

GRIEVANCE ADMINISTRATOR,
Petitioner/Appellant,
v
STANLEY C. SHAPIRO,
Respondent/Appellee.

File No. DP 143/85

Decided: September 30, 1986

OPINION OF THE BOARD

The Respondent, a 43 year old attorney admitted to practice in the State of Michigan since 1972, pleaded guilty on February 22, 1985, to the misdemeanor of false pretenses with intent to defraud, under \$100, in violation of MCL 750.218, MSA 28.415. A Certification of Conviction from the 56-2 District Court in Eaton County was filed with the Board and, in accordance with MCR 9.120(A), the Respondent was ordered to appear before a Hearing Panel to show cause why a final Order of Discipline should not be entered and to submit evidence bearing upon the level of discipline to be imposed. The Grievance Administrator has filed a Petition for Review seeking modification of the 90 day suspension imposed by the Hearing Panel on the grounds that the public is not adequately protected in this case if the Respondent is automatically reinstated to the practice of law. We agree, and therefore increase discipline in this case to a suspension of 120 days.

The Respondent testified on his own behalf before the Panel and related to them that his life "fell apart" in 1978, 1979 when he traveled to Israel to attempt to salvage a deteriorating marital situation. Following a divorce, Mr. Shapiro explained that he "took off just to travel around the world, went to places, India, Pakistan, Burma, Sri Lanka, really out of the way places, grew a beard and just hung out. I got heavily involved in drugs in Asia, came back to the States." (T 33) He further testified that he practiced law in Michigan for approximately six months in 1980, then moved to Florida before settling in California.

At the Panel Hearing in February of 1986, the Respondent testified that he is now active in business and real estate matters in California and has been an active member in Alcoholics Anonymous and Cocaine Anonymous in California for approximately 18 months. He explained that the misdemeanor conviction in Eaton County, Michigan, was the result of acts which took place during the summer of 1984 and he spoke at some length regarding his regret for his conduct during that period and his pride in his ability to restructure his life during the past year and a half.

In its thoughtful analysis of the factors to be considered in arriving at an appropriate level of discipline, the Panel noted its concern that the offense which resulted in Respondent's conviction involves elements which go to character and trust and may reflect adversely upon the Respondent's honesty and integrity. However, the Panel also stated that it was impressed with the restitution made by the Respondent, the state of Respondent's personal affairs at the time the acts were committed, and Respondent's intense regime of rehabilitation. Based upon those considerations, the Panel rejected the Grievance Administrator's Request that a suspension be imposed of sufficient duration

to require that the Respondent appear before a hearing panel to establish his eligibility for reinstatement.

In his written and oral arguments to the Board, the Grievance Administrator has urged that the serious nature of Respondent's criminal conviction alone would warrant an increase in discipline. We decline to adopt that view, and emphasize that our decision to increase discipline in this case is not based solely upon the nature of the crime committed or upon the conviction itself.

Rather, the Board has considered other factors which appear in the record which, along with our appraisal of the presentation made by Respondent, convinces us that reinstatement proceedings will provide an appropriate screening mechanism to insure that Respondent's admitted addiction and underlying personal problems no longer constitute threats to himself or to the public. Under the circumstances presented by this he, it is entirely appropriate that Respondent establish by clear and convincing evidence those criteria set forth in MCR 9.123(B), including his showing that he can safely be recommended to the public, the courts and the legal profession as a person fit to be consulted by others, to act in matters of trust and confidence and to aid in the administration of justice.

Chairperson Patrick J. Keating, Board Secretary Charles C. Vincent, M.D., and Members Robert S. Harrison, Remona A. Green and Odessa Komer concur.

CONCURRING OPINION

(By Vice Chairperson Martin Doctoroff
and Member Hanley Gurwin)

We agree with the result reached by the Board in this case and concur in the decision to increase the discipline to a suspension of 120 days in order to invoke the reinstatement provisions of MCR 9.123(B) and MCR 9.124. We do not agree, however, with the language in the majority opinion which suggests that Respondent's conviction alone would not have warranted such an increase. On the contrary, while Respondent's admitted addiction to a controlled substance strongly reinforces the view that reinstatement proceedings be required, we would emphasize that the Respondent has also admitted engaging in criminal conduct involving fraud. For that reason alone, the automatic reinstatement provision which accompanies suspensions of 119 days or less would not be appropriate and the Respondent should bear the burden of establishing his moral and ethical fitness to practice law in this state.