IN RE: HENRY B. WYNN

NO. BD-1987-22

S.J.C. Judgment of Reinstatement denied entered by Justice Gants on April 17, 2014.[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

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: BD-1987-22

IN RE: HENRY B. WYNN

MEMORANDUM OF DECISION

Henry B. Wynn has petitioned for reinstatement to the bar under S.J.C. Rule 4:01, § 18(4), as amended, 394 Mass. 1106 (1985). Wynn was temporarily suspended on September 15, 1987, following his conviction for failing to file State income tax returns. On January 13, 1989, while still under temporary suspension, he entered into a stipulation with bar counsel admitting to multiple acts of misconduct, and both the Board of Bar Overseers (board) and the court accepted the parties' joint recommendation that he be suspended from the practice of law for two years, retroactive to the date of his temporary suspension. This is his third petition for reinstatement. His first, filed on August 6, 1990, was denied, and he withdrew his second, filed on November 4, 2005, without prejudice by consent.[1]

Discussion. On February 24, 2014, the board adopted the hearing panel's report and its recommendation that Wynn's

[1] Since March 5, 1999, he has been granted leave by this court to work as a paralegal.

petition for reinstatement be denied. The findings and recommendations of the board are entitled to deference but are not binding on this court. In re Ellis, 457 Mass. 413, 415 (2010); Matter of Prager, 422 Mass. 86, 89 (1996). "The test of fitness for reinstatement is two pronged. Not only must a petitioner demonstrate the requisite moral qualifications and learning in the law, but he also must show that his resumption of the practice of law will not be detrimental to the integrity of the bar, the administration of justice, or the public interest." Id. at 93, citing S.J.C. Rule 4:01, § 18(5), as amended, 394 Mass. 1106 (1985). "The conduct giving rise to the petitioner's disbarment is affirmative proof that he lacked at the time the moral qualifications to practice law, and he bears the heavy burden of establishing that he presently meets those moral and competency qualifications" (citation omitted). In re Ellis, supra. "In judging whether he is fit to serve as an attorney, the court looks to (1) the nature of the original offense for which the petitioner was disbarred; (2) the petitioner's character, maturity, and experience at the time he was disbarred; (3) the petitioner's occupation and conduct in the time since his disbarment; (4) the time elapsed since the disbarment; and (5) the petitioner's present competence in legal skills." Id. The petitioner must show that he has so rehabilitated himself that he "currently possesses the necessary

moral character to be admitted to the bar of the Commonwealth," Matter of Prager, supra at 92, and will "inspire public confidence once again, in spite of his previous actions." Id. at 89, quoting Matter of Hiss, 368 Mass. 447, 452 (1975). "[I]t is appropriate, despite the lack of specific directives, to consider the public perception of and confidence in the bar when determining the fitness of original applicants to practice law in the Commonwealth." Matter of Prager, supra at 93.

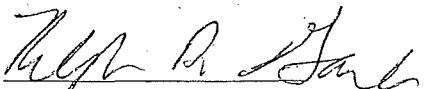
The board rested its denial on two separate grounds: Wynn's failure to prove that he has the requisite learning in Massachusetts law, and his failure to establish that he has been morally rehabilitated. As to learning in Massachusetts law, I adopt the factual findings made by the hearing panel and adopted by the board, which I do not find to be clearly erroneous. Apart from those findings, I note that Wynn claims that his conviction for failure to file State income taxes was vacated by the court, but he has failed to furnish any court document, even a docket entry, to support this contention, even though his claim is contested by the board. A competent lawyer would not make this assertion without locating the appropriate court document and making it part of the record.

As to his moral qualifications, apart from the finding that he held himself out as an attorney, I adopt the factual findings made by the hearing panel and adopted by the board, which I do

not find to be clearly erroneous. I am particularly troubled by his insistence that he did not admit to the allegations set forth in the stipulation in 1989, where the board expressly voted to adopt the hearing panel's recommendation only on the condition that he admit to allegations that previously he had denied but not contested, and where he executed a revised stipulation on June 7, 1989, in which he clearly accepted the board's condition and admitted to the allegations. His continued reliance on a letter he wrote to Assistant Bar Counsel Terence Troyer on June 12, 1989, in which he claimed that his admission was nothing more than the same nolo contendere that the board had rejected suggests not only that he was trying then to avoid the legal consequences of his admission but that he is trying to do it again now.

In view of the deference given to the board's decision and my independent review of the evidence, I conclude that the board did not err in determining that Wynn had failed to meet "the heavy burden" of establishing that he presently meets the required legal and moral qualifications to warrant reinstatement. See In re Ellis, supra. I also conclude that, in view of the totality of his conduct, the public's confidence in the bar would be diminished by his reinstatement.

Conclusion. For the reasons stated above, Wynn's petition for reinstatement is denied.



Ralph D. Gants
Associate Justice

Entered: April 16, 2014