

STATE OF MICHIGAN

Attorney Discipline Board

FILED
ATTORNEY DISCIPLINE BOARD

2020-Nov-20

In the Matter of the Reinstatement Petition of
NADER W. NASSIF, P 72557,

Petitioner/Appellant,

Case No. 19-97-RP

ORDER OF ELIGIBILITY FOR REINSTATEMENT

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

Tri-County Hearing Panel #4 of the Attorney Discipline Board issued a report and order on June 22, 2020 finding that petitioner had not sustained his burden of showing, by clear and convincing evidence, that he satisfied the requirements of MCR 9.123(B)(1), (6), and (7) and denying petitioner's petition for reinstatement. Petitioner filed a timely petition for review requesting that the Board reverse the hearing panel's findings and grant his petition for reinstatement. In response, the Grievance Administrator took no position, but reiterated, as he did before the hearing panel, that he had no objection to petitioner's reinstatement.

The Attorney Discipline Board has conducted review proceedings in accordance with General Order ADB 2020-2, and MCR 9.118, including review of the evidentiary record before the panel and consideration of the briefs and arguments presented by the parties at a virtual proceeding via Zoom video-conferencing conducted on October 21, 2020. For the reasons discussed below and based on the evidence presented, we find that petitioner has established, by clear and convincing evidence, the criteria for reinstatement set forth in MCR 9.123(B). We therefore vacate the hearing panel's order and will issue an order granting petitioner's petition for reinstatement upon verification that petitioner has been recertified by the State of Michigan Board of Law Examiners and has paid bar dues in accordance with Rules 2 and 3 of the Supreme Court Rules concerning the State Bar of Michigan.

Petitioner was the subject of two prior formal disciplinary proceedings that underlie the instant petition for reinstatement. In the first matter, *Grievance Administrator v Nader W. Nassif* 14-58-AI; 14-84-JC, petitioner's license to practice law in Michigan was suspended on May 23, 2014, when an order of an automatic interim suspension was entered after he pleaded no contest, in the Washtenaw County Circuit Court, to the charge of felonious assault, a felony, in violation of MCL 750.82.¹ On August 12, 2014, the Grievance Administrator filed a notice of filing of a judgment of conviction. Thereafter, the parties filed a stipulation for consent order of discipline under MCR 9.115(F)(5), which was accepted by the hearing panel. On December 15, 2014, in accordance with the parties' stipulation, Tri-County Hearing Panel #53 issued an order of suspension that suspended petitioner's license to practice law in Michigan for 180 days, effective January 6, 2015, with conditions that required compliance with the terms and conditions of his remaining criminal probation.

¹ Petitioner has been continuously suspended from the practice of law since May 23, 2014.

In the second matter, *Grievance Administrator v Nader W. Nassif*, 17-137-GA, the Grievance Administrator filed a formal complaint against petitioner on November 16, 2017, alleging that he committed professional misconduct by engaging in *ex parte* communications and a personal friendship with Christopher S. Easthope, former judge at the 15th Judicial District Court, conduct which required disclosure or disqualification. The parties subsequently filed a stipulation for consent order of discipline under MCR 9.115(F)(5), which was accepted by the hearing panel. On March 5, 2018, Tri-County Hearing Panel #60 issued an order of suspension that suspended petitioner's license to practice law in Michigan for 179 days, effective June 1, 2017.

The parties appeared before the panel on February 4, 2020 for the hearing on petitioner's petition for reinstatement. Petitioner called three witnesses, all of whom are attorneys themselves, to testify as to his character and to provide their opinions as to whether petitioner's license to practice law should be reinstated. All three testified that it should. (Tr 2/4/20, pp 8-11, 15, 16-17, 23, 25-27, 35.) Petitioner also testified on his own behalf. The Administrator's counsel reiterated that he had no objection to petitioner's reinstatement. (Tr 2/4/20, p 94.)

On June 22, 2020, the panel issued its report denying petitioner's petition for reinstatement. The report specifically noted that the panel did not find that petitioner sustained his burden of showing, by clear and convincing evidence, that he satisfied the requirements of MCR 9.123(B)(1), (6), and, (7).² An order denying petitioner's petition for reinstatement was issued the same day.

In a reinstatement proceeding, the burden of proof is on the petitioner who must establish that he or she has met the requirements of MCR 9.123(B), by clear and convincing evidence. Clear and convincing evidence is evidence that "produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct, and weighty and convincing as to enable [the fact finder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995), quoting *In re Jobes*, 108 NJ 394,407-408; 529 A2d 434 (1987). [*Chmura II*, 464 Mich 58, at 71-72.] *Grievance Administrator v Geoffrey N. Fieger*, 94-186-GA (ADB 2002).

² MCR 9.123(B)(1), (6), and (7) state, 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:

(1) he or she desires in good faith to be restored to the privilege of practicing law in Michigan;

(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 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.

However, granting or denying 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 August*, 438 Mich 296 (1995); *In re Reinstatement Petition of Keith J. Mitan*, 12-2-RP (ADB 2013).

In this particular matter, the panel found that with regard to MCR 9.123(B)(1) and respondent's good faith desire to be restored to the practice of law, that they were:

[Q]uite concerned with petitioner's attitude towards the process, he was not happy that the panel was even asking questions regarding his previous infractions. He was very smug and exhibited the belief that since he has "served his time" by not practicing law since 2014 he deserved to be reinstated. . . .Petitioner's testimony regarding the misconduct was insincere. . . .The panel does not believe that petitioner truly wants to practice law, he merely believes he is entitled to practice law because he has not been able to do so for over five years. [Report 6/22/20, pp 3, 4.]

Petitioner refuted the panel's characterization of his testimony, noting that the panel made no reference to the record in support of these conclusions. Rather, he argued that the record is replete with his expressions of humility and his desire to practice law, and he provided specific references to the record to illustrate his point. (Petitioner's Brief, pp 5-6.) In addition, petitioner testified that he is currently a licensed realtor, and that he writes content for legal websites "to use what I know in a capacity that wasn't considered practicing law," and which requires him to familiarize himself with certain areas of the law. (Tr 2/4/20, pp 39-40, 47-49.) We agree with petitioner's characterization of his testimony in this regard. We further note that the only reference to "serv[ing] his time" in the record was a statement made by respondent's counsel in his closing argument to the panel. (Tr 2/4/20, p 93.)

There is little information in the record regarding the underlying facts of petitioner's criminal matter, and virtually no information can be gleaned from the underlying disciplinary proceeding resulting from respondent's conviction because of the consent resolution. However, at the hearing, petitioner was asked by both the Administrator's counsel and the panel about the underlying facts of the criminal matter and he provided details of what occurred. (Tr 2/4/20, pp 52-53, 68-73.) The record also reveals that petitioner responded to all of the questions asked of him regarding the events of the underlying incident, referring to it as "an extremely dark period of [his] life," (Tr 2/4/20, p 54), and he maintained his innocence when further questioned by the panel. (Tr 2/4/20, pp 73-74.)

As noted by both parties on review, a hearing panel cannot deny a petition for reinstatement simply because the petitioner has a lack of remorse because they maintain their innocence. *Petition of Albert*, 403 Mich 346 (1978); *In Re Reinstatement Petition of Fletcher*, 93-44-RP (ADB 1995). However, a petitioner must demonstrate an understanding of the seriousness of the crime that they have been convicted of and a hearing panel can weigh a petitioner's response to that inquiry in determining credibility and assessing demeanor with respect to the requirements set forth in MCR 9.123(B).

Here, the panel found that respondent did not recognize the seriousness of the crime he was convicted of committing and found that “petitioner was very vague with his responses to the panel's questioning and appeared insulted that the panel even asked for details of the occurrence,” that he “. . .accused the complainant of falsifying her story,” and that “petitioner's rendition of the story was not credible and he was not forthright with his answers.” (Report, 6/22/20, p 4.) However, and as noted above, the record in fact reflects that petitioner was responsive to the questions posed to him about the underlying incident and no evidence was introduced to refute his rendition of the events. Furthermore, the Administrator's counsel even noted that he “talked to a lot of people for this, regarding why the CSC charge went down to the felonious assault and I was told that there were credibility issues with the victim.” (Tr 2/4/20, p 89.)

The panel also found that respondent “only attended a few weeks of substance abuse therapy and classes after being ordered to do so as part of his court ordered probation.” However, petitioner testified that he regularly attended either AA or NA throughout his two year contract with LJAP, which he entered into voluntarily and not as part of his criminal probation. Petitioner also had to undergo drug testing during his two year probationary period from the criminal matter. (Tr 2/4/20, pp 42-44, 64-65, 83-85.) Petitioner maintains that he has not used drugs since the date of the underlying incident, July 31, 2013, (Tr 2/4/20, pp 65, 75, 85), and again, no evidence to the contrary was presented. Furthermore, respondent admitted that through his work as an electronic music DJ, he continues to be around people who use drugs in his presence, but he noted that “I always just walk away or, you know, if there's something of that nature I just.... I remove myself from the situation.” (Tr 2/4/20, p 91.)

With regard to petitioner's second disciplinary matter, the panel found petitioner's testimony to be “insincere,” and that he “downplayed his misconduct.” (Report, 6/22/20, p 3.) However, the record indicates that petitioner acknowledged that his conduct violated the rules of professional conduct and he testified that he now realizes that “there's a line there and if you even attempt to even get close to that line, just the appearance of impropriety is enough. So there really just isn't any value or any point in even trying to have that sort of a relationship with anyone that sits in that position as a judge.” (Tr 2/4/20, p 57-58.)

We are unable to find evidentiary support for the panel's conclusion that petitioner's testimony as referenced above, precluded a finding that he desires in good faith to be restored to the privilege of practicing law in Michigan, as set forth in MCR 9.123(B)(1).

We turn now to the panel's finding that petitioner did not establish the eligibility requirements of MCR 9.123(B)(6) and (7). As indicated in *In Re Reinstatement of Arthur R. Porter, Jr.*, 97-302-RP (ADB 1999):

Subrule 6 “is primarily directed to the question of the applicant's ability, willingness and commitment to conform to the standards required of members of the Michigan State Bar,” and Subrule 7 focuses on “the public trust” which the Court, the Board and hearing panels, have “the duty to guard.” (Internal citations omitted.) This inquiry involves the nature and seriousness of the misconduct, evidence of rehabilitation, and essentially culminates in a prediction that the petitioner will abide by the Rules of Professional Conduct. [*Id.* at 10]

The court has recognized the "inherently subjective nature" of these two requirements, however, this does not relieve us of our responsibility to review the panel's findings in this regard for proper evidentiary support. *In the Matter of the Reinstatement Petition of Robert C. Horvath*, 91-220-RP (ADB 1992). Here, the panel found that:

Although petitioner testified that he now knows the *ex parte* communications he had with the judge were wrong, he provided no testimony to satisfy the panel that he understood the sexual encounter for which he was convicted was wrong. In fact, petitioner's comment that he would not represent a client who inquired of his criminal past shows petitioner's failure to understand the trustworthiness required of a lawyer. To effectively represent a client, they must trust you and be able to inquire of your past. [Report 6/22/20, p 5.]

We simply see no nexus between petitioner's understanding that the sexual encounter underlying his criminal conviction was wrong, and his willingness to represent a client who inquires about his criminal past or his understanding of the trustworthiness required of a lawyer. As indicated by petitioner, a lawyer is not required to discuss the details of his/her criminal conviction with prospective clients.

Petitioner testified that, since the encounter and his subsequent criminal prosecution, he has learned to be smarter about situations he puts himself in (Tr p 46), and that it was an "extremely dark period of my life personally," but he was not trying to portray himself as a victim (Tr p 54). He further explained that he pleaded no contest because he was "facing five years in prison and being deemed a sex offender for the rest of his life" (Tr p 74). Again, petitioner's professed innocence and his refusal to admit wrongdoing is not an appropriate basis in which to deny reinstatement. *Fletcher, supra*.

Finally, in regard to whether petitioner satisfied the requirements of MCR 9.123(B)(7), the panel found that:

Petitioner was practicing law for an incredibly short period of time before his license to practice law in Michigan was suspended. Because his improper conduct occurred so early in his career, the panel cannot in good conscience recommend him to the public, the courts, and the legal profession as a person fit to be consulted by others and to represent them, and to otherwise act in matters of trust and confidence, and in general to aid in the administration of justice as a member of the State Bar of Michigan and an officer of the court. [Report 6/22/20, p 5.]

While the length of time petitioner was licensed when the misconduct occurred may be a relevant factor to consider, it appears to have been the exclusive one considered in the panel's determination that petitioner did not satisfy the requirements of Subrule (7). We do not perceive it to have the weight and significance apparently assigned by the panel. Although we ordinarily

afford substantial deference to findings of fact, and some deference to a panel's conclusions on these important and subjective determinations regarding eligibility for reinstatement, we must respectfully conclude that there is insufficient evidentiary support for the panel's finding with respect to this factor. On the other hand, petitioner presented the testimony of three attorneys who all testified as to their opinion of petitioner's competency as well as their favorable prediction of whether petitioner could be safely recommended to the public.

Accordingly, we conclude that the evidence submitted by petitioner satisfactorily establishes that he has met each of the applicable criteria in MCR 9.123(B) and reinstatement should be granted.

NOW THEREFORE,

IT IS ORDERED that the hearing panel order denying petition for reinstatement entered June 22, 2020, is **VACATED** for the reason that the Board is persuaded that petitioner has satisfactorily established his eligibility for reinstatement under the criteria in MCR 9.123(B) by clear and convincing evidence.

IT IS FURTHER ORDERED that petitioner, Nader W. Nassif, shall be **REINSTATED** to the practice of law in the State of Michigan upon proof that he has satisfied the following conditions:

1. Petitioner shall file written proof with the Attorney Discipline Board and the Grievance Administrator that he has been recertified by the State Board of Law Examiners;
2. Petitioner shall file proof with the Attorney Discipline Board and the Grievance Administrator that he has paid applicable membership dues to the State Bar of Michigan in accordance with Rules 2 and 3 of the Supreme Court's Rules Governing the State Bar.

IT IS FURTHER ORDERED that upon satisfaction of the foregoing conditions, the Attorney Discipline Board shall enter an order of reinstatement.

ATTORNEY DISCIPLINE BOARD

Dated: November 20, 2020

By:


Jonathan Lauderbach, Chairperson

Board members Jonathan Lauderbach, Barbara Williams Forney, Karen O'Donoghue, Linda Hotchkiss, Michael Hohausser, Peter Smit, and Linda Orleans concur in this decision.

Board member Michael Rizik, Jr. dissents and would affirm the hearing panel's order denying reinstatement.

Board member Alan Gershel was recused and did not participate in the discussion or decision of this matter.