

OFFICE OF THE PRESIDING DISCIPLINARY JUDGE, COLORADO

Driscoll v. People

77 P.3d 471 · Decided September 29, 2003

SUMMARY

The Colorado Presiding Disciplinary Judge and Hearing Board granted Robert Justin Driscoll's petition for reinstatement to the practice of law. The decision found clear and convincing evidence of rehabilitation, professional competence, and fitness to practice, while imposing conditions involving abstinence, random testing, and payment of proceeding costs.

CASE DETAILS

COURT	Office of the Presiding Disciplinary Judge, Colorado
WRITING FOR THE COURT	Roger L. Keithley, Presiding Disciplinary Judge; William R. Gray, Hearing Board Member; David A. Helmer, Hearing Board Member
JURISDICTION	Colorado
DECIDED	September 29, 2003
DISPOSITION	other
PROCEDURAL POSTURE	Driscoll petitioned for reinstatement to the practice of law after a three-year suspension. Following a reinstatement hearing, the Hearing Board granted reinstatement subject to sobriety monitoring, abstinence, payment of costs, and completion of admission requirements.
STANDARD OF REVIEW	The petitioner bears the burden of proving rehabilitation, compliance with applicable disciplinary orders and rules, and fitness to practice law by clear and convincing evidence.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Robert Justin Driscoll v. People of the State of Colorado

TOPICS

- administrative law
- agency adjudication
- civil procedure

PRACTICE AREAS

- attorney discipline
- professional responsibility
- administrative law

QUESTIONS PRESENTED

1. Whether Driscoll proved by clear and convincing evidence that he was rehabilitated, had complied with applicable disciplinary orders and rules, and was fit to practice law.
2. Whether Driscoll's delayed compliance with the prior sobriety stipulation prevented reinstatement.
3. What conditions should govern Driscoll's reinstatement to protect the public.

HOLDINGS

1. An attorney suspended for more than one year may be reinstated only upon clear and convincing proof of rehabilitation, compliance with applicable disciplinary orders and disciplinary rules, and fitness to practice law; all three elements must be established.
2. Delayed compliance with a prior disciplinary order does not preclude reinstatement where the noncompliance resulted from a genuine and reasonable misunderstanding, the petitioner ultimately complied, and the evidence otherwise overwhelmingly establishes rehabilitation and fitness.
3. Reinstatement may be conditioned on continued abstinence, random testing, payment of proceeding costs, and compliance with admission and registration requirements.

KEY QUOTATIONS

“All three of the elements of proof must be established before reinstatement may be authorized.” (476)

“However, the Hearing Board is charged first and foremost with protecting the public.” (477)

FACTUAL BACKGROUND

Driscoll had a prolonged disciplinary history involving neglect of client matters, mishandling client funds, dishonest conduct, insufficient-funds checks, and substance abuse. He was suspended for three years in 1992, with reinstatement conditioned on compliance with disciplinary requirements, restitution, payment of costs, and a prior sobriety agreement. Driscoll eventually completed restitution and paid the required costs, passed the Colorado bar examination and the professional responsibility examination, and presented extensive evidence of sobriety, rehabilitation, professional competence, and community service beginning in January 2000.

PROCEDURAL HISTORY

Driscoll was suspended from practicing law for three years in 1992 and later sought reinstatement. A reinstatement hearing was held in 2002 and continued in 2008. The Hearing Board considered evidence concerning his rehabilitation, compliance with prior disciplinary orders, and professional competence, then ordered his reinstatement subject to specified conditions.

DISPOSITION

other

CASES CITED

- People v. Driscoll, 716 P.2d 1086, 1088 (Colo. 1986)
- People v. Driscoll, 830 P.2d 1019 (Colo. 1992)
- People v. Driscoll, 880 P.2d 1019 (Colo. 1992)
- People v. Klein, 756 P.2d 1013, 1016 (Colo. 1988)

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