

**IN RE: GREGORY A. HESSION**

**NO. BD-2013-065**

**S.J.C. Judgment of Reinstatement entered by Justice Cordy on March 20, 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  
GREGORY A. HESSION

Petition for Reinstatement

SJC No. BD-2013-065

HEARING PANEL REPORT

**I. Introduction**

On July 7, 2014, Gregory A. Hession filed a petition for reinstatement from an order of a year-and-a-day suspension entered August 27, 2013.

A public hearing on the petition was held on November 24, 2014. The petitioner was represented by Michael A. Fitz, Esq.; Assistant Bar Counsel Susan Strauss Weisberg appeared for the Office of Bar Counsel. Nine exhibits were admitted into evidence including, as Ex. 1, the petitioner's Answers to Reinstatement Questionnaire, Part I. The petitioner testified on his own behalf and called four witnesses: his wife, Sandra L. Hession; his friend, Jonathan Lukens; his attorney at the disciplinary hearing, Ronald R. Morace, Esq.; and a colleague, Laura Glomb, Esq. Bar counsel called no witnesses. Two members of the public, Marion Haddad and Ara Eresian, Jr., appeared and testified. For the reasons discussed below, we recommend that the petition for reinstatement be allowed.

**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).

### **III. Disciplinary Background**

The petitioner was admitted to the bar in 1993. Tr. 10 (Petitioner). He practiced primarily in the areas of family and juvenile law, including care and protection proceedings in the juvenile court. Tr. 12 (Petitioner). As indicated above, a single justice suspended him, effective August 27, 2013, for violation of various rules, including rule 3.3(a)(1) (false statement of material fact to tribunal), rule 3.3(a)(2) (failure to disclose material fact to tribunal to avoid assisting client’s fraud), rule 3.3 (a)(4) (offering evidence the lawyer knows to be false), rule 3.4(c) (knowing disobedience of court order); and 8.4(c) (conduct involving dishonesty, fraud, deceit and misrepresentation). Ex. 4.

The discipline came about as the result of the petitioner's representation of a mother (Jane) in a care and protection proceeding involving her young son (Richard), who had been removed from her care, and a daughter of nearly seventeen (Sally). Sally lived with her father in a southern state but had come to Massachusetts to visit her mother. Ex. 4 (88-89); Tr. 12-13 (Petitioner). The father had legal and physical custody of Sally. Ex. 4 (89); Tr. 15 (Petitioner). After a report alleging that the mother had neglected Sally, the Department of Children & Families (DCF) began an investigation. Ex. 4 (89). Shortly thereafter, Sally took a combination of drugs and alcohol and was hospitalized. Id. After an attempt to escape, she was bruised in a scuffle with police, tied to the bed, and held for three days in a locked psychiatric ward. Ex. 2, ¶ 40 (50-51); Ex. 3 (70); Tr. 13 (Petitioner). On September 11, 2007, one day after discharge, DCF took Sally into its care on an emergency basis and put her in a group home. Ex. 3 (71); Tr. 13 (Petitioner). At a subsequent hearing on Friday September 14, 2007, the petitioner and Sally's counsel argued that Sally's father had custody and that he had not been properly notified of the hearing. Ex. 4 (90). The judge responded by giving DCF temporary custody, and scheduling a further hearing before a new judge for September 19, 2007. Id.

On Friday night September 14, 2007, Sally's mother managed to remove Sally from a DCF group activity. Ex. 4 (90); Tr. 13 (Petitioner). Worried that DCF would look for Sally at her home, the mother left her near a dumpster in the rain, called the petitioner, told him she had taken Sally, informed him where she had left her and asked him to pick Sally up. Ex. 4 (90); Tr. 13 (Petitioner). The petitioner did so. He did not call the police or DCF, because Sally had just had bad experiences with both. Ex. 4 (90). He advised her to go back to DCF custody. Id. When she refused, he arranged for friends (who were actually clients) to let her stay at their

house for the night. Ex. 4 (90-91); Tr. 13, 31 (Petitioner). The petitioner felt like this was an emergency, and his primary concern was for Sally's safety. Ex. 4 (90); Tr. 13-14 (Petitioner).

The next day, the petitioner and his wife went to the friends' house to speak with Sally. Ex. 4 (91); Tr. 14. He again urged her to go back to DCF; she again refused. Id.; Tr. 83-84 (Sandra Hession). Sally expressed an intention to return to her father's home in a southern state, and said that she would hitchhike if necessary. Ex. 4 (91); Tr. 18-20 (Petitioner). The petitioner and his wife gave Sally clothing and \$300 in cash for a bus ticket to return to her father's home. Ex. 4 (91). The mother was informed that Sally had left to go to her father's home and, after the petitioner learned she had safely arrived, the mother was so apprised. Ex. 4 (91-92).

Days later, at the hearing on September 19, 2007, the petitioner appeared before the new judge and told him that Sally had "apparently" left DCF custody. Ex. 4 (92). Asked by the judge if the mother had any idea where Sally was, the petitioner gave a vague description of Jane having received a call from Sally; explained that Jane had told him that Sally was "local"; and concluded that he didn't think Jane knew much more than that. Ex. 4 (93).

Counsel for DCF asked to examine Jane. Id. The petitioner asked for and was allowed a brief recess to speak with her. Id. After she was put under oath, Jane took the stand and made numerous misrepresentations, among them that she believed Sally was somewhere in the New England area; that Sally had assured her she would appear in court that day; and that Jane would contact DCF in the event Sally were to return home. Ex. 4 (94).

The single justice agreed with the board that the petitioner had violated a court order, and therefore a disciplinary rule, when he helped Sally flee DCF custody. Ex. 4 (98-99). The justice carefully parsed the petitioner's comments to the trial judge and agreed with the board's description of them as ranging "from strongly disingenuous to entirely false." Ex. 3 (80); Ex. 4

(100-101). He also found sanctionable misconduct in the petitioner's failure to correct Jane's misleading and affirmatively false testimony to the court. Ex. 4 (101). The justice noted further that the hearing committee had found an unconsented and unwaiveable conflict of interest in the petitioner's representation of Jane in Richard's care and protection matter and his simultaneous representation of the foster parents in whose home Richard lived against charges of sexual abuse of a niece. Ex. 4, n. 6 (94-95).<sup>1</sup>

#### 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”).

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. We also paid close attention to his descriptions of his behavior and to his responses to bar counsel's pointed and probing questions. We found his expressions of remorse to be heartfelt and genuine. See Matter of Ellis, 457 Mass. 413, 416, 26 Mass. Att'y Disc. R. 162, 166 (2010) (identifying remorse as one of factors in support of successful showing of good moral character). More compelling, he appears to have insight into what happened, why it happened and how to prevent it in the future.

We agree that the petitioner's principal misconduct was precipitated by what he described as a humanitarian impulse. Describing his mental state after Jane's request to him to retrieve

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<sup>1</sup> The justice summarized the hearing committee's other findings. *Id.* Having failed to find violations of bar counsel's most serious charges, the hearing committee recommended a public reprimand for two conflicts of interest and a third violation consisting of a failure to explain to Jane certain limitations on his conduct. Ex. 2 (66-67).

Sally from the vicinity of the dumpster, he explained: "What was going through my mind was this child needed to be, was in a dreadful situation and I needed to do something to help make her safe. This was really purely at that point a humanitarian impulse to try to help somebody." Tr. 14-15 (Petitioner). The petitioner recognized that his failure to have in mind any coherent plan for what he would do with Sally once he had her "set in motion a series of actions that ultimately led to where we are here." Tr. 13-15. He described the "terrible problem" he created when he failed to think ahead and "interjected himself into the situation instead of staying dispassionate from it and being thoughtful as counsel should have been." Tr. 21-22 (Petitioner).

Bar counsel took issue with some of the petitioner's responses to the questionnaire. As to his conduct before the judge, the petitioner admitted under cross-examination at the hearing that his questionnaire responses, where he denied stating an untruth, were not entirely accurate in that he had stated an untruth by not stating what he knew. Tr. 54-57 (Petitioner). He agreed that he had made an affirmative misrepresentation to the judge when he stated the child was "possibly local." Tr. 57 (Petitioner). He agreed that he had assisted his client in a fraud on the court by helping her to enable Sally to leave the jurisdiction, in violation of the DCF custody order, and that he himself had violated that order. Tr. 63-64 (Petitioner). He was candid about the fact that he had been concerned about his own exposure, and that is why he did not take Sally to his own house. Tr. 65 (Petitioner). He agreed that what he had thought was a possible conflict of interest was in fact a true conflict for which he did not make adequate disclosure. Tr. 66 (Petitioner).<sup>2,3</sup>

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<sup>2</sup> The petitioner described this dual representation of Jane and the foster parents in his reinstatement questionnaire as "improper, as it could have led to the interests of both of the clients being in conflict." Ex. 1 (5). He elaborated at the hearing, stating that he had thought both parties were adverse to DCF, not each other, but conceding that in fact it was an "irrevocable conflict that I shouldn't have entered into." Tr. 23-24 (Petitioner). He noted that "no harm came from it." Tr. 25 (Petitioner). Harm is not an element of this violation. Cf. Matter of Carnahan, 449 Mass. 1003, 1005, 23 Mass. Att'y Disc. R. 57, 60 (2007) (distinguishing conflicts cases where lawyer self-deals or client suffers substantial injury). We note that under cross examination, the petitioner admitted that it had not been a potential conflict, but a real one. Tr. 68 (Petitioner).

The petitioner admitted that the practice to which he would like to return includes stressful and emergency situations involving family law, care-and-protection and child-custody matters, and that he has likened himself to an emergency-room doctor. Ex. 1 (11-12); Tr. 38-39 (Petitioner). While the precise situation at issue here will not recur, we recognize the inevitability of difficult judgments and tensions between competing concerns. When asked for assurances that he will not again fail to recognize or correctly resolve ethical dilemmas, the petitioner testified to the terrible humiliation he experienced in front of the court, the judges and fellow counsel. Tr. 28 (Petitioner). This dovetailed with earlier testimony, where he had explained the respect he has for the judge he lied to, and how he felt he had betrayed his principles and integrity, and ruined his credibility before that judge. Tr. 25-26 (Petitioner). He noted, too, that he has spent “a great deal of time” studying the ethics rules, including the new ones, and especially the rules applicable to his particular offenses. Tr. 28-29 (Petitioner). We are satisfied that the petitioner now has a better grasp of the proper balance between zealous advocacy and candor to the tribunal, such as to make unlikely a future lapse.<sup>4</sup>

The petitioner’s character witnesses underscore our conclusion about his moral fitness. In addition to his wife, he offered testimony from a friend and two lawyers. Jonathan Lukens, a friend who knows him from church, detailed their relationship and described the petitioner’s community reputation as “incredibly honest[,] . . . very hard working and dedicated [and] compassionate.” Tr. 90, 92-93 (Lukens). Lukens was aware when the petition was filed of the

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<sup>3</sup> We agree that the petitioner’s responses to the questionnaire could have been better written, to disclose more completely and directly all of the facets of his misconduct. However, we are satisfied that bar counsel was given (and used) an opportunity to question the petitioner vigorously, and we found his answers to be guileless and insightful.

<sup>4</sup> We agree with bar counsel that there was no emergency on September 19, 2007 when the petitioner made his untruthful remarks and allowed his client to do the same. Nonetheless, for the reasons detailed above, we conclude that the petitioner is morally fit to resume practice.

“major factors” involved. Tr. 91 (Lukens). Nonetheless, Lukens considers the petitioner to be honest and remorseful, and describes him as more pensive since his suspension. Tr. 98-99 (Lukens). Attorney Laura Glomb described the petitioner as very kind, honest, upstanding and moral, and a “man of integrity.” Tr. 128-129 (Glomb). She, too, knew about the misconduct, characterizing it as a gross mistake, and confirmed that since his suspension he has become more pensive and extremely remorseful. Tr. 131-134 (Glomb).

We note that after he was suspended, the petitioner spent the first two months working around his farm, where he and his wife raise many sheep and goats. Tr. 11, 26-27 (Petitioner). He observed that he spent time thinking about what he had done, and noted that farm work is “really good” for that. Tr. 26-27 (Petitioner). He also got a job in a carpet store, where he worked until fairly recently. Tr. 26 (Petitioner). In terms of charitable endeavors and community work, the petitioner wrote that he used to engage in a great deal of such work, prior to his suspension, but since the suspension and due to extreme time constraints, his only community activity is church involvement. Ex. 1(8). He did not discuss charitable work at the hearing. However, there was testimony that he generally attends church regularly, both Saturday night and Sunday morning. Tr. 92 (Lukens).

The petitioner's suspension is “conclusive evidence that he was, at the time, morally unfit to practice law, and it continued to be evidence of his lack of moral character . . . when he petitioned for reinstatement. . . . It [is] incumbent on [the petitioner], therefore, to establish affirmatively that, during his suspension period, he ha[s] redeemed himself and become `a person proper to be held out by the court to the public as trustworthy.” Matter of Dawkins, 432 Mass. at 1010-1011, 16 Mass. Att’y Disc. R. at 95 (citations omitted). A “fundamental precept of our system is that persons can be rehabilitated.” Matter of Ellis, 457 Mass. at 414, 26 Mass.

Att’y Disc. R. at 163. Considering all the evidence with which we have been presented, we conclude that the petitioner has shown the moral fitness sufficient to resume the practice of law.

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

Bar counsel did not challenge the petitioner’s learning in the law. Because his misconduct did not implicate his competence, he has practiced for fourteen years and he has not been out of practice for very long, we devote scant discussion to this factor. In his reinstatement questionnaire, the petitioner indicated he has read the *Massachusetts Lawyer’s Weekly*, MCLE books on legal ethics and a “large number of cases regarding the issues charged.” Ex. 1 (9). He elaborated at the hearing explaining, as indicated above, that he has studied the ethics rules and has read hundreds of pages of proposed rules, stating that “I want to be fully prepared to do this correctly when we go again.” Tr. 28-29 (Petitioner). If he is reinstated, the petitioner will resume what he describes as a “good, thriving solo practice” at his home office. Ex. 1 (11-12). He has identified seven people, including three local attorneys, who have agreed to be active mentors and advisors. Ex. 1 (12-13). We find the described activities sufficient to satisfy the competency requirement.

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

“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 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 have reviewed, cited and summarized adequate evidence to convince us that the public interest will not be harmed by the petitioner’s reinstatement. We are mindful that two members of the public, identified above, came forward to testify against the petitioner’s reinstatement. We have duly considered their testimony and their written submissions. The Court observed long ago that although “a few members of the public may be perturbed if petitioner is reinstated[, w]e cannot, however, accept the position that, so long as *any* member of the public objects, a petition for reinstatement ought be denied.” Matter of Allen, 400 Mass. 417, 425-426, 5 Mass. Att’y Disc. R. 10, 23 (1987) (emphasis in original). While we recognize and appreciate the importance of public input, the reinstatement process is not a popularity contest. Contrast Matter of Keenan, 314 Mass. 544, 550-551 (1943) (despite favorable testimony of over sixty witnesses, Court denies reinstatement of disbarred attorney, citing harm to the administration of justice and incompatibility with public interest). Our job is to cast a wide net and take the long view. On balance, we do not find the witnesses’ particular experiences to be so compelling as to outweigh our contrary impressions that the public welfare generally will not be undermined by the petitioner’s return to the profession.

#### V. Conclusions and Recommendation

We conclude that the petitioner has met his burden. He has demonstrated 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 (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 Gregory A. Hession be allowed.

Dated: 12/19/14

Respectfully submitted,  
By the Hearing Panel,

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

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

Donna Jalbert Patalano /w  
Donna Jalbert Patalano, Esq., Member