

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: GARY NITZKIN,

Misc. No. 21-51597

Petitioner.

Honorable George Caram Steeh
Honorable David M. Lawson
Honorable Shalina D. Kumar

ORDER DENYING PETITION FOR REINSTATEMENT

Attorney Gary Nitzkin was suspended from the practice of law by the Michigan Attorney Discipline Board effective September 22, 2021. Under this Court's reciprocal discipline rule, E.D. Mich. LR 83.22(g)(1)(A), Nitzkin was suspended from the practice of law in this Court on January 5, 2022. Nitzkin's privilege to practice law was restored by the Michigan authorities on January 6, 2022. Nitzkin filed a petition for reinstatement in this Court on December 7, 2022 under LR 83.22(i). The panel held an initial hearing on the petition on June 22, 2023, at which the petitioner made a presentation and testified. The Michigan Attorney Grievance Administrator was appointed to serve as "of counsel" in the matter, and associate grievance counsel Graham Leach filed a report and appeared at the hearing.

At the initial hearing, petitioner Nitzkin explained that his law practice focuses almost exclusively on the representation of individuals who believe they have been mistreated by creditors. He testified that he seeks remedies for his clients under the federal statutes that provide protection against abusive debt collection tactics and mandate fair credit reporting practices, such as the Fair Debt Collection Practices Act and the Fair Credit Reporting Act. After intake, he and his associate attorneys typically send letters to the collection agencies or the credit bureaus

outlining demands for relief. If those requests are unrequited, then Nitzkin's firm initiates litigation.

Nitzkin testified that most cases result in nominal settlements for his clients, and attorney's fees are recovered under the fee-shifting provisions of the federal laws he invokes. He tells his clients, therefore, that generally they will have no out-of-pocket litigation expenses, including attorney's fees. He said that when a settlement offer is received from a defendant, he notified the client, explained the pros and cons of the offer, answered their questions, sought permission to accept it, and proceeded as the client instructed.

Nitzkin also testified that during the term of his suspension by the Michigan Bar authorities, he had no client contact in any capacity. After he was reinstated to practice in the Michigan courts, he resumed his normal duties at the firm monitoring day-to-day operations, finances, marketing, human resources, and consulting with the attorneys who represent the clients in court. Notably, however, Nitzkin testified that he also returned to communicating with clients about settlement offers. He said that he did not maintain a specific case load, but he acknowledged that settlement offers from individual defendants in all cases came through him. He then relayed the settlement offer along with other necessary information about costs and attorney's time charges to allow the client to make the decision to accept or reject the offer. Nitzkin stated his sole role and contact with clients is limited to settlement offers. But he also testified that all the firm's litigation cases were maintained in federal courts, and many of them were pending in this district.

Nitzkin explained that any actual negotiating with defendants in litigation was handled by the associate attorney assigned to each client. He characterized his role as that of a messenger to ensure that the client gets the information needed to make an informed decision and to ensure that

all communications with clients are in writing and recorded. But his role in the firm also included speaking with clients before their cases were filed in federal court to discuss damages, making recommendations, and gaining settlement authority. Those are the types of communications and representational conduct that Nitzkin says that he discontinued during his period of suspension in Michigan but resumed upon his Michigan reinstatement, while remaining suspended in this Court.

Under Local Rule 83.22(i), “[w]hen this court has suspended or disbarred an attorney under LR 83.22(g) or (h), the attorney may apply for reinstatement by filing in this court an affidavit that the jurisdiction that entered the order of discipline on which this court based its discipline has reinstated the attorney.” E.D. Mich. LR 83.22(i)(1). The rule further explains a petitioner’s burden in seeking reinstatement:

- (2) The attorney seeking reinstatement must prove by clear and convincing evidence that--
 - (A) the attorney has complied with the orders of discipline of this court and all other disciplinary authorities.
 - (B) the attorney has not practiced in this court during the period of disbarment or suspension and has not practiced law contrary to any other order of discipline.
 - (C) the attorney has not engaged in any other professional misconduct since disbarment or suspension.
 - (D) the attorney has the moral qualifications, competency and learning in the law required for admission to practice before this court, and that his or her resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive of the public interest.

E.D. Mich. LR 83.22(i)(2).

After the hearing, we expressed concern about Nitzkin’s activity with clients of the firm that occurred after state bar reinstatement and while he still was suspended from practice in this

Court. We asked the Michigan Attorney Grievance Administrator to file a supplemental report addressing whether Nitzkin has satisfied the requirement of E.D. Mich. LR 83.22(i)(2)(B), which prohibits him from “practice[ing] in this court during the period of . . . suspension.” The Administrator responded that Nitzkin’s compliance with that requirement was “unclear.”

We scheduled another hearing to inquire further about Nitzkin’s professional activities during the critical period. At the hearing, the Grievance Administrator did not take a hard and fast position on whether those activities amounted to practicing law in this Court. Nitzkin insisted that his contact with clients of the firm was strictly limited to conveying settlement offers via email messages to those clients. Those missives included an accounting of attorney’s fees and expenses and the corresponding net sum that the client would receive. He characterized his function as a mere “conduit.”

However, in a statement to the Grievance Administrator, Nitzkin explained when an attorney assigned to a case (many of which, as noted above, are pending in this Court) receives a settlement offer from a defendant, that offer is forwarded to Nitzkin. *See* ECF No. 13-3, PageID.99. In fact, *all* settlement offers come to him before they are conveyed to the clients. He discusses counter offers with the assigned attorneys and “give[s] [his] input and opinion to the attorney in charge” of that client’s case. *Ibid.* He says that his “opinion is considered when the attorney in charge makes a recommendation to the client whether to accept or reject or make a counter offer.” *Ibid.*

The question presented by Nitzkin’s testimony is whether consulting with his firm’s clients on federal cases pending in this district, conveying and explaining settlement offers, and obtaining

permission from them to settle their cases amounts to the practice of law “in this court.” We believe that it does.

Our local rules define the term “practice in this court” to mean

in connection with an action or proceeding pending in this court, to appear in, commence, conduct, prosecute, or defend the action or proceeding; appear in open court; sign a paper; participate in a pretrial conference; represent a client at a deposition; or otherwise practice in this court or before an officer of this court.

E.D. Mich. LR 83.20(a)(1). That rule also warns that “[a] person is not permitted to circumvent this rule by directing the conduct of litigation if that person would not be eligible to practice in this court.” *Ibid.* Interpreting a similar local rule from the Western District of Michigan, the Sixth Circuit told us that the privilege to practice law in a district court includes more than making court appearances and filing pleadings in one’s name. *In re Desilets*, 291 F.3d 925, 930 (6th Cir. 2002). Admission to practice “authorizes activities beyond those involved in appearance before the . . . court.” *Ibid.* The Western District rule specifically allows an admitted “attorney to ‘counsel a client in the action or proceeding for compensation.’” *Ibid.* (quoting W.D. Mich. LR 83.1(a)(iii)). Our local rule does not include “counsel[ing] a client” language, but the import of our definition plainly covers activities beyond court appearances.

That should not come as a surprise to Nitzkin. Advising clients of their legal rights and obligations is among the fundamental duties of attorneys and counsellors at law. And when those clients have federal cases pending in this district — which were initiated by Nitzkin’s law firm — providing advice to those clients about those cases surely constitutes “practice[] in this court.”

The Michigan Court Rules provide another source of guidance on the activities permitted and prohibited to a suspended attorney. Those rules are not binding on us, since federal standards control admission to the federal bar. *Desilets*, 291 F.3d at 928 (citing *Sperry v. Florida ex rel. the*

Florida Bar, 373 U.S. 379, 385 (1963)). But they certainly would govern Nitzkin’s conduct. And our Court has incorporated the Michigan Rules of Professional Conduct as adopted by the Michigan Supreme Court into the standards of professional conduct that govern “attorneys who practice in this court.” E.D. Mich. LR 83.22(b). The Michigan rule states that “during the period of . . . suspension . . . [the attorney is] forbidden from . . . having contact either in person, by telephone, or by electronic means, with clients or potential clients of a lawyer or law firm either as a paralegal, law clerk, legal assistant, or lawyer.” Mich. Ct. R. 9.119(E)(2). Nitzkin’s description of his activities after he was reinstated to practice by the Michigan authorities but while he was suspended from practicing here easily falls within the realm of this prohibited conduct and amounts to the practice of law “in this court.”

Nitzkin argues that he did not believe that his client contacts during the critical period transgressed into prohibited activity, and that he did not intentionally violate any restrictions. He suggests that because his privilege to practice law was restored by the Michigan authorities, any contact with new clients, even when he would tell them about their rights and litigation options, was allowable. We do not quarrel with the idea that imparting general legal advice about rights and possible federal causes of action would not run afoul of Local Rule 83.22(i)(2)(B). The reason is not because that activity does not constitute the practice of law. It does. But if there is no pending case, it would not amount to the practice of law “in this court.” As we understand Nitzkin’s statements, his activities included client contacts to convey settlement offers and discussions with the assigned attorneys about settlement decisions in pending cases. We cannot reconcile that course of conduct with the definitions and warnings in Local Rule 83.20(a)(1).

One last point. As noted earlier, it is the petitioner's burden to establish the requisites for reinstatement under Local Rule 83.22(i)(2). And he must do that clearly and convincingly. Even if it can be said that Nitzkin did not act with a purpose to skirt the rules, we are not persuaded that his professional activity, which included contacting clients about settlement offers in cases pending in this Court and discussing counter offers — litigation strategy, if you will — with the attorneys assigned to those cases, evidences full compliance with the restrictions imposed upon a suspended attorney.

For these reasons, we cannot find that petitioner Nitzkin has presented clear and convincing evidence that has satisfied E.D. Mich. LR 83.22(i)(2)(B). However, we find it appropriate to allow Nitzkin to show compliance while this suspension from practice in this district is expanded by four months. He may reapply for reinstatement thereafter if he can demonstrate compliance.

Accordingly, it is **ORDERED** that the petition for reinstatement is **DENIED**. The petitioner may file a new petition demonstrating compliance with E.D. Mich. LR 83.22(i)(2)(A)–(D) after **December 15, 2023**.

Dated: August 18, 2023

s/George Caram Steeh
GEORGE CARAM STEEH
United States District Judge

Dated: August 18, 2023

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: August 18, 2023

s/Shalina D. Kumar
SHALINA D. KUMAR
United States District Judge