

IN RE: EDWARD E. O'SULLIVAN

NO. BD-2000-066

S.J.C. Judgment of Reinstatement entered by Justice Duffly on May 14, 2015.¹

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¹ The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

**COMMONWEALTH OF MASSACHUSETTS
BOARD OF BAR OVERSEERS
OF THE SUPREME JUDICIAL COURT**

In the Matter of

EDWARD E. O’SULLIVAN,

Petition for Reinstatement

SJC No. BD-2000-066

HEARING PANEL REPORT

I. Introduction

On September 19, 2014, Edward E. O’Sullivan, represented by counsel, filed a petition for reinstatement with the Supreme Judicial Court from (i) an order of suspension entered by the Court on December 4, 1997; and (ii) an order of disbarment entered by the Court on November 14, 2000, effective immediately. We received evidence under the petition at an evidentiary hearing on January 13, 2015. The petitioner testified on his own behalf and called six witnesses; bar counsel called no witnesses. Thirty-five exhibits were admitted into evidence. While recommending certain conditions, bar counsel did not oppose the petitioner’s reinstatement. Tr. 228.

The petitioner presented an outstanding case of reform and current fitness. We especially commend him for maintaining his focus after his disbarment: pursuing constructive employment, raising his children, participating in charitable endeavors and, ultimately, taking carefully considered steps to prepare for these reinstatement proceedings. The panel recommends that the petition for reinstatement be allowed on conditions.

II. Standard

A petitioner for reinstatement to the bar bears the burden of proving “the moral qualifications, competency, and learning in the law required for admission to practice law in this Commonwealth, and that his or her resumption of the practice of law will not be detrimental to the integrity and standing of the bar, the administration of justice, or to the public interest.”

S.J.C. Rule 4:01, § 18(5); Matter of Daniels, 442 Mass. 1037, 1038, 20 Mass. Att’y Disc. R. 120, 122-123 (2004) (rescript). See Matter of Dawkins, 432 Mass. 1009, 1010, 16 Mass. Att’y Disc. R. 94, 95 (2000) (rescript); Matter of Pool, 401 Mass. 460, 463, 5 Mass. Att’y Disc. R. 290, 293 (1998). Supreme Judicial Court Rule 4:01, § 18(5) establishes two distinct requirements, focusing, respectively, on (i) the personal characteristics of the petitioner; and (ii) the effect of reinstatement on the bar and the public. Matter of Gordon, 385 Mass. 48, 52, 3 Mass. Att’y Disc. R. 69, 73 (1982).

In making these determinations, a panel considering a petition for reinstatement “looks to ‘(1) the nature of the original offense for which the petitioner was disbarred, (2) the petitioner’s character, maturity, and experience at the time of his disbarment, (3) the petitioner’s occupations and conduct in the time since his disbarment, (4) the time elapsed since the disbarment, and (5) the petitioner’s present competence in legal skills.’” Matter of Prager, 422 Mass. 86, 92 (1996), quoting Matter of Hiss, 368 Mass. 447, 460, 1 Mass. Att’y Disc. R. 122, 133 (1975).

III. Disciplinary Background

In 1997, the petitioner received a three-year suspension under a stipulation for discipline (Ex. 32) based on the petitioner’s conviction in 1996 for conspiracy to make false statements to a federally-insured bank¹ in connection with his purchase of two pieces of real estate. Tr. 51-52, 55-57 (Singal). The conviction, under which the petitioner was sentenced to one year of

¹ The underlying misconduct occurred in 1986-1987. Tr. 51-53 (Singal); Tr. 106-107 (O’Sullivan); Ex. 31, at BBO 654.

probation,² arose from the petitioner's submission to the lender of closing documents in two real estate transactions that asserted falsely that he, as borrower, had paid a cash deposit from his own funds, that he paid funds at the closing from his own assets and, in one of the transactions, that he intended to occupy the real estate as his principal residence.³

Before and in anticipation of the disciplinary proceedings concerning these matters, in 1996 the Court ordered the petitioner temporarily suspended. After that temporary suspension the petitioner held himself out as a lawyer and, for that reason, his three-year disciplinary suspension was not made retroactive to his temporary suspension. Tr. 111-113 (O'Sullivan); 13 Mass. Att'y Disc. R. 601 (1997).

We credit that this holding-out occurred only in connection with the matter that resulted in the petitioner's later resignation and disbarment in 2000. Tr. 164 (O'Sullivan).

The Court ordered that disbarment under an affidavit of resignation in which the petitioner acknowledged the following matters could be proved by a preponderance of the evidence (16 Mass. Att'y Disc. R. 332 (2000)):

In 1983, within about a year of his admission to the bar, the petitioner undertook to assist an elderly client in the sale of her share of a house.⁴ Because of the petitioner's failure to adequately research the matter and his failure to consider a petition for partition, he incorrectly advised the client that the assent of all owners would be required to sell the property.

The petitioner's incompetence and neglect of the matter resulted in unnecessary delay to the sale, excessive work, excessive fees, and his unnecessarily undertaking the representation of various co-owners with conflicting interests. Meanwhile, he allowed relatives of his first client to live at the house despite their failure to pay rent, taxes, insurance, and municipal charges. He

² The petitioner's assistance to the government, communicated to the sentencing judge, resulted in the prosecutor agreeing not to make a sentencing recommendation. Tr. 48-51 (Singal); Ex. 5, at BBO 76. The petitioner successfully completed probation in 1997. Ex. 11.

³ Tr. 109-110 (O'Sullivan).

⁴ Tr. 113 (O'Sullivan).

misrepresented to the client that these relatives would buy the property. Further, the petitioner unnecessarily obtained appointment as receiver for two missing owners.

In 1988, the property was put under a purchase and sale agreement, but the closing was delayed by various errors the petitioner had committed. To compensate for his errors, the petitioner made financial concessions to the purchasers that cost the property owners about \$3,050.

The property was sold in 1989. The petitioner delayed reporting the sale to his clients and when he finally did so he misrepresented the reasons for the delay, concealing his own neglect and incompetence. He also reported that he would hold a portion of the proceeds for the missing owners under court order, when no such order existed. When he disbursed the proceeds to known owners, he charged them a clearly excessive fee at a higher hourly rate than he had quoted to his original client. Meanwhile, he failed to keep adequate records of the funds, commingled personal funds in his receivership accounts, and ultimately intentionally misused some of the missing owner's portion of the proceeds for his own purposes.

The petitioner did not respond to a request for an accounting made in 1996 by a friend of his original client. Around that same time, the petitioner closed the receivership accounts and paid the missing owners' funds to himself, holding them in a non-interest-bearing account. He notified the other owners that he was now able to distribute the funds originally earmarked for the missing owners, and he requested that the other owners sign a form waiving "any further rights of appeal in the matter" without fully explaining his representation, including his own neglect and incompetence. The other owners signed and returned the forms, but the petitioner did not then distribute the funds, which he turned over to another attorney after his temporary suspension in 1996.

That temporary suspension, ordered in connection with his criminal conviction, required that he resign his fiduciary positions. Ex. 1, at BBO 21-24. He did not do so in this second matter until May 1997.

The petitioner did not file any accountings in the receiverships until 1999. When he did, his accountings incorporated misleading information and a claim for more than \$2,200 in each receivership for unwarranted “maintenance fees.”

The petitioner’s resignation and disbarment treated as matters in aggravation the prior three-year suspension and the fact that some of the misconduct that resulted in his resignation and disbarment occurred during the investigation leading to the prior suspension.

IV. Findings

A. Moral Qualifications

The petitioner has amply shown that he now has “the moral qualifications ... required for admission to practice law in this Commonwealth.” S.J.C. Rule 4:01, § 18(5).

The professional misconduct that resulted in the petitioner’s discipline, spanning roughly ten years, ended around 1999, and he has been disbarred since 2000. We are, of course, mindful that the mere passage of time is not enough to demonstrate current moral fitness. Matter of Daniels, 442 Mass. 1037, 1038 (2004); Matter of Dawkins, 432 Mass. 1009, 1012 (2000); Matter of Hiss, 368 Mass. 447, 460, n. 19 (1975). Nevertheless, the petitioner’s disbarment provided ample opportunity for him to reflect on his misconduct and reform his character. He used his time well.

Without shirking or excuses, the petitioner admits his wrongdoing and accepts responsibility for it, and he expresses credible remorse. Tr. 25, 26-27 (Carron); Tr. 54-55, 58 (Singal); Tr. 109-110, 112-113, 114-119, 120-121, 156-157, 163-164 (O’Sullivan); Ex. 1, at BBO 2-3, 16-17. We credit that he has considered his misconduct and now guides his decisions with ethical principles. Ex. 1, at BBO 16-17. We credit as sincere his testimony that he has grown, has matured, has gained some wisdom in the intervening years, and that “you won’t see me back here again. You won’t have to worry about me.” Tr. 157 (O’Sullivan).

Starting around 2001, and in the course of his work as a lobbyist,⁵ the petitioner has impressed his colleagues as a “straight shooter” even when that was not to his advantage, and they never had cause to question his honesty. Tr. 16 (Carron); to the same effect, see Tr. 36-38, 40 (Barletta); Tr. 64-65, 67 (Sullivan); Tr. 89-90 (Burns). The clients and colleagues to whom the petitioner disclosed his disbarment have found it inconsistent with the character they know.⁶ Tr. 17-18 (Carron); Tr. 36-38 (Barletta); Tr. 62 (Sullivan); cf. Tr. 92-93 (Burns).

The petitioner’s supporting witnesses describe him as a person of great drive and initiative, always prepared to help, and an inspiration. Tr. 22-23 (Carron); Tr. 41 (Barletta); Tr. 89-90 (Burns). His drive and initiative were on display when, despite his disbarment, he pursued business opportunities to support himself and his family. He continued his business as a lobbyist, Tr. 123-124 (O’Sullivan); we discuss other businesses below. The petitioner has also demonstrated good moral character by standing by friends and providing support in times of crisis or difficulty. Tr. 24 (Carron); Tr. 90, 93 (Burns); cf. Tr. 66-67, 70 (Sullivan).

The misconduct that resulted in the petitioner’s resignation and disbarment spiraled out of his attempt to handle a client’s matter when – he candidly admits -- he was not competent to do so.⁷ Tr. 114-116 (O’Sullivan). The petitioner now enlists the help of others more

⁵ The petitioner worked in government before attending law school, and he has worked as a lobbyist since his graduation from law school. Tr. 98-102 (O’Sullivan). In 1994 he formed his own lobbying/government relations business, Capital Associates; that firm still exists and, although it conducted no lobbying during the two years before the reinstatement hearing, the petitioner expects its business will rebound after the current change in administration. Tr. 102-104, 130-131, 177, 179, 193-194 (O’Sullivan).

⁶ Around 2004, and after learning that petitioner’s disbarment involved misuse of trust funds, one of his lobbying clients nevertheless loaned him almost half a million dollars to buy a business, Tr. 30, 36, 38, 42, 44 (Barletta); Tr. 124-126 (O’Sullivan), since repaid. Tr. 126 (O’Sullivan). An attorney who handled legal matters related to lobbying efforts by the petitioner found the disbarment disquieting, and initially distanced himself from the petitioner. Over time, he developed respect for the petitioner’s honesty, and ultimately agreed to support the petitioner’s bid for reinstatement. Tr. 62, 64-66, 71-72 (Sullivan). See also Ex. 10 (letters supporting the petitioner’s reinstatement).

⁷ When the petitioner undertook this representation, he was employed full-time with the legislature and later with a lobbying group; he was doing little legal work. Tr. 207-208, 216 (O’Sullivan).

knowledgeable to conduct his efforts.⁸ Tr. 22 (Carron). His commitment to competence has been reflected in his work as a lobbyist. Tr. 33 (Barletta).

During his suspension and his disbarment the petitioner has owned or co-owned a number of small businesses in addition to Capital Associates, his lobbying firm. Tr. 130-132 (O'Sullivan); Questionnaire, Part I (Ex. 1), Ans. 3A. Around 2004, he purchased an electronic claims processing business. Tr. 125 (O'Sullivan). Around 2005, he co-founded – and he still operates - a billboard advertising business, Capital Advertising LLC. Tr. 74-83 (Burns); Tr. 126-128 (O'Sullivan); Ex. 33. In 2014, he co-acquired another similar business based in Virginia. Tr. 84-86 (Burns). Also around 2014, he established his own outdoor advertising business “on the side,” with the knowledge and permission of his partner in Capital Advertising. Tr. 128-129 (O'Sullivan). Around 2008 or 2009, he purchased a business that maintains voter and constituent data, used by legislators and prospective candidates in their political activities. Tr. 19, 25 (Carron); Tr. 129-130 (O'Sullivan).

He has also engaged in a number of charitable activities, which were a regular part of his life even before his disbarment.⁹ Tr. 69 (Sullivan); Tr. 137-138 (O'Sullivan).

⁸ See, for example, Ex. 35, a print-out from a web site (since removed) that in 2007 the petitioner established for his lobbying firm, Capital Associates, listing support professionals. Tr. 159, 161, 197-198 (O'Sullivan).

Bar counsel expressed a legitimate concern that this website, on the whole, creates a misleading impression that the support professionals are employees of a large company the respondent operates rather than independent contractors to a smaller one. Tr. 158-162, 230; and see Tr. 209-211. During the petitioner's disbarment the website's content was not necessarily governed by the rules concerning lawyer advertisement, Mass. R. Prof. C. 7.1 through 7.5. Going forward, the petitioner should be mindful of his higher duty as a lawyer to avoid creating misleading impressions about his law practice, Mass. R. Pro. C. 7.1-7.5, Matter of Barros, S.J.C. No. BD-2012-121 (January 23, 2013); AD No. 05-05, 21 Mass. Att'y Disc. R. 672 (2005); AD 06-07, 22 Mass. Att'y Disc. R. 856 (2006); AD No. 98-64, 14 Mass. Att'y Disc. R. 928 (1998), and about services related to the practice of law, Mass. R. Prof. C. 5.7. He should be equally mindful of the high standard of honesty required of lawyers generally. Mass. R. Prof. C. 8.4(c). Our confidence that he will do so is bolstered by two points. He readily closed that website when about three years ago it came to his attention that it referred to him as a lawyer. Tr. 147-148, 154-155 (O'Sullivan). Currently, he recognizes the ethical issues around lawyer advertising and solicitation because they were “hammered ... home very well” in the seminars he attended. Tr. 211-212 (O'Sullivan).

⁹ In addition to the charitable organizations mentioned in the following main text, the petitioner contributed his time and know-how as a member of the governing board of Always Healthcare Organization, a Florida organization dedicated to assisting indigents to obtain health insurance. He resigned from that organization because its grant applications required detailed disclosure of the felony convictions of board members, and he did not want the organization to have to contend with that issue. Tr. 140-141 (O'Sullivan). [footnote continues]

Since around 2007 or 2008 he has volunteered his time with “Best Buddies of Massachusetts,” an organization that matches people with intellectual disabilities with adults to assist in high school, college, and workplace activities. In addition to other activities supporting the organization, he has become a member of its board of advisors. Tr. 138-139 (O’Sullivan); Ex. 1, Part I, Ans. 3B. The petitioner is an active member at the Center of Hope, Southbridge, an organization affiliated with The Arc, a community-based organization advocating and serving people with intellectual and developmental disabilities and their families. Tr. 12-13, 21 (Carron); Tr. 139 (O’Sullivan); Ex. 1, Ans. 3B. He “is quick to ask what’s the Center engaged in and where can I help,” Tr. 20 (Carron), and he has both donated furniture to the Center and provided it with business opportunities. Tr. 20-21 (Carron). The petitioner is a founding member of Above The Line New England, Inc., a charitable organization that helps veterans find affordable housing, and which is now seeking grant money to fund its operations. Tr. 43 (Barletta); Tr. 140 (O’Sullivan); Ex. 1, Ans. 3B. He is a member of the board of directors of the Boston College Alumni Association. Ex. 1, Ans. 3B. He served a three-year term on the Finance Committee for the Town of Duxbury. Tr. 142 (O’Sullivan); Ex. 1, Ans. 3B. He volunteered for twelve years as a coach in youth sports. Tr. 142 (O’Sullivan); Ex. 1, Ans. 3B. The petitioner’s charitable work extended to continuing to provide lobbying services to an Indian tribe after its efforts at federal recognition did not succeed and funding for the project had run out. Tr. 68-69 (Sullivan).

As the foregoing shows, the petitioner exemplifies the “fundamental precept of our system ... that a person can be rehabilitated.” Matter of Ellis, 457 Mass. 413, 414, 26 Mass. Att’y Disc. R. 158, 163 (2010). The conduct giving rise to the petitioner’s disbarment, “conclusive evidence that he was, at the time, morally unfit to practice law....” Dawkins, 432 Mass. at 1010-1011, 16 Mass. Att’y Disc. R. at 95 (citations omitted), “continued to be evidence

When first suspended, the petitioner was concerned that the notoriety of his conviction, Tr. 148-149, 212-213 (O’Sullivan), might make him unattractive to charities, but he made his way back, most notably by accepting an invitation to participate with the Best Buddies program, described in the main text. Tr. 138-139 (O’Sullivan).

of his lack of moral character ... when he petitioned for reinstatement... .” Dawkins, 432 Mass. at 1010-1011, 16 Mass. Att’y Disc. R. at 95 (to same effect, see Centracchio, 345 Mass. at 346, Matter of Waitz, 416 Mass. 298, 304, 9 Mass. Att’y Disc. R. 336, 342 (1993)). The petitioner overcame the presumption arising from his disbarment. He demonstrated “[r]eform ... manifested by some external evidence...” going far beyond “the passage of time alone [which] is insufficient to warrant reinstatement.” Waitz, 416 Mass. at 305, 9 Mass. Att’y Disc. R. at 343; see also Daniels, 442 Mass. at 1038, 20 Mass. Att’y Disc. R. at 123. He “establish[ed] affirmatively that, during his suspension period, he redeemed himself and become ‘a person proper to be held out by the court to the public as trustworthy.’” Dawkins, 432 Mass. at 1010-1011, 16 Mass. Att’y Disc. R. at 95 (citations omitted); see also Ellis, 457 Mass. at 414, 26 Mass. Att’y Disc. R. at 163-164. He has led “‘a sufficiently exemplary life to inspire public confidence once again, in spite of his previous actions.’” Matter of Prager, 422 Mass. at 92, quoting Matter of Hiss, 368 Mass. at 452, 1 Mass. Att’y Disc. R. at 126.

B. Learning in the Law

The petitioner has also satisfied his burden under S.J.C. Rule 4:01, § 18 to demonstrate that he has the “competency and learning in the law required for admission to practice law in this Commonwealth.”

When, around three years ago, the petitioner decided to seek re-admission to the bar,¹⁰ he sought guidance from, among others, counsel experienced in disciplinary matters. Tr. 121 (O’Sullivan). His attendance at continuing legal education programs, including two programs recommended by bar counsel (trust accounting, and MCLE’s “How to Make Money And Stay Out Of Trouble”), Tr. 143-144 (O’Sullivan), was one of his first overt steps towards reinstatement.

¹⁰ We credit the petitioner’s testimony that he did not consider seeking reinstatement until about three years ago, despite being eligible in or around 2008, for two primary reasons. Initially, he was committed to establishing and building his new businesses. In addition, he waited until his children had started their own adult lives to avoid harm to them from any potential negative publicity of a reinstatement bid. Tr. 149-150, 214 (O’Sullivan).

The petitioner has attended more than a dozen continuing legal education seminars, a preparatory course for the bar admission examination, a review course for the professional responsibility examination, and a prep course for the Massachusetts real estate license. Tr. 145-147 (O'Sullivan); Ex. 1, Ans. 3F. The seminars, which he continued to attend after submitting his reinstatement packet, included licensing, incorporation agreements, business valuation, negotiating contracts, residential real estate closings, commercial real estate, an annual practice skills program, veterans' benefits, lobbying and campaign financing, employment issues concerning employee versus independent contractor status, and a course on starting a law practice. Tr. 143, 146 (O'Sullivan); Ex. 1, Ans. 3F. The petitioner's formal courses are supplemented by informal learning during his years as a businessman and lobbyist, interfacing with the law through the statutes, regulations, and legal documents that affected his businesses. Tr. 144-145 (O'Sullivan). Also, he regularly reads Massachusetts Lawyers Weekly, he receives and reads General Counsel News (an e-mail service) and he has reviewed the Model Rules of Professional Conduct and their Massachusetts counterpart. Tr. 143, 145, 147 (O'Sullivan); Ex. 1, Ans. 3F.

Finally, this panel is favorably impressed with the thoughtful manner in which the petitioner has considered his return to practice and how he can leverage his skills and experience using a law license. Tr. 151-152, 188-193, 215-216 (O'Sullivan). We take this as evidence of a strategic competence readily transferrable to the practice of law.

C. Effect of Reinstatement on the Bar, the Administration of Justice and the Public Interest

The petitioner has also satisfied the "public interest" prong of the test for reinstatement. Here, we address the "[t]he impact of a reinstatement on public confidence in the bar and on the administration of justice..." Matter of Waitz, 416 Mass. at 307, 9 Mass. Att'y Disc. R. at 345. "In this inquiry we are concerned not only with the actuality of the petitioner's morality and

competence, but also on the reaction to his reinstatement by the bar and public.” Matter of Gordon, 385 Mass. at 53, 3 Mass. Att’y Disc. at 73.

In light of our findings above, we need say no more to conclude that the petitioner’s return to practice is consistent with precedent and the even-handed administration of justice, and it will not be detrimental to the integrity and standing of the bar or to the public interest. Still, we add that we are favorably impressed that, in response to bar counsel’s inquiries about restitution, the petitioner placed \$18,000 in escrow with his counsel, to be distributed to the estate heirs in the matter that resulted in his resignation and disbarment and constituting return of his legal fees in that matter, and that he charged his counsel with locating the heirs to receive that distribution.¹¹ Tr. 152-154 (O’Sullivan). On a petition for reinstatement, “making restitution ... is an outward sign of the recognition of one’s wrongdoing and the awareness of a moral duty to make amends to the best of one’s ability. Failure to make restitution, and failure to attempt to do so, reflects poorly on the attorney’s moral fitness.” Matter of McCarthy, 23 Mass. Att’y Disc. R. 469, 470 (2007).

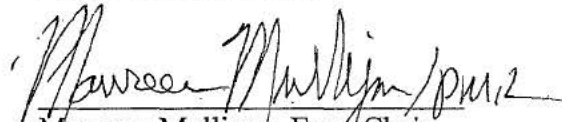
V. Conclusions and Recommendation

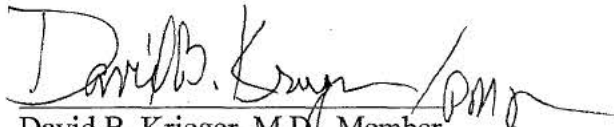
One matter remains that does not diminish the strength of our conviction that the petitioner’s reinstatement is warranted. We have some concern that the petitioner’s understanding of the requirements for trust accounts is at best rudimentary. Tr. 187-188 (O’Sullivan). We recommend that as a condition on his reinstatement, if the petitioner establishes a practice which requires a trust account, he consult with the Law Office Management Assistance Program concerning the establishment and maintenance of trust accounts, and adopt its recommendations.

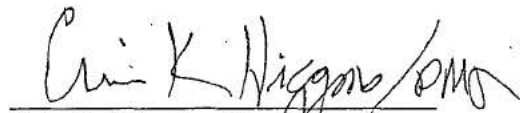
¹¹ The petitioner also expressed willingness to place in escrow with his counsel an additional \$3,050, to compensate the estate for the financial concession made by the petitioner to the purchasers of the real estate – a concession made because of the petitioner’s own errors. Tr. 205-207 (O’Sullivan). This matter differs from the \$18,000 discussed above because it is more akin to damages than to restitution and, therefore, we decline to include its repayment as a condition for reinstatement. Still, we were impressed by the petitioner’s desire to atone for his previous misconduct; we leave the matter to the considered exercise of his discretion.

With this condition, we recommend that the petition for reinstatement filed by Edwards
E. O'Sullivan be allowed.

Respectfully submitted,
By the Hearing Panel,


Maureen Mulligan, Esq. Chair


David B. Krieger, M.D., Member


Erin K. Higgins, Esq., Member

Filed: Feb. 24, 2015