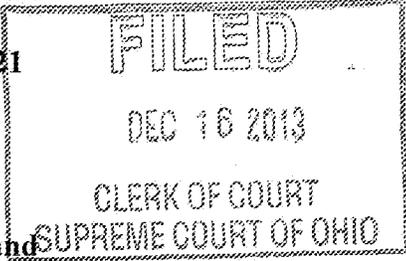


BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO

In Re: : SCO Case No. 2006-0443
Reinstatement of : BCGD Case No. 05-021
Stephen Patrick Linnen :
Attorney Reg. No. 0071290 :
Petitioner : Findings of Fact,
Columbus Bar Association : Conclusions of Law, and
Relator : Recommendation of the
Board of Commissioners on
Grievances and Discipline of
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 18, 2013 in Columbus upon the petition of Stephen Patrick Linnen for reinstatement to the practice of law pursuant to Gov. Bar R. V, Section 10(B). The hearing panel consisted of Alvin R. Bell, Judge C. Ashley Pike, and Keith A. Sommer, chair. None of the panel members resides in the district from which the complaint arose or served as a member of a probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 6(D)(1).

{¶2} Bradley N. Frick, Bruce A. Campbell, and Janet A. Grubb appeared on behalf of Relator. Alvin E. Mathews appeared on behalf of Petitioner.

{¶3} The burden is on Petitioner to show by clear and convincing evidence that he should be reinstated to the practice of law. Petitioner must establish that he possesses all of the mental, educational and moral qualifications that were required of an applicant for admission to

the practice of law at the time of his original admission, and that he is now a proper person to be re-admitted to the practice of law in Ohio, notwithstanding the previous disciplinary action.

Petitioner must also show by clear and convincing evidence that he has complied with the continuing legal educational requirements as prescribed by Gov. Bar R. X, Section 3(G).

Additionally, based upon the order of suspension, Petitioner must show that he has complied with the order of the Supreme Court of Ohio stating:

1. Respondent submits an evaluation by an independent and qualified healthcare professional of his mental health and the propriety of his reinstatement;
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.

{¶4} The Supreme Court of Ohio ordered that Respondent be indefinitely suspended from the practice of law October 25, 2006. *See Columbus Bar Assn. v. Linnen*, 111 Ohio St.3d 507, 2006-Ohio-5480. Petitioner's suspension from the practice of law was for violation of DRI-102(A)(3) based on multiple misdemeanor convictions.

{¶5} Petitioner filed a verified petition for reinstatement to the practice of law March 1, 2013. Pursuant to Gov. Bar R. V, Section 10(B), Petitioner requested the Court to reinstate him to the practice of law. The petition was verified by an accompanying affidavit.

{¶6} The petition states that Petitioner has complied with the Court's order of suspension, including, but not limited to, payment of all costs of this proceeding pursuant to Gov. Bar Rule V 10 (D) and all other requirements set forth by the Court's previous order and the relevant rules as stated in affidavit of compliance attached as an exhibit to the petition. The

petition states that the suspension was for violation of disciplinary rules in effect in 2003, namely DR 1-102(A)(3) and DR 1-102(A)(6) “based upon Petitioner’s deplorable misconduct that ended in 2003 and led to multiple misdemeanor convictions.” Reinstatement Petition at ¶9. Petitioner states that he completed his term of misdemeanor probation over four years ago.

¶7 Based on the evidence presented, the panel finds that Petitioner has satisfied the requirements for reinstatement to the practice of law and recommends that the petition for reinstatement be granted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

¶8 At the hearing, Petitioner submitted several exhibits numbered 1 through 12 which were admitted into evidence.

¶9 The parties stipulated to Dr. Jeffrey L. Smalldon’s qualifications. Dr. Smalldon is one of 300 forensic psychologists nationally who are board-certified by the American Board of Professional Psychology, and he possesses the highest level of license in the area of addiction.

¶10 The parties stipulated that the evaluation conducted by Dr. Smalldon constitutes an evaluation by “an independent and qualified health-care professional” as required by the 2006 suspension order issued by Supreme Court of Ohio. The parties agreed Dr. Smalldon was an independent psychologist chosen by both parties. Dr. Smalldon met with Petitioner five different times from March 2012 to August 2013. Dr. Smalldon spent approximately eight and one-half hours face-to-face with Petitioner. In addition, Dr. Smalldon had Petitioner complete a battery of assessment procedures. Dr. Smalldon also spoke twice with Dr. Sandi McCall, Petitioner’s long-time individual therapist. Dr. Smalldon also interviewed Petitioner’s former probation officer and spoke with Dr. George Mass who was Petitioner’s initial therapist who retired and Dr. McCall followed up. Hearing Tr. 22-24.

{¶11} In addition, Dr. Smalldon spoke with Stephanie Krznarich of Ohio Lawyers Assistance Program (OLAP) by telephone and reviewed extensive records concerning Petitioner's background, including the original transcript of the Supreme Court decision with respect to Petitioner's indefinite suspension and the records of the original criminal case. *Id.* at 23. Dr. Smalldon testified that Petitioner expressed tremendous remorse every time they talked concerning the incidents that led to his criminal conviction and recognized the impact on his victims. *Id.* at 26.

{¶12} Dr. Smalldon testified that he does not believe Petitioner suffers from a major mental illness. Dr. Smalldon diagnosed an adjustment disorder with anxiety; exhibitionism currently in remission for approximately ten years; and impulse control disorder currently in remission for approximately ten years. *Id.* at 28.

{¶13} Dr. Smalldon testified he reviewed the letter from Dr. Pelt and the report of Dr. Gervin. Dr. Smalldon stated Dr. Pelt concluded in 2013 that Petitioner was not in need of medication and confirmed the same conclusion of Dr. Gervin in 2013. *Id.* at 29-31.

{¶14} Attorney Mathews questioned Dr. Smalldon as to whether based on his review of Petitioner's situation if he "formed an opinion to a reasonable degree of psychological probability as to whether he can return to the competent, ethical, and professional practice of law from a mental health standpoint?" Dr. Smalldon stated:

I was going to say, a qualified yes. Qualified only in that I am speaking as a mental health professional. And what I can say is that my assessment has not revealed any mental health-related problems that would cause me to suggest that there should be limits on Mr. Linnen's ability to practice law or that would compromise his ability to practice law.

Well, I — I haven't diagnosed any kind of major mental illness that, in my opinion, would interfere with his ability to practice law. I have reviewed all of these background records pertaining to his case, so I think I have a reasonably good understanding of the pattern of conduct that landed him in trouble both with

the law and with the Ohio Supreme Court originally. And I know that there are no documented recurrences of that behavior for about ten years. The fact that there isn't is far and away the most significant factor in drawing a determination about the likelihood of any future re-offending. He's got, as I said, almost ten years without a relapse. So that's certainly an important factor in my saying that there is nothing from a mental health perspective that would cause me to say that there need to be limits on his ability to practice law.

Id. at 33-34.

{¶15} When questioned as to the significance of ten years without recurrence, Dr.

Smalldon testified:

It absolutely does. There's no stronger indicator of the likelihood or unlikelihood of recidivism than amount of time since relapse. And ten years is a long time. In one of the most frequently used risk assessment instruments, the - - the coding language for using the test talks about if there are several years where the individual has resided in the community and is known not to have re-offended, that likely means that any risk of recidivism can be dramatically dropped; that that's an extremely important factor. When you have ten years without a relapse, that's a very important factor, the - - the strongest of any factor.

Id. at 35-36.

{¶16} During cross-examination by Relator, Dr. Smalldon testified:

Well, he's remained a consistent client of Dr. Sandra McCall. He's continued to attend 12-step meetings on average once a week. He's had his own sponsor. He's acted as sponsor to other people. He places a lot of emphasis on healthy eating. He exercises regularly. He's become actively involved in something that he's very interested in, which is his condominium complex; I believe he's president of the condominium's board. And one of the things that I felt was significant in talking with him is that someone who did what he did ten years ago, who was present in the Columbus area for the media attention given to it, who had his law - - law license suspended indefinitely, is operating under something of a cloud here in the Franklin County area, he chose to remain here.

Id. at 54-55.

{¶17} Dr. Sandra McCall testified as a licensed therapist. Petitioner was referred to Dr.

McCall by OLAP. Dr. McCall testified that Petitioner had a lot of remorse and sadness and cried a lot, and had terrible remorse about the pain he caused people and also his family. Dr. McCall

testified that Petitioner stated: “When I look back on that period in my life, I can’t believe that I did those things.” *Id.* at 65.

{¶18} Dr. McCall met with Petitioner every other week initially and then went to once a month to the present time. Dr. McCall testified that Petitioner never misses an appointment and is committed. Dr. McCall knows that he attends 12-step meetings on a regular basis. Petitioner himself serves as a sponsor for others. Twelve-step meetings are for sex addiction. Dr. McCall was asked if she formed an opinion to a reasonable degree of professional probability as to whether he suffered from a medical condition. She stated: “You know, Stephen has mild depression and mild anxiety, and that’s where he is today.” *Id.* at 68.

{¶19} In response to a question as to whether she formed an opinion to a reasonable degree of professional probability as to whether Petitioner can return to the competent, ethical and professional practice of law, Dr. McCall stated:

I have no doubt about that at all. Steve has spent ten years of his life practicing new behaviors, doing the right thing day in and day out. There is no sign at all of objectifying women, of the kind of behaviors that were there that led up to the diagnosis. He has stayed committed faithfully over those ten years to recovery. And I believe, if this Board would require it, he would continue that. He would continue OLAP, he’d continue to see me, he would continue meetings. I believe he will continue those things, for the most part anyway, because they are the structure of his life today. He is a different person with a different understanding of what drove his behavior, what the choices are.

Id. at 73-74.

{¶20} The panel questioned Dr. McCall if she felt Petitioner has the mental, emotional and moral clarity, and stability to engage in the practice of law, and Dr. McCall answered “absolutely, I do.” *Id.* at 87.

{¶21} Stephanie Krznarich, a clinical director of the Ohio Lawyers Assistance Program, testified that she is a licensed independent social worker supervisor and works in the field of

behavioral health and mental health. Krznarich met with Petitioner December 9, 2003 for a chemical dependency/mental health assessment and decided he should engage in a mental health recovery contract for five years. The diagnosis at that time was dysthymia, alcohol abuse, marijuana abuse, and exhibitionism. Krznarich stated the last cannabis abuse was in June 2003 and that he had used one to two times a year for the past seven years. Petitioner reported drinking alcohol three to four times a week anyway from a bottle of beer to a glass of wine. During law school, from 1996 to 1999, he drank approximately one time every other week and would have a binge pattern of five to seven beers when he would drink. *Id.* at 93-95.

{¶22} Krznarich testified that on July 25, 2008 he received a DUI charge and contacted OLAP for a second assessment. Petitioner was not diagnosed with any alcohol abuse of dependence from the assessment of July 25, 2008. Krznarich stated he now drinks one to three times per week consisting of one to two glasses of wine with dinner or one or up to three beers. *Id.* at 96-97.

{¶23} Krznarich testified that in 2003, Petitioner's dysthymia was a low level depression that lasts two or more years, and that Petitioner has seen a number of psychiatrists who determined that medication was not necessary. Krznarich testified that when she met Petitioner in 2003, he did not meet the criteria for substance abuse, alcohol abuse or alcohol dependence, and did not exhibit any mental health systems of depression or anxiety. *Id.* at 97-101.

{¶24} Krznarich testified that Petitioner has consistently attended 12-step recovery meetings and has always sent meeting logs to her. Petitioner is also a sponsor for other individuals for sex addiction and sex and love addiction and in fact has a home group. Krznarich stated he has also worked through the 12 steps of recovery at least twice and has worked through another well known, well researched work book. *Id.* at 101-103.

{¶25} Krznarich stated that he has been compliant during the seven years, and when he was no longer actively engaged and a participant in OLAP, Petitioner acted as a volunteer and serves to help other people in recovery with lawyer's assistance program. Krznarich stated that OLAP would be willing to enter into another recovery contract for ongoing monitoring with Petitioner. She further stated:

I don't have any concerns that are specific to Steve and his return to the practice of law.

He has the fundamental knowledge and skills and tools to be successful in life and in the practice of law.

Id. at 105-106.

{¶26} Attorney Mathews questioned Krznarich as to what significance she gave to the fact that Petitioner had not reoffended since his arrest in 2003. She testified:

It's great significance. Dr. Smalldon says in his report that it's very difficult because this kind of conduct is unusual, at best, very unusual; that it's not common; and that, to be honest, it's not highly studied. That he thinks that - - the fact that he will likely to re-offend is very low, I would agree with that. I would agree with that because this is what we know about process addictions, which is an addiction like sex addiction.

Id. at 115.

{¶27} She emphasized the 12 steps of recovery, his sponsors, and the tools and skills he has developed in working with Drs. Mass and McCall. *Id.* at 115-116.

{¶28} Krznarich was questioned as to whether she believes Petitioner has measures in place to deal with stress that he didn't have back when he offended, and she stated "absolutely." *Id.* at 125.

{¶29} Krznarich testified that the OLAP contract could continue and she hoped a sponsor for the 12-step recovery program would continue indefinitely. *Id.* at 132.

{¶30} Petitioner testified and identified Exhibit 12, a portion of which established his compliance with the CLE requirements of Gov. Bar R. X.

{¶31} Petitioner testified that he has worked through the 12-step program twice concerning the step requiring him to make amends to people who have been harmed. Petitioner stated that he was unable to directly amend the harm because he was prohibited from contact with the victims. Petitioner believed it would have been inappropriate to contact those people. Petitioner stated that turning his life in a different direction and assisting other people was a way of making amends. Petitioner stated Dr. McCall refers people to talk to and meet with him to share the difficulties he had. In the 12-step program, he sponsors other people. *Id.* at 170-174.

{¶32} Petitioner admitted to drinking significant amounts back in 2003 and 2004. Petitioner stated there was drinking frequently at the state house involving trade groups. Concerning cannabis abuse, Petitioner stated it was a very long time ago and not since he was arrested in 2003. Petitioner stated he has cut back in the past six to eight months concerning alcohol consumption. Petitioner is drinking three days a week in low quantities. Since his 2008 OMVI, Petitioner has not had any legal consequences concerning drinking. Petitioner stated he made a big mistake in 2008 drinking maybe three beers over a short period of time and had a fender bender. Petitioner registered a 0.10 and was charged with OVI. Petitioner called his sponsor the next day and also OLAP. *Id.* at 176-180.

{¶33} Petitioner stated that he would affiliate with OLAP and be receptive to monitoring by an attorney if he were reinstated. *Id.* at 192.

{¶34} Petitioner further testified that OLAP suggested consultation with Dr. Smalldon and that Relator also visited with Dr. Smalldon independently. *Id.* at 197-198.

{¶35} Petitioner admitted that his behavior was absolutely terrible and inexcusable and he bears shame every day. Petitioner stated that it has been a gradual journey involving a series of steps that he has taken and credits OLAP, Dr. Mass and Dr. McCall, and his probation officer. *Id.* at 200.

{¶36} When asked why he is the proper person to practice law and if he has the qualities you possessed at the time of your original application, Petitioner stated:

Well, I mean, I have to say that as a threshold thing, I have put my own house in order and dealt with - - with my own psychological problems and issues. I believe that, back in 2003, I really lacked essential maturity. I think I was an immature person. I think I was - - I was a selfish person. And I have tried to grow away from that and take into account other people's perspectives and try to understand where other people are coming from. And I - - that helps in so many ways. I also try to manage stress appropriately. Practicing law is stressful. And not only - - A lawyer not only carries his own burdens and his own problems, but also has to shoulder those of clients. And so managing stress is very important to me. I manage stress a variety of ways. Prayer and meditation, exercise, eating right, sleeping right. These seem like very basic things and they are; it's like - - it's like the bottom level of a pyramid that you build on.

Id. at 201-202.

{¶37} Relator further established that Petitioner complied with all mandates of the Supreme Court before seeking reinstatement set forth in the October 25, 2006 order. Relator agrees that Petitioner complied with the mandates of the Supreme Court.

{¶38} Relator also questioned his association with Mike Spillan having represented him prior to his suspension during 2004 and 2005. After his suspension, Petitioner continued to work for the Spillans for another year doing bookkeeping and tax-type things and light accounting. Petitioner admitted working for the Spillans during the period they committed felonies and were incarcerated but stated he was not doing work for the companies that were involved in the misconduct. Petitioner's probation officer informed him of the background of the Spillans. *Id.* at 209-214.

{¶39} Petitioner testified he has had two employers since 2005, not counting work as a tax preparer. The first employer was the Spillans and their companies, and the other was TPI Management. Petitioner had been with TPI since 2008. They would buy consumer credit card debt and loan debt and bad car loans. Petitioner did not draft the pleadings, but would only put in the specific information into the pleading which was drafted by an attorney. Petitioner also did IRS compliance for TPI. TPI had one principal and one owner, Attorney Bryan Johnson, who was suspended by the Supreme Court from the practice of law in 2007. Johnson's case involved over-billing and his fees were excessive. There was no indication Petitioner was involved. Petitioner stated he started working for Johnson in early 2009. Johnson was reinstated when he went to work for him, and that Johnson has been extremely ethical. *Id.* at 217-221.

{¶40} Relator questioned Petitioner concerning his drinking and asked him why he doesn't stop drinking. Petitioner stated he has never been assessed as being an alcoholic. Petitioner stated that he stopped drinking twice, but denied relapsing since he has never been diagnosed as an alcoholic. *Id.* at 222-223.

{¶41} Petitioner was questioned extensively on redirect about work he did for the Spillans. Petitioner admitted he did legal work for them before his suspension, and after his suspension worked in a non-legal capacity doing accounting, bookkeeping, and compliance. The Spillans were both sentenced to federal prison. Petitioner was questioned by two attorneys from the Securities and Exchange Commission, but was not drawn into the controversy and was never implicated in any wrong-doing. *Id.* at 223-227.

{¶42} Petitioner was a good communicator, a sensitive person, and an animal lover. Petitioner stated he is interested in serving a constituency that needs access to the legal system at

an affordable price. Petitioner's appearance, demeanor, level of remorse, and sincerity was impressive.

Character Witnesses

{¶43} Attorney Joseph Budde testified that Petitioner worked for him in a business involved in collections as an independent contractor on a part-time basis doing business-related work. Budde testified that he found Petitioner to be honest and trustworthy and a man of integrity. *Id.* at 135-142..

{¶44} Regina Mersy testified that she is retired and spent 30 plus years with the Ohio Attorney General. She and her husband resided in a condo which they bought in 2005 and became Petitioner's neighbor. Mersy knew of Petitioner's disciplinary case, serves on the board of the condo with Petitioner who serves as president. Mersy testified when questioned concerning Petitioner's reputation for honesty and integrity. Mersy was very positive concerning Petitioner's actions on the board. Mersy was very positive concerning Petitioner's personal skills beyond his legal skills in dealing with people. *Id.* at 144-151.

{¶45} Cheryl Straker testified that she is the deputy director of museum and education at the Ohio State House and works for the Capitol Square Review and Advisory Board. She and her husband became acquainted with Petitioner in 2006 when they lived across the street from him. Straker did not know of the circumstances of his criminal conviction or disciplinary action. Straker stated he was completely honest and even had a key to their house and the code to their garage. Straker was familiar with his reputation in the condominium community for honesty and integrity, and her husband bought a condo a few years later where Petitioner was the president. Straker stated he was very level headed, conscientious, and thoughtful in making decisions. Straker knew Petitioner was elected president of the association. *Id.* at 154-158.

{¶46} Debbie Witt testified she has known Petitioner since 2006 and that she lived in the condo community with Petitioner and gave positive testimony concerning Petitioner's reputation. Witt was also positive concerning his opinion as to his honesty and integrity. Witt testified that Petitioner explained early in their friendship his disciplinary situation, but that did not change their opinion of him. *Id.* at 159-163.

{¶47} All character witnesses were very impressive and exuded a level of respect and enthusiasm in supporting Petitioner's petition for reinstatement.

{¶48} Based on the foregoing, the panel determines by clear and convincing evidence that: (1) 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 original admission; (2) Petitioner has complied with the continuing legal education requirements of Gov. Bar R. X, Section 3(G) and has complied with the order of the Supreme Court; and (3) Petitioner is now a proper person to be readmitted to the practice of law in Ohio notwithstanding the previous disciplinary action.

PANEL RECOMMENDATION

{¶49} Relator is officially neutral on the reinstatement petition and stated the panel should make the decision based on the hearing. If reinstated, Relator stated that Petitioner is in compliance with the Supreme Court order and, if reinstated, would recommend monitored probation for three years after reinstatement; enter into a new three-year contract with OLAP and fulfill all recommendations of OLAP, including counseling, treatment and participation in 12-step programs; refrain from further illegal conduct; contribute not less than 50 hours per year for three years of pro bono legal services at legal aid, a legal clinic, or similar entity; and engage in sobriety.

{¶50} The panel unanimously recommends that Petitioner be readmitted to the practice of law in Ohio. The panel further recommends that Respondent be ordered to (1) serve a period of monitored probation for three years, with a monitor assigned by Relator, (2) enter into a new, three-year contract with OLAP, (3) fulfill recommendations of OLAP, including counseling, treatment and participation in 12-step program, and (4) refrain from any illegal conduct. The panel does not recommend imposition of the additional conditions suggested by Relator.

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 13, 2013. The Board adopted the findings of fact, conclusions of law, and recommendation of the panel and recommends that the Petitioner, Stephen Patrick Linnen, be readmitted to the practice of law in Ohio, subject to the conditions stated in ¶50 of this report. 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