

In the Matter of the Reinstatement
Petition of Joseph Covington,
Petitioner.

ADB 128-87

Decided: August 29, 1988

BOARD OPINION

The Petitioner, Joseph Covington, was disbarred in 1982 following his conviction of the felony of attempting to obtain money in excess of \$100 by false pretenses. His petition for reinstatement in accordance with MCR 9.123(B) was considered by a hearing panel which found that the petitioner had successfully established his eligibility for reinstatement. Upon consideration of the Petition for Review filed by the Grievance Administrator, the Attorney Discipline Board affirms the hearing panel decision.

Petitioner was convicted in the Detroit Recorder's Court in April 1982 of the felony of attempting to obtain money of a value of over \$100 by false pretenses. It was found that he had been appointed to represent an indigent defendant in Recorder's Court in late 1976 and had negotiated a plea bargain calling for a reduction in the potential penalty. He then represented to the client that he could arrange for the original charges to be dismissed in exchange for payment of a substantial sum to the assistant prosecuting attorney. The implicit understanding was that the money would be used to "fix" the case. The Court found that Mr. Covington actually took money from the criminal client under a pretense that he would payoff someone to have certain charges dropped when he knew that the prosecutor's office had already offered to dismiss the charge.

In proceedings initiated by the Grievance Administrator, a hearing panel of the Attorney Discipline Board accepted proof of that conviction and entered an order suspending Mr. Covington's license for two years. On appeal, that discipline was increased by the Board to revocation which noted in its opinion that the misconduct "ranks among the most grave and offensive to come before this Board . . . respondent's representations to the client were not only a fraud undermining the integrity of the criminal process--they also cast very serious aspersions on the character of the individual prosecutor involved . . . such conduct not only violates the essence of the attorney/client relationship, it raises, among other things, the question of whether the respondent ever has or will have the requisite character which is the basis of the court's endorsement of every member of the Bar". In the Matter of Joseph Covington, DP 39/82 (Brd. Opn. 3/18/83 p. 256)

To regain the right to practice law, an attorney whose license has been revoked must present clear and convincing evidence in support of the criteria set forth in MCR 9.123(B). In his Petition for Review in this case, the Grievance Administrator does not object to the panel's conclusions that Mr. Covington desires in good faith to be restored to the privilege of practicing law, that five years have elapsed since the revocation of his license, that he has not attempted to practice law during that period, that he has complied fully with the order of discipline and that his conduct since the order of discipline has been exemplary and above reproach. The appeal is grounded upon a claim that the

hearing panel erred in failing to give adequate weight to the original misconduct in determining whether Mr. Covington now has a proper understanding of the standards imposed on members of the Bar and will conduct himself in conformity with those standards [MCR 9.123(B)(6)] and the finding that he can now safely be recommended to the public, the courts and the legal profession as a person fit to aid in the administration of justice as a member of the Bar [MCR 9.123(B)(7)]. He argues, in short, that the petitioner's conduct was so heinous that a question exists as to whether or not the petitioner could ever satisfy the requirements of MCR 9.123(B) (6,7). The Administrator urges that a separate standard of review should have been employed by the hearing panel in recognition of a distinction of an order of revocation and an order of suspension.

In its report, the hearing panel explicitly stated its concern over the severity of the offense for which the petitioner was convicted and they stated "Obtaining money from a client upon the representation that it was to be used to subvert the criminal system is about as serious an ethical offense as the panel can imagine." However, they continued "if the Supreme Court had wished disbarment to be forever, it has had ample opportunity to so state. It has not chosen to do so either in its opinions or in its rule making capacity." Despite the Administrator's insistence that the panel overlooked "the distinction between an order of revocation and an order of suspension" that distinction is simply not found in our the court rules which govern the discipline or reinstatement of attorneys.

At the time of his disbarment, Petitioner Covington's duty to notify his clients of his change of status was described in GCR 1963, 968 and those duties applied equally to all attorneys who were disbarred or suspended. The expanded requirements which now appear in MCR 9.119 continue to make no distinction between a disbarred or suspended attorney. Similarly, the reinstatement procedures described in MCR 9.123(B) and MCR 9.124 apply to all attorneys whose licenses have been suspended for more than 119 days or whose licenses have been revoked. Suspended attorneys may petition for reinstatement on the expiration of the specified term while disbarred attorneys may petition for reinstatement after five years. [MCR 9.123(B)(2)]

It has now been ten years since the Court addressed its attention to the reinstatement process in a written opinion. In that case, *Petition of Albert*, 403 Mich 346; 269 NW2d 173 (1978) the Court ruled that it was improper to deny reinstatement to a suspended attorney on the ground that he had not shown proper remorse for his wrongdoing as required under rules in effect prior to October 1, 1978. The longest and most wide-ranging of three separate opinions filed in that case contains Justice Levin's references to the theoretical difference between a suspension and a disbarment. Noting that standard definitions of the word "suspension" include the "temporary removal from office or privileges" Justice Levin noted that "the implicit assumption of a suspension, whether or not indefinite, is that the disciplined lawyer will ordinarily be reinstated at the end of the suspension period." *Petition of Albert*, supra, 269 NW2d 173. Justice Levin, who was joined by Justice Kavanagh in that opinion, noted that:

"Combining in one rule the same substantive criteria for reinstating suspended and disbarred lawyers blurs the distinction between suspension and disbarment and causes doubt about the character and quantum of proof appropriate in each case, leading to uneven

application of the rule . . . in suspending Albert, rather than disbaring him, the Grievance Board by implication concluded that his prior misconduct did not warrant permanent revocation of his license to practice law and that he was capable of conforming his conduct to the standards of the profession.” Petition of Albert, supra, 269 NW2d 173, 176, 179.

We cannot necessarily disagree with the assumption of Justice Levin and the argument of the Grievance Administrator that there may be certain types of misconduct which are, by their very nature, so reprehensible and inimical to basic principles of justice that the offending attorney's license should be permanently revoked. We cannot, however, apply such a rule in this case. As the panel has pointed out, disbarment is not necessarily permanent in Michigan and the Supreme Court has not ruled that it should be, even in the most extreme cases.

The court rules have, at all times since Mr. Covington's disbarment, extended to him the promise that he could file a petition for reinstatement after five years. Neither the rules nor the jurisprudence of this state have identified any class of petitioners for whom the standards of MCR 9.123(B) should be applied more stringently. Petitioner Covington has established to the satisfaction of the hearing panel in this case that, notwithstanding his actions in 1976, he is currently possessed of an attitude toward the standards imposed on members of the Bar from which the public, the courts and the legal profession may conclude that he may now safely be recommended as a person fit to be a lawyer. Where the panel's findings have adequate support in the whole record, we are constrained to accept those findings. In Re Del Rio, 407 Mich 336; 285 NW2d 277 (1977).

In this case, it is clear that the panel considered the reprehensible nature of the conduct for which petitioner was disbarred but concluded that he had presented clear and convincing evidence of his present fitness to reenter our profession. In the absence of a showing that such a conclusion lacked evidentiary support, we must affirm the hearing panel's decision.

Concurring: Martin M. Doctoroff, Hanley M. Gurwin, Robert S. Harrison, Patrick J. Keating and Theodore P. Zegouras.