

Grievance Administrator,
Petitioner/Appellant,

v

Thomas B. Richardson, P 34969,
Respondent/Appellee.

96-97-GA

Decided: January 27, 1998

BOARD OPINION

On October 3, 1997, Tri-County Hearing Panel #1 issued an order in this matter suspending respondent's license to practice law in Michigan for a period of thirty days commencing October 25, 1997. In accordance with MCR 9.106(2), the panel imposed conditions relevant to the established misconduct including completion of a law office management seminar; demonstration of respondent's further awareness of ethical obligations by taking and passing the ethics portion of the Multi-state Bar Examination or auditing a course in professional responsibility by an accredited law school; and the requirement that respondent practice law under the supervision of a mentor for a period of one year. The Grievance Administrator petitioned for review and seeks increased discipline. We affirm the hearing panel's order.

On review, the Board must determine whether the panel's findings have evidentiary support in the whole record. At the same time, the Board possess a greater degree of discretion with regard to the ultimate result. Grievance Administrator v August, 438 Mich 296, 304; 475 NW2d 256 (1991); In re Daggs, 411 Mich 304, 318-319; 307 NW2d 66 (1981). In this case, neither party has challenged the hearing panel's factual findings with regard to respondent's failure to exercise reasonable diligence in completing the administration of a decedent's estate; his failure to communicate adequately with the client; his failure to comply with MCR 8.303; his failure to segregate client funds from his personal funds; his

charging of an excessive fee for legal services and his presentation of an invoice for fees which falsely implied that he had completed all of the necessary probate procedures.

The panel, which had the first-hand opportunity to assess respondent's credibility and demeanor, concluded that respondent's ignorance of the law led to his negligent handling of the probate matter. Respondent demonstrated, at best, an elementary understanding of the procedures, papers and fees necessary to conclude the administration of a decedent's estate in Oakland County Probate Court. Respondent also professed complete ignorance of the requirements of MCR 8.303 which govern an attorney's compensation for legal services rendered on behalf of a fiduciary. It is undisputed that respondent violated several provisions of that rule including failing to enter into a written fee agreement signed by his client and withdrawing the claimed fees from his client trust account before those fees had been approved by the probate court.

We have been presented with no specific case authority for the proposition that payment of an attorney's claimed fees without proper consent of the interested parties or approval by the probate court in violation of MCR 8.303 constitutes misappropriation. In these review proceedings, counsel for the Administrator conceded that respondent's withdrawal of estate funds to pay his attorney fees could be characterized as commingling and misappropriation in a technical sense. However, in this case it is clear that respondent's withdrawal of funds for attorney fees did not approach the level of willful conversion or embezzlement of estate funds which would be expected to result in discipline ranging from a suspension of one year to license revocation.

We are more troubled by respondent's presentation of a statement for legal services to his client listing services which had not been performed and filing fees which had not been paid. While respondent claimed that the statement was prepared in good faith and that those items simply represented his estimate of the services needed to close the estate, we agree with the Grievance Administrator that the failure to denote specifically those

services which had not yet been performed resulted in a statement which was false and misleading. However, for purposes of assessing discipline, respondent's statement for fees cannot be compared to the forged documents or deliberate falsehoods found in the cited cases of Schwartz v Gerisch, ADB 171/87; 197/87 (ADB 1988) (three-year suspension increased to revocation); Grievance Administrator v Henderson, 92-118-GA (ADB 1992) (one-year suspension increased to revocation) or Grievance Administrator v Fernando Edwards, 437 Mich 1202; 466 NW2d 281 (1990) (Board increased two-year suspension to revocation; Supreme Court peremptorily reduced to three-year suspension).

We are satisfied that the hearing panel carefully considered the nature of respondent's conduct in light of the surrounding circumstances and the mitigating factors presented. As the panel recognized in its report, comparisons, even to similar cases, are not necessarily of great value and the discipline imposed must be appropriate to the facts of the particular case. In re Grimes, 414 Mich 483, 494-495; 326 NW2d 380 (1982).

The discipline order crafted by the panel combines the punitive/deterrent effect of a short suspension with remedial conditions involving continuing education. Finally, the panel's order addresses the need to assure protection of the public by directing that respondent practice law under the supervision of a mentor for a period of one year. We conclude that the hearing panel's order is sufficient to achieve the goals of these disciplinary proceedings and should be affirmed.

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

Board Member Michael R. Kramer did not participate in this decision.