

STATE OF MICHIGAN

FILED
ATTORNEY DISCIPLINE BOARD

2018 JAN 10 AM 10:14

Attorney Discipline Board

In the Matter of the Reinstatement Petition
of DENNIS P. MIKKO, P 33736,

Case No. 17-6-RP

Petitioner/Appellant,
_____ /

**AMENDED ORDER AFFIRMING HEARING PANEL ORDER
DENYING PETITION FOR REINSTATEMENT¹**

Issued by the Attorney Discipline Board
211 W. Fort St., Ste. 1410, Detroit, MI

Emmet County Hearing Panel #1 of the Attorney Discipline Board entered an order in this matter, denying the petition for reinstatement filed by petitioner, Dennis P. Mikko. Petitioner sought review of that decision 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 review hearing before the Board on December 13, 2017.

In its report filed July 18, 2017, the hearing panel delivered a unanimous opinion that petitioner had not clearly and convincingly established that his conduct since the order of discipline has been exemplary and above reproach, as required by MCR 9.123(B)(5), or that he can be safely recommended to the public, the courts and the legal profession as a person fit to practice law, as required by MCR 9.123(B)(7).

Petitioner requests that the panel's decision to deny his petition for reinstatement be reversed. In reinstatement proceedings, the Board reviews findings of fact for proper evidentiary support. *In re McWhorter*, 449 Mich 130, 136 (1995). 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 by this Court." *Grievance Administrator v Irving A. August*, 438 Mich 296, 311 (1991); *In re Reinstatement Petition of Keith J. Mitan*, 12-2-RP (ADB 2013). With regard to reinstatement proceedings, the Board has previously articulated that, taken together, subrules (5)-(7) of MCR 9.123(B) "require scrutiny of the reinstatement petitioner's conduct, before, during, and after the misconduct which gave rise to the suspension or disbarment in an attempt to gauge the petitioner's current fitness to be entrusted with the duties of an attorney." *In re Reinstatement of Arthur R. Porter, Jr.*, 97-302-RP (ADB 1999). Applying both the standard of review, the criteria articulated in *Porter*, and based upon the record below, the Board finds that there is proper evidentiary support for the

¹ Amended as to the addition of costs assessed by the Board for the December 13, 2017, review hearing held in this matter only.

hearing panel's conclusions in this matter, and that petitioner did not carry his burden of proof as to the criteria found in MCR 9.123(B)(5) and (7) by clear and convincing evidence.

Petitioner asserts that he is entitled to a new hearing because certain magazines and DVD's presented at the reinstatement hearing should not have been considered by the panel. There is no merit to this argument. The hearing panelists made it clear at the hearing that, although they would allow the evidence to be admitted, they questioned its probative value because of the amount of time that had elapsed. Furthermore, in denying petitioner's motion for a new hearing, the panel expressly stated that it neither considered nor gave any weight to the magazines or DVD's in its findings and conclusions. The Board has no reason to doubt that the hearing panel was being candid and sincere when it said the evidence complained of played no part in its decision.

To the extent that any of the panel's conclusions were based upon its assessment of petitioner's testimony, the Board will generally defer to those assessments in light of the panel's firsthand opportunity to judge credibility. *Grievance Administrator v Richard E. Meden*, 92-106-GA (ADB 1993); *Matter of Leonard R. Eston*, DP 48/85 (ADB 1987). In this matter, the Board is not persuaded that the hearing panel erred or that reversal of the hearing panel's decision to deny reinstatement would be appropriate. The conclusion that petitioner failed to meet his burden of proof is adequately supported by the record.

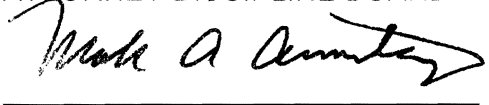
Having found that there is proper evidentiary support for the hearing panel's finding that petitioner did not satisfy the criteria of MCR 9.123(B)(5) and (7), the Board need not decide petitioner's claim that certain statements made by the panel regarding petitioner's daughter and petitioner's involvement as a youth soccer referee are not supported by the evidence.

NOW THEREFORE,

IT IS ORDERED that the hearing panel's order denying petition for reinstatement filed in this matter on July 18, 2017, is **AFFIRMED**.

IT IS FURTHER ORDERED that respondent shall pay court reporting costs incurred by the Board for the review hearing conducted on December 13, 2017, in the amount of \$155.00. This cost will be added to the payment plan currently in effect. Respondent's final payment shall now be due on or before **September 22, 2018, in the amount of \$105.00**. Costs may be paid by check or money order made payable to the Attorney Discipline System and submitted to the Attorney Discipline Board, 211 West Fort St., Ste. 1410, Detroit, MI 48226, for proper crediting.

ATTORNEY DISCIPLINE BOARD

By: 
Mark A. Armitage, Executive Director

Dated: January 10, 2018