

IN RE: JOHN L. DODGE

NO. BD-2012-070

S.J.C. Judgment of Reinstatement entered by Justice Spina on March 23, 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 JOHN L. DODGE)

)
) SJC No. BD -2012-070
)

Petition for Reinstatement)
_____)

HEARING PANEL REPORT

I. Introduction

On July 7, 2014, the petitioner, John L. Dodge, filed a petition for reinstatement from an order entered August 11, 2012, placing him on disability inactive status.

A public hearing on the petition was held on Friday, November 7, 2014. The petitioner was represented by Thomas E. Peisch, Esq.; Assistant Bar Counsel Richard C. Abati, Esq., appeared for the Office of Bar Counsel. Twenty exhibits were admitted into evidence. The petitioner testified on his own behalf and called one witness, John T. McLaughlin, Esq. Bar counsel called no witnesses. Subject to some proposed conditions, bar counsel does not oppose reinstatement. For the reasons discussed below, we recommend that the petition for reinstatement be allowed, with conditions.

II. Standard

A petitioner for reinstatement from disability inactive status bears the burden of proving that his "physical or mental condition does not adversely affect [his] ability to practice law and that he . . . has the competency and learning in law required for admission to practice." S.J.C. Rule 4:01, § 13(6)(e). See Matter of Devlin, S.J.C. No, BD-2008-080 (May 10, 2010).

III. Background and General Findings

The petitioner was admitted to the Massachusetts bar in 1989. As indicated above, he was placed on disability inactive status on August 11, 2012. Ex. 2 (012-016). On July 7, 2014, he filed a Petition for Reinstatement, and his responses to the standard Reinstatement Questionnaire, Parts I and II.

The questionnaire reflects that the petitioner has suffered from severe depression, for which he has received treatment and from which he believes he has recovered. Ex. 2 (004). He indicates that following his 2008 divorce, he was hospitalized for depression in April 2011, after which he attempted to return to work. Tr. 18, 42 (Petitioner). Due to worsening symptoms, he was unable to do so and he ceased the practice of law completely in January 2012. Tr. 18, 42-43 (Petitioner). Subsequently, he was hospitalized in February and again in March 2012, with a diagnosis of major depressive disorder. Ex. 2 (004). He then left Massachusetts to live in Connecticut with his elderly parents. *Id.* He relapsed and was again hospitalized for depression in December 2012. *Id.*; Tr. 18 (Petitioner). We discuss in greater detail below the petitioner's recovery.

IV. Findings

A. No Continuing Adverse Effect on Ability to Practice Law

We find that the petitioner has recovered from his depression, that he is currently capable of returning to practice, and that he has in place sufficient support systems to ensure that he will remain emotionally healthy and able to withstand the pressures and stresses of law practice.

We start by crediting the uncontradicted testimony that the petitioner has recovered from depression. His treating psychologist, Mark Mann, PhD, submitted a letter detailing the petitioner's disability, course of treatment, and recovery. The letter reflected that as of March,

2012, the petitioner “was severely depressed, . . . had difficulty performing activities of daily living, was limited in his ability to concentrate on tasks, and was generally profoundly impaired. His speech was slow, yet deliberate and he had difficulty maintaining eye contact.” Ex. 9 (151). Dr. Mann recounted his treatment of the petitioner, including consultation with a psychiatrist who saw him regularly and prescribed medication. Id. The letter described stressors during the course of the treatment, such as the deterioration of the petitioner’s elderly parents, with whom he had been living; the death of his mother; and the death of his good friend and law partner, Richard Clayman. Dr. Mann made the point that despite these pressures and difficulties, the petitioner did not regress and continued on his path to recovery. Ex. 9 (152).

Dr. Mann described the petitioner’s recovery as “remarkable,” and notes that his “mental status is well within normal limits, his energy level and mood are high. He has a deep desire to return to work once again and support his family. His disease no longer impairs him. He has in fact learned a great deal about himself and others. He has developed [all] the essential skills necessary to sustain a major recovery.” Id. Dr. Mann unconditionally recommended reinstatement, noting that he is “aware of nothing regarding John’s physical or mental condition that would adversely affect his ability to practice law. There is nothing in his present condition that would make me the least bit hesitant to recommend that his Petition for Reinstatement be granted.” Id.

We had the occasion to observe the petitioner and to hear his testimony. We found him to be articulate, thoughtful, introspective, and lucid about the origins and extent of his depression. The petitioner explained that he thinks it started around the time he was divorced, in 2008. Tr. 17 (Petitioner); Ex. 2 (004). He noted that it became acute in April 2011, when he was finding it very difficult to function. Tr. 18 (Petitioner). He explained that he saw Dr. Mann at first twice a week, supplemented with phone calls. Tr. 19 (Petitioner). The frequency decreased with time,

even more so in the spring of 2013, as he began to feel much better. Id. He also saw a psychiatrist who prescribed numerous medications; these stabilized him, but caused his personality to become “terribly flat.” Tr. 20 (Petitioner).

The petitioner learned in the spring of 2013 that his friend and former law partner, Richard Clayman, had been diagnosed with a brain tumor. Tr. 21 (Petitioner). He described this as a “slap in the face” moment, where he told himself: “here’s someone with real problems, it’s time to solve your own.” Id. At that point, in consultation with his psychologist and psychiatrist, he began to wean himself from the various medications and did so in the late spring and early summer of 2013. Id. The petitioner discussed candidly the fact that although he underwent highly stressful occurrences after this time - the death of Richard Clayman and the decline and ultimate death of his mother - he did not relapse. Tr. 23 (Petitioner).

Bar counsel cross-examined the petitioner thoroughly, asking probing and specific questions about his lack of compliance with the SJC’s Order of Disability Inactive Status to file an affidavit of compliance (Ex. 6), as well as his mental health, debts and plans for resuming practice. The petitioner admitted he had not complied with the SJC’s August 11, 2012 order, noting that he was not aware of it until sometime during the summer of 2013. Tr. 33-34 (Petitioner). He stated that even if he had received it, at the time he “just wasn’t in any physical or mental shape to be able to comply with it.” Tr. 34 (Petitioner). He recognized that he still should have filed an affidavit of compliance, and did not, but noted that by the time the order was entered, his former partner had taken over all of his cases and he had no clients. Id. The petitioner agreed that he is not current with his child support payments, and has considerable consumer and IRS debt. Tr. 37-40 (Petitioner). He indicated that he is receiving Social Security disability payments, that they are his sole source of income, and that he gives one third to his ex-wife for child support and one third to his father (with whom he currently resides) for living

expenses. Tr. 63 (Petitioner); Ex. 3 (028). The petitioner did not agree that many of the financial pressures that contributed to his depression still exist, explaining that he has learned various strategies to deal with financial and other pressures. Tr. 41-42 (Petitioner). For instance, he may need to declare bankruptcy to take care of the consumer debt and some portion of the IRS debt. Tr. 41 (Petitioner).

Asked about his practice plans should he be reinstated, the petitioner described going to a firm or business, and indicated that solo practice was his last choice. Tr. 26, 47-48 (Petitioner). He was open about the fact that while working with Attorney Clayman, he had no bookkeeping responsibilities, and he admitted to a lack of familiarity with the three way reconciliation requirements governed by Rule 1.15. Tr. 48-49 (Petitioner). He cited certain safeguards he feels would help him cope with any practice pressures, identifying attorneys, friends and family members he could rely on, and expressing his willingness to enter into a mentoring agreement with a Massachusetts lawyer to assist him. Tr. 50-53 (Petitioner).

The hearing panel drilled deeper, asking pointed questions about charges of fraud or malpractice made against the petitioner, and about his finances. See Ex. 2 (020). He explained that in six instances, charges were filed or threatened against him, and that with one exception, at the time of the lapses he was in the throes of his depression and was not on medication. Tr. 54 (Petitioner). He agreed that his insurer paid claims on his behalf, and that this suggested a certain culpability on his part. *Id.* He clarified his income tax liabilities, explaining when they were incurred. Tr. 59-60 (Petitioner).

In addition to the evidence discussed above, we reviewed letters in support of the petitioner's reinstatement. These included a letter from his ex-wife, Dr. Andrea Dodge, who noted her awareness that "he has made great strides in his recovery from his disease and I have every confidence that he is ready, willing and able to return to the practice of law with

competence and professionalism and will bring great honor upon the Massachusetts Bar upon his reinstatement.” Ex. 11 (155). We also reviewed letters of support from former clients and colleagues. Only one seemed unaware of, or simply did not mention, the petitioner’s illness; the author did, however, write effusively about the petitioner’s professional and personal characteristics. Ex. 12. The others stated explicitly that they were aware of the petitioner’s struggles with depression and illness and believed he had recovered. Ex. 13, 14, 15, 16; compare Ex. 17. We are struck by a common theme sounded by these letters: the petitioner’s basic competence, compassion and decency.

B. Competency and Learning in the Law

As indicated, S.J.C. Rule 4:01, § 13(6)(e) requires that, to be reinstated, a petitioner must demonstrate that he has the “competency and learning in the law required for admission to practice.” We find that the petitioner has met this burden.

Prior to taking disability inactive status, the petitioner had a general practice in Chelsea which, per his description, included “a little bit of everything”: criminal, personal injury, real estate, wills, and divorce work. Tr. 12 (Petitioner). He had spent his entire legal career working for Richard Clayman, first as a law clerk while in law school in 1987, and later as an associate. Tr. 11 (Petitioner). He became Clayman’s law partner in 2001, when they formed the law firm of Clayman and Dodge, and remained there until he stopped practicing in 2012. Tr. 11-12 (Petitioner).

Although not employed since his transfer to disability inactive status, with the permission of bar counsel, the petitioner volunteered his services as a paralegal on a short-term basis with a small Connecticut law firm. Tr. 25 (Petitioner); Ex. 2 (005). In addition, he has volunteered from time to time at a local food pantry and, as indicated, has served as a live-in caregiver for his elderly parents. Tr. 22, 25; Ex. 2 (005).

We found credible the petitioner's description of his efforts to remain current with Massachusetts law. He indicated that he has been a subscriber to the online edition of the Massachusetts Lawyers Weekly, and receives daily the slip opinions of the Appeals Court and the Supreme Judicial Court. Tr. 14 (Petitioner). He described various MCLE courses he had taken; he also stated that he had taken a 40-hour mediation training course in April 2014. Id.; Ex. 2 (006). He told us about several recent developments since he stopped practicing, such as changes to Rule 1.5 and the adoption of the Uniform Probate Code; he noted that he has been an attorney for 23 years and still has that "wealth of experience." Tr. 15-16 (Petitioner).

John McLaughlin, Esq., a partner in the Boston firm of Berluti McLaughlin & Kutchin, testified in support of the petitioner's reinstatement. He also submitted a compelling and detailed letter. Ex. 16. He testified that he had practiced in a small law firm in Chelsea located in the same physical space as the petitioner's law firm. They had worked together early in their careers, from 1987 until 1997, and remained colleagues, working together on cases, until the petitioner began to get sick. Tr. 66-67, 76 (McLaughlin). McLaughlin described the petitioner before his illness as an "outstanding lawyer." Tr. 68-69 (McLaughlin). After the death of the petitioner's former law partner, Richard Clayman, in 2013, McLaughlin was appointed personal representative of the estate with the responsibility of winding up Clayman's law firm. Tr. 69-70 (McLaughlin); Ex. 16 (166). The petitioner came forward and volunteered his time to help McLaughlin administer the estate and to transition open cases to other lawyers. Tr. 69-70 (McLaughlin). At that point and in that context, McLaughlin interacted with the petitioner and was able to assess his skills and mental state. Tr. 70 (McLaughlin). McLaughlin spoke forcefully and compellingly about the petitioner's devotion to the task of closing down the law practice, including the ethical issues of transferring clients and making sure they had

representation. Tr. 76 (McLaughlin) . Attorney McLaughlin stated that he would “absolutely” be willing to act as a mentor, should the petitioner be reinstated. Tr. 74 (McLaughlin).

V. Conclusions and Recommendation

We conclude that the petitioner has met his burden. He has proven both that his mental condition does not adversely affect his ability to practice law, and that he has the competency and learning in the law sufficient for reinstatement. We recommend that the petitioner’s reinstatement be subject to conditions as follows. First, he is to enter a mentoring agreement, reasonably agreeable to bar counsel, with John T. McLaughlin, Esq., or an appropriate successor reasonably agreeable to bar counsel, should McLaughlin become unavailable to serve. Next, we understand that, upon reinstatement, the petitioner hopes to join an existing law firm or business. We think that is a wise plan. However, we understand that there is a chance he will work as a solo practitioner, or form a small firm with others. Should he go that route, we recommend three additional conditions. First, he is to arrange for a LOMAP audit, and accept its recommendations about his practice. Second, he is to attend bar counsel’s free trust accounting seminar. Third, he is to attend the MCLE workshop entitled “Hanging Your Shingle.” He must satisfy the first two conditions within three months and the third condition within one year of starting solo practice or forming a new firm, and must certify to bar counsel that he has done so.

Subject to the above conditions, we recommend that the petition for reinstatement filed
by John L. Dodge be allowed.

Dated: 12/15/14

Respectfully submitted,
By the Hearing Panel,

Maureen Mulligan /w
Maureen Mulligan, Esq., Chair

Laurence D. Fitzmaurice /w
Laurence D. Fitzmaurice, Member

Thomas A. Kenefick /w
Thomas A. Kenefick, III, Esq., Member