

VIRGINIA: BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF BRUCE WILSON MCLAUGHLIN, PETITIONER

VSB Docket Nos. 01-000-0924 and 05-000-4620

ORDER OF RECOMMENDATION

On August 26, 2005, this matter came to be heard before a duly constituted panel of the Virginia State Bar Disciplinary Board consisting of Peter A. Dingman, 1st Vice Chair, Dr. Theodore Smith, lay member, Robert E. Eicher, Glenn M. Hodge and Bruce T. Clark on a Renewed Petition for Reinstatement filed by Bruce W. McLaughlin to reinstate his license to practice law in the Commonwealth of Virginia.

Seth M. Guggenheim, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar. The petitioner was represented on record by Roger D. Groot, however Mr. Groot was unable to attend the hearing due to a conflict with a Circuit Court trial he was involved in on the day of the hearing. Prior to commencing the hearing, the Petitioner advised the Panel of Mr. Groot's conflict at which time the Petitioner waived his presence and elected to proceed acting pro se.

The hearing was reported by Teresa L. McLean, Court Reporter, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222.

This matter is governed by Paragraph 13.I.9. of the Rules of the Supreme Court, Part 6, § IV. Pursuant to such rules, the Petitioner has the burden of proving by clear and convincing evidence that his license should be reinstated.

The circumstances which bring the Petitioner before the Board this day are, to say the

least, unusual. The Petitioner was originally licensed to practice law in the Commonwealth on August 26, 1980 and did so for approximately eighteen years. In 1998, the Petitioner was accused by his wife, with whom he was having marital difficulties, of sexually abusing their children. These accusations led to the filing of charges against him before the Circuit Court of Loudoun County and on November 19, 1998, following a lengthy jury trial, the Petitioner was convicted on several charges for which he was sentenced to serve thirteen years incarceration. On April 8, 1999, in response to the Petitioner's conviction, this Board issued a Rule to Show Cause and Order of Suspension and Hearing. This Order immediately suspended the Petitioner's license to practice law but did not state a termination date for such suspension. No hearing on such order was held.

Petitioner appealed his conviction. Pending the results of such appeal, he remained incarcerated in the Loudoun County Adult Detention Center. While there, the Petitioner related to the Panel that he was on three occasions assaulted by other inmates who regularly "marked" anyone convicted of molesting children. Petitioner's medical records and incident reports filed at the detention center were offered into evidence to corroborate Petitioner's story.

Thereafter, Petitioner's appeal was denied. Petitioner learned of this denial by letter he received on February 9, 2000. By coincidence, within hours of learning of the denial, Petitioner was taken from the detention center to the Loudoun County General District Court in order to permit him to testify against one of the inmates accused of assaulting him. At this time, Petitioner attempted to escape from custody by running from the courthouse. He was apprehended by an officer within one block of the court and returned to custody. Petitioner testified that his decision to run was "stupid" and "ill advised" and was motivated by his deep seated fear that his previous status with the other inmates as a child molester coupled with being labeled a "snitch" if he testified would place him in a more dangerous and perhaps even fatal situation if his incarceration

in the detention center and Virginia prison system continued.

On July 27, 2000, Petitioner pled guilty to simple escape, a class six felony, for which he was sentenced to an additional five years of incarceration with two and one half of those years being suspended on condition of one year probation upon his release.

On January 9, 2001, the Virginia State Bar issued a second Rule to Show Cause and Order of Suspension based upon the Petitioner's conviction for escape. This order again suspended the Petitioner's license to practice but did not state a terminal date for such suspension. At the time the second order was entered, the Petitioner's original suspension of April 8, 1999 remained in effect. Before a hearing could be conducted in reference to the second Show Cause, the Petitioner filed a Petition to Surrender License in which he voluntarily agreed to surrender his license. He did so subject to an agreement with the Bar counsel then handling his case that he reserved the right to continue to contest the charges in VSB Docket No. 99-000-2297, the matter in which his license was first suspended, after his conviction in the abuse case. On January 26, 2001, the Bar entered an order revoking Petitioner's license to practice law. This order was silent as to the effective date of such revocation. Copies of all of the above referenced orders issued by the Bar have been made exhibits in these proceedings.

Following the above series of events, the Petitioner filed a Writ of Habeas Corpus challenging his conviction in the abuse case. The basis of the Writ was his claim that there had been a failure of his trial counsel to use certain documents in cross examination, specifically notes prepared by the Petitioner's estranged wife which were allegedly used by her to coach the testimony of the Petitioner's young children. It was the Petitioner's contention that these notes show that his children's stories were not based upon actual experiences, but were the results of suggestions placed in their heads by their mother. The Writ also raised question concerning the

failure of counsel to discover that transcripts prepared by the police of certain interviews with the Petitioner's children contained material variations between what the children had actually stated on the recorded tapes and what had been transcribed.

By letter opinion dated December 19, 2001, Petitioner's Writ was awarded. Thereafter, following an unsuccessful appeal of the granting of the Writ by the Commonwealth, Petitioner was granted a new jury trial in reference to the abuse charges in which trial he was found not guilty on all charges. As the time the Petitioner had served by that point on the abuse charges exceeded the active time called for on his escape charges, he was released on probation following his retrial. He thereafter successfully completed all requirements of his probation.

The abuse charges for which the Petitioner was first incarcerated have now been expunged from his record leaving his class six felony escape conviction as the only matter remaining on his record. The Panel also notes from the evidence presented that while the Petitioner was still incarcerated and before his habeas petition was granted, the Virginia Department of Social Services, which had originally ruled that the abuse allegations leveled against the Petitioner were "founded", overturned this determination at an appeals hearing and replaced it with a finding that such accusations were "unfounded". At this time, the Petitioner shares joint legal and physical custody of his children. .

The Bar in its response to the evidence presented by the Petitioner accepted the factual presentation outlined above without challenge. The Bar also advised the Board that it had no objection to the granting of the Petitioner's petition and would not be placing any evidence in opposition to the same. At a subsequent point in the hearing, the Bar went so far as to join in requesting that the Board recommend the Petitioner's reinstatement.

The Board, in determining how to respond to the Supreme Court's referral of the

Petitioner's Renewed Petition, is in part guided by the factors outlined by the Board *In the matter of Alfred L. Hiss*, Docket No. 83-26, opinion dated May 24, 1984. It is noted, however, that the Rules do not make consideration of all elements of Hiss mandatory. The guidelines that the Board considered in weighing the evidence in this matter are as follows:

1. The severity of the petitioner's misconduct including but not limited to the nature and circumstances of the misconduct.
2. The petitioner's character, maturity and experience at the time of his disbarment.
3. The time elapsed since the petitioner's disbarment.
4. Restitution to clients and/or the Bar.
5. The petitioner's activities since disbarment including but not limited to his conduct and attitude during that period of time.
6. The petitioner's present reputation and standing in the community.
7. The petitioner's familiarity with the Virginia Rules of Professional Conduct and his current proficiency in the law.
8. The sufficiency of the punishment undergone by the petitioner.
9. The petitioner's sincerity, frankness and truthfulness in presenting and discussing factors relating to his disbarment and reinstatement.
10. The impact upon public confidence in the administration of justice if the petitioner's license to practice law was restored.

It is the opinion of the Board that some, but not all of the above tests apply to the

circumstances at hand.

There is nothing before the Board which would indicate that the Petitioner, prior to the revocation of his license, was anything but a well respected and competent attorney. Indeed, the record would indicate that within his areas of practice, he was considered to be extremely competent and effective. Moreover, the Petitioner's disciplinary record in the eighteen years prior to the occurrences which bring him before the Board at this time was spotless.

Likewise, while the Board certainly does not condone the Petitioner's actions in escaping from lawful custody, the Board feels that, when considered in light of the circumstances presented, such actions do not fall within a category of moral turpitude nor do they raise issues as to the Petitioner's honesty, character and ability to reenter the Bar as an effective lawyer adhering to the Rules of Professional Conduct.

One requirement of the rule for reinstatement was raised by the Petitioner and discussed at length between the Panel, the Petitioner and counsel for the Bar. Rule 6, §IV, paragraph 13. I.8.b(1) states in part that, "no petition may be filed sooner than five years from the effective date of the Revocation". The order officially revoking the Petitioner's license was entered on January 26, 2001, a date less than five years prior to the filing of the Renewed Petition which is now before the Board. Such order, however, failed to contain an effective date for the commencement of the revocation. It is also true that as a practical matter the Petitioner, by reason of the indefinite suspension entered on April 8, 1999, had been prevented from practicing for a period well in excess of the five years required by the rule.

There is some question as to whether the Board even needs to address this issue. This hearing is undertaken in response to a reference received by the Bar from the Virginia Supreme

Court. It is reasonable to infer that the Court would not have referred this matter to the Disciplinary Board unless it was satisfied that all preliminary prerequisites of the petition had been met. Indeed, a prior petition filed in this matter was rejected by the Court without ever reaching the Board based upon the Petitioner's failure to comply with other statutory prerequisites which the Petitioner has since cured.

To the extent that the Board is requested to respond to this issue, it is recommended, in consideration of the specific facts of this case, that the interest of justice would best be served by a practical application of the rule, accepting the fact that the Petitioner's indefinite suspension commencing in April of 1999, when coupled with the revocation entered in 2001 which did not recite an effective date, constitutes a period in excess of the five years as required by the Rule.

Having considered the elements set forth in Hiss, the evidence presented at the hearing and the joining motion of counsel for the Bar supporting the Petitioner's request for reinstatement, the Board finds that the reinstatement of the Petitioner's license would be in the best interest of justice and the public. Indeed, the Board believes that reinstatement, in these circumstances, might enhance the confidence of the public in the administration of justice. It is therefore the unanimous recommendation of this Panel that the Petitioner's license be so reinstated.

One final issue was raised by the Petitioner arising from his unusual circumstances. The Petitioner holds the rank of Lieutenant Colonel in the United States Army Reserve with eighteen years of service. In two years, assuming he remains in the Reserves, the Petitioner will have served in the military twenty years thereby qualifying him for the retirement benefits associated with such a term of service. When the Petitioner was originally convicted, action was commenced by the military to discharge the Petitioner from the service, but such actions were stayed pending

the outcome of his appeal, and his ultimate retrial.

In the time since the Petitioner's conviction was over turned in the second jury trial, the military has conducted its own hearings to determine whether the Petitioner may remain in the service. In those hearings, it was determined that there was no reason why he should be discharged based upon his character or his exemplary prior record. However, as the Petitioner served in the military as a JAG officer and, as his license to practice law had been revoked, thereby preventing him from serving as a JAG officer, it was determined under military regulations that his inability to continue to perform the duties required of him dictated that he must be discharged from the service.

In response to this decision, the Petitioner filed an injunction action in the Federal District Court for the Western District of Pennsylvania seeking to stay the Army's actions pending the outcome of this hearing and pending the ultimate ruling of the Court in this matter. It is the Petitioner's hopes that he may be reinstated in a timely enough fashion to prevent his discharge based solely upon the status of his license to practice law.

In reference to this hope, the Petitioner has asked the Board to make a recommendation to the Court concerning another requirement of Part 6, § IV, paragraph 13.I.8.b(3). Under the Rule, should the Court decide to permit the Petitioner's reinstatement, his return to full privileges would still be conditioned upon him retaking and passing the written portion of the Virginia State Bar exam. Such exam will not be offered until December of this year, which the Petitioner fears will be too late to save his military career. Because of this, the Petitioner has asked this Panel in the interests of equity and justice to recommend to the Court that it waive this requirement of the Rule.

While the members of the Panel are sympathetic to the Petitioner's plight in this matter,

they believe they lack the authority to grant his request for a favorable recommendation as this is an issue outside the scope of the reference made to the Board by the Court. The Panel does, however, commend Petitioner's request to the Court for its consideration and favorable disposition, if the Court deems it within its power to so act..

As required by Paragraph 13I.8.b.(2) of the Rules of Court, Part 6 §IV, the Board finds the costs of the proceeding to be as follows:

Copying:	\$136.38
Transcript/Court Reporter:	\$331.50
Mailing of Notice of Hearing:	\$369.21
Publication Cost:	\$114.31
Administrative Fee:	<u>\$750.00</u>
Total:	\$1701.40

It is ORDERED that the Clerk of the Disciplinary System forward this Order of Recommendation and the record herein to the Virginia Supreme Court for its consideration and disposition.

It is further ORDERED that the Clerk forward an attested copy of this Order of Recommendation by certified mail, return receipt requested, to the Petitioner, Bruce Wilson McLaughlin at his address of record with the Virginia State Bar, Apartment 202, 1110 Huntmaster Terrace, Leesburg, Virginia 20176 with copies by regular mail to his counsel of record, Roger D. Groot, 619 East 25th Street, Buena Vista, Virginia 24416-2227 and to Seth M. Guggenheim, Assistant Bar Counsel, 100 North Pitt Street, Alexandria, Virginia 22314-3133.

Entered this 9th day of September 2005



Peter A. Dingman, First Vice Chair