Grievance Administrator,

Petitioner/Appellee,

v

Sheldon Goldner, P 36641

Respondent/Appellant.

97-160-AI; 98-36-JC

Decided: June 15, 1999

BOARD OPINION

The respondent, Sheldon Goldner, petitioned for review of a hearing panel order of revocation based upon his plea of guilty, in the United States District Court for the Eastern District of Michigan, to the felony of mail fraud and aiding and abetting in violation of 18 U.S.C. 1341, 2. Respondent argues, as he did to the panel, that the nature and seriousness of his criminal conduct bears some similarity to the felonious conduct which resulted in suspensions at or near 33 months in other cases and that a similar result is warranted here. This is not a case in which we have struggled with the competing notions of deference to a hearing panel's exercise of discretion versus the Board's authority to exercise its own discretion as a reviewing tribunal where the level of discipline is the subject of that review. In this case, we are of one mind with the panel's view that the fraud in this case "is as bad as dishonesty and cheating by a lawyer gets" and that revocation of respondent's license to practice law in Michigan is the appropriate sanction.

When professional misconduct is conclusively established with the Administrator's filing of a judgment of conviction under MCR 9.120(B)(3), the hearing panel must nevertheless exercise its critical responsibility to carefully inquire into the specific facts of each case. Grievance Administrator v Deutch, 455 Mich 149, 169 (1997). In this case, the specific facts were laid out on the record with the introduction of copies of the government's sentencing memorandum in U. S. v Lawrence Schlussel, Sheldon Goldner and Schlussel and Drazin, P.C., U. S. District Court, Eastern District of Michigan, Case No. CR 95-80393-2; transcripts of respondent's guilty plea in June 1997 and his sentencing in February 1998 before U. S. District Judge John Feikens; the testimony of Assistant U. S. Attorney (AUSA) Terrence Berg and the testimony of respondent himself.

Beginning in 1993, after receiving information from an informant, the FBI and the U. S. Attorney's Office in Detroit began a two-year investigation of the law firm of Schlussel and Drazin, P.C. The informant had been an actual client of the firm, and had been encouraged to claim that he suffered from temporal mandibular joint syndrome (TMJ) when, in fact, he did not.

The FBI, under AUSA Berg's supervision, subsequently sent in undercover agents, posing as clients, to the law firm. The undercover agents wore concealed tape-recording devices. Respondent Goldner participated in three of the undercover visits by initially meeting with the "clients" to interview them about the nature of their injuries. Prior to meeting with respondent, the three undercover agents were advised by AUSA Berg to claim that they had suffered injuries, but to specifically deny they had suffered any kind of head injury.

In all three visits, respondent encouraged the "clients" to falsely claim that they had a head injury, in particular a jaw injury such as TMJ, so that they could recover more money. The following excerpt from petitioner's exhibit #3, the government's sentencing memorandum, is illustrative:

> 2. Conduct Relating to FBI Special Agent A. J., Hicks a.k.a. "Carl Taylor"
>
> On March 2, 1994, Special Agent A. J. Hicks of the FBI visited Schlussel's office posing as "Carl Taylor," who said he was suffering "minor stiffness" of his neck after a car accident. Hicks met with Goldner only. Upon hearing about the "minor stiffness," Goldner replies: "You didn't come to us to make you minor, mi-, minor money. You want us to make you as major money as you can for you. Is that true?. . .It better be true. Okay, otherwise I'll say goodbye. . . .Okay. Now, for minor stiffness, on your neck, I can't get you crap." (3/2/94 Tr. at 3). When asking Hicks to describe the accident, Goldner volunteers a version of the events, and instructs Hicks to agree. Goldner says: "it hit the side of your face against the window. Right? The answer's yes." (3/2/94 Tr. at 4). Goldner goes on explaining what such an injury would feel like: "Your jaw would hurt. Your mouth would hurt. It would be hard to open your mouth, it would be hard to chew. Right?. . .Okay? You been havin' that?" Hicks responds: "No, I haven't had it, but I . . " and Goldner interrupts: "The answer's yes. . . .'Cause otherwise, I can't make you any money." (3/2/94 Tr. at 4-5). Toward the end of their meeting, Goldner reminds Hicks: "So, again, the key is your head, your mouth, your face, your jaw. Get'em.?" (3/2/94 Tr. 8). (Petitioner's Exhibit #3, pp 3-4)

As described in the information filed by the government against attorneys Schlussel and Goldner, respondent was charged with participating in a scheme by which the attorneys would encourage clients to complain of TMJ related injuries that did not occur and TMJ related symptoms that they did not have in order to sustain a more lucrative law suit. As part of that scheme, clients would be referred to certain chiropractors and dentists for treatment. After the clients had made a sufficient number of visits to the dental and chiropractic offices, respondent and/or Schlussel would send a letter via the U. S. mail to an insurance company asking for an amount between $40,000 and $50,000 as a fair settlement for their client's falsified injury. This scheme was described in Count 1 of the information and that was the count to which respondent's offered his plea of guilty to U. S. District Judge Feikens. Respondent was sentenced by Judge Feikens to the custody of the U. S.

Bureau of Prisons for one year and one day, to be served in a half-way house, followed by supervised release for three years. Respondent was also fined $10,000.

Respondent testified that he began working as an associate attorney at the law firm of Schlussel and Drazin, P. C. in May 1990 and he continued at the firm until June 1997. Approximately two months after he began working at the firm, respondent was instructed by Schlussel to begin advising clients to "enhance" their injuries. Although respondent testified he knew it was wrong, he began advising clients in July 1990 to either "enhance" existing injuries or lie about the injuries they suffered and he continued to do so until his arrest by the FBI in 1995.

Respondent agreed when questioned by the panel that he met with approximately 1000 clients between July 1990 and his arrest in 1995. However, respondent stated that while he often told clients to "enhance" their injuries, he only told 15 to 20 clients to actually lie during that period. Respondent conceded that he instructed all three of the undercover agents that he met with to lie about their injuries.

Respondent testified that he engaged in this activity, even though he knew it wrong, because he needed the job. When asked if he ever told Schlussel that he did not want to do it, respondent stated that he had, but was informed that it "was the way we do things around here."

Respondent prepared and submitted to the panel a memorandum on the issue of the appropriate level of discipline which included what appears to be an exhaustive list of the sanctions imposed in all Michigan discipline cases involving felony convictions since 1974. This memorandum was reviewed by the hearing panel, along with all of the aggravating and mitigating factors cited by the parties, prior to the issuance of the panel's report on discipline. In that report, the panel concluded:

> Respondent's position, based on comparison of other criminal conviction disciplines imposed on all other similar respondents and on the lower responsibility of Sheldon Goldner as compared to that of Lawrence Schlussel as measured by the discipline imposed on Mr. Schlussel (revocation) and their relative roles in the dishonest scheme is this: "The Respondent is asking for a discipline in the range of 24 to 30 months." (Tr 90).
>
> Petitioner's position is based on the details of the respondent's active participation in a four or five year active role in counseling clients to lie about the extent and even to the fact of injuries, that he has a continuing dishonest and selfish motive, that his unethical conduct went to the heart of what it means to be a lawyer when the respondent encouraged and participated in fraud on other parties, other lawyers, and the courts over a period of four or five years. Petitioner claims that the conduct of the respondent as established at the hearing qualifies under Section 5.1 and Section 9.22 of the American Bar Association Standards for Imposing Lawyer Sanctions supporting revocation as the proper sanction in this case.

> The discipline case sanctions referred to by the respondent in his very helpful hearing memorandum seem to this hearing panel to be distinguishable. The factS of the instant case go to the very center of what it means to be a lawyer--and the fraud in this case extends from clients to opponents to courts. This case is as bad as dishonesty and cheating by a lawyer gets, and there is no real or acceptable excuse.
>
> At the end of his testimony, the respondent said: "And really what I'm really asking for is a second chance to, you, clear my name, to -- you can be assured it won't happen again. . ." (Tr 84).
>
> This hearing panel has considered the respondent's professional experience before the acts found here began, the four or five years of active fraud and lies, and the explanation, excuse and request of the respondent.
>
> We cannot, and do not, conclude that the respondent "[i]s fit to be entrusted in professional and judicial matters and to aid in the administration of justice as an attorney and counselor and as an officer of the court." MCR 9.103(A).
>
> It is the determination of this hearing panel that Sheldon Goldner's license to practice law in the State of Michigan be revoked. (HP Rept, p 3-4.)

In considering respondent's argument that comparison to the discipline other felony conviction cases should result in modification in discipline in this case from revocation to a suspension at or near 33 months, we start with the underlying principle enunciated by the Supreme Court that:

> In reviewing the discipline imposed in a given case, we are mindful of the sanctions meted out in similar cases, but recognize that analogies are not of great value. [Matter of Grimes, 414 Mich 483; 326 NW 2d 380 (1982).]

As we have said, "The fashioning of a discipline order is, at best, an inexact science requiring careful consideration of the unique circumstances of each case." Grievance Administrator v Stephen Moultrup, 93-197-GA (ADB 1995). Even in cases involving criminal conduct where professional misconduct is conclusively established by the filing of a judgment of conviction and the only issue before a panel or the Board is the appropriate level of discipline, the Court has stated that "Attorney misconduct cases are fact-sensitive inquiries that turn on the unique circumstances of each case." Grievance Administrator v Deutch, 445 Mich 149, 166 (1997) citing In Re Grimes, supra, at 490.

We agree with the panel that the instant case may be distinguished from those felony cases cited by respondent which involved a single or occurrence not directly related to the attorney's practice of law or status as an attorney. Those cases include Grievance Administrator v Eric P. VonWiegen, 92-236-JC (conviction for tax evasion resulted in a six-month suspension by consent);

Grievance Administrator v Gary W. Lange, 93-27-JC (conviction for filing a false tax return resulted in a six-month suspension); Grievance Administrator v Ann Zachary, 96-84-JC (retail fraud [shoplifting] conviction resulted in a 180-day suspension by consent); Grievance Administrator v Herbert Mick, 96-29-JC (112-day suspension followed by two years probation for an attorney convicted of OUIL third); Grievance Administrator v Nicholas Smith, 96-177-JC (conviction of tax evasion resulted in a two-year suspension by consent); Grievance Administrator v Maia Sherman, 97-35-JC (conviction for false statements on a tax return resulted in a 180-day suspension by consent).

Other cases emphasized in respondent's brief are somewhat more analogous to the instant matter in that they involved an attorney's course of conduct over a period of time and involved criminal conduct while the individual was acting as an attorney.

In Grievance Administrator v Michael Dowdle, 96-178-JC, respondent's receipt of over $500,000 in undisclosed real estate commissions over a four-year period contrary to his fiduciary obligations to his employer resulted in a conviction of conspiracy to commit mail and wire fraud. The 30-month suspension ordered by the panel was not appealed to the Board.

Grievance Administrator v David Foster, 92-202-JC and Grievance Administrator v Angelo Polizzi, 95-69-JC both involved attorneys involved in money-laundering schemes brought to them by undercover agents in sting operations. The Board affirmed a 33-month suspension in Foster. In Polizzi, the Board affirmed a 30-month suspension which was subsequently increased to a four-year suspension by the Supreme Court.[1] Grievance Administrator v Deday LaRene, 94-82-JC involved an attorney convicted of conspiracy and tax evasion arising from his assistance to a client in a business transaction. The 33-month suspension imposed by the panel was affirmed by the Board and leave to appeal was denied by the Supreme Court.[2]

Three of the cases cited by respondent, Polizzi, LaRene and Foster, involved appeals to the Attorney Discipline Board on the issue of whether or not the discipline imposed by the hearing panel should be modified or affirmed. In each of those cases, the Board afforded deference to the hearing panel's decision.

It is appropriate that we give similar deference to the panel's decision in this case. The panel expressed its condemnation of respondent's conduct by ordering that his license to practice law in Michigan be revoked. The panel's order, based on its members' first-hand opportunity to weigh and assess the evidence, was appropriate and the order is affirmed.

Board Members Elizabeth N. Baker, C. H. Dudley, Barbara B. Gattorn, Grant J. Gruel, Albert L. Holtz, Kenneth L. Lewis and Nancy A. Wonch concur in this decision.

Board Members Michael R. Kramer and Roger E. Winkelman did not participate in this decision.

---

[1] Grievance Administrator v Polizzi, 454 Mich 1219 (1997)

[2] Grievance Administrator v LaRene, 452 Mich 1202 (1996)