

JUN 18 2013

OFFICE OF  
DISCIPLINARY COUNSEL

STATE OF WEST VIRGINIA

At a regular term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on June 12, 2013, the following order was made and entered:

In Re: Petition for Reinstatement of Thomas E. Esposito

No. 11-0671

On April 18, 2011, the petitioner, Thomas E. Esposito, by Ancil G. Ramey, Steptoe & Johnson PLLC, presented to the Court his petition for reinstatement of his license to practice law in the State of West Virginia. By order entered on January 26, 2006, Mr. Esposito's license to practice law was annulled after he entered a guilty plea to a felony offense in the United States District Court for the Southern District of West Virginia. The petitioner has satisfied the five-year waiting period for petitioning for reinstatement under Rule 3.33(b) of the Rules of Lawyer Disciplinary Procedure.

A hearing on the petition for reinstatement was conducted on April 11, 2012, before the Hearing Panel Subcommittee of the Lawyer Disciplinary Board. On March 13, 2013, the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by Timothy E. Haught, its chairperson, presented to the Court its written recommended disposition in this matter, recommending that the petitioner, Thomas E. Esposito, be reinstated to the practice of law with conditions, as set forth therein.

Thereafter, on March 22, 2013, the Office of Disciplinary Counsel filed its consent to the recommended disposition. No request for a hearing was filed.

A *de novo* standard applies to the review of the record made before a Hearing Panel Subcommittee of the Lawyer Disciplinary Board as to questions of law, questions of application of the law to the facts, and questions of appropriate sanctions. See Syl. Pt. 2, in part, *Lawyer*

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Disciplinary Bd. v. Vieweg, 194 W.Va. 554, 461 S.E.2d 60 (1995). Furthermore, this Court gives respectful consideration to the Hearing Panel Subcommittee recommendations while ultimately exercising its own independent judgment. *Id.* (quoting Syl. Pt. 3, *Comm. on Legal Ethics v. McCorkle*, 192 W.Va. 286, 452 S.E. 2d 377 (1994)).

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. 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. *See In re Brown*, 166 W.Va. 226, 273 S.E.2d 567 (1980).

The misconduct leading to the petitioner's disbarment involved the knowing concealment of the actual commission of a felony. On January 10, 2005, the petitioner entered a guilty plea to misprision of a felony in the United States District Court for the Southern District of West Virginia. The petitioner has served his sentence on probation and paid his fine.

Having considered the parties' briefs, the record in this case, including the testimony of those individuals who testified on the petitioner's behalf, the Court is of opinion to and does hereby refuse the petition for reinstatement. Given the specific nature of the conduct leading to and resulting in the petitioner's disbarment, even giving respectful consideration to the recommendation of the Hearing Panel Subcommittee, the Court is not satisfied that the petitioner has shown that he possesses the integrity, moral character and legal competence to resume the practice of law. The seriousness of the conduct leading to the petitioner's disbarment, misprision of a felony, is of such a nature in and of itself that the Court cannot conclude at this time that his

reinstatement will not have a justifiable and substantial adverse effect on the public confidence in the administration of justice. See Syl. Pt. 1, *In re Brown*, 166 W.Va. 226, 273 S.E.2d 567 (1980). “[D]isbarment of an attorney to practice law is not used solely to punish the attorney but is for the protection of the public and the profession.” Syl. Pt. 2, *In re Daniel*, 143 W.Va. 839, 173 S.E.2d 153 (1970).

The petition for reinstatement is refused: Justice Ketchum would grant. The petitioner is ordered to pay the costs of these proceedings.

Service of an attested copy of this order shall constitute sufficient notice of its contents.

A True Copy

Attest: /s/ Rory L. Perry II, Clerk of Court

