



**IN RE: THOMAS FRANCIS FEENEY**

**NO. BD-2013-018**

**S.J.C. Judgment of Reinstatement entered by Justice Lenk on November 4, 2015.<sup>1</sup>**

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<sup>1</sup> 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 )

THOMAS F. FEENEY, )

Petition for Reinstatement )

SJC No. BD-2013-018

HEARING PANEL REPORT

I. Introduction

Acting *pro se*, on December 19, 2014, Thomas F. Feeney filed with the Supreme Judicial Court a petition for reinstatement from an order of term suspension the Court entered on March 8, 2013, effective April 8, 2013. Matter of Feeney, S.J.C. No. BD-2013-018.

Counsel filed an appearance for the petitioner on December 19, 2015, and he was represented by counsel during the remainder of the proceedings before us. Originally scheduled for hearings to begin on April 13, 2015, we continued the matter at the petitioner's request to July 21, 2015. We received evidence under the petition at an evidentiary hearing on that day. The petition was opposed by Bar Counsel. The petitioner testified on his own behalf and called three additional witnesses: two attorneys and one former client. Bar counsel called no witnesses. Nine exhibits were admitted into evidence.

After considering the evidence and testimony, and for the reasons set forth below, this panel recommends that the petition for reinstatement be allowed on 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 (1988). 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**

Admitted to practice in Hawaii in 1999 and in Massachusetts in 2000, during 2013 the petitioner received a suspension of a year and a day based on his stipulation to facts and rules violations under three counts of a five-count petition. Under that stipulation, bar counsel withdrew count four, and the petitioner maintained his denial of count two.

Under the three remaining counts of the petition, the petitioner admitted the following:

Count One: From around January 2009 through March 2010, the petitioner failed to keep required records of his IOLTA account, including client ledgers and three-way reconciliations; he withdrew funds from the account by means that did not identify the source or the payee, including in cash; he paid creditors directly from the IOLTA account; and he commingled personal funds in the account.

Count Three: During February 2009, the petitioner undertook to defend a client in a civil matter under an hourly fee contract with a \$1,500 retainer. He deposited the retainer into his operating account rather than into a trust account. He converted the retainer before it was earned, and he never earned the entire retainer. While during July 2009 the petitioner repaid to the client the amount of the unearned portion of the retainer, he did so using the funds of other clients.

Those other three clients had retained the petitioner to represent them in a dispute with their landlord. Around July 2009, judgment entered against them in the amount of \$6,528.70. During late July 2009, they provided the petitioner with two installments, \$2,028.70 and \$3,000 respectively, to pay towards the judgment, but which the petitioner intentionally misused for other purposes. One of those purposes was the refund to the client on the matter described above.

Little more than a week after converting the second installment, the petitioner received from his clients the \$1,500 balance of the funds to satisfy the judgment. He deposited personal funds to replace the money he had converted, and in mid-August 2009 he paid the judgment.

Count Five: During August 2009, an attempted electronic payment out of the petitioner's IOLTA account was dishonored for insufficient funds. Upon receipt of notice of the dishonor, bar counsel started an investigation and requested that the petitioner provide records of his IOLTA account and other accounts. The petitioner provided to bar counsel bank records that included deposit slips that had been altered in an effort to conceal the petitioner's misuse and his deposit of personal funds to cover the misused funds. Scheduled to appear before bar counsel to give a sworn statement, the petitioner produced unaltered versions of his bank records.

The petitioner's stipulation waived the right to present evidence of matters in mitigation and aggravation and set forth no stipulations concerning either. In addition, the stipulation reflects bar counsel's agreement that no parties were deprived of funds as a result of the petitioner's misuse.

On February 10, 2014, the Court granted the petitioner leave to be employed as a paralegal, and the petitioner did so on an as-needed basis at least through the date the petition for reinstatement was filed.

#### IV. Findings

##### A. Moral Qualifications

We find that the petitioner has demonstrated “the moral qualifications . . . required for admission to practice law in this Commonwealth. . . .” S.J.C. Rule 4:01, § 18(5).

At the outset, we acknowledge the petitioner’s initial difficulty coming to grips with his clear wrongdoing.<sup>1</sup> Still, unlike petitioners whose refusal to acknowledge their wrongdoing evidenced lack of reform, the petitioner did not appear before us attempting to qualify his stipulation to discipline, to shift blame, or to suggest that his stipulation was a mere pragmatic concession that he now feels free to disavow. Compare Matter of Ascher, S.J.C. No. BD-2006-020, panel report at 4-7, order denying reinstatement entered May 28, 2015. The petitioner’s stipulation to discipline fully admitted the truth of certain charges, Ex. 1, at BBO 53, and he has not taken a different position before us. When confronted directly with the nature of his wrongdoing, he acknowledged it. Tr. 54-56, 57, 67-70, 124-139 (Feeney). In stark contrast to the panel’s findings in Ascher, we do credit the petitioner’s expressions of remorse and acceptance of responsibility. Tr. 46-47, 50-52, 59, 95 (Feeney). We find that the petitioner has learned his lesson, that he has accomplished true reform, and that he fully appreciates the practice of law is a privilege he must earn. Tr. 95-96, 129-132 (Feeney); Tr. 172, 178 (Pontikes); Tr. 196-197 (Gollub); Tr. 226-227 (Simeone).

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<sup>1</sup> Neither the petitioner’s formal submissions – his petition and his questionnaire responses – nor his direct testimony admitted that he had intentionally misused one client’s funds to pay other clients, or that he lied to bar counsel through fabricated documents. Rather, at first he characterized these incidents as involving accounting errors, early use of funds, and “misreporting.” Tr. 42-46, 52, 123 (Feeney); Ex. 1, at BBO 4, 7-8, 11, 16. In other circumstances, the board has found that a failure to acknowledge and confront the wrongdoing leading to suspension prevented a finding of reform and required denial of reinstatement. As we explain, this case is different. Further, it appears that in discussing his suspension with at least one of his peers, the petitioner did acknowledge knowing misconduct. Tr. 197-198 (Gollub). He admitted to a former client that he has misused client funds. Tr. 225 (Simeone).

We credit that the petitioner was facing personal and family crises around the time of his misconduct. Tr. 47-49, 53-54, 56-58, 60-63 (Feeney); Tr. 188-189 (Gollub); Ex. 1, at BBO 4-6, 16, 18-20. This confluence of circumstances eroded his judgment;<sup>2</sup> it has ended, Tr. 62-63 (Feeney), and is not likely to be repeated. Equally important, we credit that he now recognizes the danger of trying to handle all of his problems unassisted, Tr. 52, 61-62, 63-64, 90-91, 96, 122, 151 (Feeney); Tr. 178-181 (Pontikes), and he has developed a support system that frees him from the dangerous burden of facing personal crises alone.<sup>3</sup> Tr. 64-65 (connected with Law Office Management Assistance Program); 70-71 (continues to work with LOMAP); 90-91, 152-153 (participated, and still participates, in programs run by Lawyers Concerned for Lawyers); 92-93 (acknowledges the assistance he received from his counsel in navigating the reinstatement process); 94-95 (now uses an accountant for year-end work and has agreed with another attorney to receive mentoring); 117-118 (proposed terms of monitoring agreement during initial return to practice); see also Tr. 180-181 (Pontikes). The respondent retained a bookkeeper to assist in correcting his records during bar counsel's investigation and he is prepared to continue working with that bookkeeper after resuming practice. Tr. 64-65, 70-71, 94-95 (Feeney). Along with his sobering experience in the disciplinary system, as a result of which he was prevented from practicing a profession he loves, this support system provides a bulwark against stressful events that will help prevent another erosion of his ethical character. Tr. 191-192, 197, 216-217 (Gollub); Ex. 1, at BBO 42, ¶ 8.

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<sup>2</sup> While the petitioner's stipulation to discipline did not recite these matters in mitigation, it did state that the parties had "taken into account all aggravating and mitigating circumstances which are or otherwise might have been presented," Ex. 1, at BBO 54 (¶ 6), and we take notice of the fact that the petitioner raised these issues in his answer to the petition for discipline and at other points during the original disciplinary proceedings. Their role in his misconduct was corroborated by his supporting witnesses. Tr. 170-172 (Pontikes); Tr. 188-189 (Gollub).

<sup>3</sup> At the time of his misconduct, the petitioner was a sole practitioner without administrative support for his financial record-keeping. Tr. 23, 46, 49-50 (Feeney). He regrets his decision to attempt to respond to bar counsel's inquiries without the assistance of independent counsel. Tr. 52 (Feeney).

Other matters confirm our conclusion that the petitioner is generally a person of good moral character who temporarily lost his moral compass and has now regained it. The petitioner regularly engaged in pro bono and charitable work before his suspension. Tr. 27-32, 37 (Feeney); Tr. 167-170 (Pontikes); Tr. 219-221, 226 (Simeone); Ex. 1, at BBO 3-4, 14-15, 37-38, 45-47, 73, 209-211; Ex. 3. He intends to leverage his own experiences reforming himself to help other attorneys. Tr. 96 (Feeney); see also Tr. 172-173 (Pontikes). Such other-regarding conduct is consistent with the petitioner's history of assisting less-experienced attorneys. Tr. 164-164 (Pontikes); Ex. 1, at BBO 34, ¶¶ 8, 13. His concern for other lawyers was complemented by his sincere concern for his clients and with treating the practice of law as a service profession. Tr. 165-167 (Pontikes); Tr. 206 (Gollub); Tr. 222-224 (Simeone). During his suspension, the petitioner donated time to assist in the development of materials for a seminar to aid attorneys in using mindfulness practices to deal with stress and depression in their practice. Tr. 75-76 (Feeney); Ex. 1, at BBO 13, and BBO 38, ¶ V. To earn a responsible living he performed various forms of manual labor and later applied for leave to be employed as a paralegal. Tr. 74-75 (Feeney).

The petitioner is a reminder that a "fundamental precept of our system is that a person can be rehabilitated." Matter of Ellis, 457 Mass. 413, 414, 26 Mass. Att'y Disc. R. 158, 163 (2010). The conduct giving rise to the petitioner's suspension was "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) and before us it "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. 298, 304, 9 Mass. Atty. Disc. R. 336, 342 (1993). As described above, however, the petitioner presented ample evidence of "[r]eform . . . a 'state of mind' that must be manifested by some external evidence . . . ." 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.

He “establish[ed] 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. at 414, 26 Mass. Att’y Disc. R. at 163-164. The petitioner has shown 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 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, and we have been persuaded to make that certification.<sup>4</sup>

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

The petitioner carried his burden under S.J.C. Rule 4:01, § 18 to demonstrate that he has the “competency and learning in the law required for admission to practice law in this Commonwealth.”

The evidence before us demonstrates that the petitioner was a competent attorney before his suspension, and that this basic competence appears to be intact. In addition to the evidence we received concerning the difficult cases the petitioner successfully concluded, Tr. 30-32, 38-42 (Feeney); Tr. 167-168 (Pontikes); Ex. 1, at BBO 38; ¶¶ III, IV; Ex. 3, an attorney who knew him before his suspension described him as “an extraordinarily competent attorney, . . . willing to entertain different theories as well as knowing garden variety matters. . . . [He is] a very good attorney.” Tr. 185-186, 188 (Gollub). The cases the petitioner referred to that attorney as a result of the suspension order were “in good shape.” Tr. 213 (Gollub). That same attorney used the petitioner’s services post-suspension as a paralegal pursuant to leave of court, and describes

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<sup>4</sup> We credit as sincere, and find persuasive, the following testimony from one of the petitioner’s supporting witnesses: “[T]his is the guy we want serving the public. . . . [T]his is somebody who’s going to take care of the public. He’s not going to be a danger . . . . [T]his is the guy we want here as part of the bar.” Tr. 167, 173-174 (Pontikes); see also Ex. 1, at BBO 34, ¶ 12.

his work as “exemplary.” Tr. 191 (Gollub); see also Tr. 208 (Gollub) (used the petitioner as a paralegal because he “puts out a good work product” and brings to his work his experience and knowledge as a lawyer); and see Ex. 1, at BBO 42, ¶ 7. A former client described the petitioner’s patience and perfectionism. Tr. 224-225 (Simeone).

Since petitioner’s suspension, he has attended twenty-four continuing legal education seminars. Tr. 81-83, 119-120 (Feeney); Ex. 1, at BBO 17-18, 123-124. These covered topics in civil litigation, family law, mediation, business and employment law, real estate, and construction law. Tr. 80-8 (Feeney); Ex. 1, at BBO 17-18. They had a substantial relationship to the areas of practice the petitioner plans to resume upon reinstatement. Tr. 88-90, 100-101 (Feeney).

In addition, the petitioner receives and reviews the slip opinions of the United States Supreme Court, the Ninth Circuit Court of Appeals, the Supreme Judicial Court of Massachusetts and the Massachusetts Appeals Court. He reviews the Massachusetts Lawyers Weekly, monthly newsletters published by the Massachusetts Law Office Management Assistance Program, and various private legal publications. Ex. 1, at BBO 19.

The petitioner received permission from the Court to work as a paralegal. Ex. 7. Pursuant to that Court order, the petitioner has worked on contract cases and collection matters, and he has performed research concerning claims in defamation and under G.L. c. 93A. Tr. 115-116 (Feeney). With bar counsel’s knowledge, the petitioner has also performed paralegal work for an attorney in Hawaii where, apparently, formal court approval is not required for a suspended lawyer to provide paralegal services.<sup>5</sup> Tr. 115, 140-142 (Feeney).

This panel was also favorably impressed by the petitioner’s thoughtful approach to resuming practice upon reinstatement, Tr. 88-90, 100-114 (Feeney), and his understanding of his trust account recordkeeping obligations. Tr. 72-73, 203-204 (Feeney).

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<sup>5</sup> Bar counsel has not contested this issue.

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

While we have cited testimony from the petitioner's witnesses indicating that his reinstatement to the bar would not be detrimental to the profession and the public, our task under this part of the test for reinstatement is not simply to pile up on either side of the ledger the testimony the parties chose to present. "In this inquiry we 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. "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 must consider whether, generally, the public will perceive the bar as viewing the original offense with sufficient gravity and 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, along with the deterrent effect of the decision whether or not 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.

In our judgment, reinstating the petitioner will not erode public confidence in the profession. To be sure, his misconduct violated fundamental duties to his clients and to the profession. Still, we have received compelling evidence that the petitioner was generally of good moral character before his misconduct, that he allowed himself to succumb to circumstances through conduct for which he accepts responsibility, and that he has reformed himself by effective affirmative efforts, including real changes to how he approaches the practice of law. In our judgment, the public will recognize, as do we, that the petitioner has earned the privilege of once again practicing law in Massachusetts.

For the same reasons, we conclude that the bar will not be adversely affected by the petitioner's reinstatement. The petitioner did not merely wait out his suspension; he has navigated a difficult transition in his outlook and in his practices and we are not merely handing him a "get out of jail free" card.

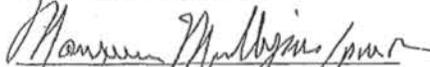
Finally, the petitioner's readmission is fully in line with the principles and rules governing reinstatement; we do no violence to the even-handed administration of justice by concluding that reinstatement is fully warranted here.

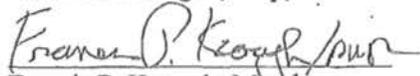
V. Conclusions and Recommendation

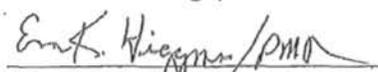
For the foregoing reasons, we recommend that the petition for reinstatement filed by Thomas F. Feeney be allowed, on the following conditions:

- a. Before resuming practice, the petitioner shall enter into a mentoring agreement, on customary terms and reasonably satisfactory to bar counsel, calling for the general supervision of his practice and the performance of his office systems for two years after reinstatement; and
- b. In that or a separate agreement, the petitioner shall agree to terms of accounting probation reasonably satisfactory to bar counsel, under which the petitioner's compliance with the ethical requirements for trust account record keeping may be confirmed not less than quarterly for two years after reinstatement.

Respectfully submitted,  
By the Hearing Panel,

  
Maureen Mulligan, Esq., Chair

  
Francis P. Keough, Member

  
Erin K. Higgins, Esq., Member

Filed: August 27, 2015