

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE REINSTATEMENT
OF JEAN T. PAVAGEAU.

No. 35986

FILED

OCT 23 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT

BY *J. Bloom*
CHIEF DEPUTY CLERK

ORDER DENYING PETITION FOR REINSTATEMENT

This is a petition for reinstatement of Jean Pavageau to the practice of law. A hearing panel of the Southern Nevada Disciplinary Board recommended that the petition be denied, as petitioner had not demonstrated by clear and convincing evidence that she should be reinstated. The petition was very brief, and Pavageau attached no documentation in support of her petition. Pavageau was the only witness to testify at the hearing.

We conclude that the hearing panel correctly found that Pavageau did not meet her burden to demonstrate by clear and convincing evidence that she had the qualifications to be reinstated. We therefore deny Pavageau's petition without prejudice.

Facts

Pavageau graduated from the University of San Diego College of Law in 1979. She was admitted to practice in Nevada in 1982. From 1982 through 1984, she operated the Nevada office of a California-based firm, Goethals & Swanson. In 1984, she opened her own practice in Las Vegas, in which she worked until 1989.

In June 1989, Pavageau was seriously injured in a car accident. She underwent over a year of therapy, and was prescribed strong painkillers and muscle relaxers. She testified that the muscle relaxers had a strong adverse effect on her, and prevented her from functioning effectively or paying attention to detail. At the time, however, she did not realize their effect.¹ In the months following the accident, her practice dwindled. Her house went into foreclosure.

On November 2, 1989, this court suspended Pavageau from the practice of law for eighteen months. The suspension was based upon her misconduct with respect to two clients. In the first case, Pavageau failed to file a complaint on behalf of the client before the expiration of the statute of limitations. In the second case, she was retained to seal the client's criminal record, and failed to perform any work on the client's behalf.

At about the time of her accident, Pavageau was retained to represent the executor of an estate worth approximately \$60,000. These funds were in Pavageau's trust account, awaiting distribution to the heirs. Pavageau distributed approximately \$30,000 to some of the heirs, but took the rest of the money and used it to save her house from foreclosure. She stated that she intended to repay the funds with a settlement from the car accident. However, due to the medication, her mental state was such that she did not pursue

¹At the reinstatement hearing, Pavageau testified that she became aware of her reaction to the medication in 1996. She was injured in another accident, and was again prescribed muscle relaxers. However, whereas in 1989 she had lived alone, in 1996 she was living with her brother. He noticed the effect the medication had on her, and she stopped taking it. She testified that she now takes nothing more than aspirin for a headache.

litigation, and no settlement was obtained. Pavageau failed to repay the amount to the trust account.

Sometime later, the heirs discovered what had happened, and initiated criminal proceedings. As part of a plea agreement in the criminal matter, Pavageau agreed to resign from the practice of law and surrender her license for a period of no less than seven years. She signed an "affidavit of resignation" to this effect. It appears that bar counsel learned of the affidavit and forwarded it to this court in 1994. Later, this court entered an order approving the resignation. The order provided that Pavageau could not petition for reinstatement earlier than seven years from the date of the affidavit, which was executed in April 1992. No other conditions for reinstatement were specified in the order.²

The rest of Pavageau's sentence included a suspended thirty-day jail sentence, and three years of probation, with several conditions. Pavageau was to be subject to search for contraband at any time; she was to see a counselor, and if the counselor recommended, was to obtain mental health counseling; and she was to pay \$15,000 in restitution to the heirs. Pavageau successfully completed all terms of her probation, and was honorably discharged in May 1995.

At the reinstatement hearing, Pavageau testified that she was subject to search on several occasions, but that no irregularities occurred. She further stated that she had

²We note that this procedure was highly unusual. Generally, a suspension is imposed by this court based upon a recommendation from a disciplinary hearing panel after a formal disciplinary proceeding. In such a case, conditions for reinstatement are frequently set forth in this court's order. Here, no disciplinary proceeding took place; rather, Pavageau's resignation was part of her criminal sentence.

met with a counselor in compliance with the terms of probation, and that the counselor had determined that she did not require further counseling. In addition, Pavageau had paid the restitution.

The remaining \$15,000 that Pavageau had taken was paid to the heirs from the state bar's Client Security Fund. Pavageau agreed to reimburse the Fund, and at the time of the reinstatement hearing, she had paid approximately \$10,700 to the Fund. Pavageau testified at that time that she was prepared to pay \$1,000 immediately, and intended to repay the remainder as soon as possible.

With respect to the misconduct underlying her November 1989 suspension, Pavageau testified that the client for whom she had failed to file a complaint made a claim on her malpractice insurance, and the claim was paid. With respect to the other client, Pavageau testified that she returned the retainer funds she had been paid by the client.

After Pavageau's suspension in 1989, she sold real estate for about two years. After that, she was employed for approximately four years as a paralegal for a sole practitioner. Following that employment, she worked for about a year for the State Industrial Insurance System ("SIIS"), also as a paralegal. Her position was terminated when SIIS was reorganized in about 1996. After being unemployed for about a year, Pavageau worked as a paralegal for a hospital corporation. This position was terminated after a hostile takeover.

Since that time, Pavageau has not found permanent employment. She worked for a few months for a company that lends money to personal injury claimants, secured by a lien on any settlement received. She testified that she quit that

position because she felt this practice was not ethical. She also testified that she was concerned that the transactions might violate regulations of the Securities Exchange Commission, and that she did not want to work for such a company. After some period of unemployment, Pavageau then went to work for a legal forms company as a paralegal. She quit after two weeks when she was asked to meet with and give legal advice to clients, because she did not want to engage in the unauthorized practice of law.

At the time of the reinstatement hearing, Pavageau had not yet found new employment. She was living with her family to save money, and was living with their assistance and what was left of a severance payment she received when she was laid off from the hospital corporation after the takeover.

Pavageau testified that she had not taken any continuing legal education courses during the period of her resignation. She indicated that she would comply with whatever requirements were imposed upon her as a condition of reinstatement, including taking the bar examination. She further testified that she would not repeat the actions that led to her discipline troubles, as she now understands how valuable the right to practice is, and she would not jeopardize it.

The hearing panel concluded that Pavageau had not demonstrated by clear and convincing evidence that she should be reinstated. We note that the panel's written decision does not state the reasons for its conclusion.

Factors To Be Considered In Reinstatement Proceedings

SCR 116(3) provides, in pertinent part:

Petitions for reinstatement by a disbarred or suspended attorney shall be filed with the disciplinary board governing the county in which the

attorney resides; a copy of the petition shall be served on bar counsel. The board shall promptly refer the petition to a hearing panel, which shall, within 60 days after referral, schedule a hearing at which the petitioner has the burden of demonstrating by clear and convincing evidence that the attorney has the moral qualifications, competency, and learning in law required for admission to practice law in this state, and that the attorney's resumption of the practice of law will not be detrimental to the integrity and standing of the bar, to the administration of justice, or to the public interest.

This rule sets forth four areas of inquiry for reinstatement petitions: First, the petitioner must demonstrate that her moral qualifications satisfy the requirements for admission to practice law in this state. Second, the petitioner must demonstrate that she is competent to be admitted to the practice of law. Third, the petitioner must demonstrate that she has the learning in law required for admission to this state. Finally, the petitioner must demonstrate that her reinstatement will not be detrimental to the integrity of the bar, to the administration of justice, or to the public interest.

The first area of inquiry, moral qualifications, will necessarily require a petitioner to show rehabilitation from the conduct leading to her suspension, and that the misconduct is not likely to recur. See Model Rules of Lawyer Disciplinary Enforcement [hereinafter "Model Rules"], Rule 25(E)(4) (providing that reinstatement may be appropriate where "the lawyer recognizes the wrongfulness and seriousness of the misconduct for which the lawyer was suspended or disbarred") and 25(E)(6) (providing that reinstatement may be appropriate where, "[n]otwithstanding the conduct for which the lawyer was disciplined, the lawyer has the requisite honesty and integrity to practice law"). In this regard, letters or affidavits and testimony from witnesses who know

the petitioner well, particularly employers and attorneys, are beneficial.³ See *In re Groshong*, 413 N.E.2d 1266, 1268 (Ill. 1980); *Matter of Barton*, 432 A.2d 1335, 1337 (Ct. App. Md. 1981); *Matter of Livesey*, 615 P.2d 1294, 1296 (Wash. 1980). Also, evidence of public service or volunteer work may help a petitioner to establish this requirement. See *Barton*, 432 A.2d at 1337.

Full compliance with the terms and conditions of prior disciplinary orders, including restitution, may also be considered in evaluating this factor. See Model Rule 25(E) (1) (providing that reinstatement may be appropriate where "the lawyer has fully complied with the terms and conditions of all prior disciplinary orders"). Other considerations pertinent to this factor are that the petitioner has not engaged in any other misconduct during the period of suspension, including the unauthorized practice of law. See Model Rule 25(E) (2) (providing that reinstatement may be appropriate where "the lawyer has not engaged nor attempted to engage in the unauthorized practice of law during the period of suspension or disbarment") and 25(E) (5) (providing that reinstatement may be appropriate where "the lawyer has not engaged in any other professional misconduct since suspension or disbarment"). Finally, the petitioner must demonstrate that she is financially responsible, in compliance with SCR 51(8).

The second factor, competence, is most critical in cases where the petitioner's previous misconduct was affected by alcohol or drug abuse, other addictions such as gambling, or mental disabilities. See Model Rule 25(E) (3) (providing

³We note that, pursuant to Canon 2B of the Nevada Code of Judicial Conduct, a judge is prohibited from testifying voluntarily as a character witness.

that reinstatement may be appropriate where, "if the lawyer was suffering under a physical or mental disability or infirmity at the time of suspension or disbarment, including alcohol or other drug abuse, the disability or infirmity has been removed"). In such cases, the petitioner must demonstrate that such addictions or disabilities have been addressed and will not lead to further misconduct upon reinstatement. See Livesey, 615 P.2d at 1296.

The third factor, learning in law, could be demonstrated by proof that the petitioner has taken continuing legal education courses during the period of suspension so as to maintain her legal knowledge. See Model Rule 25(E)(7) (providing that reinstatement may be appropriate where "the lawyer has kept informed about recent developments in the law and is competent to practice"). Where so ordered by this court, it could also include passing certain tests such as the Multi-State Professional Responsibility Examination or the bar examination. In some cases, a petitioner who has engaged in law-related employment during the suspension could be found to satisfy this requirement. See Barton, 432 A.2d at 1337-38. In other situations, reinstatement could be conditioned upon the petitioner's completion of a certain number of continuing legal education credits. See Livesey, 615 P.2d at 1296 (conditioning reinstatement upon completion of forty-five hours of continuing legal education in each of two years following reinstatement).

The final consideration is that the petitioner must demonstrate that her reinstatement will not be detrimental to the integrity of the bar, to the administration of justice, or to the public interest. As stated by the Supreme Court of California,

"[t]he sole object of the court, upon an application by an attorney previously disbarred for reinstatement to practice, is to determine whether or not the character of the applicant is such that he should be admitted to an office of trust, and recommended to the public as a trustworthy person, fit to be consulted by others in matters of confidence."

Feinstein v. State Bar of California, 248 P.2d 3, 6 (Cal. 1952) (citations omitted). This factor is thus related to the other factors, particularly the first, the petitioner's moral qualifications. However, the focus is shifted from the petitioner's personal interest to the public's interest in an ethical, competent bar, in recognition of a lawyer's role as an officer of the court. It requires a demonstration that the reinstatement of the petitioner will not bring the bar or the justice system into disrepute, but rather that the petitioner, if reinstated, will be a credit to the legal profession.

Pavageau's Petition For Reinstatement

Applying the foregoing standards to Pavageau's petition, we conclude that the hearing panel correctly found that Pavageau did not meet her burden of demonstrating by clear and convincing evidence that she should be reinstated to the practice of law in Nevada.

First, Pavageau did not present recommendations from anyone who knew her in support of her petition. As discussed above, testimony or affidavits from employers, co-workers or longtime friends would be relevant and beneficial in determining whether Pavageau has rehabilitated herself. Also in this regard, Pavageau could provide evidence of any community service or volunteer work she has done during the period of her resignation.

Second, Pavageau must demonstrate her financial responsibility. It appears that at the time of the hearing,

she had not found steady employment and relied on her family for at least a portion of her living expenses. Evidence that she is financially independent and responsible would support her effort to be reinstated.

Third, Pavageau has not completed her restitution payments. While she has paid a substantial part of what she owes, she will be a stronger candidate for reinstatement after the restitution is paid in full.


Fourth, Pavageau's testimony concerning her reaction to the muscle relaxers was uncorroborated. It would be beneficial to have medical testimony or documentation in support of Pavageau's testimony, if available. Also, the testimony of Pavageau's brother, whom she stated discovered the connection between the medication and her abnormal behavior, would be helpful.

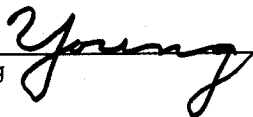
Finally, Pavageau presented little evidence to support a finding that she has the requisite learning in law to warrant her reinstatement. While some of her employment during her period of resignation has been law-related, it is not clear that this employment has kept Pavageau's legal knowledge current. Also, Pavageau has been unemployed for substantial periods of time. The record reflects that Pavageau has not taken any continuing legal education courses during the period of her resignation. It appears that Pavageau could provide additional support for a future petition by completing some form of legal education.⁴


⁴In our November 2, 1989, order of suspension, we indicated that a possible condition of reinstatement would be that Pavageau must sit for and pass the Nevada bar examination. After further review, we conclude that Pavageau need not sit for the Nevada bar examination as a condition of reinstatement.

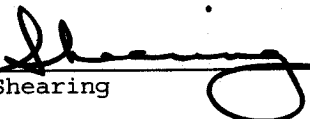
Pavageau's brief petition and her testimony alone, although favorable to her, were insufficient to satisfy the clear and convincing evidence standard. We therefore approve the decision of the hearing panel and deny the petition without prejudice.⁵

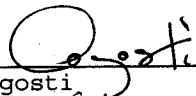
It is so ORDERED.

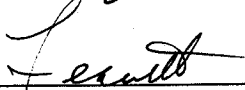
, C.J.
Rose


, J.
Young

, J.
Maupin

, J.
Shearing

, J.
Agosti

, J.
Leavitt

, J.
Becker

cc: Richard J. Pocker, Chair, Southern Nevada Disciplinary Board
Rob. W. Bare, Bar Counsel
Wayne Blevins, Executive Director
Wolfson & Glass
Dickerson Dickerson Consul & Pocker

⁵Pursuant to SCR 116(7), Pavageau may file another petition in one year. We make no comment at this time on the merits of any such petition.