

In the Matter of the Reinstatement Petition
of Bernard Adams, Jr, P 10033,

Petitioner/Appellant.

94-130-RP

Decided: October 10, 1995

BOARD OPINION

The Attorney Discipline Board has considered the Grievance Administrator's petition for review of a hearing panel order of reinstatement. For the reasons stated below, the panel's decision to grant reinstatement is reversed and the petition is denied.

The petitioner, Bernard Adams, Jr, was suspended for 180 days effective August 10, 1993 by an order of the Attorney Discipline Board, increasing a hearing panel suspension of 120 days. The Board affirmed the hearing panel's conclusion that the respondent was retained to represent the defendant in a civil case but failed to appear for a settlement conference; failed to advise his client of the entry of a default judgment; failed to file a timely motion to set aside the default judgment; failed to keep his client reasonably informed regarding the status of the case; and, failed to respond to the Grievance Administrator's request for further information or to cooperate with the Attorney Grievance Commission's investigation.

The petitioner filed a petition for reinstatement with the clerk of the Supreme Court on July 25, 1994. In accordance with MCR 9.124, the matter was assigned to a hearing panel which conducted a public hearing on November 10, 1994. In addition to the testimony and exhibits offered by the petitioner, the record includes the Grievance Administrator's 375 page investigative report submitted in accordance with MCR 9.124(C) containing a summary of the facts of the petitioner's previous misconduct, a transcript of his sworn interview conducted on September 1, 1994, and a summary of other available evidence bearing on his eligibility for reinstatement. On

April 11, 1995, the hearing panel entered an order granting the petition for reinstatement with conditions including the submission of written proof that the petitioner has opened a client trust account conforming to the requirements of MRPC 1.15(d) and that he practice under the supervision of another attorney for one year. A dissenting opinion was submitted by the hearing panel's chairperson who found that the petitioner had not established the criteria of MCR 9.123(B)(5-7).

On review, the Board must determine whether or not the findings of the hearing panel have proper evidentiary support in the whole record. In re Freedman, 406 Mich 256; 277 NW2d 635 (1979); In re Grimes, 414 Mich 483; 326 NW2d 380 (1982); Grievance Administrator v August, 438 Mich 296 (1991).

Applying that standard in this case, we must conclude that there is insufficient evidentiary support in the record to support a finding that the petitioner established the requirements of MCR 9.123(B)(5, 6 & 7) by clear and convincing evidence. In reaching this conclusion, we adopt the dissenting opinion of the hearing panel chairperson who observed:

"I am concerned that after thirty-some years of practice, which included previous disciplinary actions, Mr Adams does not seem fully cognizant of many of the basic responsibilities required to practice law. Likewise, I am concerned about Mr Adams' failure to follow the details of all of the requirements for reinstatement. While I do not agree with all of the Grievance Administrator's concerns, it does seem to me that the Petitioner needs to take further steps to satisfy MCR 9.123(B)(5); MCR 9.123(B)(6) and MCR 9.123(B)(7).

In short, I do not feel comfortable at this time in being able to safely recommend the Petitioner to the public, the courts and the legal profession as a person who is presently fit to be entrusted 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.

It would be my hope that the Petitioner would take addition [sic] steps to satisfy these concerns, and then, in 180 days again petition for reinstatement as is permitted by law." (Hrg. Pnl. Rept. 4/11/95, p. 4)

The petitioner testified that at the time of his suspension, he had ten to fifteen active clients. Rule 9.119(A) specifically directs that an attorney whose has been suspended must, within seven days of the effective date of the order of discipline, notify those clients, in writing, by registered or certified mail, of the nature and duration the discipline, the respondent's inability to act as an attorney and the location of the clients' files. Rule 9.119(C) further directs that the disciplined attorney must file an affidavit of compliance with the Attorney Discipline Board and Attorney Grievance Commission within fourteen days of the effective date of the order.

At his interview at the Attorney Grievance Commission on September 1, 1994, the petitioner testified under oath that he notified all of his active clients of suspension by certified mail, return receipt requested, and that he would furnish those letters to the Commission (Administrator's Investigative Report, p. 139).

At his reinstatement hearing on November 10, 1994, the petitioner had still not submitted proof that he had mailed written notices to his clients. He told the panel:

"I haven't done it. I'm sorry. I didn't know I had to do it. I missed that. I'm sorry. (Tr. p. 59). (emphasis added)

The petitioner further testified that he had actually notified only one client of his suspension in writing but that he had contacted his other clients in person or by telephone. To date, the petitioner has yet to submit the affidavit of compliance, including mailing receipts, which should have been filed August 14, 1993. The petitioner's inconsistent testimony on this subject, together with his professed ignorance of the requirements of Rule 9.119 falls substantially short of the requirement of Rule 9.123(B)(6) that he demonstrate a proper understanding of and attitude toward the standards that are imposed on members of the bar.

The petitioner's less than scrupulous adherence to the standards imposed upon him as a suspended attorney are also amply demonstrated by his correspondence to the Wayne County Prosecutor's Office on "Adams and Sims" law firm letterhead on November 17, 1993 on behalf of his client Lilly Mae William, his failure to advise his client and the court of his impending suspension while representing defendant in the matter of People v Robert Haggerman, and his apparent failure to notify his client, the prosecutor and the court in that case of his suspension until September 15, 1993, as outlined in Judge Parker's letter to the Grievance Administrator dated September 14, 1993, (Grievance Administrator's Report, p. 364-365).

Finally, we must comment on the petitioner's testimony to the panel that, he did not, after thirty-one years as a licensed attorney, fully understand the need to maintain a client trust account for the handling of client funds or the need to refrain from commingling his personal funds with those of his clients. (Tr. pp. 97-105).

Until the petitioner has established each of the requirements of MCR 9.123(B) by clear and convincing evidence, he may not be reinstated to the practice of law.

Board Members John F Burns, George E Bushnell, Jr, C Beth DunCombe, Marie Farrell-Donaldson, Elaine Fieldman, Albert L Holtz, Miles A Hurwitz and Paul D Newman.

Board Member Barbara B Gattorn did not participate in this decision.