

STATE OF MICHIGAN

2023-Mar-20

Attorney Discipline Board

In the Matter of the Reinstatement Petition
of PETER T. HOWE, P 57973,

Case No. 22-23-RP

Petitioner/Appellant,

**ORDER AFFIRMING HEARING PANEL ORDER
DENYING PETITION FOR REINSTATEMENT**

Issued by the Attorney Discipline Board
333 W. Fort St., Ste. 1700, Detroit, MI

Tri-County Hearing Panel #54 of the Attorney Discipline Board entered an order in this matter on October 18, 2022, denying the petition for reinstatement filed by petitioner, Peter T. Howe. Petitioner sought review of that decision by the Attorney Discipline Board in accordance with MCR 9.118. The Board has conducted review proceedings, including review of the record before the panel and consideration of the briefs and arguments presented by the parties at a virtual review hearing before the Board on February 15, 2023.

Petitioner was the subject of two prior formal disciplinary proceedings that underlie his petition for reinstatement for deliberately misappropriating settlement funds from two separate clients, one in Michigan and one in Illinois; *Grievance Administrator v Peter T. Howe*, 11-37-AI; 11-52-JC; and *Grievance Administrator v Peter T. Howe*, 12-22-RD. Both matters were assigned to Tri-County Hearing Panel #69 and consolidated for consideration of a stipulation for consent order of discipline in which the parties stipulated that respondent be disbarred. On May 23, 2012, Tri-County Hearing Panel #69 entered an order of disbarment (by consent), that disbarred petitioner from the practice of law in Michigan, effective March 9, 2011.¹

Petitioner filed his first petition for reinstatement on August 1, 2019, and an order of eligibility for reinstatement with conditions was issued by the hearing panel on October 20, 2020.² On review, this Board reversed the hearing panel's order of eligibility for reinstatement and denied petitioner's petition for reinstatement. Our June 18, 2021 opinion concluded that:

¹ Petitioner's license to practice law was automatically suspended, effective March 9, 2011, the date on which he pled guilty to larceny by conversion \$1,000 to \$20,000, a felony under MCL 750.362. See Notice of Automatic Interim Suspension issued March 24, 2011. On September 20, 2011, an order was entered in the Supreme Court of Illinois granting petitioner's motion that his name be stricken from the role of attorneys licensed to practice law in Illinois.

² The order indicated that an order of reinstatement would be issued by the Board upon verification that petitioner was recertified by the Board of Law Examiners, that he paid his bar dues in accordance with Rules 2 and 3 of the Rules concerning the State Bar of Michigan, and that he had designated a third party of his choosing, acceptable to the Grievance Administrator, to administer his office bookkeeping and IOLTA account.

There is a glaring lack of clear and convincing evidence that petitioner has changed his ways, has a proper attitude toward his professional obligations, and can safely be recommended to the public to act in the fiduciary capacity that is necessary in the practice of law. [*In the Matter of the Reinstatement Petition of Peter T. Howe*, 19-77-RP (ADB 2021), p 16.]

On April 18, 2022, petitioner filed his second petition for reinstatement, which was assigned to Tri-County Hearing Panel #54. The parties appeared before the panel on July 29, 2022, for a virtual hearing on petitioner's petition for reinstatement. At the beginning of the hearing, the panel advised that they were aware of petitioner's prior reinstatement proceeding, and in particular the Board's June 18, 2021, opinion, and "[needed] to know and have on the record what is different now than then." (Tr 7/29/22, p 16.) Petitioner testified on his own behalf and answered questions from the Administrator's counsel and hearing panel. No exhibits were offered.

On October 18, 2022, the panel issued its report finding that petitioner had not established his eligibility for reinstatement. The panel's report noted the following:

Petitioner's presentation . . . consisted of a litany of the financial hardships his family has undergone as a result of his disbarment. He acknowledged that his paralegal work had failed, but he had not sought any employment outside of the legal profession in spite of the fact that his felony had been expunged. *Petitioner also testified that he had not contacted either the IRS or Illinois client protection fund to explore his repayment options.* He claimed he had no real options for repayment without his law license. (Tr 7/29/22, pp 7-22, 25-46.)

* * *
Absent new evidence not disclosed at the prior hearing we would be reluctant to grant reinstatement given the prior stated position of the Board. *In the course of the July 29, 2022, hearing no evidence was presented which was substantively different from that which the Board based their decision upon.*

* * *
Specifically, the panel views petitioner's continued failure to engage with and begin repayment to the IRS and the Illinois client protection fund as being inconsistent with the elements of MCR 9.123(B)(5), (6), and (7). Petitioner testified that he has avoided addressing those debts because they were not "on him" yet. (Tr 7/29/22, pp 10, 43.) The panel finds petitioner's explanation unconvincing. The panel is of the opinion that both of those entities would have worked with petitioner to allow for a replayment (sic) that was potentially viable for all concerned. Petitioner provided nothing to suggest to the contrary other than his stated fear of making contact.

The panel also notes that while petitioner described work that he had performed during this period of time and a substantial loan that had been taken out with the intent to repay these two obligations, *none of those funds went to pay for the same. Instead, those monies*

were used to pay for other personal and family expenses that he indicated he wanted to take care of. (Tr 7/29/22, pp 9-10, 14, 18-21, 43-44.)

* * *

This panel may well have been persuaded to order petitioner's reinstatement had there been any real attempt by petitioner over these years to repay his debts owed to the IRS and Illinois client protection fund. However, that did not happen. (Report 10/18/22, pp. 2-4.) (Emphasis added.)

On November 7, 2022, petitioner filed a timely petition for review, arguing that the panel "erred as a matter of fact and law" in denying his petition for reinstatement because he "has complied with BOTH panel's and the Attorney Discipline Board's request to either pay these debts (or to take a "substantial step" to resolving said debts) pursuant to the Board and Panel's instruction. . ." In response, the Administrator requests that the Board affirm the hearing panel's order denying reinstatement.

On review, the Board must determine whether there is proper evidentiary support in the record to support the hearing panel's decision to grant or deny a petition for reinstatement. *In Re McWhorter*, 449 Mich 130, 136; 534 NW2d 480 (1995). However, the granting or denial of a petition for reinstatement under MCR 9.123(B) involves "an element of subjective judgment" and the ultimate "discretionary question whether the Court is willing to present that person to the public as a counselor, member of the state bar, and officer of the court bearing the stamp of approval from this Court." *Grievance Administrator v Irving A. August*, 438 Mich 296,311; 475 NW2d 256 (1991). *In re Reinstatement Petition of Keith J. Mitan*, 12-2-RP (ADB 2013).

The panel's conclusion that petitioner did not establish by clear and convincing evidence, the factors set forth in MCR 9.123(B)(5), (6), and (7)³ certainly has proper evidentiary support in the record and we affirm it entirely.

³ MCR 9.123(B) provides in relevant part:

An attorney whose license to practice law has been revoked or suspended for more than 179 days is not eligible for reinstatement until the attorney has petitioned for reinstatement under MCR 9.124 and has established by clear and convincing evidence that:

* * *

(5) his or her conduct since the order of discipline has been exemplary and above reproach;

(6) he or she has a proper understanding of and attitude toward the standards that are imposed on members of the bar and will conduct himself or herself in conformity with those standards;

(7) taking into account all of the attorney's past conduct, including the nature of the misconduct which led to the revocation or suspension, he or she nevertheless 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 as a member of the bar and as an officer of the court.

The reinstatement requirements set forth in MCR 9.123(B)(5), (6), and (7) require that we scrutinize petitioner's conduct before, during, and after the misconduct which gave rise to his disbarment in an attempt to gauge his current fitness to be entrusted with the duties of an attorney. *In Re Reinstatement of Arthur R. Porter, Jr.*, 97-302-RP (ADB 1999). There is "no formula for reinstatement" and "[t]he evidence necessary to establish compliance with MCR 9.123(B)'s requirements clearly and convincingly will vary depending on the circumstances of the individual petitioner." *Id.* at 10.

Subrule 7 requires the clear conclusion that the petitioner can safely be recommended as a person fit to be consulted in matters of trust and confidence. MCR 9.103(A) defines the license to practice law as "a continuing proclamation by the Supreme Court that the holder is fit to be entrusted with professional and judicial matters and to aid in the administration of justice." To affix such a proclamation of safety, or "stamp of approval," August, 438 Mich at 311, upon someone who has committed serious misconduct would seem to require a searching inquiry into the causes for the conduct resulting in discipline and the most convincing showing that a genuine transformation has occurred. [*Id.* at 11.]

Petitioner deliberately stole settlement funds belonging to a Michigan client and an Illinois client. While our prior opinion and the reports of both panels mention the fact that the Illinois Client Protection Program and the IRS still have not been paid by petitioner, we must be clear about what is at issue in this matter. This is not a case involving excessive debt or financial responsibility in a general sense. The references to the fact that repayment has not been made (and the IRS has not been paid), in whole or in part, do not convert this proceeding into a negotiation regarding debt repayment, and yet petitioner approaches it in exactly this fashion: *if* he is reinstated, *then* he will think about repayment.

Forced or compelled restitution is not mitigating in a discipline case. ABA Standard 9.4(a). And we have "warned against an overemphasis on restitution as mitigation in misappropriation cases"⁴ because not every lawyer will have the means to make restitution and such ability may come and go. The ability to make restitution neither establishes the character requisite to hold a law license or provides assurance to the public that only those fit to act as repositories of their funds will be able to practice law. Our sanctions must not result in clients having to gamble on the financial health of their attorneys when they entrust funds to them. By analogy, making restitution for theft of client or third party funds does not entitle a disciplined attorney to reinstatement. It is but one indicator of rehabilitation and fitness, and it is certainly not enough by itself to earn the proclamation of fitness contemplated by MCR 9.123(B).

As the case law referenced above repeatedly underscores, whether an attorney who deliberately violated the fundamental fiduciary responsibility to not steal client funds should be reinstated to the practice of law will depend upon a truly compelling showing of change and rehabilitation. Here, no evidence of moral rehabilitation is in the record. Petitioner's conduct since disbarment and the activity leading to it does not evidence a genuine transformation in any respect and there is nothing in the record to support a conclusion that petitioner could now be safely recommended to the public as a fiduciary in light of his misconduct. This is so even before considering petitioner's failure to pay one dime to reimburse the Illinois Client Protection Program

⁴ *Grievance Administrator v Peter C. Mason, Jr.*, 13-4-GA (ADB 2013), pp 5-6.

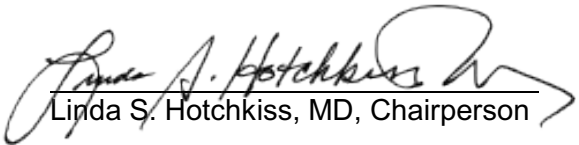
for the compensation it paid to the victims of his theft (or towards his IRS obligations) despite having the ability to do so. When the panels and this Board reference these failures, the point is not that payment will result in reinstatement. Rather, the point is that the failure even to comprehend the importance of righting the egregious wrong of theft from a client while having substantial resources to do so is evidence that petitioner has *not* changed his ways or his character. Again, petitioner's failure to meet the burden imposed by MCR 9.123(B) is about so much more than payment or nonpayment. His failure to grasp this has likely contributed to his inability to meet that burden.

NOW THEREFORE,

IT IS ORDERED that the hearing panel's order denying petition for reinstatement filed in this matter on October 18, 2022, is **AFFIRMED**.

IT IS FURTHER ORDERED that respondent shall, on or before April 18, 2023, pay costs in the amount of **\$792.75**, consisting of costs assessed by the hearing panel in the amount of \$579.75 and, court reporting costs incurred by the Attorney Discipline Board in the amount of \$213.00 for the review proceedings conducted on February 15, 2023. Please refer to the attached cost payment instruction sheet for method and forms of payment accepted.

ATTORNEY DISCIPLINE BOARD

By: 
Linda S. Hotchkiss, MD, Chairperson

Dated: March 20, 2023

Board members Linda S. Hotchkiss, MD, Alan M. Gershel, Rev. Dr. Louis J. Prues, Linda M. Orleans, Jason M. Turkish, Andreas Sidiropoulos, MD, Katie Stanley, and Tish Vincent concur in this decision.

Board member Peter A. Smit was absent and did not participate.