

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 898 Disciplinary Docket No. 2
: :
: :
HOWARD J. CASPER : No. 44 DB 1992
: :
: Attorney Registration No. 2704
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

By Petition for Reinstatement filed on November 20, 2003, Howard J. Casper requests readmission to the bar of the Supreme Court of Pennsylvania. Office of Disciplinary Counsel filed a Response to the Petition for Reinstatement on July 27, 2004 and opposes reinstatement. Petitioner was disbarred on consent by Order of the

Supreme Court dated October 1, 1992. The resignation was based on Petitioner's misappropriation of client funds; improper handling of escrow funds; failure to distribute funds to clients and third parties; and failure to communicate and act with candor toward his clients. This is Petitioner's second request for reinstatement to the bar. Petitioner initially filed a Petition for Reinstatement on May 3, 2000. He subsequently filed a Request for Leave to Withdraw Petition on June 12, 2001, which Request was granted by the Disciplinary Board by Order of June 13, 2001.

A reinstatement hearing was held on October 29, 2004 before a District I Hearing Committee comprised of Chair Sean P. Buggy, Esquire, and Members Michael A. Cibik, Esquire, and Joseph Cagnoli, Jr., Esquire. Petitioner was represented by James C. Schwartzman, Esquire. Continued hearings were held on January 26, 2005, April 21, 2005, and November 29, 2005.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on September 21, 2006, and recommended that the Petition for Reinstatement be denied.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on November 15, 2006.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner is Howard J. Casper. He was born in 1940 and was admitted to the practice of law in Pennsylvania in 1967. He was admitted to the practice of law in New Jersey in 1973. His current business address is 1475 Flat Rock Road, Narberth PA 19072-1239.

Disciplinary Background

2. Petitioner was disbarred on consent by Order of the Supreme Court of Pennsylvania dated October 1, 1992.

3. Petitioner was disbarred by the Supreme Court of New Jersey by Order dated February 15, 1994.

4. The disbarment resulted from Petitioner's misconduct in three matters.

5. In the Ferlaino matter Petitioner failed to promptly pay his client's medical expenses, failed to respond to client telephone calls, and failed to return the excess funds owed to the client and account for the distribution of the funds. Petitioner's bank accounts were out of trust and on several occasions reflected a negative balance.

6. In the Wise matter Petitioner failed to respond to requests from his client for information and case updates, failed to return his client's file after being terminated and failed to refund his client's money.

7. In the Bauer matter Petitioner made several misrepresentations to his client and opposing counsel, failed to respond to numerous written and oral communications from his client, opposing counsel and the court, failed to diligently represent his client, failed to make reasonable efforts to expedite litigation consistent with

the interest of his client, and failed to promptly distribute funds that his client and a third party were entitled to receive.

8. Six client matters were reported to Office of Disciplinary Counsel after Petitioner's disbarment took effect. Petitioner's conduct in each of these matters was similar to that which led to the disbarment.

9. Pursuant to the Supreme Court's disbarment Order of October 1, 1992, and Petitioner's Resignation Statement, Petitioner was required to comply with all provisions of Rule 217, Pa.R.D.E.

10. By letter to Petitioner dated February 8, 1993, Elaine M. Bixler, Secretary of the Disciplinary Board, notified Petitioner that his verified Statement of Compliance had not been received.

11. Petitioner failed to file the Statement of Compliance as required by Rule 217(e).

12. Petitioner failed to notify the Office of Attorney Ethics of the Supreme Court of New Jersey of his Pennsylvania disbarment as required by the New Jersey Rules .

Atlantic Exposition Service Activities

13. On or about October 22, 1991, Petitioner, George Butler and Joseph P. Perrino acquired the assets of a trade show company, Atlantic Exhibit, from the bankruptcy court.

14. Petitioner paid \$60,000 to purchase the assets from the bankrupt estate.

15. Neither George Butler nor Joseph Perrino contributed monies to the purchase.

16. Petitioner, Mr. Butler and Mr. Perrino were equal owners of AES upon its formation in 1991.

17. On or about August 31, 1994, Petitioner filed for bankruptcy in the United States Bankruptcy Court for the Eastern District of Pennsylvania.

18. By Order dated March 31, 1995, Petitioner was released from all dischargeable debts, including debts caused by his legal malpractice and misconduct.

19. In Schedule B - Personal property of the bankruptcy petition, Petitioner wrote that: "[d]ebtor has option to receive 1/3 stock (Atlantic Exposition Service, Inc.) in 1998 if sales efforts reach specific level."

20. Petitioner did not have an option as alleged in the bankruptcy Petition.

21. Petitioner had an ownership interest in AES from its inception and represented that he merely held an option in order to achieve a more favorable result in his personal bankruptcy proceeding.

22. On or about March 31, 1995, Patrick Perrino purchased Joseph Perrino's shares of AES for \$500,000.

23. As of August 27, 1996, Petitioner and Patrick Perrino were 50% owners of AES.

24. On September 2, 1996, Petitioner and Patrick Perrino entered into an "AGREEMENT FOR CONVEYANCE OF SHARES FOR COLLATERAL."

25. The Conveyance Agreement provided, in pertinent part, that:

3. Casper pledged his said shares in AES to Perrino on account of certain indebtedness which Casper hereby acknowledges...

4. The said Pledge provides the following:

1. All of Casper's shares are hereby transferred and conveyed along with all rights to Perrino.

2. Perrino shall have the right to own, possess, vote, encumber and otherwise exercises full dominion and control over said shares until and unless the said debt owed by Casper is repaid;...

26. According to Petitioner he no longer held any ownership interest in AES as of September 2, 1996

27. On or about October 8, 1996, Petitioner applied to the Internal Revenue Service for an Offer in Compromise to reduce his outstanding tax liability from \$331,904.53 to \$20,000.

28. On or about November 21, 1997, the IRS accepted Petitioner's offer to pay \$20,000 and released the outstanding tax liability because it found that Petitioner's offer was "consistent with the taxpayer's ability to pay, since the offer amount is greater than the taxpayer's current collectible assets. Based on the taxpayer's projected future income, the service believes collection of the remaining liability is in doubt."

29. Petitioner acknowledged that there was never any indebtedness from himself to Patrick Perrino notwithstanding the AGREEMENT FOR CONVEYANCE

document. Petitioner and Mr. Perrino knew that the document had no legal effect and was drafted only to protect Patrick Perrino from an outsider purchasing Petitioner's shares of AES in the bankruptcy proceeding.

30. In the years immediately following the 1997 compromise with the IRS, Petitioner's adjusted gross income dramatically increased.

31. In 1997 Petitioner reported an adjusted gross income of \$63,684.00

32. In 1998 Petitioner's adjusted gross income more than tripled to \$192,766.

33. In 1999 Petitioner's adjusted gross income rose to \$612,972.

34. Petitioner's purported transfer of 50% ownership of AES without consideration was performed to enable Petitioner to reach a more favorable compromise with the IRS.

35. On or about July 28, 2003, Petitioner signed an Affidavit swearing that AES knowingly paid a secret kickback to Jack Penman, manager of the bakery trade show.

36. On or about January 28, 2004, Petitioner signed a certified Declaration stating that AES paid a kickback and bribe consisting of 20% of revenue to Jack Penman in exchange for bakery trade show contracts in 1996, 1998, 2000 and 2002.

37. The kickback/bribes AES paid to Mr. Penman consisted of (1) a car for Mr. Penman's girlfriend; (2) automobile insurance for the car; (3) a monthly stipend to Mr. Penman's girlfriend and son; (4) cash payments to various entities owned or designated by Mr. Penman; and (5) the balance accrued on AES books as a loan to Mr. Penman.

38. Petitioner declared that neither Mr. Penman's girlfriend, nor Mr. Penman's son worked for AES.

39. Petitioner admitted that:

The BRIBE (emphasis in original) to Penman and his Designees during the period 1996 through 2002, in amounts equal to 20% of the gross sums AES received for decorating services as commercial bribes and kickbacks to get the decorating business for the ABS shows, (sic) not because AES owed money to Penman as a result of legitimate transactions, deals, arrangements, or contracts.

Sexual Harassment Lawsuit

40. Paula Brethauer was employed as Petitioner's administrative assistant from June 18, 1999 until May 22, 2001.

41. In a civil lawsuit, Ms. Brethauer accused Petitioner of sexual harassment and of creating a hostile work environment by continuously subjecting her to sexual comments, jokes, innuendos, photographs and e-mails relating to sexual acts and the female anatomy.

42. Ms. Brethauer alleged that on at least two occasions, Petitioner sent her photographs depicting nude women in sexually revealing positions.

43. Petitioner admitted that he sent the photographs of nude women to Ms. Brethauer and explained that he "got some emails that were raunchy, and they were sent to me and I passed them on."

44. Petitioner admitted that Ms. Brethauer's "allegations were accurate, but I don't believe that they legally amount to sexual harassment, but they were accurate."

45. Petitioner settled the lawsuit in exchange for the sum of \$45,000.

Reporting of Lawsuits, Open Liens and Judgments

46. Petitioner failed to report eight lawsuits in his Reinstatement Questionnaire filed on November 20, 2003. Petitioner also failed to report these lawsuits in his first Questionnaire filed in May of 2000.

47. In response to question 10 in the Reinstatement Questionnaire filed on November 20, 2003, which asked, "[a]re there any judgments against you currently on court records as unsatisfied?", Petitioner responded "[i]nvestigation continuing. Petitioner was discharged in bankruptcy, yet there may be one creditor, Germantown Savings Bank, who purchased loan papers on copy equipment which was not paid as the name of the original creditor was misidentified in the bankruptcy."

48. At the time of the filing of the Reinstatement Questionnaire on November 20, 2003, three judgments were listed on court records as unsatisfied and/or had not been discharged in bankruptcy.

State Corporate Tax Returns

49. For the tax years 1984 through 2003, Howard J. Casper, Associates failed to file a corporate tax return with the Commonwealth of Pennsylvania.

50. For the years 1984 through 2003, the Pennsylvania Department of Revenue had a Corporate Tax lien for Howard J. Casper, Associates.

Miscellaneous Findings

51. In response to Reinstatement Questionnaire No. 20 wherein Petitioner was asked to state “any other additional facts or matters you desire to have considered relating to your disbarment...which the Disciplinary Board should know and consider,” Petitioner attached a two-page typed answer stating, in pertinent part, that “whenever I was short I would borrow from my escrow account.”

52. Petitioner represented to many of his character witnesses that he lost his law license simply because he had “borrowed” funds from his escrow account.

53. Petitioner characterized the client funds that he misappropriated from his escrow account as “loans”, although he did not have permission from his clients.

54. In further answer to Question 20 of the Reinstatement Questionnaire, Petitioner stated in relevant part, that “the fact that no client was harmed in any way does not even in the smallest fashion justify what I did.”

55. Former clients of Petitioner’s made claims to the Pennsylvania Lawyers Fund for Client Security. The Fund approved claims and disbursed funds to John Behlau and Florence Polizzano in 1993 and Michael Udowenko in 1994. Petitioner was advised by the Fund of these payments to his former clients. Petitioner reimbursed the Fund by two payments made in June and July of 2000.

56. Petitioner did not show sincere remorse for his wrongdoings.

57. Petitioner offered the testimony of nine character witnesses, all of whom testified on direct examination that Petitioner was an honest, truthful and law-abiding person.

58. Most of the witnesses were unaware of the details of Petitioner's misconduct.

59. Martin A. Sobel, Esquire, and Louis Fine, Esquire, are Pennsylvania attorneys who have known Petitioner for many years. Mr. Sobel described Petitioner as an excellent friend and Mr. Fine described Petitioner as a "great guy."

60. Mr. Fine knew that Petitioner had been disbarred but was not aware of the reason for the disbarment until approximately one week prior to the reinstatement hearing.

61. George Forster is a golf pro who has known Petitioner for 21 years. He is also married to Petitioner's ex-wife. He was not aware of the reason for Petitioner's disbarment until the day before the reinstatement hearing. At the hearing Mr. Forster testified that he believed Petitioner borrowed money from escrow accounts, but he was unaware that Petitioner neglected clients.

62. Howard Lazarus is a textile engineer who has known Petitioner as a close friend for 25 years. Mr. Lazarus knew Petitioner was disbarred for "using monies that were not his" but was unaware of the other reasons for the disbarment.

63. Jeffrey Kalan is a retired businessman who has known Petitioner for approximately 12 years, as a result of Petitioner's close personal relationship with Mr.

Kalan's sister. His understanding of Petitioner's disbarment was that Petitioner's son was very sick and needed hospitalization and Petitioner borrowed funds from an escrow account. Mr. Kalan was unaware of the other acts of misconduct committed by Petitioner.

64. Kenneth Emmons is a business agent for the Painters International District Counsel 711. He knows Petitioner from providing union labor for Petitioner's trade show business. Mr. Emmons was aware of Petitioner's disbarment from other people, but did not hear of it from Petitioner until several days before the reinstatement hearing. Mr. Emmons testified that Petitioner "used funds that were borrowed and replaced."

65. Edward McGee is a field representative for Painters International District Counsel 711 and has known Petitioner for 12 years through Petitioner's trade show business. He described his understanding of Petitioner's disbarment as "he did some business with his escrow account that he shouldn't have done according to the technical law."

66. Audrey Soslow has been Petitioner's companion for the past 12 years. Her understanding of Petitioner's disbarment was that he "borrowed money from his trust account or an escrow account...because of Michael his son." Ms. Soslow was unaware of the other acts of misconduct committed by Petitioner which lead to his disbarment.

67. Michele Forster is Petitioner's former wife. She currently enjoys an amicable relationship with Petitioner. They were married from 1977 until 1992 and have three children. Ms. Forster described the difficult financial situation she and Petitioner experienced during the marriage and stated that she was unaware at the time the reason

for the problems. Petitioner told Ms. Forster during the disbarment process that Petitioner used escrow funds to pay for drug treatment for his son Michael, from a previous marriage.

III. CONCLUSIONS OF LAW

1. The misconduct for which Petitioner was disbarred is not so egregious as to preclude consideration of his Petition for Reinstatement.

2. Petitioner has not met his burden of proof that he has the moral qualifications, competency and learning in the law required for admission to practice law in the Commonwealth of Pennsylvania.

3. Petitioner has not met his burden of proof that his return to the practice of law within the Commonwealth of Pennsylvania will be neither detrimental to the integrity and standing of the bar, nor subversive of the public interest.

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. As a disbarred attorney, Petitioner bears a heavy burden to prove that he is qualified for readmission, since he has no expectation of a right to resume the practice of law. Office of Disciplinary Counsel v. Keller, 506 A.2d 872 (Pa. 1986). Before a disbarred attorney's qualifications are

considered, the Supreme Court first addresses whether the “magnitude of the breach of trust would permit the resumption of the practice of law without a detrimental effect upon the integrity and standing of the bar or the administration of justice nor be subversive of the public interest.” Keller, supra, 506 A.2d at 875. The threshold question before this Board is whether Petitioner's conduct was so egregious that the consideration of his reinstatement petition should be precluded.

Petitioner was disbarred for misappropriation of client funds, failing to communicate with clients, making misrepresentations to a client and opposing counsel, lack of diligence, failing to properly disburse funds and failing to make reasonable efforts to expedite litigation. This misconduct is very serious, yet in light of case law, Petitioner's misconduct cannot be considered so egregious as to preclude consideration of his request for readmission. Office of Disciplinary Counsel v. Perrone, 777 A.2d 413 (Pa. 2001) (stating that an attorney who was disbarred for filing false and misleading fee petitions with the Philadelphia Court of Common Pleas for reimbursement of legal services that he did not provide to indigent defendants did not engage in conduct so egregious as to preclude his reinstatement request).

Having concluded that Petitioner's misconduct does not prohibit this Board's consideration of his Petition for Reinstatement, the Board must determine whether Petitioner has met his burden of proving by clear and convincing evidence that his resumption of the practice of law at this time will not have a detrimental impact on the integrity and standing of the bar, the administration of justice, or the public interest; and

that he has the moral qualifications, competency and learning in the law required for admission to practice law in Pennsylvania. Office of Disciplinary Counsel v. Toll, No. 20 DB 1987, 64 DB 1988, 73 Pa. D. & C. 4th 120 (2004); Pa.R.D.E. 218(c)(3)(i). The Board must undertake a searching inquiry into Petitioner's present professional and moral fitness to resume the practice of law. This necessarily includes an examination of the rehabilitative efforts made by Petitioner during his disbarment. Philadelphia News, Inc. v. Disciplinary Board of the Supreme Court, 363 A.2d 779 (Pa. 1976); In re Verlin, 731 A.2d 600 (Pa. 1996). After considering the volumes of evidence and numerous witnesses ably presented by both sides, the Board is persuaded that Petitioner has not met his burden of proof and has failed to establish that he is fit to be reinstated to the practice of law in Pennsylvania.

Petitioner has been disbarred since 1992, a lengthy amount of time, yet the record is devoid of any compelling evidence to demonstrate that Petitioner has rehabilitated himself. Petitioner's Reinstatement Questionnaire, testimony at the reinstatement hearing, and verified written responses in court documents establish that Petitioner is not fit to practice law. The testimony of Petitioner's own witnesses further exemplifies his lack of qualification.

Petitioner's conduct in his non-legal business affairs during his disbarment did not deviate materially from those activities for which he was disbarred. Petitioner's actions reflect his willingness to reject accountability for actions which caused harm to others in favor of his own remuneration. This conduct is in direct opposition to the public

interest. As set forth above in the findings of fact, Petitioner shifted assets temporarily away from himself while he discharged in excess of \$600,000 owed to legal malpractice judgment holders and the IRS, and he signed declarations admitting to paying bribes and kickbacks. A review of pleadings and judicial admissions contained in lawsuits brought against Petitioner depict the same pattern of lack of accountability that led to Petitioner's disbarment. Petitioner's testimony at the reinstatement hearing concerning these business matters was highlighted by his lack of candor and his attempts to minimize the serious implications of his actions.

Petitioner's lack of accountability was apparent in his Reinstatement Questionnaire, wherein he omitted important facts, including his involvement in eight lawsuits, certain of which accused him of sexual harassment, bribery and accounting irregularities, and transfer of corporate assets to avoid tax liability and exposure in bankruptcy. Petitioner's involvement in these lawsuits was not on the periphery. He signed pleadings, testified and entered into settlements involving substantial sums of money, yet inexplicably did not feel any responsibility to report these lawsuits in his Questionnaire.

Petitioner did not fully recognize and acknowledge the extent of his underlying misconduct. He continued to use the word "borrowed" to describe his misappropriation of client funds, and quite reluctantly admitted that injury occurred to clients by his actions. When informing his character witnesses about his misconduct he did not reveal the full extent of his actions, instead using descriptions that placed him in

the most favorable light. Some witnesses thought that Petitioner's use of client funds was a "technical violation", per Petitioner's description to them. While Petitioner's character witnesses all testified that Petitioner was an honest, truthful and law-abiding person, the Board is inclined to give little weight to this testimony.

Petitioner offered scant evidence of his rehabilitative efforts. He alluded to significant amounts of time participating in civil and community activities, but failed to specify how much time he spent in these activities and when his involvement occurred, nor did his character witnesses mention his involvement in such activities. The Board does not find Petitioner's testimony of community activities compelling.

The totality of the record demonstrates that Petitioner is not a viable candidate for reinstatement. Petitioner's reinstatement would undermine the administration of justice and the public interest. Petitioner's ability to practice law in the future will hinge on his willingness to be candid to this Board and the Supreme Court of Pennsylvania. The Board recommends that the Petition for Reinstatement be denied.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Petitioner, Howard J. Casper, 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: _____
Robert C. Saidis, Board Member

Date: January 25, 2007

Board Member Jefferies did not participate in the adjudication.

Board Member Curran recused.

ORDER

PER CURIAM:

AND NOW, this 20th day of April, 2007, upon consideration of the Report and Recommendations of the Disciplinary Board dated January 25, 2007, the Petition for Reinstatement is 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.

Mr. Justice Fitzgerald did not participate in this matter.