

IN THE SUPREME COURT OF PENNSYLVANIA

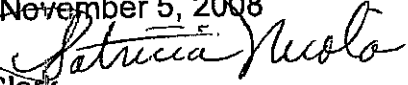
In the Matter of : No. 1083 Disciplinary Docket No. 3
: :
MARVIN F. GALFAND : No. 25 DB 2004
: :
PETITION FOR REINSTATEMENT : Attorney Registration No. 2834
: :
: (Philadelphia)

ORDER

PER CURIAM:

AND NOW, this 5th day of November, 2008, the Motion to Correct the Record is denied and, upon consideration of the Report and Recommendations of the Disciplinary Board dated May 2, 2008, the Petition for Reinstatement is hereby denied.

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 5, 2008
Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 1083 , Disciplinary Docket
: No. 3
MARVIN F. GALFAND :
: No. 25 DB 2004
: Attorney Registration No. 2834
PETITION FOR REINSTATEMENT :
: (Philadelphia)

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 June 7, 2007, Marvin F. Galfand filed a Petition for Reinstatement to the Supreme Court of Pennsylvania. Petitioner was suspended for a period of one year and one day by Order of the Supreme Court dated February 7, 2006. On July 6, 2007, Petitioner filed Revised Answers to Questionnaire. By Response dated August 8, 2007,

Office of Disciplinary Counsel indicated that after investigation of Petitioner's Questionnaire, it had concerns regarding reinstatement. Petitioner filed a Supplement to Petition for Reinstatement on September 13, 2007.

A reinstatement hearing was held on September 27, 2007, before a District I Hearing Committee comprised of Chair Michael L. Turner, Esquire, and Members David M. Laigaie, Esquire, and Michael L. Korniczky, Esquire. Petitioner was represented by Cletus P. Lyman, Esquire. Petitioner testified on his own behalf.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on January 18, 2008 and recommended that the Petition for Reinstatement be denied.

Petitioner filed a Brief on Exceptions on February 19, 2008.

Office of Disciplinary Counsel filed a Brief Opposing Exceptions on March 10, 2008.

This matter was adjudicated by the Disciplinary Board at the meeting held on March 26, 2008.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner is Marvin F. Galfand. He was born in 1939 and was admitted to practice law in Pennsylvania in 1965. His current business address is 2037 Locust St., Philadelphia PA 19103.

2. By Order dated February 7, 2006, Petitioner was suspended from the bar of Pennsylvania for a period of one year and one day.

3. This suspension was based on two separate matters. In the first matter Petitioner misappropriated a client's money and deceived that client into believing that Petitioner had not received the client's settlement funds. Petitioner thereafter used non-fiduciary funds to satisfy his obligations to that client.

4. In the second matter, during a period of approximately 15 months, Petitioner deposited settlement monies into his escrow account and used the funds in an unauthorized manner. Petitioner used settlement funds to pay for depositions, make distributions to medical providers, make settlement distributions to other clients and pay personal expenses.

5. Petitioner filed a Petition for Reinstatement and Reinstatement Questionnaire on June 7, 2007.

6. The Questionnaire contained numerous omissions and misstatements, as described below.

7. In response to Question 2(b), which asked "Date, place and court of initial admission to the bar of Supreme Court of Pennsylvania", Petitioner answered "October 1964".

8. However, when Petitioner was advised that his attorney registration statement had an admission date of January 1965, he was unsure of when he was admitted to the bar.

9. In response to Question 2(c), which asked "Have you ever applied for admission to practice as an attorney or counselor in any other state or country or before Federal Court or an Administrative Agency?", Petitioner checked "yes" and listed four entities.

10. By letter of June 15, 2007, Office of Disciplinary Counsel asked Petitioner to provide the dates of admission to each of the four entities listed, to advise whether he was admitted to the Middle District of Pennsylvania via Motion/Bar Exam and finally, to provide evidence of his notification to these Courts of his suspension by the Supreme Court.

11. In Petitioner's Response to the June 15, 2007 letter, Petitioner failed to explain or qualify his previous answer.

12. At the September 27, 2007 reinstatement hearing, Petitioner provided testimony that:

- a. He did not know when he was admitted to the United States Tax Court;
 - b. He did not know if he notified other Courts of his suspension;
- and
- c. He never notified the United States Supreme Court of his suspension.

13. Question 2(d) of the Questionnaire states "Detail where, how long and under what circumstances you have been employed prior to your

disbarment/suspension/transfer to inactive status (listing all employers full time, part time and temporary, whether with or without compensation), by lawyer or law firm, or self-employed or employed by agency or business entity; the nature of employment, position held and the reason for termination of each position. If you are in partnership with another lawyer or with a law firm, list the name of the firm, the names of the other partners and the date of association." Petitioner had several overlapping dates of employment in his employment history.

14. Office of Disciplinary Counsel, by letter dated June 15, 2007, asked Petitioner to supply employment information for the years 1970-1975 and to provide the names of his employers during that time frame.

15. In his Response, Petitioner listed himself working at two law firms, Verlin & Goldberg and Shapiro & Galfand (one as an attorney and one as a partner), for overlapping years.

16. Petitioner was unable to explain which firms he worked for and during what time period he worked at those firms.

17. In response to Question 7(a) of the Questionnaire, which asks "Were you ever disciplined by a Court or any other jurisdiction including any state or federal administrative agency?", Petitioner checked "no".

18. Petitioner, at the reinstatement hearing, explained that he did not consider Question 7(a) as inquiring about his suspension in other Courts. Further, Petitioner's interpretation was that his suspension in the Eastern District, Tax Court and the

Middle District Court was not discipline to be reported, but after he thought about it he realized he should have answered "yes".

19. Question 11(a) of the Questionnaire states: "List in chronological order all occupations, jobs, business associations or other ventures of any kind whatsoever (full time, part time and temporary, whether with or without compensation) which you had during the period of your suspension/disbarment/inactive status. As to each, identify by name and address your employer (or partner or associate in business), state the amount of your salary or other form of compensation, if "other compensation", state the type and terms thereof and list the dates and duration of each. If any employer was a relative of yours or in the case of a corporation or other business was owned or controlled by you or by a relative, so note, giving the name of the relative and his/her position in the business." Petitioner failed to answer this question.

20. Office of Disciplinary Counsel, by letter dated June 15, 2007, asked Petitioner to provide information regarding his employment during his period of suspension.

21. In his Response to the June 15, 2007 letter, Petitioner stated he "performed services as an accountant, financial advisor, investor, secretary and other services for my wife, tax preparation and assisted in other activities such as recordkeeping and bookkeeping."

22. At the reinstatement hearing Petitioner explained that he worked at his wife's law office doing secretarial work including typing and what he described as financial work. Petitioner also answered telephones and spoke to his wife's clients.

23. Petitioner believed that the clients to whom he spoke knew he was a suspended attorney because he or his wife would tell them that piece of information when they spoke to the clients.

24. Petitioner did not know that under Pennsylvania Rule of Disciplinary Enforcement 217(j)(4)(i) he was not permitted to engage in law-related activity in an office where he had worked when he had engaged in the misconduct that resulted in his suspension.

25. Petitioner's wife, Myra Galfand, Esquire, did not notify the Disciplinary Board of her status as a supervising attorney as required by Pa.R.D.E. 217(j)(5).

26. Petitioner did not know that the 2007 Legal Directory listed him as a practicing attorney. He was informed of this fact at the hearing.

27. Petitioner maintains a business checking account. He writes checks from the account several times a month when he is aware that there are insufficient funds to cover those checks. He stated that he has overdraft protection so he believes he can write checks and the bank will pay them and charge Petitioner \$35.00 per check.

III. CONCLUSIONS OF LAW

Petitioner has not demonstrated by clear and convincing evidence that he has the competency required for admission to practice law in Pennsylvania.

IV. DISCUSSION

This matter is before the Board for consideration of Petitioner's request for readmission to the bar of the Supreme Court of Pennsylvania following his suspension of one year and one day. Petitioner must show by clear and convincing evidence that he has the moral qualifications, competency and learning in the law required for admission to practice law in this Commonwealth. Pa.R.D.E. 218(c)(3)(i). Further, Petitioner must demonstrate 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. Pa.R.D.E. 218(c)(3)(i). 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).

The underlying basis for Petitioner's suspension involved misappropriation of a client's settlement money. Petitioner deceived his client into believing that he never received the funds and he then used fiduciary funds to satisfy obligations to that client. Petitioner also engaged in a pattern of commingling and conversion during a period of 15 months, whereby he deposited settlement monies into his escrow account and then engaged in improper use of those escrow funds.

Petitioner's difficulties with the reinstatement proceeding started with his inability to complete the Reinstatement Questionnaire correctly. He failed to answer

certain questions and partially answered other questions. Petitioner either misinformed or omitted the following information: his date of admission to the bar of Pennsylvania; the dates of admission to four other courts and the status of his discipline in those courts; his employment history prior to suspension; details of his employment during suspension. Petitioner contradicted himself in his Amended Reinstatement Questionnaire and, upon cross-examination, exhibited an inability to answer questions pertaining to the Questionnaire. His attempts to clarify misleading and omitted information were not successful. Petitioner's errors and omissions tend to show his carelessness and inattention to detail.

Petitioner explained his omissions and errors as technicalities which did not rise to the level of incompetence. The Board disagrees. A petitioner's inability to fill out a pre-printed questionnaire involving his previous practice of law and his employment while suspended constitutes a competency problem. Given the desire to have one's professional license reinstated, it is assumed that great care will be taken to provide accurate information. The instant matter is not a case of one or two insignificant errors but a pattern of inaccuracies which raise doubts as to Petitioner's fitness.

Petitioner's testimony regarding his bank accounts bolsters the conclusion that he lacks competency. His method of writing checks on his business account involves writing checks on insufficient funds and depending on his overdraft protection, for which he is charged \$35 per check. After a suspension of one year and one day for violations of the rules of conduct involving control of clients' funds and the commingling and conversion of

same, the least that can be expected from a petitioning attorney is an enhanced knowledge of the correct way to manage checking accounts. That knowledge was not demonstrated by Petitioner.

The totality of the record before the Board demonstrates that Petitioner is not ready for reinstatement. Petitioner was never able to make a strong showing of competency at any level of the proceedings.

Petitioner has not met his burden with clear and convincing evidence that he is ready to resume the practice of law.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Petitioner, Marvin F. Galfand, be denied reinstatement 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: Charlotte S. Jefferies
Charlotte S. Jefferies, Board Member

Date: May 2, 2008

Board Members Newman, Storey and Cogneetti did not participate in the adjudication.