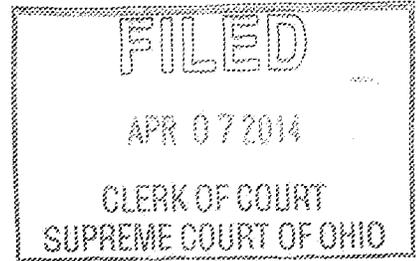


ORIGINAL

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



In Re:	:	SCO No. 2005-1115
Reinstatement of	:	BCGD Case No. 02-030
Lawrence Edward Winkfield Attorney Reg. No. 0034254	:	
Petitioner	:	Findings of Fact,
	:	Conclusions of Law, and
Columbus Bar Association	:	Recommendation of the
	:	Board of Commissioners on
Relator	:	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 January 28, 2014, in Columbus upon the petition of Lawrence Edward Winkfield for reinstatement to the practice of law pursuant to Gov. Bar R. V, Section 10(B), before a panel consisting of John Polito, Robert Fitzgerald, and David L. Dingwell, 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} The petitioner appeared with his legal counsel, Geoffrey Oglesby. Judith McInturff and Bruce Campbell appeared on behalf of Relator.

{¶3} On June 5, 1996, Petitioner was suspended from the practice of law by the Supreme Court of Ohio following a formal hearing before a panel of the Board. The suspension was for a period of one year, with the sanction suspended based upon certain conditions. *Columbus Bar Assn. v. Winkfield*, 75 Ohio St.3d 527, 1995-Ohio-459. Petitioner's suspension from the practice of law

was for violation of DR 9-102(B)(4) based upon evidence that Petitioner failed to promptly remit client funds.

{¶4} On April 11, 2001, Petitioner was suspended from the practice of law by the Supreme Court of Ohio following a formal hearing before a panel of the Board. The suspension was for a period of two years, with the final year of the sanction suspended based upon certain conditions. *Columbus Bar Assn. v. Winkfield*, 91 Ohio St.3d 364, 2001-Ohio-70. Petitioner's suspension from the practice of law was for violation of DR 1-102(A)(6), DR 6-101(A)(3), DR 7-101(A)(1), DR 7-101(A)(2), DR 9-102(A)(2), DR 9-102(B)(3), DR 9-102(B)(4), and Gov. Bar R. V, Section 4(G). These violations were found based upon evidence that Petitioner failed to deposit a client's retainer into a separate trust account, failed to file papers in the client's legal matter, failed to timely return the full amount of the retainer upon the client's request, and then failed to cooperate in the disciplinary investigation.

{¶5} On January 11, 2006, Petitioner was indefinitely suspended from the practice of law by the Supreme Court of Ohio following a formal hearing before a panel of the Board. *Columbus Bar Assn. v. Winkfield*, 107 Ohio St.3d 360, 2006-Ohio-6. Petitioner's suspension was based upon his violation of the 2001 suspension order of the Supreme Court of Ohio by continuing to hold himself out as an attorney and representing clients in legal matters while under suspension. Petitioner's 2006 suspension from the practice of law was also based upon his violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 1-102(A)(5), DR 1-102(A)(6), DR 1-102(B), DR 2-106(A), DR 2-110(A)(2), DR 2-110(A)(3), DR 3-101(B), DR 5-101(A), DR 6-101(A)(3), DR 7-101(A)(1), DR 7-101(A)(2), DR 7-101(A)(3), DR 9-102(A), DR 9-102(B)(4), and Gov. Bar R. V, Section 4(G).

{¶6} These numerous violations arose out of the following conduct that was subsequent to the 2001 suspension order:

- Petitioner, despite being under a suspension, continued to represent multiple clients in legal matters, and on one occasion, when confronted by the client about his suspension, advised the client that he could continue representing the client through a “ghost attorney;”
- Petitioner failed to promptly deliver the files of multiple client upon request;
- Petitioner continued to represent clients on legal matters, but did so by holding himself out as a “case manager/ paralegal” on business cards and stationery;
- Petitioner engaged in conduct failing to take steps to reasonably protect a client’s rights before withdrawing from representation, failing to refund unearned fees upon withdrawal, and neglecting an entrusted matter;
- Petitioner engaged in conduct towards one female client whereby he made sexual overtures towards her and requested sexual acts; and
- Petitioner failed to respond or cooperate with the investigation of the grievances.

{¶7} During that proceeding, despite the severity and extent of the misconduct, Relator did not advocate permanent disbarment. The Board also did not recommend disbarment.

{¶8} Both Relator, the Board, and the Supreme Court of Ohio were influenced by the severity of Respondent’s mental disease and the professional and personal hardships it had caused.

{¶9} Upon psychiatric evaluation, Petitioner was diagnosed with depression and personality disorder that required at least one hospitalization, treatment by multiple psychiatrists and physicians, and a regimen of prescription antidepressants.

{¶10} Mental health professionals reported that Petitioner’s difficulties stemmed from a traumatic childhood that involved the death of his mother at an early age, and being relocated among various aunts and uncles until being placed into foster care in the seventh grade that continued until he graduated from high school.

{¶11} The Court therefore was “persuaded to also give Respondent the chance to prove himself in the future, albeit under the rigorous conditions recommended by the board.” *Id.* at ¶56. The Court then ordered that Petitioner be indefinitely suspended from the practice of law.

{¶12} Petitioner filed a petition for reinstatement to the practice of law on July 7, 2008. Upon recommendation of the Board, the Supreme Court of Ohio denied that petition for reinstatement on September 29, 2009. *Columbus Bar Assn. v. Winkfield*, 123 Ohio St.3d 1211, 2009-Ohio-5682.

{¶13} Petitioner filed a second verified petition for reinstatement to the practice of law on October 4, 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.

{¶14} 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 R. V, Section 10(D) and all other requirements set forth by the Court’s previous order and the relevant rules as stated in an affidavit of compliance attached as an exhibit to the petition.

{¶15} The petition states that Petitioner recognizes the wrongfulness of his conduct which led to the sanction and further acknowledges the appropriateness of the sanction. The petition also states that Petitioner has remorse for the deeds that led to the sanction and further alleges that he has rehabilitated himself.

{¶16} 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 readmitted 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).

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

- He has made restitution as ordered in the 2001 suspension order;
- He has satisfied all financial obligations to the Client Security Fund and debts to former clients incurred because of his misconduct;
- He has not been accused of engaging in the unauthorized practice of law;
- He has entered into and consistently complied with a comprehensive and professionally prescribed health-treatment plan for mental conditions at issue in this matter;
- During the treatment, he has provided quarterly reports to Relator regarding his compliance with the health-treatment plan;
- He is physically and mentally able to competently and ethically engage in the practice of law; and
- He has a detailed oversight plan for his post-suspension practice of law that includes a structured environment and monitoring.

{¶18} 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

{¶19} At the hearing, Petitioner submitted exhibits numbered 1 through 25 that were admitted into evidence. Relator submitted three exhibits marked A, B, and C.

{¶20} Petitioner offered testimony from four witnesses in support of his Petition: Mr. Richard J. Fetter, Dr. Jerry M. Zober, M.D., Hon. James Green, and Petitioner. Relator called no witnesses, nor offered a strenuous objection to the petition.

{¶21} Richard J. Fetter was the first to testify. Fetter is a licensed counsellor, psychotherapist, and social worker. Fetter has been treating Petitioner since the time of his initial suspension from the practice of law.

{¶22} Fetter testified that over the length of time he has been treating Petitioner, approximately fifteen years, he has witnessed improvement in Petitioner's ability to cope with his situation. Fetter described that Petitioner and his wife "struggled to a fair degree, trying to cope with the situation that had occurred legally with his license, and they've had marital strife." Hearing Tr. 21.

{¶23} Fetter then testified that more recently "they have been together as a couple and functioning with compassion and concern for each other and listening better and less argumentative than I've ever seen them over these years." Hearing Tr. 22.

{¶24} When asked to describe Petitioner in prior years, Fetter referred to him as "angry, depressed, agitated, and self-centered." Hearing Tr. 27. Fetter testified that he has observed "change that's occurred incrementally and has really shown a very different kind of person over the years who has emerged from that." Hearing Tr. 28.

{¶25} Fetter testified that Petitioner's "focus and his behavior was consistent with that of a responsible individual who had a goal, and his goal was a responsible one of obtaining his license again. And he had persevered quite a while." Hearing Tr. 33.

{¶26} Fetter also testified that in his opinion, Petitioner has accepted responsibility for the problems he caused. *Id.*

{¶27} When asked to explain the changes that he has seen in Petitioner since his last petition for reinstatement in 2009, Fetter testified as follows:

The one that is more predominant is the one that I spoke to before, is the attitude, the intention, the empathy that he has for others and the humility, that he's taking

responsibility increasingly, and I've seen that changed. And it's changed since 2009.

There's a different kind of connection that he seeks from people. He has compassion and concern for them that I had not seen as much of before, and he also appreciates what they've done for him when he talks about his involvement with the church, when he talks about his relationship with his wife. There's a kindness there and a caring there that is much more pronounced than it was when I first knew him.

Hearing Tr. 47-48.

{¶28} Next, Dr. Jerry Zober testified regarding his evaluation of Petitioner. Dr. Zober's diagnostic assessment in 2009 identified depressive disorder, mixed personality disorder, and coronary artery disease.

{¶29} Dr. Zober evaluated Petitioner again and issued a medical opinion on October 31, 2013 and determined that Petitioner was fit and suitable to practice law. Hearing Tr. 75-76.

{¶30} However, of major import to the panel, when asked about whether ongoing psychotherapy was appropriate, Dr. Zober stated "yes." Hearing Tr. 86. Dr. Zober further opined that "untreated, I would have concerns, but the fact that he was and continues in treatment, I don't have." Hearing Tr. 87.

{¶31} Dr. Zober specifically recommended "a more set routine with a follow-up date set at the end of each session for the next one." This is in contrast to Petitioner's current regimen of psychotherapy counseling treatment with Fetter which is on an "as-needed" basis.

{¶32} Petitioner testified in support of his petition. He testified about his acceptance of responsibility for his actions, as well as developing a plan to return to the ethical practice of law which would include enlisting the services of an attorney to monitor him. Hearing Tr. 110; 112-124.

{¶33} While Petitioner suggested the use of attorney William Smith in Beachwood, the panel believes this choice would be inappropriate and unworkable due to the great distance between Petitioner in Columbus and attorney Smith in suburban Cleveland.

{¶34} The most persuasive witness to the panel was Judge James Green of the Franklin County Municipal Court. Judge Green has known Petitioner for almost thirty years. Hearing Tr. 127.

{¶35} Judge Green has had the opportunity to interact with Petitioner not only in a professional context, but more recently has interacted with him on a personal basis, attending the same church as Petitioner, and seeing him there on a regular basis. Hearing Tr. 128-130.

{¶36} Judge Green testified that he believed Petitioner should be permitted to return to the practice of law (Hearing Tr. 129-130), and made the following observation that the panel believes is most demonstrative of Petitioner's progress and development since his suspension and prior petition:

And I'm not quite sure how I was going to maybe get an opportunity to address this, but sometimes we go through a process in life where we don't get it, and things happen, and then for some of us, we hopefully reach a point where the light bulb goes off and we get it.

I'm convinced in the time that I've known him more intimately, I think he gets it now. I think things that maybe led to his suspension that he didn't as fully appreciate prior to the suspension, I think he has a deep appreciation for that now. And if I had concerns before, I don't have those same concerns today, if that helps.

Hearing Tr. 132-133.

{¶37} 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

{¶38} Relator is officially neutral on the reinstatement petition and stated the panel should make the decision based on the hearing. Relator recommended that if Petitioner is reinstated, Relator would recommend monitored probation as well as fulfilling all recommendations of Petitioner's mental health professionals, including regular counseling and therapy treatment. Relator also requested the condition that Petitioner refrain from further illegal conduct.

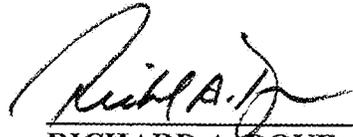
{¶39} The panel unanimously recommends that Petitioner be readmitted to the practice of law in Ohio. The panel further recommends that Respondent be ordered to: (1) serve a period of monitored probation for three years, with a monitor assigned by Relator, and that such monitor's principal office be located within the Columbus metropolitan area; (2) fulfill all recommendations of mental health practitioners, including ongoing and routine psychotherapy counseling and treatment as recommended by Dr. Jerry M. Zober or other licensed psychiatrist; and (3) refrain from any illegal conduct.

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 April 4, 2014. The Board adopted the findings of fact, conclusions of law, and recommendation of the panel that Petitioner, Lawrence Edward Winkfield, be readmitted to the practice of law in Ohio, subject to

the conditions stated in ¶39 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.

A handwritten signature in cursive script, appearing to read "Richard A. Dove".

RICHARD A. DOVE, Secretary