

Grievance Administrator,
Petitioner/Appellant,

v

Perry T. Christy, P 11874

Respondent/Appellee.

Case No. 96-75-GA; 96-149-GA

Decided: October 10, 1997

BOARD OPINION

The hearing panel found by a preponderance of the evidence that respondent engaged in acts of professional misconduct as charged in two consolidated complaints. Specifically, respondent failed to pay the costs assessed against him in a prior order of suspension; accepted the representation and provided legal services to numerous clients under an agreement with a legal services plan at a time when his license to practice law was suspended; failed to release client files to the successor attorney as requested by the legal services plan and the clients; and failed to answer two requests for investigation. On June 18, 1997, the panel issued an order suspending respondent for a period of eighteen months commencing July 27, 1996. The panel also ordered respondent to relinquish possession of the files and documents belonging to forty two named individuals. The Grievance Administrator's petition for review asserts that the hearing panel erred by imposing discipline less than revocation and by ordering discipline retroactively. We conclude that the circumstances in this case warrant the revocation of respondent's license to practice law in Michigan.

The respondent has not sought review of the hearing panel's report and order. The panel's findings and conclusions with regard to the charges of misconduct are accepted. The respondent was reprimanded in a prior discipline proceeding and was ordered to pay

\$941.83 costs on or before January 22, 1995.¹ In accordance with MCR 9.128, the respondent's failure to pay those costs resulted in his automatic suspension from the practice of law, effective February 3, 1995. That automatic suspension remained in effect until respondent's payment of costs to the State Bar of Michigan on January 5, 1996. However, the respondent was the subject of an unrelated discipline proceeding which resulted in an order suspending his license for one year, effective July 27, 1995, for misconduct which included neglect of a legal matter, failure to communicate with a client, failure to refund unearned fees, making false statements to a client and making false statements in an answer to a request for investigation.² As a consequence of these two matters, the respondent has been continuously suspended from the practice of law since February 3, 1995.

From February 3, 1995 through July 4, 1995, while his license was subject to automatic suspension for failure to pay costs, the respondent accepted twenty-six new client matters referred to him by the Prudential Legal Services Plan ("the plan"). The respondent accepted another twenty-one new client matters referred by the plan between July 5, 1995 and July 26, 1995. The order of suspension issued by a hearing panel on July 5, 1995 in case 94-125-GA included a specific reference to MCR 9.119 which prohibits acceptance of new retainers or engagements in any new case or legal matter after the entry of an order of suspension but prior to its effective date unless specifically authorized by the Board chairperson. [MCR 9.119(D)]. Respondent accepted six additional client referrals from the plan after July 27, 1995, the effective date of the hearing panel order of suspension.

In October 1995, the plan learned of respondent's suspension from the practice of law. On October 9, 1995, the plan sent

¹ Grievance Administrator v Perry T. Christy, ADB Case No. 92-191-GA; 92-212-FA.

² Grievance Administrator v Perry T. Christy, ADB Case No. 94-125-GA.

written notice to respondent requesting that he immediately refrain from performing any further legal services on behalf of plan members. On December 11, 1995, the plan requested that respondent turn over the files belonging to plan members. Although the clients authorized release of their files to the new attorney appointed by the plan, Respondent failed to relinquish those client files.

Two of those clients, Julie McKay and David Zelock, filed requests for investigation which were served upon respondent by the Grievance Administrator. Respondent failed to answer those requests for investigation.

On January 22, 1997, the panel issued its report, finding that the respondent had engaged in the misconduct charged in the two formal complaints. The panel report cited the "extensive and credible testimony" of petitioner's witnesses and the "voluminous and compelling documentary evidence admitted on the record".

Respondent failed to appear for the hearing on discipline scheduled for February 24, 1997 but appeared at the subsequent hearing on May 13, 1997. On June 18, 1997, the panel issued an order suspending respondent from the practice of law for a period of eighteen months, effective July 27, 1996. The panel further ordered respondent to turn over all files and related documents regarding each Plan member identified in Count One of Formal Complaint, ADB 96-75-GA. The order specified that the respondent was to file an affidavit that he had either complied with the requirement that he turn over fifty three client files or that he did not have possession of those files. As of the date of the review hearing conducted by this Board on September 18, 1997, the respondent had not complied with the order concerning the client files.

The hearing panel's report on discipline does not explain the rationale for the decision to impose an eighteen month suspension retroactive to July 27, 1996. An inference may be drawn that the panel chose retroactive application in order to add an additional

eighteen month suspension period to the earlier one year suspension in Case No. 94-125-GA, thus creating, in effect, a cumulative suspension of two and a half years.³

A variety of legitimate goals may be achieved through the retroactive application of an order of discipline. However, the commencement date of the retroactive suspension or disbarment should not be earlier than the effective date of a suspension or disbarment already in effect. In most cases, a hearing panel's order of discipline takes effect twenty one days after it is served on the respondent. However, MCR.9.115(J)(3) specifically allows a panel to issue an order to take effect on a different date if the panel finds good cause and explains the reason for ordering a different effective date.

In at least two cases, the Board has imposed a suspension retroactively for a respondent's violation of a prior discipline order. See Grievance Administrator v Timothy Crawford, 95-216-GA (ADB 1997) (one year suspension ordered retroactively for respondent's violation of a 120 day suspension) and Grievance Administrator v William Jenkins, DP 45/81 (1982) (Respondent violated an order suspending his license for one year. The Board imposed an additional one year suspension retroactively, "in consideration of the length of time Mr. Jenkins has been barred from the practice of law beyond the one year suspension originally imposed").

In this case, it is the length of the suspension imposed, not its retroactive application, which requires modification. While the Board reviews a hearing panel's findings for evidentiary support, the Board possesses a measure of discretion with regard to

³ The petitioner's brief mistakenly asserts: "Without setting forth any basis, the panel made the eighteen-month discipline retroactive to July 27, 1996, the date that respondent's order of suspension for 160 days took effect". GA Brief in Support of Petition for Review, p. 12 (emphasis added). In ADB Case No. 94-125-GA, the panel ordered a suspension of 160 days effective July 27, 1995. In an order issued January 18, 1996, the Board lengthened that suspension to one year. The suspension ordered by the panel in the instant case was consecutive to, not concurrent with, the earlier period of suspension.

the ultimate decision. Grievance Administrator v August, 438 Mich 296, 304 (1991). Exercise of this discretion is appropriate in light of the Board's overview function to assure a level of continuity and consistency in the imposition of discipline. Matter of Daggs 411 Mich 304; 307 NW2nd 66 (1981), citing State Bar Grievance Administrator v Williams, 394 Mich 5, 15; 228 NW2nd 222 (1975). Of course, in the final analysis, each case must turn on its own facts, State Bar Grievance Administrator v Del Rio, 407 Mich 396; 285 NW2nd 277 (1979). Even among apparently similar cases, there may be wide variations in the egregiousness of the misconduct and the aggravating or mitigating factors.

In addition to the suspensions of one year imposed in the matters of Timothy Crawford and William Jenkins, *supra*, the Board has imposed discipline ranging from a suspension of 121 days to revocation for cases involving violation of an order of suspension. In Grievance Administrator v Deborah Flowers DP 104/83, DP 125/83 (1984), for example, the Board reduced the suspension from one year to 121 days (the length of time then necessary to trigger reinstatement proceedings under MCR 9.123(B)) for respondent's representation of a client during a sixty day suspension. In that case, the board noted the mitigating effect of the testimony from the respondent's treating psychiatrist.

At the higher end of the range of discipline for cases involving the practice of law while suspended, the Board has ordered a suspension of two and a half years (Grievance Administrator v Phillip Smith, DP 123/82 (1983) and suspensions of three years, Grievance Administrator v David Greenspan, DP 1/81 (1982); Grievance Administrator v David Greenspan DP 98/82 (1983).

Another case which falls within the rather broad range of discipline for such conduct is Grievance Administrator v Peter G. Mekas, ADB 90-40-GA(HP order 8/8/91) There, a hearing panel and the Attorney Grievance Commission approved a consent order of

discipline imposing a retroactive sixteen-month suspension⁴ for a respondent who violated a one year suspension by holding himself out as an attorney, filing pleadings, appearing in court and falsely representing to a court that he was eligible to practice law.

At the highest end of the spectrum for this offense, the Board has ordered revocation for misconduct which included the continued practice of law in violation of a prior suspension order. See Grievance Administrator v Richard C. Parchoc, ADB 94-39-GA; 94-68-FA (1994) in which the Board increased discipline from a suspension of three years and one day to revocation.

In Parchoc, the respondent had a somewhat more extensive record of prior discipline, having received three suspension orders within the proceeding year. In this case, the aggravating effect of respondent's prior discipline (a reprimand and suspension of one year) is overshadowed by the pattern of misconduct established by the evidence. Respondent accepted fifty-three client matters referred to him by a legal services plan at a time when he knew or should have known that his license to practice law was suspended. The real and potential harm to those individual clients was then compounded by respondent's refusal to communicate with the clients and the successor attorney and by his failure, to this day, to relinquish possession of the clients' files and documents.

Respondent's sporadic attendance at scheduled discipline hearings in this matter and his failure to answer requests for investigation, along with other aggravating factors, lead inescapably to the conclusion that respondent is not worthy of the proclamation in MCR 9.103(A) that the holder of a license to practice law in Michigan is fit to be entrusted with professional matters and to aid in the administration of justice as an attorney and counselor. Respondent's abdication of his responsibilities to

⁴ The stipulation filed by the Administrator on July 23, 1991 in Mekas agreed to a suspension retroactive to May 31, 1990.

his clients and obligations to the legal profession warrants revocation.

Board Members Elizabeth N. Baker, Barbara B. Gattorn, Miles A. Hurwitz, Michael R. Kramer and Roger E. Winkelman concur.

Board Members C.H. Dudley, M.D., Albert L. Holtz, Kenneth L. Lewis and Nancy A. Wonch were absent and did not participate.