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SUPREME COURT OF PENNSYLVANIA



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May 2, 2024

ELECTRONICALLY FILED

Marcee D. Sloan, Board Prothonotary
The Disciplinary Board of the Supreme
Court of Pennsylvania
Pennsylvania Judicial Center
601 Commonwealth Ave., Suite 5600
P.O. Box 62625
Harrisburg, PA 17106-2625

RE: In the Matter of DANIEL MICHAEL DIXON
PETITION FOR REINSTATEMENT
No. 174 DB 2020
Attorney Registration No. 202108
(Philadelphia)

Dear Ms. Sloan:

Pursuant to Rule 218(c)(2), Pa.R.D.E., the Office of Disciplinary Counsel ("ODC") submits this response to the petition for reinstatement from suspension ("Petition for Reinstatement") filed by Daniel M. Dixon ("Petitioner") on March 6, 2024. ODC does not oppose the Petition for Reinstatement at this time, but reserves the right to raise any objections after evaluating the evidence Petitioner presents at the reinstatement hearing.

Factual and Procedural History

Petitioner was admitted to the bar of the Commonwealth of Pennsylvania on May 23, 2006. On March 4, 2022, Petitioner was suspended for one day and one year.

Petitioner's suspension was the result of his neglect and dishonesty in handling a client matter while an attorney at Morgan, Lewis & Bockius LLP ("Morgan Lewis").

On or about November 15, 2016, Petitioner was assigned to handle an appeal of a tax assessment to the Pennsylvania Department of Revenue's Board of Appeals ("BOA") on behalf of CSI International, Inc. ("CSI"). The appeal concerned an assessment against CSI of \$176,734.81. (D.Bd. Rpt., ¶¶ 5-7)

On June 6, 2017, the BOA issued a Decision and Order rejecting CSI's request for relief. Petitioner received a copy of the Decision and Order by email. (Id., ¶¶ 17-23, 151-54, 170) On July 17, 2017, the BOA sent Petitioner an additional copy of the Decision and Order which corrected a typographical error. (Id., ¶25) Petitioner received the corrected Decision and Order on July 17, 2017, and billed .3 hours to reviewing it. (Id., ¶¶ 27-33, 151-54, 156-57, 170-71) Both copies of the Decision and Order stated that an appeal needed to be filed to the Board of Finance & Revenue ("BF&R") on or before September 5, 2017. (Id., ¶¶20, 26)

Petitioner failed to inform CSI of the BOA's ruling and then failed to timely appeal to the BF&R. (Id., ¶¶ 24, 34, 37-38) On September 20, 2017, the Department of Revenue ("Department") filed a lien against CSI in the amount of \$183,620.58. (Id., ¶43)

After receiving the BOA's decision, Petitioner repeatedly failed to reply to CSI's inquiries about the status of its case. (Id., 35-36, 44-45, 95-96, 126-27, 140-41) And when he did reply, he made materially false and misleading statements to CSI, including, inter alia:

- providing purported updates which failed to disclose that the BOA had issued its adverse ruling, that he had failed to timely appeal

to the BF&R, and that he had then filed an untimely appeal;¹

- falsely telling CSI that the lien filed against the company was "errantly issued," when he knew it was imposed due to his failure to timely appeal from an adverse ruling;
- claiming a proposed compromise he had offered to the Department would soon be approved, even after the Department's attorney had twice told him the Department had no interest in compromising CSI's claim.

(Id., ¶¶ 48-52, 60-66, 84-92, 97-99, 103-4, 109-10, 125, 134-36).

Petitioner also falsely claimed before the BF&R that he had not received the BOA's decision until after the time to appeal had expired. (Id., ¶¶ 75, 78, 105-6, 113-20, 133) As support for this claim, Petitioner submitted to the BF&R two false and misleading affidavits, one of which he executed and the other of which he prepared for his assistant. (Id., ¶¶ 113-120) When the BF&R denied the untimely appeal Petitioner had filed for lack of jurisdiction, he falsely told CSI that the ruling was an unanticipated "curveball" based upon a "purported prejudicial defect, that had been dealt with and dispatched as a mistake on the Department's side." (Id., 138-144)

ODC filed its Petition for Discipline on November 10, 2020. Petitioner failed to file a response, with the result that the factual allegations were deemed admitted.

On March 2, 2021, a hearing was held to determine the appropriate discipline. Petitioner testified on his own behalf, claiming, among other things, that he had been suffering with "severe depression, anxiety, and adult onset ADHD." (N.T. 3/2/21, 60) He further claimed that, when he accepted his position at Morgan Lewis, he was "in no way prepared" for it. (Id., 60, 66) He explained his conduct in the CSI matter by asserting that he "couldn't get over the anxiety of losing [his] job because of the mistake," that he attempted to "fix" the "mistake," and that he

¹ Petitioner filed the untimely petition challenging the BOA's decision on November 7, 2017, but did not inform the client that he had done so. (Id., ¶¶75-77)

made matters worse by "ultimately being dishonest." (Id., 62) He claimed that he had "improved [himself] professionally and mentally since that time." (Id., 62-63)

The Hearing Committee recommended a suspension of not less than two years. In its report, the Committee noted, inter alia, that Petitioner's testimony "reflected difficulty accepting or admitting responsibility for the blatantly false affidavits and statements" he had submitted to the BF&R, and found his lack of contrition for that misconduct "particularly moving." (Hearing Committee Report and Recommendation, 6/28/21, p. 6)

On July 19, 2021, Petitioner filed a Brief on Exceptions. ODC replied. During oral argument before the Board, Petitioner again claimed that at the time he was representing CSI he was "dealing with some personal issues ... mostly relating to mental health." (N.T. 9/22/21, 5) He further claimed to have been "managing [his] depression and anxiety through talk therapy and medication." (Id., 8)² Petitioner acknowledged a portion of his misconduct, admitting that he received the BOA's Decision and Order, that he missed a deadline, and that he "lied to this client." (Id., 32-33) He nonetheless continued to deny that he knowingly filed false affidavits, claiming that he did not believe they were false at the time he filed them. (Id.)

On December 8, 2021, the Board issued its Report and Recommendation, recommending a suspension of one year and one day.

By Order dated March 4, 2022, the Supreme Court suspended Petitioner for a period of one year and one day.

Following the conclusion of the proceedings in Pennsylvania, Petitioner was disciplined in New Jersey, where he was also previously admitted. By Order dated October 31, 2023, the New Jersey Supreme Court reciprocally imposed a one-year suspension. The Court further required that "prior to reinstatement to the practice of law in New Jersey, [Petitioner] shall provide to the [New Jersey] Office of Attorney Ethics proof of [his] fitness to

² Petitioner failed to put forth any expert evidence to establish that he had a psychiatric disorder that caused the underlying misconduct. The Board accordingly found that he had failed to satisfy the requirements for his mental health to be deemed mitigating under Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989). (Bd. Rpt., p. 37)

practice law, as attested to by a medical doctor approved by the Office of Attorney Ethics."

Concerns Regarding Petitioner's Fitness For Reinstatement

In seeking reinstatement, Petitioner is required to prove, by "clear and convincing evidence," that he has "the moral qualifications, competency and learning in law required for admission to practice law in this Commonwealth and that the resumption of the practice of law within the Commonwealth by [him] 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).

ODC has concerns regarding Petitioner's ability to satisfy his burden of proof in this case. ODC has identified the following issues of concern which may be addressed at the hearing:

1. Petitioner has offered only limited evidence regarding his efforts to rehabilitate himself following his suspension. See Philadelphia Newspapers, Inc. v. The Disciplinary Board of the Supreme Court of Pennsylvania, 363 A.2d 779, 780-81 (Pa. 1976) (a reinstatement proceeding is a "searching inquiry into a lawyer's present professional and moral fitness to resume the practice of law," including "the nature and extent of the rehabilitative efforts [the former attorney] has made since the time the sanctions were imposed, and the degree of success achieved in the rehabilitative process").
2. Petitioner has never acknowledged filing false affidavits with the BF&R, and has been inconsistent in his position regarding other acts of misconduct. At proceedings before the Hearing Committee and the Board, he denied knowingly filing false affidavits. Moreover, in disciplinary proceedings in New Jersey, Petitioner continued to deny much of the wrongdoing the Board found that he had committed:
 - a. in answering a Second Amended Complaint in New Jersey, filed on January 17, 2022—which was after the Board had issued its Report and Recommendation—Petitioner, inter alia:

- i. denied that the affidavits he submitted to the BF&R were false;
 - ii. denied that he was ever intentionally dishonest;
 - iii. denied that he misled CSI about the status of the untimely appeal he had filed; and
 - iv. denied that he failed to properly comply with CSI's reasonable requests for information.
 - b. at argument before the New Jersey Disciplinary Review Board, on March 16, 2023, Petitioner:
 - i. claimed that he [had] "forgotten" that he had received the BOA's Decision and Order;
 - ii. denied that he had knowingly filed false affidavits or misled the BF&R;³ and
 - iii. claimed that when communicating with CSI, he had not believed the appeal he filed was late.
3. Petitioner's assertions in the New Jersey proceedings regarding Morgan Lewis' investigation into his conduct raise similar concerns about the extent to which he accepts responsibility for his actions. In his response to the Second Amended Petition, Petitioner claimed that he was "not given the opportunity to discuss the handling of the matter" with Morgan Lewis, and was forced to accept "an ultimatum" from the firm. This is

³ The Supreme Court of New Jersey's Disciplinary Review Board, found Petitioner's claim that he had forgotten receiving the BOA's decision—twice—and had not knowingly filed false affidavits to be "not only contrary to the admitted facts contained in the ODC's petition and the findings of the Pennsylvania Disciplinary Board, but also lack[ing] any semblance of credibility." (In the Matter of Daniel M. Dixon, An Attorney at Law, Decision, Jul. 3, 2023, pp. 41-42 [attached as Tab A to Part I of the Petition for Reinstatement])

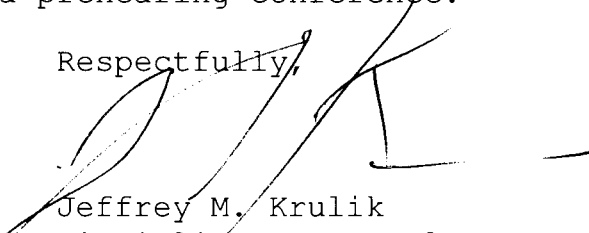
inconsistent with testimony from Morgan Lewis' general counsel, credited by the Board, that: (a) she spoke with Petitioner about his conduct during her investigation; (b) after responding to her initial inquiries, he offered "almost no cooperation"; and (c) when offered the opportunity, he was unable to explain the discrepancy between his account and the evidence uncovered in her investigation. (D.Bd. Rpt. ¶¶163-73; N.T. 3/2/21, 31-45)

4. Petitioner has presented only general plans for resuming the practice of law, stating that it is "likely" he will resume the practice of law and "may provide tax consulting services, or pursue a career in business or education."
5. Petitioner has not offered an expert opinion from a mental health professional regarding whether he is now mentally fit to resume the practice law.

ODC reserves the right to raise any objections to reinstatement that might arise between the date of this letter and the reinstatement hearing, or at the time of the hearing.

To expedite the reinstatement hearing, ODC respectfully requests that you schedule a prehearing conference.

Respectfully,


Jeffrey M. Krulik
Disciplinary Counsel

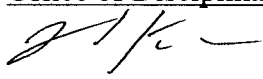
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cc: Daniel Michael Dixon, Petitioner (via Email and First-Class Mail)

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Office of Disciplinary Counsel

Signature: 

Name: Jeffrey M. Krulik, Disciplinary Counsel

Attorney No. (if applicable): 57110