

IN RE: REUBEN S. DAWKINS

S.J.C. Order Denying Reinstatement entered by Justice Abrams on September 14, 2000 ¹

REPORT OF HEARING PANEL

This is the second Petition for Reinstatement filed by the petitioner, Reuben S. Dawkins. In October of 1992, Mr. Dawkins petitioned for reinstatement from a six-month suspension for the commingling and use of clients' funds. Instead of reinstating Mr. Dawkins, the 1992 panel, ruling on combined Petitions for Reinstatement and for Discipline, recommended that he be disbarred. Instead of disbaring Mr. Dawkins, the Court indefinitely suspended him. Matter of Dawkins, 10 Mass. Att'y Disc. R. 49 (1994). Recently the Supreme Court stated that in retrospect it was hard to justify the initial six-month suspension given to Mr. Dawkins and that an indefinite suspension was probably warranted since there were "no substantial mitigating circumstances". Matter of Schoepfer, 426 Mass. 183, 187 (1997). We have before us, therefore, an attorney whose conduct warranted two indefinite suspensions. Bar Counsel argues that the evidence in this hearing not only is insufficient for reinstatement, but should disqualify the petitioner from seeking reinstatement for at least ten years because Mr. Dawkins engaged in legal work prior to reinstatement. We believe Mr. Dawkins should not be reinstated. We also believe that based on the evidence, Bar Counsel would be justified in again filing contempt proceedings against Mr. Dawkins for continuing to engage in the practice of law prior to reinstatement.

On April 2, 1992, the Supreme Judicial Court ordered that Mr. Dawkins be suspended for a period of six months from the practice of law for commingling and use of clients' funds in Matter of Dawkins, 412 Mass. 90 (1992). In October of 1992, Mr. Dawkins filed his first Petition for Reinstatement. However, Bar Counsel, on December 29, 1992, filed a Petition for Discipline against Mr. Dawkins alleging new disciplinary violations. After hearings on the consolidated petitions, the 1992 Hearing Panel and the Board of Bar Overseers recommended that Mr. Dawkins be disbarred. The 1992 Hearing Panel stated:

"The panel strongly recommends that the respondent be disbarred. Disbarment is the only appropriate sanction for the multiple misconduct in this case, especially given the respondent's previous disciplinary record. Any lesser recommendation would constitute a public scandal and would call into question the ability of this profession to regulate itself." (Exhibit 2 attached at p. 55)

The 1992 Hearing Panel found that the respondent failed to protect the rights of minors whom he represented and for whom he had obtained funds; neglected his clients cases; continually misrepresented to his clients the status of their cases; imposed upon clients who were unsophisticated in legal matters by suggesting unnecessary legal assistance; charged grossly excessive fees, as exemplified by his fee of approximately \$20,000 to collect undisputed insurance and retirement benefits which required purely administrative tasks; and failed to protect the rights of elderly heirs of an estate.

The 1992 Hearing Panel further found that Mr. Dawkins had converted client funds, commingled personal funds with clients' funds in order to evade his own tax responsibilities, and permitted his clients to use his clients' fund account to shield their own funds from creditors. In addition, Mr. Dawkins filed a registration statement with the Board of Bar Overseers which falsely represented that he maintained an IOLTA account. Mr. Dawkins changed the account to an IOLTA account nine days after his suspension from the practice of law. Moreover, the 1992 Hearing Panel found that Mr. Dawkins' conduct in these other matters

paled in comparison to his neglect of a defendant convicted of a murder whom Mr. Dawkins had represented at trial and for whom Mr. Dawkins was to take an appeal. Mr. Dawkins intentionally failed to pursue the appeal and failed to respond to many of his client's inquiries and to inquires from the Supreme Judicial Court clerk's office. When Mr. Dawkins did respond, he misrepresented his intentions to pursue the appeal. More than three years after the conviction, Mr. Dawkins withdrew at the suggestion of the court. New counsel was appointed and the conviction was overturned because of reversible plain error in the rulings of the trial court.

The 1992 Hearing Panel also found that Mr. Dawkins failed to cooperate with Bar Counsel's investigation. He was not candid during the disciplinary proceedings, fabricated a letter which he introduced in evidence and had a substantial history of prior discipline. This discipline included not only Matter of Dawkins, 412 Mass. 90 (1992), but also Matter of Dawkins, 3 Mass. Att'y Disc. R. 52 (1983), a public censure imposed, in part, for neglect or incompetence in seven criminal cases involving "the failure of the respondent to proceed with post-conviction appeals." Despite the recommendation of the Hearing Panel and the Board of Bar Overseers that he be disbarred, the single justice (Lynch, .J.) only suspended Mr. Dawkins indefinitely, retroactive to April 2, 1992. Matter of Dawkins, 10 Mass. Att'y Disc. R. 49 (1994). This suspension was entered on July 20, 1994.

With respect to the present Petition for Reinstatement, the Supreme Judicial Court rule 4:01, §18(6) requires that Mr. Dawkins prove: (1) that he has the moral qualifications required for admission to the practice of law in the Commonwealth; (2) that he has the required competency and learning in the law; and (3) that his resumption of the practice of law would not be detrimental to the integrity and standing of the bar, the administration of the justice or the public.

Mr. Dawkins has failed to sustain his burden of proof on any of the three elements required for reinstatement. The scathing report of the 1992 Panel chaired by Michael E. Mone, found Mr. Dawkins morally unfit to practice law. In reading Mr. Dawkins' reinstatement questionnaire and listening to his testimony, it would appear that Mr. Dawkins has never even read that report. On cross-examination, Mr. Dawkins was asked about his 1994 suspension. He testified as follows (Tr. 1:60):

"Q. Okay. What were you suspended for in 1994, do you remember?

A. I don't remember to be honest with you.

Q. You don't remember?

A. No, I don't."

In answering Question 5 of the reinstatement questionnaire, which calls for a description of the misconduct upon which the suspension or disbarment was based, Mr. Dawkins represented that his suspension was "based upon failure to pay medical bills promptly after settlement of tort case and using funds for purposes unrelated to the tort action," conduct that led to his six-month suspension. Mr. Dawkins erroneously answered Question 6 that there were no complaints against him other than Bar Counsel. He admitted at the hearing that Lance Johnson, Inez Johnson, Naomi Cohen, Charles White, and Hilda Harris-Ransom had filed complaints against him (Tr. 1:66) and as a matter of record, that a judge's complaint to Bar Counsel led to the six month-suspension. Matter of Dawkins, 412 Mass. at 90-92 (1992).

In answering Question No. 8 of the questionnaire, Mr. Dawkins failed to list the names of the complaining witnesses.

It appears that Mr. Dawkins has made friends with a number of attorneys over the years. He produced 21 letters recommending that his petition be granted. However, none of the letters indicate that the writers had ever read the 1992 report of the Hearing Panel; that they even knew the reasons for Mr. Dawkins' suspension; or that Mr. Dawkins had ever discussed the matters leading to his suspension with the writers.

Our job is not to determine whether Mr. Dawkins is well liked, but rather, whether he has demonstrated that he has changed since his suspension and that he now does have the moral qualifications to practice law. The hearing was devoid of such evidence. As set forth above, Mr. Dawkins shows no understanding, acknowledgement, or even recognition of his misconduct causing his suspension, nor any awareness of the harm he caused his clients and others. In addition, Mr. Dawkins has failed to repay the Clients' Security Board the \$1,600 awarded to Inez Johnson as restitution for his defalcation. (Tr. 1-45, 1:32) Mr. Dawkins has failed to resolve his tax liabilities with the Internal Revenue Service and the Massachusetts Department of Revenue. Mr. Dawkins listed IRS obligations totaling \$3,298 and Department of Revenue obligations of \$2,200 in his Reinstatement Questionnaire. (Tr. 1:81) At the hearing, Mr. Dawkins acknowledged that he misstated his IRS obligations and that they amounted to \$18,336.25. (Tr. 1:82) The invoices he produced, Exhibits 8A-8C, actually totaled \$17,857.48, but the Internal Revenue Service is claiming entitlement to \$42,707.05 (Ex. 9). In June of 1993 in the Disciplinary Proceedings leading to his indefinite suspension, Mr. Dawkins testified that he owed the IRS \$46,000. (Tr. 1:92).

Mr. Dawkins testified that he was unable to make restitution to the Clients' Security Board due to lack of funds. (Tr. 1:45). However, since 1992, Mr. Dawkins has leased office space in downtown Boston. (Tr. 1:93-94). He has also maintained a business telephone with three telephone lines. (Tr. 1:46, 98, 129). Certainly he could have used some of his money to make restitution to the Clients' Security Board and to pay his taxes, rather than paying for office space and telephone lines.

The 1992 Hearing Panel found that Mr. Dawkins did not have the learning in the law necessary to be reinstated at that time. There was scant evidence to show that there should be any change in that assessment. Mr. Dawkins testified that he did read Lawyers Weekly when he was able to get a copy from other lawyers and subscribed to the Advance Sheets until his subscription expired about a year ago. (Tr. 1:113). He has not taken the MPRE, nor any courses on ethics. According to Mr. Dawkins, since his suspension he has been reading and loafing. (Tr. 1:134).

Finally, we find that Mr. Dawkins continues to practice law (or at least holds himself out as a lawyer) since his suspension. Mr. Dawkins paid for listings in the Yellow Pages as an attorney until Bar Counsel brought a petition for contempt against him for holding himself out as a lawyer. (Tr. 1:98) (Exs. 11, 13, 19). Mr. Dawkins also is listed in the 1997 white pages as a lawyer. (Ex. 12). Mr. Dawkins appeared for his wife, Bernice Dawkins, in a summary process proceeding against Richard Campo in the Plymouth District Court. (Ex. 15). Mr. Dawkins took \$600 from Jeffrey Harvey who was facing criminal charges in the Dorchester District Court and a possible violation of probation in the Suffolk Superior Court. (Tr. 1:170, 171). Mr. Harvey's cousin, John Roberts, recommended Mr. Dawkins to Harvey. (Harvey Tr. 1:139, 172). Mr. Dawkins and Harvey met in the South End, where Mr. Dawkins agreed to handle motions and obtain affidavits for the Dorchester matter and take care of the probation violation in Suffolk Superior Court for \$2,500. (Tr. 1:177). Harvey paid Mr. Dawkins \$100 at this first meeting. (Tr. 1:145) He then learned from his aunt that Mr. Dawkins had not handled a case for a couple of years but "he was a good murder attorney and that if [Harvey] felt comfortable with him to use him." (Tr. 1:173) Harvey paid another \$500 to Mr. Dawkins on November 16, 1997, and obtained a receipt. (Tr. 1:144-146)

Mr. Dawkins took no action after receiving payment. (Tr. 1:49, 147) Harvey called the Board of Bar Overseers on November 25, 1997, to investigate Mr. Dawkins' "track record." (Tr. 1:147) He learned from the Board that Mr. Dawkins was indefinitely suspended. Harvey called Mr. Dawkins, advised him that he knew Mr. Dawkins had been suspended, and demanded his money back. (Tr. 1:149-150) Mr. Dawkins said that he was not practicing law and offered to find a lawyer for Harvey. (Tr. 1:150-1:151) Harvey refused this offer, and Mr. Dawkins returned the money, in cash. (Tr. 1:149-151)

Mr. Dawkins denies that he took the funds as partial payment of a fee for providing legal

services. Instead, he says, Harvey gave him the \$600 "as a down payment, I mean a retainer for a lawyer who I chose." (Tr. 1:49) Mr. Dawkins admits that he did not even perform this task, having been "under the weather for about a week or so." (Tr. 1:50).

CONCLUSIONS OF LAW

The conduct giving rise to Mr. Dawkins' suspension is affirmative proof that he lacks the moral qualifications to practice law. *Matter of Centracchio*, 345 Mass. 342, 346 (1963). To gain reinstatement, Mr. Dawkins has the burden of proving that he has led "a sufficiently exemplary life to inspire public confidence once again, despite his previous actions." *Matter of Prager*, 422 Mass. 86, 92 (1996), quoting *Matter of Hiss*, 368 Mass. 447, 452 (1975). S.J.C. Rule 4:01, §18(6), places the burden of proof on the petitioner to demonstrate that

he ... has 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.

Mr. Dawkins has met none of these requirements. Mr. Dawkins' reinstatement would not be in the public interest. Mr. Dawkins' continuing to hold himself out as a lawyer should be brought before the Supreme Judicial Court in another contempt proceeding.

RECOMMENDATIONS

This Hearing Panel recommends that the Petition for Reinstatement filed by Reuben S. Dawkins be denied.

Robert V. Costello, Chair
Robert Guttentag, Member
Richard M. Zielinski, Member

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

Please direct all questions to webmaster@massbbo.org.
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