

IN RE: SAMUEL J. CONCEMI

S.J.C. Order of Reinstatement entered by Justice Lynch on November 17, 1999¹

HEARING PANEL REPORT

I. Introduction.

This is the second time that Samuel J. Concemi ("Concemi") has petitioned for reinstatement following a judgment of disbarment which was entered in the Supreme Judicial Court on June 5, 1996, retroactive to May 3, 1991, the date of his temporary suspension. See Matter of Concemi, 12 Mass. Att'y- Disc. R. 63 (1996). In 1996, a prior panel of the Board conducted a hearing on Concemi's first petition for reinstatement.² Applying the standards set forth in S.J.C. Rule 4:01, that panel concluded that Concemi had the requisite learning in the law and moral character to resume practice, but that reinstatement a mere five years following the effective date of the order of disbarment would be "detrimental to the integrity and standing of the bar, the administration of justice, or the public interest." December 9, 1996 Hearing Panel Report, p. 7. The panel therefore recommended that the petition be denied and that Concemi be instructed to reapply no earlier than May 3, 1999.

On March 10, 1997, the Board voted to adopt the Hearing Panel's findings of fact and legal conclusions that Concemi had the moral qualifications and learning in the law required for the resumption of practice, but to reject the panel's conclusion that his reinstatement at that time was not appropriate. Accordingly, the Board recommended that the petition for reinstatement be granted. Bar Counsel appealed the Board's decision to a single justice of the Supreme Judicial Court who, on June 23, 1997, denied the petition for reinstatement stating that, "in imposing the penalty of disbarment, the court intended that the petitioner's removal from the practice of law continue for more than the minimum period applicable to a lawyer under an indefinite suspension." Matter of Concemi, 13 Mass. Att'y. Disc. R. 94(1997).

Concemi filed the present petition for reinstatement on December 11, 1998, and submitted a new reinstatement questionnaire on January 5, 1999. A hearing on the petition was held on May 19 and May 27, 1999, before Cynthia J. Cohen, Chair and Steven P. Sabra and Robert J. Guttentag, Panel Members. The panel heard testimony from five witnesses, including the Petitioner, and received documentary evidence including twenty-nine letters from retired judges, practicing attorneys and others in support of reinstatement. For the reasons that follow, the panel recommends that the petition be allowed.

II. Background Facts.

Concemi was admitted to the Bar of the Commonwealth in 1966. The vast majority of his career was spent in solo practice in the greater Lawrence area.

On December 19, 1990, following a jury trial in the United States District Court for the District of Massachusetts, Concemi was found guilty on a thirty-five count felony indictment charging him with one count of conspiracy to defraud ComFed Savings Bank in violation of 18 U.S.C. § 371, seventeen counts of bank fraud in violation of 18 U.S.C. § 1344 and seventeen counts of making false statements to a federally insured bank in violation of 18 U.S.C. § 1014. These charges stemmed from seventeen real estate transactions in 1988 and 1989, in which Concemi, as lawyer for ComFed, together with two co-conspirators (a ComFed employee and an individual who was the real estate broker and seller in some of the transactions),

concealed secondary financing agreements which violated ComFed's underwriting policies. The convictions were affirmed by the United States Court of Appeals for the First Circuit. *United States v. Concemi*, 957 F.2d 942 (1st Cir. 1992), denial of habeas corpus *aff'd.*, 14 F.3d 44 (1st Cir. 1994).

Concemi was sentenced to thirty-six months of incarceration to be followed by two years of supervised release and was ordered to make restitution of \$16,460 and to pay a fine of \$6,000. He served his sentence and, in June, 1993, was released to a half-way house in Lawrence where he was allowed to work in the community during the day. On November 1, 1994, his supervised release was terminated early. He paid his fine and made restitution.

Based upon Concemi's convictions, Bar Counsel filed a petition for discipline on February 15, 1991, seeking Concemi's disbarment. On October 13, 1994, by a two to one vote, a hearing panel recommended that Concemi be suspended for two years, retroactive to the date of his temporary suspension (May 3, 1991) or the date of his release from federal probation, whichever was later. The third member of the panel recommended a three-year suspension. Significant to the hearing committee in recommending a term suspension rather than indefinite suspension or disbarment was evidence that ComFed was aware of the secondary financing and had a practice of giving loans to borrowers regardless of their ability to meet normal underwriting requirements.

On January 9, 1995, the full Board adopted the panel's findings and rulings but recommended that Concemi be suspended for three years, retroactive to the date of his temporary suspension. On appeal by Bar Counsel, the Supreme Judicial Court held that the Board erred in taking evidence and making factual findings inconsistent with the facts underlying Concemi's convictions and that disbarment was the appropriate sanction.

III. Findings and Conclusions Pertaining to the Reinstatement Petition.

On a petition for reinstatement, the petitioner bears the burden of proving that he has the moral qualifications required for admission to practice law; that he has the competency and learning in law required for admission; and that his resumption of practice will not be detrimental to the integrity or standing of the bar, the administration of justice or the public interest. S.J.C. Rule 4:01, § 18 (5). *Matter of Cappiello*, 416 Mass. 340, 9 Mass. Att'y- Disc. R. 47 (1993); *Matter of Waitz*, 416 Mass. 298, 9 Mass. Att'y. Disc. R. 336 (1993). In evaluating a petition for reinstatement, the true test must always be the public welfare. *Matter of Waitz*, *supra*. The panel concludes that, in this case, the petitioner has met his burden on each of the requisite criteria.

A. Moral Qualifications.

With the exception of the conduct leading to his disbarment, Concemi has led an exemplary life as an individual and as a lawyer. He has a stable family life, he has no substance abuse problems, and he is genuinely remorseful about the actions which led to his conviction and disbarment.

Concemi is civic-minded and, prior to his disbarment, was actively engaged in pro bono work such as participating in the lawyer-of-the-day program of the Essex Probate Court and representing juveniles referred to him by the Lawrence Boys and Girl's Club. If reinstated, Concemi intends to resume his pro bono work.

While in prison, Concemi was a model prisoner. He was active in the Catholic chapel, assisted inmates in preparing for their GED exams, coached three sports and served as chief law librarian.

The testimony of Concemi's character witnesses and the many letters of support received into evidence confirm that Concemi is extremely well-regarded by former clients, members of the

Lawrence and Haverhill bars, retired members of the judiciary, members of the business community and members of the community at large.

Like the first reinstatement panel, we conclude that Concemi has the moral qualifications to resume the practice of law.

B. Learning in the Law.

Since his suspension, Concemi has kept current with developments in the law. While in prison, in addition to being chief law librarian, he counseled other inmates on civil, criminal and administrative issues and helped them with the preparation of pleadings and briefs. In March, 1 1996, Concemi took and passed the multi-state professional responsibility examination. He reads Lawyers' Weekly on a regular basis.

Concemi also has remained conversant with the law through his employment as a title examiner and paralegal. In June, 1993, when he was released to a halfway house, Concemi began to do title examinations, working for his daughter in her title examination business. At the time, he was under the impression that performing title examinations was not the equivalent of paralegal work and that he did not need leave of court to work in that capacity. Concemi was open about his work as a title examiner, disclosing it in various proceedings including his disciplinary hearing in 1994 and his first reinstatement hearing.³

When he was advised that he should, in fact, seek leave of court in order to work as a title examiner, Concemi filed a motion with a Single Justice of the Supreme Judicial Court requesting permission to do title examinations and paralegal work. This motion was allowed by Lynch, J. on March 10, 1995. Thereafter Concemi not only continued to perform title examinations but also worked as a paralegal for attorneys in the greater Lawrence area, doing legal research in a number of areas such as real estate, probate, tax, corporate, tort and contract law.

Since 1998, Concemi has worked as a title examiner together with John Daly, an attorney and member of the Massachusetts bar. In January, 1999, Concemi and Daly formed a Massachusetts corporation under the name of Express Title Services, Inc., for the sole purpose of performing title examinations and related services. Concemi believed that, having been granted permission to do title examinations, it was not a violation of the rules of professional responsibility for him to go into business with an attorney for that purpose.

We agree with Bar Counsel that Concemi's formation of a business entity with Daly implicates concerns addressed by Rule 5.4(d) of the Massachusetts Rules of Professional Conduct. However, we find any possible violation to be inadvertent and based upon good faith. Accordingly, we do not find this to be an impediment to Concemi's reinstatement, although we agree with Bar Counsel's suggestion that Concemi would benefit from further education on ethical matters. It is significant to us that, in other respects, Bar Counsel does not challenge Concemi's legal knowledge and ability.

C. Standing of the Bar and Public Interest.

The panel heard no opposition from any quarter to Concemi's reinstatement. On the contrary, the evidence before us supports the conclusion that reinstatement would not be detrimental to the standing of the bar in the community or adversely affect the public interest.

A particularly well-respected group of individuals associated with the legal community has voiced support for Concemi's reinstatement, including many longtime practicing attorneys, the entire Lawrence County Bar Association Executive Committee, three retired District Court judges and the Honorable John E. Fenton, Jr., former Chief Justice of the Trial Court and former Dean of Suffolk Law School. Perhaps even more significantly, eleven distinguished lay persons from the greater Lawrence community also have endorsed Concemi's reinstatement.

They include police officers, an elected member of the Lawrence City Council, business people, the President of Merrimack College, the Executive Director of the Lawrence Boys and Girls Clubs and other community activists. The unusual quality of this support suggests to us that the first reinstatement panel's concern about public perception is no longer justified.

The passage of additional time is also significant to us. It has now been more than eight years since the effective date of Concemi's disbarment and nearly three years since the first reinstatement panel determined that reinstatement was premature. The current panel now concludes that sufficient time has elapsed so that reinstatement would not diminish the significance of an order of disbarment from the perspective of the public or the bar. We note that reinstatement at this time would not be inconsistent with the Board's proposed rules change which would increase to eight years the minimum period of disbarment. Nor would it be inconsistent with the result in comparable cases. See *Matter of Krowen*, 10 Mass. Att'y. Disc. R. 166 (1994) (disbarment following conviction in federal court for fifteen counts of mail fraud; reinstatement seven and one half years after consent to disbarment, subject continuing legal education and monitoring conditions); *Matter of Cintolo*, 10 Mass. Att'y- Disc. R. 40 (1994) (disbarment following conviction for conspiracy to obstruct justice; reinstatement eight years after effective date of disbarment, subject to successful completion of MPRE).

Finally, we observe that the events in question occurred in the context of an otherwise unblemished twenty-five year career. Although the conduct which resulted in disbarment occurred in the course of Concemi's practice of law, it was not so patently reprehensible as to warrant further delay in permitting him to resume practice.

IV. Ultimate Conclusions and Recommendation.

For the foregoing reasons we conclude that the Petitioner, Samuel J. Concemi, has the moral qualifications required for admission to practice law; that he has the competency and learning in law required for admission; and that his resumption of practice will not be detrimental to the integrity or standing of the bar, the administration of justice or the public interest. We recommend reinstatement with the following condition: that he be required to attend twelve hours of continuing legal education annually for two years and that four of the twelve hours be in the field of legal ethics.

Respectfully submitted,

Cynthia J. Cohen
Steven P. Sabra
Robert J. Guttentag

FOOTNOTES:

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

² Concemi's first petition for reinstatement was filed on January 31, 1995, and a hearing was held on February 7, 1996, even though his disciplinary case remained pending. It was not until March 28, 1996, that the Supreme Judicial Court issued its rescript ordering that Concemi be disbarred retroactive to May 3, 1991. *Matter of Concemi*, 422 Mass. 326, 12 Mass. Att'y. Disc. R. 64 (1996). Subsequently, pursuant to an order of a single justice on June 24, 1996, the petition for reinstatement was treated as if filed on May 3, 1996, five years to the day after the effective date of Concemi's disbarment.

³ Bar Counsel concedes that whether or not a suspended attorney was barred from performing title examination work was somewhat unclear, at least until the amendment of S.J.C. Rule 4:01, § 17(7) in 1997. Hence Bar Counsel did not raise this as an issue at the first reinstatement hearing and does not raise it now.

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