

Attorney Discipline Board

2023-Sep-11

In the Matter of the Reinstatement Petition
of DAVID CHIPMAN VENIE, P 68087,

Case No. 22-62-RP

Petitioner/Appellant,
_____ /

**ORDER AFFIRMING HEARING PANEL ORDER
DENYING PETITION FOR REINSTATEMENT**

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

Tri-County Hearing Panel #6 of the Attorney Discipline Board entered an order in this matter on April 28, 2023, denying the petition for reinstatement filed by petitioner, David Chipman Venie. 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 August 16, 2023.

Petitioner was permanently disbarred from the practice of law in New Mexico on January 18, 2017, for actions arising out of his representation of three clients, which included counseling a client to bribe witnesses, revealing client confidences, making material misrepresentations to tribunals and the disciplinary authority, filing frivolous pleadings, and conversion of client funds. On May 2, 2017, the Grievance Administrator filed a Notice of Filing of Reciprocal Discipline, and on July 20, 2017, an Order of Disbarment was entered, effective August 18, 2017, based on the New Mexico discipline.

Petitioner filed a Petition for Reinstatement as a Member of the State Bar of Michigan on August 19, 2022. The petition was assigned to Tri-County Hearing Panel #6. On November 4, 2022, counsel for the Grievance Administrator filed her investigative report pursuant to MCR 9.124(C)(2), and subsequently filed a supplemental report on November 10, 2022. Included in the investigative report was the transcript of petitioner's investigative interview conducted on September 26, 2022. The Grievance Administrator took no position on petitioner's reinstatement in the report, but stated that "[s]everal issues call into question Petitioner's fitness to practice law."

The parties appeared before the hearing panel via Zoom video conferencing on January 11, 2023, for the hearing on the petition for reinstatement. The parties did not submit any exhibits, but agreed that the record would consist of the original investigative report, the supplemental report, and the attached appendices. Petitioner called three witnesses to testify as to his character and to provide their opinions that petitioner's license to practice law should be reinstated. Petitioner also testified on his own behalf.

At the conclusion of the hearing, the panel instructed the parties to file written closing arguments and findings of fact and conclusions of law. An order reflecting these instructions was entered on January 30, 2023, requiring the parties to file the requested pleadings on or before February 20, 2023. Both parties complied with the panel's order.

In its report filed April 28, 2023, the hearing panel delivered a unanimous opinion that petitioner had not clearly and convincingly established that he desires in good faith to be restored to the privilege of practicing law in Michigan, as required by MCR 9.123(B)(1); 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). An order denying petitioner's petition for reinstatement was issued the same day.

Petitioner filed a timely petition for review on May 15, 2023. Petitioner requested that the Board reverse the hearing panel's findings and grant his petition for reinstatement. The Grievance Administrator argued that the panel's findings are supported by the record as a whole, and therefore the panel's order should be affirmed.

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 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)(1), (5) and (7) by clear and convincing evidence.

To the extent that 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 Neil C. Szabo*, 96-228-GA (ADB 1998); *Grievance Administrator v Deborah C. Lynch*, 96-96-GA (ADB 1997). See also *McWhorter*, *supra* at 136 n 7. There is no evidence in the record to suggest that we should not exercise such deference here.

For these reasons, 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.

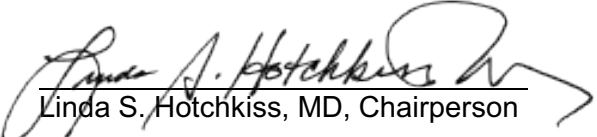
NOW THEREFORE,

IT IS ORDERED that the hearing panel’s order denying petition for reinstatement entered in this matter on April 28, 2023, is **AFFIRMED**.

IT IS FURTHER ORDERED that respondent shall, on or before **Tuesday, October 10, 2023**, pay costs in the amount of **\$195.50**, consisting of court reporting costs incurred by the Attorney Discipline Board for the review proceedings conducted on August 16, 2023. Please refer to the attached cost payment instruction sheet for method and forms of payment accepted.

ATTORNEY DISCIPLINE BOARD

By:


Linda S. Hotchkiss, MD, Chairperson

Dated: September 11, 2023

Board members Linda S. Hotchkiss, MD, Alan M. Gershel, Rev. Dr. Louis J. Prues, Linda M. Orleans, Jason M. Turkish, Andreas Sidiropoulos, MD, Katie Stanley, and Tish Vincent concur in this decision.

Board member Peter A. Smit was absent and did not participate.