Supreme Court of Ohio Clerk of Court - Filed October 06, 2015 - Case No. 2010-1793

BEFORE THE BOARD OF PROFESSIONAL CONDUCT
OF THE SUPREME COURT OF OHIO

In re:

Reinstatement of

William Scott Medley
Attorney Reg. No. 0031001

Petitioner

Disciplinary Counsel

Relator

Board Case No. 2010-024

SCO Case No. 2010-1793

Findings of Fact
and Recommendation of the
Board of Professional Conduct
of the Supreme Court of Ohio

ON PETITION FOR REINSTATEMENT TO THE PRACTICE OF LAW

{¶1} This matter was heard on August 31, 2015 in Columbus, upon the petition of William Scott Medley for reinstatement to the practice of law pursuant to Gov. Bar R. V, Section 25. The hearing panel consisted of David Dingwell, David Hardymon, and Paul De Marco, chair. None of the panel members resides in the district in which Petitioner now resides or resided at the time of his indefinite suspension.

{¶2} Petitioner appeared *pro se*. Dionne DeNunzio and Joseph Caligiuri appeared on behalf of Relator.

{¶3} The Supreme Court indefinitely suspended Petitioner in January 2011. Petitioner filed the instant petition for reinstatement in May 2015. Petitioner called one witness and submitted eight letters in support of his petition. Relator participated minimally in the hearing, asking few questions, and does not oppose Petitioner's reinstatement.

{¶4} Based on the evidence submitted at the hearing, the panel concludes that Petitioner has established by clear and convincing evidence that he has fulfilled the restitution and CLE requirements for reinstatement and has complied with his suspension order, that he currently

possesses all the mental, educational, and moral qualifications that were required at the time of his original admission to the practice of law, and that he is now a proper person to be readmitted notwithstanding his previous disciplinary action. Therefore, the panel recommends that the petition for reinstatement be granted.

FINDINGS OF FACT

{¶5} Petitioner was admitted to the practice of law in the state of Ohio on November 7, 1980.

Petitioner's Prior Disciplinary Cases

{¶6} In 1998, while serving as the only judge on the Gallipolis Municipal Court, Petitioner spoke by telephone to a woman who had just been arrested for DUI and then drove her home. He knew her because she had been a defendant in his court on two prior occasions. After speaking with her by telephone, Petitioner gave her a ride home without discussing her case. He later presided over her DUI case, accepted a plea agreement, and gave her a suspended sentence. The Supreme Court held that Petitioner's conduct violated the Code of Judicial Conduct and publicly reprimanded him. *Disciplinary Counsel v. Medley*, 93 Ohio St.3d 474, 2001-Ohio-1592.

{¶7} In 2004, the Supreme Court found that Petitioner again violated the Code of Judicial Conduct. *Disciplinary Counsel v. Medley*, 104 Ohio St.3d 251, 2004-Ohio-6402. That case involved three separate matters. Two of them were instances in which Petitioner as municipal court judge handled cases (one criminal and one civil) *ex parte* and decided the merits without first hearing from both sides. The third involved Petitioner's practice of using arrests to coerce small-claims judgment debtors to pay their judgments, a practice one concurring justice called "a thought-through plan to essentially revive debtors' prisons." *Id.* at ¶48. The Court suspended Petitioner from the practice of law for 18 months and concurrently suspended him *without pay*

from his judicial position, then with the Gallia County Common Pleas Court, Probate Division, staying the final six months on the condition he commit no further misconduct. *Id.* at ¶43. Petitioner was reinstated to the practice of law in 2005.

{¶8} On January 27, 2011, the Court suspended Petitioner indefinitely from the practice of law. *Disciplinary Counsel v. Medley*, 128 Ohio St.3d 317, 2001-Ohio-234. In 2005, while Petitioner was suspended without pay from his position as probate judge, the state erroneously issued payroll warrants to him totaling $71,405.04 in gross wages, which Petitioner cashed. *Id.* at ¶2. Petitioner also made false statements in 2009 in attempting to secure reissuance of four expired payroll warrants. *Id.* That is, Petitioner completed, signed, and had notarized forms on which he falsely certified that he had let the warrants expire and that he was entitled to reissuance of them. Upon receiving these forms, the Supreme Court reissued warrants totaling $23,017.98, but later stopped payment on them. Relator thereafter initiated a disciplinary proceeding against Petitioner, at the end of which the Court concluded, as the parties had stipulated and the Board had found, that Petitioner violated DR 1-102(A)(4) and Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation], and DR 1-102(A)(6) and Prof. Cond. R. 8.4(h) [conduct adversely reflecting on a lawyer's fitness to practice law]. *Id.* at ¶14. It is from this 2011 suspension that Petitioner seeks to be reinstated.

Petitioner's Situation Since His Suspension

{¶9} Prior to his indefinite suspension, Petitioner entered into an agreement with a special counsel to the Ohio Attorney General requiring Petitioner to make fixed monthly payments until his debt to the state was repaid. Petitioner began making these payments but stopped, telling the special counsel he was unable to afford the payments without additional income. Petitioner proposed to "buy" additional retirement years for $130,000, which would allow him sufficient

income to live and pay back the state. The special counsel balked at this and instead sued Petitioner. This suit was dismissed about two years after Petitioner was indefinitely suspended. Despite the objections of the special counsel, Petitioner went ahead and purchased the additional retirement years as he had proposed, which allowed him to expand his home mortgage enough to draw out the cash he needed to pay the state. Hearing Tr. 50-56. A copy of the final check to the state treasurer for $72,000 was admitted as Stipulated Exhibit 10. All told, Petitioner paid the state $95,500 in restitution. Stipulated Ex. 9, p. 6.

{¶10} Petitioner fulfilled the requirement of his suspension order that he complete one hour of CLE for every month he was suspended.

{¶11} At the hearing, Petitioner described for the panel his family, educational, and employment history. Growing up, his family was not well off. Hearing Tr. 39. He worked multiple jobs—including dish-washing and house-cleaning—to put himself through college and law school, with a military stint in between. *Id.* at 40-41. He found it difficult to support himself as a lawyer during the early part of his legal career, which led him to accept a position teaching at the University of Rio Grande in Gallia County. *Id.* at 41. After five years there, he ran for and was elected to the municipal bench. *Id.* He later served as a probate judge until he was defeated for reelection in 2008.

{¶12} Petitioner has not worked as a lawyer or in any other job since his suspension in January 2011. He has devoted himself to caring for his elderly parents in Florida. "[T]he only even remotely decent thing that happened out of this whole process," he explained at the hearing, "was that I was able to spend more time with my parents." *Id.* at 26. This enabled him to attend to his father, who was diagnosed with bladder cancer shortly after Petitioner's suspension. *Id.*

{¶13} In addition to caring for his parents, Petitioner remained actively engaged with various local and national charitable, cultural, and civic organizations, including veterans associations such as Disabled American Veterans, American Legion, Veterans of Foreign Wars, and the Checkpoint Charlie Foundation—through which Petitioner recently was selected to represent the United States and return to Berlin where he had served during the Cold War. *Id.* at 27-29 and 30-36.

{¶14} At the hearing, Petitioner offered this apology for the conduct that led to his indefinite suspension:

> In retrospect, everything I did was stupid and not very well thought out. The checks kept coming. I finally started cashing them, but it wasn't until some five or six months after they had started; and I wrote down here I thought at the time I didn't have an option. I regret the decision. It's the worst decision I've probably ever made.... I'd say coming here hat in hand is probably the most humiliating thing I've ever had to do.... I have never done anything with anybody's money before. I've been in charge with reasonably large sums of money. There was ways when I was in municipal court -- I think when I left there was close to $700,000 in various little pots that we were looking to build a new building and some other things, and it would have been very easy to see other courts have jackets printed up. We never did any of that. I never used the money for my own office.... I can't begin to explain how much I regret what I did to my family's name, the judiciary, and the Ohio bar. I hope that I can make a comeback and to some extent rehabilitate my name. It would have been easier, less traumatic and less humiliating – and don't think I haven't thought about it – to just stay retired and live my life in some degree of anonymity and obscurity playing golf and traveling, but I've come to the conclusion that I can't live like that. So this hearing, win, lose, or draw, at least I made the attempt and whatever the board decides I'm happy with; but I think there's more in me. I'm sure there are people who would say it's easy to admit wrongdoing and get on with your life. It's not that easy for me. Like I said, I've never done anything like this in my life; and I think I can commit that nothing like this will ever remotely happen again. I wanted to take this opportunity to put on the record that I do apologize to the citizens of Gallia County for abusing the confidence they had in me. I apologize to the Supreme Court for acting in a manner inconsistent with the conduct, and I apologize to all members of the Ohio bar. We have enough problems without somebody doing something like this to the reputation of attorneys in general and to a profession I love. Most importantly, I apologize to my family for the – what I did to the family name.

Id. at 43-47.

{¶15} When questioned about his future plans if reinstated, Petitioner admitted he did not know, expressed doubt he would practice law again, and speculated he might return to teaching, his occupation before he ran for judge. *Id.* at 49. He added that at almost 66 years of age, "I really may not do anything, to be honest with you. It's an issue in my life that needs to be resolved one way or the other so I can get on with other things." *Id.* at 44, 49.

{¶16} Petitioner called Steve McGhee, the Gallia County Treasurer, as a character witness. McGhee testified that Petitioner is known for being trustworthy and dedicated to his community. *Id.* at 9-11. Although Petitioner never confided in McGhee about the circumstances of his suspension, McGhee testified that the conduct for which Petitioner received the indefinite suspension was out of character for the man he knows. *Id.* at 15.

{¶17} In addition to the testimony he presented at the hearing, Petitioner submitted eight character letters from Gallia County office holders and private citizens, including members of the legal community. These letters characterize Petitioner as fair to litigants and lawyers, a hard worker, dedicated to community service, and sincerely contrite for his wrongdoing. Stipulated Exs. 1-8.

PANEL RECOMMENDATION

{¶18} Gov. Bar R. V, Section 25(D)(1) establishes the requirements for reinstatement from an indefinite suspension. It provides in relevant part:

> 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:
>
> (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 order of suspension;

(d) That the petitioner has complied with the continuing legal education requirements of Gov. Bar R. X;

****

(f) That the petitioner is now a proper person to be readmitted to the practice of law in Ohio, notwithstanding the previous disciplinary action.

{¶19} Under Gov. Bar R. V, Section 25(F)(4), the hearing panel must "make and certify a report to the Board of the proceedings before it, including its findings of fact and recommendations."

{¶20} The panel finds by clear and convincing evidence that Petitioner has complied with his restitution and CLE requirements and with his order of suspension.

{¶21} We turn then to the other requirements for reinstatement that Petitioner must satisfy—that he "possesses" the same qualifications required of new bar applicants and that he "is now a proper person to be readmitted." The panel notes that both of these requirements are phrased in the present tense and thus focus on Petitioner as he is now.

{¶22} The panel has no doubt that Petitioner now possesses all of the mental, educational, and moral qualifications that were required of an applicant for admission to the practice of law in Ohio in 1980. This is not to downplay the unconscionable and inexcusable conduct that led to his indefinite suspension. Rather, it is merely to say that, based on Petitioner's explicit recognition of and genuine contrition for his wrongdoing at the hearing, the panel believes he would qualify mentally, educationally, and morally for admission under the standards used in 1980.

{¶23} The "proper person" inquiry is more open-ended and flexible. As significant as a petitioner's past misconduct naturally is in a panel's assessment of him or her, Gov. Bar R. V, Section 25(D)(1)(f) requires the panel to assess the petitioner "notwithstanding the previous

disciplinary action." In making this assessment of Petitioner before us, however, it would be inappropriate for us as a panel to close our eyes to whatever his past conduct might portend, if he were to be reinstated.

{¶24} There is no gainsaying Petitioner's history as a judge. In all of the instances noted above, he plainly did not live up to the high standards that judges in Ohio must meet. The panel does not believe, however, that his history as a judge—including instances where he failed to observe important judicial formalities—should disqualify him from reinstatement as a lawyer. The panel sees nothing in his behavior as a judge that suggests he would pose a danger to the public as a lawyer. To prolong his suspension now would simply serve to punish Petitioner for his misdeeds as a judge; it would not serve to protect the public from him as a lawyer.

{¶25} There is no question that the conduct for which Petitioner received his indefinite suspension gives the panel great pause in considering his reinstatement. We take special note of the fact that his wrongdoing was not confined to cashing the warrants mistakenly issued to him in 2005. It also included making false statements to the Supreme Court in order to secure reissuance of warrants four years later. So it bears noting that Petitioner was guilty of two sets of ethical lapses—in 2005 and four years later in 2009. As such, Petitioner's misconduct cannot be passed off as the product of the mental and financial stress caused by his 2004 suspension. Rather, he acted consciously and deliberately not once but twice, over a five-year period, to defraud the state. We are mindful of that as we consider whether or not Petitioner should be reinstated to the practice of law. We also are cognizant that in his apology at the hearing, Petitioner did not go out of his way to mention his 2009 conduct, although he told the panel in this proceeding that "everything" he did to earn an indefinite suspension was "stupid," [Hearing Tr. 43], and in the earlier proceeding he stipulated to trying to defraud the state not merely in 2005 but also in 2009.

{¶26} While it is regrettable that Petitioner's dispute with the Attorney General's special counsel over how restitution would be accomplished necessitated litigation, the fact that Petitioner ultimately fulfilled his pledge to repay the state in full and that he has safely handled other people's money during his suspension suggest he could be counted on to safeguard client funds if he were to practice law again—which does not appear likely.

{¶27} Based on Petitioner's testimony about his uncertain future plans, it is unclear to us what exactly impels him to seek reinstatement. But this strikes us as neither unusual in reinstatement cases nor grounds for denial. Rather, it might simply be that lawyers whose licenses have been suspended, like lawyers not yet licensed to practice law, cannot realistically explore, envision, or articulate employment opportunities as easily as those with active licenses. Viewed in this light, the fact that Petitioner has not spelled out a plan for his future as a lawyer also should not disqualify him from reinstatement.

{¶28} As unconscionable as Petitioner's conduct was, the fact that the Supreme Court did not disbar him for it but rather left the door open to his reinstatement made it possible for Petitioner to file this petition. In the final analysis, the panel's assessment of Petitioner under Gov. Bar R. V, Section 25(D)(1)(f) is necessarily predictive. In other words, given the panel's perception of Petitioner's expressions of remorse and shame for his wrongdoing, is the panel satisfied that Petitioner, if reinstated, will conduct himself as the Rules of Professional Conduct require? Based on the panel's opportunity to observe and take the measure of Petitioner, including his sincerity in this proceeding and his willingness to admit *all* of his wrongdoing in the prior disciplinary proceeding, the answer to this question is yes. The panel therefore finds that, notwithstanding the prior disciplinary action, Petitioner is a proper person to be readmitted to the practice of law.

{¶29} During his almost five-year suspension, Petitioner has made full restitution and met his CLE requirements; has complied with his suspension order; has accepted responsibility for his wrongdoing; and has demonstrated by clear and convincing evidence that he meets all of the qualifications that would have been required of a new bar applicant in 1980; and that he is a proper person to be readmitted now to the practice of law.

{¶30} Accordingly, pursuant to Gov. Bar R. V, Section 25(F)(4), the panel finds that Petitioner has fulfilled all requirements for reinstatement and therefore recommends that his petition be granted.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 25, the Board of Professional Conduct of the Supreme Court of Ohio considered this matter on October 2, 2015. The Board adopted the findings of fact and recommendation of the panel and recommends that the reinstatement petition of William Scott Medley be granted and that he be reinstated to the practice of law in Ohio. The Board further recommends that the cost of these proceedings be taxed to Petitioner.

Pursuant to the order of the Board of Professional Conduct of the Supreme Court of Ohio, I hereby certify the foregoing findings of fact and recommendation as those of the Board.

RICHARD A. DOVE, Director