

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

Petitioner.

94-78-RP

Decided: March 15, 1996

MEMORANDUM OPINION

On March 9, 1995, Tri-County Hearing Panel #15 of the Attorney Discipline granted a petition for reinstatement in this matter and assessed costs against petitioner in the amount of \$4310.90. The Grievance Administrator filed a petition for review seeking reversal of the reinstatement. The petitioner filed a cross-petition limited to the issue of the costs assessed against him. In an order and opinion entered September 27, 1995, the Board vacated the panel's order and denied the petition for reinstatement on the grounds that petitioner had failed to establish the requirements of MCR 9.123(B)(5), (6) and (7). The Board took the petitioner's objections regarding costs under advisement.

We conclude that the Grievance Administrator's copying charges for re-copying the investigative material submitted in a prior reinstatement proceeding are not properly assessed against the petitioner. The Grievance Administrator's itemized statement of expenses dated December 20, 1994 is reduced by \$1158.00.

Michigan Court Rule 9.128(A) directs, in part:

The hearing panel and the Board in an order for discipline or an order granting or denying reinstatement must direct the attorney to reimburse the State Bar of Michigan for the expenses of that hearing, review and appeal if any. Reimbursement must be a condition in a reinstatement order.

The expenses of \$1755.50 incurred by the Board for court reporting services provided at the panel and Board hearings constitute expenses allocable to hearing and review within the meaning of Rule 9.128. Similarly, the Grievance Commission's out-

of-pocket expenses for subpoenas, witness fees and court reporting fees constitute expenses allocable to the hearing.

The Grievance Commission's charge of \$1158 for the preparation of the Grievance Administrator's investigative report (2316 pages @ \$.50 per page) and the additional charge of \$1158 for preparing five copies of the report (2316 pages @ \$.10 per page X 5) presents a different situation.¹

Rule 9.124(C) directs the Grievance Administrator to investigate a petitioner's eligibility for reinstatement and to prepare and serve a written report which must "summarize the facts of all previous misconduct and the available evidence bearing on the petitioner's eligibility for reinstatement." Unlike the out-of-pocket expenses incurred by the Board or Commission, the Administrator's in-house preparation and copying of the investigative report is essentially a service charge for time and materials expended by the Grievance Commission's employees.

This is the petitioner's second attempt at reinstatement.² In the first proceeding, the Administrator filed a multi-volume investigative report which included all the pleadings from the underlying discipline cases, copies of the complete court files in seven civil cases in which the petitioner was involved and a transcript of the petitioner's reinstatement interview at the Grievance Commission.

Of the ten volumes which comprise the Administrator's investigative report in this reinstatement proceeding, the first

¹ The original report was filed with the ADB on June 19, 1994. The Administrator mailed copies to the petitioner and the three panelists. The Grievance Administrator retained the fifth copy.

² Petitioner received a fifteen-month suspension effective July 29, 1987 and a three-year suspension effective August 10, 1987. Petitioner filed a petition for reinstatement August 15, 1990, ADB 90-138-RP. The Board reversed the hearing panel's order denying reinstatement in an order issued December 2, 1991. The Michigan Supreme Court reversed on August 7, 1992. Petitioner filed a second petition for reinstatement on May 2, 1994.

six volumes, containing 1158 pages, are devoted to the same material submitted in the earlier investigative report plus all of the pleadings and transcripts from the hearings, review and appeal in the first proceeding. Petitioner asserts that the duplication of material from this first report constitutes a "reprinting tactic" and is a deliberate attempt to inflate petitioner's costs.

There is nothing in the record which establishes, or even implies, that the Grievance Administrator's submission of an all-inclusive investigative report was motivated by bad faith or a desire to inflict needless expense upon petitioner. We recognize the inherent value in providing as complete a report as possible to the individual panel members so that the parties and the panel members can focus upon those matters relevant to the petitioner's conduct and fitness.

Nevertheless, we also note the absence of written guidelines or prior notice to petitioner regarding the charges for the recopying of the material filed with the Board in the prior reinstatement matter.

The American Bar Association's Standing Committee on Ethics and Professional Responsibility has determined that in the absence of advance disclosure, it would be unethical for a lawyer in private practice to charge a client for general office overhead or to charge the client more than the direct cost associated with in-house services, including photocopying. (ABA Standing Committee on Ethics and Professional Responsibility, Formal Opinion 93-379, 12/6/93).

In this case, we conclude that petitioner should not be assessed the copying charges for Volumes I-VI of the Grievance Administrator's investigative report, those volumes consisting of copies of pleadings, transcripts, and reports for which petitioner was charged in a preceding action.