STATE OF MICHIGAN

Attorney Discipline Board

In the Matter of the Reinstatement
Petition of Cheryl M. Warren

Petitioner/Appellant

Case No. 06-44-RP

Decided: September 30, 2008

Appearances:
Cheryl M. Warren, In Pro Per, Petitioner/Appellant
Stephen P. Vella, for the Grievance Administrator

BOARD OPINION

Petitioner, Cheryl M. Warren, seeks review of an order denying her petition for reinstatement which was entered by Tri-County Hearing Panel #5 on September 6, 2007. Petitioner challenges the panel's decision that she failed to establish by clear and convincing evidence the criteria for reinstatement set forth in MCR 9.123(B). In addition to her petition for review, petitioner has filed other motions with the Attorney Discipline Board which will be addressed separately below. The central issue before the Board in this review proceeding is whether there is sufficient evidence in the record below to support the hearing panel's findings and conclusions. Having reviewed the record, we find, unanimously, that there is abundant evidence in support of the hearing panel's findings and the panel's order denying reinstatement is therefore affirmed.

I. Procedural Background

In the underlying disciplinary case, *Grievance Administrator v Cheryl M. Warren*, ADB Case No. 01-16-GA, petitioner was suspended for a period of 18 months effective April 30, 2003. The panel found that petitioner failed to adequately inform a client of the nature and extent of legal services provided in connection with a probate matter and that she billed and collected fees that were excessive. The panel also found that petitioner borrowed $70,000 from her client without first ensuring that the terms of the loan and security agreement were both settled and fully understood and agreed to by her client; that she failed to advise her client that he could revoke a power of attorney he had given to her; and that she engaged in conduct in which her personal and/or business

interests were adverse to those of her client. Finally, the panel found that petitioner subsequently subjected her client and another attorney to written and verbal personal attacks and threats of legal retribution. The panel found her conduct to be in violation of Michigan Rules of Professional Conduct 1.4(a) and (b); 1.5(a); 1.8(a); 1.14(a); and 6.5(a).

On appeal, the Attorney Discipline Board entered an order on October 2, 2003, affirming the suspension. The excessive attorney fee portion of the restitution ordered by the panel was reduced from $9,800.00 to $7,260.00, thereby decreasing the total restitution ordered from $14,450.00 to $12,270.00.

On April 28, 2006, petitioner filed a petition for reinstatement under the procedure described in MCR 9.123(B) and a hearing on her reinstatement petition was scheduled for July 25, 2006. Following a stipulation to adjourn filed by the parties and an administrative adjournment requested by the hearing panel, public proceedings before Tri-County Hearing Panel #5 were commenced on March 21, 2007, and concluded at a hearing conducted April 30, 2007. The hearing panel's report and order denying petition for reinstatement were filed September 6, 2007.

An attorney whose license to practice law has been suspended for more than 179 days must establish by clear and convincing evidence the criteria set forth in MCR 9.123(B)(1)-(9).[1] The panel below found that petitioner had established the elements of Rule 9.123(B)(1)-(4), that is, that she desires in good faith to be restored to the privilege of practicing law in Michigan; that the term of her 18 month suspension has elapsed; that she has not practiced or attempted to practice law during the suspension period; and that she has complied fully with the order of discipline. The portions of MCR 9.123(B) at issue in this case concern the requirements of subrules (5)-(7):

> (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 conformity with those standards;

[1] MCR 9.123(B)(8) requires recertification by the Board of Law Examiners if the petitioner has not been eligible to practice for a period of three years. MCR 9.123(B)(9) requires a petitioner to demonstrate that he or she has reimbursed the Client Protection Fund of the State Bar of Michigan (formally known as the Client Security Fund) for any amounts paid as the result of petitioner's misconduct. Neither of those criteria is applicable in this case.

> (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.

The hearing panel found that the petitioner failed to establish those criteria. With regard to the requirement of Rule 9.123(B)(5), the panel reported:

> Unfortunately, petitioner's conduct during her suspension is reflective of a continuation of the conduct that led to her suspension. Her actions relating to the above-mentioned causes of action were frivolous, unfocused, unprofessional, and showed a complete lack of respect for the legal profession and its workings. Moreover, we note that although she was ordered to execute the mortgage and promissory note in favor of Mr. Levine, and to pay him restitution in excess of $12,000 in the disciplinary order issued on April 8, 2003, she failed to execute and record the mortgage until early April of 2006, and she did not fully pay the restitution until May of 2006, after she filed her Petition for Reinstatement. It is our view that a person desirous of demonstrating "exemplary" behavior which is "above reproach" would have complied with the disciplinary order in a much more expeditious manner as a sign of good faith. Accordingly, we find that the petitioner has not complied with the standards set forth in MCR 9.123(B)(5) [HP Report, p 5, footnote omitted.]

On the question of petitioner's compliance with Rule 9.123(B)(6), the panel stated:

> Nor does petitioner have a proper understanding of, and attitude toward, the standards that are imposed on members of the bar, and this panel is not persuaded that she will conduct herself in accordance with those standards pursuant to MCR 9.123(B)(6). In fact, the numerous lengthy pleadings (both concerning her disciplinary matters and her many civil judicial filings), e-mails, and other documents authored by the petitioner during her period of suspension reflect a person who appears obsessed with what she views as some sort of "betrayal" by Mr. Levine, in concert with Ms. Burdi, and who is simply unable to deal with legal or even financial matters in a reasonable and appropriately dispassionate matter. Her testimony before the panel was rambling, unfocused, and non-responsive, and she frequently blamed her lack of action, inappropriate action, or other failures on the alleged inaction, bad advice, or malevolence of

> others (3/21/07 TR. at 152-229 & 4/30/07 Tr. at 12-64). We conclude that Ms. Warren has not displayed a "proper understanding of and attitude toward the standards that are imposed on members of the bar" and we are not convinced that, if readmitted, she will conduct herself in accordance with those standards. [HP Report, p 5.]

And, as to whether or not petitioner can be safely recommended to the public in accordance with Rule 9.123(B)(7), the panel found:

> Lastly, Petitioner has not shown that she can be safely recommended by this panel, 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 or confidence, and in general to aide [sic] in the administration of justice as a member of the bar and as an officer of the court pursuant to MCR 9.123(B)(7). Based on all of the testimony, including the specific examples set forth above, Petitioner has shown that she cannot even properly represent herself in her numerous legal matters, much less advise a client of how to properly proceed. She has not proven by clear and convincing evidence that she knows, understands, or appreciates what is expected of members of the bar. [HP Report, p 6.]

II. Discussion

Notwithstanding petitioner's wide-ranging arguments and allegations on matters dealing with the evidence presented in the underlying discipline proceeding and her highly personalized attacks on the motives and character of the Grievance Administrator's counsel, the focus of this review proceeding is limited to petitioner's fitness for reinstatement and, specifically, whether or not petitioner has established such fitness by clear and convincing evidence. The hearing panel, having had an opportunity to review the voluminous report submitted by the Grievance Administrator and to observe and weigh the testimony of petitioner and other witnesses over the course of two days of public hearings, concluded, unanimously, that petitioner had not met that burden.

On review, the Board must determine whether or not the hearing panel's findings have evidentiary support in the whole record. *In re Reinstatement of Leonard R. Eston*, 94-78-RP (ADB 1995); *Grievance Administrator v August*, 438 Mich 296, 304; 475 NW2d 256 (1991). Discipline matters are fact sensitive inquiries to be decided on the particular facts of each case. *Grievance Administrator v Deutch*, 455 Mich 149, 166; 565 NW2d 369 (1997), and that axiom applies equally to reinstatement matters where, as the Board has said, there can be no single formula for reinstatement. *In re Reinstatement of Arthur R. Porter, Jr.*, 97-302-RP (ADB 1999). The evidence

necessary to establish compliance with MCR 9.123(B) may vary depending on the circumstances of the individual petitioner. *August*, 438 Mich 309-310, 312 n 9. However, certain essential requirements for reinstatement are applicable in every case. As the Board has noted:

> MCR 9.103(A) defines the license to practice law as "a continuing proclamation by the Supreme Court that the holder is fit to be entrusted with professional and judicial matters and to aid in the administration of justice." To affix such a proclamation of safety or "stamp of approval," *August*, 438 Mich at 311, upon someone who has committed serious misconduct would seem to require a searching inquiry into the causes for the conduct resulting in discipline and the most convincing showing that a genuine transformation has occurred. [*In re Reinstatement of Arthur R. Porter, Jr., supra*, p 10.]

We conclude that there is proper, indeed substantial, evidentiary support for the panel's conclusions that petitioner failed to meet her burden of proof necessary to establish eligibility for reinstatement under MCR 9.123(B)(5), (6) and (7). Moreover, petitioner's conduct since her suspension and during these reinstatement proceedings leaves little doubt that she has not experienced a transformation in her attitude toward those with whom a lawyer may be expected to interact, including clients and opposing counsel.

During the panel proceedings, petitioner introduced testimony of witnesses who had known petitioner professionally, either as an attorney or during her earlier career as an auditor at the Michigan Department of Treasury. The panel reported that each of those witnesses testified that they found Ms. Warren to be competent and honest, and that they believed she was qualified to be reinstated to the practice of law. There is nothing in the record that suggests that the panel found those individuals to be anything other than credible. However, it also appears that none of them had encountered petitioner as an adversary in a legal matter.

The Grievance Administrator elicited testimony from George Shea, the attorney retained by the complainant in the underlying discipline matter to facilitate the entry of a mortgage and promissory note from petitioner. Attorney Shea testified that petitioner was both rude and unprofessional in her dealings with him (Tr 04/30/07, pp 111-181). The panel reported that when petitioner was questioned at the panel hearing about her dealings with Mr. Shea, she was consistently evasive, non-responsive, and/or argumentative. (HP Report, p 4).

The panel also received testimony from Jeffrey Vollmer, an attorney who represented Highland Lake Condominium Association where petitioner both resided and with which she was

engaged in litigation at the time of the reinstatement hearing. The panel characterized his testimony as "candid, credible and persuasive." Attorney Vollmer described petitioner's legal filings in her dispute with the condominium association as not only unduly lengthy and convoluted, but outright frivolous.

In the same vein, Joseph Ehrlich, an attorney who defended Charter Oaks Home, Inc. in a lawsuit filed by petitioner seeking refund of a deposit paid for the intended purchase of a condominium in early 1999, testified that after petitioner's action against his client was dismissed, she then proceeded to threaten and harass him regarding the adjudication. As with the other witnesses presented by the Grievance Administrator, the panel found Attorney Ehrlich to be a credible and persuasive witness and noted that his testimony was supported by the relevant documentation. Taken together, this testimony provides clear, proper, and ample evidentiary support for the panel's conclusion that petitioner's conduct during the period of her suspension reflects a continuation of the conduct that led to her suspension. This evidence persuades us that petitioner has not met her burden of proof under MCR 9.123(B) (5)-(7) and has not shown that she is entitled to the proclamation of fitness extended to licensed attorneys under MCR 9.103(A).

III. Other Relief Sought by Petitioner

In addition to her petition for review filed September 11, 2007 and her amended petition for review filed September 28, 2007, petitioner filed a further motion with the Board on November 27, 2007 entitled "Motion for Reversal with Request for Oral Argument in Public Televised Hearing." In that motion, petitioner sought reversal not only of the hearing panel order denying her petition for reinstatement but, apparently, reversal of the order of discipline issued by Tri-County Hearing Panel #13 on April 8, 2003 in *Grievance Administrator v Cheryl M. Warren*, Case No. 01-16-GA. The motion also requested:

> Further, Warren requests that oral argument on this motion be held in Lansing, at the Michigan Hall of Justice, in an open public hearing; and, that it be televised by MGTV, due to the ongoing prosecutorial misconduct that has gone unredressed to corrupt the integrity of these proceedings.

As noted above, the Board has conducted review proceedings under MCR 9.118 for the sole purpose of determining whether or not the order denying petition for reinstatement issued by Tri-County Hearing Panel #5 on September 6, 2007 had evidentiary support in the record and whether or not it should be affirmed, amended or reversed. Questions as to the validity of the order of

suspension issued April 8, 2003 in the matter of *Grievance Administrator v Cheryl M. Warren*, Case No. 01-16-GA or to the validity of the proceedings which led to Ms. Warren's suspension, are not properly before the Attorney Discipline Board. The Board has previously considered Ms. Warren's petition for review of that discipline order. In its order of December 29, 2004, the Michigan Supreme Court denied petitioner's application for leave to appeal. The underlying disciplinary action will not be revisited.

In correspondence from the Board's Executive Director, petitioner was advised that the Board would conduct a review hearing in this matter at the office of the Attorney Discipline Board in Detroit; that the hearing would be open to the public in accordance with MCR 9.126 (B); and that the proceeding would not be televised. Review proceedings in this matter have been conducted in conformity with MCR 9.118 and petitioner's request for a televised hearing in Lansing is therefore denied.

Petitioner filed an additional request with the Board on August 7, 2008 entitled "Emergency motion to apply loan payments to principal; alternatively, a payment plan on balloon due July 1, 2008." This motion refers to a note and mortgage executed by petitioner in April 2006 to her former client, Michael Levine, which note called for petitioner to make a balloon payment of the remaining principal balance on July 1, 2008. Relying on unsupported allegations of misconduct against the Grievance Administrator's counsel and the attorneys representing Mr. Levine, petitioner now asks the Board to intervene in this contractual matter between petitioner and Mr. Levine. As the adjudicative arm of the Michigan Supreme Court in matters involving the discipline and reinstatement of Michigan attorneys, the Board's jurisdiction is limited to the powers and duties described in MCR 9.110 (E). Those powers do not include authority to grant the relief sought by petitioner.

IV. Conclusion

For the reasons discussed above, the Board concludes that the hearing panel order denying the petition for reinstatement filed by petitioner Cheryl Warren clearly has proper evidentiary support. We agree with the panel that petitioner has failed to establish her eligibility for reinstatement and the order denying reinstatement is therefore affirmed.

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

Board members William J. Danhof, George H. Lennon and Hon. Richard F. Suhrheinrich, did not participate.