

Grievance Administrator,

Petitioner/Appellant,

v

Gary R. Dettloff, P 28693

Respondent/Cross-Appellant.

96-152-AI; 97-231-JC

Decided: April 15, 1999

BOARD OPINION

This matter commenced with the Grievance Administrator's filing of a judgment of conviction pursuant to MCR 9.120 which established that respondent, Gary R. Dettloff, entered a plea of no contest in Wayne County Circuit Court to one count of attempted violation of Michigan's Blue Sky Law contrary to MCL 750.92. The documents filed by the Grievance Administrator showed that respondent was sentenced on August 12, 1997 to five years of non-reporting probation and was ordered to make restitution of \$260,516.21.

Respondent's plea of no contest in that criminal matter was tendered to the Wayne County Circuit Court on March 19, 1997. In accordance with MCR 9.120(B)(1), respondent's license to practice law in Michigan was automatically suspended on the date of that plea and resulting felony conviction. In accordance with MCR 9.120(B)(3), the Board ordered respondent to show cause why a final order of discipline should not be entered and the matter was referred to a hearing panel. The hearing panel ordered that respondent's license should be suspended for 179 days commencing November 14, 1998, to run consecutively to the interim suspension which had been in effect since March 19, 1997. The panel conditioned respondent's eligibility for reinstatement upon his filing an affidavit that he has made all restitution ordered by the Wayne County Circuit Court together with an affidavit from his treating physician. The Attorney Discipline Board has considered the Grievance Administrator's petition for review and respondent's cross-petition for review. We modify the effective date of the 179-day suspension ordered by the panel. The panel's decision is otherwise affirmed.

Respondent's misconduct was conclusively established on the filing of the judgment of conviction from the Wayne County Circuit Court. Grievance Administrator v Deutch, 455 Mich 149 (1997). The hearing before the panel was therefore conducted as a second-phase discipline hearing to determine the appropriate level of discipline, given all aggravating and mitigating factors. At such a hearing, a panel must exercise its critical responsibility to carefully inquire into the specific facts

of each case. Grievance Administrator v Deutch, *supra* at 169. In this case, the hearing panel devoted three days of hearing to the receipt and discussion of the evidence offered as mitigation or aggravation by the parties. The nature of respondent's conduct which resulted in his guilty plea, the aggravating and mitigating factors presented to the panel and the weight given to those factors by the panel are ably and fully set forth in the hearing panel's report entered October 23, 1998. The panel's findings and conclusions (pp 4-14 of its report) are therefore attached to this opinion as an appendix.

The Grievance Administrator has petitioned for review solely on the grounds that discipline should be increased. The Administrator requests the revocation of respondent's license to practice law or, if a lesser discipline is to be imposed, a suspension of at least 180 days. The Administrator acknowledges that the discipline order crafted by the panel would result in an effective suspension of approximately two years and two months. However, the Administrator argues, respondent should not be allowed to regain the right to engage in the practice of law until he has undergone further scrutiny by the Grievance Administrator and a hearing panel as part of the reinstatement process described in MCR 9.124.

Upon review of the record below, we conclude that the hearing panel's decision to allow respondent to terminate his suspension with the filing of an affidavit under MCR 9.123(A), coupled with additional conditions pertaining to restitution and medical fitness, is appropriate and should be affirmed.

We have also considered respondent's cross-petition for review. We adopt the hearing panel's reasoning regarding the admission or exclusion of certain evidence offered by the Administrator for the purpose of demonstrating aggravating circumstances.

Finally, we consider respondent's request for a modification of the 179-day suspension ordered by the panel. Specifically, respondent requested that the order in this case follow the general custom and practice in felony conviction cases in which a final order of discipline is ordered retroactively, to run concurrently with the automatic interim suspension in effect since the respondent's conviction. We find that such relief would be appropriate under the unique facts and circumstances of this case.

In addition to the affidavit requirement of MCR 9.123(A), the panel ordered that respondent meet two conditions before he could be reinstated. The panel first ordered:

A) Respondent shall complete all restitution he is ordered to make by the Wayne County Circuit Court, and file written proof with the Grievance Administrator and the Attorney Discipline Board that he has done so.

On March 17, 1999, respondent filed a copy of an order entered that day by Wayne County Circuit Judge William Leo Cahalan in the matter of People v Gary R. Dettloff, Case 95-10395-01 which (1) recognized that respondent "has fully satisfied the obligations of restitution determined

to be due by this court in this matter"; and, (2) discharged respondent from probation, effective March 17, 1999.

The second condition imposed by the panel required that respondent submit an affidavit from Thomas R. Clark, PhD, with respect to respondent's problem solving capacities and "that in Dr. Clark's judgment respondent is fit to practice law." Dr. Clark's affidavit in fulfillment of that condition was filed with the Board on February 15, 1999.

The hearing panel's report concluded:

Respondent has been suspended since March 19, 1997. We will enter an order suspending respondent from practicing law for 179 days, such period to begin 21 days from the date of the order and requiring payment of such restitution as is finally fixed by the Wayne County Circuit Court. Respondent's effective time of suspension will thereby be more than two years plus such additional time, if any, as is required to complete restitution. [HP Rept, p 14.]

Although review proceedings in this case were originally scheduled for January 1999, the review hearing under MCR 9.118(C) was adjourned to March 1999 following respondent's motion for an extension. By granting the modification of effective date requested by respondent at this time, we do not significantly alter the result contemplated by the panel. Respondent's effective time of suspension will still be more than two years. He has completed restitution and he has been discharged from probation. He has satisfied the other condition imposed by the panel. We therefore modify the effective date of respondent's 179-day suspension from November 14, 1998 to March 19, 1997.

Board Members Elizabeth N. Baker, C. H. Dudley, Albert L. Holtz, Kenneth L. Lewis and Nancy A. Wonch concur in this decision.

Board Members Barbara B. Gattorn and Grant J. Gruel dissenting. We would affirm the hearing panel's decision in its entirety, including the effective date of suspension. The panel's order was carefully crafted and we see no compelling reason to modify it.

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