

Grievance Administrator,
State of Michigan
Attorney Grievance Commission,

Petitioner,

v

D Richard Miller, P 33456,

Respondent.

Case No. 93-77-GA

Decided: August 24, 1995

MEMORANDUM OPINION

On January 12, 1994, a hearing panel entered an order revoking respondent's license to practice law in Michigan. The respondent filed a Petition for Review in accordance with MCR 9.118 and requested that the petition be consolidated with three other matters then pending before the Board; Matter of D. Richard Miller ADB 123-89; Matter of D. Richard Miller 92-258-GA; Matter of D. Richard Miller 93-15-GA. The respondent's Motion for Consolidation was granted. Briefs and oral arguments were presented to the Board in the consolidated matters.

On April 20, 1995, the Attorney Discipline Board entered an order revoking respondent's license to practice law for the misconduct established in consolidated cases ADB 123-89; 92-258-GA and 93-15-GA. In its opinion, the Board ruled that the hearing panel's entry of a default in this case, 93-77-GA, was erroneous and that the hearing panel's order of revocation, in this case only, should be vacated. On April 20, 1995, simultaneous with the entry of an order of revocation in cases 123-89; 92-258-GA and 93-15-GA, the Board entered its order discontinuing this case without prejudice.

The Attorney Discipline Board has considered the Grievance Administrator's objections to the Order of Discontinuance entered April 20, 1995. The Grievance Administrator requests that the Order

of Discontinuance be vacated and that this matter be remanded to Tri-County Hearing Panel #33, for further proceedings.

In a memorandum opinion dated October 31, 1994 in Grievance Administrator v Attorney Discipline Board, 447 Mich 411 (1994), the Michigan Supreme Court held that the Attorney Discipline Board retains jurisdiction to consider misconduct committed during the period of licensure by attorneys whose licenses are later revoked. The court emphasized, however, that the Board has discretion to enter a discontinuance without prejudice if appropriate in the particular circumstances of that case.

The formal complaint in this case states that the respondent was appointed to represent defendants in twenty four appellate matters (23 criminal appeals and 1 appeal from a probate court decision). The complaint charges the respondent failed to communicate adequately with his clients; took no action whatsoever in 10 of the 24 cases; failed to take timely action in the other 14 cases; failed to respond to no progress warning letters issued by the Court of Appeals; filed defective briefs; was removed as counsel in 2 cases; and had failed to pay costs assessed by the Court of Appeals in 14 cases.

Restitution to the respondent's clients is not an issue in this case. An order discontinuing this case without prejudice to further prosecution will not impede any monetary claims or rights of the individual clients.

The nature of the allegations in this complaint provide little likelihood of legal or evidentiary obstacles to proving the misconduct if prosecution of this complaint is reinstated. Respondent's alleged acts or omissions occurred in the years 1988 to 1991. To prove the charges that the respondent failed to file pleadings in the Court of Appeals, or filed pleadings which were defective or untimely, the Grievance Administrator produce the files and records maintained by the clerk of the Michigan Court of Appeals. Those records are not likely to be unavailable in the event these charges are reinstated.

The Grievance Administrator argues that discontinuance of this complaint without prejudice to future prosecution will impede

fairness to the respondent. The Administrator claims that any effort on respondent's part to obtain reinstatement would be clouded by the likelihood that these charges of misconduct will be reinstated. However, the respondent has not filed objections to entry of the Order of Discontinuance.

We have considered the argument that in the event the respondent petitions for reinstatement, the hearing panel appointed to determine the respondent's fitness for reinstatement would not be presented with all of respondent's pre-disbarment misconduct. In our decision to increase discipline to revocation in the three other cases consolidated for review, we summarized the misconduct established in those cases: the respondent's demeaning attitude toward female employees; the continuation of that conduct during the course of the hearing panel proceedings; the respondent's attempts to trivialize his conduct; his inappropriate touching of a female court employee, neglect of his obligation to provide diligent representation for clients in probate, domestic relations and criminal cases; his failure to communicate with those clients; his charging of excessive fees and his failure to co-operate with the Grievance Administrator's investigation.

The misconduct charged in this complaint, if established, would not significantly enlarge the scope of the respondent's misconduct, nor would it raise areas of concern which would not otherwise be considered by a reinstatement panel.

Finally, we have considered the claim that the failure to continue this discipline proceedings against this disbarred respondent will "inevitably damage the integrity of the legal profession and contribute to a further loss of respect in the minds of the public". Respondent has been investigated, prosecuted and disbarred in discipline proceedings funded by the legal profession. Although respondent may be able to apply for reinstatement after five years, the reinstatement of a disbarred attorney is by no means automatic. The ultimate authority to reinstate lies with the Michigan Supreme Court.

If reinstatement should be granted to this respondent, the charges herein may be reinstated. Discontinuance of this case

will not result in manifest injustice. On the contrary, discontinuance without prejudice to prosecution of these charges in the future, will allow the discipline system's finite resources to be utilized in more productive ways.

Having reviewed all of the circumstances of this case, and having applied the rationale of Grievance Administrator v Attorney Discipline Board, 447 Mich 411, 1994, we conclude that discontinuance is the appropriate resolution.

Board Members John F Burns, George E Bushnell, Jr, C Beth DunCombe, Elaine Fieldman, Albert L Holtz, Miles A Hurwitz and Paul D Newman concur.

Board Members Marie Farrell-Donaldson and Barbara B Gattorn did not participate.