

In the Matter of the Reinstatement Petition
of John C. Mouradian,

JOHN C. MOURADIAN, P-18040,
Petitioner/Appellant.

v

GRIEVANCE ADMINISTRATOR,
Appellee.

Case No. 96-111-RP

Decided: February 27, 1998

BOARD OPINION

Petitioner, John C. Mouradian, has petitioned for review of a hearing panel order denying his petition for reinstatement. The Board has conducted review proceedings in accordance with MCR 9.118. The hearing panel's order is affirmed.

During the years 1983 to 1988, petitioner was publicly disciplined as follows: Reprimand effective April 7, 1983; Reprimand effective September 8, 1983; Thirty-day suspension effective March 28, 1984; Sixty-day suspension effective July 30, 1984; 180-day suspension effective October 31, 1986; Sixty-day suspension effective January 26, 1987; and, 119-day suspension effective May 24, 1988. The 180-day suspension required a petition for reinstatement and reinstatement proceedings in accordance with MCR 9.123(B). In February 1989, a hearing panel ordered petitioners reinstatement with certain conditions.

The complaints which gave rise to petitioner's current suspension were filed in 1992. Based upon his defaults for failure to answer two consolidated complaints, a hearing panel found that petitioner was appointed as appellate counsel for twenty-two criminal defendants but failed to file five appellate briefs; failed to timely file seventeen other appellate briefs; failed to adequately communicate with those clients; falsely advised a client that he had filed an appellate brief; accepted a \$1000 fee from a client although prohibited from doing so by virtue of his appointment; failed to answer two requests for investigation; and failed to answer two formal complaints. The respondent's three-year suspension was affirmed by the Board. Petitioner's application for leave to appeal was denied by the Supreme Court.

The instant petition for reinstatement was filed in May 1996. The preliminary matters filed by petitioner included a motion for the appointment of a special master to determine, among other things, if Attention Deficit Disorder is a disability within the meaning of the Americans With Disabilities Act, (ADA) 42 U.S.C. 12101, and to determine if the Attorney Discipline Board and Attorney Grievance Commission had met certain responsibilities

alleged by petitioner to arise under the ADA. That motion was denied by the Board along with petitioner's motion for appointment of counsel.

In a reinstatement proceeding conducted under MCR 9.123(B) and MCR 9.124, the burden is upon the petitioner to establish eligibility for reinstatement by clear and convincing evidence under the criteria enumerated in MCR 9.123(B)(1), (2), (3), (4), (5), (6), (7), (8) and (9). The proceedings before the hearing panel are summarized in the hearing panel's opinion which is attached as an appendix. The Attorney Discipline Board has reviewed the record below and concludes that the hearing panel's decision should be affirmed. In reaching this conclusion, the Board has applied the standard of review which combines and balances the standards enunciated by the Court in reinstatement matters, i.e., review of the panel's findings for proper evidentiary support in the whole record, recognition of the element of subjective judgment which is applicable to MCR 9.123(B) and, finally, exercise of the measure of discretion granted to the Board with regard to its ultimate decision. Grievance Administrator v August, 438 Mich 296, 304, 307, 311 (1991). The panel's findings have proper evidentiary support. The panel appropriately exercised its judgment with regard to the criteria of MCR 9.123(B) as expressed in its opinion which we adopt by reference, with the following clarification. The panel's opinion provides recommendations and guidelines for the steps petitioner may take to demonstrate an attention to deadlines and to establish a track record of supervised activity in a law-related position. The panel's recommendations should not be construed as a bar to petitioner's filing of a new petition for reinstatement in accordance with MCR 9.123(D)(3), i.e., on or after April 29, 1998.

Board Members Elizabeth N. Baker, C. H. Dudley, Barbara B. Gattorn, Grant J. Gruel, Albert L. Holtz, Roger E. Winkelman and Nancy A. Wonch concur in this decision.

Board Members Michael R. Kramer and Kenneth L. Lewis did not participate in this decision.

ATTACHMENT

STATE OF MICHIGAN
ATTORNEY DISCIPLINE BOARD

IN THE MATTER OF
JOHN C. MOURADIAN (P18040)

ADB No. 96-111-RP

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PANEL OPINION REGARDING REINSTATEMENT

There were two separate hearing dates to determine whether petitioner should be reinstated into the practice of law. The hearing panel conducted the hearing in accordance with MCR 9.124(D), MCR 9.126 and the rules generally applicable to non-jury state circuit court proceedings. In this proceeding, the petitioner is required to establish by the eligibility for reinstatement by clear and convincing evidence and, specifically, to establish the applicable criteria under MCR 9.123(B).

Three panel members were appointed. However, at the August 20, 1996, hearing, it was agreed by both petitioner and respondent that the hearing would go forward with only two panel members: Ronald M. Bookholder, Chairperson; and Nina Abrams, Secretary, as Richard Levine was unavailable to be present at the hearing. Respondent, as well as petitioner, were given the opportunity to adjourn the hearing to another date but chose to go forward with two panel members.

Two separate hearings were held, the first on August 20, 1996, and the second on February 21, 1997. The following witnesses were presented on behalf of the respondent:

- a. John C. Mouradian who testified on his own behalf
- b. Dr. Howard Schubiner, M.D., an expert in Attention Deficit Disorder
- c. Arthur Weiss, attorney.

The following exhibits were presented and admitted:

- a. proposed Grievance Administration report dated July 10, 1996.

- b. Curriculum Vitae of Dr. Howard Schubiner, M.D.
- c. Petitioner's report, Volume I
- d. petitioner's report, Volume II

The petitioner and respondent both provided oral and written closing arguments, requested findings of fact, and requested relief. All of the above evidence, including testimony, was reviewed by the panel.

Petitioner's license to practice law was suspended for three (3) years effective April 26, 1993. The Order of Suspension related to four (4) separate formal complaints covering twenty-two (22) different clients of petitioner. The misconduct involved primarily neglect of criminal appeals. In addition to the current suspension, petitioner had a previous suspension and reprimand. Petitioner was last reinstated in 1989 prior to the April 193 suspension. The 1989 Order of Reinstatement Case No. ADB 184-88 called for the petitioner to be monitored for one year to establish a "ticker" system and to continue counseling with a psychologist or psychiatrist for one year. (Investigation Book, page 222). Not long after petitioner as reinstated, a further pattern of neglect continued that eventually led to his current suspension. The panel that allowed reinstatement in 1989 was concerned with respect to a structured setting did provide conditions for reinstatement which require certain conditions be met including a monitoring of petitioner and continued counseling for a period of time.

Petitioner has acknowledged that he did have problems in the practice that led to inattention and neglect, primarily in criminal appeals cases.

Petitioner, as a result of the most recent suspension, counseled with Dr. Howard Schubiner, a medical doctor connected with Wayne State University who has a substantial expertise and practice in the area of Attention Deficit Disorder (ADD). Dr. Schubiner is co-founder of the Adult Attention Deficit Disorder Clinic at Wayne State University Medical Center.

The panel accepts that Attention Deficit Disorder is a genetic neurological disorder occurring in portions of our population. The panel accepts testimony that the condition is caused by an abnormality of neurotransmitters in certain parts of the brain. The panel accepts the testimony and petitioner's assertion that the disorder has existed all of petitioner's life and has continued from childhood to adulthood. Both petitioner and Dr. Schubiner testified that the petitioner is treated and continues to treat for the ADD since the time of its discovery and is currently being treated for the condition with drug therapy. Methylphenidate or Ritalin, which increases the availability of Dopamine and Norepinephrine in the brain.

Dr. Schubiner testified that if a person has been practicing a profession for ten to fifteen years without any problems and then problems arose, most likely either there had been a change in work

environment or a change in the person. If there had been a change in the environment as suggested, a return to favorable environment may diminish the problems.

Dr. Schubiner stated that, initially, structure and monitoring is recommended.

The panel recognized that petitioner is a college graduate, a law school graduate, passed the bar examination, and successfully practiced law without problems. Petitioner wishes to blame a substantial amount, if not all, of his problems on Attention Deficit Disorder (ADD). Petition[er], in questions and answers, clearly believes that he does not need supervision but is willing to accept supervision, if necessary, in order to be relicensed.

Once relicensed, there cannot be prohibition upon what areas of the law can or cannot be practiced. Once reinstatement takes place, a lawyer is given the opportunity to hold himself out to practice law. There is a certain work ethic required to represent clients in a timely manner. Looking at the Rules of Professional Conduct, preamble:

A Lawyers' Responsibility on page 616 of the *West's Michigan Rules of Court 1997* "In all professional functions, a lawyer shall be competent, prompt, and diligent... A lawyer's conduct should conform to the requirement of the law, both in professional service to clients and in a lawyer's business and personal affairs."

There is a certain work ethic required to represent clients in a timely manner and in the last few years, Mr. Mouradian has not demonstrated by paid employment or any long-term volunteer work that he has a work ethic other than upon his own case. He has not shown any long-term (more than two years) or responsible action for service to others. His many prior problems as an attorney go to timeliness, responsibility toward clients, and awareness of maintaining calendars and schedules. If anyone cannot over a long time (over two years) demonstrate the ability to maintain his or her calendar and meet deadlines (in this day and age of tight court deadlines when clients entrust substantial issues to their attorneys) that person should not practice law.

The panel noted during the hearing that when representing himself, Mr. Mouradian by his questions, in his written materials, and his courtesy toward others raised questions of competency in performing the tasks of an attorney. The panel is concerned about the work product it witnessed in Mr. Mouradian's own representation of himself. Merely retaking and passing the bar examination is not sufficient for this panel to recommend Mr. Mouradian to be reinstated as a lawyer.

Mr. Mouradian emphasized the skills that he can perform in a

work environment that he could survive and argues that his disability must be accommodated in a field that constantly demands that he perform in his weakest skill areas. Although the panel sympathizes with his disability, we believe that we have duty to the general public that supersedes making an exception for Mr. Mouradian without Mr. Mouradian first demonstrating that he is capable over a period of time to meet the obligations that are expected of a competent, capable practicing lawyer. We question the petitioner's true understanding of his problem in that he himself believes that it is only necessary to monitor him in criminal appeals. We agree with the Grievance Commission that if petitioner is fit to practice law, he should be fit to practice in all areas of the law and at least recognize his limitations. Dr. Schubiner, the expert in whom he expresses confidence, clearly states that it is reasonable and necessary that he fit into a structured environment with supervision. We, the panel, have seriously considered whether to recommend readmission with conditions. The panel considered requiring that petitioner work as an employee of some other attorney who would take responsibility for supervising his conduct on a daily basis. Petitioner's employer would then be responsible for providing the necessary supervision and structure. Arthur Weiss offered to be a supervising attorney but he himself questioned whether or not he would be prepared to employ Mr. Mouradian. The panel commends Arthur Weiss, a friend and professional colleague of petitioner, for coming forward on behalf of Mr. Mouradian and his willingness to try to assist in any way he can. However, we recognize further that Mr. Weiss works many hours during the week and acknowledges that he would prefer not being an employer as opposed to being just a supervising attorney.

The panel recognizes that this last suspension was not his only problem. In this light, the panel believes that Mr. Mouradian should be able to demonstrate a work ethic for a period of a minimum of eighteen months by being a para-legal or in some capacity in some business that will demonstrate to this panel or another panel the work ethic that reflects Mr. Mouradian on his own or with supervision can interact with others and perform the tasks necessary to properly represent clients. This panel would expect his employment to include at least thirty hours per week. It is expected that Mr. Mouradian should be able to demonstrate that he can keep and maintain a calendar and interact with other people and function in a job that would have similar requirements to that of any attorney that would allow this or another panel to be more secure than we are currently that if reinstated, even with conditions, Mr. Mouradian would be able to represent clients without further incident.

Until Mr. Mouradian can demonstrate continuous employment and/or continuous volunteer work of thirty hours or more per week for a period of a minimum of eighteen months and until he also demonstrates:

- a. his continued treatment with Dr. Schubiner or another

- competent doctor with respect to ADD,
- b. that he continues to take his medication as prescribed,
 - c. he is capable of handling a work environment similar to that which would be required as a practicing attorney,
 - d. he is willing, at a minimum, to be supervised, if not employed, by another attorney at the time of his reinstatement,
 - e. he accepts and demonstrates understanding of his limitations,

the panel recommends that he not be readmitted to the practice of law.

We wish Mr. Mouradian to know that this was not an easy, but was a difficult decision for this panel when denying a reinstatement petition.

This panel denies John C. Mouradian's request for reinstatement based upon the hearing and the evidence received by the panel. The panel does not find Mr. Mouradian has established by clear and convincing evidence that he has satisfied the necessary criteria pursuant to MCR 9.123(B) for this panel to reach a different result.

It is recommended by the panel that Mr. Mouradian be allowed to have continuing contact with the law acting as a para-legal if he chooses. However, should he choose to act as a para-legal, it is recommended that he notify both the Grievance Commission and the Discipline Board and have his employer/monitor be able to assist another panel regarding his competency and work ethic. We believe that this would be beneficial and in his best interest in an attempt to demonstrate his current ability and work ethic for future reinstatement.

Respectfully submitted,

September 29, 1997

Ronald M. Bookholder
Panel Chairperson

Nina Abrams
Panel Secretary