

ORIGINAL

THE SUPREME COURT OF OHIO

In Re:

Petition for Reinstatement of:

Jay Alan Goldblatt  
28700 Jackson Road  
Orange Village OH 44022

Case No. 2007-1961

Petitioner

Disciplinary Counsel  
250 Civic Center Drive, Suite 325  
Columbus OH 43215

Relator

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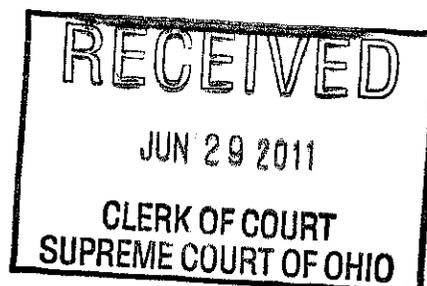
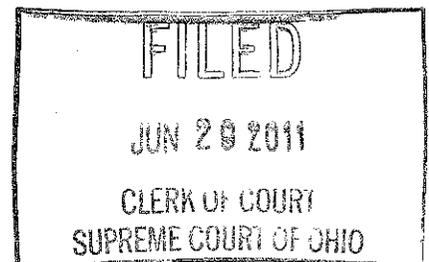
**OBJECTIONS OF PETITIONER TO THE RECOMMENDATION OF THE  
BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE OF  
THE SUPREME COURT OF OHIO AND SUPPORTING BRIEF**

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### Background

Petitioner has been suspended from the practice of law for approximately five and one-half years beginning January 27, 2006. On that date, this Honorable Court imposed an interim suspension due to his felony convictions in Cuyahoga County. On May 29, 2008, this Court imposed an indefinite suspension as a result of those convictions and Petitioner's underlying conduct.

On January 24, 2011, Petitioner filed a Petition for Reinstatement with this Court. The Court forwarded the petition for Reinstatement to the Board of Commissioners on Grievances and Discipline (the "Board"). The Board appointed a panel to conduct a hearing on the Petition for Reinstatement. The panel conducted the hearing in Akron, Ohio on May 10, 2011.

After hearing the evidence and the statement of the Chief Assistant Disciplinary Counsel that based on the evidence and on her office's investigation of this matter, the Petitioner had met his burden of proof that he is fit to be reinstated to the practice of law in Ohio, the panel unanimously recommended that Petitioner be re-admitted to the practice of law in Ohio. Despite all of this, the Board erred and recommended that Petitioner be denied readmission.

### Objections and Argument

This recommendation by the Board is contrary to the evidence presented at the hearing before the panel and is contrary to the Findings of Facts and Conclusions of Law that the Board adopted and issued in this matter. (As certified by the Secretary of the Board, the panel's Findings of Fact and Conclusions of Law are those of the Board itself.)

All of the evidence presented at the hearing supports the Conclusions of Law that the Board has adopted and issued: "Petitioner possesses all of the mental, educational and moral

qualifications that were required of an applicant for admission to the practice of law in the State of Ohio at the time of his original admission;” (Conclusion of Law number 23.A.) and “Petitioner is now a proper person to be re-admitted to the practice of law in the State of Ohio, notwithstanding the previous disciplinary action.” (Conclusion of Law number 23 C.)

This supporting evidence includes a letter from the Honorable Janet Burnside of the Cuyahoga County Court of Common Pleas who presided over the trial and sentencing of Petitioner. The panel (and the Board) found this to be an “unqualified recommendation that Petitioner be readmitted to the bar; and she took the time to cite his personal growth and discipline as the reasons for her recommendation.” (Finding of Fact number 12.)

Although Petitioner never asked that the prior panel or this Court consider any mental illness to be a mitigating factor, he did present a report from psychiatrist Stephen Levine, M.D. concluding that Petitioner “is now capable cognitively, ethically, morally, and psychiatrically to practice his profession again.” (Finding of Fact number 16.) The panel and the Board found that the letter from Petitioner’s psychotherapist, Candace Risen, supported his reinstatement to the practice of law. (Finding of Fact number 17.)

Petitioner’s monitor from the Ohio Lawyers Assistance Program, Paul Caimi, provided a letter and testified in person. He was examined by Petitioner, cross examined by Relator and questioned by the panel. The panel and the Board found that Mr. Caimi “detailed...Petitioner’s excellent performance to this point in his contract...” (Finding of Fact number 18.)

Petitioner testified, was cross examined by the Relator and was questioned by the panel. (Finding of Fact number 21.) “Petitioner also introduced several letters of support from various individuals holding positions of responsibility and trust in various communities and

organizations, all indicating that they support his reinstatement without qualification.” (Finding of Fact number 20).

The Board first lost its way in not relying on this evidence and on its own Findings of Fact and Conclusions of Law, instead citing “Petitioner’s underlying crime...” The Board described this crime as one of “solicitation of sex with a minor” notwithstanding that in the underlying crime, Petitioner never communicated in any way with a minor or with anyone pretending to be a minor. This not to minimize what Petitioner himself describes as “awful” and “horrible” conduct. (Finding of Fact number 22) and “reprehensible” (Petition for Reinstatement number 5.f.). The point is that the Board based its recommendation on an apparently insufficient analysis of the record.

More importantly, this Court did not impose a permanent disbarment in the original disciplinary action and none of the Disciplinary Counsel, the panel nor the Board recommended a permanent disbarment at that time. Nevertheless, the Board cited Petitioner’s underlying crime as one of its two reasons to deny reinstatement. If that crime from seven years ago, no matter how heinous, is grounds to deny reinstatement, then the Board is in effect retrying the prior disciplinary case and turning an indefinite suspension into a permanent disbarment. That crime and conduct can never go away. As a consequence, the crime and conduct would prevent reinstatement forever if they are allowed to be considered.

The Board’s other basis for recommending against reinstatement is Petitioner’s “relapse in 2010 involving Petitioner’s participation in a chat line.” The panel referred to this as “the single relapse incident in 2010.” (Finding of Fact number 19.)

As is detailed in the record, this occurred over one year ago and involved Petitioner making several calls over several days to a telephone chat line in which people call to talk to

other callers about a variety of subjects, some tasteful and some not. As Petitioner testified, there is nothing inherently wrong with a person, lawyer or not, calling a telephone chat line and he committed no crime in the process. Petitioner further testified that regardless of what he talked about on the telephone, his self imposed rules of conduct prohibit him from calling into the chat line. The record shows that it was for this reason that Petitioner himself was the one who first used the word "relapse" to describe this incident and he immediately reported it to his then probation officer, his OLAP monitor, his 12-step sponsor, his therapist and his therapy group.

As the record reflects, if Petitioner had not reported the "relapse," no one else would have known about it. (Finding of Fact number 19.) The Chief Assistant Disciplinary Counsel stated in her closing: "The fact that we are even talking about the relapse from 2010 is evidence of his acceptance of responsibility and of his personality issues, his mental health issues and his self-governed sobriety." (Finding of Fact number 19 citing Tr.129). Moreover, Petitioner did not violate his OLAP contract in this or any other way and he has remained in compliance with the OLAP contract for over five years.

Here, again, the Board's review of the evidence appears to have been insufficiently thorough. The Board has taken what on balance everyone else views as a positive, and has tried to turn it into a negative in an attempt to provide support for its recommendation. As this fails to support the Board's recommendation, this Court should reject the recommendation.

Furthermore, reinstatement is supported by precedent that Petitioner presented at the hearing: cases in which other lawyers committed sexually based offenses (including a case in which a minor was actually harmed) and this Court imposed suspensions that were shorter than the five and one-half year suspension that Petitioner has served. (See *Office of Disciplinary*

*Counsel v. King* (1988) 37 Ohio St.3d 77; *Disciplinary Counsel v. O'Malley* (2010) 126 Ohio St. 3d 443.) The Board failed to follow or distinguish these decisions.

The Board also failed to follow or distinguish the precedents from other states that Petitioner presented at the hearing that show that the practice in the United States is for shorter suspensions and the return to the practice of law of lawyers who have committed sexual offenses, including in cases in which minors or others have actually been harmed. (See *Iowa Supreme Court Attorney Disciplinary Board v. Templeton*, 784 N.W. 2d 762 (Iowa 2010); *Matter of Christie*, 574 A.2d 845 (Delaware 1990); *In re Farley*, 771 N.W. 2d 857 (Minnesota 2009); *In the Matter of Disciplinary Proceedings Against Engl*, 698 N.W.2d 821 (Wisconsin 2005); *Matter of Lever*, 60 A.D.3d 38 (N.Y. App. Div. 2008).

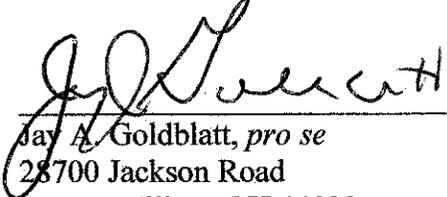
There may be occasions where this Court should adopt a Board recommendation that conflicts with the panel's recommendation. But this is not such a case. The Board recommendation conflicts with all of the evidence. The Board recommendation conflicts with the unanimous recommendation of its panel. The Board recommendation conflicts with the Board's own Findings of Fact and the Board's own Conclusions of Law. The Board recommendation conflicts with the view of the Disciplinary Counsel as presented at the hearing. The Board recommendation conflicts with precedent from this and other states. And the Board does this in the context of a petition for reinstatement, which is a far more objective process than the more subjective determinations made in original disciplinary actions.

Conclusion

For all of the foregoing reasons, Petitioner Jay Alan Goldblatt respectfully requests that this Honorable Court adopt the recommendation of the hearing panel and reinstate him to the practice of law in Ohio. Petitioner further respectfully requests (and hereby moves for) oral argument before this Court should the Court not be prepared to do so solely on the Briefs.

Respectfully submitted,

June 27, 2011

  
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## CERTIFICATE OF SERVICE

A copy of the foregoing Objections of Petitioner and Supporting Brief was sent by first class mail on the 27 day of June, 2011 to:

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