

JUN 13 2013

OFFICE OF THE
JUDICIAL COUNSEL

STATE OF WEST VIRGINIA

At a regular term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on June 12, 2013, the following order was made and entered:

In Re: Petition for Reinstatement of Mark O. Hrutkay

No. 11-0136

On January 19, 2011, the petitioner, Mark O. Hrutkay, by Sherri D. Goodman, Goodman Advocacy, his attorney, presented to the Court a petition for reinstatement of his license to practice law in the State of West Virginia. By order entered May 11, 2005, Mr. Hrutkay's license to practice law in the State of West Virginia was annulled by consent. The petitioner has satisfied the five-year waiting period for petitioning for reinstatement under Rule 3.33(b) of the Rules of Lawyer Disciplinary Procedure.

A hearing on the petition for reinstatement was conducted on February 17, 2012, before the Hearing Panel Subcommittee of the Lawyer Disciplinary Board. On March 8, 2013, the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by Paul T. Camilletti, its chairperson, presented to the Court its written recommended disposition in this matter, recommending that the petitioner, Mark O. Hrutkay, be reinstated to the practice of law with conditions, as set forth therein.

Thereafter, on April 1, 2013, counsel for the petitioner and the Office of Disciplinary Counsel filed their consents to the recommended disposition. No request for a hearing was filed.

A *de novo* standard applies to the review of the record made before a Hearing Panel Subcommittee of the Lawyer Disciplinary Board as to questions of law, questions of application of the law to the facts, and questions of appropriate sanctions. *See* Syl. Pt. 2, in part, *Lawyer Disciplinary Bd. v. Vieweg*, 194 W.Va. 554, 461 S.E.2d 60 (1995). Furthermore, this Court gives

respectful consideration to the Hearing Panel Subcommittee recommendations while ultimately exercising its own independent judgment. *Id.* (quoting Syl. Pt. 3, *Comm. on Legal Ethics v. McCorkle*, 192 W.Va. 286, 452 S.E. 2d 377 (1994)).

The general rule for reinstatement is that a disbarred attorney, in order to regain admission to the practice of law, bears the burden of showing that he presently possesses the integrity, moral character and legal competence to resume the practice of law. In addition, the Court must conclude that such reinstatement will not have a justifiable and substantial adverse effect on the public confidence in the administration of justice and in this regard the seriousness of the conduct leading to disbarment is an important consideration. *See In re Brown*, 166 W.Va. 226, 273 S.E.2d 567 (1980).

The specifics of the misconduct leading to the petitioner's disbarment are as follows. On January 7, 2005, the petitioner entered a guilty plea to an Information filed in the United States District Court for the Southern District of West Virginia alleging that the petitioner committed mail fraud in violation Title 18, United States Code § 1341. The Information charged the petitioner with mailing a false and fraudulent campaign financial statement that concealed illegal bribes paid for votes. Fundamentally, the petitioner participated in a vote buying scheme during the 2000 election. The petitioner served his sentence and paid his fines and restitution.

Having considered the parties' briefs, the record in this case, including the testimony of those individuals who testified on the petitioner's behalf, the Court is of opinion to and does hereby refuse the petition for reinstatement. Given the nature of the conduct that resulted in the petitioner's disbarment, even giving respectful consideration to the recommendation of the Hearing Panel Subcommittee, the Court is not satisfied that the petitioner has shown that he possesses the integrity, moral character and legal competence to resume the practice of law. The

seriousness of the conduct leading to his disbarment, the commission of a crime involving one of election fraud, is of such a nature in and of itself that the Court cannot conclude that his reinstatement at this time will not have a justifiable and substantial adverse effect on the public confidence in the administration of justice. See Syl. Pt. 1, *In Re Brown*, 166 W.Va. 226, 273 S.E.2d 567 (1980). “[D]isbarment of an attorney to practice law is not used solely to punish the attorney but is for the protection of the public and the profession.” Syl. Pt. 2, *In re Daniel*, 143 W.Va. 839, 173 S.E.2d 153 (1970).

The petition for reinstatement refused. Justice Ketchum would grant. The petitioner is ordered to pay the costs of this proceeding.

Service of an attested copy of this order shall constitute sufficient notice of its contents.

A True Copy

Attest: /s/ Rory L. Perry II, Clerk of Court

