GRIEVANCE ADMINISTRATOR,
Petitioner/Appellant,
v
LEONARD R. ESTON, P-13231,
Respondent/Cross-Appellant.

File No. DP 24-87

Decided: February 8, 1988

BOARD OPINION

Respondent was found to have practiced law while his license was suspended, in violation of a previous order of discipline. The Respondent and the Grievance Administrator have both filed Petitions for Review seeking modification of the hearing panel order suspending Respondent's license for an additional period of three years. The Attorney Discipline Board unanimously affirms the hearing panel's order.

The Complaint in this case charged that Respondent, Leonard R. Eston, was suspended for a period of sixty days as the result of a finding of professional misconduct in a prior disciplinary matter, that the discipline was stayed during Respondent's appeals to the Attorney Discipline Board and the Supreme Court, and that the sixty-day suspension became effective May 28, 1986 when the Court entered its Order Denying Respondent's Application for Leave to Appeal. The Complaint further charged that Respondent Eston violated that Order of Suspension by appearing as an attorney in Wayne County Circuit Court on June 9 and 10, 1986; in the Forty-third District Court on June 2, 1986; in the Southfield District Court on June 3, 1986; and in the Ecorse District Court on June 6, 1986. Respondent admitted to the panel that he received actual notice of the Supreme Court Order Denying his Application for Leave to Appeal on May 30, 1986 and the panel found that his appearances as an attorney subsequent to that date were established by a preponderance of the evidence. That evidence included affidavits prepared and executed by the Respondent acknowledging those appearances.

Respondent relied upon three "affirmative defenses": 1) That the disciplinary proceeding in this case constitutes double or "triple" jeopardy in violation of the United States Constitution; 2) That he had no notice of the effective date of his suspension, and; 3) That his continued practice of law after May 30, 1986 was based upon his reliance on the advice of his former counsel that the appeal was not yet concluded.

We affirm the hearing panel's rejection of those defenses. The Respondent argued that his practice of law during the month of June 1986 has already resulted in his appearance before this Board and further resulted in his "punishment" in the form of a contempt citation issued by Wayne County Circuit Judge Maureen Reilly. First, as the Administrator has pointed out, these are not criminal proceedings and it has been held that the affirmative defense of double jeopardy is not applicable in a disciplinary matter, Hawkins v State Bar, 23 C2d, 622, 153 Cal Reptr 234, 591, P2d (1979). Judge Reilly's contempt citation was based on the statutory prohibition against the practice

of law by an unauthorized person. Mr. Eston's previous appearance before the Board involved the narrow issue of whether or not he could file an Affidavit of Compliance terminating the prior suspension in light of his admission that he had practiced law subsequent to May 28, 1986. In that matter, this Board assisted Respondent by ruling that he could file an affidavit showing that he had not practiced law during a different sixty-day period, but we specifically ruled that our action did not bar subsequent disciplinary or criminal proceedings based on allegations that he practiced law while suspended. Respondent's right to practice law has not previously been placed in jeopardy as the result of disciplinary proceedings based upon the unauthorized practice of law.

As for Respondent's argument that he was not properly notified of the effective date of his suspension, we are unable to find merit in that position. All parties agree that the sixty-day suspension ordered by the hearing panel and affirmed by the Board was automatically stayed by Respondent's filing of an Application for Leave to Appeal with the Supreme Court. The Respondent acknowledges that the Supreme Court denied that application in an order dated May 28, 1986 which he received personally on May 30, 1986. No testimony was offered from either the Respondent or his former counsel regarding any advice or interpretation of the Rules in support of Respondent's contention that he was entitled to a further stay of the discipline order. To the contrary, the Court Rules governing practice before the Supreme Court are quite clear. The document received by the Respondent and his attorney was not an "opinion" but was an "order" which is not stayed by the filing of a Motion for Reconsideration. See MCR 7.313(E).

Finally, we must reject Respondent's argument that the hearing panel was unfairly prejudiced by an affidavit signed by Respondent's former counsel which was marked and offered as an exhibit by counsel for the Grievance Administrator but which was not received into evidence. The mere fact that the panel was made aware of the proposed exhibit does not create a presumption that the panel members were prejudiced in any way and we note that the panel ruled consistently throughout the proceedings that they would not consider any conversations or communications between Mr. Eston and his former counsel.

Having determined that the panel's factual findings should be affirmed, we now consider whether the discipline imposed, a suspension of three years, was appropriate. As noted in the hearing panel's report, the suspension for three years is not inconsistent with the discipline imposed by this Board in other cases involving practice while suspended. See Matter of David H. Greenspan, DP 1/81, April 1, 1982 (Brd. Opn. p. 209) and Matter of David H. Greenspan, DP 98/82, September 30, 1983 (Brd. Opn. p. 296). In another case considered by the Board in 1983, a hearing panel Order of Revocation was reduced to a suspension of two and one-half years in light of certain mitigating factors, but the Board noted that "certainly, the sanction for non-compliance with an order of suspension could be three years or even revocation of a license. The Board acknowledges that the Grievance Administrator makes a compelling argument for disbarment in order to preserve the effectiveness of disciplinary enforcement". Matter of Philip E. Smith, DP 123/82, April 19, 1983 (Brd. Opn. 261).

In its report on discipline, the hearing panel noted that in addition to Respondent's sixty-day suspension effective May 28, 1986, he was reprimanded for an unrelated act of professional misconduct in an order which became effective June 26, 1987. The hearing panel, which filed its

report in this case on July 17, 1987, was not aware of yet another disciplinary matter considered by another panel resulting in a suspension for fifteen months, effective July 29, 1987. In that case, it was found that Respondent did not diligently pursue an appeal on behalf of a client in a criminal matter, improperly ignored orders by the Court of Appeals directing him to file a brief, failed to complete a contract of employment with a client in another criminal appeal case, and gave false statements to a United States District Court Magistrate in the Court's investigation of the client's complaints.

Among the general principles to be considered in assessing discipline is the direction of our Supreme Court that "it is the duty of every attorney to conduct himself or herself at all time in conformity with standards imposed on members of the bar as a condition of the privilege to practice law", MCR 9.103(A). In previous cases, this Respondent has been found to have violated those standards as they relate to his duties to his clients and to the courts. In this case, we are presented with evidence that the Respondent was unwilling or unable to comply with the terms of an order of suspension issued by the Attorney Discipline Board in its role as the Supreme Court's adjudicative arm. We are thus presented with a continuing pattern of indifference to those very standards described in MCR 9.103(A). We affirm the conclusion of the hearing panel that protection of the courts, the public and the legal profession requires that the privilege to practice law be suspended for three years in this case.

Concurring: Martin M. Doctoroff, Remona A. Green, Hanley M. Gurwin, Patrick J. Keating and Charles C. Vincent, M.D.