

Grievance Administrator,

Petitioner/Appellee,

v

Robert H. Golden, P 14108,

Respondent/Appellant,

No. 96-269-GA.

Decided: May 14, 1999

BOARD OPINION

We are disappointed as we are faced with another case arising out of unpardonably inappropriate behavior by an attorney at a deposition. In this case, respondent assaulted his opposing counsel in an attempt to recover papers produced by the deponent so as to prevent them from being marked as an exhibit. We affirm the hearing panel's findings and modify the discipline ordered. Respondent shall be suspended for 60 days.

Respondent represented the plaintiff, a corporation and real estate broker. Bruce L. Segal represented one defendant. Mark P. Bucchi represented a codefendant. A deposition of a real estate salesperson affiliated with the plaintiff was taken at respondent's office. A transcript of the deposition was introduced into evidence at the hearing. In pertinent part, it reads:

MR. SEGAL: I have no further questions. I'm going to mark this as an exhibit.

MR. GOLDEN: No, you're not.

MR. SEGAL: Then I'm just going to take it with me.

MR. GOLDEN: You're not going to do that either.

MR. SEGAL: Are you going to physically stop me?

MR. GOLDEN: If you try and take it with you, I will. And there's no question in my mind that I can do that.

MR. SEGAL: All right. Why don't we then call the Court and resolve this difficulty right now.

MR. GOLDEN: No, why don't you just give the papers --

MR. SEGAL: No. There is --

MR. GOLDEN: -- back to the witness.

MR. SEGAL: No. There is a procedure here where we can contact the Court to resolves [sic] disputes.

MR. GOLDEN: No.

MR. SEGAL: I am not going to give these papers back to the witness, Mr. Golden.

MR. GOLDEN: Then I'm going to get up and take it from you.

MR. SEGAL: If you take it from me, I will report you to the Attorney Grievance Committee [sic].

MR. GOLDEN: Please do that.

(Whereupon Counsel Golden approaches Counsel Segal)

MR. SEGAL: Mr. Golden, these are documents that he brought to this deposition.

MR. GOLDEN: I don't want to hurt you.

MR. SEGAL: Mr. Golden, if you touch me I will call the police.

MR. GOLDEN: Call the police.

MR. BUCCHI: The record should reflect --

MR. GOLDEN: Give them to me, you son of a bitch.

MR. BUCCHI: Okay. That will be enough boys. Gentlemen.

MR. SEGAL: Mr. -- you're breaking my glasses.

MR. GOLDEN: I'll break your head.

MR. BUCCHI: Let go. Bob, you can let go.

MR. SEGAL: Keep the record on. Please.

MR. BUCCHI: Both of you better let go.

MR. SEGAL: Mr. Golden.

MR. GOLDEN: Let go.

MR. BUCCHI: Both of you let go [of the document], I'm telling you now.

MR. SEGAL: Mr. Golden.

COURT REPORTER: Please, sirs.

MR. GOLDEN: Let go.

MR. BUCCHI: No, sir.

MR. SEGAL: I'll tell you what, I'm just going to call the Court.

(Whereupon Counsel proceeds to contact the Court by telephone)

MR. BUCCHI: You've now attacked a fellow member of the practicing bar. If you want to attack two of us, that's what you're going to have to do now, Mr. Golden.

MR. GOLDEN: I'm capable of doing it.

MR. BUCCHI: I understand. Are you willing to do it.

MR. GOLDEN: I don't know. If it's necessary, I'll do it.

MR. BUCCHI: Okay. We've talked -- we've done all the talking we're going to do.

MR. GOLDEN: Right.

MR. BUCCHI: Go ahead.

MR. GOLDEN: Let go.

MR. BUCCHI: No, sir.

COURT REPORTER: You're very close to me and I don't want to be hurt.

MR. BUCCHI: We're not going to get any closer. Now, I am not letting go of the documents which I am now holding without further instructions from Judge McDonald. I will place these in safe keeping until whatever the two of you are arguing about is concluded. I will not review them, but I am not going to have that happen any further.

And, I strongly suggest that the altercation not proceed any further.

MR. GOLDEN: Gentlemen, this deposition is concluded.

[Petitioner's Exhibit 1, pp 100-104.]

In addition to reviewing this transcript, the hearing panel heard the testimony of respondent, Mr. Segal, Mr. Bucchi, and the court reporter. The panel also listened to an audiotape made by the court reporter.

Mr. Segal testified that he did not want to give the papers back to the witness "because Mr. Golden had made it clear . . . that he did not consider [the deponent] to be a party. He didn't consider himself to be representing [the deponent]." This caused Mr. Segal to be concerned about preservation of the document after the deposition. Segal testified that the tone of respondent's voice caused him to ask, "Are you going to physically stop me?"

The witnesses who testified at the hearing all shared the view that respondent was the aggressor in this dispute. Mr. Bucchi testified that Mr. Segal did not goad respondent and that "Mr. Segal was the basically the nail in this confrontation between the hammer and the nail." Mr. Segal remained seated at the table while respondent approached and grabbed him. The panel found that respondent placed his hands around Segal's neck and head. The witnesses variously described the maneuver as a "headlock" or a "chokehold." It was at this point that Segal said "you're breaking my glasses," to which respondent replied, "I'll break your head."

The court reporter was "shocked" and testified to feeling "embarrassment that this was happening." She testified that Mr. Segal's glasses were knocked off by respondent who seemed "out of control."

Mr. Bucchi explained that when he said: "Let go. Bob, you can let go," he was talking to respondent and referring to Mr. Segal's head and neck. When Bucchi said, "both of you better let go," he was referring to the papers, which he was trying to take possession of in an attempt to end the conflict. Bucchi obtained the papers, while Segal went to call the judge.

Once Bucchi obtained the papers, respondent took hold of them and attempted to take them from Bucchi. Respondent and Bucchi were "squared off." Bucchi said to respondent that he had already "attacked" one member of the bar and had a decision to make with regard to another. The court reporter protested, "You're very close to me and I don't want to be hurt." The deposition ended with Bucchi saying that the papers would be held pending further instructions from the court, and they were ultimately turned over to the judge's clerk.

The hearing panel found that respondent's conduct violated MCR 9.104(1)-(4), MRPC 6.5(a), and MRPC 8.4(a) and (c). In its report regarding discipline, the panel stated:

At the end of his argument in the discipline phase, Mr. Golden offered a pro forma apology. The apology did not show any understanding that his conduct was not excusable or how disruptive it was of the judicial process. It was inconsistent with his combative demeanor throughout the hearing. [Hearing Panel Report, p 5.]

Respondent has filed a petition for review. The evidentiary support for the panel's findings is not at issue. Rather, respondent's arguments relate to the appropriate level of discipline for this incident.

At the hearing on discipline, respondent asserted that this was an isolated incident in his career. In cross examining respondent, counsel for the Attorney Grievance Commission confronted him with a remark he made to a different opposing counsel in a 1991 creditor's examination taken in another case. Respondent first argues that this amounted to the improper use of "confidential information" in violation of MCR 9.126(A). We fail to see how a transcript of a proceeding which would otherwise be a matter of public record somehow becomes cloaked in secrecy once in the possession of the Grievance Administrator. Moreover, the rule expressly provides that members of hearing panels and the Board may review such materials in any event. MCR 9.126(D).

Respondent next argues that the Administrator's tactic denied him notice of the charges against him. The Administrator replies that by stating, "I've taken hundreds and hundreds of depositions and nothing like this has ever occurred before," respondent opened the door to admission of specific instances of conduct under MRE 405(b). We need not resolve this issue because the panel's report makes it clear that the panel did not rest its decision with respect to discipline on the 1991 creditor's exam conduct. Moreover, respondent did not object below. Accordingly, the issue is not preserved for review.

While the Board reviews a hearing panel's findings and conclusions for evidentiary support in the whole record, the Board possesses greater latitude with regard to the ultimate decision. Grievance Administrator v August, 438 Mich 296, 304; 475 NW2d 256 (1991); Grievance Administrator v Thomas B. Richardson, 96-97-GA (ADB 1998). This power allows the Board to carry out what the Court has described as the Board's "overview function of continuity and consistency in discipline imposed." In re Daggs, 411 Mich 304, 320; 307 NW2d 66 (1981).

We are not in a position to disagree with the panel's assessments regarding respondent's attitude, and the need for significant discipline in this case. However, in exercising our overview function to assure consistency and continuity, we are unable to conclude from the record that it is necessary for respondent to be suspended for 180 days and be required to petition for reinstatement under MCR 9.123 & 9.124. Accordingly, we modify the panel's order and suspend respondent for 60 days.

Our decision to impose a suspension of 60 days -- even though respondent has practiced with an unblemished record for over 37 years and this was an isolated incident which ended without physical injury to anyone -- reflects our unwillingness to tolerate this type of behavior. We will continue to review and decide these matters on a case-by-case basis, as is the rule in attorney discipline proceedings. However, we will not forget that persons involved in the legal process are engaged in an undertaking vital to our society.

When a client counsels with an attorney or when a person participates in some phase of litigation, the greater end involves -- and should strengthen -- the rule of law. We cannot ask all citizens to conduct their legal affairs and the pursuit of justice in accordance with a process which the lawyers themselves abandon when it becomes inconvenient. For these reasons lawyers can expect that conduct rising to the level of a physical assault while performing their legal duties will generally result in a suspension. This does not mean that a suspension may never be imposed for abusive or inappropriate conduct not involving physical contact. Nor does it mean that a suspension will be warranted whenever an attorney touches another person involved in the legal process. However, we hereby serve notice on the profession that its members should, before acting, reflect on the fact that these cases will be taken seriously by this Board.

Board Members Barbara B. Gattorn, Grant J. Gruel, Albert L. Holtz, Nancy A. Wonch, Elizabeth N. Baker, C. H. Dudley, M.D., Kenneth L. Lewis, and Roger E. Winkelman concur in this decision. Board Member Michael R. Kramer was voluntarily recused and did not participate in this decision.