

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

Keith L. Wheaton, Petitioner

vs.) No. 35462

Lawyer Disciplinary Board, Respondent

FILED

November 17, 2011

released at 3:00 p.m.

RORY L. PERRY II, CLERK

SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

This matter arises from the petition filed by Petitioner Keith L. Wheaton for reinstatement of his license to practice law in West Virginia. Petitioner's license to practice law was annulled for reasons set forth in *Lawyer Disciplinary Bd. v. Wheaton*, 216 W.Va. 673, 610 S.E.2d 8 (2004). The uncontested facts giving rise to the disciplinary proceeding, the corresponding findings of misconduct and the resulting thirty-one violations of the West Virginia Rules of Professional Conduct are fully stated therein and need not be reiterated in this memorandum decision.

Upon adopting in *Wheaton* the Lawyer Disciplinary Board's ("Board") recommendation that Petitioner's law license be annulled, this Court also adopted the Board's recommendation that, should Petitioner seek reinstatement to the practice of law after the prescribed five-year period under Rule 3.33 of the Rules of Lawyer Disciplinary Procedure, Petitioner should be required to do the following: (1) reimburse those clients who were injured by his misconduct and who he failed to repay, including Ms. Nancy Christensen (\$450.00), Mr. Edward K. Pruden, Sr. (\$300.00), and Ms. Pamela D. Mason (\$500.00); (2) "fully satisfy the judgment assessed against him by the federal bankruptcy court due to misconduct in the underlying case of his client, Ms. Mason;" (3) "demonstrate that he has an understanding of the Rules of Professional Conduct and that he undertake an additional eighteen hours of ethics and office management continuing legal education;" (4) "submit to supervised practice for a period of at least two years" upon reinstatement; and (5) reimburse the Board for the costs associated with the lawyer disciplinary proceedings, pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure." 216 W.Va. at 680 n. 30, 610 S.E.2d at 20 n.30.¹

On or about January 20, 2010, Petitioner filed a petition for reinstatement, satisfying the mandatory five-year waiting period under Rule 3.33(b) of the Rules of Lawyer Disciplinary Procedure. A hearing on the petition for reinstatement was conducted on March 9 and 10, 2011, before a three-member Hearing Panel Subcommittee of the Board.

On July 18, 2011, the Subcommittee filed with this Court its Recommended Decision of the Hearing Panel Subcommittee of the West Virginia Lawyer Disciplinary Board, Findings of Fact and Conclusions of Law ("Recommended Decision"). In its Recommended Decision, the Subcommittee

¹According to documentation submitted by the Office of Disciplinary Counsel during the reinstatement hearing, the total costs and expenses of the underlying lawyer disciplinary proceeding were \$13,353.39.

indicated that, in addition to the underlying misconduct and resulting violations set forth in *Wheaton*, it also considered evidence of Petitioner's conduct occurring in the years following the annulment of his law license. In particular, the Subcommittee considered the fact that, in 2005, Petitioner filed for Chapter 7 Bankruptcy. Among the liabilities listed in his bankruptcy petition were fifteen actual or potential legal malpractice lawsuits exceeding a total of \$85,000.00 in potential liability. The Subcommittee found that these liabilities were discharged by the bankruptcy court and Petitioner made no attempt at restitution.

The Subcommittee further considered the fact that Petitioner failed to comply with Rule 3.28 of the Rules of Lawyer Disciplinary Procedure, which enumerates the duties of disbarred or suspended lawyers; that the Family Court of Kanawha County, West Virginia, entered an order on November 17, 2006, granting judgment to the State of West Virginia and against Petitioner in the amount of \$15,060.46, for three worthless checks submitted to the West Virginia Bureau for Child Support Enforcement; that on December 9, 2009, a Criminal Contempt Order was issued against Petitioner in the General Court of Justice, District Court Division, Wake County, North Carolina (where Petitioner now resides), finding that Petitioner had accrued a child support arrearage in the amount of \$13,500.00; and that on August 31, 2009, Petitioner pled guilty in the State of North Carolina to the misdemeanor criminal offense of Unauthorized Use of a Motor Vehicle and was placed on one-year probation, fined \$908.04, and given credit for five days spent in confinement.²

Additionally, the Subcommittee considered evidence that, in 2007, a default judgment in the amount of \$2,000.00 was entered against Petitioner in the Commonwealth of Virginia for an unpaid personal loan from a family member, and that, in 2009, Petitioner was a named party in a repossession of motor vehicle action filed by the Ford Motor Company, in which judgment was entered in the amount of \$4,831.93, plus costs and interest. According to the Recommended Decision, neither judgment has been satisfied. In August 2009, two worthless check warrants in the amounts of \$1,300.00 and \$210.00, respectively, were issued against Petitioner; however, after Petitioner paid full restitution, both warrants were dismissed without convictions.³

Thirteen witnesses other than Petitioner provided testimony during the course of the reinstatement hearing. Witnesses appearing on behalf of Petitioner testified to his good works in the community and in his church, his good moral character, and how he has been negatively impacted by the annulment of his law license. The Office of Disciplinary Counsel presented numerous

²According to the Recommended Decision, Petitioner was initially arrested and charged with Larceny of a Motor Vehicle, a felony, when he failed to timely return a rental car. After entering into a plea agreement with the State of North Carolina, the charge was reduced to the aforementioned misdemeanor offense.

³According to the Recommended Decision, there were fourteen additional open ethics complaints pending against Petitioner at the time his license was annulled. The complaints were closed following the annulment but were placed in Petitioner's file "for future consideration." Although evidence of the allegations contained in those complaints were presented during the reinstatement hearing, the Subcommittee indicated that it did not consider them because they had not been thoroughly investigated.

witnesses, all of whom were former clients of Petitioner and all but one of whom testified that, in their respective opinions, Petitioner should not be reinstated to the practice of law.⁴

In its Recommended Decision, the Subcommittee recommended to this Court that Petitioner's petition for reinstatement be denied.

This Court applies a *de novo* standard of review to questions of law and application of the law to the facts, and questions of appropriate sanctions following a hearing before the Hearing Panel Subcommittee. See Syl. Pt. 2, in part, *Lawyer Disciplinary Bd. v. Vieweg*, 194 W.Va. 554, 461 S.E.2d 60 (1995). Furthermore, "this Court gives respectful consideration to the Committee's recommendations while ultimately exercising its own judgment. On the other hand, substantial deference is given to the Committee's findings of fact, unless such findings are not supported by reliable, probative, and substantial evidence on the whole record." *Id.* (quoting Syl. pt. 3, *Committee on Legal Ethics v. McCorkle*, 192 W.Va. 286, 452 S.E.2d 377 (1994)).

This Court has long held that

'The general rule for reinstatement is that a disbarred attorney in order to regain admission to the practice of law bears the burden of showing that he presently possesses the integrity, moral character and legal competence to resume the practice of law. To overcome the adverse effect of the previous disbarment he must demonstrate a record of rehabilitation. In addition, the court must conclude that such reinstatement will not have a justifiable and substantial adverse effect on the public confidence in the administration of justice and in this regard the seriousness of the conduct leading to disbarment is an important consideration.' Syllabus Point 1, *In Re Brown*, 166 W.Va. 226, 273 S.E.2d 567 (1980).

Vieweg, at syl. pt. 3, 194 W.Va. at 555, 461 S.E.2d at 61.

Furthermore,

'Rehabilitation is demonstrated by a course of conduct that enables the court to conclude there is little likelihood that after such rehabilitation is completed and the applicant is readmitted to the practice of law he will engage in unprofessional conduct.' Syllabus Point 2, *In Re Brown*, 166 W.Va. 226, 273 S.E.2d 567 (1980).

Vieweg, at syl. pt. 4, 194 W.Va. at 555, 461 S.E.2d at 61.

⁴Petitioner's former client, Ms. Margo Bruce, testified that she believed Petitioner should be reinstated to the practice of law, but, according to the Recommended Decision, "admitted that she might feel differently. . . had she not eventually received the settlement proceeds in her underlying case. Ms. Bruce also stated that if Petitioner were reinstated, she would not recommend him to others as an attorney or retain him again for herself."

During oral argument, Petitioner conceded that he has failed to satisfy any of the enumerated requirements for reinstatement set forth by this Court in *Wheaton*. It was Petitioner's contention that he is unable to reimburse former clients or to pay the costs of the underlying disciplinary proceedings, as required by *Wheaton*, for the simple reason that he is unable to obtain sufficient or steady employment in order to earn enough money to make the required payments⁵. Likewise, he indicated that the civil and criminal litigation in which he has been entangled since the annulment of his law license stem from his inability to earn a sufficient living. Thus, Petitioner argued, reinstatement of his law license would allow him to resume the practice of law⁶ and afford him the opportunity to earn enough money to satisfy the financial requirements of *Wheaton*.

We do not find Petitioner's argument to be compelling. The underlying misconduct giving rise to the disciplinary proceedings against Petitioner displayed "a pattern of misappropriating funds and unlawfully converting client funds to his own personal use. He routinely accepted legal fees for services which he never performed. . . [and] exhibited a pattern of failing to communicate with his clients, making material misrepresentations to his clients and to the court, and failing to diligently pursue cases on behalf of clients." *Wheaton*, 216 W.Va. at 683, 610 S.E.2d at 18. His request for reinstatement is not considered lightly. Having failed to satisfy any of the requirements for reinstatement set forth in *Wheaton*, it appears that Petitioner relies on the mere passage of time since his annulment as his strongest argument. Although we appreciate that Petitioner performs good works in his community and in his church, he has, nevertheless, engaged in a course of conduct since the annulment of his law license which fails to show that "he presently possesses the integrity, moral character and legal competence to resume the practice of law." *Vieweg*, at Syl. Pt. 3, 194 W.Va. at 555, 461 S.E.2d at 61. The civil and criminal entanglements described above are extensive and serious in nature. Petitioner has failed to demonstrate by this conduct that there is little likelihood that, if reinstated, he will not engage in unprofessional conduct again. *See Vieweg*, at syl. pt. 4, 194 W.Va. at 555, 461 S.E.2d at 61.

Finally, based upon the adjudicatory record, we conclude that Petitioner has failed to show that his reinstatement to the practice of law will not have a "justifiable and substantial adverse effect on the public confidence in the administration of justice[.]" *Vieweg*, at syl. pt. 3, 194 W.Va. at 555, 461 S.E.2d at 61. As we have stated in past cases, this Court "does not take lightly our charge of insuring 'that the public's interests are protected and that the integrity of the legal profession is maintained.' *Office of Disciplinary Counsel v. Albers*, 214 W.Va. 11, 13, 585 S.E.2d 11, 13 (2003)." *State ex rel. Office of Disciplinary Counsel v. Mooney*, 223 W.Va. 563, 566, 678 S.E.2d 296, 299

⁵According to the Recommended Decision, Petitioner has not held consistent full-time employment since the annulment of his law license. In 2008, he founded JBT Media Holdings, Inc., the parent company of a bi-monthly multi-cultural publication which is currently "'dormant' due to the economy." Petitioner also testified about other specific attempts at employment that were derailed either because of unpaid child support or the annulment of his law license.

⁶Petitioner indicated during the reinstatement hearing that, upon reinstatement, he would seek employment in a corporate legal department, law firm, university, or association, where there would be significant oversight of his work.

(2009). Indeed, several former clients of Petitioner testified that as a result of Petitioner's misconduct, their trust and confidence in lawyers has been seriously shaken.

Based upon the foregoing, the petition for reinstatement filed by Petitioner Keith L. Wheaton is hereby denied.

Petition Denied.

ISSUED: November 17, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Thomas E. McHugh