

## IN RE: JOSEPH PAUL SULLIVAN, JR.

S.J.C. Order Denying Reinstatement entered by Justice Cordy on September 8, 2009.<sup>1</sup>

HEARING PANEL REPORTI. Introduction

The petitioner Joseph Paul Sullivan, Jr. filed a petition for reinstatement with the Supreme Judicial Court on January 9, 2009, from an order of indefinite suspension from the bar entered by the Court on January 13, 2004. Matter of Sullivan, 20 Mass. Att'y Disc. R. 516 (2004). A hearing was held on the petition on May 11, 2009. Katy E. Koski, Esq. represented the petitioner. Bruce Eisenhut, Esq. represented the Office of Bar Counsel. The petitioner testified on his own behalf and called two witnesses; Bar Counsel called no witnesses. In addition to the petitioner's reinstatement questionnaire and its attachments, the parties stipulated to seven exhibits that were admitted into evidence. The parties agreed that the petitioner's reinstatement questionnaire is part of the record of proceedings.

Bar Counsel opposed the petition on the ground that it is premature. Tr. 69:8. More specifically, Bar Counsel expressed concerns that the petitioner did not present a detailed plan for returning to the practice of law that should have addressed such issues as supervision or monitoring of the petitioner's work, obtaining professional liability insurance, and participation in courses in legal education given the petitioner's absence from the practice of law since June 2000. Bar Counsel also found troubling the petitioner's admission that he currently is not familiar with record-keeping requirements of Rule 1.15 of the Massachusetts Rules of Professional Conduct given that his indefinite suspension in 2004 was for his intentional misuse of client funds. Tr.45:19-23. After considering the evidence and testimony, the panel recommends that the petition for reinstatement be denied for the reasons set forth below.

II. Standard

A petitioner for reinstatement to the bar bears the burden of proving that he has satisfied the requirements for reinstatement set forth in S.J.C. Rule 4:01, § 18(5), namely that he possesses "the moral qualifications, competency, and learning in the law required for admission to practice law 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 Daniels, 442 Mass. 1037, 1038, 20 Mass. Att'y Disc. R. 120, 122 (2004) (rescript), quoting S.J.C. Rule 4:01, § 18(5). See Matter of Dawkins, 432 Mass. 1009, 1010, 16 Mass. Att'y Disc. R. 94, 95 (2000) (rescript); Matter of Pool, 401 Mass. 460, 463, 5 Mass. Att'y Disc. R. 290, 293 (1998).

In determining whether the petitioner has satisfied these requirements, 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.'" Id., 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).

The conduct giving rise to the petitioner's suspension is affirmative proof that he lacks the moral qualifications to practice law. Matter of Centracchio, 345 Mass. 342, 346 (1963). 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 (1996), quoting Matter of Hiss, 368 Mass. at 452, 1 Mass. Att'y Disc. R. at 126.

"The act of reinstating an attorney involves what amounts to a certification to the public that the attorney is a person worthy of trust." Id.; Matter of Centracchio, 345 Mass. at 348. In fact, "considerations of public welfare are dominant. The question is not whether the petitioner has been punished enough." Matter of Cappiello, 416 Mass. 340, 343, 9 Mass. Att'y Disc. R. 44, 47 (1993); Matter of Keenan, 314 Mass. 544, 547 (1943).

### III. Disciplinary Background

The petitioner received his first admonition in 1994 for his failure to file in 1992 a real estate tax abatement application within the allowed period. Ex. 1. He received a second admonition in June 2000 for his failure to file in 1997 a property loss claim on behalf of his client within the two-year limitations period. Ex. 2. In January 2002, he was suspended for one year and a day for his failure to represent properly a client who had retained him to pursue a personal injury claim resulting from an automobile collision in 1992. In this case, the Court found that the petitioner neglected his client's case, failed to keep his client informed as to the status of her case, and terminated his representation without notice to his client. In addition, the petitioner failed to cooperate with Bar Counsel's investigation in violation of Mass. R. Prof. C. 8.4(g) and S.J.C. Rule 4:01, § 3(1). Ex. 3. In January 2004, the petitioner was indefinitely suspended for his intentional misuse of estate funds. On July 13, 2000, while serving as an executor to an estate, he deposited a \$5,000 check payable to the estate into his personal checking account and used all or substantially all of the funds for purposes unrelated to the estate. Ex. 4. He later repaid the estate. Tr. 64:9, 10, 11.

In summary, the petitioner's history of misconduct began in 1992. In 1999, he closed his law practice and began work as the chief housing specialist at the Housing Court on April 8, 1999.<sup>2</sup> Tr. 53:9. While working at the Housing Court, he received his second admonition in June 2000 and his first suspension. On July 13, 2000, less than a month after receiving his second admonition, (and before his year and one day suspension effective January 10, 2002) he misappropriated \$5,000 that belonged to the estate for which he served as an executor. For this misconduct, the petitioner received his second suspension, an indefinite suspension effective January 13, 2004. He left his position in the Housing Court in 2004. Tr.38:8.

Thus, the petitioner has a long history of discipline. Moreover, he was indefinitely suspended effective January 13, 2004, while he was still on suspension from his one year and one day suspension having never sought reinstatement from the 2002 suspension. He has been suspended for seven years, and ceased practicing two years before his first suspension.

### IV. Findings

#### A. Learning in the Law

S.J.C. Rule 4:01, § 18 requires that, in order to be reinstated, the petitioner demonstrate that he has the "competency and learning in the law required for admission to practice law in this Commonwealth." (Emphasis added.)

The petitioner has been suspended since January 10, 2002, and has not engaged in the private practice of law since April 1999. Given his history of discipline, the panel finds that the petitioner's efforts to acquire knowledge of current law were inadequate. The petitioner testified that he "took many courses at the MCLE that dealt with real estate, landlord-tenant issues." Tr. 40:15, 16. With his reinstatement questionnaire, the petitioner submitted

certificates from only four continuing legal education programs. Collectively, the programs included one for legal research for paralegals, one on pretrial litigation basics, one on long term care planning, and one on law office recordkeeping. The petitioner further testified that he "on occasion [would] run into attorneys that I dealt with either in my practice or at the Housing Court and would go back and forth and discuss the issues, current issues of the day in the real estate market." Tr. 40:17, 18, 19, 20. In addition, he read *Banker and Tradesmen* and *Lawyers Weekly*. Tr. 40:22, 23. Although the petitioner obtained permission from the Court to work as a paralegal in 2008, a good step toward acquiring knowledge of current law, he never worked as a paralegal. Tr. 47:7 - 9. A suspension from the practice of law since January 2002, requires greater effort to develop the competency and learning in the law than the efforts offered by the petitioner. Matter of Dawkins, 432 Mass. at 1011, 16 Mass. Att'y Disc. R. at 96 (reading Massachusetts Lawyers Weekly when able to borrow a copy, the "advance sheets," and a book on ethics insufficient to show competency); Matter of Waitz, 416 Mass. 298, 304, 9 Mass. Att'y Disc. R. 336, 344 (1993) (attendance at MCLE practical skills course and reading legal publications for two or three hours weekly insufficient for reinstatement). The panel finds that the petitioner failed to meet his burden of establishing that he possesses a sufficient competency and learning in the law required for admission to the practice of law.

### **B. Moral Qualifications**

"Reform is a 'state of mind' that must be manifested by some external evidence ... [and] the passage of time alone is insufficient to warrant reinstatement." Matter of Waitz, 416 Mass. at 305, 9 Mass. Att'y Disc. R. at 343.

The petitioner's indefinite suspension in 2002 "was conclusive evidence that he was, at the time, morally unfit to practice law, and it continued to be evidence of his lack of moral character ... when he petitioned for reinstatement. It was incumbent on the petitioner, therefore, to establish affirmatively that, during his suspension period, he had redeemed himself and become 'a person proper to be held out by the court to the public as trustworthy.'" Matter of Dawkins, 432 Mass. at 1010-1011, 16 Mass. Att'y Disc. R. at 95 (citations omitted).

In his reinstatement questionnaire and in his testimony at the hearing, the petitioner failed to express a clear understanding of his misconduct. The reasons that he offered to explain his extensive disciplinary history included marital problems that began in the early 1990s (Tr. 49:19 -23), estrangement from his daughter (Tr. 51:4), issues around the closing of his law practice, and starting a new job at the Housing Court. (Tr. 55:5, 6, 7). He failed to convince the panel that he understood what he had done wrong, and that he had accepted responsibility for his misconduct.

A petitioner's moral character can be illustrated by charitable activities, volunteer activities, commitment to family, or community work. For his charitable activities, the petitioner offered only that he served on the Board of Assessors and the By-Law Review Commission in the town of Scituate. He moved, however, from Scituate in 1999 or 2000. Tr. 46:14, 15. He provided no information concerning other charitable or volunteer activities in which he was involved during his seven-year suspension. The panel finds that the petitioner has failed to demonstrate that he has the moral qualifications to be reinstated to the practice of law.

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

"In any disciplinary [or reinstatement] case, the primary factor for the court's consideration is the effect upon, and perception of, the public and the bar." Matter of Daniels, 442 Mass. at 1038, 20 Mass. Att'y Disc. R. at 122, citing Matter of Alter, 389 Mass. 153, 156, 3 Mass. Att'y Disc. R. 3 (1983) and Matter of Keenan, 314 Mass. at 547.

Two witnesses testified on the petitioner's behalf. David Campbell, Esq., a solo practitioner, testified that he has known the petitioner for approximately 25 years. The petitioner and Attorney Campbell met when they were tenants renting law office space in the same building. When Attorney Campbell bought a building and converted some of the space into office space, the petitioner became a tenant in Attorney Campbell's building. Attorney Campbell stated that he would rent space to the petitioner again. He thought that the petitioner was "... very professional, intelligent, and forthright." Tr. 12:21, 22. Attorney Campbell referred clients to the petitioner over the years including some of Attorney Campbell's relatives, and testified that he would refer clients to him if he were reinstated. Tr. 12:17, 18, 19. He testified that the petitioner had told him of the circumstances that resulted in his indefinite suspension, but had not disclosed earlier discipline.

The petitioner's second witness was Stuart Schrier, Esq. Attorney Schrier, a solo practitioner, testified that he has known the petitioner for approximately 24 years. He saw the petitioner often in the Housing Court, and they did real estate closings together where Attorney Schrier typically represented a seller and the petitioner represented a buyer. Attorney Schrier said that the petitioner "was a perfect gentleman." Tr. 23:9. He stated that he is willing to refer clients to the petitioner. Attorney Schrier testified that the petitioner explained to him the circumstances that resulted in the indefinite suspension and that he was aware that the petitioner had had other disciplinary problems.

The panel finds that the petitioner has not provided sufficient evidence from which it can judge the effect that his reinstatement to the practice of law might have on the administration of justice and the public interest. The petitioner's disciplinary history began in 1994. He has been suspended for seven years and yet provided no letters of recommendation from non-lawyers that could have addressed the public's perception of the petitioner's reinstatement. The petitioner's lack of charitable or volunteer work since 2000 again creates a further void that prevents the panel from determining whether he is worthy of the public's trust.

The panel finds that the petitioner has not demonstrated that he fully understands and acknowledges the nature of his misconduct. He demonstrated little or no insight into the seriousness of his misconduct. In fact, he appears to have ignored completely that the fact that he has been suspended seven years and not five. He testified, "I spent 5 years being suspended." Tr. 63:12. It has been five years from the effective date of his indefinite suspension, but seven years from the effective date of his first suspension of a year and a day. See Exhibits 3 and 4. And, as set forth above, because he assumed retirement status in June 2000, it has been nine years since he practiced law. Tr. 8:18, 19.

The panel agrees with Bar Counsel that this petition is premature. In addition to his failure to demonstrate insight into the circumstances that lead to his long history of discipline and to convince the panel that he will not repeat his past mistakes, the petitioner has failed to put forth a specific plan for resuming a law practice after a hiatus of nine years. Had he worked as a paralegal, he would have gained some experience in current law. He failed to describe a plan whereby he would obtain clients, nor has he agreed to supervision by a mentor. It was his witnesses, Attorneys Campbell and Schrier, who in their testimony offered to refer clients to the petitioner. And it was Attorney Schrier, not petitioner, who discussed his willingness to supervise the petitioner. The petitioner failed to address the fact that he carries substantial debt as described in his questionnaire. The petitioner's reliance on his wife, who has been a successful office manager for 26 years, to serve as his bookkeeper and to ensure that he makes no further mistakes is misplaced. While he would benefit from her support and assistance, it is the petitioner's duty to assume full responsibility for his billing, for keeping track of his clients' cases, and for conducting himself in an ethical manner.

## **V. Conclusions and Recommendation**

Based upon the petitioner's written submission, his own testimony, and that of his witnesses,

the panel concludes that the petitioner has not met his burden of proving that he should be reinstated.

The panel recommends that the petition for reinstatement filed by Joseph Paul Sullivan, Jr. be denied because we conclude that the petitioner has not proven that he possesses "the moral qualifications, competency, and learning in the law required for admission to practice law in this Commonwealth, and that his 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." S.J.C. 4:01, § 18(5).

FOOTNOTES:

<sup>1</sup> The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

<sup>2</sup> The petitioner assumed retirement status with the Board in June 2000. Tr. 8:18.

Please direct all questions to [webmaster@massbbo.org](mailto:webmaster@massbbo.org).

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