of the placard went missing. “From February 2005 until about August 2007, the respondent intentionally used the child’s disability placard to defend against parking tickets he received in Boston, including but not limited to parking in handicapped parking areas. The respondent wrote appeal letters to the office of the parking clerk requesting dismissal of various parking tickets by falsely claiming that he was transporting the disabled child to medical appointments at the times the tickets were issued and enclosing a photocopy of the child’s disability placard as proof. The

respondent had no contact with the child and knew that he was not entitled or authorized to use the disability placard.” 26 Mass. Att’y Disc. R. at 115-116. In response to inquiries from the office of the parking clerk, the petitioner submitted at least two fabricated letters purporting to be from the disabled child. The respondent signed, or caused to be signed, the child’s name to these letters. 26 Mass. Att’y Disc. R. at 116.

Unrelated to the foregoing matter, “the respondent also had a relative who had a disability placard issued by the registry of motor vehicles in 1998, which was due to expire on April 9, 2003. The respondent’s relative died in 2002. On April 30, 2007, the respondent altered the expiration date and displayed this placard in his car at a metered space in Boston without paying the meter.” 26 Mass. Att’y Disc. R. at 116.

IV. Findings

A. Learning in the Law

We find that, in accordance with S.J.C. Rule 4:01, § 18, the petitioner has not demonstrated that he has the competency and learning in the law required for reinstatement to the practice law in this Commonwealth.

In sections G and H of part I of the petitioner’s reinstatement questionnaire, he identified several courses he took and several publications he read regularly. However, he did not provide specific dates of the courses nor did he attach any certificates of attendance; he had no printouts of attendance lists or anything else to show he actually attended any of these classes. The petitioner was questioned about this at the hearing. (Tr. 58-61, Corben). We do not credit the petitioner’s testimony that he actually attended these courses or his explanations as to why he did not have any certificates or other proof of attendance.¹ The testimony of the petitioner’s only

¹ At least one of the courses the petitioner testified he attended was about “famous past cases” and not “current developments in the law” (Tr. 59-60, Corben). At least as to this course, it failed to demonstrate the petitioner was able to “acquire or maintain learning in the law and knowledge of [his] ethical obligations” (Questionnaire part one, section 3G and 3H). There was a 2013 letter (Tab E) from someone who recalled the petitioner had attended seminars presented by John P. McGloin Memorial Lecture Series in 2010 and 2011, but it provided no information concerning the nature of these lectures, how long they lasted, or their subject matter.

supporting witness, Rena Andreola, a paralegal, was not particularly helpful. She testified generally that “he has kept up with whatever possible to remain active knowledgeable [sic] with the laws.” However, her statement that he “was a great attorney and, if given the chance, could be a great attorney again” (Tr. 88, Andreola) is insufficient to meet the petitioner’s burden concerning his knowledge and learning of the law.

B. Moral Qualifications

The petitioner has not demonstrated the moral qualifications for readmission.

The petitioner came before us bearing a difficult burden of proof. His suspension, based on his intentionally falsified and altered documents in the two matters, along with the other misconduct giving rise to his 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. at 304, 9 Mass. Att’y Disc. R. at 342. “Reform is a ‘state of mind’ that must be manifested by some external evidence ... [and] the passage of time alone 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. “It [is] incumbent on [the petitioner], therefore, 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. 413, 414, 26 Mass. Att’y Disc. R. 158, 163-164 (2010).

We are not persuaded that the petitioner has addressed his ethical shortcomings. We accept that his remorse about the loss of his license² is sincere (Tr. 27-28, Corben), but sincere

² We note that the petitioner’s remorse was more about the loss of his license than the harm he caused to the family of the disabled girl or the disrepute caused by his falsified and altered documents. He testified that “I’m feeling remorseful. I’m very saddened because it has hampered my ability to be of assistance to help others and therefore I was suspended from the practice of law.” (Tr. 27-28, Corben).

remorse, standing alone, does not equal reform. Cf. *Matter of Lee*, SJC No. BD 2009-081 (3/14/2012), hearing panel report, adopted by the board and upheld by the Court, at 4-5 (“[W]e credit that the petitioner feels remorse and believes he has reformed, but the evidence presented to this panel demonstrates his inability to articulate consistently the nature of his original offense (making his claims of remorse and reform less compelling) and does not establish that his claimed subjective epiphany has taken hold in objectively verifiable conduct”).

To be sure, the petitioner tells us than he accepts responsibility for his misconduct. However, he repeatedly couched his answers to questions as “taking responsibility,” rather than admitting his misconduct. (Tr. 76-77, Corben). Even after finally admitting he “did it,” when pressed by the Hearing Panel (Tr. 77, Corben), the petitioner reverted to repeating “I take responsibility for these transgressions.” (Tr. 78-79, Corben).

One of the factors we must consider in reinstatement hearings is a petitioner’s understanding, and acceptance, of the misconduct that led to discipline. *Dawkins*, 432 Mass. at 1011, 16 Mass. Att’y Disc. R. at 95-96; *Matter of Keenan*, 314 Mass. 544, 550 (1943). If the petitioner can present credible and substantial evidence of present good character, reinstatement does not absolutely require that he admit guilt if he continues in good faith to deny it. *Matter of Hiss*, 368 Mass. 447, 455-459, 1 Mass. Att’y Disc. R. 122, 128-133 (1975). Here, however, the petitioner seems to want it both ways: to claim that he has accepted responsibility for the misuse of the handicap placard and the falsification of letters to defend against parking tickets, while denying his own direct personal responsibility for that conduct. For example, on August 15, 2007, the petitioner wrote to the girl’s parents in pertinent part as follows:

Please allow me to apologize to you [parents’ names omitted] and say I am very sorry for any aggravation. As I have never had any desire to take advantage of your family’s kindness, have always been very appreciative that you have allowed me to become close with your family. I adore [your daughter] and even took sign language classes to better give of myself and chat with her then and more recently during Christmas’ at [her mother’s house].

Yesterday I was made aware that the fellow who I was intimately involved with at odd intervals, Bruno Hernandez, and who on occasion assisted with my office, had compromised my personal relationships and financial

matters. Although, I did know he had access to my belongings, through spare keys he took and never returned, I did not know the extent of his going through old files or his portraying me. My previous attempts to prevent his actions were always hampered as he, being only a citizen of Brazil, traveled back and forth and was often unreachable, yet they seemed resolved once we spoke after he resurfaced.

Though I understand you have been compromised in this situation, I too have been the brunt of his theft and mistreatment as my life was infiltrated. And although I take responsibility for these transgressions, please allow me to help in anyway possible to rectify this situation.

(Reinstatement ex. 8). When questioned about the letter at the reinstatement hearing, the petitioner testified that he was taking responsibility for the actions of others. He answered questions as follows:

Q: So it's true that you're not taking any personal responsibility in this letter that you are calling an apology, is that correct?

A: It says in the following paragraph, "I take responsibility for these transgressions. Please allow me to help in anyway possible to rectify the situation."

Q: But you're blaming Bruno Hernandez.

A: It says, "I take responsibility for these transgressions. Please allow me to help in anyway possible to rectify the situation."

(Tr. 54-55, Corben). Later in the hearing, when pressed on the subject, the petitioner repeatedly said "I take responsibility for these transgressions." (Tr. 77-79, Corben). When asked about the forged letters, he even said: "Bruno had something to do with that. I'm taking responsibility * * * I'm the one who signed the letters." (Tr. 80, Corben; emphasis added). Finally he conceded in answer to a further question:

Q: But my question to you is Bruno Hernandez did not sign -did not do the shaky hand issue³ that [the daughter] refers to here. It was you,

³ The daughter has cerebral palsy. Her letter to the reinstatement panel (ex. 7) said: "I was born with severe cerebral palsy and [am] profoundly deaf. I have no use of my body or hands and dictated this letter to one of my PCA's and asked that they sign it on my behalf. Mr. Corben signed letters to the parking authority, in my name, with a shaky-looking signature, but one that I could not possibly have signed." The father's letter (ex. 6) stated: "As egregious as the theft and misuse of the handicap placard,

right?

A: Yes.

(Tr. 80, Corben).

At no time did the petitioner explain what led him to engage in this misconduct or what had changed in the interim that would demonstrate that he has been rehabilitated and would not engage in such conduct again. Based on the petitioner's inconsistent and evasive testimony (some of which is set forth above), now four and a half years after his suspension and seven years after the misconduct, we can credit neither the petitioner's purported acknowledgement of responsibility nor his quibbles with the facts to which he previously stipulated.

Evidence was conspicuously lacking that the petitioner used his suspension to face his misconduct squarely and to obtain independent advice and correction at a personal level. Simply stated, the petitioner has not persuaded us either that he has honestly accepted and addressed the faults in his ethical judgment or that he is prepared to accept guidance from others to address them.

The petitioner's character witnesses (including the letters) did not overcome these obstacles to finding current moral fitness. There was correspondence that the petitioner has, in various situations, demonstrated a sense of ethics, charity, and service to family and others, as well as to his religious community. However, much of that was undated or concerned matters pre-dating the suspension.⁴

and more serious as identity theft, was that he signed letters to the parking authority using [my daughter's] name and a shaky, infirm signature as one might expect of someone with cerebral palsy. Corben's slipup was that [my daughter] has severe cerebral palsy and has no use of her hands whatsoever and cannot sign or write at all."

⁴ Three of the petitioner's six letters at Tab G were from satisfied former clients (DiLusio, White-Gillenwater and Spence). A fourth was an undated letter from Haven for Hunger acknowledging a donation of pantry supplies and toiletries. The fifth letter was from a district court clerk-magistrate, acknowledging the petitioner's volunteer efforts, before his suspension, to resolve small claims disputes. The sixth letter described the petitioner's participation in an entrepreneurship training program, apparently as both a student and later as a guest speaker. The post-hearing submission was from a district court judge, noting the petitioner "has always presented as a professional and sincere person." In short, nothing submitted on behalf of the petitioner addressed whether he has been rehabilitated or even indicated that the writers had any knowledge of his suspension, the reasons therefor, or the petitioner's acknowledgement and acceptance of his misconduct. At the hearing he also submitted letters from five more people about his activities. However, no one even said that the petitioner had "learned his lesson,"

The petitioner's two other letters were not much more helpful. His former attorney, Roger Witkin, wrote that the petitioner "has the moral qualifications to resume membership in the Bar" (ex. 1), but provided no elaboration or explanation for this bare conclusion. He also wrote that "I also believe that Mr. Corben understands very clearly the wrongful nature of the conduct that led to his suspension and regrets it deeply." However, we do not agree, based on our observation of the petitioner and his testimony before us.

Likewise, attorney Jordan Shapiro, who previously represented the petitioner on unrelated matters, also stated the petitioner "has the moral qualifications required for readmission," again without elaboration or explanation. (ex. 2). Mr. Shapiro also said that Mr. Corben "is genuinely remorseful of the misconduct that led to his suspension," but provided no basis for that opinion. His letter lacked any indication that the petitioner had even spoken to Mr. Shapiro about what led to his suspension or any basis for the belief in Mr. Corben's remorsefulness.

Because the letters and Andreola's testimony addressed the petitioner's conduct before his suspension (Tr. 88, Andreola), it carries little weight in determining current fitness. *Matter of Hiss*, 368 Mass. at 464, 1 Mass. Att'y Disc. R. at 137-138 (the Court and the board discounted testimony from witnesses who did not acknowledge the petitioner's guilt and did not distinguish his character before and after the underlying conviction leading to disbarment); *Matter of Dawkins*, 432 Mass. at 1011, n. 5, 16 Mass. Att'y Disc. R., at 96, n. 5 (Court held hearing panel warranted in discounting supportive letters that focused on good works before suspension, but shed little light on rehabilitation or current moral qualifications; one of the writers admitted knowing little of the petitioner's wrongdoing or that the petitioner had been suspended twice). No one described changes in the petitioner since his suspension.

A "fundamental precept of our system is that a person can be rehabilitated," *Matter of Ellis*, 457 Mass., at 414, 26 Mass. Att'y Disc. R., at 163. It has been four and a half years since the petitioner's term suspension, and there is no evidence of intervening misconduct. Still, on a

or anything to that effect. Certainly, no one reported any change in the petitioner's character after his suspension or gave evidence that the petitioner had used his time away from the practice of law to carefully re-think his professional obligations.

petition for reinstatement “considerations of public welfare are dominant. The question is not whether the petitioner has been punished enough.” *Matter of Cappiello*, 416 Mass. 340, 343, 9 Mass. Att’y Disc. R. 44, 47 (1993); *Matter of Keenan*, 314 Mass. 544, 547 (1943). “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.

C. Petitioner’s Occupation and Conduct Since His Suspension

Here, the petitioner has presented little evidence to show 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 petitioner’s suspension began on January 30, 2010, about four and a half years before his reinstatement hearing. (Tr. 47, Corben). While one of the submitted letters stated the petitioner had actively participated in leadership training program in the fall of 2011, for reasons the petitioner did not explain, he has not worked since his suspension, either full-time or part-time, for himself or anyone else.⁵ He is on food stamps; family and friends pay for his utilities and clothes; and his mortgage payments were deferred until January of 2013, when he began making payments through the assistance of family and friends. (Tr. 47-49, Corben). *Matter of Dawkins*, 432 Mass. 1009, 1012, 16 Mass. Att’y Disc. R. 94, 97 (2000) (denying reinstatement and noting the petitioner “has had no gainful employment during his suspension”). Furthermore, in neither his testimony (Tr. 38-39, 42-43, Corben) nor in the letters describing his charitable work (tab G and ex. 9-12) did we find details of how much time he spent on such endeavors.

We do not downplay the petitioner’s desire to return to practice. Nevertheless, on the record before us, it is clear that the petitioner has not arrived at the point where reinstatement is

⁵ On page 7 of his reinstatement questionnaire, the petitioner wrote “I have worked hard to support myself during my suspension * * *.” When asked to explain how he “worked hard to support himself” as he never worked in the four and a half years since his suspension, the petitioner replied that he sold his “office belongings” and “anything that I’ve had of value.” (Tr. 49-50, Corben).

warranted.

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

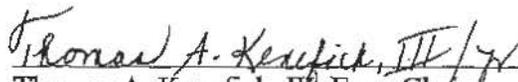
Further, the public's perception of the legal profession as a result of the reinstatement and the effect on the bar must be considered. "In this inquiry we are concerned not only with the actuality of the petitioner's morality and competence, but also [with] the reaction to his reinstatement by the bar and public." *Matter of Gordon*, 385 Mass. at 52, 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.

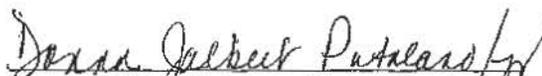
In light of the petitioner's inability to acknowledge his misconduct and the paucity of evidence of current public-oriented service as external evidence of reform and good moral character, together with the vague and relatively unsupported evidence of learning in the law, we are not persuaded that the petitioner's reinstatement at this time would not be detrimental to the public interest and the bar.

V. Conclusions and Recommendation

For the foregoing reasons, we recommend that the petition for reinstatement filed by Garrison S. Corben be denied.

Respectfully submitted,
By the Hearing Panel,


Thomas A. Kenefick, III, Esq., Chair


Donna Jalbert Patalano, Esq., Member

Filed: 8/29/14

David B. Krieger / jk
David B. Krieger, M.D., Member