

Grievance Administrator,

Petitioner,

v

Mark L. Brown, P 39562

Respondent.

95-68-GA

Decided: June 19, 1996

BOARD OPINION

Complainant Jesse Agnew filed a delayed petition for review objecting to certain provisions of a hearing panel order entered December 13, 1995 suspending the license of respondent Mark L. Brown for a period of thirty (30) days. The hearing panel's order was based upon its approval of a stipulation for consent discipline submitted by the respondent and the Grievance Administrator in accordance with MCR 9.115(F)(5). In that stipulation, respondent admitted charges that he failed to communicate adequately with a client in a divorce case and failed to answer three requests for investigation. The stipulation also contained the parties' agreement that charges relating to respondent's representation of complainant Agnew should be dismissed, specifically, the charges that respondent was appointed in April 1993 to prepare a motion for new trial on Agnew's behalf but failed to keep his client reasonably informed of the status of the case.

In his delayed petition for review, Agnew asks that the hearing panel order of suspension be vacated, that the charges in Count I of the formal complaint be reinstated and that the respondent be ordered to provide Agnew with a copy of the motion for new trial. The Board ordered the Grievance Administrator and the respondent to submit answers to Agnew's delayed petition with a specific request to respondent to provide a copy of the motion for new trial filed on his client's behalf. Respondent stated in

his answer that a timely motion for new trial was filed in May 1993 and he provided a copy of that motion.

For the reasons stated below, the Attorney Discipline Board is unable to grant the relief requested by the complainant. The Delayed Petition for Review is therefore dismissed.

The Board has the authority to review a hearing panel's decision to impose discipline based upon an attorney's admission or plea of no contest to charges of professional misconduct. However, the Board's jurisdiction does not extend to a review of the Attorney Grievance Commission's agreement to dismiss charges of professional misconduct or its decision to discontinue the prosecution of a formal complaint.

In Grievance Administrator v Kurt O'Keefe, ADB 90-13-GA (Bd Opn 1992), the hearing panel accepted the stipulation of the Grievance Administrator and the respondent to dismiss a formal complaint. The complainant filed a petition for review on the grounds that the Administrator and the Attorney Grievance Commission did not thoroughly investigate her allegations against the respondent and she requested that the complaint be reinstated for further proceedings. In its opinion denying the complainant's request to vacate the order of dismissal, the Board reiterated that, although a complainant is entitled to prior notice that the Grievance Commission intends to dispose of the allegations in a formal complaint by stipulating to a dismissal, the complainant does not have a right to veto such a decision by the Attorney Grievance Commission or the Grievance Administrator. The authority to seek dismissal of actions which have become unworthy of prosecution is inherent in the Commission as the prosecution arm of the Michigan Supreme Court. Grievance Administrator v O'Keefe, supra, citing Matter of Richard Durant, ADB 208-88 Bd Opn 5990. In O'Keefe, the board acknowledged that the complainant was caught in a procedural web:

"Had the complainant's request for investigation been rejected by the Grievance Administrator as insufficient under the provisions of MCR 9.112(C)(1)(A) or had it been dismissed by the Grievance Commission under MCR 9.114(A),

the complainant would have had the right to file a complaint for mandamus in the Supreme Court. See MCR 9.122(A)(2) and MCR 7.304. In light of the fact that the Attorney Grievance Commission is under the Court's direct supervisory control as its investigation and prosecution arm (MCR 9.108(A) and the Grievance Administrator is the Court's direct appointee (MCR 9.109(A), it is appropriate that the Court, not the Board, should review discretionary acts of the Commission or the Administrator with regard to the dismissal of an investigation or a prosecution" Grievance Administrator v O'Keefe supra.

Complainant Agnew is caught in the same procedural web. There is no significant difference between the Attorney Grievance Commission's approval of a stipulation to dismiss the entire complaint in O'Keefe and the Commission's approval of a stipulation to dismiss all charges based upon respondent's representation of Mr. Agnew.

According to the Grievance Administrator's reply to the delayed petition, the Grievance Commission members were advised prior to their approval of the stipulation that Agnew was likely to oppose respondent's proposal. The terms of the stipulation were approved by the Commission in October 1995. The stipulation for consent discipline was executed by the respondent and the Administrator on December 1, 1995 and a copy of was mailed to the complainant on that date.

The decision of the Grievance Administrator and Attorney Grievance Commission to dismiss the charges based upon respondent's representation of complainant Agnew were prosecutorial decisions beyond the scope of this Board's power of review. The complainant's proper remedy to challenge the stipulation to dismiss Count I is to seek the Supreme Court's power of superintending control over the Commission and the Administrator in a complaint for mandamus filed in accordance with MCR 7.304(A) and MCR 9.122(A)(2).