GRIEVANCE ADMINISTRATOR,
Petitioner/Appellee,
v
CHE A. KAREGA, P-31387,
Respondent/Appellant.

ADB 123-87; 142-87

Decided: May 12, 1988

BOARD OPINION

Respondent, Che A. Karega, was reprimanded by the hearing panel for violation of an order of suspension and for his failure to notify a client of his suspension. The discipline in this case is modified by vacating the Order of Reprimand and imposing a suspension of 120 days.

The Respondent was suspended from the practice of law for 120 days by a hearing panel order of suspension which became effective May 9, 1986. Respondent admits receipt of that order. Neither the Respondent nor the Grievance Administrator petitioned for a review of that suspension order and Respondent did not request a stay of the discipline. During the period of suspension, Respondent appeared and presented himself as a licensed attorney at the Juvenile Division of the Wayne County Probate Court at a hearing on June 2, 1986 on behalf of his cousin, Michael Wilson. Respondent argued that he received no fee for that appearance and was assisting his cousin only as a concerned relative. The panel considered the transcript of that hearing as well as the Probate Court file which contained Respondent's written demand for hearing in a pleading signed by Che A. Karega, "Attorney for Michael Wilson". Although that appearance was filed before the effective date of Respondent's suspension, he made no effort before, during or after his appearance in Court on June 2, 1986 to alert the Court, his client or opposing counsel that he was not a licensed attorney.

The hearing panel also found that Respondent was retained by one Victoria Lawson to represent her on a misdemeanor charge in the Fifty-sixth Judicial District Court, and filed his appearance on her behalf prior to his suspension on May 9, 1986. Although he was discharged by his client prior to the effective date of his suspension, Respondent took no action to withdraw as counsel and did not notify the Court of his discharge or his suspension from practice.

Based upon Respondent's testimony at the hearing, the panel reached the conclusion that the Respondent has suffered from a medical problem involving his thyroid. They ruled that this condition, unless given proper medical supervision and therapy, "affects not only his physical well-being but his ability to make good judgment in the affairs of life and profession" and that both Respondent's prior suspension of 120 days and his violation of that suspension were, to some degree, caused by that medical condition. Other than his own testimony, Respondent presented no further evidence at the hearing regarding his medical problems. The only documentation which appears in the record is an undated letter to the Attorney Discipline Board from a doctor at the Veteran's Administration Hospital in Allen Park which states that Mr. Karega is currently being treated at that

hospital for hyper-thyroidism, that he was last tested in March 1987, and that the doctor does not see any impediment his medical condition could have to the practice of his profession.

At the conclusion of the proceedings before the hearing panel, the Respondent offered to provide medical records from the VA Hospital, and the record suggests that further medical information was in fact provided to the panel members. Unfortunately, that material was not filed with the Board by the Respondent nor was it forwarded with the hearing panel's report. Furthermore, the additional medical information was not provided to the Grievance Administrator's counsel and there was no reasonable opportunity to present any objections or rebuttal to those materials.

The Board's review of a panel decision must be on the basis of whether, upon the whole record, there is proper evidentiary support, In re Del Rio, 407 Mich 336; 285 NW2d 277 (1979) and whether the panel's findings are supported by competent, material and substantial evidence, In the Matter of Philip E. Smith, 1/35166-A, 1981 (Brd. Opn. 115). Medical evidence submitted to the panel by the Respondent but not disclosed to the Grievance Administrator and not included with the panel's report, cannot be considered part of the record before us. Respondent's testimony as a layman concerning his hyper-thyroidism was not supported by any competent or material evidence at the trial level and we are unable to adopt the panel's findings that such a medical condition impaired Respondent's judgment in the weeks following May 9, 1986.

In addition to its conclusions regarding Respondent's illness, the panel enumerated other factors which they considered in mitigation. These included findings that the Respondent is intelligent and was competent as his own attorney; that the misconduct here did not involve acts of gross neglect or acts of dishonesty with client funds; that he served honorably in the United States Navy; that he was once appointed to an organized crime strike force; that he has the potential for providing valuable legal services; that he has now been suspended since May 9, 1986. While there is some evidentiary support in the record for each of these conclusions, their cumulative mitigating weight does not appear to be so great as to warrant the imposition of a reprimand in the case of an attorney found to have violated an order of suspension.

This Board has defined mitigation as those circumstances which "do not constitute a justification or excuse . . . which in fairness and mercy may be considered as extenuating or reducing the degree of moral culpability". In the Matter of Ross John Fazio, DP 105/80; DP 143/83, 1981 (Brd. Opn. p. 146). Similarly, the Standards for Imposing Lawyer Sanctions adopted by the American Bar Association House of Delegates in February 1986 defines mitigation as "any considerations or factors that may justify a reduction in the degree of discipline to be imposed". In the further commentary provided by the Joint Committee on Professional Discipline of the American Bar Association, it is noted that mitigating circumstances must generally relate to the offense at issue and be matters independent of or incident to the specific offense but nevertheless be relevant to the fitness to practice law.

We have considered the mitigating factors cited by the panel with those definitions in mind. For example, while Respondent's successful service in the United States Navy is to be commended, we question whether military service in the past is so remarkable as to warrant a reduction in discipline. Likewise, his previous appointment to a crime strike force by a United States attorney

general and his service to clients in the past do not directly address the concerns raised by Mr. Karega's failure to comply fully with the terms of an order of discipline.

Looking again to the ABA Standards for Imposing Lawyer Sanctions, we note that intentional violation of the terms of a disciplinary order which causes injury or potential injury to a client, the public, the legal system or the legal profession is generally considered to warrant disbarment. Disbarment in such a case has been justified as "a prophylactic measure to prevent further misconduct by the offending individual". Matter of McIneryney, 389 Mass 528; 541 NE2d 407 (1983). In fact, it may be even more important to focus upon the deterrent effect (or lack thereof) on other individuals which may result if the order of reprimand is allowed to stand in this case. Orders of suspension and disbarment are issued by the Attorney Discipline Board in its capacity as the adjudicative arm of the Michigan Supreme Court. How seriously may we expect the legal profession to take these orders if violation of a suspension results in nothing more than a reprimand? In a 1982 case involving the continued practice of law in violation of an order of suspension, the Board stated that blatant disregard for a discipline order is "a very serious offense that strikes at the very heart of the Supreme Court's effort to protect the public . . . the failure to comply with a discipline order ranks among the most serious offenses", In the Matter of Philip E. Smith, DP 123/82; DP 65/82, 1983 (Brd. Opn. p. 261, [reducing discipline from a revocation to suspension of thirty months.]

While our Supreme Court has not spoken explicitly on this issue, the Court has had occasion to consider the level of discipline to be imposed in a case involving violation of a suspension order. In Matter of Hubert J. Morton, Jr., DP 57/83, S.Ct. Case No. 77136 (1986), Respondent was found to have communicated with an opposing counsel and a client during a sixty-day suspension and those communications were deemed to constitute attempts to practice law while suspended. Both Respondent and the Grievance Administrator filed applications for leave to appeal to the Supreme Court from the Board's decision to affirm a sixty-day suspension. In its Order of March 5, 1986, the Supreme Court considered the application for leave to appeal filed by the Grievance Administrator and, in lieu of granting leave, increased the period of suspension from sixty days to ninety days. Although that Order contained no rationale for the Court's action, we believe that an inference may be drawn that the Court intended that the suspension imposed for a violation of a discipline order should be no less than the suspension which was violated.

Application of such a policy in this case would result in Respondent's additional suspension for a minimum period of 120 days. Under the circumstances, we believe that such discipline would be appropriate. While we find no excuse for Respondent's appearance in Juvenile Court on behalf of his cousin on June 2, 1986, it does appear to be an isolated incident motivated primarily by familial concerns and we are not entirely unmindful of the mitigating factors cited by the panel.

The hearing panel noted as further mitigation that Respondent's license has now been suspended continuously since May 9, 1986. We do not view that factor as grounds for reducing the level of discipline in this case and we believe that a suspension of 120 days is appropriate in view of the length of the original suspension and because Respondent will be required to appear before a hearing panel to establish his eligibility for reinstatement in accordance with the procedures set forth in MCR 9.123(B) and MCR 9.124. However, we have considered Mr. Karega's continued

suspension in our decision to order that the 120 suspension in this case be deemed effective December 8, 1987, the date the hearing panel order was entered in this case.