GRIEVANCE ADMINISTRATOR,
Appellee,
v
DAVID P. HUTHWAITE, P-15307,
Petitioner/Appellant.

File No. DP 78/85

Argued: November 11, 1986
Decided: January 30, 1987

OPINION OF THE BOARD

Petitioner's license to practice law was revoked February 22, 1980 upon the finding by a hearing panel that he had pled guilty to criminal charges of embezzlement of $12,500 from a Guardian Estate. Approximately one year before the revocation, a finding of professional misconduct in an unrelated matter had resulted in the suspension of Petitioner's license for a period of 120 days and that suspension, in effect since March 1980, has not been terminated by the filing of an Affidavit of Compliance. On June 7, 1985, Mr. Huthwaite filed a Petition for Reinstatement as required by MCR 9.124(A) and the hearing on that Petition was conducted on June 24, 1986.

Based upon Petitioner's testimony and the written report of the Grievance Administrator which included a transcript of his interview by a member of the Administrator's staff, the reinstatement Hearing Panel concluded that Petitioner had not met his burden of establishing his eligibility for reinstatement. Specifically, while the Panel found that more than five years had elapsed since the revocation of Petitioner's license and that he had not attempted to practice law during that period and had otherwise complied with the Order of Revocation, the Petitioner did not established by clear and convincing evidence that his conduct had been exemplary and above reproach, that he had not shown a proper understanding of the standards that are imposed on members of the Bar and that he could not be safely recommended as an attorney to the public, the courts and legal profession.

In its Report, the Hearing Panel cited the $26,550.30 arrearage in Petitioner's child support obligations and his failure to engage in an active search for employment as examples conduct which was not, in the Panel's opinion, exemplary and above reproach. The Panel also expressed its concern that Petitioner acknowledged that the revocation of his license was a result of his embezzlement of client funds in an attempt to maintain a comfortable but unremarkable standard of living. Given the evidence that Petitioner's financial situation had deteriorated since 1980, the Panel was not assured that Petitioner, reinstated to the practice of law, would not again succumb to temptation.

Petitioner seeks review of the Hearing Panel's denial of his Petition for Reinstatement. We reverse the Hearing Panel denial of reinstatement and order that Petitioner be eligible for reinstatement subject to his recertification by the Board of Law Examiners.

The Board shares the Hearing Panel's concern that Petitioner has been delinquent in his child support obligations since his disbarment in 1980 and that he has apparently made no serious attempt to seek employment during that period. The Panel's observation that Petitioner has consistently relied upon his family to help him out of all of his problems is well-supported by the record, and we cannot say that the Panel erred in its perception of the Petitioner as a person who has shown no responsibility, either professionally or personally, during his life.

We are unable to conclude, however, that such personal short-comings warrant the denial of Petitioner's request that he be reinstated to the practice of law.

At the time of his disbarment in 1980, Petitioner was ordered to cease and desist from the practice of law, his sole profession for more than twenty years, and to refrain from any activity which might be construed by others as the practice of law. Petitioner has demonstrated to the satisfaction of the Panel and this Board that he did refrain from the practice of law during that period and if that were the only requirement in those proceedings, no further discussion would be necessary.

At the time his license was revoked, Petitioner was also put on notice that he would not be eligible for reinstatement until he could show that his conduct since the Order had been exemplary and above reproach [MCR 9.123(B)(5)], that he had a "proper" understanding and attitude toward the standards that are imposed on members of the Bar [MCR 9.123(B)(6)]; and that he could, in the opinion of a hearing panel, safely be recommended to the public, the courts and the legal profession as a person fit to act in matters of trust and confidence as a member of the Bar and an officer of the Court [MCR 9.123(B)(7)]. We are simply not persuaded that Petitioner was fairly put on notice in 1980 that his eventual eligibility for reinstatement might depend on his ability to demonstrate that he had been able to find employment and able to discharge his child support obligations.

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 must require 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, 269 NW2d 173, p 177.

Our primary concern is the protection of the public, not the punishment of the attorney under investigation See In the Matter of Friedman, 406 Mich 256; 277 NW2d 635 (1979); In the Matter of Trombley, 398 Mich 377; 247 NW2d 873 (1976). We are not able, from the record before us, to predict with confidence that an attorney who has relied upon the generosity of his family while suspended might pose a greater or lesser danger to the public if reinstated than a suspended attorney who has obtained regular employment during that period.

In this case, we are somewhat more distressed by Petitioner's failure to pay child support. Again, however, we must bear in mind the purpose of these reinstatement proceedings and must conclude that, in this case, the failure to discharge one's domestic obligations may not necessarily reflect upon one's ability to serve the public and the courts as a member of the legal profession.

Finally, we are cognizant of the dilemma faced by the hearing panel when presented with Petitioner's frank admission that he could not unequivocally guarantee that the misconduct which lead to his disbarment, namely the misappropriation of funds, would never occur again. If it were true that financial need was the only factor which might influence the proclivity of an attorney to misappropriate client funds, then Petitioner's current financial status might be an accurate indicator of a possible recurrence of that misconduct. Financial need is not the only factor however, and, happily, the vast majority of attorneys entrusted with client funds do not help themselves to client monies even if their own financial situations are bleak.

We believe that there is ample support in the record to believe that Mr. Huthwaite's forced removal from his chosen profession has had a corrective effect in the sense that he is now acutely aware of the prohibition against the misappropriation of client funds and that he is aware from personal experience of the consequences of such misconduct.

In summary, we find that Petitioner has, in good faith, established his eligibility for reinstatement by clear and convincing evidence as required. We therefore reverse the Hearing Panel denial of the Petition for Reinstatement and order that Petitioner be eligible for reinstatement, subject to his certification in accordance with MCR 9.123(C) and his reimbursement of costs, as required by MCR 9.128.

Martin M. Doctoroff, Remona A. Green, Hanley M. Gurwin, Patrick J. Keating, and Charles C. Vincent, M.D. all concurred.

Robert S. Harrison and Odessa Komer did not participate in his decision.