

**IN RE: MICHAEL A. MURPHY****NO. BD-2012-065****S.J.C. Judgment of Reinstatement with Conditions entered by Justice Duffly on
January 14, 2014.[†]****(Page Down to View Memorandum of Decision)**

[†] 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)	
)	
MICHAEL A. MURPHY,)	SJC No. BD-2012-065
)	
Petition for Reinstatement)	
)	

HEARING PANEL REPORT

I. Introduction

Acting *pro se*, on August 1, 2013, Michael A. Murphy filed with the Supreme Judicial Court a petition for reinstatement from an order of suspension the Court entered on September 17, 2012, effective October 17, 2012. Matter of Murphy, S.J.C. No. BD-2012-065. We received evidence under the petition at an evidentiary hearing on October 30, 2013. Bar counsel's decision not to oppose the petition was conditioned on the imposition of certain conditions on the petitioner's reinstatement. Tr. 50.

The petitioner testified on his own behalf and no other witnesses were called by either party. Eight exhibits were admitted into evidence.

After considering the evidence and testimony, this panel finds that the petitioner has the current moral qualifications, competence and learning in the law required for admission to practice, and that his readmission would not be detrimental to the administration of justice, the public interest, or the integrity or standing of the bar. We recommend that the petition for reinstatement be allowed on the condition that, within three months of the effective date of his reinstatement, the respondent shall attend the monthly course in trust accounting presented by bar counsel.

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 received a suspension of a year and a day based on a stipulation to facts, violations and discipline. Exs. 6, 8. Specifically: The petitioner knowingly spent more time than necessary on two cases his firm was billing at hourly rates, and he also failed to delegate tasks appropriate for lower-billing-rate associates, all resulting in knowingly inflated client billing. Exs. 6, 8. This misconduct violated Mass. Rules Prof. Conduct 1.5(a) (clearly excessive fees) and 8.4(c) (dishonesty, deceit, fraud, or misrepresentation). Exs. 6, 8.

IV. Findings

A. Moral Qualifications

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

The respondent demonstrated through credible testimony that he understands the wrongfulness of his misconduct and accepts full responsibility for it. Tr. 6-7, 30, 33, 34, 48; Ex. 1 (questionnaire, part one), response 2B and personal statement. He expressed sincere remorse, Tr. 6-7, 30-31; Ex. 1 at personal statement, and an understanding of the pressures that resulted in his overcharging his client. Tr. 8, 31. We credit that, since his misconduct forced him from his position as the director of the Boston office of a well-regarded multi-state law firm, Tr. 7, 15, 26; Ex. 1 at personal statement, he takes better care of himself and he has gained an improved perspective and understanding making it unlikely he will repeat that misconduct. Tr. 10, 15-16, 34-35; Ex. 2 (Schorr letter); Ex. 5 (Gianturco letter).

During his suspension the petitioner demonstrated a commitment to service to his family, his community, and to others. He donated his time at a local hospital where he transported samples from, and cleaned and sanitized, a hospital emergency room, and provided other services as needed. He assisted in two political campaigns. Through a fellow former FBI agent, he also obtained part-time employment providing executive protection and investigative services. Tr. 10-11, 19-20, 27-28, 28-30; Ex. 1, responses 3A and 3B; Ex. 2 (Schorr letter); Ex. 5 (Gianturco letter).

We also note the several letters in evidence attesting to the petitioner's moral character. Exs. 2-5. These letters have some shortcomings that detract somewhat from their weight; they do not demonstrate the authors' understanding of the misconduct leading to the petitioner's suspension, and they do not provide before-and-after pictures of reform.¹ Still, they portray a

¹ The petitioner testified that the authors of the letters "all know ... why I'm suspended." Tr. 10. We would have preferred to have that information come from the authors themselves. One of the letters states: "As a friend and colleague, I know he has learned from this experience and will be all the better and stronger going forward." Ex. 5. It would have been better if we had received and evaluated the specific factual evidence underlying this testimonial. Still, the letter does not stand on its own; it corroborates the petitioner's testimony of reform. Contrast Matter of

person currently of good moral character, and they round out the picture presented by the petitioner's own credible testimony of reform. They also indicate that the petitioner's misconduct was an aberration in his longstanding career.²

Finally, we note the petitioner's responsible plan for the resumption of practice in his former practice areas, complemented by his willingness to seek advice when confronted with practice issues. Tr. 21, 25, 43-48; Ex. 1, response 4A.

The petitioner has thus 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).

B. Learning in the Law

The petitioner also 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).

Hiss, 368 Mass. at 464, 1 Mass. Att'y Disc. R. at 137-138; Matter of Dawkins, 432 Mass. at 1011, n. 5, 16 Mass. Att'y Disc. R., at 96, n. 5.

² Before his suspension, and both as an FBI agent and as a lawyer, the petitioner was recognized for upstanding moral character. Ex. 3 (Syracusa letter) ("Mike's reputation as a FBI Special Agent was exceptional and he enjoyed the respect and admiration of his fellow agents for his high moral character, which he exhibited as a matter of course"); Ex. 5 (Gianturco letter) ("I first met Mr. Murphy when we were both FBI Agents. ... [W]hen I retired from the Bureau ... he hired me as an investigator ... I found him to be professional, [a] competent [lawyer,] and honest").

We credit the petitioner's testimony that around the time of his misconduct he was facing his mother's final illness and death, and the attendant circumstances and demands on his time and attention. Tr. 8-9.

We start with the petitioner's successful career as a litigator, ultimately attaining both partnership in, and the management of the Boston office of, a well-regarded firm. Tr. 7, 11-12, 22-25; Ex. 1, personal statement; Ex. 2 (Schorr letter). Letters from his supporters reinforce the theme of high competence. Ex. 3 ("I know Mike to be extremely competent in legal matters and have utilized his attorney skills in the past"); Ex. 4 (Corbett letter) ("I have known Mr. Murphy for twenty-five years. ... I know that Mr. Murphy is an eminently qualified trial lawyer"); Ex. 5 (Gianturco letter) ("I have been hired by Mr. Murphy [as an investigator] on several occasions and my evaluation of him as a lawyer is excellent"). In addition to his admission to the bar in Massachusetts, the petitioner had been admitted to several trial and appellate courts in three states, four federal district courts, and three federal circuit courts of appeals.

During his suspension, the petitioner has kept himself abreast of developments in the law relating to his fields of practice.³ Tr. 12, 20. He read Massachusetts Lawyers Weekly, reviewed the Massachusetts Law Reporter and reviewed pertinent portions of cases relevant to his former and planned future practice as a civil litigator. Tr. 12, 20, 36-37, 39-40; Ex. 1, responses 3G, H. The petitioner also bought and read the American Bar Association's Model Rules of Professional Conduct and took an on-line course in preparation for the Multistate Professional Responsibility Examination. Tr. 40.

This evidence of continued learning is somewhat thin, and it passes muster only because of the length of the petitioner's suspension, his reputation as a skilled lawyer, and his personal accomplishments. Contrast Matter of Dawkins, 432 Mass. at 1011, 16 Mass. Att'y Disc. R. at 96 (reading the "advance sheets," an unidentified book on ethics and Massachusetts Lawyers Weekly when able to borrow a copy, insufficient to show competency and learning); Matter of Waitz, 416 Mass. 298, 304, 9 Mass. Att'y Disc. R. 336, 344 (1993) (after indefinite suspension, attendance at three or four MCLE practical skills courses and "studying the law" or reading legal

³ In anticipation of obtaining work as an independent contractor assuring corporate compliance with certain federal statutes, the petitioner also received training in auditing financial transactions. Tr. 12-14, 37-38.

publications for two or three hours weekly at another lawyer's office insufficient for reinstatement).

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. 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.

We decline bar counsel's suggestion that the petitioner be required to obtain malpractice insurance and attend ethics training.

As to the former, we do not consider the respondent's misconduct to be the type for which malpractice insurance is necessary to ensure the public's protection. Nor do we 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.

Bar counsel based her suggestion that the petitioner attend ethics training on the petitioner's current lack of familiarity with the requirements concerning documentation of fee agreements, as set forth in Rule of Professional Conduct 1.5. Tr. 40-41, 50-51. We credit the petitioner's assertions that, as a result of his preparation for taking the M.P.R.E. in order to fulfill

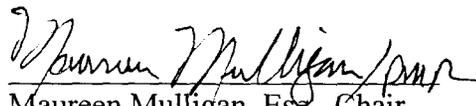
the requirements of reinstatement, he is more familiar with the rules of professional conduct than he ever was. Tr. 14, 51-52. We find the petitioner competent to educate himself concerning the demands of rule 1.5, and we are confident he will do so before accepting his first professional engagement after reinstatement.

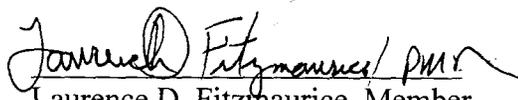
In contrast, we agree with bar counsel that the petitioner should attend bar counsel's course in trust accounting. The petitioner's understanding of the Massachusetts rules concerning trust accounting appeared to this panel to be lacking. Tr. 41-43. Those rules are sufficiently complex and outside of the ordinary skill set of most lawyers, and their demands so thoroughly permeate the resumption of practice, that the petitioner should obtain the assistance bar counsel offers, and during the early days of his resumption of practice.

V. Conclusions and Recommendation

Based upon the petitioner's written submission and his testimony, the hearing panel recommends that the petition for reinstatement filed by Michael A. Murphy be allowed on the condition that within three months of his reinstatement he attend the trust account training course offered by bar counsel.

Respectfully submitted,
By the Hearing Panel,


Maureen Mulligan, Esq., Chair


Laurence D. Fitzmaurice, Member


Regina E. Roman, Esq., Member

Filed: December 7, 2013