

In re Vichian R. Ford
Petitioner

Supreme Court No. M.R. 30955
Commission No. 2021PR00079

Synopsis of Hearing Board Report and Recommendation
(October 2023)

Following his guilty plea to a charge of misdemeanor criminal damage to property, Petitioner was found to have committed a criminal act that reflected adversely on his fitness as a lawyer and suspended for six months and until further order of the Court. This matter came before the Hearing Panel on Petitioner's petition for reinstatement. The Administrator objected to the petition.

While Petitioner satisfied some reinstatement factors, he did not demonstrate compliance with the treatment recommendations set forth in his disciplinary case and did not establish his rehabilitation, good character, and current knowledge of the law by clear and convincing evidence. For these reasons, the Hearing Panel recommended that the petition for reinstatement be denied.

**BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION**

In the Matter of:

VICHIAN R. FORD,

Petitioner,

No. 6272235.

Supreme Court No. M.R. 30955

Commission No. 2021PR00079

REPORT AND RECOMMENDATION OF THE HEARING BOARD

SUMMARY OF THE REPORT

Petitioner's license was suspended for six months and until further order of the Court after he committed criminal damage to property. He now seeks reinstatement. Due to Petitioner's lack of compliance with treatment recommendations and failure to establish his rehabilitation, good character, and current knowledge of the law by clear and convincing evidence, the Hearing Panel recommends that the petition for reinstatement be denied.

INTRODUCTION

A hearing on the petition for reinstatement was held on March 24, 2023, by video conference, before a panel consisting of John L. Gilbert, Chair, Stephen R. Pacey and Peggy Lewis LeCompte. Petitioner appeared pro se. Tammy L. Evans appeared on behalf of the Administrator.

PETITION AND OBJECTIONS

On January 17, 2020, the Supreme Court suspended Petitioner for six months and until further order of the Court. In re Ford, 2018PR00011, M.R. 030123 (Jan. 17, 2020). Petitioner filed a petition for reinstatement on September 3, 2021. The Administrator filed an objection to the petition for reinstatement on January 12, 2023.

FILED

October 11, 2023

ARDC CLERK

EVIDENCE

Petitioner testified on his own behalf. His Exhibit 1 was admitted into evidence. The Administrator presented Danesh Alam, M.D. as a witness. The Administrator's Exhibits 1-5 were admitted into evidence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

An attorney seeking reinstatement to the practice of law has the burden of proving by clear and convincing evidence that he or she should be reinstated. In re Richman, 191 Ill. 2d 238, 730 N.E.2d 45 (2000). In considering a reinstatement petition, we focus on the attorney's rehabilitation, present good character and current knowledge of the law, with rehabilitation being most important. In re Martinez-Fraticelli, 221 Ill. 2d 255, 850 N.E.2d 155 (2006). There is no presumption in favor of reinstatement. Richman, 191 Ill. 2d at 248.

Pursuant to Supreme Court Rule 767(f), we consider the following factors in determining whether to recommend reinstatement: (1) the nature of the misconduct for which the petitioner was disciplined; (2) the maturity and experience of the petitioner at the time discipline was imposed; (3) whether the petitioner recognizes the nature and seriousness of the misconduct; (4) when applicable, whether petitioner has made restitution; (5) the petitioner's conduct since discipline was imposed; and (6) the petitioner's candor and forthrightness in presenting evidence in support of the petition.

I. Petitioner's misconduct does not bar reinstatement.

A. Evidence Considered

On August 11, 2015, a security guard observed Petitioner breaking windows and a glass door in a vacant professional building. Police officers who were called to the scene observed Petitioner yelling, behaving erratically, and stating that people were trying to kill him. According to the police, Petitioner reported having taken prescription medication, Adderall, and cocaine.

(Adm. Ex. 3). Petitioner testified that his conduct resulted from a serious mental health emergency due a reaction to prescription medication. (Tr. 17-18). He denies having taken any substances other than Chantix (a smoking cessation aid) and Adderall, both of which had been prescribed to him. (Tr. 48).

Petitioner was charged with, and pleaded guilty to, one class A misdemeanor count of criminal damage to property of less than \$300. His judgment of conviction was stayed, and he was placed on supervision for twelve months and ordered to pay a fine of \$450. His supervision was terminated as satisfied on February 7, 2017. (Adm. Ex. 3).

The Administrator charged Petitioner with committing a criminal act that reflected adversely on his fitness as a lawyer. As part of Petitioner's disciplinary proceeding, he was evaluated by forensic psychiatrist, Stafford Henry, M.D. Dr. Henry diagnosed Petitioner with bipolar disorder, probable cocaine and cannabis use disorder, attention deficit disorder, and suspected alcohol abuse disorder. In Dr. Henry's opinion, Petitioner was incapacitated from the practice of law and was not able to consistently adhere to the Rules of Professional Conduct. (Adm. Ex. 3). The Hearing Panel found that Petitioner committed the charged misconduct. Based on Dr. Henry's recommendations and Petitioner's lack of insight into his condition and tendency to blame others, the Hearing Panel recommended a suspension of six months and until further order of the Court. (Adm. Ex. 3).

The Review Board found there was abundant evidence to support the Hearing Board's findings that Petitioner committed misconduct and was unfit to practice, including Petitioner's own testimony and behavior during the disciplinary hearing, Dr. Henry's credible testimony, and the police report from Petitioner's arrest. (Adm. Ex. 4). Like the Hearing Board, the Review Board recommended that Petitioner be suspended for six months and until further order of the

Court. The Supreme Court accepted the Hearing and Review Board recommendations. Ford, M.R. 030123 (Jan. 17, 2020).

B. Analysis and Conclusions

The severity of the misconduct leading to discipline is an important factor in determining if reinstatement is warranted. Richman, 191 Ill. 2d at 245. Petitioner's criminal conduct was relatively minor. Moreover, the commission of criminal acts has not precluded other petitioners from being reinstated. See e.g. Martinez-Fraticelli, 221 Ill. 2d 255 (attorney convicted of defrauding taxpayers); In re Kipnis, 2012PR00142, M.R. 25660 (Nov. 20, 2013) (attorney convicted of three counts of mail fraud); In re Smith, 2017PR00105, M.R. 028983 (Sept. 21, 2020) (attorney criminally charged with making false statements on loan applications). For these reasons, we conclude that Petitioner's criminal conduct does not preclude reinstatement.

II. Petitioner's misconduct did not result from inexperience or immaturity.

A. Evidence Considered

Petitioner was 42 years old and had been licensed to practice law for 15 years at the time of his suspension. (Tr. 63-64). He characterized himself as immature at that time because he did not know how to handle the challenges he was experiencing. He believes he is more mature now. (Tr. 22-23).

B. Analysis and Conclusions

While we take into account Petitioner's mental health challenges at the time of the misconduct and his description of himself as immature, the fact remains that he was a mature and experienced lawyer when he committed criminal damage to property. A lawyer of any level of experience understands the wrongfulness of violating criminal laws. That said, this factor is not determinative of whether reinstatement is appropriate. Attorneys have been reinstated despite the

fact that they committed misconduct when they were mature and experienced practitioners. See Martinez-Fraticelli, 221 Ill. 2d 255; In re Fleischman, 135 Ill. 2d 488, 533 N.E.2d 352 (1992).

III. Petitioner demonstrated that he understands the nature and seriousness of his misconduct.

A. Evidence Considered

Petitioner described his misconduct as horrible, embarrassing, and disruptive. (Tr. 21). He recognizes that it interfered with other people's businesses, wasted the State's resources, and reflected negatively on the legal profession. (Tr. 22, 25). When he appeared before the Hearing Board in his disciplinary matter, he was angry about the way the police treated him and focused on that mistreatment instead of what had caused him to be in that situation. It took Petitioner three years, with the help of his therapist, to understand the nature and seriousness of his misconduct. (Tr. 24).

B. Analysis and Conclusions

Expressions of remorse and acknowledgments of wrongdoing have been found to be indications that a petitioner recognizes the nature and seriousness of his misconduct. See Martinez-Fraticelli, 221 Ill. 2d at 276; In re Parker, 149 Ill. 2d 222, 235-36, 595 N.E.2d 549 (1992). We find Petitioner's expressions of remorse to be genuine. He understands that his conduct negatively impacted the profession even though it was unrelated to his representation of clients.

IV. Petitioner has made all required restitution.

A. Evidence Considered

Petitioner has paid the fine imposed in his criminal matter and the costs associated with his disciplinary proceeding. (Tr. 27).

B. Analysis and Conclusions

Petitioner has made restitution of all amounts associated with his misconduct. Therefore, this factor weighs in his favor.

V. **Petitioner did not meet his burden of establishing that his conduct since discipline was imposed supports reinstatement.**

A. Evidence Considered

Treatment Recommendations

In recommending that Petitioner be suspended for six months and until further order of the Court, the Hearing Board stated as follows:

Respondent is not currently receiving the type of treatment Dr. Henry described as appropriate for a person with Respondent's mental health conditions. We accepted that testimony, particularly as there was no contrary evidence to suggest a different type of treatment would suffice.

Based on Dr. Henry's testimony, Respondent should be treated for at least six to twelve months. . . . The reinstatement process, in which Respondent would have the burden of proving he is fit to resume practicing law, would serve to ensure that, before Respondent can again practice law, he will have received adequate and effective treatment."

(Adm. Ex. 3).

The Review Board found the Hearing Board's recommendation to be "reasonable, grounded in evidence, and supported by relevant authority." It concurred that a six-month suspension until further order of the Court was appropriate based on Dr. Henry's testimony that he would want someone with Petitioner's mental health conditions to have six to twelve months of consistent compliance with treatment conditions. (Adm. Ex. 4).

Treatment History

Petitioner was aware of the recommendations that he receive six to twelve months of consistent mental health treatment. (Tr. 49). Between the imposition of his suspension on January 17, 2020, and the filing of his petition for reinstatement on September 2021, his mental health

treatment consisted of two remote appointments with therapist Latoya Smalls. (Tr. 50). Those sessions took place on March 10, 2020, and August 25, 2020. (Tr. 60; Resp. Ex. 1). According to Petitioner, Smalls felt the two appointments were all that were necessary under the COVID restrictions in place at the time. Petitioner further testified that Smalls did not find that he had drug or alcohol problems. (Tr. 29-32).

Petitioner felt it would have been a waste of resources to be treated for symptoms that no longer affect him. He did not want to continue to take money from his parents to pay for treatment. (Tr. 54, 59). He believes Counsel for the Administrator in the disciplinary proceeding and Dr. Henry did not act ethically with respect to Dr. Henry's evaluation and that the Hearing and Review Boards failed to acknowledge the treatment he had already received. (Tr. 50, 57-58).

Evaluation by Dr. Alam

Danesh Alam, M.D. is a psychiatrist who is board certified in addiction medicine and general psychiatry. He is the Medical Director and Vice Chair of Northwestern Medicine Central DuPage Hospital. He performed an evaluation of Petitioner in November 2022 and met with Petitioner remotely for three sessions as part of that evaluation. Dr. Alam also reviewed Petitioner's sworn statements, portions of court files, police department records, hospital records, the disciplinary Complaint, correspondence between Petitioner and Counsel for the Administrator, and the Reports and Recommendations of the Hearing and Review Boards. (Tr. 70-72).

Petitioner was cooperative with the evaluation. He confirmed to Dr. Alam that he was not under psychiatric care. He denied any illicit drug use and reported "social at best" alcohol use. (Tr. 74).

Regarding his arrest, Petitioner told Dr. Alam that his presentation at that time was due to prescription drugs he had been given. Petitioner stated that he was a target of the Administrator's investigation for reasons he did not know. (Tr. 75-77).

At the time of the evaluation, Dr. Alam did not feel he had enough information to reach a conclusion as to the presence of an acute psychiatric disorder. (Tr. 73). He did not note any active symptoms that would suggest mania or hypomania. Because there are references in Petitioner's records to bipolar disorder, cocaine use, and cannabis use, his diagnosis to a reasonable degree of medical certainty is rule out bipolar disorder, unspecified substance use disorder, and rule out cocaine use and cannabis use. Monitoring over a period of time is necessary to rule out bipolar disorder and substance use disorder. (Tr. 78-79). An extensive evaluation, time and monitoring of the individual, and compliance with treatment recommendations are important predictors of one's competency to practice. (Tr. 81-82).

Given the limitations of Dr. Alam's evaluation, he is of the opinion that a short period of professional support would be helpful to Petitioner. Uncertainties about where Petitioner intends to live and how he plans to support himself increase his vulnerability and challenges. Consistent treatment would have benefitted Petitioner and put Dr. Alam in a better position to evaluate his fitness to practice law. (Tr. 84-85).

Petitioner's Family Obligations and Employment

Petitioner's time since discipline was imposed has been focused on helping his family. He cares for his father, who lives in Pennsylvania, and also assists his mother. (Tr. 29-31). Additionally, Petitioner has spent time babysitting, housesitting, and dog sitting. (Tr. 45). He took a job at a horse barn and is now the manager of the barn. (Tr. 46). Petitioner testified that his discipline brought him closer to his family and put into perspective the privilege of practicing law. (Tr. 44).

Petitioner testified that he donated half of COVID stimulus funds he received to charity and used the other half to pay for his expenses, so his parents did not have to support him. (Tr. 68).

Current Knowledge of the Law

Petitioner testified he completed sixteen hours of continuing legal education courses pertaining to professionalism, ethics, substance abuse, and other procedural areas of the law in the week prior to his hearing. (Tr. 38, 63).

B. Analysis and Conclusions

Our main concern in evaluating Petitioner's conduct since discipline was imposed is whether he addressed the issues that led to the determination that he was not fit to practice law. While Petitioner has made progress in this area, his failure to comply with the recommendation of six to twelve months of continuous treatment with a qualified mental health care provider leaves us unable to conclude that he is fit to return to practice. Petitioner's reasons for his lack of compliance are not persuasive. He testified that he relied on therapist Smalls' decision that he did not need more treatment, but we did not hear from Smalls nor do her notes indicate that additional therapy was unnecessary. Petitioner also expressed that financial constraints prevented him from obtaining consistent treatment. We recognize that the cost of obtaining treatment may present obstacles*. However, our sympathy for Petitioner's financial situation cannot override his burden of demonstrating that he is rehabilitated or our corresponding duty to protect the public by recommending reinstatement only upon a showing of rehabilitation.

A record of consistent treatment is essential in this case because of the uncertainty and conflicting evidence surrounding Petitioner's mental health diagnosis and possible history of substance abuse. Petitioner disputes the diagnoses of bipolar disorder and substance use disorder but has presented no evidence from a qualified mental health professional to support his position. We rely on opinions and evidence from qualified health care providers when an attorney's fitness to practice may be affected by mental health challenges or substance abuse. See In re Magafas, 2019PR00063, M.R. 029993 (Sept. 23, 2021) (Hearing Bd. at 13-14) (petition for reinstatement

denied due to lack of evidence from a therapist or treating professional confirming the lawyer's sobriety and prognosis). Both Dr. Henry and Dr. Alam recommended a period of consistent treatment, and we have not been presented with a persuasive reason to disregard their recommendations. Therefore, we find Petitioner's noncompliance to weigh heavily against reinstatement.

We also found Petitioner's evidence related to his character and activities since discipline was imposed to be lacking. When evaluating an attorney's conduct since discipline was imposed, the Supreme Court has looked favorably upon evidence that he or she held a position of trust or responsibility, behaved in an exemplary manner, and was involved in community, religious, charitable or other volunteer activities. Martinez-Fraticelli, 221 Ill. 2d at 277. Attorneys who succeed in being reinstated have presented character witnesses who speak to their honesty, trustworthiness, and exemplary conduct. See, e.g., In re Mills, 2021PR00099, M.R. 031068 (March 21, 2023) (Hearing Bd. at 6-10). No character evidence was presented in this case, nor did Petitioner present evidence of his activities and employment beyond his own testimony. Similarly, he did not present documentation corroborating his testimony that he donated half of the COVID stimulus funds he received to charity. We do not question Petitioner's credibility, but his testimony alone is not sufficient to establish the high standards of character and conduct necessary for reinstatement. See In re Foreman, 2016PR00044, M.R. M.R. 028099 (Sept. 20, 2018) (Hearing Bd. at 12-13). For all of the foregoing reasons, Petitioner has not demonstrated that his conduct since discipline was imposed supports reinstatement.

VI. Petitioner was candid and forthright in presenting his petition.

A. Evidence Considered

Petitioner testified that he provided all of the evidence he could to support his petition and expressed his willingness to take drug tests. He noted that he self-reported his misconduct. (Tr.

35-36). He was cooperative with Dr. Alam's evaluation and attempted to answer all questions completely. (Adm. Ex. 1). Counsel for the Administrator acknowledged that Petitioner was candid throughout the reinstatement proceeding. (Tr. 101).

B. Analysis and Conclusions

A petitioner in a reinstatement proceeding is expected to act with a high level of care, candor, and judgment commensurate with the gravity of the request. In re Howard, 2010PR00067, M.R. 23910 (2013). The Administrator has raised no concerns with respect to Petitioner's candor, and we find he was open and forthright in testifying and presenting his petition. This factor weighs in Petitioner's favor.

RECOMMENDATION

Consideration of the foregoing factors is intended to aid in our determination of Petitioner's rehabilitation, present good character, and current knowledge of the law. Rehabilitation is a matter of one's return to a "beneficial, constructive and trustworthy role." In re Martinez-Fraticelli, 221 Ill. 2d 255, 850 N.E.2d 155 (2006). As in disciplinary proceedings, our objective is to safeguard the public, maintain the integrity of the legal profession and protect the administration of justice from reproach. In re Berkley, 96 Ill. 2d 404, 410, 451 N.E.2d 848 (1983).

To Petitioner's credit, he recognizes the serious nature of his misconduct and has expressed remorse for it. However, due to his decision not to comply with the recommendation of six to twelve months of sustained treatment, he has not established his rehabilitation by clear and convincing evidence. In addition, we find that more evidence is needed to establish Petitioner's good character and current knowledge of the law. No witness vouched for Petitioner's character or legal ability, nor did Petitioner present evidence substantiating his testimony about the continuing legal education courses he completed. Thus, based on the evidence before us, we are unable to conclude that Petitioner is fit to return to practice at this time. Our position is not that

Petitioner should never be reinstated, but that he still has work to do to meet the necessary standards. Accordingly, we recommend that the petition for reinstatement be denied.

Respectfully submitted,

John L. Gilbert
Stephen R. Pacey
Peggy L. LeCompte

CERTIFICATION

I, Michelle M. Thome, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Hearing Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on October 11, 2023.

/s/ Michelle M. Thome

Michelle M. Thome, Clerk of the
Attorney Registration and Disciplinary
Commission of the Supreme Court of Illinois

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* The Illinois Lawyers Assistance Program (LAP) is an excellent resource that provides free and confidential mental health services, including assessments, individual and group therapy, and referrals.