

ORIGINAL

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

In Re:

Reinstatement of

Scott Allan Pullins

Attorney Reg. No. 0076809

Petitioner

Disciplinary Counsel

Relator

FILED :
JUN 09 2014 :
CLERK OF COURT,
SUPREME COURT OF OHIO

SCO No. 2010-0851

BCGD Case No. 2009-022

: Findings of Fact,
: Conclusions of Law, and
: 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 November 15, 2013, in Columbus, upon the petition of Scott Allan Pullins for reinstatement to the practice of law pursuant to Gov. Bar R. V, Section 10(B), before a panel consisting of Judge John R. Willamowski, Lawrence A. Sutter, and Robert L. Gresham, 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 represented himself at the hearing. Stacy Solocheck Beckman 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 of the mental, educational, and moral qualifications that were required of an applicant for admission to the practice 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 action. Petitioner must also show by clear and convincing evidence 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 requirement 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 admitted to the practice of law in the state of Ohio on November 10, 2003.

Count 1-Grievance against Judge Otho Eyster

{¶6} On or about January 17, 2006, Petitioner on behalf of himself, his daughter, and his wife's parents, filed an action in the Knox County Court of Common Pleas wherein he sought a civil protection order. The case was assigned to Judge Otho Eyster, presiding judge of the Knox County Court of Common Pleas. On January 20, 2006 and January 23, 2006, Petitioner filed disciplinary grievances against Judge Eyster with Relator. Judge Eyster had not waived confidentiality regarding the grievances filed against him, and no formal complaint had been filed with the Board. Petitioner was aware that all documents and proceedings relating to the grievances were confidential. On February 21, 2006, prior to a hearing on Petitioner's petition for protection order, Petitioner filed an affidavit of disqualification against Judge Eyster with the Supreme Court of Ohio which revealed the fact he had filed a grievance. Ultimately, the grievances were dismissed on March 20, 2006, and the affidavit was denied on March 16, 2006.

Count 2-Regina Comm v. Robert Cotton

{¶7} On September 13, 2005, Petitioner was appointed by Judge Eyster to serve as a guardian ad litem in the case of *Regina Comm v. Robert Cotton*, in the Knox County Court of Common Pleas. In Petitioner's report and recommendations of the guardian ad litem, Petitioner made the following statements:

- “On July 13, 2005... as is his custom, Judge Otho Eyster refused to hold an Ex Parte Hearing and summarily denied the request for an Ex Parte Protection Order.”
- “Apparently Judge Eyster does not agree with this portion of Ohio law [R.C. 2903.214 (D)(1)] so he routinely ignores it.”
- “In my years of practicing law and working with appointed and elected officials, this is the worst example that I have ever seen of negligence and incompetence in carrying out the duties of a public official.”
- “Unfortunately, Judge Otho Eyster and this Court have failed her (Regina Cotton) significantly in her time of greatest need.”

Count 3-Lawsuit against Carl F. Holmes, et al.

{¶8} On April 3, 2006, Petitioner as the attorney for his wife and father-in-law, filed a lawsuit in the Knox County Court of Common Pleas against Carl F. Holmes, *et al.* Contemporaneous with filing the complaint, Petitioner filed a motion for a temporary restraining order and attached an affidavit in support of the motion on which he signed his wife's name and notarized the affidavit. Petitioner did not indicate on the affidavit he was signing his wife's name.

Count 4-Lawsuit against Thomas Collier

{¶9} On May 24, 2006, Petitioner filed a pro se lawsuit against Thomas Collier, a member of the Ohio House of Representatives, seeking relief for alleged defamation. Petitioner filed this lawsuit in the Knox County Common Pleas Court and it is captioned *Scott A. Pullins v. Thomas Collier*, Case No. 06 OT 050242. The case was assigned to Judge Thomas P. Curran,

sitting by assignment. As the defendant was a member of the House of Representatives, the case was defended by the office of the Ohio Attorney General. At the hearing, following the filing of a motion to dismiss by the Ohio Attorney General, Petitioner provided the court with law suggesting the court should not grant the defendant's motion to dismiss, but should instead hold the case in suspense pending a ruling by the Ohio Court of Claims. The parties agreed the case would be held in suspense, and depending upon the court of claims' decision, the Knox County Court of Common Pleas would either dismiss the instant action or proceed further on the merits. Accordingly, Judge Curran then ordered, "... this case shall be placed in suspense, pending a decision by the Court of Claims." While the case was still in suspense and knowing the court of claims had not yet decided the issue of subject matter jurisdiction, Petitioner, on multiple occasions, caused to be issued subpoenas under this case caption and case number. Petitioner failed to serve opposing counsel with the required notice of the issuance of these subpoenas. The information sought from these two subpoenas sought only to satisfy personal interests of Petitioner as to the identity of critics. The individual identities sought had nothing to do with nor any connection with or any relevance to the *Pullins v. Collier* case.

Count 5-Bradley L. Wilhelm

{¶10} Bradley L. Wilhelm was a defendant in a criminal case in the Knox County Court of Common Pleas. The case was presided over by Judge Eyster. Wilhelm's case was tried by a jury and he was convicted of three counts of intimidation and one count of having weapons while under disability. On October 15, 2004, the court of appeals for the Fifth Appellate District reversed appellant's conviction for the three counts of intimidation, and affirmed appellant's conviction for one count of having weapons while under disability. Petitioner undertook the representation of Wilhelm, asking the court for restoration of firearms rights. On March 9, 2007,

Petitioner filed an affidavit of disqualification in the Supreme Court of Ohio, asking that Judge Eyster be removed from the case. In the affidavit of disqualification, Petitioner alleged prejudice, violation of Judicial Code of Conduct, and ex parte meetings and discussions with the prosecutor. On May 25, 2007, Chief Justice Moyer denied the affidavit of disqualification. In the Chief Justice's judgment entry, he noted that the prosecuting attorney and assistant prosecuting attorney responded to the affidavit as well, and they both denied holding any ex parte discussions with the judge.

Count 6-Lawsuit against Jeff Harmer et al.

{¶11} On December 20, 2007, Petitioner as attorney for his wife and two other plaintiffs, filed a lawsuit against individuals associated with the Apple Valley Property Owners Association ("AVPOA"). The suit also named the AVPOA as a defendant. The action was filed in the Knox County Court of Common Pleas and was entitled *Kathryn Elliott Pullins, et al. v. Jeff Harmer et al.*, Case No. 07 OT 12-0697. This case was assigned to Judge Eyster. Petitioner filed an affidavit of disqualification asking the Supreme Court of Ohio to remove Judge Eyster from the case because he is married to Carol Garner, who was employed as President and Director of the Foundation for the Knox County Community Hospital. Petitioner alleged the AVPOA is the only nongovernmental organization that has a representative represent as a voting member and/or director of the Foundation of the Knox County Community Hospital. Petitioner claimed the AVPOA, along with its officers, directors, and employees who are parties to the action, essentially employed and otherwise supervised the judge's spouse. Additionally, Petitioner asserted of the approximately 36 directors/voting members, it appeared nine of them were also members/owners of the AVPOA. Finally, Petitioner asserted of the nine member/owners of the AVPOA, two were also local attorneys that regularly practiced in front of

Judge Eyster. The Chief Justice of the Supreme Court of Ohio denied the affidavit of qualification. The defendants in the lawsuit filed numerous motions to dismiss and for judgments on the pleadings. By January 27, 2009, the trial court had granted defendants' motions to dismiss or for judgment on the pleadings on all but one of the counts of the amended complaint. Petitioner promptly on January 27, 2009, filed appeals on the dismissed counts. On February 17, 2009, Petitioner issued a subpoena to Judge Eyster's wife, Carol L. Garner, as Development Director for the Knox County Community Hospital. The subpoena required her to produce documents regarding donors for Knox Community Hospital. Petitioner was attempting to resurrect the same allegations from his January 8, 2008 affidavit of disqualification which had been denied. Petitioner subsequently filed a second request for order or recusal asking Judge Eyster to recuse himself.

Count 7-Affidavit of Disqualification

{¶12} On June 14, 2005, Petitioner and his wife were named defendants in a lawsuit filed in the Mount Vernon Municipal Court. The lawsuit was moved to the Knox County Court of Common Pleas. The case was assigned to Judge Eyster. On January 12, 2006, Respondent prepared an affidavit of disqualification of Judge Eyster. In the affidavit of disqualification, Petitioner states, "Judge Otho Eyster has clearly violated Canon 3 (E)(I), (1)(a), (1)(c), (1)(d)(i), and (2) of the Ohio Judicial Code of Conduct..." On February 6, 2006, Chief Justice Thomas Moyer filed a judgment entry granting the affidavit of disqualification to avoid the appearance of impropriety and specifically stated, "While I see no evidence in the record before me to suggest that Judge Eyster has shown any improper bias or prejudice in favor of the plaintiff, I conclude that he should not remain as trial judge on the case."

{¶13} Petitioner was suspended from the practice of law on December 23, 2010.

Disciplinary Counsel v. Pullins, 127 Ohio St.3d 436, 2010-Ohio-6241. In the ensuing disciplinary proceeding, the Board found that Petitioner had violated the following: DR 1-102(A)(4) [conduct involving dishonesty, fraud, deceit, or misrepresentation]; DR 1-102(A)(5) [conduct prejudicial to the administration of justice]; DR 1-102(A)(6) [conduct that adversely reflects on a lawyer's fitness to practice law]; DR 7-102(A)(4) (5) and (6) [in his representation of a client a lawyer shall not knowingly use perjured testimony or false evidence, or participate in the creation or preservation of evidence when he knows or it is obvious that it is false]; DR 7-106(C)(6) [undignified or discourteous conduct which is degrading to a tribunal]; DR 8-102(B) [knowingly make a false accusation against a judge]; Prof. Cond. R. 3.1 [a lawyer shall not bring or defend a proceeding, or assert or controvert an issue in a proceeding, unless there is a basis in law and fact for doing so]; Prof. Cond. R. 3.5(a)(6) [undignified or discourteous conduct that is degrading to a tribunal]; Prof. Cond. R. 8.2(a) [make a statement that the lawyer knows to be false or with reckless disregard for the truth or falsity concerning the qualifications or integrity of a judicial officer]; Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation]; Prof. Cond. R. 8.4(d) [conduct that is prejudicial to the administration of justice]; Prof. Cond. R. 8.4(h) [conduct that adversely reflects on the lawyer's fitness to practice law]; Gov. Bar R. IV, Section 2 [it is the duty of the lawyer to maintain a respectful attitude toward the courts, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance]; Gov. Bar R. V, Section 11(E) [requiring all proceedings and documents relating to review and investigations of grievances shall be private]; and DR 5-103(B) [prohibiting a lawyer from providing financial assistance or advancing funds to a client for expenses other than litigation costs].

{¶14} The Board found as aggravating factors a dishonest or selfish motive; pattern of misconduct; multiple offenses; refusal to acknowledge wrongful nature of conduct; and vulnerability of and resulting harm to victims of the misconduct. In mitigation, identified by the Board, were the absence of any prior disciplinary record; full and free disclosure to disciplinary Board; and cooperative attitude throughout process.

{¶15} Relator recommended indefinite suspension. Petitioner recommended a public reprimand. The panel agreed with the recommendation of Relator and the Supreme Court of Ohio agreed with the recommended sanction.

{¶16} Petitioner is now requesting the Supreme Court of Ohio to readmit him to the practice of law and his indefinite suspension be lifted.

{¶17} At the hearing in this matter, evidence was presented establishing Petitioner has been employed during his period of suspension in nonattorney roles. From June 2011 until June 2013, Petitioner worked as a default analyst for the mortgage banking executive office of JPMorgan Chase Bank NA. While at Chase, Petitioner was assigned to work on highly escalated consumer complaints concerning the Independent Foreclosure Review, the National Mortgage Settlement, and complaints that originated with government agencies and senior executives. Petitioner also worked as a consultant providing custom writing, marketing, and public relations services through the Pains Group LLC, a company owned by his wife.

{¶18} If reinstated, Petitioner represents that former clients, including but not limited to Action Coupling and Equipment Inc., Critical Life EMS, and Wilhelm Bottled Gas have agreed to provide Petitioner employment as an Ohio attorney.

{¶19} Although it was never proffered or held that Petitioner's license suspension was related to any medical condition, in its decision the Supreme Court of Ohio concluded that since

Petitioner cancelled his OLAP contract, he may have unaddressed mental health issues. As such, Petitioner would be required to provide proof within a reasonable medical certainty he was mentally fit to return to the practice law. Accordingly, Petitioner and Relator submitted stipulated exhibits establishing evidence from Petitioner's personal physician, Brent C. Nimeth, M.D., that Petitioner is mentally competent to a reasonable degree of medical certainty to return to the practice of law.

{¶20} Petitioner has not previously petitioned for reinstatement and over three years have elapsed since his indefinite suspension was imposed.

{¶21} There are no formal disciplinary proceedings pending against Petitioner.

{¶22} Gov. Bar R. V, Section 10(E)(1) establishes the Requisites for Reinstatement from an indefinite suspension by stating (in relevant part):

- (a) The petitioner shall not be reinstated unless he or she establishes all of the following by clear and convincing evidence to the satisfaction of the panel hearing the petition for reinstatement:
- (b) That the petitioner has made appropriate restitution to the persons who were harmed by his or her misconduct;
- (c) 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;
- (d) That the petitioner has complied with the continuing legal education requirements of Gov. Bar R. X, Section 3(G); 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.

{¶23} Based upon the foregoing, the panel determines by clear and convincing evidence that: Petitioner possesses all of the mental, educational, and moral qualifications required of an applicant for admission to the practice of law in the state of Ohio at the time of his original admission; Petitioner has complied with the continuing legal education requirements of Gov. Bar

R. X, Section 3(G); and Petitioner is now a proper person to be readmitted to the practice of law in the state of Ohio.

{¶24} Based on the foregoing conclusions of law, the panel recommends the petition for reinstatement be granted with the condition that Petitioner enter into an OLAP-approved contract for a period of no less than five years.

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 June 6, 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, Scott Allan Pullins, be readmitted to the practice of law in Ohio but without the condition of an OLAP contract recommended by the panel. The Board concluded there was no basis in the record for requiring the Petitioner to enter into an OLAP contract. 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