

STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,

Petitioner/Appellee,

v

Charles Robert Knight, P 42510,

Respondent/Appellant,

Case No. 02-100-RD

Decided: May 27, 2003

Appearances:

Cynthia C. Bullington, for the Grievance Administrator.

Charles Robert Knight, In pro per

BOARD OPINION

This is a reciprocal discipline matter decided by a hearing panel of the Attorney Discipline Board under MCR 9.104(B). The respondent, Charles Robert Knight, was reprimanded by the Statewide Grievance Committee of the State of Connecticut which ruled that he disseminated confidential information disclosed to him in the course of a civil matter for no substantial purpose other than to embarrass an opposing party, in violation of Rule 4.4 of the Rules of Professional Conduct in that state. The respondent did not participate in the show cause proceedings conducted in Michigan. At the conclusion of its hearing, Tri-County Hearing Panel #57 determined that imposition of identical discipline in Michigan would not be clearly inappropriate and its order of reprimand was issued December 30, 2002. The respondent petitioned for review on the grounds that the imposition of identical discipline would be clearly inappropriate because the Connecticut Grievance Committee engaged in disparate treatment by declining to take disciplinary action against another Connecticut attorney involved in the disclosure of the same confidential material disclosed by the respondent. For the reasons discussed below, we conclude that the reciprocal order of reprimand should be affirmed.

I. Hearing Panel Proceedings

On September 25, 2002, the Grievance Administrator filed a petition for order to show cause accompanied by certified copy of the September 12, 2002 decision of the Statewide Grievance Committee of Connecticut finding that the respondent should be reprimanded for a violation of Rule 4.4 of the Connecticut Rules of Professional Conduct. On September 26, 2002, the Board issued an order to show cause directing the respondent to appear before Tri-County Hearing Panel #57 on November 20, 2002 to show cause why a reciprocal order of discipline should not be entered under Michigan Court Rule 9.104(B). That rule states:

Proof of an adjudication of misconduct in a disciplinary proceeding by another state or a United States court is conclusive proof of misconduct in a disciplinary proceeding in Michigan. The only issues to be addressed in the Michigan proceeding are whether the respondent was afforded due process of law in the course of the original proceedings and whether imposition of identical discipline in Michigan would be clearly inappropriate.

The Board's order was served on the respondent by regular and certified mail at his Connecticut address, which is his last address registered with the State Bar of Michigan in accordance with Rule 2 of the Supreme Court's rules concerning the State Bar of Michigan.¹ The respondent did not respond to the show cause order and did not appear before the hearing panel at the scheduled hearing.

At the hearing, the Grievance Administrator's counsel argued that service was properly obtained and that the respondent had raised no claim that he was denied due process in the Connecticut proceeding. As to the level of discipline, counsel advised the panel that she was aware of five Michigan discipline cases which included at least one count of an alleged violation of

¹ The respondent was served at the same address which he subsequently provided to the Board in connection with his petition for review. The respondent does not claim that service was defective or that he did not have notice of the Michigan proceedings.

Michigan Rule of Professional Conduct 4.4.² Counsel further advised the panel that three of those cases resulted in reprimands while the other two resulted in suspensions of 30 and 180 days. Counsel urged the panel to enter a finding under MCR 9.104(B), that imposition of a reprimand in Michigan would not be “clearly inappropriate.” The hearing panel entered its report and order of reprimand on December 30, 2002. The respondent petitioned for review in accordance with MCR 9.118 on January 13, 2003. Review proceedings were conducted by the Board on March 20, 2003. At his request, the respondent participated by telephone.

II. Issue Presented

Is the respondent properly subject to an order of reprimand in Michigan based upon proof of an adjudication of misconduct and the issuance of a reprimand in a disciplinary proceeding conducted by the Statewide Grievance Committee in Connecticut?

III. Discussion

The respondent, Charles R. Knight, represented the defendant/employer in a sexual harassment lawsuit instituted in 1998 by Kristin Norton, the complainant in the Connecticut discipline proceeding. During pre-trial discovery, Ms. Norton was compelled to produce her medical and psychological records. Although these were her confidential records, they were released to Knight under a Connecticut statute which provides an exception to the psychologist/patient privilege when the patient’s psychological condition is an element of the claim.

At the time of the litigation, Ms. Norton was living with Mr. Michael Lanata. Lanata was divorced and was involved in a bitter custody dispute with his former wife, Cheryl Lanata, who was represented by Connecticut attorney Lisa Faccadio in that custody matter.

Neither the respondent nor his client had any involvement in the custody dispute between Michael Lanata and Cheryl Lanata. Nevertheless, in October 1999, the respondent wrote a letter to

² Connecticut’s Rule of Professional Conduct 4.4 and Michigan’s Rule of Professional Conduct 4.4 are both based upon the American Bar Association’s Model Rule of Professional Conduct 4.4. Rule 4.4 is identical in both jurisdictions and directs:

Rule 4.4 RESPECT FOR RIGHTS OF THIRD PERSONS - In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

Cheryl Lanata's attorney. With that letter, the respondent included excerpts from Kristin Norton's psychological records. The Connecticut Grievance Committee found that at least one of the statements made by the respondent in his letter about Ms. Norton and her son were "unsupported by the psychological records" and that "another statement emphasized a partial quote made by the complaint's psychologist and was taken out of context by the respondent." The panel found that Cheryl Lanata's attorney had not previously spoken with respondent and had not requested the records. The panel also found that the respondent did not disclose to Ms. Norton that he was disclosing her records to her boyfriend's ex-wife's lawyer. That lawyer then forwarded the information to her client, Ms. Lanata, and she provided the documents to a clinical psychologist who was doing a custodial evaluation in the custody battle between Michael Lanata and Cheryl Lanata.

Eventually, Ms. Norton became aware that her confidential records, released to attorney Knight in her harassment lawsuit against her former employer, were now being used against Michael Lanata in his custody dispute with his former wife. Ms. Norton was compelled to seek an order to quash the further dissemination of her medical records. Although she obtained such an order, she discovered that Ms. Lanata was continuing to distribute the confidential psychological information to individuals outside the Lanata custody dispute and Ms. Norton was further compelled to file a lawsuit against Ms. Lanata to force her to honor the confidentiality order.

The Statewide Grievance Committee in Connecticut conducted a hearing in October 2001. Respondent Knight was represented by counsel and he appeared and testified on his own behalf. According to the Committee's report, the respondent testified that he turned the psychological notes over to attorney Faccadio in exchange for a copy of a deposition which Ms. Norton had given during the Lanatas' custody dispute. He testified that he did not believe that the other attorney would show the psychological notes to her client. However, the Committee found the following:

1. Respondent Knight could have obtained Ms. Norton's deposition through "normal discovery means" and the Committee discredited his statement that the psychological records were in exchange for the deposition.
2. The committee did not find credible respondent's testimony that he believed that attorney Faccadio would not disclose the psychological records to her client.

3. The Committee reported that it was especially troubled that the respondent provided selected pages from the psychological records that inaccurately represented particularly delicate information about the complainant [Ms. Norton] and her son.

The panel concluded that the respondent's dissemination of excerpts from Ms. Norton's psychological records violated her rights to privacy and confidentiality, that he had no substantial or legitimate purpose in disseminating that information to a third party and that his actions clearly resulted in substantial embarrassment to Ms. Norton. That Committee concluded that the respondent's conduct violated Rule 4.4 of the Rules of Professional Conduct.

The respondent does not dispute the Connecticut findings - in fact, he incorporates them by reference in his brief. It does not appear that he appealed his reprimand in Connecticut. He explains in his brief that after he got the reciprocal discipline order in this case, he went to the Grievance Committee offices in Connecticut to find out what happened to the grievance against attorney Faccadio. On January 3, 2003, he learned that Ms. Norton's grievance against Ms. Faccadio had been dismissed. It is apparently his claim that the Committee's different treatment of the two grievances constitutes evidence that the Committee's actions in his case were arbitrary or capricious within the meaning of Connecticut General Statute 2.38(F).

The respondent attached a copy of that section of the Connecticut statute to his brief in support of petition for review. However, the statute he cites describes the standards to be applied by a reviewing court in Connecticut on an appeal from a Statewide Grievance Committee decision. Respondent Knight did not appeal the decision of the Statewide Grievance Committee. Moreover, the Attorney Discipline Board is not bound by the standards of review set forth in the Connecticut statute. Rather, the first question framed by Michigan Court Rule 9.104(B) in our proceeding is whether or not the respondent was afforded due process of law in Connecticut.

We first note that although the respondent was provided with notice of the reciprocal proceeding in Michigan, he did not respond in any way and it could be said that he has waived his right to raise this issue by failing to answer the order to show cause or to appear before the panel. We also note, however, that in any event, respondent has not clearly articulated a recognized element of due process which was violated. He does not claim, for example, that he was denied any fundamental right to notice of the charges against him, the right to confront his accuser, or the right to present evidence in his defense. In fact, the respondent did participate in the Connecticut

proceeding and he was represented by counsel. There is nothing in the record to suggest that the respondent raised a due process claim in Connecticut. His only argument now is that the results in his case and the grievance against Ms. Faccadio's case are different.

However, the report of the grievance panel in Connecticut in the matter of Kristin Norton v Lisa Faccadio reveals that the two cases were different. For example, the panel which considered the grievance against Ms. Faccadio noted that it was Knight who contacted her; that she did not solicit the information regarding Ms. Norton; that she believed she had an obligation to forward the information to her client; and that she instructed her client, in writing, to honor the confidentiality order from the court. That panel found:

In this case, the information was gratuitously provided to [Faccadio] by another attorney. Accordingly, [Faccadio] has not violated this segment of the rule. R's client was involved, inter alia, in a post judgement visitation dispute. The panel cannot say that R's client's ex-spouse's relationship with [Ms. Norton] has no substantial relevance to that post judgment dispute. When a divorced parent is engaged to marry someone - that person will necessarily have a fair amount of contact with that parent's minor children. This can become relevant to visitation issues. Accordingly, [Faccadio's] providing the unsolicited information to her client for review is consistent with her obligations under Rule 1.4 - which require an attorney to keep a client informed about the matter for which representation is undertaken so that the client can make informed decisions.

That finding may be contrasted with respondent's conduct in releasing the confidential records to Faccadio. Respondent's client was Ms. Norton's former employer. He had no duty to his client which involved assisting Ms. Norton's boyfriend's ex-wife in a custody battle. The panel in Knight's case specifically found that there was no merit to his claim that he needed to disclose Ms. Norton's confidential records in order to obtain a copy of her deposition.

The respondent raises an additional argument that the Connecticut ruling in his case was erroneous under a prior Connecticut case, Klingerman v Statewide Grievance Committee, 16 CONN. L. RPTR. NO 11, 349 (May 13, 1996), which held that actions which have the incidental effect of causing embarrassment or inconvenience are not misconduct if there was some substantial legitimate purpose for the conduct. It is not necessary for the Board to consider this argument. Under MCR 9.104(B), the Connecticut decision is conclusive proof of misconduct unless the respondent can show that the Connecticut decision was the result of a fundamental denial of due

process. His time to challenge the Connecticut decision was in an appeal to a court in Connecticut. Having waived his right to challenge the Connecticut opinion in Connecticut, he cannot challenge it now in Michigan.

The respondent's "statement of questions involved" erroneously ascribes a "clearly inappropriate" standard to the question of whether or not his discipline in Connecticut violated that state's appellate review criteria. The stated intent of Michigan's reciprocal discipline rule is to give full faith and credit to the Connecticut order of reprimand. We conclude that the "clearly inappropriate" standard in MCR 9.104(B) applies only to the question of whether or not identical discipline should now be imposed in this state.

Having determined that the respondent was afforded due process in a disciplinary proceeding conducted in the State of Connecticut and that the proof of adjudication of misconduct in that jurisdiction is conclusive proof of misconduct in the reciprocal proceeding in Michigan, we are left only with the question of whether imposition of identical discipline in Michigan would be clearly inappropriate. As noted above, the respondent did not appear before the hearing panel below in response to the Board's order to show cause nor does his brief in support of his petition for review directly address the question of the level of discipline. In the absence of any persuasive argument that a reciprocal order of reprimand would be "clearly inappropriate," we will affirm the hearing panel's order of reprimand in this case.

Finally, we note that the respondent states in his brief that imposition of reciprocal discipline in this case would be inappropriate because the respondent has not been an active member of the State Bar of Michigan for over ten years. The record in this case is devoid of any factual information regarding the precise date or circumstances under which the respondent ended his status as an "active" member of the State Bar of Michigan and there is no evidence in the record that the respondent ever attempted to submit his resignation or to request that his name be stricken from the official register of attorneys. See MCR 9.115(M). The Board is aware of no authority for the proposition that absence from the State of Michigan or the inactive status of one's license cloaks the holder of a Michigan license to practice law with disciplinary immunity.

IV. Conclusion

The hearing panel below properly accepted proof of an adjudication of misconduct in a disciplinary proceeding in Connecticut as conclusive proof of misconduct in a disciplinary

proceeding in Michigan conducted under MCR 9.104(B). The respondent has not established that he was denied due process of law in the course of the Connecticut proceedings nor has he persuaded the Board that imposition of identical discipline in Michigan would be clearly inappropriate. The hearing panel order of reprimand issued December 30, 2002 is therefore affirmed.

Board members Theodore J. St. Antoine, William P. Hampton, Ronald L. Steffens, George H. Lennon, Billy Ben Baumann, M.D., and Lori M. Silsbury concur in this decision.

Board members Marie E. Martell, Rev. Ira Combs, Jr. and Hon. Richard F. Suhrheinrich did not participate.