

STATE OF MICHIGAN

Attorney Discipline Board

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ATTORNEY DISCIPLINE BOARD
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In the Matter of the Reinstatement Petition
of HUGO J. MACK, P 30997,

Case No. 08-4-RP

Petitioner.

ORDER OF REMAND FOR FURTHER PROCEEDINGS

Issued by the Attorney Discipline Board
211 W. Fort St., Ste. 1410, Detroit, MI

Petitioner was disbarred by consent in 1993 following his convictions for assault and criminal sexual conduct in the first degree. He filed a petition for reinstatement of his license to practice law pursuant to MCR 9.123 and MCR 9.124. Washtenaw County Hearing Panel #1 conducted a hearing and entered an order denying the petition for reinstatement on August 18, 2008. Petitioner has filed a petition for review, arguing that the panel erred in concluding that he had not demonstrated by clear and convincing evidence compliance with MCR 9.123(B)(7).

The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118, and has carefully considered petitioner's arguments in light of the hearing panel's report and the transcript of the hearing before it, which clearly show that the panel also considered this matter with great care and diligence. We find no error by the hearing panel. With respect to petitioner's claim that the panel "was distressed" because petitioner continues to maintain his innocence, we find no express or implied signal from the panel that an insincere confession is a prerequisite to petitioner's reinstatement.

The hearing panel took notice of respondent's unblemished record of good conduct while incarcerated and the testimony of his current employer and former colleagues in support of his petition for reinstatement. After weighing the evidence against the standards set forth in MCR 9.123(B), the panel stated that it could not "at this time conclude that requirement (7) has been met," which is to say, as the panel did, that it "does not believe that Mr. Mack 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."

However, the panel held out encouragement to petitioner:

Our conclusion does not preclude the possibility that at some point in the future, perhaps with compelling independent evidence, medical or otherwise, that Mr. Mack recognizes the implications of the behavior which resulted in his conviction and will with a high degree of certainty pose no danger to clients or the legal system, reinstatement may be deemed appropriate. [HP Report, p 3.]

We share in the panel's view that petitioner should not be deterred from attempting to assemble the requisite proofs under MCR 9.123(B) in the future. Accordingly, we **REMAND** this matter for further proceedings and consideration in order to afford petitioner an opportunity to supplement the record at a hearing conducted no sooner than June 15, 2009. We remand rather than simply affirming the panel in order to give petitioner the opportunity to marshal additional proofs (which may include a current evaluation by a licensed psychiatrist or psychologist who has been apprised of the requirements of MCR 9.123(B)) and address the issues raised by the panel, if he can do so in a reasonable time.

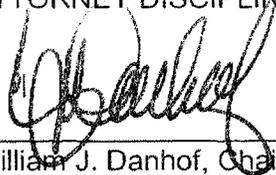
If petitioner does not request an evidentiary hearing by September 15, 2009, or if he informs the Board sooner that he does not wish to supplement the record, the proceedings on remand will be deemed concluded and the Board will issue an order affirming the hearing panel's decision and close this file. If a hearing is requested by petitioner, it shall be held within a reasonable time and the panel shall submit a supplemental report and an order granting or denying reinstatement.

Nothing in this order of remand should be read to alter the burden of proof, which remains the petitioner's, or the standard of proof which is that the elements of MCR 9.123(B) must be proven by clear and convincing evidence. Nor does this order preclude the panel from again denying the petition for reinstatement, if that is appropriate in the panel's judgment at the conclusion of such additional proceedings as may be conducted.

We do not retain jurisdiction.

ATTORNEY DISCIPLINE BOARD

By: _____


William J. Danhof, Chairperson

DATED: February 23, 2009

Board members Thomas G. Kienbaum, William L. Matthews, C.P.A., Billy Ben Baumann, M.D., Andrea L. Solak, Rosalind E. Griffin, M.D., and Craig H. Lubben concur in this decision.

Board Members Carl E. Ver Beek and James M. Cameron, Jr. were not present and did not participate.