

IN THE MATTER OF LEONARD ZISKIE,
Petitioner.
File No. DP-92/82

Argued: March 31, 1983

Decided: July 18, 1983

OPINION OF THE BOARD

The reinstatement Petitioner was disbarred in 1966 for perpetrating a fraud on a client, misrepresentation and concealment, misappropriation of funds and failure to answer a Formal Complaint. A reinstatement hearing was held by a hearing panel of the Attorney Discipline Board pursuant to GCR 1963, 973.3. The panel decided that the Petitioner had not met the eligibility requirements of GCR 1963, 972.2. The panel concluded that Petitioner's failure to reimburse his clients for misappropriated funds precludes reinstatement. Petitioner has appealed claiming that he has met each of the requirements of GCR 1963, 972.2 and that reimbursement is not a condition precedent to reinstatement. We agree that in this case repayment is not a condition precedent to reinstatement and will grant the petition subject to Petitioner fulfilling his agreement to make restitution after reinstatement and given Petitioner's renewed ability to generate an income.

Petitioner's monetary obligations arose from the following:

(a) In 1965 Petitioner was retained to represent certain personal injury plaintiffs and filed a lawsuit which was dismissed for lack of progress due to Petitioner's neglect. Substitute counsel was unable to have the cause reinstated because the statute of limitations had expired. Petitioner paid the clients \$250 to compensate for their loss. He paid them an additional \$150 by a check which was returned due to insufficient funds. No further restitution has ever been made to the client and Petitioner has never made good on the dishonored check.

(b) In 1965 Petitioner was retained by a corporate client in a collection action. When settlement was reached, Petitioner retained \$3,364.14 from the settlement refunds as his fee. However, due to a bookkeeping error the client simultaneously sent Respondent a check in that amount to cover his fee. At the client's request, Petitioner issued a refund check for the duplicate payment, but the check was returned for insufficient funds. Petitioner later performed services for the client worth approximately \$900, leaving a balance due of \$2,464.14. Petitioner does not disavow the obligation, but states that when he attempted to repay the debt he found that the corporate client had been absorbed by General Telephone and Electric Company which did not keep records of accounts receivable of the original corporate-client.

(c) Petitioner, as part of a settlement on behalf of a client issued a check in the amount of \$105.60 to cover attorney fees and costs; the check was returned for insufficient funds. Notwithstanding Petitioner's signature on the check, he disavows the obligation claiming he does not recall issuing the check.

The record, therefore, discloses three obligations -- \$150, \$2,464.14, and \$105.60. Petitioner asserts no defense or excuse for nonpayment of the first, claims he has attempted but could not make payment of the second and largest because the former corporate client no longer exists, and would avoid his obligation on the third item because he does not recall issuing a check or being committed to an underlying obligation therefor.

Petitioner has presented, and we have duly considered, several strong recommendations from members of the Bar and the judiciary on Petitioner's behalf. Failure to make restitution notwithstanding, we are satisfied that Petitioner has met his burden of proof as required by GCR 1963, 972.2 (with the exception of subsection (8) which requires recertification by the State of Michigan Board of Law Examiners). Reinstatement will not be final until Petitioner has been recertified.

Restitution is not a prerequisite for reinstatement here simply because it was not and could not have been ordered by the panel which adjudicated the original Formal Complaint under State Bar Rule 15, Sec. 3. According to GCR 1963, 972.2(9), reinstatement may be conditioned on reimbursement of funds to the Client Security Fund; although the Client Security Fund is not involved in this case, there is no rule or reason why the debts involved in this case should be considered canceled, and the Petitioner has expressly agreed to make restitution to the three aforementioned creditors. Because Petitioner's promise to repay the obligations is the basis for the Board appraisal of fitness under GCR 1963, 972, failure to satisfy these debts in a timely manner within the limits to be set forth will force the Board to rescind its order of reinstatement.

We agree that, notwithstanding the seriousness of the misconduct, disbarment for 17 years has been sufficient discipline. Petitioner has met the requirements for reinstatement, and reinstatement may present the only practicable opportunity for him to obtain the means necessary to ultimately make restitution. The Petition for Reinstatement is granted subject to recertification by the Board of Law Examiners and subject further to restitution after entry of the final order of reinstatement.

Board Secretary David Baker Lewis did not participate in the hearing or decision in this matter. All Concur except Board Member Leo Farhat - dissent attached.

Dissent by Board Member Leo A. Farhat:

Petitioner made no effort whatsoever to fulfill his moral and legal obligations. The reasons asserted for non-payment of these obligations are weak if not specious and, of themselves, give rise to very serious doubts about Petitioner's judgment and attitude. GCR 1963, 972 requires that a reinstatement Petitioner show by "clear and convincing evidence" that he ". . .has a proper

understanding of and attitude toward the standards that are imposed upon members of the Bar . . . [and] can safely be recommended to the public, the courts and the legal profession as a person fit to be consulted by others and to represent them and otherwise act in matters of trust and confidence, and in general to aid in the administration of justice....”. In all the years of his disbarment, Petitioner has failed to take a single remedial step toward fulfillment of the obligations that resulted in his disbarment. Indeed, so much time has lapsed without any effort by Petitioner in this regard, one must question whether Petitioner meets the first criteria set forth under GCR 1963, 972.2(1), to-wit: that “[Petitioner] desires in good faith to be restored to the privilege of practicing law in Michigan.”

On the other hand, the sheer length of time of a reinstatement Petitioner’s disbarment certainly should not compel us to end his professional exile. We face the overriding responsibility of protecting the public and deterring in the strongest fashion possible any future misconduct of this nature.

I would affirm the hearing panel and deny the petition for reinstatement until such time as Petitioner has made a convincing and substantial effort to fulfill these overdue obligations.

(NOTE: The Opinion of the Board was reversed by the Michigan Supreme Court on March 7, 1984 for reasons set forth in the dissent of Board Member Leo A. Farhat.)