

IN THE SUPREME COURT OF PENNSYLVANIA

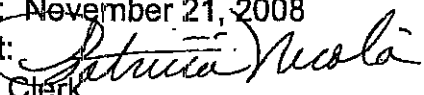
In the Matter of : No. 1166 Disciplinary Docket No. 3
: :
: No. 181 DB 2004
ROBERT F. CREEM : :
: Attorney Registration No. 17953
: :
PETITION FOR REINSTATEMENT : (Lehigh County)

ORDER

PER CURIAM:

AND NOW, this 21st day of November, 2008, upon consideration of the Report and Recommendations of the Disciplinary Board dated August 27, 2008, 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: November 21, 2008
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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ROBERT F. CREEM : No. 181 DB 2004
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PETITION FOR REINSTATEMENT : Attorney Registration No. 17953
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: (Lehigh 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

On July 9, 2007, Robert F. Creem filed a Petition for Reinstatement to the bar of the Supreme Court of Pennsylvania. Petitioner was suspended for a period of one year

and one day by Order of the Court dated September 28, 2006. Office of Disciplinary Counsel filed a Response to Petition for Reinstatement on October 15, 2007 and reserved the right to take a final position on reinstatement.

A reinstatement hearing was held on November 30, 2007, before a Hearing Committee comprised of Chair Joseph G. Riper, Esquire, and members Albert P. Massey, Jr., Esquire, and Ethan N. Halberstadt, Esquire. Respondent was represented by Samuel C. Stretton, Esquire. During the hearing Petitioner called three character witnesses and his treating psychiatrist. Petitioner testified in support of his reinstatement.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on April 11, 2008 and recommended that reinstatement be granted.

Office of Disciplinary Counsel filed a Brief on Exceptions on April 21, 2008. Petitioner filed a Brief Opposing Exceptions on May 2, 2008 and requested oral argument before the Disciplinary Board.

Oral argument was held before a three member panel of the Disciplinary Board on July 9, 2008.

This matter was adjudicated by the Disciplinary Board at the meeting on July 19, 2008.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner is Robert F. Creem. He was born in 1947 and was admitted to the practice of law in Pennsylvania in 1973. His current business address is 1541 Alta Drive, Whitehall PA 18052.

2. By Order dated September 28, 2006, the Supreme Court of Pennsylvania suspended Petitioner for a period of one year and one day.

3. Petitioner engaged in the conversion of fiduciary funds for his own personal use. In a client matter, he retained the sum of \$8,000 while issues relating to a medical lien and welfare lien were to be resolved; there was a delay in satisfying the liens and a delay in distributing the retained funds. Petitioner also made personal use of some of the retained funds during the time in question. In a different matter, Petitioner's escrow account was out of trust for various periods of time and other misappropriations occurred. Petitioner fully admitted that his fiduciary funds were not properly handled nor sufficiently maintained during the time period from September 4, 2002 to April 9, 2004.

4. Petitioner's responses to some questions on the Reinstatement Questionnaire were not clear.

5. In Question No. 12, Petitioner was asked to list "any income" in excess of \$500 but Petitioner only listed income from his law practice. He did not report a total income of \$134,886 for 2004, listing only a loss from his law practice of \$13,127.

6. For 2005, Petitioner listed income of \$69,031 from his law practice. His federal income tax return for that year reported total income of \$194,869.

7. The income Petitioner did not report for 2004 and 2005 on the Reinstatement Questionnaire were distributions from his retirement account which were required to be reported for taxing purposes on Petitioner's federal income tax returns.

8. Petitioner supplied Office of Disciplinary Counsel with his federal income tax returns for 2004 and 2005 prior to the reinstatement hearing.

9. In completing his response to Question No. 10 of the Questionnaire, Petitioner omitted the requirement to "attach a current copy of docket entries for each case listed."

10. In response to Question 10(a) as to whether Petitioner had ever been involved in a civil action as a party, or as one who claimed an interest, Petitioner listed three cases. According to the docket, there are approximately 37 actions in which Petitioner is or was involved as a party in Lehigh County.

11. In response to Question 10(c) as to whether there were any judgments currently listed on court records as unsatisfied, Petitioner listed one such judgment, but the court records search list showed approximately five active, unsatisfied judgments filed against Petitioner.

12. In 2005 a federal tax lien for \$45,000 was entered against Petitioner. The lien has been satisfied.

13. Petitioner did not practice law or give legal advice during his suspension. He lived on monies received from fees that were still due him when he was a lawyer and from money borrowed from his family.

14. Petitioner indicated that he had not paid any of the outstanding judgments and liens and tax liens because he did not have the funds to do so.

15. Petitioner has discussed with some of his creditors the fact that he will repay them once he is reinstated and has cash flow.

16. Petitioner noted that he spoke to the Treasurer for the City of Allentown about taxes that were due and his intention to pay. He also spoke to the Morning Call newspaper about outstanding advertising expenses.

17. Petitioner talked to a deputy attorney general in the Department of Revenue about tax delinquencies but did not have any agreement yet with the Department.

18. Petitioner has suffered from mental illness and has treated with his psychiatrist, Dr. Daniel Goldfarb, since 1992. He currently sees Dr. Goldfarb every two to three months.

19. Dr. Goldfarb testified at the reinstatement hearing that Petitioner suffers from Bipolar Disorder and mild Attention Deficit Disorder. Petitioner is prescribed Lithium, Paxil, Zanax and Risperdal, which he takes regularly.

20. Petitioner's illnesses are under control and there is no cognitive reason that would preclude Petitioner from returning to the practice of law.

21. Petitioner accepted full responsibility for his past misconduct. He hired an accountant to audit his escrow account and then replaced the monies at issue.

22. If reinstated to the practice of law, Petitioner would operate his IOLTA account differently. He indicated that he had purchased a computer program to help keep

organized and would personally monitor the account. He further testified that he would hire a professional bookkeeper to assist him in handling the account and would continue to utilize an accountant.

23. Petitioner indicated that he would be the only person who would sign escrow checks and he would not delegate the check signing to a non-lawyer.

24. Petitioner has satisfied his continuing legal education requirements during his suspension. He also reads journals of the Pennsylvania Trial Lawyers Association and American Trial Lawyers Association, as well as all new case referenced on the Pennsylvania Trial Lawyers website.

25. During his suspension, Petitioner maintained his civic and charitable activities, including involvement with his synagogue and the Jewish Federation of Lehigh County.

26. If reinstated Petitioner plans to have a general practice of law.

27. Taffey Ney is an employee of the Jewish Federation of Lehigh County. She has known Petitioner for six years and is aware of his reputation in the community as a truthful and honest person.

28. Harvey Creem is a brother of Petitioner and is a retired C.P.A. He is not aware of any current psychological problem that would cause concern.

29. Gerald Creem is a brother of Petitioner and is a financial advisor for Wachovia. He indicated that Petitioner has expressed remorse and has learned from his mistakes. He notes a definite improvement in his brother's life over the past year.

III. CONCLUSIONS OF LAW

1. Petitioner has demonstrated by clear and convincing evidence that he has the moral qualifications, competency and learning in the law required for admission to practice law in the Commonwealth. Pa.R.D.E. 218(c)(3)(i).

2. Petitioner has demonstrated by clear and convincing evidence that the resumption of the practice of law within the Commonwealth will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subversive of the public interest. Pa.R.D.E. 218(c)(3)(i).

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of Petitioner's request for reinstatement from suspension. By Order of the Supreme Court of Pennsylvania dated September 28, 2006, Petitioner was suspended for one year and one day. Pursuant to Rule 218(a), Pa.R.D.E., an attorney who is suspended for a period exceeding one year may not resume the practice of law until reinstated by the Supreme Court of Pennsylvania. In order for Petitioner to gain reinstatement, he has the burden of proving by clear and convincing evidence that he possesses the moral qualifications, competency and learning in the law required for admission to practice law in this Commonwealth. In addition, Respondent has the burden of demonstrating that his

resumption of the practice of law will not be detrimental to the integrity and standing of the bar or administration of justice, nor subversive of the public interest. Rule 218(c)(3)(i), Pa.R.D.E.

A reinstatement proceeding is a searching inquiry into a lawyer's present professional and moral fitness to resume the practice of law. The object of concern is not solely the transgressions which gave rise to the lawyer's suspension, but rather the nature and extent of the rehabilitative efforts the lawyer has made since the time the sanction was imposed, and the degree of success achieved in the rehabilitative process. Philadelphia News, Inc. v. Disciplinary Board of the Supreme Court, 363 A.2d 779 (Pa. 1976).

Petitioner's misconduct entailed the misappropriation of funds of a client and from his escrow account, which remained out of trust for various periods of time. Petitioner comes before the Board seeking reinstatement to practice by offering evidence of his current fitness for the Board to evaluate.

Petitioner has been suspended since September 28, 2006. Prior to the discipline in question, Petitioner had practiced law in Pennsylvania since 1973 without incident. During the time frame of his suspension he has not engaged in the practice of law nor has he held himself out as an attorney licensed to practice law in Pennsylvania. Petitioner has expressed sincere remorse for his misconduct. He understands that his misuse of funds and failure to monitor the financial activity of his trust account were serious violations of his duties to his clients. If reinstated, Petitioner described the steps he would

take to ensure that no violations occur in the future. He plans to hire a bookkeeper and utilize an accountant. He has already purchased a computer program to assist him in keeping track of his accounts.

Petitioner offered credible testimony concerning his financial status, judgments against him, and his ongoing efforts to satisfy creditors. Petitioner openly discussed his Bipolar Disorder and Attention Deficit Disorder and his efforts to treat these disorders through sessions with his psychiatrist and use of prescription medication. The evidence is clear that these mental disorders do not impact his cognitive ability to practice law and are not an impediment to his reinstatement.

Petitioner offered credible evidence of his charitable activities and his good character in the community. Petitioner offered credible evidence that he has maintained his knowledge of the law by fulfilling his Continuing Legal Education credits and by reading and reviewing various legal journals.

Office of Disciplinary Counsel objects to Petitioner's reinstatement. Office of Disciplinary Counsel contends that errors and omissions in Petitioner's Reinstatement Questionnaire preclude reinstatement as they demonstrate that Petitioner is not fit and technically competent to practice law. As set forth in the Findings of Fact, Petitioner did make errors in conjunction with his preparation and responses to the Questionnaire. For example, he failed to identify all civil actions in which he had been a party and failed to identify all judgments taken against him.

Question 12 of the Questionnaire required Petitioner to identify any income in excess of \$500. Petitioner only listed income obtained from his law practice, resulting in a disparity between Petitioner's response and the income reported on his federal income tax return for 2004 and 2005. Petitioner credibly explained his response and provided Office of Disciplinary Counsel with full and complete copies of his tax returns which disclosed withdrawals from Petitioner's retirement fund.

Petitioner has the responsibility to carefully complete the Reinstatement Questionnaire; however, the errors and omissions cited by Office of Disciplinary Counsel do not rise to a level justifying Petitioner's preclusion from reinstatement. None of the errors are material in answering the fundamental question of whether Petitioner possesses the fitness to resume the practice of law. The errors and omissions were not intended to mislead Office of Disciplinary Counsel. Moreover, Petitioner and his counsel cooperated with the Office of Disciplinary Counsel. Petitioner's testimony at the reinstatement hearing credibly explained any inaccuracies on the Questionnaire, and, importantly, underscored that he understands his fiduciary duties to his clients.

Petitioner has met his burden of proving with clear and convincing evidence that he has the moral qualifications, competency and learning in the law required for admission to practice law in the Commonwealth, and he has further demonstrated by clear and convincing evidence that his resumption of the practice of law within the Commonwealth will be neither detrimental to the integrity and standing of the bar or the

administration of justice, nor subversive of the public interest.

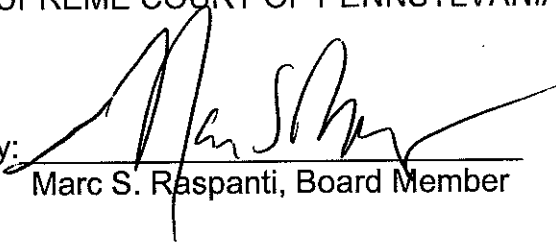
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Petitioner, Robert F. Creem, 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: 

Marc S. Raspanti, Board Member

Date: August 27, 2008

Board Member Newman did not participate in the adjudication