

In re Michael David Elkin
Petitioner

Supreme Court No. M.R. 30186
Commission No. 2019PR00099

Synopsis of Hearing Board Report and Recommendation
(February 2022)

In 2017 Petitioner was suspended for one year and until further order of the Court for failing to act with reasonable diligence in representing four clients, failing to communicate with those clients, failing to return unearned fees and, as to one client, misrepresenting the status of the client's matter. Petitioner is seeking reinstatement to the practice of law.

After considering the factors set forth in Supreme Court Rule 767 to determine a Petitioner's rehabilitation, good character and current knowledge of the law, the Hearing Board recommended the Petition for Reinstatement be granted, with conditions that include Petitioner's treatment by a mental health professional and oversight of his practice.

**BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION**

In the Matter of:

MICHAEL DAVID ELKIN,

Petitioner,

No. 6286099.

Supreme Court No. M.R. 30186

Commission No. 2019PR00099

REPORT AND RECOMMENDATION OF THE HEARING BOARD

SUMMARY OF THE REPORT

Petitioner seeks reinstatement to the practice of law after being suspended for one year and until further order of the Court in 2017. The Hearing Board recommends the petition be granted, with conditions.

INTRODUCTION

A hearing on the Petition for Reinstatement of Michael David Elkin (“Petitioner”) was held on August 9 and 10, 2021 by remote video conferencing before a panel consisting of Heather A. McPherson, Michael V. Casey and Gerald M. Crimmins. Petitioner was represented by Adrian Vuckovich and Kathryne Hayes. The Administrator of the Attorney Registration and Disciplinary Commission (“ARDC”) was represented by Marcia Topper Wolf.

PETITION AND OBJECTIONS

On September 22, 2017, Petitioner was suspended from the practice of law for one year and until further order of the Court. On December 19, 2019, he filed a petition requesting reinstatement. On October 1, 2020, the Administrator filed objections to the petition, urging that it be denied.

FILED

February 17, 2022

ARDC CLERK

EVIDENCE

The following witnesses testified at hearing: Petitioner, Dr. Camilla Ashley, Dr. Henry Gault, Dr. Lisa Rone, Moshe Lieberman, Miriam Katz, Samuel Tenenbaum, Fred Lane and David Freydin. Petitioner's Exhibits 1-13 and 15-19 and Administrator's Exhibits 1-9 were admitted into evidence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioning attorneys seeking reinstatement to the practice of law have the burden of proving by clear and convincing evidence that they should be reinstated. In re Richman, 191 Ill. 2d 238, 730 N.E.2d 45 (2000). In considering a reinstatement petition, we focus on the attorney's rehabilitation, present good character, and current knowledge of the law, with rehabilitation being most important. In re Martinez-Fraticelli, 221 Ill. 2d 255, 850 N.E.2d 155 (2006). There is no presumption in favor of reinstatement. Richman, 191 Ill. 2d at 248.

Supreme Court Rule 767(f) sets forth the following factors to be considered in determining whether reinstatement is appropriate: (1) the nature of the misconduct for which the petitioner was disciplined; (2) the petitioner's maturity and experience at the time of discipline; (3) whether the petitioner recognizes the nature and seriousness of the misconduct; (4) whether restitution has been made; (5) the petitioner's conduct since discipline was imposed; and (6) the petitioner's candor and forthrightness in presenting evidence in support of the petition. Ill. S. Ct. R. 767(f).

Background

Petitioner graduated from law school and was licensed to practice in Illinois in 2005. While in law school, he was diagnosed with general anxiety disorder and treated with therapy and medication. Following law school, Petitioner studied at a rabbinical college in Israel for several years and continued taking prescribed medication. He also married and had a son. (Tr. 53-56).

In 2008, Petitioner returned to the United States and began working at a small general practice law firm. Between 2008 and 2012, he experienced a number of stressful events including the end of his marriage; being restricted from seeing his son; his mother's diagnosis and treatment for cancer; and his father's diagnosis of an aggressive brain tumor and subsequent death. Petitioner remarried in 2012 and had a second son. (Tr. 57, 60-62, 236).

In the spring of 2013, Petitioner opened his own practice in order to increase his income. At that time, he was seeing a physician for medication maintenance. Initially he was able to handle his cases and take on some pro bono matters but after his first year of practice, his second marriage began to deteriorate, and he started falling behind. At about the same time, he agreed to take on an international matter, on a pro bono basis, involving a young pregnant woman in Indonesia who had been accused of murdering her mother. Petitioner traveled to Indonesia for two weeks, became obsessed with the case, and remained involved in it after returning home, to the detriment of his other work. He knew some of his clients were very upset and had contacted the ARDC. (Tr. 64-75, 78-83, 94).

By the summer of 2015 Petitioner felt completely overwhelmed, had lost 50-60 pounds, was not able to leave his apartment, could not take care of his clients or himself, and was not able to respond to requests from the ARDC, although he knew it was important to do so. He sought psychiatric help for depression from Dr. Camilla Ashley. On August 21, 2015, Dr. Ashley wrote to the ARDC on Petitioner's behalf and requested an extension of time for Petitioner to submit information. Initially, Petitioner met with Dr. Ashley twice a week but then months would go by when he was not capable of meeting. (Tr. 84-86, 95-99, 186-88, 195-96, 212: Pet. Ex. 1).

During the following months, Petitioner continued to deteriorate emotionally, did not leave his apartment, was evicted from his law office, could not work on any cases, and defaulted in his

divorce from his second wife. In the spring of 2016, he discontinued his representation of the young woman in Indonesia. Around that time the Lawyer's Assistance Program (LAP) reached out to him because a judge had expressed concern about his mental health and failure to appear in court. Petitioner met with someone from LAP but did not pursue further meetings. He was aware the ARDC was investigating four of his client matters and he opened letters from the ARDC, but he was not able to respond or appear for a sworn statement. (Tr. 84, 87-90, 94, 97-99, 121-22).

In May 2016, Petitioner sought help at a hospital because his anxiety led him to believe he was having a heart attack. Thereafter, he met with Dr. Ashley who recommended he extricate himself from his current environment and go to Israel where he had a support system. (Tr. 111-15, 198, 212).

In July 2016 Petitioner arrived in Israel where he lived in a dormitory at a rabbinical college and taught classes part-time. He continued taking prescribed medications in Israel until late 2016 at which time he could no longer afford to pay for them. After a few months without medication, he began feeling better. He returned to the U.S. in the fall of 2017. (Tr. 117-20, 171).

I. Nature of Misconduct for which Petitioner was Disciplined

A. Evidence Considered

On August 29, 2016, the Administrator filed a four-count Complaint against Petitioner asserting that between August 2014 and early 2016 he neglected three domestic relations cases and a traffic court matter; failed to respond to his clients' requests for information; failed to refund unearned fees to each of the clients; and made false statements to one client. Petitioner did not respond to the Complaint or appear at his disciplinary hearing held on March 15, 2017. The hearing proceeded as a default matter. (Tr. 121-23, Pet. Ex. 2; Adm. Ex. 1).

On March 17, 2017, the Hearing Board issued a report and recommendation finding all the misconduct proved and recommending Petitioner be suspended for one year and until further order

of the Court, with reinstatement conditioned upon proof of restitution to his four clients. On September 22, 2017 the Supreme Court approved the Hearing Board report and recommendation. In re Elkin, 2016PR00096, M.R. 028735 (Sept. 22, 2017). (Pet. Ex. 2; Adm. Ex. 2).

B. Analysis and Conclusions

The severity of the misconduct leading to discipline is an important factor in considering reinstatement and cannot be minimized by subsequent exemplary conduct. Richman, 191 Ill. 2d at 245. Petitioner does not deny that his neglect of four client matters, failure to communicate, failure to refund unearned fees and misrepresentation to a client was serious and harmful conduct.

Some misconduct is so egregious that the offending attorney should never be readmitted to the practice of law. In re Rothenberg, 109 Ill. 2d 313, 484 N.E.2d 289 (1985). In the present case the severity of the misconduct can be measured by the sanction ordered, which was not a disbarment but rather a one-year suspension and until further order of the Court. See In re Oliver, 95 CH 681, M.R. 11753 (Sept. 25, 1998) (Hearing Bd. at 20). More than four years have now passed since that discipline was imposed.

We are aware that attorneys who neglected multiple cases or committed even more egregious misconduct have been reinstated to the practice of law. See In re Prusak, 2017PR00042, M.R. 28736 (Jan. 17, 2020) (attorney neglected eight criminal matters and made false statements to clients and ARDC); Martinez-Fraticelli, 221 Ill. 2d 255 (attorney imprisoned for defrauding taxpayers). In light of the foregoing circumstances and case law, we conclude that the nature of Petitioner's misconduct does not preclude reinstatement.

II. Petitioner's Maturity and Experience at time of Discipline

A. Evidence Considered

We consider the evidence in the foregoing sections, along with the following evidence.

At the time Petitioner was disciplined in 2017, he was 36 years old and had been practicing law since 2008. When he started his own practice in 2013, he felt he had the necessary experience to proceed, but now realizes he was not prepared to run an office and practice law at the same time. He believes if he had been more experienced, he would have declined to take some cases, especially the Indonesian case, and would have withdrawn from cases he could not handle appropriately. He testified he was in a state of panic at the time, was not thinking rationally, and did not fully understand his mental health condition. (Tr. 64, 124, 127-29).

B. Analysis and Conclusions

Youth and lack of experience are relevant considerations because either can explain an attorney's lack of judgment in a given situation. In re Juliano, 2011PR00032, M.R. 24589 (Sept. 12, 2013) (Hearing Bd. at 20). Mental disorders or impairments have also been considered as a circumstance that affects an attorney's judgment. See e.g. In re Sutherin, 07 RT 3009, M.R. 21969 (Jan. 21, 2010); In re Lange, 2012PR00063, M.R. 25388 (Sept. 25, 2013).

Although Petitioner had not been operating his own practice for an extended period of time when he engaged in misconduct, we find he was mature and experienced enough to know he must not ignore his clients' cases or inquiries, or misrepresent the status of a case. These duties are basic and do not require an in-depth contemplation of the rules. We do not weigh this factor heavily against Petitioner, however, as we also consider that he was suffering from a mental condition that appeared to impact his judgment. Further, we are aware that other attorneys who committed inherently dishonest acts unrelated to any mental disorder and who had practiced longer than Petitioner at the time of their misconduct, have been reinstated to the practice of law. See Martinez-Fraticelli, 221 Ill. 2d 255; In re Fleischman, 135 Ill.2d 488, 553 N.E.2d 352 (1990).

III. Petitioner's Recognition of the Nature and Seriousness of the Misconduct

A. Evidence Considered

We consider the evidence in the previous sections, along with the following evidence.

Petitioner acknowledged engaging in very serious misconduct. He testified nothing is much worse than abandoning clients; he regrets not responding to inquiries; he will never forgive himself for letting his clients down and causing them damage; and he would feel privileged to help those individuals in the future. Although he made restitution to his clients, he does not believe that circumstance makes up for his failure to represent them. Petitioner also regrets not responding to the ARDC complaint or appearing at his disciplinary hearing, but at that time he was in Israel and in terrible shape emotionally. He recognizes he has let the profession down and intends to work hard to regain the respect of his peers. (Tr. 123-26, 130, 150, 160).

Various individuals who have worked with Petitioner or had a long-standing friendship with him, including two attorneys and a rabbi, testified Petitioner disclosed his suspension to them, recognizes his mistakes, and expressed remorse for his actions. Likewise, Petitioner's treating psychiatrists, Dr. Ashley and Dr. Henry Gault, testified that Petitioner expressed remorse and feels guilty for neglecting cases. (Tr. 101-104, 203, 233-34, 262, 283-84, 297).

B. Analysis and Conclusions

Expressions of remorse and acknowledgments of wrongdoing have been found to be indications that a petitioner recognizes the nature and seriousness of his misconduct. See Martinez-Fraticelli, 221 Ill. 2d at 276; In re Parker, 149 Ill. 2d 222, 235-36, 595 N.E.2d 549 (1992). Attempts to minimize, rationalize, or portray oneself as a victim are signs that an attorney does not appreciate the seriousness of his behavior. See In re Gottlieb, 109 Ill. 2d 267, 270-71, 486 N.E.2d 921 (1985); In re Salem, 2019PR00035, M.R. 029861 (Sept. 23, 2021) (Hearing Bd. at 9-10).

Petitioner acknowledged his misconduct, accepted responsibility for his actions, and did not attempt to trivialize his behavior. We believe his expressions of regret were sincere. Further, it was clear to us that he has given a great deal of thought to the impact his actions had on his clients. These circumstances weigh in Petitioner's favor.

IV. Payment of Restitution

A. Evidence Considered

We consider the evidence in previous sections, along with the following evidence.

As part of the Supreme Court's September 22, 2017 order suspending Petitioner, the Court conditioned any future reinstatement on proof of restitution to the four clients whose matters he failed to pursue. The total amount of restitution was \$11,870. (Pet. Ex. 2).

Petitioner testified he made full restitution as soon as he returned from Israel, which was in the fall of 2017. He wishes he had returned the money immediately. (Tr. 121, 126-27, 134).

B. Analysis and Conclusions

Restitution has been completed as required by the Supreme Court and therefore we conclude this factor weighs in favor of reinstatement.

V. Petitioner's Conduct Since Discipline was Imposed

A. Evidence Considered

We consider the evidence in the previous sections, in addition to the following evidence.

Mental Health Status

Petitioner believes he has a much better understanding of his mental health today than he did in the 2014 to 2017 time period. He testified his current diagnosis is generalized anxiety disorder and his treatment plan since 2017 has involved meeting with a therapist, taking medication, and attending LAP meetings. He enjoys the LAP meetings and feels they have been helpful to his mental health. As a result of his treatment, he feels he is more mature and

dependable, has flourished in his employment, and has been able to maintain close involvement in his sons' lives. Petitioner recognizes he will need ongoing psychiatric care, and he intends to continue with treatment on an indefinite basis. (Tr. 131-34, 149, 158-59).

Three psychiatrists testified regarding Petitioner's diagnosis and treatment. Dr. Ashley, a retired psychiatrist, treated Petitioner from August 2015 until he left for Israel in July 2016, and again from September 2017 until January 2021. In December 2015, Dr. Ashley diagnosed Petitioner with bipolar disorder and prescribed medications for that condition. (Tr. 195; Adm. Ex. 6).

When Petitioner returned from Israel, Dr. Ashley thought he looked transformed and had insight into his condition. Although he was no longer taking any medications, Dr. Ashley did not attribute his improvement to that fact, nor did she believe his condition in 2015 was due to toxicity from a combination of different medications, although she agreed the latter scenario could be correct. Dr. Ashley met with Petitioner on a monthly basis, either by phone or in person, from September 2017 until January 2021, and continues to prescribe mood-stabilizing medication for him. At the time of Dr. Ashley's deposition in August 2020, she diagnosed him with "Bipolar 1 single episode." She believes Petitioner is very stable, extremely reliable, working hard to follow his treatment, and is absolutely fit to practice law. She does not believe his return to practice, which he intends to do in a law firm setting, would pose any threat to the public. (Tr. 199-216).

Dr. Gault, a general psychiatrist, has been meeting with Petitioner weekly, by telephone, since February 2021. Dr. Gault testified Petitioner is extremely consistent and reliable in attending their sessions, and is honest and detailed in providing information. In Dr. Gault's opinion, Petitioner's problems did not result from bipolar disorder; rather, his conduct was most likely the result of anxiety disorder, aggravated by side effects from a combination of medications and by

traumatic circumstances that caused him to become almost paralyzed. Dr. Gault testified Petitioner's improvement in Israel after discontinuing his medications would not have occurred if he had bipolar disorder. (Tr. 228-44, 256-57, 260; Pet. Ex. 19; Adm. Ex. 7).

Dr. Gault believes Petitioner's current medications are appropriately addressing his mental health condition; he has the necessary cognitive and emotional abilities and qualifications to function as a lawyer and conduct himself as a professional; and he is fit to practice law. If reinstated, Dr. Gault believes Petitioner should be subject to conditions including attending therapy sessions, participation in LAP, monitoring by another attorney, and reports to the ARDC. The therapy sessions should occur weekly for an initial period, and then could be cut back to every other week. Dr. Gault would like to conduct the therapy sessions himself, but has another psychiatrist in mind for prescribing medications, with the ultimate goal being to remove Petitioner from medications. (Tr. 246-48, 257-59; Pet. Ex. 19).

Dr. Lisa Rone is a psychiatrist who evaluated Petitioner in December 2020 at the request of the ARDC and thereafter prepared a written report in which she diagnosed Petitioner with substance/medication-induced bipolar disorder and panic disorder in remission, with a provisional diagnosis of narcissistic personality traits. Dr. Rone believes the toxic effects of Petitioner's medications and other substances contributed to the mismanagement of his practice. She described Petitioner's treatment as "disjointed" and believes he would do better with only one person providing therapy and prescribing medication. (Tr. 133, 329, 343-45, 352, 357-58; Pet. Exs. 17, 18; Adm. Ex. 9).

Although Dr. Rone believed Petitioner lacked insight into his difficulties with the ARDC, she concluded he has no cognitive or attentional difficulties that would preclude his return to the practice of law or diminish his ability to practice. She testified she did not have enough details to

give a definitive opinion regarding his prognosis but acknowledged if his bipolar disorder was medication-induced, his prognosis is good. (Tr. 339, 348-49, 353, 365-66; Adm. Ex. 9).

If Petitioner is reinstated, Dr. Rone recommends he be required to attend weekly psychotherapy sessions with Dr. Gault or another practitioner for at least one year and monthly thereafter, receive psychiatric monitoring to evaluate medications, and continue with his LAP meetings. Further, a reporting system should be set up to ensure follow-up and monitoring. In Dr. Rone's opinion, Petitioner would benefit from practicing in a larger firm where he receives support. (Tr. 347-50, 368-69; Adm. Ex. 9).

Financial Condition

After returning from Israel in 2017, Petitioner paid off some of his financial obligations, settled some debt, and, with his mother's assistance, brought his monthly obligations up to date, including child support. His current indebtedness is approximately \$500,000, including \$300,000 owed to his mother, \$95,000 to the IRS, \$82,000 for student loans, and miscellaneous debt owed to his attorneys and others. He testified all his debt is being addressed. He is waiting for a decision on an offer of compromise submitted to the IRS over a year ago and currently has no monthly payment on his student loans due to his income level. He plans to repay all his debts, and does not intend to file bankruptcy. (Tr. 71, 151-53, 162-65, 174-75; Adm. Ex. 5).

Employment

After returning from Israel in 2017, Petitioner began working as a teacher and currently teaches a total of eight classes at a high school and two middle schools. He also works through a separate company to teach students who need extra assistance. Aside from Petitioner's in-class duties, he prepares weekly report cards for the students, newsletters for parents, presents speeches and lectures, and takes students on field trips. He feels he has a good rapport with his students and their parents, and has received a promotion based on feedback from parents. Petitioner testified

he faces stress and pressure as a teacher but has been able to cope with it. He would not have been able to perform teaching duties or be a reliable teacher in the 2014 to 2016 time period. (Tr. 135-37, 141-45; 148, 157-58; Pet. Exs. 7-11, 13).

Rabbi Samuel Tenenbaum, the dean of one of the schools at which Petitioner teaches, testified Petitioner is open, honest, humble, very reliable and devoted to his students. Further, Petitioner accepts and appreciates feedback, and is well-liked by the parents. Rabbi Tennenbaum described Petitioner as “an inspiration.” (Tr. 282-85).

Knowledge of Law

Petitioner testified he has fulfilled continuing legal education (CLE) requirements for the reporting periods ending in 2018 and 2020 and is now working on the requirements for June 2022. He presented CLE certificates demonstrating his completion of 67.25 hours of CLE since April 2017. Petitioner also teaches a high school class in constitutional law. (Tr. 153-54; Pet. Ex. 15).

B. Analysis and Conclusions

Petitioner’s activities since discipline was imposed, including matters relating to mental health, employment, volunteer work and overall responsibility, provide insight into whether he is rehabilitated and ready to return to practice. In re Wexler, 2017PR00071 (Hearing Bd. at 16). We received much evidence regarding Petitioner’s mental health leading up to his discipline in 2017 and his treatment since that time. That evidence showed that Petitioner has displayed consistent efforts to address his issues by engaging in therapy, complying with his prescribed medications, and continuing his involvement with LAP. He impressed us as being very realistic about his continued need for ongoing treatment.

While the psychiatrists who treated and evaluated Petitioner offered differing opinions regarding the causes for his mental state prior to 2017, they were in agreement as to his current ability and fitness, cognitively and emotionally, to practice law. They also agreed he should remain

in treatment and practice with other attorneys for the protection of himself and the public. Drs. Gault and Rone specifically noted Petitioner's need for continued psychiatric treatment and attendance at LAP sessions. On the basis of those opinions, we conclude Petitioner's mental health is not an impediment to reinstatement, as long as conditions are placed on his reinstatement.

As for other aspects of Petitioner's life, he has proven himself to be diligent in seeking and maintaining employment during his period of discipline. The evidence showed that he is a dedicated and responsible teacher of middle and high school students and has achieved success in that field, as measured by parental feedback and the assessment of Rabbi Tennenbaum.

With respect to Petitioner's financial condition, although he has a significant amount of debt, his obligations are being addressed and his situation appears to be stabilized. Indebtedness is not necessarily fatal to a reinstatement petition, as long as the Petitioner has shown financial responsibility and has made attempts to reduce the debt (In re Groshong, 83 Ill. 2d 27, 413 N.E.2d 1266 (1980)), or has indicated his willingness to repay the debts when he is financially able to do so. In re Zahn, 82 Ill. 2d 489, 413 N.E.2d 421 (1980). We believe Petitioner was sincere in expressing his intent to repay all debts rather than declare bankruptcy.

Petitioner's conduct in the past four years has been marked by self-awareness, responsibility and good judgment, qualities that are key for his return to the practice of law. Further, Petitioner has satisfactorily demonstrated his efforts to keep abreast of the law through continuing legal education courses. We conclude that Petitioner's overall conduct since discipline was imposed is a positive factor that favors reinstatement.

VI. Petitioner's Candor in Presenting Petition

A. Evidence Considered

Petitioner testified he has provided accurate and truthful information for consideration by the panel. (Tr. 157).

B. Analysis and Conclusions

We have not detected any deficiencies in Petitioner's petition or his presentation of evidence, and we believe he testified with candor. This factor, therefore, weighs in favor of reinstatement.

Evidence of Petitioner's Character

Petitioner testified he is not the same person he was when he engaged in misconduct and he has worked hard to gain respect as a teacher. Further, he has learned how to stay healthy, how to deal with stress and how to reach out to people. Going forward, he recognizes he will need to attend therapy and be more organized, disciplined, and cautious. (Tr. 130-31, 158).

If Petitioner is reinstated, he plans to join a firm rather than work for himself as he feels he will benefit from being in a structured environment mentored by senior attorneys. He has spoken to two attorneys, David Frumm and David Freydin, who have offered to mentor him. Petitioner testified if he receives a request from the ARDC, he will immediately deal with it and if he is reinstated, he will happily comply with any conditions for his practice and any requirements regarding his mental health. (Tr. 154-59, 166-70).

David Freydin, an attorney who has his own firm and employs three full-time attorneys, has known Petitioner for sixteen years and referred clients to him with no negative feedback. Freydin confirmed he would be willing to mentor Petitioner and would consider hiring him, as long as Petitioner is current on practice methods and rules. Freydin feels Petitioner is in a good place and is ready to return to practice. (Tr. 308-12).

Fred Lane, an attorney, has known Petitioner since 2010 when Petitioner participated in Lane's trial technique class. Lane described Petitioner as an excellent, hard-working student who loves the law, as well as a man of strong religious values and morals. Lane is confident Petitioner will not get into trouble again. (Tr. 293-97).

Miriam Katz testified Petitioner represented her in obtaining a divorce under Jewish law, which necessitated his travel to Israel and navigation of Israeli courts. The successful outcome of her case set a precedent in Israel and helped other women. Katz is grateful to Petitioner for giving her a chance to remarry and believes the community needs a person who has helped many people. (Tr. 274-77).

RECOMMENDATION

Consideration of the foregoing factors is intended to aid in our determination of Petitioner's rehabilitation, present good character, and current knowledge of the law. Rehabilitation is a matter of one's return to a "beneficial, constructive and trustworthy role." In re Martinez-Fraticelli, 221 Ill. 2d 255, 270, 850 N.E.2d 155 (2006). As in disciplinary proceedings, our objective is to safeguard the public, maintain the integrity of the legal profession and protect the administration of justice from reproach. In re Berkley, 96 Ill. 2d 404, 410, 451 N.E.2d 848 (1983).

Petitioner engaged in serious misconduct at a time when he was mature and experienced. To his credit, however, he has demonstrated that he recognizes and understands the severity of his acts, as well as the consequences of those acts on his clients and the legal profession. He does not owe any restitution as a result of his misconduct. As far as his mental health issues, he is committed to continuing with therapy, complying with his medication schedule, participating in LAP sessions, and practicing with other attorneys who can provide a support mechanism if needed. We also consider the testimony of Petitioner's character witnesses, his employment as a teacher, and his efforts to keep abreast of the law. Considering all of the foregoing factors, we conclude that Petitioner has proved his rehabilitation by clear and convincing evidence. We therefore recommend that his petition for reinstatement be granted.

Given Petitioner's history of mental health difficulties, his time away from practice, and the opinions of Drs. Gault and Rone, we recommend that his reinstatement be subject to conditions, including oversight of his practice and continued mental health treatment. Such conditions will ensure that the public is protected and will provide Petitioner with tools to deal with any challenges he faces in the future. See In re Hayes, 2018PR00090, M.R. 029589 (Nov. 19, 2019).

Accordingly, we recommend that Petitioner Michael Elkin be reinstated to the practice of law subject to the following conditions, which will remain in effect for the first two (2) years after entry of the Court's final order, if the Court allows reinstatement:

- a. Petitioner shall comply with Article VII of the Illinois Supreme Court Rules on Admission and Discipline of Attorneys and the Illinois Rules of Professional Conduct and shall timely cooperate with the Administrator in providing information regarding any investigations relating to his conduct;
- b. Petitioner, upon reinstatement, shall comply, or document that he has complied, with the Minimum Continuing Legal Education requirements for reinstated attorneys set out in Supreme Court Rule 791(f);
- c. Petitioner shall attend meetings as scheduled by the Commission probation officer. He shall submit quarterly written reports to the Commission probation officer concerning the status of his practice of law and the nature and extent of his compliance with the conditions of his reinstatement;
- d. Petitioner shall notify the Administrator within fourteen (14) days of any change of address;
- e. Petitioner shall continue in his course of individual therapy with Dr. Henry Gault, or such other qualified mental health professional approved by the Administrator, on a regular basis of not less than once per week for the first year following reinstatement and not less than once per month for the second year, with the Administrator advised of any change in attendance deemed warranted by such professional. Petitioner shall comply with any treatment recommendations, including the taking of medications as prescribed by the treating professional or by another mental health professional approved by the treating professional and the Administrator;
- f. Petitioner shall provide the Administrator and approved mental health professional(s) with an appropriate release authorizing the professional(s) to (1) disclose to the Administrator, on at least a quarterly basis, information pertaining to Petitioner's compliance with any treatment plan established with

- respect to Petitioner's condition; (2) promptly report to the Administrator Petitioner's failure to comply with any part of an established treatment plan; and (3) respond to any inquiries by the Administrator regarding Petitioner's compliance with any established treatment plan;
- g. Petitioner shall participate in counseling sessions with the Lawyers' Assistance Program by attending at least one meeting per month;
 - h. Petitioner's practice shall be supervised by a licensed attorney approved by the Administrator. Petitioner shall meet with the attorney on a monthly basis concerning Petitioner's practice of law. Petitioner shall authorize the attorney to meet with a representative of the Administrator and work out a supervision plan, which shall include the supervising attorney submitting a quarterly written report to the Administrator regarding Petitioner's practice, the number of cases being handled by Petitioner, and the supervising attorney's general appraisal of Petitioner's practice of law;
 - i. Petitioner shall notify the Administrator within fourteen (14) days if the supervising attorney is unable to serve;
 - j. Petitioner and the supervising attorney shall promptly report any violation of the Illinois Rules of Professional Conduct by Petitioner; and
 - k. Petitioner's conditional reinstatement shall be revoked if he is found to have violated any of the conditions of reinstatement, and he shall be suspended from the practice of law until further order of the Court.

Respectfully submitted,

Heather A. McPherson
Michael V. Casey
Gerald M. Crimmins

CERTIFICATION

I, Michelle M. Thome, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Hearing Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on February 17, 2022.

/s/ Michelle M. Thome
Michelle M. Thome, Clerk of the
Attorney Registration and Disciplinary
Commission of the Supreme Court of Illinois