

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

**In re:**

**Reinstatement of**

**SCO Case No. 2012-2070**

**Joseph Patrick O'Malley  
Attorney Reg. No. 0060087**

**BPC Case No. 2011-113**

**Petitioner**

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

**Disciplinary Counsel**

**Relator**

**ON PETITION FOR REINSTATEMENT TO THE PRACTICE OF LAW**

{¶1} This matter was heard on May 24, 2015 in Columbus, upon the petition of Joseph Patrick O'Malley for reinstatement to the practice of law pursuant to Gov. Bar R. V, Section 25. The case was heard by a panel consisting of Lisa A. Eliason, Robert B. Fitzgerald, and Patricia A. Wise, chair. None of the panel members resides in the district in which Petitioner now resides or resided at the time of his suspension.

{¶2} Petitioner was represented by Larry H. James. Joseph M. Caligiuri and Jennifer A. Bondurant appeared on behalf of Relator.

{¶3} On August 22, 2011, Petitioner was suspended on an interim basis pursuant to Gov. Bar R. V, Section 18 as a result of his felony conviction. *In re O'Malley*, 129 Ohio St.3d 1440, 2011-Ohio-4146. Following a disciplinary hearing before this Board, the Supreme Court indefinitely suspended Petitioner on October 17, 2013. *Disciplinary Counsel v. O'Malley*, 137 Ohio St.3d 161, 2013-Ohio-4566. Petitioner filed the instant petition for reinstatement in January 2016. Five witnesses, including Petitioner, testified at the hearing and eight letters submitted on

behalf of Petitioner were admitted into evidence. Relator participated minimally in the hearing, asking few questions, and takes no position with respect to 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 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, he has satisfied all aspects of his federal sentence, including completion of his supervised release, and he is now a proper person to be readmitted notwithstanding his previous disciplinary action. No restitution was ordered in the disciplinary proceeding. 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 9, 1992.

#### **Petitioner's Disciplinary Case**

{¶6} In 2008, while serving as a consultant to the Cuyahoga County Auditor, Petitioner assisted in responding to a public records request from the Cleveland Plain Dealer. His improper actions in doing so led him to plead guilty to misprision of a felony. In a civil matter in his private practice that same year, Petitioner engaged in *ex parte* communications with a judge, seeking to influence the judge, misconduct to which Petitioner later stipulated in proceedings before this Board. Petitioner then lied to FBI agents about those communications, resulting in a guilty plea to making a materially false statement to the FBI. Petitioner was convicted of misprision of a felony and making a materially false statement and sentenced to four months in prison and two years of supervised release.

{¶7} The Supreme Court held that Petitioner’s conduct violated Prof. Cond. R. 3.5(a)(1) [prohibiting a lawyer from seeking to influence a judicial officer \* \* \* by means prohibited by law], Prof. Cond. R. 3.5(a)(3) [prohibiting a lawyer from communicating *ex parte* with a judicial officer as to the merits of the case during the proceeding unless authorized by law or court order], Prof. Cond. R. 8.4(b) [committing an illegal act that reflects adversely on the lawyer’s honesty or trustworthiness], 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], and Prof. Cond. R. 8.4(h) [conduct that adversely reflects on the lawyer’s fitness to practice law]. The Court indefinitely suspended Petitioner from the practice of law. *Disciplinary Counsel v. O’Malley, supra*. It is from this suspension that Petitioner seeks to be reinstated.

#### **Petitioner’s Situation since His Suspension**

{¶8} During the day, Petitioner works for banks or mortgage service providers. He works in foreclosed homes, changing the locks, assessing the damage, repairing and securing broken windows, making sure that the asset is secured, providing bids, and doing everything necessary to make a property suitable for sale. He then maintains the property until it sells. At night he works in the bar owned by his wife (the liquor license holder). Hearing Tr. 82-83.

{¶9} At the hearing, Petitioner expressed his remorse as follows:

I’m sorry. I’m embarrassed. I wish I could do it over again, but there are no do-overs, so \* \* \*. And the lesson that sticks with me every day is that there is – there’s no gray area. No matter how well intentioned you might be to help your client, there’s a right way to do it. I didn’t do it the right way.

Hearing Tr. 83-84.

{¶10} When asked why it was important to him to be reinstated, Petitioner testified that:

\* \* \* the thing I miss most is the calls saying, ‘Hey, can you help me?’ They don’t happen. I mean, unless somebody needs their garbage out of their house or out of their backyard, you know, nobody’s – nobody’s calling me to help them. And I liked that. And that was the thing that has occurred to me over the course of the last six years since I’ve handled the case, that that’s the part I miss the most. Of

course, there's the side benefit that it would allow me to spend more time with my kids and make sure they have everything they need without the additional assistance of my family, but that's probably the reason I want to go back. Because I helped a lot of people, I made a good living at it, and I miss it.

Hearing Tr. 84-85.

**PANEL RECOMMENDATION**

{¶11} Gov. Bar R. V, Section 25(D)(1) establishes the requirements for reinstatement from an indefinite suspension and reads, in relevant part, as follows:

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, education, 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.

{¶12} 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.”

{¶13} The panel finds, by clear and convincing evidence, that Petitioner has complied with his CLE requirements and with his order of suspension. No restitution was ordered by the Court or owed by Petitioner.

{¶14} Petitioner must possess the same qualifications required of new bar applicants and we must find that he “is now a proper person to be readmitted.”

{¶15} These requirements are phrased in the present tense and thus focus on Petitioner as he is now.

{¶16} As significant as the instances of Petitioner’s previous misconduct are in our assessment of Petitioner; however, we still are required to assess him “notwithstanding the previous disciplinary action.” See Gov. Bar R. V, Section 25(D)(1)(f).

{¶17} In our view, there comes a point where an indefinitely suspended attorney has nothing left to prove to secure reinstatement to the practice of law. The panel believes that, after completing his federal sentence, including his supervised release, Petitioner has reached this point. He has met his CLE requirements and complied with his suspension order. He has accepted responsibility for his wrongdoing. He has demonstrated by clear and convincing evidence that he meets all of the qualifications required of a new bar applicant and that he is a proper person to be readmitted to the practice of law. To prolong his suspension would simply punish Petitioner; it would not serve to protect the public.

{¶18} 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 August 5, 2016. The Board adopted the findings of fact and recommendation of the panel and recommends that the reinstatement petition of Joseph Patrick O'Malley be granted and that Petitioner 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.**

A handwritten signature in black ink, appearing to read "Richard A. Dove", written over a horizontal line.

**RICHARD A. DOVE, Director**