In the Matter of the Reinstatement Petition
of Leonard R Eston, P 13231,

Petitioner.

94-78-RP

Decided: September 27, 1995

BOARD OPINION

The petitioner was suspended for fifteen months, effective July 29, 1987, in Matter of Leonard R Eston, ADB Case No DP 7/85. In a separate matter, ADB 24/87, the petitioner was suspended for a period of three years, effective August 10, 1987. The petitioner's first petition for reinstatement was denied by a hearing panel. In a divided opinion, the Attorney Discipline Board reversed the panel's denial of reinstatement by a vote of 4-3. See Matter of the Reinstatement Petition of Leonard R Eston, ADB Case No. 90-138-RP. The Board's order was then appealed to the Supreme Court by the Grievance Administrator. On August 7, 1992, the Court reversed the Board's decision and adopted the hearing panel order denying reinstatement. Matter of the Reinstatment Petiton of Leonard Eston, 440 Mich 1205, (1992).

On May 2, 1994, the petitioner filed the petition for reinstatement which is the subject of these proceedings. In accordance with MCR 9.124(C), the Grievance Administrator investigated the petitioner's eligibility for reinstatement and reported his findings in a ten-volume written report which included the record of the prior reinstatement proceeding, the record of petitioner's prior misconduct, the court records in various proceeding in which the petitioner had participated as a party, tax records and other "available evidence bearing on the petitioner's eligibility for reinstatement". The report also included information pertaining to two additional orders of discipline entered during the period of petitioner's suspension--a thirty-day suspension, effective July 13, 1993, in Matter of Leonard R Eston,

ADB Case No. 90-91-GA and an order of reprimand effective July 14, 1993 in Matter of Leonard R Eston, ADB Case No. 92-40-GA.

During three days of hearing conducted by Tri-County Hearing Panel #15, the panel considered the voluminous report and other documentary evidence submitted by the parties together with the petitioner's testimony under direct and cross-examination and the testimony of other witnesses.

On March 9, 1994, the hearing panel entered its order granting the petition for reinstatement accompanied by a twenty-six page majority report. The third panel member submitted a dissenting opinion.

On review, the Board must determine whether or not a hearing panel's findings have proper evidentiary support in the whole record. In re Freedman, 406 Mich 256; 277 NW2d 635 (1979); In re Grimes, 414 Mich 483; 326 NW2d 380 (1982); Grievance Administrator v August, 438 Mich 296 (1991). At the same time, the Board possesses a measure of discretion with regard to its ultimate decision. In re Daggs, 411 Mich 304, 318-319; 307 NW2d 66 (1981); Grievance Administrator v August, supra p. 304. Finally, the Board is cognizant of the "element of subjective judgment in the application of MCR 9.123(B)" enunciated by the Court. August, supra at 311.

To achieve reinstatement following a disciplinary suspension of greater than 179 days, the petitioner must establish by clear and convincing evidence his or her compliance with the applicable provisions of MCR 9.123(B)(1-9). The dissenting panel member found that petitioner Eston failed to meet this burden with regard to subrules (5), (6) and (7) which require a demonstration that his conduct since the order of discipline has been exemplary and above reproach; that he has a proper understanding and attitude toward the standards that are imposed on members of the bar and will conduct himself or herself in conformity with those standards; and that he can safely be recommended to the public, the courts and the legal profession as a person fit to be consulted by others, to represent them, to act in matters of trust and confidence and to

aid in the administration of justice as a member of the bar and as an officer of the court.

We conclude that the record as a whole contains insufficient evidentiary support for the findings of the panel majority. In so doing, we adopt the dissenting opinion of panel member Jennifer Peregord in its entirety and incorporate it by reference as an appendix to this opinion.

Board Members C Beth DunCombe, Elaine Fieldman, Albert L Holtz and Miles A Hurwitz concur.

Board Member Marie Farrell-Donaldson would affirm the hearing panel's decision to grant reinstatement.

Board Member John F Burns was voluntarily recused.
Board Members George E Bushnell, Jr, Barbara B Gattorn and Paul D Newman did not participate.

In The Matter Of The Reinstatement
Petition of Leonard R. Eston, P13231

J. Peregord, dissenting.

Because I cannot find that the petitioner's conduct during his period of suspension has been exemplary and above reproach, that he has a proper understanding of and attitude toward the standards that are imposed on members of the bar and will conduct himself in conformity therewith, or that he can safely be recommended to the public, the courts, and the legal profession as a person fit to practice law, I dissent. See MCR 9.123 (B)(5), (6), & (7).

I have struggled, as I know my co-panelists have, with the practical, applied meaning of the terms "exemplary" and "above reproach" in this case. Webster's Unabridged Dictionary, 2d Ed., defines "exemplary" as "serving as a pattern or model for imitation; worthy of imitation." To be "above reproach" connotes behavior consistently superior to that which one might ordinarily expect.

The evidence presented to us established that, **subsequent** to Mr. Eston's first petition for reinstatement, filed on August 15, 1990:[1]

> 1. Petitioner continues to have an $1,800 unpaid judgment against him resulting from a lawsuit by 3M Harris involving a leased Xerox machine. (Eston, Vol. X at 2224-25: Petitioner's 7/14/94 Reinstatement Deposition (hereafter "7/14/94 Dep.").[2]

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[1]Although the Supreme Court amended the language of subsection (7) of MCR 9.123 to require us to consider the nature of the misconduct which led to the original suspension, I do not find that misconduct, neglecting a criminal appeal and practicing law during a brief period of suspension, to be so egregious or outrageous as to cast a shadow over Mr. Eston's request for reinstatement seven years later. And while we are directed to consider a petitioner's conduct in an all-inclusive fashion for the entire period of suspension, MCR 9.123 (B)(5), Mr. Eston's conduct during the first three years of his suspension was already utilized as the basis for denying him reinstatement in 1991. Accordingly, I believe it is appropriate to consider Mr. Eston's conduct from 1987-1990 only for comparative purposes; viewed in that light, I find that Mr. Eston's conduct since the filing of his prior petition for reinstatement in 1990 has moderated from that which he exhibited during the first three years of his suspension. Notwithstanding, for the reasons which follow, I cannot join my co-panelists in recommending his reinstatement.

[2]Portions of the official record, contained in 10 bound volumes submitted by the Grievance Administrator, will be (continued...)

2. Petitioner continues to have a $1,400 unpaid judgment against him arising out of an automobile accident. (7/14/94 Dep., Vol. X at 2225-26).

3. Petitioner received blight citations (after 30 days elapsed from the issuance of a warning without remedial action) for having an inoperable vehicle and wood pallets and old tires on his property. A bench warrant was issued for the petitioner after he failed to appear for his February 7, 1992, trial on this case. The citations were ultimately abated and the tickets dismissed with $50 court costs assessed.

The code enforcement officer who issued these citations testified unequivocally that they were issued solely due to the presence of wood pallets, tires, and an inoperable vehicle. (Budd, Hrg. Tr. at 142-45 & 162). Notwithstanding, the petitioner subsequently sued both the City of Oak Park and Detroit Edison (Vol. VIII at 1766-84 (complaint)), to recover his clean-up costs as well as an additional $25,000 for purported civil rights violations and emotional and reputational damages, claiming falsely, in my view, that the blight citations were issued because of fireplace-length portions of tree trunks and large limbs left after Edison cut down a tree on his property 1 1/2 years earlier. (See 7/14/94 Dep., Vol. X at 2228-30; 9/24/94 Hrg. Tr. at 45-46; Jack Abella, 11/15/94 Hrg. Tr. at 70-81 & 96-98; Pet. Ex. 5 (Detroit Edison Tree Removal Agreement, signed by the petitioner and specifying that large logs would be cut into fireplace length and left on the property)). The petitioner failed to appear for hearings on discovery and summary disposition motions. This nuisance suit was settled for a total of $750 ($375 from Edison and $375 from the City of Oak Park).

4. On April 13, 1992, a default judgment in the amount of $22,000 was entered against Mr. Eston in a suit brought by the Michigan Department of Treasury for nonpayment of taxes over a period of several years. (Vol. VIII at 1579). On March 11, 1991, the petitioner filed what I charitably construe to be an artfully worded answer to the complaint in which he asserted that 1) he was not liable for Michigan taxes because he had not been "a permanent resident of the State of Michigan from 1973 thru 1990 and is not subject and/or liable for Michigan Income Tax indebtedness for this period," and that 2) he "did not have taxable income from 1973 thru 1990 inclusively, and he is not liable for any alleged tax liability to the State of

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[2](...continued)
referenced by the volume and page number. Transcript references to the hearings held before the panel on Mr Eston's current reinstatement petition are referenced as "Hrg. Tr." (e.g., 12/6/94 Hrg. Tr.).

Michigan, whatsoever." (Vol. X at 1588-93). In fact, the petitioner acknowledged during the course of these proceedings that he had been a resident of Michigan the entire time except for a brief period he spent in California from 1979 through early 1981,[3] and that up until the time of his suspension in 1987, he had reportable earnings in the state of Michigan from his law practice. (7/14/94 Dep., Vol. X at 2252-54 & 2260-63).

The default judgment was granted after the petitioner failed to appear for both the mediation and trial of the case. (Id. at 1567-70). The petitioner failed to pay mediation fees associated with this case until issuance of a show cause order. The petitioner's motion to set aside the default judgment was dismissed after he failed to appear at the hearing on his motion. (Id. at 1564-65). He then appealed to the Michigan Court of Appeals, which ultimately dismissed the case for lack of progress, assessing $200 in costs. (Id. at 1524). The judgment remains unpaid.

5. Mr. Eston filed what can only be described as a frivolous suit against Comerica Bank and some of its employees in 1992 for having mistakenly identified him from bank videos as the individual who robbed the bank in May of 1990. (7/14/94 Dep., Vol. X at 2237). Summary disposition was granted in favor of the Bank and was upheld on appeal. (Vol. IX at 1884-85).

6. Mr. Eston sued the City of Oak Park and various of its police officers in June of 1992 for damages and injunctive relief over an incident at his residence which resulted, in part, in his arrest for disorderly conduct. He alleged civil rights violations, false arrest, false imprisonment, malicious prosecution, etc. (Vol. VIII at 1691-1712 (complaint)). On July 8, the petitioner moved for a default judgment in the amount of $3 million dollars for the defendants' failure to answer his complaint. The petitioner certified on his motion praecipe that he had contacted the City Attorney, Burton Shifman, for concurrence and been refused. (GA Ex. 9). Defendants opposed the petitioner's motion, and following a hearing before Oakland Circuit Judge Hilda Gage, the default was set aside. The judge expressly found in her Order that the petitioner had made a "false certification that he sought concurrence" in his motion. (Vol. VIII at 1627-28 & 1660-78; Puzzuoli, 9/27/94 Hrg. Tr. at 92-100).[4]

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[3]Even this assertion is questionable, since Mr. Eston also testifed at his reinstatement hearing that he was "born in the State of Michigan. This is my home all my life." (12/6/94 Hrg. Tr. at 17).

[4]The City ultimately settled this case for $4,000.

I do not consider the above actions to constitute a model of behavior either worthy or desirable of imitation. I realize that these acts perhaps do not rise to the level of misconduct which the petitioner demonstrated between 1987 and mid-1990 and for which a prior panel denied him reinstatement in 1991. Nevertheless, I do not believe the absence of outright criminal, assaultive, or other illegal behavior qualifies one as fit to be safely recommended to the public as a competent, ethical, and responsible practitioner. Mr. Eston's various false statements, his pattern of failing to appear for scheduled court hearings on his own cases, his propensity for filing frivolous or, at best, marginally meritorious pleadings, and his many unpaid judgments and assessments weigh heavily against him.

In addition, I was troubled by Mr. Eston's conduct and statements during the several days of testimony on his reinstatement petition. He engaged in temperamental outbursts, which included accusing the Grievance Commission (as he routinely accuses police officers, attorneys, and judges) of acting in bad faith, discrimination, and unethical behavior. At one point, he railed at Chairman Baiers, after the Chairman sustained an objection to his questioning, "You don't want the facts on the record. That's the problem with you." (See, e.g., 11/15/94 Hrg. Tr. at 15-16 & 126-28). On occasion, Mr. Eston was also belligerent and hostile, both under questioning (12/6/94 Hrg. Tr. at 40-42 & 73-74 (stating he would look only at Chairman Baiers and not at counsel for the AGC, saying "I don't even want to look at that racist"), and in his questioning of his witnesses (Id. at 81-89 (accusing a witness from the Wayne County Prosecutor's Office of exhibiting "animosity" and having a "personal vendetta" against him, of "trying to ruin my career" and of having "unwritten criteria or policies to try to get rid of Mr. Eston so that he could not be reinstated into the practice of law in the State of Michigan.").

For all of the foregoing reasons, I do not consider Mr. Eston to have carried his burden of establishing by clear and convincing evidence that he is fit to be reinstated to the practice of law in accordance with MCR 9.123 (B)(5), (6), and (7).