

Per Curiam:

Committee on Legal Ethics of the West
Virginia State Bar

FILED

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Amelia E. Prange
CLERK OF COURT
SUPPORTING CHARITIES & COMMUNITIES
FUNDATION, INC.

No. 16794 vs.

Nancy S. Miller

This is a petition by Nancy S. Miller for reinstatement of her license to practice law. After an evidentiary hearing, the Full Hearing Panel of the Committee on Legal Ethics recommended, on December 15, 1987, that the petition be denied as the petitioner failed to demonstrate that through rehabilitation she now possesses the integrity, moral character and legal competence to practice law. The Committee also seeks costs and fees associated with this petition. Since the recommendation of the Committee reflects neither a mistake of fact nor arbitrary assessment of law, we adopt the recommendation of the Committee; but deny its request for fees.

By a former order of this Court, entered July 11, 1985, the petitioner's license to practice law was suspended until further order of the Court and the petitioner ordered to be promptly evaluated by a psychiatrist.

In support of her petition for reinstatement, the petitioner submitted the brief August 24, 1987 report of psychiatrist, Dr. Phillip Levine. Dr. Levine met with the petitioner and spoke with her treating therapist, Dr. William B. Childers. While noting that the petitioner suffered from depression in 1984, he found no "evidence of a psychiatric disability which would preclude her from practicing law."

At the Committee's request, Dr. Levine was asked to give a more thorough report and was provided with additional records concerning the petitioner. In his subsequent report of September 10, 1987, Dr. Levine did not reiterate his previous recommendation for reinstatement, and instead questioned its validity.

During her time of suspension the petitioner continued to hold herself out as a practicing attorney. Further, the petitioner's testimony at an evidentiary hearing revealed general instability and a lack of comprehension of the meaning of her suspension.

Based on all the foregoing, the Committee recommended denial of the petition for reinstatement as the petitioner failed to establish that she has the integrity, moral character, and legal competence to practice law.

Absent a mistake of law or arbitrary review of the facts, State Bar Ethics recommendations are given great weight. Syl. pt. 3, In Re Brown, 166 W. Va. 226, 273 S.E.2d 567 (1980). The petitioner has not established that through rehabilitation, she is now competent to practice law. In syllabus points 1 and 2 of Brown, supra, the Court discussed the type of rehabilitative efforts necessary for readmission:

1. 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.

2. 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.

Other jurisdictions have made similar rehabilitative requirements for attorneys who have adversely affected the public due to illness. In the Matter of Winston, 528 N.Y.S.2d 843, 137 A.D.2d 835 (N.Y.A.D. 1988), an attorney wrote worthless checks and converted an escrow deposit in a real estate transaction due to mental illness. The New York bar recommended disbarment. However, the Court considered the attorney's two-year enrollment in a rehabilitation program. Rather than disbarring the attorney, the Court suspended his license for a three-year period, with the right to move for reinstatement upon medical and psychological proof that through rehabilitation, the attorney is capable of resuming the practice of law.

The burden of proving entitlement to reinstatement through rehabilitation rests with the petitioner. Syl. pt. 1, Brown, supra. The rehabilitation must be such that the Court is convinced that there is little likelihood of continued unprofessional conduct. Syl. pt. 3, Brown, supra.

The Committee found that the petitioner has continued to hold herself out as a practicing attorney and has continued to exhibit irresponsibility related to a psychiatric disorder and therefore is not entitled to reinstatement at this time.

Since the Committee did not arbitrarily assess the facts and properly applied the law, we accept its recommendation and order that the petitioner's license continue to be suspended until further order of this Court.

The Committee has further requested reimbursement for the actual and necessary expenses reasonably incurred with these proceedings. Given the nature and circumstances of the petitioner's case, the Court does not believe the sanction of such costs is merited.

It is therefore adjudged, ordered and decreed that the petitioner, Nancy S. Miller, remain suspended from the practice of law until further order of this Court.