

2021-Aug-19

Attorney Discipline Board

In the Matter of the Reinstatement Petition of
HUSSAIN SALEH, P 72484,

Petitioner/Appellant,

Case No. 20-62-RP

ORDER OF ELIGIBILITY FOR REINSTATEMENT

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

Tri-County Hearing Panel #11 of the Attorney Discipline Board issued a report and order on December 7, 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)(5), (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. Although the Grievance Administrator took no position on petitioner's reinstatement at the hearing, on review he asserted that the panel's findings are supported by the record.

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 June 16, 2021. 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 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 a formal disciplinary proceeding, *Grievance Administrator v Hussain Saleh*, 17-131-AI; 18-52-JC, that underlies the instant petition for reinstatement. In that case, petitioner's license to practice law in Michigan was suspended on October 31, 2017, when an order of an automatic interim suspension was entered after he entered a guilty plea in the U.S. District Court for the Eastern District of Michigan, to the charge of conspiracy to obtain United States passport by false statement of fraud, in violation of 18 USC §§ 371 and 1542, a felony. On May 14, 2018, 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 September 27, 2018, in accordance with the parties' stipulation, Tri-County Hearing Panel #2 issued an order of suspension that suspended petitioner's license to practice law in Michigan for 35 months, effective October 31, 2017, with conditions that required compliance with the terms and conditions of his remaining criminal probation, completion of three continuing legal education classes, and completion of fifteen hours of community service.

The parties appeared before the panel via Zoom videoconferencing on November 18, 2020, for the hearing on petitioner's petition for reinstatement. Petitioner submitted three letters of recommendation regarding his character, as well as a letter from his probation officer, indicating

that he had successfully completed his probation with no violations. Petitioner also testified on his own behalf. The Administrator's counsel acknowledged that "for the most part" petitioner had met his burden with respect to MCR 9.123, but expressed concerns about MCR 9.123(B)(5), (6), and (7).¹ (Tr 11/18/20, pp 56-57.)

On December 7, 2020, the panel issued its report denying petitioner's petition for reinstatement. Although the panel recognized that petitioner "presented himself in a forthright, candid matter at the hearing," 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)(5), (6), and, (7). 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).

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).

¹ MCR 9.123(B)(5), (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:

* * *

(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 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.

In this particular matter, the panel found that with regard to MCR 9.123(B)(5), “[p]etitioner has displayed a pattern of lack of candor in his important life decisions that gives this panel concern.” The panel relied on petitioner's failure to disclose three specific facts to his probation officer: (1) the existence of a virtual mailbox in Pompano Beach, Florida; (2) the fact that petitioner occasionally slept at his mother's house or at a hotel because of marital problems; and (3) the existence of a bank account held by a newly incorporated business.

Petitioner offered reasonable explanations as to why these three facts were not disclosed. First, petitioner testified that he did disclose the virtual mailbox when the probation questionnaire asked if he had a P.O. Box address, but did not disclose the virtual mailbox when the questionnaire asked if he had changed his residence. (Tr, p 40.) For that same reason, he did not disclose that, from June 2019 to November 2019, he slept at his mother's house or at a hotel “one to two times a week” because the marriage counselor recommended it. (Tr, p 25.) Petitioner explained that he did not report this information to his probation officer because he was only required to notify her if his residence changed, and he never moved out of the house nor was there ever a legal separation between him and his wife. (Tr, p 25.)

Finally, Petitioner opened a bank account in the name of "H & H Collection" but did not disclose this information to the probation officer. Petitioner explained that, in the monthly questionnaire, he was asked to disclose sources of income. Because the collection agency was not running and thus did not bring in any income, he did not report this information as a source of income. (Tr, pp 44-45.)

Furthermore, there was no evidence presented that petitioner was obligated to tell his probation officer this information. No notice of an alleged violation was filed with the court; rather, these facts only came to light because petitioner requested that his probation be reduced from 24 months to 18 months, so that he could visit his father in Lebanon. In response to this request, the U.S. Attorney argued that the request should be denied because of petitioner's “current lack of candor . . . and probation violations[.]” referring to petitioner's failure to disclose the three facts above. (Investigative Report, Appx H.) Petitioner testified that, upon receiving the government's response, he contacted his probation officer, who had already been contacted by the prosecutor, about the allegations. (Tr, pp 33-34.) Not only was petitioner never accused or found to be in violation of his probation, his probation officer submitted a letter confirming that petitioner had successfully completed his probation and “did not incur any violations” during the term of his probation. (Investigative Report, Appx J; Tr, p 34.)

As stated above, the panel found that petitioner was forthright and candid during the hearing. Furthermore, during his suspension, petitioner appears to have gone above and beyond what was required of him in the order of discipline with regard to continuing legal education classes and community service hours. He continued developing himself professionally outside of the legal field, he has shown a commitment to helping others in his community by forming a non-profit, and he sought individual and marriage counseling, in order to better himself and strengthen his marriage. For these reasons, we are unable to find evidentiary support for the panel's conclusion that petitioner failed to meet the requirements of MCR 9.123(B)(5).

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. (Footnotes omitted.) [*Id.* at 10.]

Here, the panel found petitioner does not have a proper understanding of and attitude toward the standards that are imposed on members of the bar, or that he will conduct himself in accordance with those standards. The panel's conclusions in this regard appear based on their belief that petitioner used other individuals to excuse his criminal behavior, and that he "has a difficult time saying no." (HP Report, p 6.)

However, we find that the record below demonstrates that petitioner has instead taken full responsibility for what he did, by not only pleading guilty to the charge, but also by recognizing that it was no one else's fault but his own for being in this situation. When explaining why he sought counseling, petitioner stated: "I was having trouble coping with what I did . . . I kept blaming myself for what I did . . . there has not been a day that has passed where I didn't reflect on what I did and the damage that I caused I didn't want to burden [my wife] with the bad things that I did to cause me to be in this situation." (Tr, pp 25, 27, 35, 41.) Petitioner also recognized that what he did was "so reckless and so harmful," that he knows moving forward he will "never do anything so stupid again." (Tr, p 45.)

We further find that petitioner was also very candid at the hearing. When asked if he ever thought of just saying no, he admitted: "One of the issues I've had in the past was saying no; whether it be to clients, [his employer] Access, personal people. And that's one of the things I learned in counseling was that it's okay to say no." (Tr, p 38.) We find that petitioner's testimony in this regard evidences an "ability, willingness and commitment to conform to the standards required of members of the Michigan State Bar," rather than a failure to do so. Thus, we find an absence of evidentiary support for the panel's conclusion that petitioner failed to meet the requirements of MCR 9.123(B)(6).

In denying reinstatement under factor (7), the panel found:

The panel, taking into account all of Petitioner's past conduct, does not believe that he can be safely 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. Petitioner's past conduct includes a criminal conviction that is a crime of dishonesty. Throughout his suspension, he did not appear completely forthcoming with his probation officer. Rather, he seemed to find technical reasons to excuse failure to be fully forthcoming. Petitioner argued that what happens between a husband and wife is not relevant; however, the fact that his wife remains unaware of his felony criminal conviction is problematic on a number of levels, and speaks to Petitioner's character and fitness to practice. [HP Report, p 6.]

Although it is true that petitioner's conviction involved a crime of dishonesty, it cannot be overlooked that the 35-month suspension of petitioner's license to practice law was not only deemed appropriate by the Grievance Administrator, it was also approved by both the Attorney Grievance Commission, and the hearing panel that imposed the order of discipline underlying this proceeding. In addition, petitioner's alleged failure to disclose certain information to his probation officer is insufficient to support a finding that petitioner was not forthcoming, especially where such evidence was not considered significant by petitioner's probation officer. We also find that, in this case, petitioner's marital relationship is irrelevant to his fitness to practice law.

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 December 7, 2020, is **VACATED** for the reason that the Board is persuaded that petitioner has satisfactorily established his eligibility for reinstatement under the applicable criteria in MCR 9.123(B) by clear and convincing evidence.

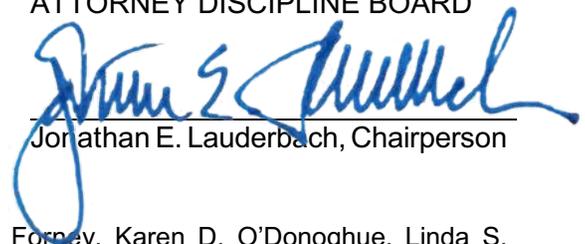
IT IS FURTHER ORDERED that petitioner, Hussain Saleh, shall be **REINSTATED** to the practice of law in the State of Michigan upon proof that he has paid applicable membership dues to the State Bar of Michigan in accordance with Rules 2 and 3 of the Supreme Court's Rules Governing the State Bar.

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

ATTORNEY DISCIPLINE BOARD

Dated: August 19, 2021

By:



Jonathan E. Lauderbach, Chairperson

Board members Jonathan E. Lauderbach, Barbara Williams Forney, Karen D. O'Donoghue, Linda S. Hotchkiss, M.D., Michael S. Hohausser, Peter A. Smit, Linda M. Orleans, and Alan Gershel concur in this decision.

Board member Michael Rizik, Jr. was recused and did not participate.