

DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

In re Barish

75 Pa. D. & C.4th 554 (2005) · Decided June 10, 2005

SUMMARY

The Pennsylvania Disciplinary Board recommended reinstatement of Kenneth S. Barish Jr., who had been disbarred on consent after misappropriating funds from an estate. The board found that the misconduct was not so egregious as to preclude reinstatement and that Barish had demonstrated rehabilitation, moral qualifications, competency, and learning in the law. On August 25, 2005, the petition for reinstatement was granted, subject to payment of the board's expenses.

CASE DETAILS

COURT	Disciplinary Board of the Supreme Court of Pennsylvania
WRITING FOR THE COURT	Suh, Member; David S. Pollock, Chair; Joseph M. Gaydos Jr., Member; David Paul Andrews, Member
JURISDICTION	Pennsylvania
DECIDED	June 10, 2005
DISPOSITION	approved
PROCEDURAL POSTURE	Petition for reinstatement to the Pennsylvania bar following consent disbarment; the Disciplinary Board recommended reinstatement, and the Supreme Court of Pennsylvania granted the petition.
STANDARD OF REVIEW	The petitioner bears the burden of proving by clear and convincing evidence that the misconduct was not so egregious as to preclude reinstatement and that reinstatement would not detrimentally affect the integrity and standing of the bar, the administration of justice, or the public interest, while also demonstrating the required moral qualifications, competency, and learning in the law.
PRECEDENTIAL VALUE	Published Pennsylvania Disciplinary and County Reports decision concerning attorney reinstatement; precedential effect is not otherwise specified in the opinion.

TOPICS

appellate procedure

probate

PRACTICE AREAS

legal ethics and professional responsibility

attorney reinstatement

disciplinary proceedings

QUESTIONS PRESENTED

1. Whether Barish's prior misappropriation of estate funds was so egregious as to preclude consideration of his petition for reinstatement.
2. Whether Barish proved by clear and convincing evidence that he possessed the moral qualifications, competency, and learning in the law necessary for practice and that his reinstatement would not be detrimental to the bar, the administration of justice, or the public interest.

HOLDINGS

1. Misappropriation of approximately \$65,000 from an estate, although serious, was not so egregious as to preclude consideration of Barish's petition for reinstatement.
2. Barish established by clear and convincing evidence that he possessed the moral qualifications, competency, and learning in the law required for Pennsylvania practice and that his reinstatement would not detrimentally affect the bar, the administration of justice, or the public interest.

KEY QUOTATIONS

"Petitioner bears the burden of proof by clear and convincing evidence that he is qualified for readmission."
(at 562)

"Considering all of the above facts, the board is persuaded that petitioner has engaged in a qualitative period of rehabilitation during his disbarment." (at 563)

FACTUAL BACKGROUND

Barish was admitted to practice in Pennsylvania in 1992 and was disbarred on consent in 1996 after misappropriating approximately \$65,830.01 from an estate, using estate proceeds to pay law-firm operating expenses and repeatedly misrepresenting that he had not received the funds. The funds were eventually repaid to the estate with interest. During approximately nine years without a license, Barish maintained nonlegal employment, completed continuing legal education, pursued a legal master's program, expressed remorse, and presented favorable character testimony concerning his rehabilitation and honesty.

PROCEDURAL HISTORY

Kenneth S. Barish Jr. filed a petition for reinstatement on March 11, 2004, after being disbarred on consent by order of the Supreme Court of Pennsylvania dated May 30, 1996. A hearing committee held a reinstatement hearing on October 26, 2004, and recommended that the petition be granted. The Disciplinary Board adjudicated the matter on March 16, 2005, unanimously recommended reinstatement, and the Supreme Court granted the petition on August 25, 2005, subject to payment of the Board's expenses.

DISPOSITION

approved

CASES CITED

- Office of Disciplinary Counsel v. Keller, 509 Pa. 573, 506 A.2d 872 (1986)
- In re Perrone, 565 Pa. 563, 777 A.2d 413 (2001)
- In re Verlin, 551 Pa. 47, 731 A.2d 600 (1999)
- In re Verlin, 557 Pa. 47, 731 A.2d 600, 602 (1999)

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