

STATE OF MICHIGAN

Attorney Discipline Board

In the Matter of the Reinstatement Petition
of James M. Cohen, P 12017,

Petitioner,

Case No. 92-266-RP

Decided: November 25, 1992

MEMORANDUM OPINION

The petitioner, James M. Cohen, was suspended from the practice of law in Michigan for a period of 120 days by order of the Attorney Discipline Board filed July 30, 1990. Matter of James M. Cohen, ADB 147-89. The petitioner commenced reinstatement proceedings by filing a petition for reinstatement on May 23, 1991. Matter of the Reinstatement Petition of James M. Cohen, Case No. 91-159-RP. The hearing panel Order of Reinstatement in that case was denied by the Attorney Discipline Board in an order issued June 11, 1992. The petitioner's application for leave to appeal was denied by the Supreme Court on October 6, 1992.

On October 15, 1992, the petitioner filed a second petition for reinstatement which has been docketed by the Attorney Discipline Board under Case No. 92-266-RP.

On October 30, 1992, the Grievance Administrator filed a Motion to Dismiss the Petition for Reinstatement. The motion raises three grounds: 1) That the petitioner fails to establish that the petitioner has refunded certain unearned fees to a client; 2) That the petitioner has not reimbursed the State Bar of Michigan for the costs assessed in the previous reinstatement proceeding; and, 3) That the petitioner has failed to establish that he has notified all his active clients of his return to the status of suspended attorney as the result of the Board's prior order denying his previous petition for reinstatement. It is the Grievance Administrator's position that the petitioner's failure to fulfill these obligations should result in dismissal of the petition for reinstatement in the interest of judicial economy.

A proceeding to determine eligibility for reinstatement is instituted by the filing of a petition for reinstatement with the Supreme Court clerk and a copy with the Grievance Commission and the Discipline Board. MCR 9.124(A) further directs that "if the petition is in proper form, the Board must assign it to a hearing panel". After the filing of the petition, the Grievance Administrator must perform the duties described in MCR 9.124(B), including the publication of a notice in the Michigan Bar Journal and the preparation of a written report and a hearing must then be held before a hearing panel appointed by the Attorney Discipline Board. At that hearing, the petitioner has the burden of establishing his or her eligibility by clear and convincing evidence in accordance with the criteria set forth in MCR 9-123(B).

hearing panel. None of these issues, however, is related to the Board's initial duty to determine whether or not the petition for reinstatement is in proper form. It has not been alleged or established that the petition for reinstatement filed on October 15, 1992 is not in proper form.

The Grievance Administrator request to dismiss the petition for reinstatement on grounds of "Judicial economy" implies that further proceedings on this petition are pointless because the petitioner cannot possibly prevail. In that respect, the Grievance Administrator's motion resembles a motion for summary disposition. Considered in that light, the motion fails to establish grounds warranting dismissal of the petition for reinstatement.

The Board's prior decision to deny reinstatement was based, in part, upon the evidence presented to a reinstatement hearing panel that the petitioner had failed to communicate adequately with a client regarding his impending suspension and had failed to return an unearned fee to the client, Stephen Dickson. The Board's opinion accompanying the order denying reinstatement concluded with the following paragraph:

"This conclusion [denial of reinstatement] is based on the evidence presented to this hearing panel and should not be construed as a permanent bar to the petitioner's reinstatement. MCR 9.123 and 9.124 do not prevent the immediate filing of another petition for reinstatement. Upon an appropriate demonstration by the petitioner that he has achieved the proper understanding of his ethical obligation to communicate with his clients, and upon a further showing that he has discharged his obligation to Mr. Dickson, a different result would, of course, be possible."

The "obligation" referred to in the Board's opinion may well be a relevant issue in further reinstatement proceedings involving this petitioner. It is not, however, an obligation imposed by the Board as a precondition to the filing of a petition for reinstatement.

The petition for reinstatement contains the petitioner's statements that he has complied fully with the original order of suspension and that he notified his clients of that suspension. The Grievance Administrator's Motion to Dismiss does not challenge either of those assertions.

The petition for reinstatement is deemed to be in proper form within the meaning of MCR 9.124(A). The requirements of MCR 9.111(B)(1) and MCR 9.124(B) dictate that a hearing on a petition for reinstatement cannot be scheduled until a notice of reinstatement has been published in the Michigan Bar Journal. Upon publication of such a notice in this case, the matter will be assigned to a hearing panel and a hearing will be scheduled no less than twenty-eight days and no more than fifty-six days after publication.