

STATE OF MICHIGAN

Attorney Discipline Board

In the Matter of the Reinstatement
Petition of David Robb, P19480,

Petitioner/Appellant.

Case No. 90-16-RP

Decided: September 11, 1992

BOARD OPINION
(After Remand)

Petitioner David Robb filed a petition for review seeking reversal of an Order Denying Reinstatement issued by Tri-County Hearing Panel 166 after remand proceedings ordered by the Attorney Discipline Board. The remand proceedings addressed three limited areas of concern to the panel in the original reinstatement proceedings, which led to the panel's first Order Denying Petition for Reinstatement: the civil judgment against the petitioner involving Securities Investor Protection Corporation (SIPC), his obligation to the State Bar of Michigan Client Security Fund, and his income tax obligations. The panel found that the additional evidence presented on remand was not sufficient to reverse its original Order Denying Petition for Reinstatement. We agree. The panel's Order Denying Reinstatement is affirmed.

The petitioner's license to practice law was revoked effective March 29, 1984. The misconduct which led to his disbarment stemmed from his actions as a bankruptcy trustee: misappropriation, conversion and forgery. He was subsequently convicted of embezzlement.

The petition for reinstatement was filed with the Michigan Supreme Court on January 26, 1990. Hearings were conducted before Tri-County Hearing Panel #66 on August 9, August 30 and November 13, 1990. On January 30, 1991, the hearing panel entered its Order Denying Petition for Reinstatement. The petitioner filed a petition for review seeking reversal of that order.

A review hearing was held on April 18, 1991. At that hearing, petitioner's counsel informed the Board that the three limited areas of concern to the panel, recited above, had since been resolved. Evidence of any such subsequent action on the petitioner's part was not contained in the record below. Therefore, in an order and opinion issued on June 14, 1991, the Board remanded this matter to the panel to take further testimony and evidence regarding those areas, and to file a supplemental report and order following the remand hearing.

The remand hearing was held on August 19, 1991. Petitioner's counsel introduced new evidence regarding those three areas of concern. The panel's Order Denying Reinstatement and Opinion on Remand were issued on January 2, 1992. The panel stated:

The panel heard testimony and received exhibits on the current developments in the payment of the SIPC judgment, the

Client Security Fund and petitioner's Federal and State income tax obligations and were not persuaded that petitioner should be granted reinstatement.

The panel's primary focus remained on whether or not David Robb could be safely recommended to the public, the courts and the legal profession . . . The panel determined that petitioner did not meet the standards of MCR 9.123 . . .

Petitioner's answers continued to appear superficial, incomplete and inconsistent. He demonstrates a lack of interest and poor judgment in dealing with his personal business affairs and creates anxiety in the panel that he would not be capable of satisfactorily advising and managing client affairs. Opinion of the Panel on Remand, pp. 1-3.

The petition for review of the panel's order and opinion on remand was filed on January 27, 1992. Review proceedings were held on May 14, 1992. At the review hearing, petitioner's counsel argued that: the panel's second denial of reinstatement was based on specific grounds which were unfair; the SIPC judgment was confusing and the panel held it against the petitioner that he could not explain the judgment and payments on it to the panel's satisfaction; the petitioner's only hope to repay the judgment was his reinstatement; and the petitioner "(h)as done everything within his capability to show that he - . - should be allowed to practice law." (Review Hearing Transcript, 5/14/92, p. 12).

Based upon the entire record, we are not persuaded that the petitioner has presented clear and convincing evidence that he 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 member of the bar and as an officer of the court. [MCR 9.123(B)(7)]. We find that the petitioner has not established the competency required to be allowed to regain his license to practice law. The foregoing conclusion was reached by the hearing panel upon evaluation of the credibility and demeanor of the petitioner.

The decision of the Michigan Supreme Court in Grievance Administrator v August, 438 Mich 296; 475 NW2d 256 (1991) held:

[t]hat the nature of the offense and the time elapsed since its commission and since disbarment are relevant and important considerations in determining whether a disbarred attorney should be recommended to the position of public trust that is held by members of the Michigan State Bar. Moreover, an attorney may be denied readmission on the grounds that sufficient time has not passed to determine the present fitness of the applicant for readmission. Such a denial should not be deemed a permanent disbarment. August at 314.

The August criteria for readmission have also not been evidenced by the petitioner. we emphasize that nothing in this Opinion prevents the

petitioner from filing another petition for reinstatement sometime in the future. He may, at some point in time, be able to show changed circumstances and establish his eligibility for reinstatement.

We conclude and find that petitioner David Robb has not established by clear and convincing evidence all of the criteria for reinstatement set forth in MCR 9.123(B). The order of Tri-County Hearing Panel #66 is affirmed.

John F. Burns, C. Beth DunCombe, Elaine Fieldman, Linda S. Hotchkiss, M.D., Miles A. Hurwitz and Theodore P. Zegouras.

[Board Member George E. Bushnell, Jr. recused himself and did not participate in the discussion or decision in this case. The Board's Executive Director, John F. VanBolt, did not assist the Board in connection with its deliberations or decision.]