

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: January 28, 2021

PM-07-21

In the Matter of ATTORNEYS
IN VIOLATION OF JUDICIARY
LAW § 468-a.

ATTORNEY GRIEVANCE COMMITTEE
FOR THE THIRD JUDICIAL
DEPARTMENT,

Petitioner;

MEMORANDUM AND ORDER
ON MOTION

ERICA MARGARET KELLY,
Respondent.

(Attorney Registration No.4922266)

Calendar Date: January 19, 2021

Before: Lynch, J.P., Clark, Mulvey, Pritzker and Reynolds
Fitzgerald, JJ.

Monica A. Duffy, Attorney Grievance Committee for the
Third Judicial Department, Albany, for Attorney Grievance
Committee for the Third Judicial Department.

Erica Margaret Kelly, Naas, Ireland, respondent pro se.

Per Curiam.

Respondent was admitted to practice by this Court in 2011
and presently resides in Ireland, where she is employed at a
consulting firm. Respondent was suspended from the practice of
law by May 2019 order of this Court for conduct prejudicial to

the administration of justice arising from her failure to comply with her attorney registration obligations beginning in 2015 (Matter of Attorneys in Violation of Judiciary Law § 468-a, 172 AD3d 1706, 1732 [2019]; see Judiciary Law § 468-a [5]; Rules of Professional Conduct [22 NYCRR 1200.0] rule 8.4 [d]). She cured her registration delinquency in June 2020 and now applies for reinstatement. The Attorney Grievance Committee for the Third Judicial Department (hereinafter AGC) opposes the application, noting certain deficiencies. In response to AGC's concerns, respondent submitted additional statements and documents.

In addition to certain procedural requirements, "[a]ll attorneys seeking reinstatement from suspension must establish, by clear and convincing evidence, that (1) he or she has complied with the order of suspension and the Rules of this Court, (2) he or she has the requisite character and fitness for the practice of law, and (3) it would be in the public's interest to reinstate the attorney to practice in New York" (Matter of Attorneys in Violation of Judiciary Law § 468-a [Nenninger], 180 AD3d 1317, 1317-1318 [2020]). Given the length of her suspension for a period greater than six months, respondent has appropriately submitted a duly-sworn form affidavit as is provided in appendix C to the Rules for Attorney Disciplinary Matters (22 NYCRR) part 1240 (see Rules for Attorney Disciplinary Matters [22 NYCRR] § 1240.16 [b]; compare Matter of Attorneys in Violation of Judiciary Law § 468-a [Hughes-Hardaway], 152 AD3d 951, 952 [2017]). Further, Office of Court Administration records demonstrate that respondent has cured the registration delinquencies underlying her suspension.

Respondent does not, however, provide proof of her passage of the Multistate Professional Responsibility Examination (hereinafter MPRE) within one year of the instant application, as is required based upon the length of her suspension (see Rules for Attorney Disciplinary Matters [22 NYCRR] § 1240.16 [b]). Nevertheless, we construe her statements in her motion's cover correspondence as a request for a waiver of the MPRE requirement. Such a request must be supported by a demonstration of "good cause" (Matter of Attorneys in Violation of Judiciary Law § 468-a [Alimanova], 156 AD3d 1223, 1224

[2017]; see Matter of Attorneys in Violation of Judiciary Law § 468-a [Giordano], 186 AD3d 1827, 1828 [2020]). In assessing whether an applicant has met this burden, we consider that the MPRE requirement for attorneys seeking reinstatement "reemphasizes the importance of ethical conduct to attorneys who have been subjected to serious public discipline, and it also reassures the general public that such attorneys have undergone retraining in the field of professional responsibility" (Matter of Cooper, 128 AD3d 1267, 1267 [2015]). In view of respondent's submissions, we grant her request for a waiver of the MPRE requirement under the circumstances presented (see Matter of Attorneys in Violation of Judiciary Law § 468-a [Alimanova], 156 AD3d at 1224).

As to respondent's compliance with the order of suspension and the rules governing suspended attorneys, she avers that she has not engaged in the practice of law in this state or any other jurisdiction following her suspension. She further provides proof of her employment in Ireland in a nonattorney role since her suspension. As to her failure to provide tax returns from the relevant time period (see Rules for Attorney Disciplinary Matters [22 NYCRR] part 1240, appendix C, ¶ 27), respondent maintains that she has never been employed in the United States and, as such, does not have any tax returns to submit. Regarding respondent's failure to timely file the required affidavit of compliance following the order of suspension (see Rules for Attorney Disciplinary Matters [22 NYCRR] § 1240.15 [f]; Rules for Attorney Disciplinary Matters [22 NYCRR] part 1240, appendix C, ¶ 21), we find that her statements included in her appendix C affidavit have cured this defect (see Rules for Attorney Disciplinary Matters [22 NYCRR] § 1240.15 [c]; Rules for Attorney Disciplinary Matters [22 NYCRR] part 1240, appendix C; Matter of Attorneys in Violation of Judiciary Law § 468-a [Alimanova], 175 AD3d 1767, 1768 [2019]). In view of the foregoing, we find that respondent has established by clear and convincing evidence her compliance with the order of suspension and the rules governing the conduct of suspended attorneys (see Matter of Attorneys in Violation of Judiciary Law § 468-a [Hui-Ju Wang], 183 AD3d at 1227; Matter of Attorneys in Violation of Judiciary Law § 468-a [Nenninger], 180

AD3d at 1317-1318; see also Rules for Attorney Disciplinary Matters [22 NYCRR] § 1240.15).

Turning to her character and fitness, respondent attests to having no criminal history or any disciplinary history, other than the underlying suspension, in this or any other jurisdiction (see Rules for Attorney Disciplinary Matters [22 NYCRR] part 1240, appendix C, ¶¶ 14, 30), and there is no indication of any governmental investigations, financial circumstances or medical or substance abuse history that would militate against her reinstatement (see Rules for Attorney Disciplinary Matters [22 NYCRR] part 1240, appendix C, ¶¶ 23-25, 31-32). Further, she expresses remorse for her failure to satisfy her registration requirements for several biennial periods and provides assurances that she will meet said obligations going forward. As to respondent's admission that she has not completed any credit hours of continuing legal education (hereinafter CLE) since her suspension, "attorneys who do not practice law in New York" are exempt from this state's CLE requirements (Rules of App Div, All Depts [22 NYCRR] § 1500.5 [b] [1]). Further, "an applicant for reinstatement is not required to complete a minimum amount of CLE as a prerequisite for reinstatement; rather, an attorney's commitment to attending CLE courses is only part of this Court's overall consideration of his or her fitness to resume the practice of law in this state" (Matter of Attorneys in Violation of Judiciary Law § 468-a [Luce], ___ AD3d ___, ___, 2021 NY Slip Op 00075, *2 [2021]). In view of her submissions as a whole, and as respondent's misconduct underlying her suspension "does not raise any concerns regarding a possible harm to the public," we find that respondent's reinstatement to the practice of law would be in the public's interest and that no detriment would arise therefrom (Matter of Attorneys in Violation of Judiciary Law § 468-a [Thompson], 185 AD3d 1379, 1381 [2020]). Accordingly, we grant respondent's application and reinstate her to the practice of law.

Lynch, J.P., Clark, Mulvey, Pritzker and Reynolds
Fitzgerald, J.J., concur.

ORDERED that respondent's motion for reinstatement is granted; and it is further

ORDERED that respondent is reinstated as an attorney and counselor-at-law in the State of New York, effective immediately.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court