STATE OF MICHIGAN

Attorney Discipline Board

In the Matter of the Reinstatement Petition
of Jose A. Sandoval, P 57274,

Petitioner/Appellee.

Case No. 15-17-RP

Decided: June 2, 2017

Appearances:

Charles E. Chamberlain, Jr., for Petitioner/Appellee
Cynthia C. Bullington, for the Grievance Administrator/ Appellant

BOARD OPINION

Kent County Hearing Panel #1 of the Attorney Discipline Board entered an order of eligibility for reinstatement with conditions on October 5, 2015, granting the reinstatement petition filed by petitioner. The Grievance Administrator petitioned for review on the grounds that the panel erred in its findings that petitioner established all of the applicable reinstatement criteria in MCR 9.123(B) by clear and convincing evidence because the panel misconstrued MCR 9.119(E)(2) committing factual and legal error in its interpretation. A review hearing was scheduled for February 19, 2016.

Shortly before the review hearing, the Grievance Administrator filed a motion for remand to the panel to take the testimony of a newly discovered witness, Benjamin Pablo Jimenez, whom the Administrator claimed in an affidavit, alleged that petitioner engaged in the unauthorized practice of law during a meeting petitioner had with Mr. Jimenez on April 25, 2015. On March 16, 2016, the Board issued an order granting the Administrator's motion and remanded this matter to the hearing panel to allow the parties and the panel to take Mr. Jimenez's testimony. The panel was ordered to then file a supplemental report and enter an order either reaffirming its earlier order of eligibility for reinstatement or vacating its earlier order and denying reinstatement. The Grievance Administrator's petition for review was dismissed without prejudice.

The parties appeared before the hearing panel on May 23, 2016, and both Mr. Jimenez and petitioner were questioned about the events referenced in Mr. Jimenez's affidavit. On October 11,

2016, the hearing panel issued its supplemental report in which it reaffirmed its prior order of eligibility for reinstatement with conditions. The Grievance Administrator petitioned for review of the hearing panel's October 11, 2016 order, on the same grounds as before.

The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118, including review of the entire record before the panel and consideration of the briefs and arguments presented by the parties at a review hearing before the Board on December 16, 2016. Having done so, we conclude that there is proper evidentiary support for the hearing panel's findings and that petitioner's reinstatement to the practice of law, subject to the conditions imposed by the panel, is consistent with the goals of these reinstatement proceedings and should therefore be affirmed.

Factual Background

Petitioner was convicted by jury verdict in the U.S. District Court, Western District of Michigan, for obstruction of justice, a felony, in violation of 18 U.S.C. § 1503. Based on petitioner's conviction and the testimony presented at a subsequent judgment of conviction proceeding, Kent County Hearing Panel #2 found that petitioner committed professional misconduct in violation of MCR 9.104(1), (3)-(5); and MRPC 3.3(a); 4.2; and 8.4(a)-(c). Petitioner's license to practice law was initially suspended on an interim basis, effective May 3, 2010, the date of his felony conviction. Once the judgment of conviction proceedings concluded, his license was suspended for 2½ years, effective April 15, 2011.

Petitioner filed his petition for reinstatement on February 9, 2015, asserting that he was in compliance with MCR 9.123(B) and the order of discipline issued by Kent County Hearing Panel #2. The Grievance Administrator filed its Investigative Report on April 10, 2015, and the matter was assigned to Kent County Hearing Panel #1. Public hearings were held on May 6, 2015 and July 7, 2015.

Proceedings before the Hearing Panel

At the May 6, 2015 hearing, petitioner presented the testimony of five witnesses, two of which were the attorneys petitioner has done some work for since the suspension of his license, Teresa Hendricks and Daniel Watkins. Petitioner also testified on his own behalf at the July 7, 2015 hearing. The parties then submitted written closing arguments.

The Grievance Administrator took the position that petitioner failed to establish by clear and convincing evidence, that his conduct since he was suspended has been exemplary and above reproach (MCR 9.123(B)(5)), that he has a proper understanding of, and attitude toward, the standards imposed on Michigan lawyers and will abide by them (MCR 9.123(B)(6)), and that, after considering all of his past conduct and the nature of his misconduct, he can nevertheless be safely recommended to the courts, the public, and the profession as fit, trustworthy, and as one who will aid in the administration of justice (MCR 9.123(B)(7)).

Specifically, the Grievance Administrator argued that questions were still unanswered as to the issue of petitioner's direct contact with clients of the Hendricks & Watkins law firm while acting as a paralegal, which appeared to be in direct violation of MCR 9.119(E)(2); petitioner's referral of clients to the same firm; repeated negative balances on his personal checking accounts; petitioner's admitted commingling of client trust funds by depositing them into his business account; his failure to provide the IOLTA records until discovered and demanded by the Administrator; and his failure to provide copies of all bank accounts maintained at Chase bank at the time of his suspension or satisfactory proof that reasonable efforts were undertaken to obtain the records. (7/13/15 Grievance Administrator's written closing argument, p 7.) The Administrator argued that petitioner failed to show, by clear and convincing evidence, that "he will have the propensity to act in a fair, open, and honest manner" and requested that the petition for reinstatement be denied.

In his written closing argument, petitioner acknowledged that there were three areas of concern that were addressed during the hearings on his petition for reinstatement: the underlying offense conduct; his personal financial situation; and, the nature of his work at Hendricks & Watkins, PLC.

With regard to the underlying offense, petitioner noted that his behavior, although admittedly wrong, was motivated out of a concern for his client, that he was acquitted of one of the counts (suborning perjury), and that the judge imposed a substantial downward departure in his sentence.[1]

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[1] Petitioner described what he did in his written closing argument to the panel. Petitioner stated that "he was charged with suborning perjury and obstruction of justice, which stemmed from his representation of a client in an illegal re-entry case in which allegations surfaced that she was involved with manufacturing false documents. Petitioner contacted a represented witness about the manufacturing allegations, and the witness later accused him of trying to get him to change his testimony. When [petitioner] sought relief from the court seeking an order to make the witness available, [petitioner] lied and told the court that he had not yet met with the witness." (7/21/15 Petitioner's written closing argument, p 6.)

With regard to his personal financial situation, petitioner acknowledged that he "has not managed his personal financial affairs very well." Since his suspension and subsequent conviction, petitioner stated that he faced "daunting financial obligations" stemming from his inability to continue to pay those obligations without a law practice. In an attempt to pay these obligations, petitioner maintained three forms of employment at UFCW Local No. 951, Michigan Migrant Legal Assistance Project (MMLAP), and independent contracting through his newly created business entity, Sandoval Consulting Services. He further stated that he has resisted filing for bankruptcy and instead worked to pay his outstanding obligations. Petitioner noted that when he was able to practice law he did not have financial difficulties, and that at no time has anyone questioned his handling of client funds. Petitioner acknowledged to the panel that he would be willing to follow any advice and/or conditions imposed upon him to straighten out his current personal financial issues.

With regard to the nature of his work at Hendricks & Watkins, PLC, petitioner admitted that he contracted with the firm, through Sandoval Consulting Services, to provide "assistance" to Attorneys Hendricks and Watkins in immigration matters. Petitioner described this assistance as "legal research, setting up and organizing the files, drafting motions, preparing counsel for hearings, and filling out forms." Petitioner specifically denied that he recruited or solicited clients for the firm or that he ever filled out client intake forms, and noted that no witnesses testified that he did either. Petitioner admitted that "on occasion, [he] followed up with clients at the request of counsel in order to have complete data, which was no more than a routine ministerial function that is delegated to support staff on a regular basis." Petitioner denied that his "minimal, occasional, and incidental" contact with clients, when he would act as an agent or conduit of information, violated the letter or spirit of MCR 9.119(E)(2) and maintained that his conduct was consistent with the Court's holding in *Grievance Administrator v Albert A. Chappell,* 418 Mich 1202; 344 NW2d 1 (1984) (A suspended or disbarred lawyer may act as an "agent, clerk, or employee" of a licensed attorney).

The Hearing Panel's Initial and Supplemental Reports

In its initial report, issued October 5, 2015, the hearing panel concluded that petitioner had met his burden of proof and was eligible for reinstatement upon the following conditions:

> Petitioner obtain financial counseling with a qualified professional accountant to examine and audit his current personal and business bank accounts and establish a plan of "best accounting practices"

> addressing petitioner's financial situation, to eliminate overdrafts, and/or any improper transfer of funds between accounts.
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> Petitioner's counsel submit a financial plan for the panel's review within sixty (60) days hereof, consisting of a report prepared by a qualified financial planning professional addressing these issues, together with a summary of the financial counseling program that petitioner agrees to participate in; and,
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> In the event petitioner shall open his own law practice, petitioner shall first be required to hire a professional accountant to manage his law firm finances.

The report noted that it was agreed that for purposes of petitioner's reinstatement petition, only MCR 9.123(B)(3), (5), and (7) were in dispute and that a determination of (7) was based primarily on how (3) and (5) were resolved.[2]

The panel found that the requirement of MCR 9.123(B)(3) (that petitioner has not practiced or attempted to practice law contrary to his order of suspension) must also be read in light of the prohibitions contained in MCR 9.119(E)(2).[3] They also concurred with petitioner's position that the

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[2] MCR 9.123(B) states, 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:

> (3) he or she has not practiced or attempted to practice law contrary to the requirement of his or her suspension or disbarment;
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> (5) his or her conduct since the order of discipline has been exemplary and above reproach; and,
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> (7) taking into account all of the attorney's past conduct, including the nature of the misconduct that 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.

[3] Pursuant to MCR 9.119(E), an attorney who is disbarred, suspended, transferred to inactive status pursuant to MCR 9.121, or who resigns is, during the period of disbarment, suspension, or inactivity, or from and after the date of resignation, forbidden from;

> (1) practicing law in any form;
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> (2) having contact either in person, by telephone, or by electronic means, with clients or potential clients of a lawyer or law firm either as a paralegal, law

prohibitions of MCR 9.119(E)(2) could not be applied literally in light of the Court's holding in *Chappell,* and its definition of the practice of law set forth in *Dressell v Ameribank*, 468 Mich 557; 664 NW2d 151 (2003) (The "practice of law" is when one counsels or assists another in matters that require the use of legal discretion and profound legal knowledge). The panel concluded that for purposes of analyzing MCR 9.123(B)(3), "the proper focus is not whether petitioner worked for a law firm during the period of his suspension, what his title may have been (i.e. paralegal, assistant, or independent contractor), or even whether he had some minimal contact with clients; but rather, whether he was actually engaged in the practice of law as defined [by *Dressell*]." (Report 10/5/15, p 5.) They further noted that they had a duty to review the evidence in its entirety and to "search beyond petitioner's work title and superficial facts regarding client interaction," noting that the Grievance Administrator's claims that petitioner was "assigned paralegal responsibilities consisting of research, preparation of forms and contact with clients to gather information," was without citation to the transcript and "actually overstates the testimony in this regard." (Report 10/5/15, p 7.) The panel concluded that:

> At most, it appears that petitioner's role at Hendricks and Watkins was principally clerical in nature, consisting mainly of gathering information and data, completing forms and occasionally meeting or following up with clients to make sure that the information gathered was complete. This is not unlike a bank employee who would gather information to complete a mortgage form, or a non-legal assistant trained to complete client intake sheets and/or organize files and records . . . there is certainly no evidence to suggest that petitioner was performing a function requiring the use of legal discretion or profound legal knowledge. [Report 10/5/15, p 8.]

Finally, the panel further concluded that for purposes of analyzing MCR 9.123(B)(5) and (7), the focus should be on "whether the evidence of petitioner's financial mismanagement bears on his honesty, and/or is evidence of something less than exemplary conduct for purposes of determining

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> clerk, legal assistant, or lawyer;
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> (3) appearing as an attorney before any court, judge, justice, board, commission, or other public authority; and,
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> (4) holding himself or herself out as an attorney by any means.

if he can be recommended to the public, courts, and legal profession as a person fit to be consulted by others and to represent them in matters of trust and confidence . . . the unrefuted evidence describes someone who was on the brink of a personal financial collapse during the period of his suspension and was taking desperate measures to avoid having to file bankruptcy." (Report 10/5/15, p 10.) The panel concluded that petitioner's personal financial mismanagement was not a "character issue," but rather a lack of financial education and business management training and expertise.

On October 11, 2016, after taking Mr. Jimenez's testimony and reviewing additional written closing arguments from the parties after remand, the hearing panel issued its supplemental report. In regard to Mr. Jimenez's testimony, the panel noted:

> During that approximately one-half hour meeting [on April 25, 2015], Mr. Jimenez testified that petitioner assisted him in completing a 10-page application and also discussed with petitioner his options for attempting to obtain residency. Contrary to Mr. Jimenez's affidavit, he stopped short of testifying that petitioner provided any legal advice, but, at most, instructed him as to the differences between a work permit and residency. [Supplemental Report 10/11/16, p 2.]

The panel also noted that the issue on remand was the same as one of the major issues involved in the underlying reinstatement hearing: Did petitioner practice or attempt to practice law contrary to the terms of his order of suspension and/or to the requirements of MCR 9.123(B)? The panel concluded that:

> After taking into consideration the testimony of both witnesses [and] consistent with their original conclusion, it appears that petitioner's role at Watkins & Hendericks was principally clerical in nature, consisting mainly of gathering information and data, completing forms and occasionally meeting or following up with clients to make sure the information gathered was complete. This does not rise to the level of practicing law, and there is no evidence based upon this second hearing, that petitioner was performing a function requiring the use of legal discretion and/or profound legal knowledge.
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> * * *
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> There is no indication in the record that petitioner did anything more than discuss Mr. Jimenez's options for addressing his immigration status, while helping him complete a form, a form that could easily be completed without any legal knowledge or assistance. Further, there is no indication that petitioner gave any legal advice upon which Mr.

> Jimenez relied and in fact, petitioner testified he told Mr. Jimenez to discuss the possibility of seeking residency with Attorney Watkins. [Supplemental Report 10/11/16, p 3.]

The hearing panel affirmed its prior order of eligibility for reinstatement with conditions.

Argument on Review

The Grievance Administrator petitioned for review of the panel's order of eligibility for reinstatement with conditions only on the basis that the panel misconstrued MCR 9.119(E)(2) committing factual and legal error in its interpretation, which resulted in the hearing panel erroneously granting petitioner's petition for reinstatement.[4]

Standard of Review

In reinstatement proceedings, as in other disciplinary proceedings, the Board and the Court review findings of fact for proper evidentiary support. *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). Hearing panel decisions on the law are reviewed by the Board *de novo*. *Grievance Administrator v Jay A. Bielfield*, 87-88-GA (ADB 1996); *Grievance Administrator v Geoffrey N Fieger*, 94-186-GA (ADB 2002).

The burden is on petitioner to prove clearly and convincingly that he is fit to practice law and that reinstating his license in no way endangers the public. We review the panel's decision to grant reinstatement in this matter applying the above standards.

Discussion

As earlier noted, the hearing panel found by clear and convincing evidence that petitioner did

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[4] On October 24, 2016, the Grievance Administrator filed a timely petition for review of the hearing panel's supplemental report and order. That petition for review raised the same issue raised in the original petition for review: the hearing panel misconstrued MCR 9.119(E)(2), committing factual and legal error in its interpretation. The Administrator again sought reversal of the panel's supplemental order. Petitioner again argued that the panel did not misconstrue the requirements of MCR 9.119(E)(2), that he met his burden of proof, and urged the Board to affirm the hearing panel's supplemental order.

not engage in the unauthorized practice of law in violation of his suspension. We find that there is proper evidentiary support for this finding.

At issue is the interpretation of MCR 9.119(E)(2), specifically whether that particular subsection of the rule is a strict "no-contact" rule which prohibits contact with clients or potential clients if the suspended or disbarred attorney is working in the capacity of a paralegal, law clerk, legal assistant, or lawyer, regardless of the type of work the suspended or disbarred attorney may be performing.

Effective September 1, 2011, MCR 9.119(E) was amended to its present language to include resigned attorneys, and to add the client contact prohibition found in subsection (E)(2). The Administrator argues that the Court's holding in *Chappell* (a suspended or disbarred lawyer may act as an "agent, clerk, or employee" of a licensed attorney) was supplanted by the Court's adoption of the amendments to MCR 9.119(E), thus it was error for the panel to rely upon the opinion as valid precedent. We do not agree. The Court opinion in *Chappell*, which was issued in lieu of granting leave to appeal, modified this Board's order to the extent that it barred Respondent Chappell, during his period of suspension, from working as an "agent, clerk or employee" of a licensed attorney. The Court ruled that such a bar exceeded the Board's power of suspension because engaging in those activities does not require a license to practice law. That rationale did not change with the adoption of the amendments to MCR 9.119(E).

The Administrator correctly notes that the interpretation of a court rule, in this case MCR 9.119(E)(2), begins with a review of the plain language of the rule itself and, if unambiguous, the rule is to be enforced as written. While the plain language of MCR 9.119(E)(2) may be unambiguous on its face, there are qualifiers within the language that appear to be a necessary prerequisite to the prohibited conduct.

In Michigan, a suspended attorney is not barred from being employed by a licensed lawyer and/or law firm as an agent, clerk, employee, or even a paralegal during the period of his/her suspension or disbarment. However, they are barred from having in-person, telephone, or electronic contact with clients, *while acting in the capacity as* a paralegal, law clerk, legal assistant, or lawyer. Again, the underlying issue here is whether this prohibition applies regardless of the type of work the suspended or disbarred attorney may be performing. In other words, is it enough that the

suspended or disbarred attorney is called a "paralegal" or "law clerk" or "legal assistant," so that any client contact is a violation of the rule? Or, does it matter what kind of work they may be doing at the time they have client contact? Attorneys charged with, or having to overcome the allegation in a reinstatement proceeding, that they are acting in violation of their order of discipline, or in this case contrary to a specific court rule, will usually argue that they are only performing ministerial acts which could be performed by laymen. Petitioner is no different.

The amendments to MCR 9.119(E) addressed very legitimate concerns with allowing disbarred or suspended attorneys to be employed by other lawyers and/or law firms. Unfortunately, there have been cases in Michigan in which disbarred and/or suspended attorneys have attempted to use their association with other lawyers and/or law firms as a front to continue practicing law or to hold themselves out to the public as being able to practice law. *In re Edgar J. Dietrich,* 466 Mich 1207, 643 NW2d 234 (2002) (disbarred attorney enjoined by the Court from meeting with, or speaking to, clients or lawyers of firm due to the continued operation of his law office through the use of newly licensed and admitted lawyers); *In re Reinstatement Petition of Keith J. Mitan,* 12-2-RP (ADB 2013) (reinstatement denied because petitioner engaged in the practice of law contrary to his order of suspension, by continuing to represent his father's estate in probate proceedings in state and federal court); *In the Matter of the Reinstatement Petition of Pamela Radzinski,* 15-15-RP (2015) (reinstatement denied because of petitioner's "flagrant violation of the criteria under MCR 9.123(B)(3)-(7)," by continuing to practice law during her suspension period, and continuing to operate her law office, in clear violation of her prior disciplinary orders).

The Administrator argues that mere title alone is enough to activate the prohibition of the rule, however, as these prior cases illustrate, evidence is usually and necessarily presented as to the type of work being performed. Since petitioner was not barred from being employed by the Hendricks & Watkins firm during the period of his suspension, it was necessary and appropriate, for the panel to determine in what capacity was petitioner employed, and, if it was as a paralegal, law clerk, or legal assistant, whether he was acting in that capacity at the time he met with clients of the Hendricks & Watkins firm. In order to make that determination, the panel had to consider evidence relating to the type of work petitioner was doing at the time he met with clients.

The Grievance Administrator further argues that petitioner was acting in violation of the rule

because he was not acting as a secretary; he was paid $50 an hour while the office secretary received $15 an hour, and he "assisted the clients in completing forms and took histories." (11/12/15 Grievance Administrator's Brief, p 13.) The Grievance Administrator insists that petitioner's contact with clients was in a direct, substantive capacity. However, the evidence admitted appears contrary to that assertion.

Petitioner testified that shortly after his interim suspension became effective, he created and incorporated a limited liability company titled "Sandoval Consulting Services, LLC." Petitioner explained that he created the company to be able to provide translation (petitioner is fluent in Spanish), and paralegal services during his suspension. During this time frame, petitioner was employed as a union liaison/organizer for UFCW Local No. 951 and the MMLAP (he was supervised by Attorney Hendricks, who is the executive director of the project), and as a independent contractor/paralegal for the Hendricks & Watkins firm. Petitioner was asked about the type of services provided to Hendricks & Watkins:

> Q: Now, when you rendered services to Hendricks & Watkins, you acted as a paralegal?
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> A: For them as a paralegal. At times I had to talk to their clients, but not as a paralegal, just to complete information in forms that was missing. Sometimes I would tell the receptionist to contact them and do that. But if I was there working over the weekend or so, I would then call them if I had missing blanks on the forms, just to complete that. So I don't think I was a paralegal for them; I was a replacement secretary.
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> Q: So they might tell you that they need to have certain forms completed and you're to contact so and so to get that information?
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> A: No . . . I go into the database and find the forms that are already there. So I check with the end date and start inputting data into the forms. And then if there's a blank or there is a need for a question to be answered, then oftentimes I ask the secretary to do that if I don't have the time to. If I do have the time to do that, then I - - there's a phone number I would call the person and ask - - ask them to put information that is missing. That's it. [Tr 7/7/15, pp 109, 136-137.]

Attorney Watkins testified that when petitioner had contact with existing clients, it was only

to gather information to be put into the form(s) on the computer, that this work was no different than what a secretary would do, that petitioner was not acting in a paralegal capacity, and that on those occasions, he was introduced to the client(s) simply as Attorney Watkins' assistant. (Tr 5/6/15, pp 28, 31, 36.)

Attorney Hendricks was also questioned about petitioner's title and the work he did at the Hendricks & Watkins firm:

> Q: And he was brought on board and this was as a paralegal or a law clerk?
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> A: Yes, as an independent paralegal, yes.
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> Q: And that was his work title, paralegal?
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> A: That's what we referred to him as.
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> Q: And so not simply as an assistant, as a paralegal?
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> A: I don't think we made a big distinction but we always made it clear that he was not a lawyer.
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> Q: Did he ever ask - - meet with client of the firm and ask them questions in order to fill out the form?
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> A: The way that it worked is all of the clients meet with Dan or I, Jose is not in the room . . . So he takes all of the information we have on the questionnaire and then enters it into the database . . . So they might come back and then there is a paralegal area that's an open area and they can sit there while he has the database open and enter it so that we're not transferring it from paper and then back to the database . . . we don't ask him to meet with clients. We ask him to enter the information . . . He would assist me, if I'm missing pieces of the questionnaire, to get the information out of the client and get it into the database.
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> Q: And do you perceive his role in that capacity where he's actually meeting with the client to be a paralegal role?
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> A: Well, it could just be a clerical role because he is not doing any legal research or writing any legal briefs.

Q: Would it be any more than what you could have a secretary do, for example?

A: Yes, that's correct.

* * *

Q: So are you comfortable that in interfacing with clients, since the time of the suspension, that whatever assistance Mr. Sandoval provided was of purely a clerical nature?

A: I think that's a fair way to characterize it. [Tr 5/6/15 pp 74-77, 84-86.]

This characterization did not change after further testimony was taken after remand. At the May 23, 2016 hearing, Mr. Jimenez testified that no one at Mr. Watkin's office told him that petitioner was an attorney, he never thought petitioner was a lawyer, and that he believed petitioner to be "an employee, an assistant," who was going to "do the paperwork, fill the paperwork." (Tr 5/23/16, pp 12-14, 21, 28.)

No evidence was presented or admitted to the contrary. This was specifically noted by the panel, in both reports, as cited earlier in this opinion. Our review of the record results in the same conclusion; when petitioner had contact with clients of the Hendricks & Watkins firm, it was in a clerical capacity. The panel concluded that MCR 9.119(E)(2) does not preclude a suspended or disbarred lawyer, while doing work that is principally clerical in nature, from having direct contact with clients of a firm at which he is employed. We find that this is a plausible interpretation of the rule that is not contrary to either the spirit or the letter of the rule amendments.

Conclusion

No evidence was admitted that any clients assumed, based on petitioner's manner and/or communication, that petitioner was actively licensed to practice law or authorized to provide legal advice; the very conduct that MCR 9.119(E) as amended, was intended to protect the public from. Ultimately, this matter necessarily involves the question of whether is it safe to allow petitioner back into the practice of law. Again, the burden was on petitioner to establish compliance with the requirements of MCR 9.123(B) by clear and convincing evidence. In *In re Reinstatement of Arthur R. Porter, Jr.*, 97-302-RP (ADB 1999), the Board held that "subrules (5)-(7) of MCR 9.123 require scrutiny of petitioner's conduct before, during, and after the misconduct which gave rise to the suspension in an attempt to gauge petitioner's current fitness to be entrusted with the duties of an

attorney." The hearing panel's initial and supplemental reports both reflect that they conducted such a review before they determined that petitioner appeared fit and worthy of reinstatement, with the conditions imposed. For all of the foregoing reasons, we affirm the hearing panel's order of eligibility for reinstatement with conditions in its entirety.

Board members Louann Van Der Wiele, Rev. Michael Murray, Dulce M. Fuller, James A. Fink, John W. Inhulsen, Jonathan E. Lauderbach, Barbara Williams Forney, Karen D. O'Donoghue, and Michael B. Rizik, concur in this decision.