In the Matter of the Reinstatement Petition
of J. RUSSELL HUGHES, JR., P-15239,
Petitioner/Appellant.

ADB 84-89

Decided: June 29, 1990

BOARD OPINION

The petitioner, J. Russell Hughes, Jr., entered into a stipulation for consent order of discipline which became effective October 22, 1987 suspending his license to practice law for a period of 120 days and until reinstatement in accordance with MCR 9.123(B). In accordance with that rule, a petition for reinstatement was filed June 26, 1989 and a hearing was conducted before Cheboygan County Hearing Panel #1 on November 2, 1989. This matter is before the Attorney Discipline Board on the filing of the petitioner's petition for review seeking reversal of the hearing panel's order denying reinstatement. Based upon a review of the whole record and the arguments presented by the parties, the Board is persuaded that the hearing panel's order should be set aside and that the petition for reinstatement should be granted.

An attorney suspended for more than 120 days must establish eligibility for reinstatement by presenting clear and convincing evidence in support of the criteria listed in MCR 9.123(B)(1-9). In this case, the hearing panel concluded that the petitioner had successfully met the requirements of sub-sections 1-4 and that sub-sections 8 and 9 were not applicable. The panel found, however, that the petitioner had failed to establish that his conduct since the order of discipline has been exemplary and above reproach [MCR 9.123(B)(5)]; 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 with those standards [MCR 9.123 (B)(6)] 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 and in general to aid in the administration of justice as a member of the Bar and as an officer of the court [MCR 9.123(B)(7)].

In its report, the panel has specifically cited its consideration of the petitioner's consent plea to a trespassing misdemeanor in June 1989 as the result of an incident which occurred in a Harrisville, Michigan tavern. The panel also noted that evidence had been presented that the petitioner was "embroiled" in various law suits. The panel recounted that the petitioner is or has been a defendant in a malicious prosecution action brought by another attorney, a legal malpractice case, and a suit for unpaid attorney fees.

The hearing panel reported that "the panel does not view this conviction in itself with a great deal of concern given the circumstances explained in the police report and the testimony of the petitioner. However, the incident contributes to a pattern of conduct in which petitioner has demonstrated a clear lack of good judgment." The panel's discussion of the various law suits involving the petitioner is also followed by its observation that "of course, these proceedings are not in themselves reason to deny his petition for reinstatement. However, as was the case with

his criminal conviction which occurred very recently, he did not persuade the panel that he understands the nature of, and seriousness, of these proceedings.

The Board has previously considered the lack of clear guide-lines given to a reinstatement petitioner. In Matter of James W. Daly, ADB 277-88, Brd. Opn. December 8, 1989, the Board reversed a hearing panel denial of reinstatement based upon the panel's fear that the petitioner's poor financial situation might lead him into further acts of misconduct. The Board said:

> It appears, however, that an attorney who has completed a fixed term of suspension and has established, prima facie, his or her eligibility . . . should not be denied reinstatement in the absence of factual evidence tending to demonstrate his or her continued unfitness.

In this case, we agree with the hearing panel's conclusions that neither the trespassing incident nor his involvement in the law suits would, individually, constitute grounds for denying this petition for reinstatement. We are not persuaded, however, that they present cumulative evidence of a lack of good judgment of a type or degree sufficient to warrant continuation of a suspension which has now been in effect for approximately two and one-half years.

In another opinion reversing a hearing panel denial of reinstatement based upon a petitioner's inability to "guarantee" his future good conduct, the Board stated:

> We must agree, to some extent, with the observations of Justice Levin in a plurality opinion remanding a denial of reinstatement in Matter of Petition of Albert, 403 Mich 346; 269 NW2d 173 (1978), which noted that "the vagueness of the present rule leaves unclear what the lawyer seeking reinstatement must show and what the hearing panel requires to justify reinstatement. . .a suspended lawyer petitioning for reinstatement should not feel compelled to present an exhaustive account of his life and character in the hope that he will, at some point, stumble on the essence of the problem as perceived by the panel and convince it that he is basically a good person who should be permitted to practice law." Petition of Albert, 969 NW2d 173, 177.

Matter of David P. Huthwaite, DP 78/85, Brd. Opn. January 30, 1987.

Obviously, the task of the hearing panel and of the Board in this case would have been made a good deal easier if the petitioner had not been involved in an incident at a local tavern and if he had not been involved as a defendant in certain law suits. We appreciate and share the concerns expressed by the hearing panel. We are unable to conclude, however, that these incidents, considered individually or as a group, should bar his reentry to the practice of law.

As in matters involving the imposition of discipline, our primary concern in matters of

reinstatement following a suspension for a fixed term is the protection of the public, not the punishment of the attorney. See Matter of Friedman, 406 Mich 256; 277 NW2d 635 (1979); Matter of Trombley, 387 Mich 377; 246 NW2d 873 (1976).

All concur