

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of	:	No. 110 Disciplinary Docket No. 1 (No. 43 RST 2007)
	:	
	:	
BARRY P. TUMPSON	:	Nos. 28 DB 1973 and 14 DB 1976
	:	
	:	Attorney Registration No. 15103
	:	
PETITION FOR REINSTATEMENT	:	(Out of State)

ORDER

PER CURIAM:

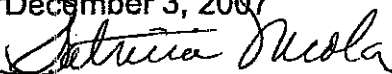
AND NOW, this 3<sup>rd</sup> day of December, 2007, upon consideration of the Report and Recommendations of the Disciplinary Board dated September 14, 2007, the Petition for Reinstatement is granted.

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.

Mr. Justice Saylor dissents.

A True Copy Patricia Nicola

As of: December 3, 2007

Attest:   
Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 110 Disciplinary Docket  
: No. 1  
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BARRY P. TUMPSON : Nos. 28 DB 1973 & 14 DB 1976  
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: Attorney Registration No. 15103  
PETITION FOR REINSTATEMENT :   
: (Out of State)

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

Barry P. Tumpson, Petitioner, is before the Disciplinary Board seeking reinstatement from suspension. By Order dated November 24, 1975, the Supreme Court of Pennsylvania suspended Petitioner for a period of three months. The Court denied Petitioner's first Petition for Reinstatement by Order of May 8, 1978. Pursuant to the

Order, the Court directed that Petitioner was not permitted to apply for reinstatement until after March 1, 1979. Petitioner applied for reinstatement for a second time, which the Court denied by Order of June 24, 1980. Petitioner filed a third Petition for Reinstatement on December 4, 2006. The Petition was referred to Office of Disciplinary Counsel for investigation. Office of Disciplinary Counsel filed a Response to Petition for Reinstatement on January 19, 2007 and stated its opposition to reinstatement.

A reinstatement hearing was held on March 23, 2007, before a District IV Hearing Committee comprised of Chair Karen Y. Bonvalot, Esquire, and Members Martin T. Durkin, Esquire, and John C. Unkovic, Esquire. Petitioner appeared pro se. Petitioner testified on his own behalf and presented character letters in support of reinstatement.

The Hearing Committee filed a Report on June 29, 2007 and recommended that the Petition for Reinstatement be granted.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on July 21, 2007.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner is Barry P. Tumpson. He was born in 1942 and was admitted to practice law in Pennsylvania in 1972. His current business address is 2780 Northeast 209<sup>th</sup> St., Aventura FL 33180.

2. By Order of November 24, 1975, the Supreme Court of Pennsylvania suspended Petitioner for a period of three months.

3. This suspension arose from Petitioner's actions in several matters. In the first matter, in April 1973, Petitioner engaged in a wrestling match with a deputy sheriff in Beaver, Pennsylvania. During the course of the scuffle Petitioner removed a loaded .38 caliber revolver from his pocket. The weapon was taken from Petitioner and he was charged with assault and battery and pointing a firearm. Following a trial Petitioner was found guilty of simple assault.

4. In May 1972, Respondent engaged in activities whereby he recommended the employment of himself to a nonlawyer who had not sought his advice regarding employment of a lawyer.

5. In February 1973 Petitioner represented a client in a district justice hearing and engaged in a "sham" withdrawal in order to secure a postponement of the hearing.

6. In November 1972, Petitioner filed an application for a license to carry a firearm, which application contained an untrue answer regarding his prior arrests.

7. Petitioner filed for reinstatement from his suspension, but the Supreme Court denied the reinstatement by Order of May 8, 1978, and further extended Petitioner's suspension until March 1, 1979 as a result of other misconduct, including making insulting

and derogatory remarks to a police officer, maintaining a sign advertising himself as an attorney-at-law while suspended, neglecting legal matters, representing parties in a conflict of interest, and conduct involving dishonesty, fraud, and deceit.

8. Petitioner filed a second Petition for Reinstatement, which was denied by the Court by Order of June 14, 1980. The basis for the denial was Petitioner's failure to meet his burden of proving he was fit and morally qualified to practice law in Pennsylvania.

9. Evidence was adduced at the second reinstatement hearing that Petitioner engaged in threatening behavior towards the disciplinary counsel handling the matter.

10. On December 4, 2006, Petitioner filed the instant Petition for Reinstatement.

11. By January 17, 2007 letter to the Disciplinary Board, Office of Disciplinary Counsel filed a Response objecting to reinstatement on the grounds that Petitioner's "31-year absence" from the practice of law "...casts doubt upon his competence and learning in the law", and that Petitioner "...must demonstrate that he has been treated for his previously-diagnosed disorder, and that such disorder is controlled so that he is not a risk for such conduct in the future."

12. Petitioner moved to Florida in 1980 and has not practiced law.

13. While Petitioner has been arrested on several occasions, he has not been convicted of any crime. His most recent arrest was in 2003.

14. Since Petitioner moved to Florida he has been engaged in the management of small businesses. These include a costume jewelry business and a

delicatessen restaurant. Most recently, Petitioner was self-employed from 1994 through the present in a business called Telephone Takeout/Dial4Dinner, Inc. and a gallery business with his wife from 2004 through 2006.

15. Petitioner has been involved in worthwhile business and community efforts. He was president of the merchant's association and sat on his condominium's board of directors for three terms. Petitioner was on the board of directors of the national trade association for his current restaurant delivery service business.

16. Petitioner is well-regarded by certain members of his local community as demonstrated by numerous letters which were placed in the record.

17. Petitioner fulfilled all of his required Continuing Legal Education credits for reinstatement.

18. Petitioner has not been employed in any law-related occupation.

19. In the Reinstatement Questionnaire Petitioner indicated that he is not certain if he desires to practice law in the future, but in the event he is reinstated, he would most likely work with a government agency.

20. Following Petitioner's suspension he experienced the termination of his first marriage and suffered from depression. He sought and received therapy.

21. Petitioner admits that he was in denial as to the fairness or legal sufficiency of the evidence which formed the basis for his suspension. As the years passed he tempered his views and came to recognize that his actions adversely affected the public's view of the profession and the standing of the bar.

22. Petitioner fully accepts responsibility for his actions.

III. CONCLUSIONS OF LAW

1. Petitioner has proven 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 proven 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 on a Petition for Reinstatement filed by Barry P. Tumpson. By Order of the Supreme Court of Pennsylvania dated November 24, 1975, Petitioner was suspended for three months. The instant Petition represents Petitioner's third attempt at reinstatement. His first attempt was denied by Order of the Supreme Court of Pennsylvania dated May 8, 1978. The Order further directed that Petitioner was not permitted to reapply to the bar until after March 1, 1979. Petitioner filed for reinstatement after that date, which petition was denied by the Court by Order of June 24, 1980.

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, Petitioner 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 was admitted to practice law in 1972. Within a period of three years he had become the subject of multiple complaints by clients and others with whom he had come in contact. His suspension arose from various ethical infractions, including such incidents as pulling a loaded revolver from his pocket during a scuffle in a police station, making a "sham" withdrawal as counsel to obtain a continuance, falsifying an application for a license to carry firearms, continuing to maintain signs identifying himself

as a lawyer after suspension, using obscene language to a policeman in connection with the arrest of a client, neglect of legal matters, and conduct involving dishonesty and deceit.

The records of the underlying proceedings reflect the findings of the Board that Petitioner was at times argumentative, facetious and disrespectful. The tactics he used were described as tiresome and obstructive. In connection with Petitioner's second reinstatement proceeding, Petitioner was found to have engaged in threatening behavior against disciplinary counsel. The Board was led to conclude by Petitioner's behavior that he still doubted that he committed wrongs deserving punishment and held resentment for the treatment he received under the disciplinary system. These findings culminated in Petitioner's failure to achieve reinstatement.

After failing to be reinstated on two occasions, Petitioner moved to Florida and ceased his involvement with the legal profession. Petitioner became a businessman and owned several successful business ventures. He also got involved in community activities through his position as a business owner. Members of the community think highly of Petitioner, as demonstrated by the letters presented into evidence.

Petitioner has been arrested on several occasions, but none of these arrests led to the conviction of a crime; the last arrest occurred in 2003.

Petitioner has fulfilled his requirements for Continuing Legal Education. He has not improperly practiced law while on suspension.

Office of Disciplinary Counsel originally stated its opposition to reinstatement following an investigation of the Petition for Reinstatement and Questionnaire. Specifically,

Office of Disciplinary Counsel questioned Petitioner's competency due to his 31 year absence from the bar. It also required more evidence that Petitioner's mental health issues are under control. Following the reinstatement hearing, Office of Disciplinary Counsel chose not to make any recommendation as to reinstatement.

While it appears that Office of Disciplinary Counsel has withdrawn its stated objections to reinstatement, the Board finds it prudent to answer the concerns raised. While this case is exceptional in the length of time between suspension and application for reinstatement, a 31 year absence from the practice of law does not, by itself, serve as an impediment to reinstatement. The rules require a showing of competency and learning in the law, which Petitioner has done. No additional burden is placed on Petitioner due to the length of time spent on suspension. As to issues of Petitioner's mental health, Petitioner himself revealed that he suffered from depression following his original involvement with the disciplinary system, and he later sought and received therapy for his condition. Otherwise, the state of Petitioner's mental health at the time of the prior hearings is not at all clear from the records of those proceedings and cannot serve as a basis to deny reinstatement in the instant matter.

Petitioner accepts full responsibility for the actions which led to his suspension. He admits that he was in denial for some time concerning the fairness and legal sufficiency of the evidence which formed the basis for the findings against him. He believes his views have been tempered with time and his own maturity. He realizes his

shortcomings and recognizes that his actions adversely affected the public's view of the legal profession and the standing of the bar.

The totality of the record demonstrates that Petitioner met his burden of proof pursuant to Rule 218(c)(3)(i).

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that Petitioner, Barry P. Tumpson, 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: Charlotte S. Jefferies  
Charlotte S. Jefferies, Board Member

Date: September 14, 2007

Board Member Gephart dissented.

Board Members Newman and Raspanti did not participate in the adjudication.