

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of: : Nos. 2193 & 2424 Disciplinary Docket
: No. 3
ROBERT PHILIP TUERK :
: Nos. 51 DB 2014 and 178 DB 2017
: PETITION FOR REINSTATEMENT : Attorney Registration No. 60360
: :
: (Philadelphia)

ORDER

PER CURIAM

AND NOW, this 21st day of November, 2024, the Petition for Reinstatement is denied. Petitioner is directed to pay the expenses incurred by the Board in the investigation and processing of the Petition for Reinstatement. See Pa.R.D.E. 218(f).

A True Copy Nicole Traini
As Of 11/21/2024

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

In the Matter of	:	Nos. 2193 & 2424 Disciplinary Docket
	:	No. 3
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ROBERT PHILIP TUERK	:	Nos. 178 DB 2017 & 51 DB 2014
	:	
	:	Attorney Registration No. 60360
	:	
PETITION FOR REINSTATEMENT	:	(Philadelphia)

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 218(c)(5) of the Pennsylvania Rules of Disciplinary Enforcement, The Disciplinary Board of the Supreme Court of Pennsylvania submits its findings and recommendations to your Honorable Court with respect to the above captioned Petition for Reinstatement.

I. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner is Robert Philip Tuerk. Petitioner was born in 1963 and was admitted to the bar in the Commonwealth of Pennsylvania in 1991. He was admitted to practice

law in Florida in 2002. Petitioner is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

A. Petitioner's Record of Discipline in Pennsylvania and Florida

2. By Order of the Supreme Court of Pennsylvania dated January 31, 1996, Petitioner was suspended for one year and one day for failing to disclose a prior arrest on his application to the Pennsylvania Bar, in violation of Rules of Professional Conduct 8.1(a) and 8.4(c). ODC-10.
3. Petitioner filed a Petition for Reinstatement to the Pennsylvania bar and by Order dated April 13, 1999, the Supreme Court denied the reinstatement. ODC-11.
4. Petitioner filed a second Petition for Reinstatement and by Order dated April 17, 2001, the Supreme Court granted reinstatement. ODC-12.
5. By Order of the Supreme Court of Pennsylvania dated October 15, 2015, Petitioner was suspended for one year and one day for violating Rules of Professional Conduct 3.3(a)(1), 3.3(a)(3), 8.4(c), and 8.4(d). ODC-13. The facts of this matter are as follows.
 - a. On February 22, 2012, Petitioner applied for admission to practice in the Eastern District of Pennsylvania (EDPA).
 - b. Pursuant to the EDPA Local Civil Rule 83.5(f), Petitioner, having been previously suspended, was required to file a petition with the Chief Judge and have a hearing before a panel prior to admission to the EDPA. This rule was printed on the back of the admission form. ODC-13, Bates 223-225.

- c. Petitioner failed to follow the rule. He completed the application form, paid his admission fee, proceeded to a courtroom, and was sworn into the EDPA by the Honorable John R. Padova, without disclosing his prior suspension.
 - d. Petitioner subsequently practiced law in the EDPA.
 - e. The EDPA held two Rule to Show Cause hearings on Petitioner's application. ODC-39.
 - i. During the first hearing, the Honorable Paul S. Diamond asked, "[D]o you think you have a little problem with candor to the tribunal, Mr. Tuerk?" (Bates 599), and the Honorable Legrome Davis told Petitioner, "I have a very hard time believing what you say." Bates 602.
 - ii. During the second hearing, Judge Davis noted Petitioner's conduct "raises the issue of his competency and training and proficiency in the law" (Bates 611) and Petitioner thereafter orally moved to withdraw his application for admission. Bates 670-671.
 - f. At the Disciplinary Board hearing in the matter, Petitioner blamed the admissions manager, his admissions sponsor, and the EDPA form itself for his failure to comply with the EDPA admissions requirements. ODC-13, Bates 234.
6. By Order dated March 24, 2016, Petitioner was reciprocally suspended in Florida for a period of one year with directions to comply with Florida Bar Rule 3-5.1(h),

which required Petitioner to file a sworn affidavit that he notified clients, opposing counsel and tribunals of his suspension. ODC-15.

7. Thereafter, the Florida Bar filed a Petition for Contempt in the Florida Supreme Court, requesting that Petitioner be held in contempt for failing to comply with Bar Rule 3-5.1(h). ODC-16.
8. By Order dated August 31, 2016, the Florida Supreme Court granted the Petition for Contempt, imposed a three year period of suspension and directed that Petitioner comply with Bar Rule 3-5.1(h). ODC-17.
9. Thereafter, the Florida Bar filed a Petition for Contempt requesting that Petitioner be held in contempt for failing to comply with Bar Rule 3-5.1(h). ODC-18.
10. By Response filed on January 31, 2017, Petitioner alleged that: it was the “first notice” he had received that the term of his suspension had increased from one to three years; he had no prior notice that his Bar Rule 3-5.1(h) affidavit was outstanding; and he previously had problems with his mail delivery. ODC-19.
11. The Florida Bar filed a Reply to Petitioner’s Response and stated: Petitioner had signed the return receipt for the Bar’s Petition for Contempt; attached a copy of Petitioner’s signed receipt demonstrating Petitioner had received a copy of the Bar’s Petition for Contempt; and explained all correspondence to Petitioner was sent to both Petitioner’s street and email addresses. ODC-20.
12. By Order dated May 4, 2017, the Florida Supreme Court, finding it appeared Petitioner “has misrepresented his receipt of notice of the proceedings,” entered

an Order for Petitioner to show cause why he should not be held in contempt and disbarred. ODC-21.

13. Petitioner filed a Response on June 2, 2017 alleging: when Petitioner “stated that he had not received notice of these proceedings” Petitioner actually “meant that he literally did not know that additional court proceedings were taking place”; and Petitioner did not deny receiving correspondence from the Bar, but claimed he had no “actual notice” because he did not open his mail. ODC-22.

14. The Florida Bar filed a Reply stating that Petitioner’s response “blaming ‘mail delivery issues’ for not having received correspondence contradicts his current response” wherein Petitioner admitted receipt of correspondence from the Bar. ODC-23.

15. By Order dated July 20, 2017, the Court “held [Petitioner] in contempt for misrepresenting to this Court receipt of notice of proceedings” and disbarred Petitioner. ODC-24.

16. Following Petitioner’s disbarment in Florida, by Order dated November 28, 2017, the Pennsylvania Supreme Court directed Petitioner to inform the Court of any grounds against the imposition of identical discipline. ODC-14(a).

17. On December 28, 2017, Petitioner filed a response challenging the fairness of his Florida disbarment. ODC-14(b).

18. By Order dated February 12, 2018, the Pennsylvania Supreme Court imposed reciprocal disbarment on Petitioner. ODC-14.

B. Post-Disbarment: Department of Education Proceedings

19. On January 17, 2019, Petitioner submitted an Application for New Credentials (Application) with the Pennsylvania Department of Education (DOE), Division of Certification Services seeking a substitute teacher license for that current year. ODC-28.

20. Question 5 of the Application asked if the applicant has ever had a license for any profession suspended or revoked, to which Petitioner answered, "Yes," and provided an attachment titled "Administrative Discipline" with an explanation of his attorney discipline as follows (ODC-28, Bates 344):

- a. Pennsylvania Bar (1996) suspension (1 year & 1 day) "for inadvertent mistake in application";
- b. Pennsylvania Bar (2015) suspension (1 year & 1 day): "for administrative admissions process error based on admission manager's directives to me and my sponsor within the courtroom";
- c. Florida Bar (2016): reciprocal discipline from Pennsylvania in 2015;
- d. Florida Bar (2017): disbarment "due to a breakdown in communication unbeknownst to me"; and
- e. Pennsylvania Bar (2018): reciprocal discipline from Florida in 2017.
- f. Petitioner omitted his Florida 2016 three year suspension from the list.

21. By letter to the DOE on March 19, 2018, Petitioner wrote he "take[s] responsibility for any blips of my unknowingness and/or misjudgments, and to which I'm remorseful." ODC-29.

22. On August 1, 2019, Petitioner submitted the same Application for the upcoming school year. ODC-31.

23. On December 9, 2019, the DOE Division of Certification Services denied the Application, finding Petitioner “failed to provide satisfactory evidence of good moral character necessary for the issuance of a teacher certification.” ODC-31, Bates 349.

24. Petitioner appealed the Division’s denial to the DOE, and on July 27, 2020, had a hearing before a Hearing Officer. ODC-32. At the hearing, Petitioner testified:

- a. “I’d like to just, again, state my regret for my behavior in February 2012 [at the EDPA admissions proceeding], for my faux pas, misjudgment etcetera” (Bates 365);
- b. “I told the truth in both my substitute teacher applications” (Bates 378); and
- c. regarding his “Administrative Discipline” list, refused to answer questions about his 1996 suspension, claimed it was “false” that he did not reveal his 1996 discipline to the EDPA, and refused to answer questions about the facts of his 2015 suspension matter in Pennsylvania (Bates 344, 383-384, 386, 388, 391).

25. On July 14, 2021, the DOE entered an Order and Adjudication “affirm[ing] the Division’s decision and conclud[ing] Mr. Tuerk does not have good moral character.” ODC-33.

26. In so concluding, the DOE found Petitioner:

- a. “repeatedly argued his disbarments resulted from inadvertent mistakes/and or misunderstanding” (Bates 435);
- b. “has not expressed regret” for his misconduct that led to the suspension and disbarment (*id.*);
- c. had “not accepted responsibility for his actions” (*id.*); and
- d. was “*not credible.*” (emphasis in original) (Bates 441).

27. Petitioner appealed the DOE’s Order and Adjudication to the Commonwealth Court. ODC-34.

28. By decision dated March 24, 2023, the Commonwealth Court (*Tuerk v. DOE*, 894 C.D. 2021 (Pa. Commw. Ct. 2023)) (ODC-36):

- a. did not disturb the DOE’s conclusion that Petitioner lacked credibility;
- b. found there was “substantial evidence” to support the DOE’s finding that Petitioner deflected blame and failed to accept responsibility for his misconduct (Bates 551); and
- c. affirmed the DOE’s decision to deny Petitioner’s application “because Petitioner failed to provide satisfactory evidence of good moral character.” (Bates 537-538).

C. Reinstatement Proceeding at Nos. 178 DB 2017 and 51 DB 2014

29. On March 27, 2023, Petitioner filed a Petition for Reinstatement and Reinstatement Questionnaire. ODC-1.

- a. The Questionnaire failed to include material information: Petitioner’s 1996 suspension (ODC-1(a)); EDPA proceedings (ODC-1(b)); required

Continuing Legal Education (CLE) credits (ODC-1(c)); and all tax transcripts (ODC-1(d)).

30. On May 3, 2023, Petitioner filed a Supplement to his original Petition consisting of an amendment to Question 9(g) that provided the Board Report and Supreme Court Order for his 1996 suspension and information pertaining to his EDPA proceeding.
31. On May 31, 2023, Petitioner filed a Supplement to his original Petition consisting of an amendment to Question 13(a) containing his CLE transcript.
32. On June 13, 2023, Petitioner filed a Supplement to his original Petition consisting of an amendment to Question 5(a) containing his tax forms.
33. On June 22, 2023, Office of Disciplinary Counsel (ODC) filed a Response to Petition for Reinstatement and raised areas of concerns that included, *inter alia*, the DOE findings that Petitioner was not credible, failed to accept responsibility, and failed to establish good moral character to be a substitute teacher, and the Commonwealth Court's findings that Petitioner deflected blame and was not credible. ODC-2.
34. On September 14, 2023, a prehearing conference (PHC) was held before Jason Gosselin, the designated Chair of the Hearing Committee (Committee). ODC and Petitioner appeared at the conference.
35. At the PHC conference, ODC stated that it had served Petitioner with its exhibits and witness list on September 7, 2023. Petitioner confirmed receipt when he stated he "was able to take a look at it this weekend," "I do have what [ODC] has, and I

object to everything except the reinstatement petition and answer.” PHC N.T. 6, 13, 14.

36. Chair Gosselin entered a PHC Order on September 18, 2023, establishing a deadline for the parties to exchange exhibits, exchange names of witnesses with their contact information, and file motions in limine.

37. Per the PHC Order, any and all exhibits were to be identified and exchanged on or before September 22, 2023, any objections to proposed exhibits submitted by September 29, 2023, and any responses to objections submitted by October 13, 2023.

38. On October 2, 2023, Petitioner filed “Objections to Respondent’s [ODC’s] Exhibit List for Petitioner’s Reinstatement Hearing” and raised various objections to ODC’s exhibits.

39. On November 6, 2023, the Hearing Committee held a reinstatement hearing. Petitioner appeared pro se. He testified on his own behalf and presented six character witnesses. Petitioner’s exhibits P-1 and P-2 were admitted into evidence. ODC introduced exhibits ODC-1 through ODC-51, and cross-examined Petitioner and his character witnesses.

40. When Disciplinary Counsel began her cross-examination of Petitioner, she handed him ODC’s exhibits. Petitioner testified that “I did not receive those exhibits. I object to all of them. I never received the exhibits. Never received them.” N.T. 180. Petitioner further testified, “[f]irst time I’m seeing them.” N.T. 181.

41. This testimony is contrary to Petitioner’s statement at the prehearing conference

on September 14, 2023, when he said that he received the exhibits, looked at them and objected to them.

42. Petitioner attempted to introduce certain exhibits even though he had not identified and exchanged them by September 22, 2023, pursuant to the PHC Order, and wrongly insisted that the deadline was September 29, 2023. N.T. 162, 163, 168. The Committee sustained ODC's objections to the exhibits. Petitioner also contended that he was not able to obtain certain exhibits until after the exchange deadline; however, the Committee sustained ODC's objections on the basis that Petitioner provided no evidence that he was unable to provide the exhibits by the deadline. N.T. 170-174.

Petitioner's testimony

43. Since 2015, during his period of suspension and disbarment, Petitioner engaged in volunteer work for organizations including MANNA (Metropolitan Area Neighborhood Nutrition Alliance), Philly House, Christ Church Garden, Get Out The Vote, Old City Civic Association, Lawyers Concerned for Lawyers, and various community cleanup projects. N.T. 161-162, 167-168.
44. Petitioner performed paralegal work for the Innocence Project. N.T. 161.
45. During his period of suspension and disbarment, Petitioner was employed doing deliveries for Amazon, Grubhub and Uber Eats. He performed free-lance paralegal work for two attorneys and performed some business consulting work. N.T. 269.
46. Petitioner completed CLE credits required for reinstatement. P-1; N.T. 175. Petitioner reads cases online and watches cases online. N.T. 175.

47. Petitioner repeatedly minimized and mischaracterized his prior misconduct and deflected blame to others.

- a. As to the 1996 suspension, Petitioner testified that his knowing omission of his prior arrest from his Pennsylvania Bar application was “a misjudgment.” N.T. 258, 259.
- b. As to his 2015 suspension, Petitioner blamed the admissions manager, his admissions sponsor, the judge, and the EDPA form itself and testified his knowing violation of court rules was “a missed lapse in judgment.” N.T. 238, 240, 265-267, 290, 302-303. Petitioner claimed he took “total responsibility” for what occurred “even though there’s explanation.” N.T. 236.¹
- c. When asked who was harmed by his conduct in the EDPA, Petitioner testified, “[t]he harm is to the system.” N.T. 277. But Petitioner did not explain what he meant. Instead, he assessed blame on the procedure and offered the following incredible testimony regarding what should have happened in the courtroom the day of the admissions proceeding: “I should have simultaneously told them and then I should have just left and said, ‘Hey, I’m sorry, I have to leave this room. Although you told me to sit down

¹ At oral argument on July 18, 2024, Petitioner explained his misconduct that resulted in the 2015 suspension and again attempted to assess blame on others when he stated, “I made a mistake. It was a hectic time during the election process. I shouldn’t have chosen that guy. Everything was wrong. But you know what? It’s my fault. It’s my fault. It’s my fault. I should have left that room, taken that one piece of paper with his contact information and local rule on the back that said you have to simultaneously tell the court and file a motion. Well, I simultaneously told the admissions manager in the room. That wasn’t enough.” OA N.T. 37.

twice' I should have just said, 'Okay, I'm sorry, I have to leave this room. This motion - - it says a motion and I'm going to leave.' I don't know how Mr. Beck would have responded to that since he's the admissions manager, but that's what has to occur. I mean I guess I'll have to get yelled at and/or have him call the marshal and say, 'This guy just violated an order of mine. Don't let him leave the building,' and then I'll have to explain it to the marshals. So be it." *Id.*

- d. Petitioner testified that the EDPA admissions proceeding was "very informal" and he was given a "piece of paper" and the local rule was "on the back" and "was like, sort of like out of focus." N.T. 303.
- e. Petitioner testified that Judge Padova administered the oath for admission and "he only asked my sponsor like three questions and did not address me whatsoever, and that was it." N.T. 302.
- f. When asked by the Committee if Petitioner raised the concern about his prior discipline with Judge Padova, Petitioner answered, "No. He did not address me." N.T. 304.
- g. As to the Florida discipline, Petitioner testified that he "accept[ed] full responsibility for these mistakes" and "I take full responsibility for these lapses in judgment." N.T. 249.
- h. While Petitioner testified that the letters he received from the Florida Bar were in stacks of his mail and in the trunk of his car and he did not open the mail, "lesson learned that if you have something and put it in the trunk of

your car you better go find it and pull it out and open it.” N.T. 247-248.

Petitioner further blamed bar counsel when he testified that he “had emails with [Florida Bar] counsel, and he never emailed or called me” with notice. N.T. 300.

- i. Petitioner testified that he has never been dishonest in his years of practice. N.T. 261. When asked whether he was dishonest to tell the Florida court he did not receive their mail, he testified, “Yes. I think that was - - I think it was a misnomer. I mean there was a nomenclature problem. Yes, I received the mail, but I did not open it.” N.T. 261.
- j. When questioned about his three year suspension in Florida, Petitioner appeared to shift blame to the Florida authorities when he testified “[t]hey knew I didn’t have any office there because I never had an office there, no phone number or anything in Florida, and they decided that I was not responding to their request for that one-page form that’s saying I informed everyone in Florida.” N.T. 244.
- k. As to the DOE application and proceedings, Petitioner testified that he titled his discipline “Administrative Discipline” and when questioned whether he understood that he received discipline from the highest courts in Pennsylvania and Florida and not an administrative agency, he responded, “[i]t’s just a misnomer if anything.” N.T. 220, 221.
- l. When questioned as to why he wrote on the DOE application that his 1996 suspension was for an “inadvertent mistake,” Petitioner testified, “[n]ot that

it was an inadvertent mistake. At this time, I know that it was a mistake. It's a mistake." N.T. 229.

48. Petitioner testified that all of his misconduct issues were "over a nolle prosequendo arrest and how people ask that question." N.T. 187.

49. Petitioner failed to express a sincere understanding of the nature of his wrongdoing and failed to demonstrate genuine remorse for the harm he caused to the public, the court system and the legal profession.

50. Petitioner's testimony that he accepted responsibility for all of his underlying misconduct is not credible.

Character witness testimony

51. Petitioner presented the testimony of six character witnesses: John L. Messa, Jr., Esquire; Leon A. King, II, Esquire; Richard W. Hoy, Esquire; Joseph Pultrone, Sr.; Diane Black Franzen; and Craig A. Sopin, Esquire.

52. None of the character witnesses knew the complete and accurate factual basis for Petitioner's:

a. Pennsylvania discipline (N.T. 52-53, 82-83, 105, 124, 142-143, 202, 207-208, 210); and

b. Florida discipline (N.T. 54-56, 84-86, 105, 142-143, 203, 209).

53. As to the 2015 misconduct before the EDPA, some witnesses understood that the admissions manager was to blame. N.T. 52-53 (Mr. Messa), 83 (Mr. King), 202 (Mr. Sopin).

54. As to the Florida discipline, Mr. King testified Petitioner told him that Petitioner

failed to get notices. N.T. 84-85. Ms. Black Franzen testified that she understood there was mail going to a post office box that Petitioner was not receiving. N.T. 143.

55. Of the six witnesses, only Mr. King knew Petitioner applied to be a substitute teacher. N.T. 51, 108, 126-127, 144, 210.

56. Mr. King had forgotten he had written a letter to the DOE on Petitioner's behalf, and after his memory was refreshed, testified he did not know that Petitioner had appealed the DOE's denial to the Commonwealth Court, and mistakenly thought Petitioner's application was rejected because he had been arrested. N.T. 75-76, 87.

D. The Procedural History Below

57. On December 26, 2023, Petitioner filed a post-hearing brief to the Committee and requested that the Committee conclude he met his reinstatement burden.

58. On January 9, 2024, ODC filed a post-hearing brief to the Committee and requested that the Committee conclude Petitioner did not meet his reinstatement burden and recommend to the Board that the Petition for Reinstatement be denied.

59. By Report filed on April 15, 2024, the Committee made the following conclusions:

- a. the misconduct for which Petitioner was disbarred is not so egregious as to preclude consideration of his Petition for Reinstatement, pursuant to *Office of Disciplinary Counsel v. John Keller*, 506 A.2d 872, 875 (Pa. 1986);
- b. Petitioner has not met his burden of proof by clear and convincing evidence that a sufficient period of time has passed since the misconduct during

which he engaged in qualitative rehabilitation; and

- c. Petitioner has not met his burden of proving by clear and convincing evidence that he is morally qualified, competent and learned in the law and further, his resumption of the practice of law will not be detrimental to the integrity and standing of the bar of the administration of justice, nor subversive of the public interest, under Pa.R.D.E. 218(c)(3).

60. The Committee found that Petitioner failed to fully accept responsibility and admit to his multiple instances of misconduct. Committee Rpt., p. 17. Further, Petitioner “repeatedly called his conducts misjudgments and at different points blamed different individuals and implied blame, before correcting himself, on the Courts themselves.” *Id.*

61. The Committee stated that it was “an obvious lack of change that persuades this Committee that Petitioner is not qualified to practice law in the Commonwealth of Pennsylvania.” Committee Rpt., p. 19.

62. The Committee recommended that the Petition for Reinstatement be denied.

63. On May 6, 2024, Petitioner filed a Brief on Exceptions to the Committee’s Report and requested oral argument before the Board.

64. On May 24, 2024, ODC filed a Brief Opposing Exceptions.

65. A three-member panel of the Board held oral argument on July 18, 2024.

66. The Board adjudicated this matter at the meeting on July 23, 2024.

II. CONCLUSIONS OF LAW

1. The misconduct for which Petitioner was disbarred is not so egregious as to preclude his reinstatement. *Office of Disciplinary Counsel v. John J. Keller*, 506 A.2d 872, 875 (Pa. 1986).
2. Petitioner failed to prove by clear and convincing evidence that he has engaged in a sufficient period of rehabilitation during his disbarment. *In the Matter of Jerome J. Verlin*, 731 A.2d 600, 602 (Pa. 1999).
3. Petitioner failed to prove by clear and convincing evidence that he has the moral qualifications and competency for reinstatement to the bar, and that his resumption of practice within the Commonwealth will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subversive of the public interest. Pa.R.D.E. 218(c)(3).

III. DISCUSSION

The Board's review of this matter follows oral argument on Petitioner's exceptions to the Committee's unanimous recommendation to deny his Petition for Reinstatement from reciprocal disbarment imposed by the Supreme Court of Pennsylvania on February 12, 2018. Petitioner contends that the Committee made numerous errors and "misstates and ignores" Petitioner's rehabilitation, moral qualifications, competence and learning in the law. Petitioner further contends that the Committee violated his "due process rights." ODC opposes Petitioner's exceptions and

supports the Committee's recommendation. Upon our independent review of the record and for the following reasons, we conclude that Petitioner failed to satisfy his burden by clear and convincing evidence and we recommend that Petitioner's request for reinstatement to the bar of this Commonwealth be denied.

As an initial matter, we address Petitioner's due process rights argument. He attacks the Committee Chair and the Committee's Report for purportedly having violated his due process rights to a "fair, impartial, and unbiased hearing."² Petitioner's Brief on Exceptions, p. 24. After review, we find no merit to this exception. Petitioner was afforded a reinstatement hearing that provided a full and fair opportunity to present his case. The Committee's recommendation to deny his reinstatement was based on evidence adduced at the hearing. Petitioner asserts that the Chair was biased against him as a gay individual because the Chair purportedly "did pro bono work for homophobic groups." Petitioner's Brief on Exceptions, p. 25.³ Petitioner never raised any challenge to the Chair at the prehearing conference, the reinstatement hearing, or in his brief to the Committee. It was only after the Committee issued its report recommending the denial of reinstatement that Petitioner decided to assert his specious claims.

A. Petitioner's misconduct is not so egregious as to preclude reinstatement

Moving to the substantive issues of this reinstatement proceeding, the primary purpose of the lawyer disciplinary system is to protect the public, preserve the

² At oral argument, Petitioner referenced the "unfair shake" he received from Chair Gosselin. OA N.T. 39.

³ We note that Petitioner raised similar claims of discrimination based on his sexual orientation during the DOE proceedings (ODC-34, Bates 486-487) and similarly questioned the neutrality of the DOE hearing officer. N.T. 187-188.

integrity of the courts, and deter unethical conduct. *Office of Disciplinary Counsel v. Paul M. Pozonsky*, 177 A.3d 830, 838 (Pa. 2018). Considering that a disbarred attorney has no expectation of a right to resume the practice of law at some future time, when a disbarred attorney seeks reinstatement, the Board and the Court as a threshold matter must examine whether the magnitude of the breach of trust would permit the resumption of practice without a detrimental effect upon “the integrity and standing of the bar or the administration of justice nor subversive of the public interest.” *Office of Disciplinary Counsel v. John Keller*, 506 A.2d 872, 875 (Pa. 1986). This initial examination recognizes that some forms of misconduct are so egregious that they will forever bar the attorney from seeking reinstatement.

Here, Petitioner was reciprocally disbarred from the practice of law in Pennsylvania following the Florida Supreme Court’s July 20, 2017 Order disbaring Petitioner for making misrepresentations to the Florida Court concerning his receipt of notices from the Florida Bar. Dishonesty to the tribunal is very serious misconduct. Nevertheless, consistent with the decisional law, we conclude that Petitioner’s misconduct is not so egregious that it should prohibit his reinstatement. See *In the Matter of William James Perrone*, 777 A.2d 413 (Pa. 2001) (Perrone was disbarred after his conviction of theft by deception and tampering with public records based on filing false and misleading fee petitions which requested payment for legal services purportedly provided to indigent defendants in the City of Philadelphia; the Court concluded that this misconduct was not so egregious as to prevent reinstatement); *In the Matter of Jerome Verlin*, 731 A.2d 600 (Pa. 1999) (Verlin disbarred for assisting a personal injury client in

impersonating a dead man at a deposition; the Court concluded this misconduct was not so egregious as to act as an outright bar to reinstatement). Accordingly, Petitioner is not barred from seeking reinstatement based on the nature of his misconduct.⁴

B. Petitioner failed to establish he engaged in rehabilitation during the period of removal from the practice of law

We next examine whether Petitioner has established by clear and convincing evidence that he has the moral qualifications, competency and learning in the law required for admission to practice law in Pennsylvania and that his readmission would not have a detrimental impact on the integrity and standing of the bar, the administration of justice nor be subversive of the public interest, pursuant to Pa.R.D.E. 218(c)(3). To meet this burden as a disbarred lawyer, Petitioner must demonstrate that a sufficient amount of time has passed since his misconduct, during which he engaged in rehabilitative efforts that dissipated the detrimental impact of his serious misconduct on the public trust.⁵ *Verlin*, 731 A.2d at 602.

A reinstatement proceeding is a “searching inquiry into a lawyer’s present professional and moral fitness to resume the practice of law. The object of concern is not solely the transgressions which gave rise to the lawyer’s suspension or disbarment, but rather, the nature and extent of the rehabilitative efforts he has made since the time the sanction was imposed and the degree of success achieved in the rehabilitative process.”

⁴ The Committee found that Petitioner met the *Keller* threshold standard and ODC did not take exception to this conclusion.

⁵ The Court has observed that the *Keller* inquiry is “somewhat co-extensive” with the determination under Pa.R.D.E. 218(c)(3). *Verlin*, 731 A.2d at 601.

Philadelphia News, Inc. v. Disciplinary Board of the Supreme Court of Pennsylvania, 363 A.2d 779, 780-781 (Pa. 1976).

Petitioner was disbarred in Pennsylvania in 2018 and has been removed from the practice of law since October 15, 2015, as a result of his one year and one day suspension, a total period of nearly nine years. The operative concept in a reinstatement proceeding is change. We must ask whether Petitioner is a different person than the one who committed the misconduct—whether Petitioner, during the past nine years, and particularly in the years since his disbarment, has “come to terms with his misconduct” and “shown by his words and actions that he is not predisposed to commit future ethical wrongdoings.” *Verlin*, 731 A.2d at 603. On this record, Petitioner has not established by clear and convincing evidence that he has rehabilitated himself from his underlying acts and transformed himself into an individual who is fit to resume the privilege of practicing law in this Commonwealth.

1. *Engaging in actions similar to the underlying misconduct; failure to acknowledge wrongdoing and accept responsibility*

When determining what constitutes rehabilitation sufficient to meet a petitioner’s burden of proof, the Board is required to “view the record as a whole and closely examine the petitioner’s period of removal from legal practice.” *Office of Disciplinary Counsel v. Paul Joseph Staub, Jr.*, No. 36 DB 2010 (D. Bd. Rpt. 5/12/2023, pp. 19-20) (S. Ct. Order 8/10/2023). This record lays bare two critical obstacles to Petitioner’s ability to demonstrate rehabilitation: first, that subsequent to disbarment, Petitioner continued to engage in the same actions and behavior that led to his 2018

disbarment and 1996 and 2015 suspensions in Pennsylvania, as well as his Florida sanctions; and second, that he has not accepted personal responsibility for his misconduct.

We review Petitioner's lengthy history of misconduct juxtaposed with his post-disbarment actions to support our conclusion that Petitioner has not changed. Petitioner's disciplinary misconduct constitutes repeated knowing failures to disclose information on applications to the Pennsylvania bar and the EDPA and misrepresentations to tribunals such as the Florida court and the EDPA. Post-disbarment, in January 2019, Petitioner filed an application with the DOE to be a substitute teacher. Despite his history of misconduct, Petitioner once again knowingly omitted information on the application as to some of his disciplinary history, and made misrepresentations and minimized his professional misconduct during his DOE application proceedings.

As the record demonstrates, the Division of Certification Services denied Petitioner's application based on his failure to provide satisfactory evidence of good moral character. Upon Petitioner's appeal of the denial, and after a hearing at which Petitioner described his misconduct as "faux pas, misjudgments, etc.," the DOE affirmed the denial of the application on the basis that Petitioner did not have good moral character. The DOE specifically referenced Petitioner's repeated arguments that his disbarments resulted from inadvertent mistakes or misunderstandings, and concluded that he had not expressed regret, had not accepted responsibility, and was not credible. Petitioner appealed the DOE's Order to the Commonwealth Court, which affirmed the DOE's

decision that Petitioner lacked good moral character to be a substitute teacher in the Commonwealth. We note that three days after the Commonwealth Court issued its March 24, 2023 Order, Petitioner filed the instant Petition for Reinstatement. Petitioner's actions in the DOE proceedings demonstrate that his prior discipline did not motivate him to change his future behavior. Rather, it appears he has learned nothing from his past misconduct and has continued to engage in dishonest behavior.

Petitioner's reinstatement request is further hampered by his efforts to soft pedal his dishonest conduct that resulted in the loss of his privilege to practice law. The record established that Petitioner has difficulty accepting responsibility for his wrongdoing and continues to equivocate. Petitioner at various times has described his misconduct as "blips," "inadvertent mistakes," "misjudgments," "lapse in judgment," "administrative admissions process error," and "faux pas." Petitioner continues to blame others, such as the EDPA admissions manager and Florida bar staff, for his disciplinary issues. Even as recently as the July 18, 2024 oral argument before the Board panel, Petitioner made reference to the EDPA admissions manager and his admissions sponsor while explaining his conduct.

Nevertheless, Petitioner insists that he has accepted responsibility for his wrongdoing. After review, we find Petitioner's written and oral expressions on this point to be not credible. He takes blanket responsibility for "any harm or disruption that my actions *may* have caused" (emphasis added) (N.T. 28) and "any harm that I *may* have caused" (emphasis added) (ODC-1, Bates 116), but fails to offer an honest explanation of what he did wrong and why it was wrong, and fails to offer any genuine expression of

remorse. Petitioner's belief that he is not to blame for his many acts of misconduct over many years seeps through his testimony and Petition for Reinstatement. Based on the record before us, we find that Petitioner has never voluntarily admitted that he knowingly violated the Rules of Professional Conduct and was wrong to do so.

Petitioner leaves a trail of tribunals over many years who have found that he mischaracterizes his discipline, fails to accept responsibility, and is not credible. There is no evidence in this record to show Petitioner's rehabilitation from the specific dishonest conduct that resulted in his disbarment, or that he currently understands that in the past he was not credible and lacked moral qualifications and has successfully transformed himself into a person of good character. Rather, Petitioner's continued pattern of behavior post-disbarment eviscerates any claim Petitioner has made during these proceedings that he is rehabilitated, trustworthy, and deserving of reinstatement.

Prior cases establish that a petitioner's continued dishonesty after suspension or disbarment is evidence that the petitioner is not qualified for reinstatement. *See In the Matter of Jon Ari Lefkowitz*, No. 125 DB 2018 (D. Bd. Rpt. 1/3/2022, pp 29-30) (S. Ct. Order 4/1/2022) (Lefkowitz's false testimony at the Pennsylvania reinstatement hearing and at an earlier reinstatement proceeding in New York weighed against reinstatement); *In the Matter of Michael Radbill*, No. 113 DB 2004 (D. Bd. Rpt. 10/28/2015, pp. 15-16) (S. Ct. Order 11/19/2015) (Radbill's on-going pattern of dishonesty post-disbarment showed that he had not changed and was not fit to resume practice).

Similarly, the Court has denied reinstatement where a petitioner-attorney minimizes the underlying misconduct. See *In the Matter of Paul Joseph Staub, Jr.*, No. 36 DB 2010 (D. Bd. Rpt. 1/9/2018, p. 14) (S. Ct. Order 3/1/2018) (Staub described his thefts merely as an example of “bad choices” on the Questionnaire and had not “fully acknowledged that his actions harmed others and damaged the integrity of the legal system,” leading the Board to find that Staub had “failed to express genuine remorse or apologize for his actions”); *In the Matter of William Jay Gregg*, No. 210 DB 2009 (D. Bd. Rpt. 12/5/2017, pp. 6,11) (S. Ct. Order 2/5/2018) (Gregg did not demonstrate genuine remorse for his financial misconduct because he explained his conduct as “mistakes” and tried to deflect blame on the lack of a bookkeeper); *In the Matter of Howard J. Casper*, No. 44 DB 1992 (D. Bd. Rpt. 1/25/2007, pp. 16-17) (S. Ct. Order 4/20/2007) (Casper did not fully recognize or acknowledge his misconduct because he described misappropriated client funds as “borrowed” and only reluctantly admitted that clients were injured by his actions).

2. *Petitioner failed to establish moral qualifications and competency under Pa.R.D.E.*

218(c)(3)

(a) Lack of moral qualifications

To demonstrate that he is rehabilitated and morally qualified, Petitioner testified to his many volunteer activities and employment efforts, and presented the testimony of character witnesses. Petitioner now contends the Committee erred in not considering his community service as evidence of his rehabilitation and not giving proper weight to his character testimony.

There is no doubt that Petitioner's volunteer service is laudable and beneficial to his community. However, these acts of service are not a substitute for Petitioner's abject lack of personal responsibility regarding his acts of misconduct and his continued misleading and minimizing statements about that conduct, which demonstrate his lack of moral qualifications.

Nor can the testimony of Petitioner's character witnesses overcome the deficiencies in his own words and actions which reveal his lack of moral qualifications and overall lack of rehabilitation. In an effort to demonstrate that he is a person of good character who is qualified to be reinstated, Petitioner offered the testimony of six witnesses. By their testimony, the witnesses believe Petitioner has good moral character and they support his return to the practice of law. However, these witnesses on the whole lacked critical knowledge and had little understanding that Petitioner's misconduct concerned acts of dishonesty and misrepresentation, and that his substitute teacher application was denied due to his failure to establish good moral character. The witnesses were wholly unprepared for the questions ODC asked on cross-examination as to their basic knowledge of Petitioner's wrongdoing. While we find these witnesses to be well-meaning, it is difficult to credit their assessment that Petitioner has good moral character based on their limited understanding of the substantive issues of this reinstatement proceeding. As well, character testimony cannot create remorse and acceptance of responsibility where Petitioner personally has demonstrated none. *See Staub*, No. 36 DB 2010 (D. Bd. Rpt. 1/9/2018, p. 16) (the Board concluded that Staub's character evidence could not "overcome the observed deficiencies in [Staub's] testimony before the Hearing

Committee. The testimony of [Staub's] witnesses can only serve to bolster a genuine statement of regret and admission of wrongdoing, which is notably absent in this matter.”)

We conclude that the Committee did not err in giving little weight to the character testimony; on our review, we have gleaned nothing in the testimony by which to assess Petitioner's current character and determine his present moral fitness. See *Lefkowitz*, No. 125 DB 2018 (D. Bd. Rpt. 1/30/2022, pp. 32-33) (many of Lefkowitz's ten character witnesses conceded a lack of knowledge of the details of his criminal conduct that led to his two year suspension, leading the Board to accord no substantial weight to the testimony).

(b) Lack of Competence

Petitioner failed to demonstrate by clear and convincing evidence that he has the necessary competence to resume the practice of law. His deficiencies in this area began with his lack of attention to detail when submitting his reinstatement documents. Petitioner filed his Petition and Reinstatement Questionnaire on March 27, 2023, but inexplicably failed to attach information required at the time of filing, such as his CLE transcript verifying that he completed 36 hours of CLE in the year preceding the filing of the Petition, his tax information, and information concerning his 1996 suspension for one year and one day. Petitioner later submitted this information in three separate supplements filed on May 3, May 31, and June 13, 2023.

As the reinstatement proceeding moved forward, Petitioner displayed an inability to follow the PHC Order to identify and produce exhibits in a timely manner. After failing to comply with the order, Petitioner strenuously argued at the reinstatement hearing

on November 6, 2023, that he never received ODC's exhibits, when in fact he had already acknowledged on the record at the PHC that he had received them and reviewed them. Petitioner also falsely claimed at the reinstatement hearing that the deadline for the exhibits to be identified and exchanged was September 29, 2023, despite the fact that the PHC Order stated the deadline as September 22, 2023.

As further evidence of Petitioner's lack of competence, he failed to properly prepare his witnesses for the hearing, as was abundantly clear by their testimony that they knew next to nothing about his disciplinary history and DOE application, indicating Petitioner had not discussed his prior transgressions in any detail with his witnesses.

Finally, Petitioner claimed the Committee Chair was biased against him based on homophobia without any evidence of record to support such a claim, which demonstrates Petitioner's penchant for levying baseless accusations when he is unable to prevail on the record and exemplifies his incompetence.

(c) Lack of credibility

A common and troubling theme throughout this proceeding and the many that preceded this reinstatement matter, is Petitioner's lack of credibility. Time and again, Petitioner's testimony has been found untrustworthy. Here, Petitioner's continued efforts to find loopholes for the full truth of his wrongdoing, while simultaneously protesting that he holds himself solely accountable for his disciplinary infractions, make it very difficult for this Board to believe Petitioner. In prior matters, the Court has denied reinstatement where a petitioner-attorney lacks credibility on the issues of responsibility and remorse.

See Lefkowitz, No. 125 DB 2018 (the Board found Lefkowitz lacked any credibility that he had changed and understood the true nature of his misconduct and was sorry for it).

In conclusion, the searching inquiry into Petitioner's present professional and moral fitness to resume the practice of law reveals that Petitioner has not rehabilitated himself from the underlying misconduct. The totality of the record presents an individual who has never accepted responsibility for the misconduct he committed and has never been contrite. Petitioner has not convinced this Board that he is not predisposed to commit future ethical infractions. Upon this record, we find that Petitioner's resumption of the practice of law would be detrimental to the integrity and standing of the bar or the administration of justice and subversive of the public interest. For these reasons, the Board recommends that Petitioner be denied reinstatement.

IV. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Petitioner, Robert Philip Tuerk, be denied reinstatement to the practice of law.

The Board further recommends that, pursuant to Rule 218(f), Pa.R.D.E., Petitioner be directed to pay the necessary expenses incurred in the investigation and processing of the Petition for Reinstatement.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: Bryan Scott Neft
Bryan Scott Neft, Member

Date: 9/17/2024