



IN RE: WILLIAM J. PUDLO

NO. BD-2011-125

S.J.C. Judgment of Reinstatement entered by Justice Lenk on August 25, 2015.¹

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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 William J. Pudlo)	
)	
)	SJC NO. BD-2011-125, BD-2010-028
)	
Petition for Reinstatement)	
)	

HEARING PANEL REPORT

I. Introduction

On November 18, 2014, the petitioner, William J. Pudlo, filed a petition for reinstatement from an order of suspension for a year and a day. We held a public hearing on the petition on March 25, 2015. The petitioner was represented by Francis C. Morrissey, Esq.; First Assistant Bar Counsel Dorothy Anderson, Esq., appeared for the Office of Bar Counsel. Twenty-six exhibits were admitted into evidence including, as Ex. 1, the petitioner's completed Questionnaire (Part I) and attachments. The petitioner testified on his own behalf and called three witnesses: David Carlson, Esq., an attorney who practiced for a time with the petitioner and has known him for many years; Michael Frazee, Esq., a Springfield attorney long acquainted with the petitioner; and Peter Clark, a former client. He offered letters of support from all three witnesses as well as from seven others, including two pastors and the former president of the Hampden County Bar Association. Bar counsel called no witnesses.

As explained below, we recommend reinstatement, with conditions.

II. Standard

A petitioner for reinstatement to the bar bears the burden of proving that he has satisfied the requirements for reinstatement set forth in S.J.C. Rule 4:01, § 18(5), namely 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 [would] not be detrimental to the integrity and standing of the bar, the administration of justice, or to the public interest.” Matter of Daniels, 442 Mass. 1037, 1038, 20 Mass. Att’y Disc. R. 120, 122 (2004), quoting S.J.C. Rule 4:01, § 18(5). See Matter of Dawkins, 432 Mass. 1009, 1010, 16 Mass. Att’y Disc. R. 94, 95 (2000); Matter of Pool, 401 Mass. 460, 463, 5 Mass. Att’y Disc. R. 290, 293 (1988).

In determining whether the petitioner has satisfied these requirements, a panel considering a petition for reinstatement looks to “(1) the nature of the original offense for which the petitioner was [suspended or disbarred], (2) the petitioner’s character, maturity, and experience at the time of his [suspension or disbarment], (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.” Matter of Prager, 422 Mass. 86, 92 (1996); see Matter of Hiss, 368 Mass. 447, 460, 1 Mass. Att’y Disc. R. 122, 133 (1975).

The conduct giving rise to the petitioner’s suspension is affirmative proof that he lacks the moral qualifications to practice law. See Matter of Centracchio, 345 Mass. 342, 346 (1963). To gain reinstatement, the petitioner has the burden of proving 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. at 126.

III. Disciplinary Background

The petitioner has received two disciplinary suspensions. The first arose during his representation of a client in a legal malpractice claim against the client’s former divorce lawyer. Among other things, the petitioner was found to have negligently misused funds advanced as a retainer and as expert fees; failed to keep track of retainer monies paid him; failed to advance the client’s case; charged clearly excessive fees; failed to refund the unearned portion of a retainer; and failed to maintain required IOLTA records. See Matter of Pudlo, 460 Mass. 400, 27 Mass. Att’y Disc. R. 740 (2011); Ex. 1 (AE0027). He received a one-year suspension with six months stayed on the condition that for two years, he provide quarterly audit reports to bar counsel.

On April 27, 2012, the petitioner filed an affidavit of compliance and sought reinstatement from his suspension; this was denied, in light of the pendency of the second set of charges. Ex. 1 (AE0045). The second matter concerned the petitioner’s representation of a lender in a house purchase and his negligent misuse of funds held as escrow agent in that transaction. Because of the negligent misuse, he deprived the sellers of \$12,300 for three months. In addition, he failed to deposit the funds in an interest-bearing account, and failed promptly to deliver funds; made a false statement of material fact to the sellers’ counsel about why the funds were delayed; and again kept deficient IOLTA records. See Ex. 6 (AE0236-AE0237). The single justice agreed with the hearing committee’s finding of mitigation, noting that the petitioner’s attention “was diverted by two serious family medical emergencies,” and concluded that while this cannot

excuse a violation of the disciplinary rules, if there is a causal connection, it can be considered in mitigation. Ex. 1 (AE0042). The respondent was suspended for a year and a day on the second matter. Although the order was entered May 16, 2012, it was made effective September 22, 2011, the effective date of the earlier suspension, and was ordered to run concurrently with the first. The single justice explicitly ordered that the second suspension was not to be stayed. Ex. 1 (AE0044).

IV. Findings

A. Moral Qualifications

We find, and explain below, that the petitioner has affirmatively established that he has reformed or has been rehabilitated. See Matter of Waitz, 416 Mass. 298, 305, 9 Mass. Att’y Disc. R. 336, 343 (1993) (“[r]eform is ‘a state of mind’ that must be manifested by some external evidence”).

The Petitioner’s Testimony and Responses to the Questionnaire

At the hearing, we had the opportunity to hear the petitioner testify, to watch him while he spoke, and to watch him while others spoke about him.

In testifying about his first suspension, the petitioner admitted that he did a lot of things wrong: he misappropriated funds advanced for expenses; he did not do contemporaneous billing; he asked for an advance on fees not earned or incurred; and he did not keep his books in accordance with the rules. Tr. 30 (Petitioner). He agreed that his misconduct was not simply an accounting matter, but that he had violated his obligation to safeguard funds. Tr. 37-38 (Petitioner). He recognized that he should have been keeping a client ledger, tracking bank statements, preparing and sending bills contemporaneously, and reconciling his accounts. Tr. 33 (Petitioner). He admitted further that he had not

managed the case at all well, describing statute of limitations issues, and problems with discovery, expert witnesses, subpoenas and trial preparation, and admitted that the case was not ready for trial after discovery. Tr. 33-34, 38 (Petitioner).

In explaining his conduct with reference to the second suspension, the petitioner informed the panel that this was a real estate transaction where he represented the lender; the money he had misappropriated was a Title V holdback—money he was obligated to hold in escrow until a certificate was issued indicating that the septic system was working, a prerequisite to closing. Tr. 35-36 (Petitioner). Having misappropriated the funds, the petitioner did not have them available at the closing, and used personal funds to pay the escrow. Tr. 36 (Petitioner). He admitted he has no disagreement with the hearing committee's findings pertaining to either the first or the second matter. Tr. 34, 36-37 (Petitioner).

We paid close attention to the petitioner's descriptions of his behavior and to his answers to probing and pointed questions. For instance, when he indicated that he "owned" the things he had done, he was asked what that meant. Tr. 48, 51-52 (Petitioner). He explained that he accepted all the things the hearing committee had found, including his inexcusable conduct. Id. We took issue with his description of his behavior in his personal statement, where he wrote that "[t]he principal cause of present suspension was my inexcusable ignorance of the rules and procedures for handling trust funds" (Ex. 1 (AE022)). We asked him why he needed rules to know that it was wrong to tell a client he needed money to hire a consultant and then to take the money without hiring the expert.

See Tr. 53-54 (Petitioner). While he offered no real explanation for that behavior, he admitted, and we credit, that he had not exercised common sense. Tr. 54-55 (Petitioner).¹

We find evidence of reform in the petitioner's explanation of what he will do differently should he be restored to practice. He has learned that he must be "incredibly diligent about office management [and] record keeping." Tr. 185 (Petitioner). He has also learned that he cannot allow clients to run up bills without paying, as he used to do, but needs to operate so as to meet his needs going forward. Tr. 132-133 (Petitioner). We credit his testimony that he has a different focus today than he did in the past, and that he truly understands that he cannot again let his obligations slip. Tr. 190 (Petitioner). We credit, and applaud, his plan to rely on mentors and others to support him both for practice issues and for IOLTA management. Tr. 72-74 (Petitioner). He unequivocally agreed, and we credit, that although he will rely on help as needed he, not an accountant or bookkeeper, is ultimately responsible for safeguarding client funds. Tr. 76 (Petitioner).

¹ Although Question 3C of the Reinstatement Questionnaire Part I asks whether "any charges, formal or informal, of fraud, malpractice, or errors or omissions were made, or claimed, against you," the preface to question 3 indicates that the information it seeks "pertains to conduct during the period of . . . suspension . . ." Ex. 1 (AE0009, AE0011). In his questionnaire, the petitioner made us aware of two claims brought against him before he was suspended: a civil action for malpractice, breach of fiduciary duty and c. 93A violations brought by Albert Barbuto, filed in May 2006 and settled in September 2008 (Ex. 1 (AE0012; AE0051-0081)); and a lawsuit alleging conversion commenced in June 2010 on behalf of the Estate of Anna B. Smith, resolved in 2012 (Ex. 1 (AE0012; AE0082-0089)); Tr. 38-46 (Petitioner). At bar counsel's prodding, the petitioner identified two additional matters: a suit brought against him by Joseph and Constance Kelley, commenced in March 2007 and dismissed on limitations grounds in August 2007 (Ex. 2 (AE0097, AE0102-0130)); and a suit brought against him by Daniel Molta, Jr. on December 31, 2007 and dismissed April 27, 2010 (Ex. 2 (AE0098, AE0132-AE0149)). While we are troubled by the number of lawsuits filed against the petitioner, we think it would be unfair to hold against him uncharged conduct that predated or occurred during bar counsel's investigation. The limitation in question 3C is designed to ensure that any conduct since the suspension that bar counsel might not have reason to know about is disclosed and considered during the reinstatement process. We do not view question 3C as a claw back or second chance for bar counsel to put before the panel diverse uncharged and unprosecuted "bad acts" of the petitioner. Where bar counsel has admitted that she was unaware of the Kelley and Molta lawsuits against the petitioner, and intentionally "subsumed" the Smith matter into the disciplinary proceeding that was pending at the time (Tr. 275-276 (Bar counsel)), and where, as a result, we have no way to determine whether bar counsel could have carried her burden to prove disciplinary violations, we give these disclosures scant weight.

In his answers to the questionnaire, the petitioner described his efforts to find work, and noted that these were largely unsuccessful. Ex. 1 (AE0009-AE0010); see Tr. 57-58 (Petitioner). He has obtained part-time employment as a substitute teacher in two school districts. Ex. 1 (AE0010). However, during the course of his suspension, he has had only twelve teaching engagements. Id. He also notes that he has begun to teach Sunday school classes for children at his church, has led home bible studies, and was elected to chair the search committee for a new pastor at his church. Ex. 1 (AE0011); Tr. 59-60 (Petitioner). His suspension from practice corresponded with his mother-in-law's declining health, her downsizing of her home and her ultimate death, and his wife's struggles to manage two serious medical conditions. Tr. 61-62 (Petitioner). He described his efforts to help both his mother-in-law and his wife. Id.

The petitioner told us that he had disclosed to the church – as well as the schools – that he was a suspended attorney. Tr. 48-49, 58; 60-61 (Petitioner); Ex. 10 (AE0286). He talked convincingly about how difficult it was to own up to friends and clients that he could no longer help them because he had been suspended. Tr. 49 (Petitioner). He explained that he has tried to live life by his faith, that he accepts responsibility for his actions, and that his religion has provided moral guidance. Tr. 60-61 (Petitioner). His church work is important, he explained, because he can candidly share his trials in that context and can help others grow through that disclosure and use their faith to deal with their own difficult times. Tr. 60-61 (Petitioner).

Witness Testimony and Letters

Two attorneys testified on the petitioner's behalf; both also wrote letters in support. Exs. 12, 13. The first to testify, David Carlson, Esq., is an attorney admitted to practice in

Massachusetts in 1985; he met the petitioner in church in the early 1980s. Tr. 201, 202 (Carlson). Carlson practiced in a small firm with the petitioner for approximately five years, beginning in 1986. Tr. 202-203 (Carlson). He described the petitioner as a “skilled litigator” and an “excellent attorney,” from whom he learned a lot. Tr. 203, 204 (Carlson). Carlson believes the petitioner is honest and of high character, careful and reliable, with a unique skill set. Tr. 204, 207 (Carlson). He has never heard anyone in the western Massachusetts community express any doubts about the petitioner’s integrity or character. Tr. 208 (Carlson). He admitted that the petitioner, while an excellent lawyer, was less skilled as a business person. Tr. 216 (Carlson). There were no problems with the use of funds from the IOLTA account during their partnership; they used an accountant to reconcile the books and a paralegal did the entries into the bookkeeping system. Tr. 222-223 (Carlson).

Michael Frazee, Esq., also testified in support of the petitioner. He has been an attorney since 1989 and has known the petitioner professionally and personally since 1989 or 1990; they go to the same church. Tr. 225-226 (Frazee). They worked together at the church in complementary leadership positions during 2005 and 2006. Tr. 229 (Frazee). Frazee spoke highly of the petitioner’s reputation in the Hampden County area, describing his character as one of integrity, honesty and good moral character and noting that people were “very surprised” by the petitioner’s suspension. Tr. 242, 243-244 (Frazee).

We note that the writers of letters were strongly — even effusively — supportive of reinstatement citing, among other positive traits, the petitioner’s “integrity and character” and church reputation of “the highest caliber” (Ex. 11 (AE0288)). One writer, Christopher Noyes, who has known the petitioner for thirty-six years, wrote that “there is not alive, an

attorney whom I would prefer to have in my corner when the chips are down,” and expressed an interest in hiring him full-time as an in-house attorney for his courier business. Ex. 15 (AE0298-AE300). A retired CPA, Robert J. O’Brien, wrote a detailed letter about the petitioner’s IOLTA study and his plan, going forward, for IOLTA maintenance and compliance, including the writer’s intention to meet with the petitioner on a monthly basis to discuss IOLTA-related issues. Ex. 14 (AE0297). The former senior pastor of the petitioner’s church, Pastor Mike Mirakian, described the petitioner as a person of integrity and compassion, and a person of trustworthy character. Ex. 10 (AE0286). Mark J. Albano, Esq., the former president of the Hampton County Bar Association, wrote strongly in favor of reinstatement, citing the petitioner’s impressive intellect, strong work ethic, courtesy, dignity and humility. Ex. 17 (AE0307).

B. Competence and Learning in the Law

The petitioner has been away from practice since September 22, 2011, just over three-and-a-half years. Prior to his suspension, he had practiced since his admission to the bar in 1972. Tr. 12 (Petitioner); Ex. 1 (AE0005). He has strong experience in real estate and title matters, working in or running title insurance companies from 1971, during law school, to 1986. Tr. 12-16 (Petitioner). In the early 1980s, he was appointed by the land court as a land court examiner, doing title and abstracting work on a case-by-case basis for the land court. Tr. 17-19 (Petitioner). In 2005, the petitioner wrote a chapter on deeds for an MCLE publication. Tr. 27 (Petitioner); Ex. 7.

In 1986, the petitioner formed a law firm with David Carlson, Esq., where he worked on real estate-related matters including title work and title examinations, and on water projects throughout western Massachusetts. Tr. 19-21 (Petitioner). The two split

amicably in 1991; from then until his suspension in 2011, the petitioner was a sole practitioner. Tr. 21-22 (Petitioner). In this capacity, he began to do real estate litigation in areas such as boundary disputes, adverse possession, and improper foreclosures; he also did some general litigation and domestic relations. Tr. 22-23 (Petitioner). He estimated that he has done in excess of a thousand closings during the course of his career. Tr. 25 (Petitioner). He was a long-time member of the Massachusetts Conveyancers Association (now REBA), where he was on the title standards committee and a member of the board of directors for over ten years. Tr. 25-26 (Petitioner). He also taught real estate law, business law and medical law and ethics at Springfield Technical Community College, was a guest lecturer at West New England School of Law on title insurance matters, and gave seminars for assessors and land surveyors, including serving as keynote speaker several times for the Massachusetts Association of Land Surveyors and Engineers. Tr. 26-27 (Petitioner). The petitioner has been a panelist on MCLE panels. Tr. 27 (Petitioner); Ex. 7.

A former client, Peter Clark, testified at the hearing about the petitioner's work for him. Clark was trained as an economist and worked as a restorer of hydroelectric facilities. Tr. 250 (Clark). He described the highly specific work the petitioner had done for him in the context of riparian rights and deed research. Tr. 251-252 (Clark). He told us that he found the petitioner to be very careful and meticulous. Tr. 253 (Clark). He also described the petitioner's work negotiating issues with town conservation commissions. Tr. 254-256 (Clark). All told, the petitioner practiced for just under forty years before his first suspension in 2011. Tr. 29 (Petitioner). We note in this context that, as indicated above, the petitioner's witnesses were unanimous in their praise for his solid legal skills, and his particular expertise in diverse aspects of real estate law.

During his suspension, the petitioner took an MCLE course in trust accounting and attended an MBA seminar on IOLTA/handling of trust funds. Tr. 63-64 (Petitioner); Ex. 1 (AE0018-AE0019). He has reviewed the new Massachusetts probate code and the new alimony law. Tr. 63-64 (Petitioner). He reads the Massachusetts Lawyers Weekly. Tr. 63 (Petitioner). He has been doing legal research to update his MCLE chapter on deeds. Tr. 63 (Petitioner).

If reinstated, the petitioner plans to start slowly and practice as a sole practitioner, continuing his focus on real estate transactions, including residential and commercial closings, and litigation. Tr. 70-71 (Petitioner); Ex. 1 (AE0018). His questionnaire recites that he has studied the rules of professional conduct concerning the safekeeping of client funds, and that he has reviewed them with a CPA acquaintance, Robert O'Brien. Tr. 64-65 (Petitioner); Ex. 1 (AE0018-19).² He has consulted with LOMAP. Tr. 66-69 (Petitioner). He has in place mentors and others to help him with IOLTA, bookkeeping and general reference matters. E.g., Tr. 72, 74-75 (Petitioner). We consider the petitioner's post-suspension efforts, as well as the weight of his pre-suspension practice, sufficient to convince us of his competence and learning in the law. See generally Matter of Perry, SJC No. BD-2004-024 (October 21, 2014), Hearing Panel Report, p. 8.

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

We find that the petitioner has satisfied the "public interest" prong of the reinstatement test. "Consideration of the public welfare, not [a petitioner's] private interest, dominates in considering the reinstatement of a disbarred applicant." Matter of Ellis, 457 Mass. at 414, 26 Mass. Att'y Disc. R. at 164. Further, the public's perception of

² Mr. O'Brien submitted a letter to this effect. Ex. 14.

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. 48, 52, 3 Mass. Att’y Disc. R. 69, 73 (1982). “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 were impressed by testimony and letters of the petitioner’s colleagues and clients. For instance, David Carlson testified that in his opinion, the petitioner’s reinstatement would be a good thing for the public and the legal community; he could not think of anyone who would object. Tr. 210-211 (Carlson). In Michael Frazee’s opinion, the western Massachusetts legal community would be benefited by the petitioner’s reinstatement. Frazee described him as a “good resource,” and opined that his reinstatement would give the real estate community “another good healthy legal mind to access.” Tr. 232-233 (Frazee). Mark Albano wrote that if reinstated, the petitioner “will work to show himself a credit to the wisdom of your committee and to our profession,” and “expect[s] that reinstatement will be viewed positively by the Bar” Ex. 17 (AE0308). Peter Clark, the former client, testified that he would encourage the petitioner’s reinstatement, and that he would hire him again. Tr. 263 (Clark). Their confidence in and past reliance on the petitioner resonates with his own explanation for why he wants to be reinstated: he feels he has something to contribute to the bar and the public, and he knows there are people he can help with his skills. Tr. 185 (Petitioner).

While this was a close case, we conclude, unanimously, that on balance the petitioner has carried his burden. We are confident that with the constraints and oversight we impose by way of conditions, the petitioner can once again take his place as an upstanding and productive member of the bar.

D. The Petitioner's Tax Returns

One final note. Bar counsel argues that the petitioner “does not pay income taxes . . . [and] takes expenses which are very questionable” Tr. 270-271 (Bar counsel). However, based on the record before the panel, there is insufficient evidence from which the panel can make a finding of any impropriety in the tax filings by the petitioner.

Bar counsel submitted evidence, in the form of the petitioner's tax filings, showing that in the years 2007 through 2011, substantial expenses were claimed by the petitioner and his wife resulting in a drastic reduction in his taxable income. Bar counsel also submitted correspondence from the IRS to the petitioner and his wife dated August 4, 2014, which apparently shows that in an IRS examination report for tax year 2011, the IRS Revenue Agent concluded that certain changes were required to the Pudlos' filing for that year. Ex. 2 (AE0159-AE0161). The result was an increase in the tax owed to the IRS from the petitioner and his wife in the apparent amount of \$2,990.43. *Id.* The petitioner and his wife have apparently appealed the result of the examination and the petitioner maintains that in discussions with the IRS Revenue Agent, he was told that the only item in dispute was an advertising expense for New England Patriots season tickets, a contention challenged by bar counsel.

Considering the evidence before us, it is impossible to discern the bona fides of the tax position taken by the petitioner and his wife in any year and what the final result was of

the 2014 examination of their 2011 filing. Bar counsel concedes that there is not enough evidence in the record to determine exactly what is on appeal from the IRS audit. Tr. 273 (Bar counsel). The petitioner's testimony was similarly equivocal on the issue. Tr. 170-172 (Petitioner). On this record, therefore, we cannot pass judgment on the propriety of the petitioner's tax filings. This conclusion does not preclude bar counsel from pursuing subsequent discipline in the event that further proceedings in connection with the 2014 audit or any other audit for that matter merit such action.

V. Conclusions and Recommendation

As described above, the petitioner has demonstrated that, since his suspension, 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 (1996), quoting Matter of Hiss, 368 Mass. at 452, 1 Mass. Att'y Disc. R. at 126. Accordingly, we recommend that the petition for reinstatement filed by William J. Pudlo be allowed with the following conditions. First, the petitioner shall obtain and maintain professional liability insurance with coverage satisfactory to bar counsel before he resumes practice. Second, he is to enter into a formal mentoring agreement satisfactory to bar counsel. Third, he is to agree to account monitoring, per the attached agreement, two times a year for two years.

Dated: May 20, 2015

Respectfully submitted,
By the Hearing Panel,

Vincent J. Pisegna /mrh
Vincent J. Pisegna, Esq., Chair

Francis P. Keough /mrh
Francis P. Keough, Member

Mary B. Strother /mrh
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