

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

Decided and Entered: February 15, 2024

PM-19-24

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

ATTORNEY GRIEVANCE  
COMMITTEE FOR THE  
THIRD JUDICIAL  
DEPARTMENT,

MEMORANDUM AND ORDER  
ON MOTION

Petitioner;

SUNG YOUL KIM,

Respondent.

(Attorney Registration No. 2470649)

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Calendar Date: January 29, 2024

Before: Garry, P.J., Egan Jr., Clark, Aarons and Lynch, JJ.

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*Monica A. Duffy, Attorney Grievance Committee for the Third Judicial Department, Albany (Alison M. Coan of counsel), for Attorney Grievance Committee for the Third Judicial Department.*

*Sung Youl Kim, Seoul, South Korea, respondent pro se.*

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Per Curiam.

Respondent was admitted to the practice of law by this Court in 1992. By October 2021 order of this Court, respondent was suspended for conduct prejudicial to the administration of justice arising from his failure to comply with the attorney registration

requirements of Judiciary Law § 468-a beginning in the 2016-2017 biennial period (*Matter of Attorneys in Violation of Judiciary Law § 468-a*, 198 AD3d 1068, 1078 [3d Dept 2021]). Respondent now moves, by motion returnable January 16, 2024, for his reinstatement (*see* Rules for Atty Disciplinary Matters [22 NYCRR] § 1240.16 [a]; Rules of App Div, 3d Dept [22 NYCRR] § 806.16 [a]). By January 11, 2024 correspondence, the Attorney Grievance Committee for the Third Judicial Department (hereinafter AGC) opposes respondent's motion, noting his failure to provide proof of his compliance with this Court's rules requiring completion of certain continuing legal education (hereinafter CLE) credits (*see* Rules of App Div, 3d Dept [22 NYCRR] § 806.16 [c] [5]), as well as his failure to submit an affidavit reflecting his compliance with this Court's rules and his failure to provide information regarding his current employment. Respondent was permitted to be heard in reply to AGC's papers in opposition but did not elect to do so.

Any attorney seeking reinstatement from disciplinary suspension must satisfy, by clear and convincing evidence, a three-part test to establish his or her entitlement to reinstatement (*see* Rules for Atty Disciplinary Matters [22 NYCRR] § 1240.16 [a]). First, it must be demonstrated that the suspended attorney has complied with both the terms of the order of suspension and the rules of this Court (*see* Rules for Atty Disciplinary Matters [22 NYCRR] §§ 1240.15, 1240.16 [a]), and such compliance may be established by sworn attestations in the movant's supporting affidavit or by timely completion of an affidavit of compliance reflecting satisfaction of the rules applicable to suspended attorneys (*see* Rules for Atty Disciplinary Matters [22 NYCRR] part 1240, appendix B) and providing reassurances that the attorney has not practiced in New York while suspended. Further, an attorney seeking reinstatement must demonstrate that he or she possesses the requisite character and fitness for the practice of law (*see* Rules for Atty Disciplinary Matters [22 NYCRR] § 1240.16 [a]; *Matter of Attorneys in Violation of Judiciary Law § 468-a [Serbinowski]*, 164 AD3d 1049, 1050 [3d Dept 2018]). Finally, the attorney must demonstrate that his or her reinstatement is in the public's interest, a balancing test which takes into consideration both the possible detriment to the community and any tangible public benefit which might be occasioned by the attorney's reinstatement (*see* Rules for Atty Disciplinary Matters [22 NYCRR] § 1240.16 [a]; *Matter of Sullivan*, 153 AD3d 1484, 1484 [3d Dept 2017]).

In addition to the aforementioned substantive showing, an applicant for reinstatement must also satisfy certain threshold procedural requirements. Where, as here, the attorney seeking reinstatement was suspended for misconduct which relates exclusively to the respondent's failure to comply with the biennial registration requirements of Judiciary Law § 468-a, this Court has established an expedited procedure

(see Rules for Atty Disciplinary Matters [22 NYCRR] § 1240.16 [e]; Rules of App Div, 3d Dept [22 NYCRR] § 806.16 [c]; compare Rules for Atty Disciplinary Matters [22 NYCRR] part 1240, appendix C). While this expedited procedure has obviated the need for certain respondents to successfully pass the Multistate Professional Responsibility Exam as a prerequisite to reinstatement (compare Rules for Attorney Disciplinary Matters [22 NYCRR] § 1240.16 [b]), this Court's rules explicitly mandate the completion of certain CLE accreditation as a prerequisite to reinstatement for those respondents, like respondent herein, who have been actually suspended for a duration of greater than two years (see Rules of App Div, 3d Dept [22 NYCRR] § 806.16 [c] [5]; *Matter of Clark*, 214 AD3d 1250, 1251 [3d Dept 2023]). Respondent has provided no proof of his satisfaction of this CLE prerequisite, despite being advised of AGC's opposition to his motion on this basis and notwithstanding the fact that he was provided with the opportunity to supplement his application accordingly.<sup>1</sup> Therefore, "we cannot conclude that [he] has met [his] burden for reinstatement" (*Matter of Attorneys in Violation of Judiciary Law § 468-a [Yamamoto]*, 176 AD3d 1310, 1311 [3d Dept 2019]; see Rules for Atty Disciplinary Matters [22 NYCRR] § 1240.16 [a]) and deny his application.

ORDERED that respondent's motion for reinstatement is denied.

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<sup>1</sup> We also note, parenthetically, that respondent has not demonstrated his compliance with Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.15. Similarly, in any future application for reinstatement, respondent should take care to provide all necessary and relevant information required in his supporting affidavit in furtherance of his burden to demonstrate his entitlement to reinstatement (see Rules for Atty Disciplinary Matters [22 NYCRR] § 1240.16 [a]).

Garry, P.J., Egan Jr., Clark, Aarons and Lynch, JJ., concur.

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