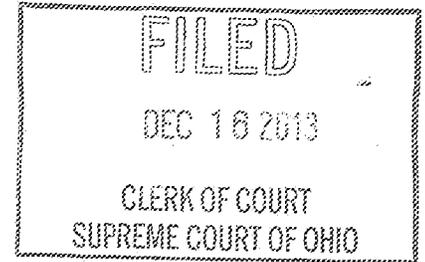


ORIGINAL

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



In Re: : SCO Case Nos. 2006-2308 & 2007-1579

Reinstatement of : BCGD Case Nos. 05-097 & 07-026

Joseph Jeffrey Church :
Attorney Reg. No. 0006961 :

Petitioner : **Findings of Fact,**
: **Conclusions of Law, and**
: **Recommendation of the**
Cleveland Metropolitan Bar Association : **Board of Commissioners on**
: **Grievances and Discipline of**
Relator : **the Supreme Court of Ohio**
:

ON PETITION FOR REINSTATEMENT TO THE PRACTICE OF LAW PURSUANT
TO GOV. BAR R. V, SECTION 10

{¶1} This matter was heard on October 10, 2013, in Columbus upon the petition of Joseph Jeffrey Church for reinstatement to the practice of law pursuant to Gov. Bar R. V, Section 10(B), before a panel consisting of Judge C. Ashley Pike, Lawrence R. Elleman, and Judge Lee. H. Hildebrandt, Jr., chair. None of the panel members resides in the district from which the complaints arose or served as a member of a probable cause panel that reviewed the complaints pursuant to Gov. Bar R. V, Section (6)(D)(1).

{¶2} Joseph Dunson and K. Ann Zimmerman appeared on behalf of Relator. Petitioner appeared pro se.

{¶3} In 2007, the Supreme Court of Ohio indefinitely suspended Petitioner from the practice of law in Board Case No. 05-097. *Cleveland Bar Assn. v. Church*, 114 Ohio St.3d 41,

2007-Ohio-2744. The Court found that Petitioner had violated DR 1-102(A)(5) and DR 6-101(A)(3) by abandoning a bankruptcy proceeding for which he had been retained by Lisa Allen and her husband and by failing to return the \$1,200 fee paid by the Allens. *Id.* at ¶5. The Court further held that Petitioner had violated those same rules by abandoning a contract case filed by Charlotte Kennedy and her husband. *Id.* at ¶8. Finally, the Court found that Petitioner had violated Gov. Bar R. V, Section 4(G) by failing to respond to investigative inquiries. *Id.* at ¶13.

¶4 In 2008, the Supreme Court imposed a second, consecutive indefinite suspension in Board Case No. 07-026. *Cuyahoga Cty. Bar Assn. v. Church*, 116 Ohio St.3d 563, 2008-Ohio-81. The Court held that Petitioner had violated DR 6-101(A)(3), DR 7-101(A)(1), DR 7-101(A)(2), DR 7-101(A)(3), and DR 9-102(B)(4) by failing to respond to a motion for summary judgment filed against his clients Jerred Copen and Tommy Copen, by failing to communicate with the Copens about their case, and by failing to return Jerred Copen's file upon request. *Id.* at ¶14. And the Court again found that Respondent had violated Gov. Bar R. V, Section 4(G) by failing to cooperate in the disciplinary process. *Id.*

¶5 Both of Respondent's disciplinary cases proceeded as default judgment matters based on Respondent's failure to answer the formal complaints filed by Relators.

¶6 Based on the evidence presented, the panel concludes that Petitioner has failed to satisfy the requirements for reinstatement to the practice of law and recommends that the petition for reinstatement be denied.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

¶7 Petitioner Joseph Jeffrey Church, was admitted to the practice of law in the state of Ohio on November 2, 1979.

¶8 On May 20, 2013, Petitioner filed his petition for reinstatement. With his petition, he filed an affidavit indicating, among other things, that he had not been convicted of

any criminal offenses; that he had taken the requisite continuing legal education hours required for reinstatement; that he had paid all restitution required by the Court; that he had complied with the orders of suspension; and that he had no formal disciplinary proceedings pending against him.

{¶9} On August 13, 2013, the chair ordered Petitioner to contact the Ohio Lawyers Assistance Program (OLAP) to undergo an evaluation concerning his petition for reinstatement. The report from OLAP contained no clinical diagnosis or other finding that would preclude Petitioner from being reinstated to the practice of law. On September 23, 2013, counsel for Relator deposed the petitioner. The case then proceeded to a formal hearing before the panel.

{¶10} At the hearing before the panel, Petitioner offered into evidence documentation from the Clients' Security Fund that he had reimbursed the Fund for the full amount that it had disbursed as a result of his misconduct. Petitioner also presented testimony and documentation that he had completed the requisite CLE hours. Finally, Petitioner presented entries from the Supreme Court purging prior findings of contempt that had been issued as a result of Petitioner's having failed to relinquish his attorney-identification card.

{¶11} On cross-examination, though, Relator explored a number of issues that had led it to oppose Petitioner's reinstatement. One of the matters raised by Relator was Petitioner's failure to pay restitution to the Allens. Petitioner maintained that the issue of restitution he had owed had been fully addressed by his payment to the Clients' Security Fund. When confronted with the fact that the Allens had suffered losses not covered by the fund, Petitioner conceded that he did not know whether the Allens had been paid in full. But Petitioner insisted that he had committed no misconduct with respect to the Allens' bankruptcy. Petitioner testified that he had done the required work for the Allens, but that the Allens had played a "game" by refusing to sign the documents to finalize the bankruptcy petition.

{¶12} Petitioner also attempted to deflect blame for other acts of misconduct. For example, he stated that his failure to respond to the summary-judgment motion in the Copen matter, his failure to respond to other clients, and his failure to cooperate in the disciplinary proceedings had been the result of his having changed addresses. When asked about a lawsuit that one of the Copens had filed against him, Petitioner insisted that it had not been a malpractice action because Copen had not sought punitive damages. As for other incidents of misconduct, such as the Kennedy grievance, Petitioner stated that he simply did not recall the events that had led to the allegations of wrongdoing.

{¶13} Relator also delved into the issue of Petitioner's deteriorating financial situation following his suspensions. Petitioner testified that he had been unemployed since the first suspension and that he had tried to obtain only two jobs during that time. According to Petitioner, he had subsisted on social security retirement benefits, on the remnants of a pension plan from a former employer, and on the proceeds from selling his blood plasma.

{¶14} Petitioner testified that, at some point in the 1970s, his mother had given him a house in Cleveland by means of a quitclaim deed. Petitioner failed to pay the assessed property taxes, which eventually reached approximately \$40,000. The tax delinquency ultimately resulted in the house being sold in foreclosure. Petitioner had no agreement to remain in the home and in fact did not even know the identity of the owner. Nonetheless, Petitioner continued to live in the house, though he was unable to pay for natural gas or water service. The home became so cluttered that Petitioner was storing furniture on the porch, and this situation led to the issuance of multiple building-code citations. Despite having no ownership rights, Petitioner expressed the intention to remain in the house until evicted.

{¶15} Of particular concern to Relator was an altercation that had occurred between Petitioner and one of his neighbors in 2008, an altercation that led to Petitioner being charged

with aggravated menacing. Petitioner had an argument with the neighbor, who is African-American, about the neighbor's dog. Petitioner, who had a license to carry a concealed weapon, brought a handgun onto his front porch and confronted the neighbor. According to Petitioner, he had not brandished the weapon but had kept it in his waistband. When the neighbor called the police on his cellular phone and said that Petitioner had the gun pointed in his face, Petitioner shouted that the neighbor was a "lying, f***ing n***er." Hearing Tr. 70.

{¶16} According to Petitioner, he had shouted the epithet to demonstrate to the police dispatcher that he was at a remote distance from the neighbor and was not holding a gun in his face. Petitioner did not explain why he needed to use a racial slur to demonstrate his distance from his neighbor, and he did not express remorse for having used the slur. Nonetheless, he expressed the belief that he could work well with African-American judges and attorneys.

{¶17} The tenor of Petitioner's testimony was that, since he had not been prosecuted for the aggravated-menacing charge, he had done nothing improper. Petitioner further cited the renewal of his concealed-carry permit as evidence that he had been a law-abiding member of the community.

RECOMMENDATION

{¶18} Reinstatement proceedings are governed by Gov. Bar R. V, Section 10, which reads in part as follows:

(E)(1) Requisites for Reinstatement. The petitioner shall not be reinstated unless he establishes all of the following by clear and convincing evidence to the satisfaction of the panel hearing the petition for reinstatement:

- (a) That the petitioner has made appropriate restitution to the persons who were harmed by his or her misconduct;
- (b) That the petitioner possesses all of the mental, educational and moral qualifications that were required of an applicant for admission to the practice of law in Ohio at the time of his or her original admission;

- (c) That the petitioner has complied with the continuing legal education requirements of Gov.Bar R. X, Section 3(G);
- (d) That the petitioner has completed a term of probation, community control, intervention in lieu of conviction, or any sanction imposed as part of a sentence for a felony conviction; and
- (e) That the petitioner is now a proper person to be readmitted to the practice of law in Ohio, notwithstanding the previous disciplinary action.

{¶19} In this case, the panel agrees with Relator that Petitioner has failed to meet his burden of establishing that he should be reinstated. First, Petitioner has failed to demonstrate that he has made appropriate restitution to all persons who were harmed by his misconduct. Although Petitioner presented evidence that he had reimbursed the Clients' Security Fund, he acknowledged that he did not know if the Allens had been made whole in the wake of the abandoned bankruptcy. Petitioner simply maintained that he had committed no misconduct, despite the prior finding of the Supreme Court to the contrary. This defiance in and of itself speaks ill of Petitioner's fitness to return to the practice of law.

{¶20} Moreover, Petitioner's inability to manage his own finances indicates that reinstatement would not be advisable. As the Supreme Court has stated, an attorney is expected to "pay his debts without a court order" and to "scrupulously honor all financial commitments." *Disciplinary Counsel v. McCord*, 121 Ohio St.3d 497, 2009-Ohio-1517, ¶13, quoting *In re Application of Manayan*, 102 Ohio St.3d 109, 2004-Ohio-1804, ¶14. Here, Petitioner failed to pay property taxes on the home that he had received from his mother, resulting in foreclosure. And he has continued to remain in the home essentially as a trespasser, with no means of even providing for utility service. Petitioner has applied for only two jobs since being suspended from practice in 2007 and did not demonstrate that he had expended any great effort to improve his financial situation.

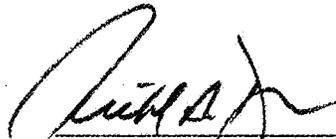
{¶21} The panel also shares the concern of Relator with respect to Petitioner's altercation with his neighbor. Petitioner turned what could have been a simple dispute into a volatile confrontation through his possession of a handgun, the use of profanity, and the use of a racial slur. Petitioner was not ultimately prosecuted for his actions, but the Supreme Court has expressed its particular disapproval of the use of racial slurs. *See Disciplinary Counsel v. Cox*, 113 Ohio St.3d 48, 2007-Ohio-979, ¶44. Although *Cox* involved the use of racial slurs in berating opposing counsel, Petitioner's unrepentant use of such language with a neighbor certainly does not reflect positively on his "mental, educational, and moral qualifications" to practice law.

{¶22} Again, the panel recognizes that Petitioner has complied with a number of the requirements for reinstatement. But he has not demonstrated by clear and convincing evidence that he has met all of the requirements. Accordingly, the panel recommends that the petition for reinstatement be denied.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 10, the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on December 12, 2013. The Board adopted the findings of fact, conclusions of law, and recommendation of the panel that Petitioner, Joseph Jeffrey Church, is not a proper person to be readmitted to the practice of law in Ohio and recommends that the petition for reinstatement be denied. The Board further recommends that the cost of these proceedings be taxed to Petitioner.

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.



RICHARD A. DOVE, Secretary