

**IN RE: MARGARET ETHEL WHITE**

**NO. BD-2014-009**

**S.J.C. Order of Reinstatement Denied entered by Justice Hines on July 27, 2016.<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.



Shortly after the hearing, on March 9, 2016, bar counsel moved to reopen the record citing, as grounds, that the petitioner had been arrested the Friday before the Monday reinstatement hearing (March 4, 2016) for OUI, negligent operation of a motor vehicle, and leaving the scene of an accident with damage. The petitioner's arrest was reportable in response to Question 3.J.1. of Part I of the reinstatement questionnaire. Under Questionnaire, Part I, Instruction 4(b), the petitioner was obligated to timely supplement her prior answers to disclose the arrest. BBO Rules, Appendix I. The petitioner did not oppose the motion and the hearing panel chair allowed it on March 22, 2016.

Thereafter, on March 26, 2016, the petitioner moved for leave to withdraw her petition for reinstatement without prejudice. She included with this motion an affidavit in which she acknowledged that she had neglected seasonably to supplement her responses to the reinstatement questionnaire, among them question 3J asking whether she had ever been arrested. Bar counsel did not oppose the motion to withdraw.

The chair took the motion under advisement pending further proceedings, and a further hearing was scheduled for April 11, 2016, at 2 p.m. The petitioner failed to appear for the hearing, but her attorney appeared and participated in the proceedings by telephone. The petitioner did not make herself available by phone (see below) and did not participate. During the reopened hearing, bar counsel introduced, over the petitioner's counsel's objection, a sixth exhibit: the petitioner's Northampton Police Department Arrest Report dated March 4, 2016. At the end of the reopened hearing, bar counsel recommended that the petition for reinstatement be denied. For the reasons discussed below, we recommend that the petition for reinstatement be denied. Consistent with this ruling, we recommend the denial of the motion to withdraw the petition or, if it is allowed, that the allowance be with prejudice.

## 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 on October 7, 2005.<sup>1</sup> Ex. 1 (BBO 3). Earlier, on December 7, 1994, she had been admitted to the New York bar and, on June 1, 1999, to the bar of the United States Supreme Court. Id. In Part I of her reinstatement questionnaire and at the first day of hearing, the petitioner described the basis for her transfer to disability inactive status. She explained that within a period of a year and a half, her mother passed away, she was diagnosed with a malignant tumor in her lung, which required removal, and her husband and daughter left the home. Ex. 1 (BBO 3); Tr. 1: 9-12 (Petitioner).

Specifically, her mother died in April 2012; shortly after that, a cancerous nodule was found in the petitioner’s lung. Tr. 1: 9-10 (Petitioner). So as not to upset her young daughter, she chose to have surgery in the summer of 2013, when the daughter was away at camp. Ex. 4 (BBO 60); Tr. 1: 10 (Petitioner). Her husband left her abruptly in October, taking the daughter with him. Tr. 1:11, 13 (Petitioner). She later discovered that her husband had left her in “financial disaster.” Ex. 1 (BBO 3). She sought the services of a doctor to treat her anxiety and depression; the doctor over-medicated her with prescription drugs, leading to what she describes as a “serious breakdown.” Id. She sought further treatment and claimed she had fully recovered after over a year with the support of her therapist and psychiatrist and a proper diagnosis and

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<sup>1</sup> The transcript shall be referred to as “Tr. \_\_: \_\_”, and the hearing exhibits as “Ex. \_\_.”

appropriate treatment. Ex. 1 (BBO 3-4). As indicated above, she was placed on disability inactive status in Massachusetts on March 25, 2014. Id. Both New York and the U.S. Supreme Court were notified of the transfer to disability inactive status. Tr. 1:61, 62-63 (Petitioner).

On December 3, 2015, the petitioner filed a Petition for Reinstatement with the SJC and, on the same day, filed her Reinstatement Questionnaire, Part I with the Board. Ex. 1 (BBO 14). She served Part II on bar counsel on December 7, 2015. Ex. 2 (BBO 24). At no point did the petitioner supplement her questionnaire to reference her March 4, 2016 arrest.

#### IV. Findings

##### A. We Find a Continuing Adverse Effect on Ability to Practice Law

During the first day of hearing, the petitioner testified before us that she had gotten her anxiety disorder under control, that she was capable of returning to practice, and that she had in place sufficient support systems to ensure that she would remain emotionally healthy and able to withstand the pressures and stresses of law practice. She was asked about two negligence-based complaints which concerned conduct during the stressful period she had described, both of which predated her taking disability inactive status. See Tr. 1:43 (Petitioner); Exs. 3-5.<sup>2</sup> When asked what controls she had in place to prevent this sort of thing from happening again, she testified specifically and emphatically that she intended “not to have another nervous breakdown. I mean to put it bluntly by seeing my therapist and putting things in order . . . that prevents me from not ending up in a situation. And I’m just being extremely honest.” Tr. 1:43 (Petitioner). She

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<sup>2</sup> The first complaint is dated November 3, 2014, and describes inattention and lack of diligence, spanning the period July 2012 to late 2013, in an uncontested divorce matter. Ex. 3. The petitioner returned the client’s money, and understood that the matter was thereafter to be closed. Tr. 1:41-42 (Petitioner). The second matter, filed August 18, 2013, describes the petitioner’s representation of an individual in a divorce matter, for which she was paid \$1500. Ex. 5 (BBO 64-65). The complaint relates a lack of diligence and responsiveness, a failure to forward a retainer agreement, and the failure promptly to repay the retainer once the client indicated she wanted it back. Id. The representation appears to have lasted from July 1, 2013 through August 2013. Ex. 5 (BBO 64-65). The petitioner has since reimbursed the client the full amount of the retainer. See Tr. 1:41 (Petitioner).

described her “controls in place” as seeing her therapist every week, going to her psychiatrist, and having the “structure” of her legal duty. Tr. 1:43 (Petitioner).<sup>3</sup>

While it did not seem particularly significant at the time, at the commencement of the first hearing, the petitioner was unable to produce her driver’s license or other photo identification in order to be sworn in by the court reporter. There was a discussion off the record about this (see Tr. 2:11-12 (Petitioner’s counsel)); on the record, after indicating to the panel that the petitioner “doesn’t have identifying materials today,” her counsel and bar counsel agreed that she was Margaret White. Tr. 1:6,7 (Petitioner’s counsel; bar counsel).

We recognize that on a reinstatement hearing from disability inactive status, our job is to determine, in the first instance, whether the petitioner has proved that her physical or mental condition does not adversely affect her ability to practice law. We think it entirely consistent with our charge under Rule 4:01, Sec. 13(6) to factor into our analysis the petitioner’s decision to drink and drive, and then leave the scene after causing property damage.<sup>4</sup> We find her decisions incompatible with a conclusion that her disability has resolved and does not impact her ability to practice law. Law practice is largely about decision-making, discernment and good judgment. Manifestly, the petitioner quite recently made a series of very poor choices. Perhaps more compelling, law practice is inherently stressful and difficult. The petitioner is not practicing and

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<sup>3</sup> Both the therapist and the psychiatrist wrote short, undetailed letters, dated respectively July 6, 2015 and November 11, 2015, each expressing the belief that the petitioner was ready to resume law practice. Ex. 2 (BBO 46, 47).

<sup>4</sup> We recognize that the police report contains only allegations against the petitioner, and that she is, of course, innocent until proven guilty. We are not concerned with whether her guilt beyond a reasonable doubt can be proved by the Commonwealth. The arrest report was properly admitted into evidence. We find it to be reliable. It reflects that when the arresting officer arrived at the petitioner’s car, he smelled alcohol, and noted that her eyes were bloodshot and glassy and that her speech was slurred. Ex. 6, Narrative (Szawlowski), p. 1. She showed signs of impairment during the field sobriety tests. *Id.*, p. 2. In this administrative proceeding, having found them reliable, we are entitled to rely on the contents of the police report. See generally *Doe v. Sex Offender Registry Board*, 459 Mass. 603, 638-639 (2011) (upholding use of hearsay statements in police reports). We note further that the petitioner has not denied, in her affidavit or through her counsel, drinking, driving and leaving the scene after causing property damage.

still made a decision to drink, while taking at least two prescription medications (Tr. 1:15 (Petitioner)), and then drive. This strongly suggests that her anxiety level and stress are not yet under control, and does not augur well for her emotional state and resilience once the pressures of law practice are thrown into the mix.

We are also troubled by the petitioner's failure, despite the clear obligation to do so, see Ex. 1 (BBO 1, 9), to supplement her petition to reflect her March 4, 2016 arrest. Question 3J(1) asks for all arrests, and "each charge brought, the disposition of the charge, if any, and its current status." Ex. 1 (BBO 9). The supplementation obligation imposes a duty "seasonably to supplement or amend any prior response that the petitioner knows or has come to know . . . (b) was correct when made but is no longer true or complete." Ex. 1 (BBO1).

Even if this omission was innocent and even if there had been no obligation to supplement, we are bothered by what we view as a lack of candor on the petitioner's part. At the first hearing, she did not have a picture identification with her; we know now that her driver's license was seized after she took a breath test. Ex. 6, Narrative (Szawlowski), p. 2. She did not explain her failure to have her license with her and kept from us any information about the arrest. See Tr. 2:11-13 (Petitioner's counsel). We recognize that at no point during the hearing was she asked directly and point blank about drinking or recent arrests, but where the whole purpose of the reinstatement hearing was for her to prove to us her fitness generally to resume practice, we think it was incumbent on her to disclose and, if possible, explain these things. "Silence can be tantamount to a false statement where there is a duty to speak." Matter of Angwafo, 453 Mass. 28, 35, 25 Mass. Att'y Disc. R. 12, 19-20 (2009). "Fragmentary information may be as misleading . . . as active misrepresentation, and half-truths may be as actionable as whole lies. . . ." Kannavos v. Annino, 356 Mass. 42, 48 (1969) (citation omitted).

The lack of forthrightness continued into the second hearing. The petitioner lives in Northampton, Massachusetts (Tr. 1:60 (Petitioner)), and was scheduled for a 2:00 PM hearing at the offices of the BBO in Boston. Her counsel explained on the record that he picked her up in his car about 11:30 AM, intending to come to the hearing. Tr. 2:5-6 (Petitioner's counsel). Petitioner's counsel stated that his car overheated. Id. He tried, without success, at 12:10 PM to speak to someone at the BBO; there was "no one available to speak with." Tr. 2:6 (Petitioner's counsel). He and the petitioner separated about 12:45 PM. Id. After reaching assistant general counsel, he and his client were given the option of participating in the hearing by telephone. Tr. 2:3-4 (Petitioner's counsel). He spoke with the petitioner by phone and explained the situation. Tr. 2:6 (Petitioner's counsel). She told him that her cell phone battery was at five percent capacity and, while they were speaking, he "lost" her. Id. He knew she was not at home, but sent her a text message to see if she could get to a phone charger or a land line. He received no answer. Tr. 2:6-7 (Petitioner's counsel).

The hearing panel chair denied counsel's motion to continue, observing that the petitioner "should have anticipated the need to be available," because there had been no indication that the hearing would not go forward. Tr. 2:7 (Hearing panel chair). We conclude that the petitioner's unavailability, at a time when a hearing was scheduled and had not been continued, was either deliberate or a manifestation of poor judgment. In the circumstances, we think that either one reflects poorly on her emotional fortitude and fitness.

The petitioner has the burden of proving to us that her disability does not adversely affect her ability to practice law. She has not convinced us. We have enumerated above various poor, even dangerous decisions, among them the decision not to be candid with us during the first hearing; the decision to drink, drive and leave the scene after causing property damage; the

decision to not supplement her reinstatement questionnaire, as required; and the decision not to attend or participate in a duly scheduled subsequent hearing before us. These serial and grave lapses, weighed against the petitioner's own testimony and two brief and unilluminating letters from medical professionals, are not sufficient to carry her burden. On this record, we cannot say that the petitioner's disability which, per her own description, caused her not to be "as cognizant or careful as [usual]," (Tr. 1:43-44)) is not still active. It goes without saying that such a disability adversely affects the ability to practice law. The petitioner has not convinced us that she is ready to be held out to the public as fully recovered and trustworthy.

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

In the interest of completeness, we address the competency and learning in law component. See S.J.C. Rule 4:01, § 13(6)(e). We find that the petitioner has met this burden.

Prior to taking disability inactive status, the petitioner had a solo practice in Northampton specializing in domestic relations and including guardian ad litem work, CHINS work and cases for CPCS. Tr. 1:56-57 (Petitioner); Ex. 1 (BBO 10). She engaged in pro bono work both in New York and Massachusetts, including at the Volunteer's Lawyer Project under Hon. Edward Ginsberg. Ex. 1 (BBO 6). She has also volunteered since 2008 as a moot court judge at Western New England Law School, and has mentored law students from that law school as well as students from her law school, CUNY at Queens College. Id.<sup>5</sup>

The petitioner has not attended any course since her transfer to inactive disability status, but has remained current in the law by going to the local law library to review recent case law in domestic relations. Ex. 1 (BBO 8); Tr. 1:21 (Petitioner). She reads the Lawyer's Weekly on a

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<sup>5</sup> She also described working with the homeless for over thirty years, including running, working and fundraising for homeless shelters and serving on the board of directors for Friends of the Homeless in North Hampton, Massachusetts. Ex. 1 (BBO 6).

semiweekly basis, and is on a listserve for the Mass. Pro Bono Family Law Group and Community Legal Research Network sponsored by her law school, sites which provide a forum for attorneys to ask questions to and receive answers from the legal community. Tr. 1:21-22 (Petitioner). The petitioner was candid about the fact that she will need to brush up on the new alimony law, but indicated that she plans to do so promptly. Tr. 1:22, 54-55 (Petitioner). She knows she needs to get up to speed and said she would do this quickly. Tr. 1:54-55 (Petitioner). She testified that she was an “active MCLE attendee,” and that while she would need to brush up in a couple of areas, she generally feels competent. Tr. 1: 22 (Petitioner).

While on disability inactive status in Massachusetts, the petitioner has taken on two cases in New York. We credit her testimony that she notified New York about her status, and that New York did not prevent her from practicing there. The first case she took, in January 2015, involved an agreement for relocation in a custody context. Ex. 1 (BBO 5); Tr. 1:18 (Petitioner). The second case, which she began in March 2015, is an adverse possession matter where she was contacted by the nephew of a woman she had represented years ago. Ex. 1 (BBO 5); Tr. 1:20-21 (Petitioner). The petitioner felt confident about her ability to handle these cases in New York. She emphasized that she had never had a complaint there, that she had practiced there for a long time, and that she did not feel that the New York practice had anything to do with the problems she'd had here. Tr. 1:49 (Petitioner).

#### V. Conclusions and Recommendation

For the foregoing reasons, we conclude that the petitioner has not met her burden to prove that her mental condition does not adversely affect her ability to practice law. As indicated, we cannot find on this record that she has overcome her emotional problems. We found a strong lack of candor in her representations to us at the first hearing, and her actions

throughout these proceedings cause us to doubt that she has recovered from her disability and is prepared to resume the practice of law. Accordingly, we recommend denial of the petition for reinstatement.

We took under advisement the petitioner's motion to withdraw her petition for reinstatement because we wanted to reopen the record to hear more evidence. Now that the proceedings have concluded, we recommend that the motion to withdraw be denied. In the event the Court chooses, instead, to allow the motion, we recommend that it do so with prejudice to make it clear that the petitioner must wait a year before refiling a new petition for reinstatement.

Dated: May 10, 2016

Respectfully submitted,  
By the Hearing Panel,

Erin K. Higgins / mch  
Erin K. Higgins, Esq., Chair

David B. Krieger / mch  
David B. Krieger, M.D., Member

Vincent J. Pisegna / mch  
Vincent J. Pisegna, Esq., Member