

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: BD-2013-021

IN RE: Robert D. Stewart

JUDGMENT OF REINSTATEMENT

This matter came before the Court on a Petition for Reinstatement and the Vote of the Board of Bar Overseers recommending that the Petition for Reinstatement be allowed with the condition listed in the October 21, 2020 Hearing Panel Report.

Whereupon, it is ORDERED and ADJUDGED that the Robert D. Stewart is hereby reinstated as a member of the bar of the Commonwealth from from the March 21, 2013 Order of Term Suspension, subject to the following condition: the lawyer shall for one (1) year after he is reinstated, continue to attend regularly LCL's Professional Conduct Group, and to certify to the Office of Bar Counsel, every three months, that he is doing so.

It is FURTHER ORDERED that the lawyer comply with the January 21, 2012 Judgment entered in Bar Docket No. BD-2011-123,

administratively suspending him from the practice of law for his non-compliance with S.J.C. Rule 4:03(2).

By the Court, (Cypher, J.)

/s/ Maura S. Doyle

Maura S. Doyle, Clerk

Entered: November 30, 2020

in this Commonwealth, and that his or her resumption of the practice of law will not be detrimental to the integrity and standing of the bar, the administration of justice, or to the public interest.” Matter of Weiss, 474 Mass. 1001, 1002, 32 Mass. Att’y Disc. R. 263, 264-265 (2016). The S.J.C.’s rule establishes two distinct requirements, focusing on (1) the personal characteristics of the petitioner and (2) the effect of reinstatement on the bar and the public. Matter of Gordon, 385 Mass. 48, 52, 3 Mass. Att’y Disc. R. 69, 73 (1982). In making these determinations, a panel considering a petition for reinstatement “looks to ‘(1) the nature of the original offense for which the petitioner was [suspended], (2) the petitioner’s character, maturity, and experience at the time of his [suspension], (3) the petitioner’s occupations and conduct in the time since his [suspension], (4) the time elapsed since the [suspension], and (5) the petitioner’s present competence in legal skills.’” Matter of Daniels, 442 Mass. 1037, 1038, 20 Mass. Att’y Disc. R. 120, 122-123 (2004) (rescript), quoting Matter of Prager, 422 Mass. 86, 92 (1996), and Matter of Hiss, 368 Mass. 447, 460, 1 Mass. Att’y Disc. R. 122, 133 (1975).

III. Disciplinary Background and Facts of Misconduct

The petitioner was admitted to the bar December 18, 1992. Upon graduation, he worked in two different law firms doing litigation and real estate conveyancing work. In the late 1990s he developed a relationship with Eric Parker, of Parker/Sheer (P/S), and in 1998 accepted an offer to work as an associate there. Tr. 22 (Petitioner). After a time, he was made a limited partner. Tr. 26 (Petitioner). During his tenure at the firm, and indeed during his entire law practice, the petitioner drank alcohol regularly. Tr. 25 (Petitioner). This became a significant problem in the mid-2000s. Id.²

² In 2007, the petitioner was arrested for OUI. He admitted to sufficient facts, and the matter was continued without a finding. He complied with the requirement to attend an alcohol education class, and to attend four AA meetings. Tr. 27-28 (Petitioner). He did not report his arrest or plea to Bar Counsel or to his firm. Tr. 32 (Petitioner).

In 2008, a client, the Ellison Family Limited Family Partnership, came into the firm. Tr. 26 (Petitioner). The two principals were mother and daughter. Id. They lived out of state, but were interested in purchasing a property in Weston, Massachusetts, and wired a total of \$11,000 to the petitioner's firm to cover certain advance costs. Id. The purchase fell through, and the clients asked the petitioner to continue to hold their funds in escrow pending a new purchase. Tr. 27 (Petitioner). He agreed to do so, and the clients left the money on deposit with the firm. Id.

In the spring of 2010, the petitioner's partners Eric Parker and Barry Scheer confronted him about his behavior, telling him in essence that they knew something was going on but were not sure what it was. Tr. 30 (Petitioner). While he recognized that this discussion was really about his alcohol consumption, the petitioner avoided the subject of alcohol by instead alluding to certain personal difficulties. Tr. 30-31 (Petitioner). They agreed he would take a period of disability away from the firm, to work on his claimed anxiety and depression. Tr. 33-34 (Petitioner). He did not address his drinking at that time; in fact, it increased. Tr. 33 (Petitioner).

After the period of disability, in or around January 2011, P/S did not want the petitioner back, and he was officially terminated. Tr. 42-43 (Petitioner). He did not tell the Ellisons why he had left the firm, but reached out to them about their matter; they said they would stay with him, and in March 2011 he had their funds wired into a new account. Tr. 43 (Petitioner); Ex. 1 (RWS004). Within ten days of depositing the money, the petitioner wrongfully withdrew it and transferred it into an account he personally controlled. Tr. 45 (Petitioner).

In August 2011, the petitioner's wife asked him to leave the house after she discovered he had stolen some money from the household. They were divorced five months later, in January 2012. Tr. 35 (Petitioner). Also in January, the petitioner was administratively suspended for

failure to pay his bar dues. Id. For the first five months of 2012, the petitioner was drinking around the clock and using cocaine. Tr. 37 (Petitioner). That spring, he entered, successively, two detox centers but left both early, against medical advice. Tr. 36, 54 (Petitioner); Ex. 1 (RWS0004). He tried to stay sober for the three days before his daughter's high school graduation on June 1, 2012 but was unable to do so; instead, he arrived drunk and caused a terrible scene. Tr. 37-41 (Petitioner); Ex. 1 (RWS004). He tried a third treatment program in June 2012 - a five-day detox followed by a twenty-eight day inpatient residential program - but relapsed shortly after completing the program. Ex. 1 (RWS004).

In August 2012, the Ellisons sought out the petitioner because they had found another property and wanted him either to represent them or to release their deposit. Tr. 45-46 (Petitioner). Unable to find him, they contacted one of his former colleagues at P/S, who managed to reach him. Tr. 46 (Petitioner). The petitioner had converted the funds and had no resources available to him; after he disclosed to his parents what he had done, they gave him the money to repay the clients. Tr. 46-47 (Petitioner). The funds were transferred to P/S within five days of the clients' request. Tr. 47, 99 (Petitioner); Ex. 1 (RWS0010-011).³ The petitioner spoke to Barry Scheer and assured him that there had been no misconduct while he was employed at P/S. Tr. 48 (Petitioner). At Scheer's direction, the petitioner self-reported to the BBO. Id.

After Labor Day 2012, at his parents' insistence, the petitioner entered a sober living house in Brighton, Massachusetts. Tr. 49 (Petitioner). At a recovery meeting of Lawyers Concerned for Lawyers, a group he began to attend in September 2012, he found a lawyer to represent him in the disciplinary matter, who negotiated a term suspension of a year and a day.

³ The petitioner never repaid his parents. Tr. 50 (Petitioner).

Tr. 51-52 (Petitioner). The Board voted to accept the parties' stipulation and filed an information with the S.J.C. On March 21, 2013, the S.J.C. (Botsford, J.) ordered the respondent suspended from practice for a year and a day. Ex. 1 (RWS020-021).

IV. Findings and Conclusions

A. Moral Qualifications

As the S.J.C. has stated, the conduct giving rise to a petitioner's suspension is affirmative proof that he lacks the moral qualifications to practice law. See Matter of Hiss, 368 Mass. at 460, 1 Mass. Att'y Disc. R. at 134. That the misconduct "continues to be evidence against . . . [the petitioner] with respect to lack of moral character at later times [is] in accordance with the principle that 'a state of things once proved to exist may generally be found to continue.'" Matter of Hiss, *id.* (citation omitted). To gain reinstatement, the petitioner has the burden of proving that he has led "a sufficiently exemplary life to inspire public confidence once again, in spite of [his] previous actions." Matter of Prager, 422 Mass. at 92, quoting Matter of Hiss, 368 Mass. at 452, 1 Mass. Att'y Disc. R. at 126. He can do this by proving he has reformed, since a "fundamental precept of our system is that persons can be rehabilitated." Matter of Ellis, 457 Mass. 413, 414, 26 Mass. Att'y Disc. R. 162, 163 (2010).

Our discussion of the petitioner's moral qualifications is divided into four parts.

1. The Petitioner's Post-Suspension Efforts to Maintain Sobriety

We recounted above the petitioner's personal and professional history leading up to his 2013 suspension. His road to recovery has been rocky. He remained sober during the five months he lived in the Brighton sober house in late 2012, and went from there to live with a roommate in Worcester, staying sober for another four months. Tr. 55 (Petitioner). He was thrown out when he did not live up to his agreement to remain sober. Tr. 58 (Petitioner). In mid-November 2014, the former Worcester roommate, Sonni DiCesare, agreed to give him another

chance, provided he fulfill two conditions: go to detox, and work with a person she knew named James. Tr. 58-59 (Petitioner). He did both of those things, and has not had a drink since November 24, 2014.

The petitioner described in great detail the supports he has relied on for his recovery. In late 2014, he began to work with Sonni's contact James, a sober alcoholic who works in the recovery community in Boston. Tr. 60-61 (Petitioner). James took the petitioner to a men's AA meeting in December of 2014. Tr. 61 (Petitioner). The petitioner has attended regularly since, stating that he has not missed more than ten weekly meeting days in six years with that group. See Tr. 62 (Petitioner). He has also gone regularly to a Saturday morning AA meeting. Tr. 64 (Petitioner). He attends a third men's AA meeting one evening a week in Magnolia/Gloucester, where participants put "pen to paper" and share their thoughts. Tr. 64-65 (Petitioner). He estimates that he attends five meetings per week. Ex. 1 (RWS0008). He has held service positions in two different AA groups in Boston and Beverly, and has performed numerous speaking commitments at AA meetings, hospitals and rehabilitation centers. Id. He currently holds an elected position of General Service Representative for his home group. Id.

In addition to AA meetings, the petitioner has, since 2012, been a regular attendee at the Professional Conduct Group of Lawyers Concerned for Lawyers. Tr. 66-68 (Petitioner); Ex. 1 (RWS008). The group now meets once a week via Zoom. Tr. 68 (Petitioner).

We found the petitioner to be eloquent, insightful and realistic about his recovery. Contrasting his current approach to life with his earlier "selfishness," he explained that he has found "through recovery that being of service and being generous is a much greater source of happiness to me than being selfish was." Tr. 69 (Petitioner). He derives strength and conviction from helping people and giving hope, paying forward what he has gotten from others. This has

enabled him to “buil[d] a way of life that really works far better than when I was just trying to take what I [could] get for myself.” Tr. 70 (Petitioner).

He has established a good relationship with his ex-wife and his daughters. Tr. 73, 74 (Petitioner). Together with his sponsor, he has put together a list of people to whom he needed to make amends; he has made dozens of amends. Tr. 75 (Petitioner). Included on the list are his ex-wife, children and parents (now deceased). Id. He has also made amends financially, as well as to work colleagues. Id.

While the petitioner thought about reinstatement as early as 2014, he was not able to stay sober, and realized he needed first to focus on himself and his own recovery. Tr. 101 (Petitioner). Asked about his level of confidence in his current stability, he explained that it is very high because of his “toolkit,” a “set of things” he does regularly that makes the likelihood of relapse “very, very, very slim.” Tr. 81 (Petitioner). “Some of those are spiritual practices. Some of those are meeting attendance. Some of those are staying connected with the literature of recovery. Some of those are staying connected with my support network.” Id. In his words, “the fellowship of AA . . . has provided me with an incredible support network of people from all sorts of areas of life, background, professions . . .” [T]here’s a constant connection that goes on there.” Id. He numbers among his support network his membership in the LCL Professional Responsibility Group, identifying as particularly inspiring the continued participation of those who have been permitted to return to the practice of law but yet continue to attend, both to stay connected to what helped them, and to be helpful to others. Tr. 81-82 (Petitioner). He sees a therapist. Id. He lives with a girlfriend of over two years, a sober alcoholic who has been sober for over six years. Id.; Ex. 1 (RWS007).

2. Work and Volunteer Activities

The petitioner's questionnaire answers reflect that he was not employed from March 2013 through May 2014. Ex. 1 (RWS006). For part of this time he lived with his parents, on whom he was financially dependent. He helped them with errands and chores. Id. He appears to have been continuously employed in a series of non-legal jobs from May 2014 to August 2017. Ex. 1 (RWS006-007). On December 7, 2016, he was granted permission to work as a paralegal. See Ex. 1 (RWS007). He currently works for three lawyers: James F. Boudreau (December 2016-present); Donna L. Martin (April 2017-present), and Jeremy M. Cohen (July 2018-present). Id. We discuss this work below, in the Learning in the Law section of our report.

In addition to paid work, evidence of moral reform can be found in good works demonstrating a sense of responsibility to others. See Matter of Wong, 442 Mass. 1016, 1017-1018, 20 Mass. Att'y Disc. R. 540, 544 (2004) (Court notes approvingly physical labor, active role in church community, participation in sons' activities and community work); Matter of Sullivan, 25 Mass. Att'y Disc. R. 578, 583 (2009) ("[a] petitioner's moral character can be illustrated by charitable activities, volunteer activities, commitment to family, or community work.").

The petitioner's non-work activities since April 2012 have centered around his recovery from alcoholism and drug addiction, as well as efforts to be helpful to his parents while they were alive. Ex. 1 (RWS007). He has returned to church since becoming sober, and serves as the secretary to the First Lutheran Church in Lynn. Tr. 83 (Petitioner). The petitioner has participated in various volunteer church initiatives, including youth events, neighborhood clean ups, workshops, study groups, food-related services, fundraising, and other community-oriented work, serving as the Chairperson of the Property Committee on one occasion. Ex. 1 (RWS008).

He also volunteers in the community, among his activities acting as an adult tutor and working as a personal assistant for an elderly woman. Id.

3. Witness Testimony and Letters

The petitioner's witnesses were enthusiastic and consistent in their support for his reinstatement. We reserve for discussion in the Learning in the Law section, below, the testimony of Attorney Jeremy Cohen. The first witness, Barry Scheer, Esq., was the petitioner's former law partner, interacting with him at P/S on a daily basis for twelve or thirteen years. Tr. 147 (Scheer). He has witnessed the petitioner's fall and recovery, having been out of touch with him for only a few years, and described him as a "terrific partner," one who "cares deeply about doing the right thing," and a person of fine moral character. Tr. 161-162 (Scheer).

Characterizing the petitioner's misconduct as a "lapse," he stated: "Except for that lapse, I've never seen anything that would give me pause" Tr. 162 (Scheer). Scheer's letter echoed many of these points, giving the petitioner credit for waiting to apply for reinstatement "until he was certain he was ready," and commencing the process by working for years as a paralegal. Ex. 4 (RWS136-137).⁴

The third witness, Robert McDermott, is the petitioner's AA sponsor. They met in December 2014 at a men's Step AA meeting, a meeting for men as they go through the twelve Steps of recovery. Tr. 171-172 (McDermott). He has been the petitioner's sponsor since 2015. Tr. 174 (McDermott). He described the petitioner as "one of the hardest working guys I've seen at recovery," always prepared and an eager student. Tr. 176-177, 183 (McDermott). The petitioner works conscientiously on his spiritual condition and is in "constant communication"

⁴ Scheer's partner, Eric Parker, did not attend the hearing. However, Scheer represented to us, as an officer of the Court, that he had told Parker that he would be appearing before us, and that Parker had wished the petitioner good luck, and had expressed the hope that it would go well. Tr. 151 (Scheer).

with other alcoholics; these habits, to McDermott's mind, should help him deal with his illness without recurrence. Tr. 181 (McDermott).

The petitioner submitted nine letters in support of his application. Three are from the witnesses who testified. A fourth, mentioned above, is from Attorney Donna Libbey Martin, an attorney who currently employs the petitioner as a paralegal. She was introduced to the petitioner through a member of AA and LCL, and found the petitioner to be "forthright and honest about how and why he lost his license to practice law." Ex. 4 (144). Barbara Bowe, the LICSW at Lawyers Concerned for Lawyers, described the petitioner as a leader in the Professional Conduct Group, "not allowing newer members to blame [others] or avoid taking responsibility for their mistakes or failures. Members look at him as someone who leads by example based on his honesty and humility concerning his work towards reinstatement." Ex. 4 (RWS143).

Taken as a whole, the letters are overwhelmingly positive, even effusive, portraying the petitioner not only as a skilled lawyer but as a fine and humble man, genuinely committed to recovery. Sonni DiCesare, his former roommate, described this vividly, writing: "Rob LIVES BREATHES SLEEPS Recovery. He begins and ends each day in prayer From the time he opens his eyes, to the time he closes them, he is committed to Recovery." Ex. 4 (RWS146) (emphasis in original). Maria L. Hampton, a Connecticut attorney who has known the petitioner for over thirty years both personally and professionally, and is the trustee of the trust established for him by his parents, also submitted a letter. She anticipated and addressed one of our concerns, writing: "Through the death of both his father, and more recently, his mother – together with the stress of starting completely over to re-establish himself economically, Rob has not faltered in his sobriety." Ex. 4 (RWS148). She went on to note that she worked with the petitioner in resolving issues of delinquent back taxes arising from his alcohol abuse, and concluded: "The resolution of this matter became a symbol to him of making things right and

remediating the harm of this past behavior. This work with the IRS was extremely stressful over many months but Rob persevered” Id.

4. Conclusions as to Moral Reform

The petitioner was expansive and genuine in describing his moral failings and the impact on his life of drugs and alcohol. We found him to be deeply remorseful, blaming only himself for his behavior and downfall and the harm and pain they had caused. He was humble and clear-eyed about the relentlessness of addiction and the concomitant challenges of remaining sober and productive. We find that he has reformed, and that he has in place a support system that seems to us comprehensive and sustainable. We conclude that the petitioner has proved moral reform. See generally Matter of Scannell, 31 Mass. Att’y Disc. R. 554 (2015); Matter of Boudreau, 30 Mass. Att’y Disc. R. 30 (2014) (both recounting challenges of drug/alcohol addiction, finding moral reform and allowing reinstatement, with conditions).

B. Competence and Learning in the Law

Under S.J.C. Rule 4:01, § 18, a petitioner must demonstrate that he has the “competency and learning in law required for admission to practice law in this Commonwealth.” We conclude that the petitioner has met his burden of establishing that he possesses sufficient competence and learning in law to be re-admitted to practice. He has completed a formal continuing education program through MCLE, through on-line and in-person programs. Tr. 84-85 (Petitioner). His questionnaire response lists over fifty courses and classes, primarily in the areas of civil litigation, family law and criminal law. Ex. 1 (RWS011-013). He estimates he has completed 200 hours of coursework. Tr. 87 (Petitioner).

Barry Scheer, the petitioner’s former law partner, had high praise for the petitioner’s legal skills, describing him as a “real treasure,” and as “very, very giving” in his practice. Tr. 157-158 (Scheer). His relationship with Scheer includes discussing trends in the law and seeking

legal guidance; Scheer praised his writing, his eagerness to ask questions and his high level of legal sophistication. Tr. 160-161 (Scheer). Scheer noted the many conversations he has had with the petitioner and concluded that “his knowledge and understanding of current decisional and statutory law and his ability to analyze and apply the law is certainly up to par, if not exceeding that of many experienced, skilled practitioners.” Ex. 4 (RWS137).

The petitioner has been working as a paralegal since January 2017. Ex. 1 (RWS013). He now works about twelve hours a week, and worked eighteen prior to March 2020. Tr. 103-104 (Petitioner). Attorney Martin, who has a family law practice, submitted a letter attesting to the petitioner’s “aptitude for grasping the often fraught and complex issues of this area of the law and incorporating them into clear and concise pleadings and memoranda. His legal research and writing skills are superlative.”⁵ Ex. 4 (RWS144).

Jeremy Cohen, Esq., hired the petitioner as a paralegal in June 2018. Tr. 190-191 (Cohen). During their interview, the petitioner explained his history within minutes; his honesty appealed to Cohen. Tr. 190-191 (Cohen). Cohen’s practice is in the relatively narrow field of legal representation of pet owners. See Ex. 4 (RWS140). He credits the petitioner’s research and writing with “chang[ing] the legal landscape” in this area. See *id.*; Tr. 193, 198-201 (Cohen). He is impressed by the petitioner’s work ethic and the amount that he cares about the practice and the law they are helping to develop. Tr. 192-193 (Cohen). The petitioner has made Cohen a better lawyer. Tr. 201 (Cohen). If he is reinstated – a conclusion for which Cohen ardently hopes – Cohen would hire him as an associate “with a clear path for advancement.” Tr. 202-203

⁵ Our review of the petitioner’s writing samples, for both Attorney Martin and Attorney Cohen, confirms that his writing is both lucid and persuasive. Ex. 5.

(Cohen). He would trust the petitioner to handle a case from beginning to end, including court appearances. Tr. 203-204 (Cohen).

If readmitted, the petitioner hopes to engage in private practice as a civil litigator, staying with the employment opportunities presented by Attorneys Martin and Cohen. Tr. 128, 129 (Petitioner). He plans to earn money as an associate or contract attorney with either or both. Tr. 130 (Petitioner). He and Attorney Cohen had looked at office space together before COVID; for now, the petitioner has a home office. Tr. 129-130 (Petitioner).

C. Effect of Reinstatement on the Bar, the Administration of Justice and the Public Interest

“Consideration of the public welfare, not [a petitioner’s] private interest, dominates in considering the reinstatement of a disbarred applicant.” Matter of Ellis, 457 Mass. at 414, 26 Mass. Att’y Disc. R. at 164. Further, the public’s perception of the legal profession as a result of the reinstatement and the effect on the bar must be considered. “In this inquiry we are concerned not only with the actuality of the petitioner’s morality and competence, but also [with] the reaction to his reinstatement by the bar and public.” Matter of Gordon, *supra*, 385 Mass. at 52, 3 Mass. Att’y Disc. R. at 73. “The impact of a reinstatement on public confidence in the bar and in the administration of justice is a substantial concern.” Matter of Waitz, 416 Mass. at 307, 9 Mass. Att’y Disc. R. at 345.

Given our findings with regard to the soundness of the petitioner’s moral fitness and the extent of his learning in law, it follows that his readmission would not adversely impact the public, the bar or the administration of justice.

V. Conclusions and Recommendation

We conclude that the petitioner has proven that he meets all of the criteria for reinstatement. We recommend that his petition be allowed, with the condition that for one year

after he is reinstated, he continue to attend regularly LCL's Professional Conduct Group, and to certify to bar counsel, every three months, that he is doing so.

Dated: October 21, 2020

Respectfully submitted,
By the Hearing Panel,

Ernest L. Sarason, Jr.
Ernest L. Sarason, Jr., Chair

Marsha V. Kazarosian
Marsha V. Kazarosian, Member

Francis P. Keough
Francis P. Keough, Member

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the Hearing Panel Report of the Board of Bar Overseers in the Matter of Robert D. Stewart Petition for Reinstatement, by email only to Petitioner's counsel Thomas R. Kiley, Esq, Assistant Bar Counsel, Adam C. LaFrance, Esq., and Bar Counsel Rodney S. Dowell, Esq.

Dated this 21st day of October 2020.

BOARD OF BAR OVERSEERS

By June D. Risk
June D. Risk
Legal Administrative Assistant