

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of	:	No. 266 Disciplinary Docket No. 3
	:	
BRIAN DERMOT FLAHERTY	:	No. 128 DB 1996
	:	
PETITION FOR REINSTATEMENT	:	Attorney Registration No. 63270
	:	(Allegheny County)

ORDER

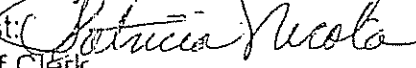
PER CURIAM:

AND NOW, this 12th day of July, 2007, upon consideration of the Report and Recommendations of the Disciplinary Board dated May 11, 2007, the Petition for Reinstatement is granted.

Pursuant to Rule 218(e), Pa.R.D.E., petitioner is directed to pay the expenses incurred by the Board in the investigation and processing of the Petition for Reinstatement.

A True Copy Patricia Nicola

As of: July 12, 2007

Attest: 

Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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: No. 3
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: Attorney Registration No. 63270
PETITION FOR REINSTATEMENT :
: (Allegheny County)

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 218(c)(5) of the Pennsylvania Rules of Disciplinary Enforcement, The Disciplinary Board of the Supreme Court of Pennsylvania submits its findings and recommendations to your Honorable Court with respect to the above captioned Petition for Reinstatement.

I. HISTORY OF PROCEEDINGS

By Order of March 25, 1998, the Supreme Court of Pennsylvania suspended Brian Dermot Flaherty for a period of one year and one day. This suspension arose out of Mr. Flaherty's conviction of the crime of DUI, and his subsequent failure to report such conviction to the Disciplinary Board. Mr. Flaherty filed a Petition for Reinstatement on

March 8, 2006. Office of Disciplinary Counsel filed a Response to Petition for Reinstatement on April 24, 2006 and reserved its right to oppose reinstatement.

A reinstatement hearing was held on July 20, 2006, before a District IV Hearing Committee comprised of Chair Mark R. Alberts, Esquire, and Members Jan C. Swensen, Esquire, and Carl A. Parise, Esquire. Petitioner was represented by Craig E. Simpson, Esquire. Petitioner testified on his own behalf and offered into evidence exhibits. Petitioner presented the testimony of five witnesses. Office of Disciplinary Counsel offered no testimony in opposition.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on January 9, 2007, with the majority recommending that Petitioner be reinstated. The dissenting Member stated that Petitioner did not demonstrate that he is competent or learned in the law.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on March 20, 2007.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner is Brian Dermot Flaherty. He was born in 1962 and was admitted to practice law in Pennsylvania in 1991. He presently resides at 9 Duff Road, Apt. 8, Pittsburgh PA 15235.

2. After his admission to the bar, Petitioner worked as an independent contractor for Milton Raiford, Esquire, and Mike Foglia, Esquire, starting in about December 1991.

3. From 1993 until January 1997, Petitioner spent about 20 hours a week as a sole practitioner, working out of his home. He handled any kind of case he could get, but mainly did criminal defense work and small arbitration cases.

4. Petitioner had no support staff and did his own typing.

5. Petitioner estimates that he represented 200 clients, engaged in three jury trials, and handled an estimate of 100 or more preliminary hearings and bond hearings.

6. Petitioner's other source of income at this time was painting houses and apartments.

7. Petitioner became dissatisfied with his law practice and decided to re-evaluate his options.

8. Petitioner stopped practicing law in January 1997 when he was transferred to involuntary inactive status by Order of the Supreme Court for failing to pay his annual attorney registration fee.

9. On March 25, 1998, upon order of the Supreme Court, Petitioner was suspended from the practice of law for a period of one year and one day.

10. The suspension was based on Petitioner's conviction of three counts of driving under the influence of alcohol or controlled substance.

11. Petitioner is an alcoholic and has been in recovery since July 2001.

12. Petitioner regularly attends Alcoholics Anonymous meetings.

13. Petitioner is committed to his sobriety.

14. During the period of his sobriety he became interested in teaching as a result of his volunteer work in a literacy program

15. Petitioner pursued his certification as a secondary teacher, completing his course work at California University of Pennsylvania.

16. The Pennsylvania Department of Education did a character evaluation and looked at Petitioner's criminal history.

17. Petitioner fully disclosed his convictions for DUI.

18. Petitioner was issued a teaching certificate in May 2006.

19. Petitioner held several jobs between the time he was suspended from the practice of law in March, 1998, until he resigned from his employment at Day Ford in 2006 to pursue a teaching job. Petitioner worked for car dealers including Holiday Park Motors, Massey Buick, and Bill Gray Buick. He also worked for Sciaretti Asphalt and Paving Company as a laborer and as a lot attendant at Premium Motor Cars.

20. Petitioner fulfilled his Continuing Legal Education credits as required for readmission to the bar.

21. Petitioner relates that he has done legal research on record keeping, record expungement, defamation and has read court opinions through the Allegheny County Bar Association website.

22. Petitioner presented five witnesses on his behalf. Ambrose Murray, Bruce D. Campbell, Esquire, Keith Accettula, Peter Flaherty, III, and Mark Flaherty, Esquire (no relation), testified credibly to Petitioner's character and his successful management of his alcoholism since July 2001,

23. Petitioner is remorseful for his past conduct and has rehabilitated himself.

III. CONCLUSIONS OF LAW

1. Petitioner has demonstrated, by clear and convincing evidence, that he possesses the moral qualifications, competence and learning in the law necessary to practice law in Pennsylvania. Pa.R.D.E. 218(c)(3)(i).

2. Petitioner's resumption of the practice of law will not be detrimental to the integrity and standing of the bar, nor subversive of the interests of the public. Pa.R.D.E. 218(c)(3)(i).

IV. DISCUSSION

Petitioner seeks reinstatement to the bar from his suspension of one year and one day. An attorney who is suspended from the practice of law for a period

exceeding one year may not resume practice until reinstated by Order of the Supreme Court of Pennsylvania. In order for Petitioner to gain reinstatement after suspension, he has the burden of demonstrating, by clear and convincing evidence, that he possesses the moral qualifications, competency and learning in the law required for admission to practice law. Further, Petitioner must demonstrate that his resumption of the practice of law will not be detrimental to the integrity and standing of the bar, nor subversive of the public interest. In determining Petitioner's fitness to resume the practice of law, the Board considers the nature of Petitioner's misconduct, his present competence and legal abilities, his character, rehabilitation, and degree of remorse expressed. Philadelphia News, Inc., v. Disciplinary Board of the Supreme Court, 363 A.2d 779 (Pa. 1976).

Petitioner's suspension resulted from his 1995 conviction of driving under the influence and his failure to report such conviction to the Disciplinary Board. Petitioner admits that he is an alcoholic and had problems handling alcohol at that time in his life. While Petitioner did not seek help for his alcoholism immediately after his suspension in 1998, he eventually reached a point in his life when he admitted he needed help and sought treatment. Petitioner began regularly attending Alcoholics Anonymous in 2001 and has not had a drink since July 5, 2001. He continues to attend a special AA meeting for lawyers. He does not drink and drive and has had no more entanglements with law enforcement. Petitioner has made substantial and profound changes in the way he lives his life.

Petitioner supplied character evidence in the form of witnesses who have been impressed with the change in Petitioner's way of life. Petitioner has also done community service work in a literacy program, from which he developed an interest in obtaining a teaching certificate. Petitioner pursued that interest and in May 2006 he was awarded a teaching certificate in secondary education by the Pennsylvania Department of Education. Petitioner is currently seeking employment as a teacher.

Petitioner fulfilled his required Continuing Legal Education credits and offered credible evidence that he reads legal periodicals, reporters and advance sheets on line. This is sufficient to prove Petitioner's competence and learning in the law. While Petitioner did not work as a paralegal, as some suspended and disbarred attorneys do, such law-related activity is not a requirement for reinstatement.

Based on the totality of the facts of record the Board concludes that Petitioner has met his burden of proving his eligibility to practice law and recommends that the Petition for Reinstatement be granted.

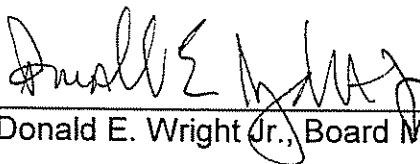
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Petitioner, Brian Dermot Flaherty, be reinstated to the practice of law.

The Board further recommends that, pursuant to Rule 218(e), Pa.R.D.E., Petitioner be directed to pay the necessary expenses incurred in the investigation and processing of the Petition for Reinstatement.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: 
Donald E. Wright Jr., Board Member

Date: May 11, 2007

Board Member Gentile did not participate in the adjudication.