



**IN RE: JOHN K. DVORAK**

**NO. BD-2012-028**

**S.J.C. Judgment of Reinstatement with Conditions entered by Justice Lenk on April 9, 2014.<sup>†</sup>**

**(Page Down to View Memorandum of Decision)**

---

<sup>†</sup> The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.



malpractice insurance coverage; (2) enter into a written mentoring agreement for the term of two years, and in a form reasonably acceptable to bar counsel; (3) in the event he seeks to open his own firm, either alone or with other attorneys, the respondent obtain an audit of his proposed office and caseload management practices from the Law Office Management Assistance Program and comply with LOMAP's reasonable recommendations; and (4) the petitioner shall cooperate reasonably with bar counsel's efforts to confirm his compliance with these 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 (1998). 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 suspended for thirty-six months from practice before the Board of Immigration Appeals, Immigration Courts, and the Department of Homeland Security. Ex. 1 (Reinstatement Questionnaire, Part One), at Ans. 2A, and at Ex. A; Exs. 2, 3. Pursuant to pertinent federal regulations, he was eligible to seek reinstatement eighteen months after the effective date of his suspension. Ex. 1, at Ans. 2A, and at Ex. A; Exs. 2, 3. The petitioner's thirty-six month suspension from practice in Massachusetts, with the last eighteen months stayed, resulted from reciprocal proceedings that, pursuant to S.J.C. Rule 4:01, § 16, did not result in additional fact findings. Ex. 1, at Ans. 2A, and at Ex. A.

According to the record before the BIA, DHS, and Immigration Courts (Ex. 1, at Ex. A; Exs. 2, 3), the petitioner's suspension followed from his admission by default to the following charges:

Since December 20, 2000, the respondent failed to provide competent representation to clients concerning fourteen Form I-140 immigrant petitions for alien workers seeking resident alien status. The respondent failed to control and to manage his workload so that each immigrant petition could be handled competently. Finally, between November 8, 2001 and December 19, 2002, the respondent misled, misinformed, or deceived the then- Immigration and Naturalization Service when he filed the immigrant petitions, by not providing accurate information and documentation.<sup>1</sup>

In general, we credit the petitioner that his ethical violations resulted from his accepting more cases than he and his associate and support staff could handle competently, and that they were the product of neglect rather than intentional misconduct or an intent to deceive.<sup>2</sup> Tr. 24,

---

<sup>1</sup> To the same effect, and with greater detail, see Tr. 59-62 (Dvorak).

<sup>2</sup> The record of the petitioner's suspension from practice before federal tribunals, the sole basis for the Supreme Judicial Court's reciprocal suspension of him, do not specify intentional or knowing misconduct. Unlike petitioners who come before a reinstatement panel following a finding of knowing or intentional violations, such as under Mass. Rule Prof. C. 8.4(c) or 3.3(a), it was open to this petitioner to clarify the state of mind that resulted in his suspension. In our findings and conclusions, below, we also take into account that the length of the petitioner's suspension from

25, 47-48, 59-60 (Dvorak). We credit the petitioner's explanation that around the time of his misconduct, a federal amnesty program provided about a four-month window during which certain illegal aliens could seek to adjust their immigration status to lawful resident alien. Tr. 19-24, 54-55 (Dvorak). This program caused immigration practitioners, including the petitioner, to be inundated with clients seeking to adjust their, or their employee's, status. Tr. 19-20, 24-25, 50-51, 52 (Dvorak). The respondent expanded his staff in an effort to meet this demand yet, as he acknowledges, he knew that the increased demands was temporary, and he failed to add sufficient staff or to turn down cases. Tr. 26, 52-53 (Dvorak). He then failed to exercise adequate supervision over his staff, who filed petitions that were not subjected to adequate due diligence and that contained false assertions concerning compliance with the amnesty program. Tr. 27-28, 28-29 (Dvorak).

Around 2006, by accident, the petitioner learned that federal authorities were targeting his firm for an audit. Tr. 63, 76- (Dvorak). The petitioner notified his clients of the audit; he reviewed his cases to correct the filings for those clients who chose to remain with him; and he assisted the clients who chose to change counsel, in some cases offering to have his sister, who shared office space with him,<sup>3</sup> to take over their cases for no additional charge. Tr. 38, 43-44,

---

practice in Massachusetts was calculated to correspond functionally to the federal suspension. If the matter had come before the board for original disposition on this record, the members of this panel would likely have voted for a far shorter suspension, perhaps a year and a day.

We emphasize, however, that we make our findings on the record before us, and after having heard only the testimony the petitioner offered. The petitioner did not litigate the federal ethical charges, which were decided in what was, in substance, a default posture, and in which the distinctions between intentional and negligent misconduct were not probed by the adversary process. Ex. 1, at Ex. A. We are somewhat puzzled by the petitioner's reluctance to seek reinstatement before the federal tribunals at his first moment of eligibility, especially where his continued interest in that field of law is shown by his testimony, Tr. 46 (Dvorak), and by his taking relevant seminars. Ex. 1, Ans. 3(H). Our puzzlement is not fully relieved by his explanation, through counsel, for that reluctance. Tr. 10-11. Still, bar counsel did not contest the petitioner's characterization of his mental state through vigorous cross-examination or documentary evidence, and we found the petitioner's testimony largely credible.

<sup>3</sup> This panel was surprised that the petitioner's reinstatement questionnaire disclosed his sister, Attorney Zak, as supporting the petitioner's reinstatement, without also disclosing their familial relationship. Contrast Tr. 78-79 (Zak) with Ex. 1, at Ans. 5.

65-68, 73-74 (Dvorak); Tr. 86 (Zak). Where clients discharged him, the petitioner ensured that the files were turned over to successor counsel of the client's choosing. Tr. 72-74 (Dvorak).

A total of fourteen cases were identified by the federal tribunal as constituting the basis for suspension. Tr. 58-59 (Dvorak). The petitioner's other clients were also prejudiced by his misconduct: some suffered delays to their cases as a result of the skepticism received by the applications originating with his office, and many had to hire new counsel. Tr. 42-43, 48-49 (Dvorak). We credit the petitioner's testimony that restitution was not sought in any of the fourteen cases the audit identified, Tr. 70-71, yet he is "willing to exam" the issue of restitution "to cushion the blow" on some of his former clients.<sup>4</sup> Tr. 43 (Dvorak).

#### **IV. Findings**

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

The petitioner has demonstrated current moral fitness to resume the practice of law.

The petitioner displayed to this panel his understanding of his misconduct and its consequences. Tr. 27-30, 42, 47, 48-49, 65 (Dvorak). We credit that he accepts responsibility for his misconduct, Tr. 27-28, 47, 49-50 (Dvorak), and feels sincere remorse, Tr. 29-30, 47 (Dvorak), all shown by extrinsic evidence. Tr. 83-84 (Zak); Tr. 98-99 (JDvorak); Tr. 107-108 (Pearson). Further, his commendable efforts to assist his clients' transition to successor counsel in the face of adverse publicity,<sup>5</sup> Tr. 38, 43-44, 65-69, 72-73 (Dvorak); Tr. 81-84 (Zak); Ex. 4

---

<sup>4</sup> We credit that the respondent made restitution in about two cases, and in other cases demonstrated to successor counsel that alleged errors had not been made. Tr. 69-70 (Dvorak).

Bar counsel asked that we condition reinstatement on reasonable efforts at restitution. On a petition for reinstatement, "making restitution ... is an outward sign of the recognition of one's wrongdoing and the awareness of a moral duty to make amends to the best of one's ability. Failure to make restitution, and failure to attempt to do so, reflects poorly on the attorney's moral fitness." Matter of McCarthy, 23 Mass. Att'y Disc. R. 469, 470 (2007). Still, we believe that here the harmed clients constitute a potentially widely diverse group; any comprehensive order would likely be too vague for enforcement in individual cases. Further, the respondent testified credibly that in the fourteen cases that were the specific basis for his discipline none of the clients claimed restitution. Where, as here, the harm is more akin to a tort than to theft, we consider the civil justice system the better remedy for clients who remain unsatisfied with the petitioner's voluntary efforts.

<sup>5</sup> The petitioner credibly described how news of his problems with the federal tribunals poisoned his reputation and depleted his client base. Tr. 43-44, 65, 74 (Dvorak).

(10/22/13 Magaletta letter) make all the more credible his testimony that he understands what he did wrong, and that he will take steps to ensure it is not repeated. Tr. 47-48, 48-49, 50 (Dvorak). The petitioner's characterization of his charitable work driving for the elderly, Tr. 32-33 (Dvorak); Ex. 1, Answer 3(B), as something that would be expected of him on reinstatement, Tr. 33-34 (Dvorak), does not put that conduct in its most favorable light. We credit the petitioner's testimony that he intends to continue this work, Tr. 34, which he enjoys. Tr. 96-97 (JDvorak). His devotion to his family also bespeaks good character. Tr. 30-32, 38 (Dvorak); Tr. 93, 94-95, 97 (JDvorak).

We are also persuaded by the respondent's testifying character witnesses, all of whom were aware of the misconduct that led to the petitioner's suspension. Tr. 79 (Zak); Tr. 90 (JDvorak); Tr. 103 (Pearson). All describe a person of current good moral character, moved to his core to atone for his misconduct, and ready to undertake the ethical practice of law. Tr. 83-84 (Zak); Tr. 98-99 (JDvorak); Tr. 107- (Pearson). These views are echoed in the letters we received in support of the petitioner's reinstatement, all of the authors of which were also aware of the basis for the petitioner's suspension. Tr. 35-36 (Dvorak); Ex. 4.

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. The petitioner has overcome the presumption against reinstatement arising from the conduct giving rise to his suspension, which "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 see also Matter of Centracchio, 345 Mass. 342, 346 (1963), Matter of Waitz, 416 Mass. 298, 304, 9 Mass. Att'y Disc. R. 336, 342 (1993). He has provided external evidence manifesting reform, 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, and by the foregoing evidence he has satisfied us 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 end with one note of caution. The petitioner appears headed towards a practice in worker’s compensation law. Tr. 39 (Dvorak). We understand this field of practice to have some similarities to the immigration practice in which the respondent allowed himself to be overwhelmed. If the respondent pursues this field he will again be in a volume practice characterized by a significant level of automation, submission of paper claims, and delegation to non-lawyers. Against this background, we find additional significance in the petitioner’s unconditional willingness to submit to a mentoring agreement and the guidance offered by LOMAP. Tr. 122.

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

The petitioner also has demonstrated that he has the “competency and learning in the law required for admission to practice law in this Commonwealth.” S.J.C. Rule 4:01, § 18(5).

The letters from the petitioner’s supporters portray a capable attorney, knowledgeable in his chosen field. Ex. 4. During his suspension, the respondent took twelve seminars in matters relevant to practice areas towards which he might develop his resumed practice. These included general courses on ethics and the discipline system, practice management, and trust account training, as well as civil practice, immigration, veterans’ benefits, workers’ compensation, and auto accident cases. Tr. 39-40, 41-42 (Dvorak); Ex. 1, Ans. 3(G).

The petitioner’s testimony and the recitation in his sworn answers to the reinstatement questionnaire indicate the substantial amount of time and effort he has devoted to keeping abreast of the law during his suspension. He has taken and passed the Multistate Professional Responsibility Examination, in April 2013. Ex. 1, at Ex. C. Based on this evidence and our observation of petitioner during his testimony, we find him to be capable, conscientious, and knowledgeable in the law.

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

We now consider the public's perception of the legal profession as a result of the reinstatement, and the effect on the bar of that reinstatement. "[W]e are concerned not only with the actuality of the petitioner's morality and competence, but also on the reaction to his reinstatement by the bar and public." Matter of Gordon, 385 Mass. at 53, 3 Mass. Att'y Disc. at 73.

On the record before us, we are convinced that the public will perceive the bar as viewing the original offense with sufficient gravity, and it will find confirmation of the seriousness with which the board and the court take their obligation to assure the protection of the public above all else. As we pointed out above, the sanction in this case seems a bit more harsh than what would usually be expected on this record, which we attribute to the attempt to align state discipline with its federal counterpart. We are also convinced that the deterrent effect of bar discipline will not be diluted by a decision to reinstate in this case. Matter of Ellis, 457 Mass. at 418, 26 Mass. Att'y Disc. R. at 168; Matter of Pool, 401 Mass. at 464, 5 Mass. Att'y Disc. R. at 298, Matter of Gordon, 385 Mass. at 55, 3 Mass. Att'y Disc. R. at 77-78.

Still, we may, and do, recommend conditions on reinstatement designed to protect the public, and to ensure that the public appreciates that its protection is foremost. Matter of Ellis, 457 Mass. at 417-418, 26 Mass. Att'y Disc. R. at 167-168. These conditions cannot impose so many restraints as to imply that the respondent cannot be trusted to resume practice. Matter of Shyavitz, S.J.C. No. BD-2003-080 (May 27, 2010) (remanding for resolution of perceived inconsistency between finding of current fitness and conditions prohibiting petitioner from handling trust funds).

We decline bar counsel's suggestion that the petitioner be required to obtain malpractice insurance as a condition of reinstatement, but we recommend that the order of reinstatement

require the petitioner's best efforts to do so.<sup>6</sup> This condition will be met if the petitioner finds employment with a firm whose malpractice coverage extends to him. We also recommend a requirement that, for a period of two years, if the respondent seeks to enter either solo practice or private practice with other practitioners, he seek an audit of his proposed office systems by the Law Office Management Assistance Program, and comply with any reasonable recommendations LOMAP provides. Finally, in light of the petitioner's candid self-assessment about his need for support in connection with his resumption of practice in new fields of law, Tr. 39-40, 45-46 (Dvorak), we recommend that the respondent's reinstatement be conditioned on his having entered into a written mentoring agreement with a term of two years and reasonably acceptable to bar counsel.<sup>7</sup> The petitioner shall cooperate reasonably with bar counsel's efforts to confirm his compliance with these conditions.

We decline bar counsel's recommendation that the petitioner's reinstatement be accompanied by the condition that the eighteen months of stayed suspension itself be stayed for two years, in effect, for an additional six months beyond the end of his federal suspension. That condition would destroy what we understand to be the intended symmetry of the petitioner's federal and state suspensions.

---

<sup>6</sup> The respondent's misconduct was the type for which malpractice insurance is appropriate to ensure the public's protection. Still, we do not consider it fair in this case to place the power to determine the fate of the petitioner's legal career in the hands of an insurance underwriter, especially when malpractice insurance is not a pre-requisite for an attorney's initial admission to the bar of this state.

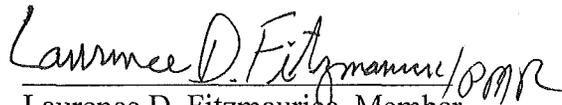
<sup>7</sup> We credit the testimony that the petitioner has arranged for mentoring in worker's compensation cases. Tr. 40-41 (Dvorak); Tr. 105-107 (Pearson).

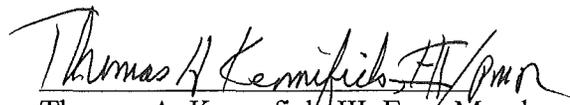
V. Conclusions and Recommendation

Based upon the petitioner's written submissions and his testimony, the hearing panel recommends that the petition for reinstatement filed by Michael A. Murphy be allowed on the conditions set forth above.

Respectfully submitted,  
By the Hearing Panel,

  
Donna Jalbert Patalano, Chair

  
Laurence D. Fitzmaurice, Member

  
Thomas A. Kennefick, III, Esq., Member

Filed: February 20, 2014