

ORIGINAL

BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO

In Re:	:	05-1115
Reinstatement of	:	Case No. 02-030
Lawrence Edward Winkfield Attorney Reg. No. 0034254	:	Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio
Respondent	:	<div data-bbox="497 658 912 936" data-label="Text"> <p>FILED JUN 18 2009 CLERK OF COURT SUPREME COURT OF OHIO</p> </div>
Columbus Bar Association	:	
Relator	:	

This matter was heard on January 9, 2009 in Columbus, Ohio, before a panel composed of Judge Joseph Vukovich, Walter Reynolds, and Paul De Marco, the panel chair. None of the panel members is from the appellate district in which the original complaint arose.

Petitioner Lawrence Edward Winfield, Attorney Registration No. 0034254, was admitted to practice law in Ohio in 1975. He was first disciplined for professional misconduct in 1996 when the Supreme Court suspended him for one year but conditionally stayed the suspension. *Columbus Bar Assn. v. Winkfield* (1996), 75 Ohio St.3d 527. He resumed practicing law following that suspension. On April 11, 2001, however, the Supreme Court found additional misconduct and ordered another suspension of petitioner's license, this time for two years with a stay of the last year on the condition of restitution. *Columbus Bar Assn. v. Winkfield* (2001), 91 Ohio St.3d 364. To implement the second suspension, the Supreme Court directed petitioner to "deliver to all clients being represented in pending matters all papers or other property pertaining

to the client . . . calling attention to any urgency for obtaining such papers or property.”

Petitioner did not make restitution at that time and, thus, was not reinstated from his second suspension.

On January 15, 2003, while petitioner still was under his second suspension, the Columbus Bar Association filed a ten-count amended complaint charging him with additional misconduct, including failing to notify clients about his second suspension and continuing to practice law in violation of the Supreme Court’s suspension order dated April 11, 2001. In connection with those proceedings, a psychiatrist appointed by the Board, Dr. Ronald Litvak, evaluated petitioner, concluding that he had “a long-standing personality disorder” that causes him not to accept responsibility, and indeed to blame others for problems in his law practice.

A panel of the Board heard the cause and made findings of fact and conclusions of law, recommending an indefinite suspension subject to specified conditions for reinstatement, all of which the Board adopted. On December 11, 2006, the Supreme Court adopted the Board’s recommendation on the basis that petitioner had “presented proof of a diagnosed mental disability and the causal connection between his diagnosis and misconduct.” *Columbus Bar Assn. v. Winkfield*, 107 Ohio St.3d 360, 2006-Ohio-6, at ¶ 56. The Court indefinitely suspended petitioner from the practice of law in Ohio, conditioning any petition for reinstatement on his ability to show compliance with Gov.Bar R. V(10) and the following conditions:

1. He has made restitution as ordered in *Columbus Bar Assn. v. Winkfield* (2001), 91 Ohio St.3d 364, 745 N.E.2d 411;
2. He has satisfied all financial obligations to the Client Security Fund and debts to former clients incurred because of his misconduct;
3. He has not been accused of engaging in the unauthorized practice of law;

4. Within 30 days of our judgment, he has entered into and consistently complied with a comprehensive and professionally prescribed health-treatment plan for the mental conditions at issue in this case;
5. During the treatment, he has provided quarterly reports to relator regarding his compliance with the health-treatment plan;
6. He is physically and mentally able to competently and ethically engage in the practice of law; and
7. He has a detailed oversight plan for his postsuspension practice of law that includes a structured environment and monitoring.

Winkfield, 2006-Ohio-6, at ¶ 57-64.

On July 7, 2008, petitioner filed with the Board the instant petition for reinstatement.

While his petition was pending, but before the panel's hearing on it, petitioner notified the panel that he had been arrested for driving while under the influence of alcohol. Gov.Bar R. V(10)(E) states in relevant part as follows: "Petitioner shall not be reinstated unless he or she establishes . . . by clear and convincing evidence to the satisfaction of the panel hearing the petition for reinstatement: that [he] has made appropriate restitution to the persons who were harmed by his misconduct, and that [he] possesses all of the mental, educational and moral qualifications that were a requirement of an applicant for admission to the practice of law in Ohio at the time of [his] original admission, and that [he] is now a proper person to be readmitted to the practice of law in Ohio, notwithstanding the previous disciplinary action." The Supreme Court has defined "clear and convincing evidence" as "that measure or degree of proof which is more than a mere 'preponderance of the evidence,' but not to the extent of such certainty as is required 'beyond a reasonable doubt' in criminal cases, and which will provide in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *Cincinnati Bar Assn. v. Massengale* (1991), 58 Ohio St.3d 121, 122, 568 N.E.2d 1222, citing *Cross v. Ledford* (1954), 161 Ohio St. 469, 120 N.E.2d 118, paragraph three of the syllabus. Gov. Bar R. V(10) does not

state that a petitioner *must* be reinstated if he establishes by clear and convincing evidence that he meets all conditions set forth therein; it states that he may not be admitted *unless* the panel so finds. *Disciplinary Counsel v. Woods* (1990), 50 Ohio St.3d 72, 74. Thus, satisfactory proof under Gov.Bar R. V(10) is a necessary condition for reinstatement, but it does not guarantee reinstatement. *Id.* The Columbus Bar Association has declined to take a position on whether petitioner should be reinstated.

In support of his petition for reinstatement, petitioner called as character witnesses several friends, a former employee, and a former client, all of whom testified, in substance, that he is qualified once again to engage competently and ethically in the practice of law. Several of these witnesses observed that petitioner had become more mature, humble, and contrite since being suspended from the practice of law. It is important to note, however, that these witnesses uniformly possessed little, if any, knowledge of petitioner's diagnosed mental illness, the problems in his practice that flowed from this condition, and the conduct that had led to his two suspensions. As such, their conclusory testimony could not sustain petitioner's claim that he had changed his ways and did not assuage the panel's concern that petitioner's condition would again lead to such problems. For that evidence, such as it was, petitioner relied on the testimony of his wife, his counselor, and himself.

Petitioner's wife, Dr. Patricia Winkfield, was questioned at length concerning petitioner's diagnosed mental illness and related problems. Unlike petitioner's other character witnesses, Dr. Winkfield was familiar with her husband's diagnosis. She attested to his dedication to counseling, which she said has led to "a realization of his problems" and, along with "exercise" and "healthy eating," helped him deal with them. (Tr. 39) Like the other witnesses, petitioner's wife offered the conclusory opinion that petitioner deserves reinstatement. It would be

inaccurate, however, to characterize Dr. Winkfield as an enthusiastic proponent of her husband's reinstatement. Perhaps related to marital difficulties to which more than one witness alluded, petitioner's wife seemed decidedly unconvinced that he could be counted on not to engage in negative behavior again. She acknowledged, for example, that he recently had been arrested for driving under the influence. She also did not gainsay the debilitating nature of his problems, stating that "depression is something that can take – you have to work on that consistently." (Tr. 42) The best Dr. Winkfield could say in support of her husband's reinstatement was that he "has a better understanding of his issues, and also planning one's day." (Tr. 42-43) This simply is not enough to assuage the panel's concern that petitioner's diagnosed mental illness and related problems will cause him to revert to the behavior for which he was originally – and repeatedly – suspended.

Petitioner also called his counselor, Richard Fetter, to testify. Mr. Fetter, a licensed independent social worker, is not a psychiatrist or a psychologist, and has no degrees in psychology. He has been petitioner's counselor for more than a decade. He identified petitioner's "primary diagnoses" as "depression" and "borderline personality disorder." (Tr. 48, 64) He sees petitioner regularly but not weekly. Although Mr. Fetter opined that petitioner has "become a more responsible individual than he was at the onset of this" (Tr. 53) and "is capable of making good choices," (Tr. 61) he acknowledged that petitioner "used horrible judgment" in driving while under the influence of alcohol last year (Tr. 63) and that at a deposition related to this matter petitioner had exhibited signs of shifting blame to others for his problems. (Tr. 69) He also acknowledged that petitioner "can become confused by organizational and structural processes in terms of how they apply to his life" and would need strong staff and peer support to resume practicing law competently and ethically. (Tr. 65) In his own testimony, petitioner

identified Attorney Wilbur Flippin as his mentor, with whom he intended to practice law, if reinstated. He described Mr. Flippin as 78 or 79 years old and a solo practitioner.

Following the hearing, petitioner was given leave to, and did, file a report by a psychiatrist, Dr. Jerry Zober of Pepper Pike, Ohio, who evaluated him shortly after the hearing. Describing this as “a very complex case,” Dr. Zober noted that, while petitioner “has certainly had a difficult course of illness” and he continues to need treatment for his personality disorder, he “is not suffering from a major mental illness” at this time. In Dr. Zober’s opinion, petitioner has made sufficient progress to resume practicing law, though he cautions that “recovery even in the best of circumstances may be tenuous.”

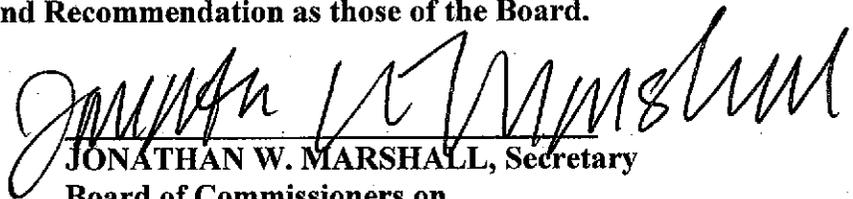
CONCLUSION

In a reinstatement case such as this, the burden rests on the petitioner to establish that he “is now a proper person to be readmitted to the Bar of Ohio.” This, he must do by “clear and convincing evidence.” Fulfilling this requirement in this case means producing evidence sufficient to leave the panel with the “firm belief or conviction” that the behavior by petitioner that led to his two prior suspensions really is a thing of the past. *Massengale*, 58 Ohio St.3d at 122. While there can be no doubt petitioner has made earnest efforts to understand his mental illness and overcome his behavioral problems, the evidence he presented simply does not leave the panel with a firm belief or conviction that he is now a proper person to be readmitted. Because we are not convinced petitioner can practice law without again doing harm to his clients’ interests and violating ethical rules, we cannot in good conscience recommend to the Board that he be permitted to resume the practice of law at this time. Accordingly, the panel recommends that the Petition for Reinstatement be denied.

BOARD RECOMMENDATION

Pursuant to Gov. Bar Rule V, Sec. 10(G)(5) and (6), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on June 12, 2009. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends that the Respondent, Lawrence Edward Winkfield, be denied readmission to the practice of law in the State of Ohio. The Board further recommends that the cost of these proceedings be taxed to the Respondent in any disciplinary order entered, so that execution may issue.

Pursuant to the order of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendation as those of the Board.



**JONATHAN W. MARSHALL, Secretary
Board of Commissioners on
Grievances and Discipline of
the Supreme Court of Ohio**

JAN 11 2006

The Supreme Court of Ohio

MARCIA J. MENDEL, CLERK
SUPREME COURT OF OHIO

Case No. 05-1115

Columbus Bar Association,
Relator,
v.
Lawrence Edward Winkfield,
Respondent.

ON CERTIFIED REPORT BY THE
BOARD OF COMMISSIONERS ON
GRIEVANCES AND DISCIPLINE OF
THE SUPREME COURT

ORDER

The Board of Commissioners on Grievances and Discipline filed its Final Report in this Court on June 22, 2005, recommending that pursuant to Rule V(6)(B)(2) of the Supreme Court Rules for the Government of the Bar of Ohio the respondent, Lawrence Edward Winkfield, be indefinitely suspended from the practice of law. Respondent filed no objections to said Final Report, and this cause was considered by the Court. On consideration thereof,

IT IS ORDERED AND ADJUDGED by this Court that pursuant to Gov.Bar R. V(6)(B)(2), respondent, Lawrence Edward Winkfield, Attorney Registration Number 0034254, last known business address in Westerville, Ohio, be indefinitely suspended from the practice of law consistent with the opinion rendered herein. It is further ordered that, upon any petition for reinstatement, respondent must show compliance with Gov.Bar R. V(10) and show the following: (1) he has made restitution as ordered in *Columbus Bar Assn. v. Winkfield* (2001), 91 Ohio St.3d 364, 745 N.E.2d 411; (2) he has satisfied all financial obligations to the Client Security Fund and debts to former clients incurred because of his misconduct; (3) he has not been accused of engaging in the unauthorized practice of law; (4) within 30 days of our judgment, he has entered into and consistently complied with a comprehensive and professionally prescribed health-treatment plan for the mental conditions at issue in this case; (5) during the treatment, he has provided quarterly reports to relator regarding his compliance with the health-treatment plan; (6) he is physically and mentally able to competently and ethically engage in the practice of law, and (7) he has a detailed oversight plan for his post-suspension practice of law that includes a structured environment and monitoring.

IT IS FURTHER ORDERED that the respondent immediately cease and desist from the practice of law in any form and is hereby forbidden to appear on behalf of another before any court, judge, commission, board, administrative agency or other public authority.

IT IS FURTHER ORDERED that respondent is hereby forbidden to counsel or advise or prepare legal instruments for others or in any manner perform such services.

IT IS FURTHER ORDERED that the respondent is hereby divested of each, any, and all of the rights, privileges and prerogatives customarily accorded to a member in good standing of the legal profession of Ohio.

IT IS FURTHER ORDERED that respondent be taxed the costs of these proceedings in the amount of Three Thousand Two Hundred Ninety-One Dollars and Ninety-Four Cents (\$3,291.94), which costs shall be payable to this Court by certified check or money order on or before 90 days from the date of this order. It is further ordered that if these costs are not paid in full on or before 90 days from the date of this order, interest at the rate of 10% per annum shall accrue as of 90 days from the date of this order, on the balance of unpaid Board costs. It is further ordered that respondent may not petition for reinstatement until such time as respondent pays costs in full, including any accrued interest.

IT IS FURTHER ORDERED that, pursuant to Gov.Bar R. X(3)(G), respondent shall complete one credit hour of continuing legal education for each month, or portion of a month, of the suspension. As part of the total credit hours of continuing legal education required by Gov.Bar R. X(3)(G), respondent shall complete one credit hour of instruction related to professional conduct required by Gov.Bar R. X(3)(A)(1), for each six months, or portion of six months, of the suspension.

IT IS FURTHER ORDERED, sua sponte, by the Court, that within 90 days of the date of this order, respondent shall reimburse any amounts that have been awarded against the respondent by the Clients' Security Fund pursuant to Gov.Bar R. VIII(7)(F). It is further ordered, sua sponte, by the Court that if, after the date of this order, the Clients' Security Fund awards any amount against the respondent pursuant to Gov.Bar R. VIII(7)(F), the respondent shall reimburse that amount to the Clients' Security Fund within 90 days of the notice of such award.

IT IS FURTHER ORDERED that respondent shall not be reinstated to the practice of law in Ohio until (1) respondent files proof with the Court that he has made restitution as ordered in *Columbus Bar Assn. v. Winkfield* (2001), 91 Ohio St.3d 364, 745 N.E.2d 411, and that he has satisfied all financial obligations to the Client Security Fund and debts to former clients incurred because of his misconduct (2) respondent complies with the requirements for reinstatement set forth in the Supreme Court Rules for the Government of the Bar of Ohio; (3) respondent complies with the Supreme Court Rules for the Government of the Bar of Ohio; (4) respondent complies with this and all other orders of the Court; and (5) this Court orders respondent reinstated.

IT IS FURTHER ORDERED that on or before 30 days from the date of this order, respondent shall:

1. Notify all clients being represented in pending matters and any co-counsel of respondent's suspension and consequent disqualification to act as an attorney after the effective date of this order and, in the absence of co-counsel, also notify the

clients to seek legal service elsewhere, calling attention to any urgency in seeking the substitution of another attorney in respondent's place;

2. Regardless of any fees or expenses due respondent, deliver to all clients being represented in pending matters any papers or other property pertaining to the client, or notify the clients or co-counsel, if any, of a suitable time and place where the papers or other property may be obtained, calling attention to any urgency for obtaining such papers or other property;

3. Refund any part of any fees or expenses paid in advance that are unearned or not paid, and account for any trust money or property in the possession or control of respondent;

4. Notify opposing counsel in pending litigation or, in the absence of counsel, the adverse parties, of respondent's disqualification to act as an attorney after the effective date of this order, and file a notice of disqualification of respondent with the court or agency before which the litigation is pending for inclusion in the respective file or files;

5. Send all notices required by this order by certified mail with a return address where communications may thereafter be directed to respondent;

6. File with the Clerk of this Court and the Disciplinary Counsel of the Supreme Court an affidavit showing compliance with this order, showing proof of service of notices required herein, and setting forth the address where the respondent may receive communications; and.

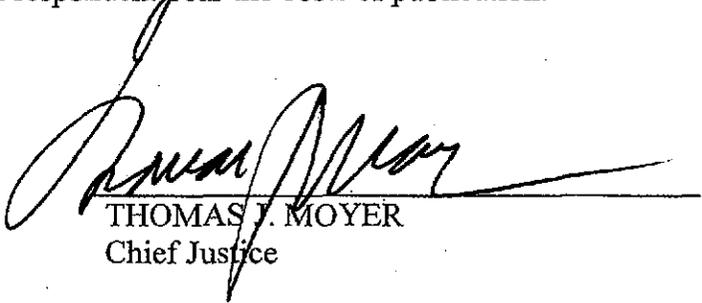
7. Retain and maintain a record of the various steps taken by respondent pursuant to this order.

IT IS FURTHER ORDERED that respondent shall keep the Clerk, the Columbus Bar Association, and the Disciplinary Counsel advised of any change of address where respondent may receive communications.

IT IS FURTHER ORDERED, sua sponte, that all documents filed with this Court in this case shall meet the filing requirements set forth in the Rules of Practice of the Supreme Court of Ohio, including requirements as to form, number, and timeliness of filings.

IT IS FURTHER ORDERED, sua sponte, that service shall be deemed made on respondent by sending this order, and all other orders in this case, by certified mail to the most recent address respondent has given to the Attorney Registration Section.

IT IS FURTHER ORDERED that the Clerk of this Court issue certified copies of this order as provided for in Gov.Bar R. V(8)(D)(1), that publication be made as provided for in Gov.Bar R. V(8)(D)(2), and that respondent bear the costs of publication.



THOMAS J. MOYER
Chief Justice