

STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,

Petitioner/Appellee/Cross-Appellant,

v

Allan G. Meganck, P 31873,

Respondent/Appellant/Cross-Appellee,

Case No. 03-125-GA

Decided: December 13, 2004

Appearances:

Emily A. Downey, for Grievance Administrator, Petitioner/Appellee/Cross-Appellant,
Allan G. Meganck, In Pro Per (did not appear for hearing)

BOARD OPINION

The hearing panel below issued an order suspending the respondent's license to practice law for a period of three years based upon its findings that, on two occasions, the respondent prepared and delivered two mortgages¹ to his brother which the respondent knew contained false notarizations and, in one case, bore the forged stamp of the county register of deeds. The Grievance Administrator has petitioned for review on the grounds that the respondent's intentional preparation and delivery of two false mortgages warrants the revocation of his license to practice law. We agree. The order of suspension and restitution issued April 2, 2004 is vacated and we will enter an order of revocation and restitution.

The formal complaint filed by the Grievance Administrator on August 20, 2003 alleged that the respondent gave a promissory note to his mother in which he agreed to pay more than \$71,000,

¹ The Grievance Administrator's Exhibit B is a document entitled "Mortgage Deed" from Allan G. Meganck and Roberta A. Meganck, Borrowers, to Lorraine M. Meganck, Lender, dated June 10, 1999. The Administrator's Exhibit D is a document entitled "Mortgage Deed" from Allan G. Meganck and Roberta A. Meganck to Lorraine M. Meganck, dated July 11, 1999. The documents purport to grant a mortgage on the respondent's home in Grosse Pointe Park Michigan. Both exhibits are hereinafter referred to as mortgages in this opinion.

plus interest, for repayment of a loan; that the promissory note called for him to give his mother a mortgage on his home as security for the loan; and that in June 1999 the respondent provided a promissory note and a document entitled “mortgage deed” to his brother for delivery to their mother. The complaint alleged that in July 1999, the respondent and his wife executed a second mortgage naming respondent’s mother as the grantee and the respondent provided that mortgage to his brother for delivery to their mother. The complaint charged that the signatures of a notary on both mortgages, as well as the stamped markings indicating that the second mortgage had been recorded by the Wayne County Register of Deeds were, in fact, forgeries. The complaint charged that the respondent was therefore guilty of professional misconduct in violation of MCR 9.104(A)(1)-(5) and Michigan Rules of Professional Conduct 8.4(a)-(c).

The respondent failed to file an answer to that complaint and his default was entered on September 17, 2003. The hearing panel denied the respondent’s motion to set aside that default and denied his motion for reconsideration. The respondent’s petition for interlocutory review by the Attorney Discipline Board was denied by the Board in an order entered February 25, 2004. The hearing panel conducted a hearing on discipline on January 7, 2004. The respondent testified on his own behalf and the Grievance Administrator offered into evidence the documents referred to in the complaint. On April 2, 2004, the hearing panel entered its order directing the suspension of the respondent’s license to practice law in Michigan for three years commencing April 24, 2004, and further directing the respondent to pay restitution to his mother in the amount of \$71,872.00, the amount specified in the promissory note.

By virtue of the default which was entered for the respondent’s failure to file a timely answer to the formal complaint, the allegations of misconduct in the formal complaint were properly deemed to be admitted. Grievance Administrator v Daune Elston, DP 144/82 (ADB 1983). However, as the result of the respondent’s testimony and the introduction of documentary evidence, the record paints a somewhat clearer picture of the respondent’s conduct in this case than is usually found in a case in which misconduct has been established by the respondent’s default.

The mortgage which respondent gave to his brother in June 1999 was signed by the respondent and his wife and pledged their home as security for the promissory note given by respondent to his mother for repayment of a loan of \$71,872.00. The document was purportedly

notarized by one Karen L. Hand. The respondent advised his brother that their mother would receive a recorded mortgage in the near future. Following further inquiries from his brother, the respondent gave his brother a second mortgage in July 1999. This document was also signed by the respondent and his wife. It not only bore the purported notarization of one Dino Martinbianco but contained on its face stamped markings of the Wayne County Register of Deeds, including specific liber and page numbers.

In April 2002, the respondent filed a voluntary petition for bankruptcy which listed his mother as an unsecured creditor. She disputed the dischargeability of the debt. In October 2002, the bankruptcy court entered a stipulated order which provided that the debts owed by respondent to his mother were non-dischargeable. A final order was entered in that court in January 2002 with a finding that the respondent's non-dischargeable debt to his mother was \$96,902.33.

Notwithstanding the respondent's efforts to set aside the default which was entered in this discipline proceeding, the respondent has not denied the essential factual allegations that he delivered two false mortgages to his brother for delivery to their mother. Moreover, the respondent himself testified to the hearing panel that he engaged in acts of dishonesty and that he knew what he was doing when he provided the false mortgages to his brother (Tr 1/7/04, p 16). However, he emphasized to the panel that the documents in question were prepared and delivered to his brother after he had borrowed the money from his mother and that the documents, while admittedly containing forged notarizations and/or markings from the Register of Deeds, were not "fraudulent" in the sense that he used them to obtain the loan.

It is essentially the respondent's position that his preparation and delivery of two forged mortgages to family members was less egregious than if he had delivered the documents to a court or to an opposing party in litigation. In this case, it is the fact that respondent intentionally created and delivered false mortgages which governs our preliminary analysis under the American Bar Association's Standards for Imposing Lawyer Sanctions. The fact that the false documents were delivered to family members, rather than a court, a client, or a party in litigation, does not materially alter the initial analysis.

Under Grievance Administrator v Lopatin, 462 Mich 235 (2000), analysis under the ABA Standards begins with the identification of the ethical duty violated. It is undisputed that respondent

violated a duty owed to the public, that is, the fundamental duty to maintain the standards of personal integrity upon which the community relies. (See the Introduction to Standard 5.0.)

The second step is to identify the lawyer's mental state. It is also undisputed, indeed admitted by the respondent, that his conduct was intentional and knowing. The third step is the determination of the extent of the actual or potential injury caused by the misconduct. The record in this case leads to the conclusion that the respondent's delivery of the false documents carried not only the potential for injury to his mother, who may have delayed seeking available legal remedies in reliance on the documents, but, perhaps more importantly, the undeniable potential injury to public confidence in the legal profession.

The parties and the panel members were in general agreement that the appropriate discipline in this case is described in one of the three subdivisions of ABA Standard 5.1 which first states:

5.1 Failure to Maintain Personal Integrity

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation.

That Standard then describes the circumstances under which disbarment, suspension or reprimand are generally appropriate:

- 5.11 Disbarment is generally appropriate when:
 - (a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
 - (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.
- 5.12 Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the

elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

- 5.13 Reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

In its report on discipline filed April 2, 2004, the hearing panel noted the Grievance Administrator's argument that application of Standard 5.11 should result in revocation. The panel disagreed, however, and concluded that ABA Standard 5.12 provides the appropriate guidance in this case. In reaching this decision, the panel found that the respondent's presentation of the false mortgages to mislead and trick his mother into believing that her loan was secured was tantamount to the criminal conduct described in MCLA §750.218 which provides in relevant part:

A person who, with intent to defraud or cheat, and by color of a . . . writing . . . does one or more of the following is guilty of a crime punishable as provided in this section:
(c) obtains from a person any money . . .

The panel apparently reasoned that Standard 5.12 was appropriate because the criminal conduct described in that statute does seriously adversely reflect on the respondent's fitness to practice but does not contain the elements listed in Standard 5.11, i.e., intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; the sale, distribution or importation of controlled substances; or the intentional killing of another.

We find two difficulties with this analysis. First, we have some doubt as to the applicability of MCLA §750.218 in light of the fact that the respondent borrowed money from his mother prior to his delivery of the promissory note and the falsified mortgages. In this case, the "writing" required as an element of that crime was not used to obtain money from his mother, but rather to assuage her subsequent doubts as to the security for that loan.

Secondly, if analysis under Standard 5.1 turns on whether respondent engaged in criminal conduct which contains the elements listed in Standard 5.11, then MCLA §750.218 would appear by its very terms to include the element of fraud which is specifically listed in Standard 5.11(a).

We need not belabor this point further because, in our view, it is not necessary to identify a criminal statute which describes the respondent's conduct. Instead, we find that the respondent's conduct meets the basic criteria of ABA Standard 5.11(b):

- (1) the respondent engaged in intentional conduct
- (2) his conduct involved dishonesty, fraud, deceit or misrepresentation;
- (3) his conduct seriously adversely reflects on his fitness to practice law.

The requirements of Standard 5.11(b) having been met, disbarment would appear to be generally appropriate, absent aggravating or mitigating circumstances.

We agree with the hearing panel that the aggravating factor of a prior disciplinary offense [Standard 9.22(a)] is present in this case. Specifically, the respondent was admonished by the Attorney Grievance Commission in May 2000 for signing a doctor's name to a promissory note, without the doctor's knowledge or consent, in order to mislead respondent's previous law firm. The hearing panel appropriately noted that that misconduct was both relatively recent and strikingly similar to the conduct in this case. That is, the respondent has, on more than one occasion, demonstrated a propensity to engage in the creation of a false or misleading document for personal gain. Had the panel wished to make further findings of aggravation, it would appear that the record would also support inclusion of Standards 9.22(g) (refusal to acknowledge wrongful nature of conduct). We also agree with the panel's conclusion that the mitigating factors cited by the respondent in his closing statement warrant little or no consideration when considered in light of the misconduct in this case and the aggravating effect of a prior admonition for similar conduct.

While ABA Standard 5.1 covers a wide range of criminal or dishonest conduct under the heading "Failure to Maintain Personal Integrity," the narrower question of assessing a sanction in a false document case is not without precedent in Michigan. Unfortunately, the Attorney Discipline Board has had to review, and in some cases modify, the level of discipline in cases involving an attorney's intentional preparation and delivery of a false document with the intent that the person to whom the document was provided would rely on its authenticity.

Such a situation was presented, for example, in the matter of Grievance Administrator v Mary E. Gerisch, 171-87; 197-87 (ADB 1988), where an attorney not only failed to inform her client

that his case had been dismissed but then manufactured a false settlement statement and settlement check in order to conceal the true status of the case. In its opinion increasing discipline in that case from a three-year suspension to revocation, the Board said,

Inasmuch as the license to practice law in Michigan is considered to be a proclamation to the public and the legal profession that the holder is fit to act in matters of trust and confidence, we believe that revocation of that license is an appropriate sanction when an attorney violates the fundamental obligation to be truthful. This would seem especially true when a deliberate calculated intent to deceive is evidenced by the preparation of a false document. [Gerisch, supra.]

More recently, the Board increased discipline from a suspension of three and a half years to revocation in a case involving an attorney who, in his representation of a client with driving related charges pending in two district courts, fabricated an order of dismissal in one case in a vain attempt to obtain a better outcome for his client in the other court. Citing prior cases, the Board noted,

An attorney who creates forged pleadings or documents not only destroys the trust of the client but does incalculable harm to the legal system. Clients, court officers and other lawyers who receive pleadings or documents from a lawyer should never have to question the document's authenticity. [GA v Scott G. Stermer, Case No. 00-206-AI; 01-3-JC (ADB 2003), citing Grievance Administrator v Gerisch.]

We are mindful that the instant case does not involve an attorney-client relationship and that the respondent did not present the two documents to a court or another attorney. However, we cannot accept the respondent's argument that intentional creation of a false mortgage is significantly less egregious if it is prepared by a lawyer and presented to his mother than if it was presented to some other person. As our Supreme Court has said, a lawyer is a professional "24 hours a day, not 8 hours, 5 days a week." Matter of Grimes, 414 Mich 483; 326 NW2d 380 (1982). This concept is consistent with the underlying rationale for the levels of discipline suggested in ABA Standard 5.0. The introduction to that standard begins:

The most fundamental duty which a lawyer owes the public is the duty to maintain the standards of personal integrity upon which the community relies. The public expects the lawyer to be honest and to abide by the law; public confidence in the integrity of officers of the court is undermined when lawyers engage in illegal conduct.

Thus, disbarment is deemed to be the appropriate sanction which should generally follow when a lawyer engages in certain types of serious criminal conduct as well as other intentional conduct involving dishonesty, fraud, deceit or misrepresentation when that intentional conduct seriously adversely reflects on the lawyer's fitness to practice, regardless of whether that criminal or dishonest conduct occurred in the course of the lawyer's representation of a client.

The false Wayne County Register of Deeds stamp, including fictitious liber and page numbers, which appear on the July 1999 mortgage from respondent and his wife to his mother was not the result of carelessness. The respondent, with the care and planning necessary to replicate the register of deed stamps, presented that mortgage to his brother in full hope and expectation that his brother and his mother would accept it as a genuine legal document. Under all of the circumstances, the revocation of the respondent's license to practice law is warranted.

Board members Theodore J. St. Antoine, William P. Hampton, Rev. Ira Combs, Jr., Billy Ben Baumann, M.D., Lori McAllister and Hon. Richard F. Suhrheinrich concur in this decision.

Board member Ronald L. Steffens dissents and would affirm the three year suspension ordered by the hearing panel which had a first hand opportunity to observe and assess the respondent during the proceedings.

Board member Marie E. Martell did not participate in the argument or decision in this case.

Board member George H. Lennon was voluntarily recused.