GRIEVANCE ADMINISTRATOR,
Appellee,
v
DAVID T. KALIL,
Petitioner/Appellant.

File No. DP 44/85

Argued August 27, 1986
Decided: November 25, 1986

OPINION OF THE BOARD

The Petitioner was the subject of disciplinary proceedings in Michigan in 1957 and on October 25, 1957 an Order was entered suspending his license to practIce law for a period of one (1) year and until further order of the Court. That suspension has now been in effect for twenty-nine (29) years and the Board is now faced with the difficult task of determining whether, on the basis of the record before us, Mr. Kalil should be eligible for reinstatement to the practice of law. We note at the outset that the difficulty presented by this case is entirely of the Petitioner's own making. Although Mr. Kalil was eligible to apply for reinstatement in 1958, it appears that he made no attempt to regain his license until 1964 when he submitted a Petition to the State Bar of Michigan which was not in proper form and which was not accepted. At that time, however, Petitioner had already embarked on a course of conduct which was to last for approximately twenty-five (25) years during which he represented himself to his employers, to his family and to the public at large as a licensed attorney.

Petitioner left the State of Michigan in 1958 and obtained employment with the International Nickel Company in New York, representing himself as an attorney licensed to practice law. In 1963, Mr. Kalil obtained employment with the Kaynar Manufacturing Company, again misrepresenting his status as an attorney to his employer. Petitioner's career continued to advance with his employment by Amex Incorporated in the State of New York in 1964 where he achieved the position of the assistant director of the Law Department and, finally, his employment in 1977 by the Jones and Laughlin Steel Company, as vice-president and general counsel.

In addition to his representations to those employers that he was a licensed attorney, the record discloses that Petitioner made a false statement to the United States Patent Office in his application for licensure as a patent agent in 1964, obtained a listing in the 1973 New York volume of the Martindale-Hubbell Directory as a Michigan lawyer, improperly listed himself in the 1977 Connecticut volume of Martindale-Hubbell as being admitted to practice in New York, and, as recently as 1983, obtained a listing in Who's Who in Finance and Industry as a member of the Michigan and New York Bars and the holder of an LLM degree from New York University.

As noted by the Hearing Panel below, Petitioner was able, over a period of approximately twenty-five (25) years, to advance his career to an enviable position and trust as general counsel of a major U.S. corporation. The record is clear that in each position he provided faithful, competent and diligent service to his employer. Petitioner's career advancement was, however, based upon a deliberate pattern of deception which continued until May 1983 when the Jones and Laughlin Steel

Corporation discovered that their general counsel was not, in fact, a licensed attorney. The Vice-President and General Counsel of the parent company, LTV Corporation, submitted his statement to the Panel that he requested Mr. Kalil's resignation because licensure as an attorney was a necessary qualification for the position and because Mr. Kalil had gained employment on the basis of misrepresentations.

The essential facts relating to Mr. Kalil's career since the suspension of his license in 1957 are not in dispute and we do not disturb the factual findings of the Panel for which there is clearly evidentiary support in the record. We also agree with the finding of the Panel that Petitioner's legal skills have been amply demonstrated. A final determination as to his basic legal competence would be the responsibility of the Board of Law Examiners in accordance with MCR 9.123(C).

Finally, and most importantly, we agree with the Panel's expression of sympathy for the Petitioner and its recognition of the dilemma in which he finds himself. That dilemma has been ably identified and discussed by counsel for Petitioner and by the Grievance Administrator.

Applying the rationale behind previous decisions of the Board and the Court in appeals involving reinstatement petitions, the Board determines that Petitioner, David T. Kalil, has demonstrated his present fitness to resume the practice of law. We therefore reverse the Hearing Panel Order Denying Reinstatement and order that Petitioner be reinstated subject to his recertification in accordance with MCR 9.123(C) and reimbursement of the expenses of these proceedings, in accordance with MCR 9.128.

The Petitioner transgressed during the period of his suspension. The record discloses that he attempted to practice law in Detroit Recorder's Court during the original one (1) year suspension which commenced October 25, 1957 and the record is replete with instances of Petitioner's misrepresentations after he left the State of Michigan and advanced in the corporate world. By his own admission to the Panel, Petitioner's conduct from 1958 to 1983 was not entirely exemplary and above reproach. (Tr. p. 102, 106-107, 111, 114-115)

The procedure for reinstatement is set forth in MCR 9.123 and 9.124 and there is nothing in those rules preventing an unsuccessful petitioner from simply filing a new petition. As this Petitioner points out, however, that "right" would be illusory under the strict interpretation of the rules urged by the Grievance Administrator. Applying the rules in the narrowest, most literal sense, a single transgression, however minor, during a period of suspension would forever bar a suspended lawyer from gaining readmission. We do not believe that is the intent of the rules governing reinstatement and we believe that the eligibility for reinstatement of this Petitioner constitutes an appropriate and equitable result.

"[T]he implicit assumption of a suspension, whether or not indefinite, is that the disciplined lawyer will ordinarily be reinstated at the end of the suspension." Petition of Albert, Opinion of Levin, J., 403 Mich 346, 358; 269 NW2d 173 (1978). In that Opinion, Justice Levin noted that the decision to suspend a lawyer, rather than disbar, implies a conclusion by the disciplinary tribunal that the prior misconduct did not warrant permanent revocation and that the errant lawyer was capable of conforming his conduct to the standards of the profession. Justice Levin noted that the rules governing reinstatement in such cases should recognize the difference between suspensions which are purely punitive and those which are intended to be corrective. Petition of Albert, supra 358.

Whether the suspension imposed against Mr. Kalil in 1957 was intended primarily to be punitive or corrective, it would appear to the Board that reinstatement at this time would not be inconsistent with the purposes of that suspension.

Petitioner was deemed to have committed misconduct prior to October 25, 1957 which warranted a one (1) year suspension. Twenty-nine (29) years have now elapsed. In addition to the punitive effect of the suspension itself, Petitioner has suffered the humiliation of a forced resignation and the search, at age sixty (60), for a new means of livelihood.

In terms of the corrective effect of the original suspension, it is appropriate that we focus our attention on the three and one-half (3 1/2) years which have elapsed since Petitioner was confronted by his employer and asked to resign. Obviously, we can neither ignore nor minimize Petitioner's underlying pattern of deception prior to May 1983. We believe, however, that it is possible for Petitioner to establish that his conduct since 1983 has been above reproach and that, during that period, he has attained the understanding of the standard that are imposed on members of the Bar which is required for reinstatement.

The Board has previously considered a Petition for Reinstatement brought by an attorney found to have violated an order of suspension in Matter of William G. Jenkins, ADB File No. 35224-A, (Brd. Opn. p 211, 1982). Petitioner Jenkins was suspended for a period of one (1) year effective December 8, 1978 but did not file his Amended Petition for Reinstatement until August 28, 1980. At the reinstatement hearing, it was established that Mr. Jenkins had not fully complied with the terms of his suspension order. Although the Hearing Panel denial of reinstatement was affirmed, the Board expressly stated that the denial was without prejudice to a later petition for reinstatement, saying

> "The violation of any Order of Suspension should not indefinitely prejudice any future petition for reinstatement--any other approach to such cases would be a punitive measure denying reappraisal of a disciplinary respondent's fitness to reenter the practice of law based upon personal and/or professional rehabilitation. When a disciplinary respondent is otherwise qualified for reentry to the practice of law . . . he should be eligible for readmission notwithstanding prior denial of reinstatement based upon a violation of an original disciplinary order."
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> "Discipline for misconduct is not intended as punishment for wrongdoing, but for the protection of the public, the courts and the legal profession". GCR 1963, 954 [now MCR 9.105].

In accordance with the stated purpose of these disciplinary proceedings, it is our finding that the record does provide an adequate basis for the conclusion that the reinstatement of this Petitioner to the rights and privileges of the practice of law will not endanger the public, the courts or the legal profession. We base this conclusion upon our consideration of Petitioner's conduct since May 1983, his rehabilitation as an individual, the support of his former colleagues, and his demonstrated desire to conform to the standards of our profession.

Patrick J. Keating, Chairman; Martin M. Doctoroff, Vice-Chairman; Charles C. Vincent, M.D., Secretary; Hanley M. Gurwin, and Robert S. Harrison all concurred.