

ORIGINAL

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

In Re: : SCO No. 2006-2306  
Reinstatement of : BCGD Case No. 04-034  
Robert Charles Schwieterman :  
Attorney Reg. No. 0061353 :  
Petitioner : Findings of Fact,  
Cincinnati Bar Association : Conclusions of Law, and  
Relator : Recommendation of the  
Board of Commissioners on  
Grievances and Discipline of  
the Supreme Court of Ohio

FILED  
APR 08 2014  
CLERK OF COURT  
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 16, 2014, in Columbus upon the petition of Robert Charles Schwieterman for reinstatement to the practice of law pursuant to Gov. Bar R. V, Section 10(B), before a panel consisting of William J. Novak, Lawrence A. Sutter, and Janica Pierce Tucker, 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} Petitioner appeared and was represented by Lisa M. Zaring. Stephen M. Nechemias appeared on behalf of Relator.

{¶3} The burden is upon Petitioner to show by clear and convincing evidence that he should be reinstated to the practice of law in the state of Ohio. Petitioner must establish that he possesses all 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; that he is now a proper

person to be readmitted to the practice of law in Ohio, notwithstanding the previous disciplinary actions. Petitioner must also show by clear and convincing evidence that he has made restitution to any persons harmed by his misconduct, and that he has complied with the continuing legal education requirements as prescribed by Gov. Bar R. X, Section 3(G).

{¶4} Based on the evidence presented, the panel finds by clear and convincing evidence that Petitioner has satisfied the requirements of Gov. Bar R. V, Section 10 and recommends that he be reinstated to the practice of law in Ohio.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

{¶5} Petitioner was initially suspended from the practice of law on November 8, 2004 as a result of a felony conviction. *In re Schwieterman*, 2004-Ohio-5853. In the ensuing disciplinary proceeding, the Board found that Petitioner had violated the following: DR 9-102(A) because he failed to deposit client funds in an identifiable bank accounts; DR 1-102(A)(3) because he engaged in illegal conduct involving moral turpitude; DR 1-102(A)(4) because he engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation; DR 9-102(B)(3) because he failed to maintain complete records and account for client funds; DR 6-101(A)(3) because he neglected multiple legal matters entrusted to him; DR 7-101(A)(1) because he intentionally failed to seek the lawful objectives of the client; DR 7-101(A)(2) because he intentionally failed to carry out his contract of employment; DR 7-101(A)(3) because he intentionally prejudiced or damaged his client during the course of the professional relationship; and Gov. Bar R. V, Section 8(E)(1)(a) for practice while under suspension. These findings were as a result of Petitioner taking money from numerous clients and the law firm of Phillips Law. Petitioner subsequently pled guilty to one-count of theft, a felony in the fifth degree. Respondent

was sentenced to five years community control and ordered to make restitution in the amount of \$9,400 to the Phillips Law Firm. Petitioner made restitution.

{¶6} The Board found as aggravating factors a dishonest or selfish motive and a pattern of misconduct. In mitigation, Petitioner offered evidence that he suffered from a mental illness which allegedly contributed to his misconduct. The Board found the testimony from one of the treating professionals persuasive and accepted that Petitioner suffered from mild depression, but did not find that such condition was sufficient to constitute a mental disorder or mental illness that contributed to or caused the misconduct. However, the Board determined that Petitioner had not yet appreciated the wrongful nature of his own misconduct. The Board recommended an indefinite suspension. The matter was reviewed by the Supreme Court which affirmed the suspension. *Cincinnati Bar Association v. Schwieterman*, 115 Ohio St.3d 1, 2007-Ohio-4266.

{¶7} Additionally, the Court noted in its decision suspending Petitioner:

\* \* \*We agree with the board that respondent does not yet fully appreciate the wrongful nature of his misconduct. In determining the appropriate length of the suspension, “we must recognize that the primary purpose of disciplinary sanctions is not to punish the offender, but to protect the public.” *Disciplinary Counsel v. O’Neill*, 103 Ohio St.3d 204, 2004-Ohio-4704, at ¶53.

Id. at ¶34.

{¶8} At the hearing on the petition for reinstatement, the Board heard testimony from Brenda Schwieterman, wife of Petitioner; Christopher Childs, colleague and friend of Petitioner; and Andrew Winters, licensed independent social worker and counselor for Petitioner. All testified to the change in Petitioner as well as his current reliability and trustworthiness.

{¶9} Petitioner also testified before the panel. The panel, in reviewing Petitioner’s testimony and demeanor, find that Petitioner has suffered remorse and guilt from his conviction and suspension. Petitioner took full responsibility for his action and appreciated the wrongful

nature of his own misconduct. Petitioner continues to receive counseling. Petitioner desires to practice law again, but has no intention of doing it immediately. Petitioner's counseling treatment has modified his outlook on life. The panel determines that Petitioner's remorse and desire to return to the practice of law is sincere.

{¶10} The panel further found that full restitution has been made to the injured parties. Petitioner has also completed over 300 hours of community service.

{¶11} The panel further found there are no formal disciplinary proceedings pending against Petitioner and that he has completed CLE attendance as required. The panel further finds that Petitioner can return to the competent and ethical practice of law.

{¶12} Relator did not take any position as to whether Petitioner should be reinstated.

{¶13} The panel determines by clear and convincing evidence that Petitioner possesses all 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.

{¶14} The panel determines by clear and convincing evidence that Petitioner has complied with continuing legal education requirements of Gov. Bar R X, Section 3(G). The panel further has determined by clear and convincing evidence Petitioner is now a proper person to be readmitted to the practice of law in the state of Ohio notwithstanding the previous disciplinary action.

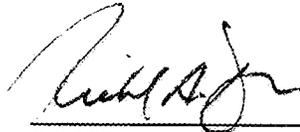
#### **PANEL RECOMMENDATION**

{¶15} The panel recommends that Petitioner be reinstated to the practice of law with a condition that he continues the mental health counseling for five years after being reinstated and returning to the active practice of law. Further, Petitioner's release from mental health counseling must be approved by a medical physician.

**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 and conclusions of law of the panel. The Board further adopted the recommendation of the panel that Petitioner, Robert Charles Schwieterman, be readmitted to the practice of law in Ohio, but modified the condition of reinstatement and recommends: (1) that Petitioner serve a period of probation for five years following his reinstatement and returning to the active practice of law, during which time he shall continue mental health counseling; and (2) that any release from mental health counseling shall be with the approval of a physician. 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.**



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**RICHARD A. DOVE, Secretary**