

Grievance Administrator,

Petitioner/Appellant,

v

Eric S. Handy, P 37618,

Respondent/Appellee.

95-51-GA

Decided: November 14, 1996

BOARD OPINION

The hearing panel found that the respondent, Eric S. Handy, committed acts of professional misconduct warranting discipline. The panel further found that respondent had established his eligibility for an order of probation pursuant to MCR 9.121(C). The panel ordered that respondent be placed on probation for one year under terms and conditions to be determined after consideration of proposals submitted by the parties.

The Grievance Administrator has filed a petition for review on the grounds that the respondent's acts of professional misconduct warrant his suspension from the practice of law. We affirm the panel's decision to place respondent on probation but modify the panel's order by adding a thirty-day suspension of respondent's license to practice law.

The respondent admits the charges that he neglected three appeals on behalf of criminal defendants, failed to act with reasonable diligence and promptness in those cases, failed to keep the clients reasonably informed about the status of their matters and failed to comply with written requests from the Court of Appeals, all in violation of MRPC 1.1(c); 1.3; 1.4; 3.2 and 3.4(c). The respondent also admits that he failed to answer three Requests for Investigation in violation of MCR 9.103(C); MCR 9.104(1-4, 7); MCR 9.113(A), (B)(2) and MRPC 8.1(b) and MRPC 8.4(a,c).



Where the ultimate issue to be reviewed is the appropriate sanction, the Board's review is not limited to the question of whether there is proper evidentiary support for the panel's findings. In exercising its overview function on questions of discipline, the Board has 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). Based upon our review of the record in this case, we conclude that the respondent established his eligibility for probation in accordance with the criteria set forth in MCR 9.121(C).

The Grievance Administrator argues, however, that probation alone fails to adequately address respondent's misconduct and fails to achieve a result which is consistent with our overriding duty to protect the public, the courts and the legal profession. We agree.

We are especially concerned by respondent's failure to provide timely answers to three separate Requests for Investigation. We are not persuaded that respondent's psychological impairment was the sole cause for his failure to discharge the "unavoidable duty" to answer those Requests for Investigation. See Grievance Administrator v David A. Glenn, ADB 91/86; (ADB 1987). As the Administrator points out, neither office disarray nor respondent's concern for his wife's condition during her pregnancy constituted exceptional circumstances ameliorating respondent's failure to seek extensions of time to answer or to notify the Attorney Grievance Commission that he lacked the capacity to prepare answers.

The Administrator's unsupported assertion that any discipline in this case less than a sixty-day suspension will erode public confidence in the discipline system and impugn the integrity of the bar is not persuasive. The record is certainly not devoid of mitigating circumstances. A thirty-day suspension will, in our view, allow the respondent, other members of the legal profession and the public at large to draw the appropriate conclusions from the nature of the misconduct in this case and the resulting discipline.

Board Members C. H. Dudley, Barbara B. Gattorn and Miles A. Hurwitz concur in this opinion.

DISSENT

Elaine Fieldman

While the psychiatric testimony submitted in support of the respondent's request for probation was, arguably, susceptible to impeachment, that testimony was neither impeached by cross-examination nor rebutted by testimony from any other witness. Because the psychiatric testimony stands unrebutted, I find no basis to modify the panel's decision.

George E. Bushnell, Jr., dissenting separately

I join in Ms. Fieldman's dissent and note further that my colleagues are sowing dragons' teeth when they substitute their view of the matter at bar for the findings of the panel. I dissent from the Board's decision and would affirm the hearing panel's order.

Board Members Albert L. Holtz, Michael R. Kramer and Kenneth L. Lewis were absent and did not participate.