STATE OF MICHIGAN

Attorney Discipline Board

In the Matter of the Reinstatement Petition
of Gregory L. Wilkins, P 44281,

Petitioner/Appellant.

Case No. 08-139-RP

Decided: January 15, 2010

Appearances:
Gregory L. Wilkins, In Pro Per, Petitioner/Appellant
Wendy A. Neeley, for the Grievance Administrator

BOARD OPINION

Tri-County Hearing Panel #2 of the Attorney Discipline Board entered an order denying the petition for reinstatement filed by petitioner Gregory L. Wilkins. Petitioner now seeks review by the Attorney Discipline Board in accordance with MCR 9.118. For the reasons discussed below, the panel's denial of reinstatement is affirmed.

Petitioner's license to practice law in Michigan has been suspended since September 25, 1997, the effective date of a 120 day suspension for his neglect of a medical malpractice action and for making false and misleading statements to a complainant in a divorce matter. *Grievance Administrative v Wilkins*, Case Nos. 96-189-GA; 96-219-FA. Petitioner received an additional one year suspension, effective June 8, 1998, for his failure to file litigation in a personal injury matter; entering into a contingent fee agreement which violated MCR 8.121; and failing to answer two requests for investigation and a formal complaint. *Grievance Administrator v Wilkins*, Case Nos. 97-81-GA; 97-115-FA; 97-117-GA.

Petitioner also received a three year suspension in 1998, to run concurrently with the previous one year suspension, for his failure to deposit and maintain settlement funds in a trust account; failure to pay funds to a third party; misappropriation of client funds and failure to enter into a written contingent fee agreement, also in violation of MCR 8.121. *Grievance Administrator v Wilkins,* Case No. 97-288-GA. While still suspended, petitioner next received a 180 day

suspension, effective June 4, 1999, for his abandonment of an appeal in a federal age discrimination matter and for his failure to enter into a written contingent fee agreement. *Grievance Administrator v Wilkins*, Case No. 98-212-GA.

Finally, petitioner was suspended, by consent, for 180 days, effective June 8, 2001, following his plea of no contest to charges that he signed another attorney's name to a claim of appeal. *Grievance Administrator v Wilkins*, Case No. 99-009-GA. These disciplinary suspensions are summarized in greater detail on the Attorney Discipline Board's website at www.adbmich.org.

The question before the Board in this review proceeding is not whether there is evidentiary support in the record for petitioner's argument that he met his burden of proof under MCR 9.123(B)(4),(5),(6) and (7). Rather, it is well settled that in reviewing a hearing panel's decision, the Board must determine whether or not the *hearing panel's* decision has proper evidentiary support in the whole record. *In Re Reinstatement of Arthur R. Porter, Jr.*, 97-302-RP (ADB 1999), citing *In Re Reinstatement of Leonard R. Eston*, 94-78-RP (ADB 1195), and *Grievance Administrator v August*, 438 Mich 296, 304; 475 NW2d 256 (1991).

An attorney seeking reinstatement from a suspension of 180 days or more must establish all of the applicable criteria in MCR 9.123(B) by clear and convincing evidence. In this case, the hearing panel's findings that petitioner failed to meet that burden of proof with regard to MCR 9.123(B) (4), (5), (6) and (7) are clearly articulated in the panel's report filed July 24, 2009 (attached as Appendix A).

While the Grievance Administrator has an obligation in a reinstatement proceeding to conduct an investigation and to submit a report to the hearing panel summarizing all available evidence bearing on the petitioner's eligibility for reinstatement,[1] the burden of proof at the hearing conducted by the panel is not placed upon the Grievance Administrator.

> Under the rules governing reinstatement proceedings, the burden of proof is placed upon the petitioner alone. While the Grievance Administrator is required by MCR 9.124(B) to investigate the petitioner's eligibility for reinstatement and to report his or her findings in writing to the hearing panel, there is no express or implied presumption that a petitioner is entitled to reinstatement as long as the Administrator is unable to uncover damaging evidence. [*Porter, supra*, pp 8-9.]

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[1] MCR 9.124(C).

After reviewing the record before the panel and considering the arguments presented by petitioner, we must agree with the Grievance Administrator's assessment that the case presented by petitioner at the reinstatement hearing was woefully insufficient to establish his eligibility for reinstatement by clear and convincing evidence. There is ample evidentiary support for the hearing panel's finding and it is therefore affirmed.

Board members William J. Danhof, Thomas G. Kienbaum, William L. Matthews, Andrea L. Solak, Rosalind E. Griffin, M.D., Carl E. Ver Beek, Craig H. Lubben, and Sylvia Whitmer concur in this decision.

Board member James M. Cameron, Jr. did not participate.

APPENDIX A

STATE OF MICHIGAN

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ATTORNEY DISCIPLINE BOARD
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Attorney Discipline Board

In the Matter of the Reinstatement Petition
of GREGORY L. WILKINS, P44281,

Petitioner.
_____/

Case No. 08-139-RP

REPORT OF TRI-COUNTY HEARING PANEL #2

PRESENT: James E. Wynne, Chairperson
Gail O. Rodwan, Member
Ron D. Robinson, Member

APPEARANCES: Wendy A. Neeley, Associate Counsel,
for the Attorney Grievance Commission

Gregory L. Wilkins, Petitioner
In Pro Per

I. EXHIBITS

None.

II. WITNESSES

Edward Taylor

III. PANEL PROCEEDINGS

This matter was assigned to Tri-County Hearing Panel #2 for consideration of a reinstatement petition filed in accordance with MCR 9.124. The Grievance Administrator's investigative report was filed on November 14, 2008. The investigative interview of petitioner was conducted on November 24, 2008.[1]

At the time of the investigative interview, petitioner was sworn in and testified to his employment history since his suspension in September of 1997. Petitioner worked as a law clerk for Josh Gordon in 1997. Between 1998 and 1999, he clerked for another attorney, Marlon Evans. Then, between 1999 and 2003, petitioner was employed, on a contract basis, with the General Motors legal department in its legal document production center. (Tr I, pp 9-10.) Since 2003, petitioner has worked in the law offices of Edward G. Taylor as a law clerk. During his continuous period of suspension, petitioner has not held himself out as an attorney and all of his employers were aware of the suspension of his law license. (Tr I, pp 13, 16.) In addition to his clerking responsibilities, petitioner was also currently working on the weekends in an adult foster care facility providing direct care. (Tr I, p 14.)

1 The transcript of the reinstatement interview will be referred to in this report as "Tr I." The transcript from the March 9, 2009 and May 11, 2009, public hearings will be denoted as "Tr II" and "Tr III," respectively.

During the investigative interview counsel for the Grievance Administrator explained to petitioner that he was required to provide all of his banking statements from the time of his suspension to the present. With respect to his tax returns, petitioner provided to the Grievance Administrator returns from 1999 to 2007. H & R Block prepared the returns for 1999 through 2002; petitioner prepared the returns for the remaining years. All of his returns were dated either July of 2008 or August of 2008, because that is when the returns were prepared and filed. (Tr I, pp 23-24.) Petitioner later clarified that he believed that the returns for the years 1999 through 2002 were actually filed with the IRS. (Tr I, p 32.) With respect to the 2003 through 2007 returns, petitioner could not say with any certainty whether those returns were filed with the IRS. (Tr I, pp 33, 35-36.) Petitioner did not file any of the returns timely because those years were a "rough period" in his life. (Tr I, p 24.) It was while he was preparing his petition for reinstatement, that petitioner discovered he had not filed returns between 1999 and 2007. Although petitioner could not identify the individual, he testified that he had thought he had hired somebody to prepare those returns in the years they were due. (Tr I, p 25.) Petitioner admitted that he attached the returns to his Personal History Affidavit but did nothing to distinguish between those returns that had actually been filed and those that likely were not. (Tr I, p 34.) He did admit that regardless of the filing status of the various returns, he had not paid any of his outstanding tax liabilities. (Tr I, p 35.)

Petitioner also testified that he had been involved in two civil actions where monetary judgments were rendered against him. Both of the judgments had been discharged in the two bankruptcies he had filed in 1995 and again in 2006. (Tr I, pp 39-41, 44.) With respect to criminal actions, petitioner testified that indecent exposure and drug possession charges were reduced to disorderly conduct misdemeanors in 2000. (Tr I, pp 48-50.)

During his investigative interview, petitioner testified that should his license to practice law be reinstated, he intended to practice law and had discussed an association with his current employer, Edward Taylor. With respect to his orders of discipline, in particular his first 120-day suspension, petitioner acknowledged that he never obtained the ordered professional liability insurance. He did, however, attend the law office management seminar in November of 1997. (Tr I, p 54.) With respect to two orders of restitution, petitioner testified that restitution ordered to Joseph Capers had not been satisfied because he could not locate this individual. He paid restitution to Dr. Carrie Stinman in November of 2008. (Tr I, p 55.) Petitioner further acknowledged that an order of discipline required that he must seek a psychiatric evaluation within six months of filing a petition for reinstatement and submit the results to the Grievance Administrator, the ADB and the panel. Petitioner testified that he had an appointment for an evaluation scheduled within the next two weeks. (Tr I, 59.) At the conclusion of the interview, it was agreed that the public hearing should be rescheduled in order to accommodate petitioner's planned psychiatric evaluation, and to permit him to address issues related to the filing of his tax returns and procurement of his banking statements.

On December 3, 2008, Dr. Bobbe J. Kelley conducted a psychiatric evaluation of petitioner. In her report issued January 26, 2009, Dr. Kelley made the following comments:

> He does not endorse any history or symptoms of psychiatric illness. However, when we explained the importance of collateral information for this type of evaluation, he was unwilling to allow communication with anyone. Therefore, I do not consider this evaluation adequate to determine absence of psychiatric illness.

The public hearing commenced on March 9, 2009. Present at the hearing were the members of Tri-County Hearing Panel #2: James E. Wynne, Chairperson; Gail O. Rodwan, Member; and Ron D. Robinson, Member. Gregory L. Wilkins appeared on his own behalf; Associate Counsel Wendy A. Neeley appeared for the Grievance Administrator. At the onset of the hearing,

Chairperson Wynne raised concerns regarding Dr. Kelley's inconclusive report. Petitioner denied that he prohibited the doctor to contact his employer and asserted that a request for authorization was never made of him. (Tr II, p 6-7.) Petitioner then indicated that he had spoken with the doctor, signed an authorization permitting her to speak with petitioner's employer, Edward Taylor, and Dr. Kelley had actually done so. (Tr II, p 8.) This panel then agreed to adjourn the hearing to permit petitioner to obtain Dr. Kelley's supplemental report. The counsel for the Grievance Administrator also addressed the issues regarding petitioner's tax returns. Counsel indicated that she was satisfied that petitioner tied up the loose ends raised at the investigative interview. Counsel had provided an address that would enable petitioner to pay restitution to Mr. Capers. Also, petitioner had filed his outstanding federal tax returns and entered into a payment plan with the State of Michigan Treasury regarding his outstanding State of Michigan liabilities. Thereafter, the hearing was adjourned.

On March 17, 2009, Dr. Kelley issued a supplemental report wherein she confirmed that she had contacted petitioner's employer and based upon this contact, was not given any information to suggest concern for a psychiatric diagnosis. Consequently, Dr. Kelley concluded in her addendum that she found "no evidence of an Axis I Psychiatric Diagnosis."

When the hearing resumed on May 11, 2009, Counsel for the Grievance Administrator acknowledged that petitioner had entered into a payment agreement with the Federal Treasury Department to address his outstanding federal tax liability. Petitioner had also paid restitution to Joseph Capers. Thereafter, petitioner called, as his only witness, his employer, Edward Taylor. Mr. Taylor was sworn in and testified that he had been an attorney since 1997. He hired petitioner as a law clerk in March of 2003. When asked if petitioner understood the standards imposed on members of the bar, Mr. Taylor replied in the affirmative and explained that on several occasions petitioner had counseled Taylor on those very same things. In particular, petitioner had cautioned Mr. Taylor not to take cases in areas of the law within which he was not familiar. When asked if petitioner could be safely recommended to the public, bench and bar, as fit to practice law, Mr. Taylor again replied in the affirmative and explained that while working with petitioner over the past five years, petitioner had cautioned him regarding his obligations as an attorney, in particular, about communicating with clients regarding the status of their cases. (Tr III, p 8.) On cross-examination, Mr. Taylor indicated that he was familiar with petitioner's disciplinary history because he had discussed the matters with petitioner and read about them in the Bar Journal. Mr. Taylor indicated that while he did not have the financial means to employ petitioner as an attorney, he hoped once petitioner's license was reinstated, they would work together. (Tr III, pp 18-19.) At the conclusion of Taylor's testimony, petitioner rested. Counsel for the Grievance Administrator did not call any witnesses, but confirmed that petitioner had reached payment agreements with the state and federal tax authorities regarding his outstanding tax liabilities. (Tr III, pp 23-24.)

Thereafter, this panel considered closing arguments. Petitioner simply indicated that the testimony of Mr. Taylor established that petitioner understood what was required of him as an attorney and could be safely recommended as fit to practice law. Counsel for the Grievance Administrator questioned whether petitioner had established the criteria for reinstatement pursuant to MCR 9.123(B). Counsel argued that petitioner had not established a plan in the event that his license were reinstated. Counsel further questioned Mr. Taylor's credibility with respect to his opinion of petitioner's fitness to practice law, in light of the fact that Taylor felt it was appropriate to consult a lawyer with a suspended license on practice issues. Counsel also noted petitioner's conduct with respect to the filing of his tax returns since his suspension and the appearance petitioner gave in his affidavit with respect to whether the returns had actually been filed. Counsel voiced concerns that petitioner had not initially cooperated with the psychiatrist and, in any event, the psychiatrist's written report was not particularly enlightening. Counsel for the Grievance Administrator also noted that petitioner's restitution payments were not timely made and he failed to provide documentation confirming his participation in the law office management seminar. Counsel

concluded that petitioner had not met his burden of proof. Thereafter, the panel took the matter under advisement.

IV. FINDINGS AND CONCLUSIONS

In order to enter a finding that an attorney suspended for more than 179 days should be eligible for reinstatement, a hearing panel must find that the following criteria under MCR 9.123(B) have been established by clear and convincing evidence:

1. He or she desires in good faith to be restored to the privilege of practicing law in Michigan;

2. The term of the suspension ordered has elapsed or five years have elapsed since revocation of the license;

3. He or she has not practiced or attempted to practice law contrary to the requirement of his or her suspension or revocation;

4. He or she has complied fully with the order of discipline;

5. His or her conduct since the order of discipline has been exemplary and above reproach;

6. He or she has a proper understanding of and attitude toward the standards that are imposed on members of the bar and will conduct himself or herself in accordance with those standards;

7. Taking into account all of the attorney's past conduct, including the nature of the misconduct which led to the revocation or suspension, he or she nevertheless can safely be recommended to the public, the courts, and the legal profession as a person fit to be consulted by others and to represent them and otherwise act in matters of trust and confidence, and in general to aid in the administration of justice as a member of the bar and as an officer of the court;

8. He or she is in compliance with the requirements of subrule (C), if applicable; and

9. He or she has reimbursed the client security fund of the State Bar of Michigan or has agreed to an arrangement satisfactory to the fund to reimburse the fund for any money paid from the fund as a result of his or her conduct. Failure to fully reimburse as agreed is ground for revocation of a reinstatement.

Petitioner has been continuously suspended from the practice of law since September 25, 1997. He has been the subject of six separate formal disciplinary actions and two admonishments. It is the unanimous decision of this panel, upon review of this rule and the evidence and testimony presented, that petitioner has not met his burden under MCR 9.123(B).

A. Petitioner Failed to Establish by Clear and Convincing Evidence That He Complied Fully with the Orders of Discipline as Required by MCR 9.123(B) (4)

Petitioner was required to submit to a psychiatric evaluation prior to petitioning for reinstatement. The psychiatrist's report, dated January 26, 2009, concluded that she was unable to make an adequate evaluation regarding the absence of psychiatric illness because petitioner would not allow her to communicate with anyone else, i.e., obtain "collateral information" about him. Thereafter, Mr. Wilkins spoke to the psychiatrist and authorized her to speak with Mr. Wilkins' current employer, attorney Edward Taylor. After speaking with Mr. Taylor, the psychiatrist prepared a cursory addendum dated March 17, 2009. The reports left unanswered matters about which the panel had no opportunity to question the psychiatrist because petitioner failed to present Dr. Kelley as a witness.

Petitioner was further required to complete successfully a law office management course prior to reapplication. When counsel for the Grievance Administrator stated at the May 11, 2009 hearing that there was no evidence that petitioner had done so, petitioner responded that he had completed the course and this could be established by "calling Lansing." Petitioner provided no documentation verifying his participation in the law office management course.

It is petitioner's burden to provide clear and convincing evidence that he has complied fully with the orders of discipline. These are but two examples of petitioner's failure to sustain the burden that is placed upon him to establish eligibility for reinstatement.

B. Petitioner Failed to Establish by Clear and Convincing Evidence That His Conduct Since the Order of Discipline Has Been Exemplary and Above Reproach, as Required by MCR 9.123(B)(5)

Petitioner solely relied upon the testimony of his employer, Edward Taylor, to establish that his conduct since his suspension has been exemplary and above reproach. We find that Mr. Taylor's testimony was inadequate in this regard. Taylor, a sole practitioner who has been a member of the Michigan Bar since 1997, testified that he has employed petitioner as a law clerk for at least the last five years on a contract basis. Taylor knew petitioner before hiring him and was familiar with petitioner's suspension and of the six different disciplinary actions because he read about them in the *Michigan Bar Journal* and because he and petitioner discussed them briefly. However, Mr. Taylor said that he never read any of the disciplinary reports or orders and he seemed to have an incomplete understating of the conduct that resulted in six suspensions. While Mr. Taylor testified that he was very satisfied with petitioner's performance and he would like to continue to work with him if he were reinstated, Taylor was not in a position to hire petitioner as an attorney.

Mr. Taylor gave the panel a fairly narrow view of petitioner's performance as a law clerk. A more comprehensive view of petitioner's exemplary conduct in the community since the 1997 suspension was required in order to establish that petitioner's conduct has been exemplary and above reproach.

C. Petitioner Failed to Establish by Clear and Convincing Evidence That He Can Safely be Recommended to the Public, the Courts, and the Legal Profession, as Required by MCR 9.123(7)

Petitioner failed to address his past conduct as a lawyer or the steps he may have taken to avoid further disciplinary action. This panel has the ability to consider, and does consider, past professional misconduct that included making false and misleading statements to a client, entering into an improper and excessive contingent fee agreement with a client, failing to deposit and

maintain funds in a trust account, and signing another attorney's name to legal documents without that attorney's knowledge or consent and later acknowledging doing so because he was not authorized to practice law. (Grievance Administrator's Investigative Report, pp 5-12.) This is the type of misconduct that causes a panel concern about recommending a lawyer to the public, the courts and the profession. Petitioner presented nothing to this panel that has occurred in the past twelve years of suspension to mitigate that concern.

Further, petitioner's present conduct is not reassuring. The panel notes in particular petitioner's failure to pay state and federal taxes over a period of years. Petitioner submitted a letter from the IRS dated April 23, 2009, agreeing to an installment repayment plan for his federal tax obligation. As of the May 11, 2009 hearing, petitioner had yet to make his first payment under the plan. Petitioner entered into a similar repayment plan for his tax obligation to the State of Michigan on March 1, 2009. As of the May hearing, petitioner had made one payment under the plan. This tax payment history is insufficient for this panel to conclude that petitioner will now meet his tax obligations. While the panel commends petitioner for the steps he has taken, it also notes that his sense of obligation toward this issue comes very late.

We are also concerned with petitioner's failure to provide a plan for his return to the practice of law. He provided no evidence that he now has a system in place that will help him avoid the mistakes of the past. Petitioner further failed to participate in any continuing legal education, whether formal or informal, to enhance his readiness for reentry into the profession.

In short, after a history of serious misconduct and a long period of suspension, petitioner did not provide this panel enough information about himself as a person or a legal professional to establish his eligibility for reinstatement into a profession that demands of its members consistently high personal and professional standards of conduct. Petitioner has not complied with the eligibility requirements set forth in MCR 9.123(B)(4),(5), (6) and (7).

For the reasons set forth above, petitioner's reinstatement petition is denied.

V. ITEMIZATION OF COSTS

Attorney Grievance Commission:	
(See Itemized Statement filed 06/08/09)	$483.68
Attorney Discipline Board:	
Hearing held 03/09/09	$128.00
Hearing held 5/11/09	$223.50
Administrative Fee	$Already Assessed and Paid
TOTAL:	**$835.18**

ATTORNEY DISCIPLINE BOARD
Tri-County Hearing Panel #2

DATED: July 24, 2009

By: James E. Wynne
James E. Wynne, Chairperson