

Grievance Administrator,  
State of Michigan  
Attorney Grievance Commission,

Petitioner/Appellant,

v

Thomas H Peterson, III, P 36408

Respondent/Cross-Appellant.

90-41-GA; 91-11-GA

Decided: February 18, 1994

BOARD OPINION

The respondent, Thomas H Peterson, III, admitted charges of misconduct contained in an eleven-count formal complaint, including allegations that he commingled and misappropriated client funds, made false statements to clients and his employer to conceal his misuse of those funds, neglected client matters and used the social security number and other personal information given to him by a client to obtain a credit card fraudulently. The proceedings before the hearing panel were focused exclusively on the appropriate level of discipline to be imposed in light of the aggravating and mitigating factors presented, including evidence of the respondent's cocaine addiction at the time the acts of misconduct were committed. At the conclusion of those proceedings, the hearing panel entered an order suspending the respondent's license to practice law in Michigan for a period of two and one-half years, imposed retroactively to November 18, 1991. The respondent and the Grievance Administrator have each filed petitions for review. Based upon a review of the whole record, we conclude that respondent's license to practice law should be suspended for a period of two years, eleven months, effective the date of the hearing panel's order, with conditions relevant to the respondent's substance abuse recovery.

Respondent was licensed to practice law in Michigan in 1984. In the summer of 1987, he was employed by a law firm in Detroit and was assigned a number of plaintiffs' personal injury cases. The respondent testified that soon after he began his employment, he was introduced to cocaine. His regular use of that drug escalated until "there came a point in time when it was virtually daily". By the fall of 1988, a series of personal crises, including the death of his mother, forced the respondent to the realization that his life was falling apart. He explained to the hearing panel that he

Board Opinion re: Thomas H Peterson, III; 90-41-GA; 91-11-GA

found the strength to go to the supervising attorney at his law firm:

"I told him that I done some terrible, terrible things; I was making bad judgements; I didn't understand why, and . . . I couldn't go on any longer.

I told him that I had leave, had to bring someone in the firm to replace because I just couldn't go on any longer." (Tr. p. 159).

In 1989, the respondent moved to Nevada. He testified, that he stopped using illegal drugs and gained employment as a clerk with a respected law firm. After passing the Nevada bar examination, he was hired as an associate. Throughout these proceedings, the respondent has emphasized the stability of his personal and professional life in Nevada. According to a partner in his law firm, he is highly regarded in the firm and in his new community.

A brief summary of the respondent's misconduct illustrates the deterioration of his professional life in 1987 and 1988.

In September 1988, the respondent received an insurance company draft in the amount of \$18,000 payable to himself and a client of his law firm. The respondent admitted that he secured the necessary endorsements but then deposited the draft into his personal account, thereby commingling funds belonging to the firm and the firm's client with his own. The respondent then made statements to his firm's bookkeeping department and drafted correspondence designed to conceal his misuse of the funds by making it appear that the settlement had been withdrawn and that the draft had been returned. Although the client's share of the proceeds was ultimately distributed, the respondent admitted that his actions were designed to give him immediate access to the proceeds which rightfully belonged to the firm.

In another matter, during his representation of a client in a medical malpractice case for the law firm, the respondent wrote to opposing counsel in July 1988 and requested that the settlement draft be mailed directly to the respondent's home address. The respondent admitted the allegation in the complaint that the request was made with the intent to conceal a planned misappropriation of funds.

In an unrelated matter, respondent admitted taking possession of an \$1800 settlement draft, depositing it into his personal account and misappropriating his law firm's share of the settlement.

Board Opinion re: Thomas H Peterson, III; 90-41-GA; 91-11-GA

In three separate matters, the respondent accepted retainer fees ranging from \$250 to \$600 from clients but failed to notify his employer that he had undertaken the representation and failed to turn the retainer fees over to the firm. In one of those cases, the respondent found it necessary to forge a signature in order to conceal his representation of the client from his employer. In all three matters, the respondent failed to perform the legal services for which he was retained and failed to communicate with his clients.

Finally, the respondent admitted that in 1986 he had represented a Detroit police officer named Thomas F Peterson. During the course of that prior representation, the respondent had obtained biographical information including his former client's social security number, birthdate and place of birth. In September 1988, the respondent applied for and received a credit card in the name of his former client and immediately accrued charges in excess of \$6000.

The respondent now seeks an order of probation under the provisions of MCR 9.121(C). Under that rule, a hearing panel, the Board or the Supreme Court may enter an order placing a respondent on probation if the respondent has asserted in mitigation and demonstrated by a preponderance of the evidence that:

- A) "During the period when the conduct which is the subject of the complaint occurred, his or her ability to practice law competently was materially impaired by physical or mental disability or by drug or alcohol addiction,
- B) The impairment was the cause of or substantially contributed to that conduct,
- C) The cause of the impairment is susceptible to treatment, and;
- D) He or she in good faith intends to undergo treatment, and submits a detailed plan for such treatment."

In its report on discipline, the hearing panel noted that the respondent had apparently not attended meetings of Narcotics Anonymous or a similar organization and had not sought guidance from a chemical dependency counselor on a regular basis for any substantial period of time. The panel concluded:

"While the panel realizes that the misconduct. . . occurred during a period of time when the respondent may have been impaired by a drug

addiction and, further, that the impairment may have contributed to the misconduct and that the cause of the impairment is susceptible to treatment, the panel is not convinced that respondent, in good faith, intends to undergo treatment or that he is, in fact, permanently freed from the drug addiction. (Hrg.Pnl.Rept 7/21/93, p.3)

The standard of review to be applied by the Board is whether or not the panel's factual findings have adequate evidentiary support in the whole record. Grievance Administrator v August, 438 Mich 296; 475 NW2d 256 (1991). Applying that standard to a review of the hearing panel's conclusion that the respondent failed to demonstrate his compliance with MCR 9.121(C)(1)(d) we find that the hearing panel's conclusion does have proper evidentiary support. Furthermore, it must be emphasized that MCR 9.121(C) does not require that a hearing panel grant a request for probation upon a showing by the respondent that he or she is eligible for probation under the four criteria listed in 9.121(C)(1). The panel's discretion in such cases is set forth in the further language of that sub-rule which states that a panel "may enter an order placing the respondent on probation for a specific period not to exceed two years if it specifically finds that an order of probation is not contrary to the public interest". (emphasis added) Based upon our review of the record, we find that the hearing panel's misgivings as to the appropriateness of probation in this case have evidentiary support and that the panel's decision to order a suspension of the respondent's license was appropriate.

We have also considered the Grievance Administrator's request that the respondent's license to practice law in Michigan be revoked. While we believe that a modification of the suspension imposed by the panel is required, we agree with the hearing panel's assessment that the mitigating factors presented by the respondent cannot be overlooked and that discipline less than disbarment will achieve the goals of these disciplinary proceedings, especially when coupled with further conditions to insure the respondent's continued rehabilitation.

Respondent's admitted misconduct in this case was reprehensible. Absent mitigation, the respondent's deliberate misapplication of funds and his efforts to obtain a credit card by fraud would likely result in revocation. Nevertheless, the evidence of the respondent's substance abuse and its devastating effects on his personal and professional life was substantial and was essentially un rebutted. While we agree with the panel that probation is not appropriate, the record is not devoid of evidence regarding the respondent's rehabilitation both personally and professionally in the State of Nevada. Such evidence of

Board Opinion re: Thomas H Peterson, III; 90-41-GA; 91-11-GA

rehabilitation has been recognized by the Board in cases involving misappropriation of client funds, as, for example, in Matter of Muir B Snow, DP 211/84, Brd. Opn. 2/17/87 (three-year suspension); Matter of Gary B Perkins, ADB 124-87, Brd. Opn. 6/28/89 (two-year suspension); Matter of Patrick M Tucker, 91-60-GA; 91-104-FA; 91-180-GA, Brd. Opn. 12/18/92 (suspension one-year with conditions).

We conclude that the respondent's license to practice law in Michigan should be suspended for two years and eleven months. The hearing panel order of suspension was issued July 21, 1993 and the respondent's suspension in Michigan is deemed to commence on that date.

In accordance with MCR 9.106(2), it is further directed that the respondent's eligibility to file a petition for reinstatement shall be conditioned upon his filing of an affidavit, accompanied by copies of all relevant medical records and reports, certifying that during the term of his suspension, he has 1) not been charged or convicted of any drug or alcohol related criminal offense; 2) not used any controlled substance in any form (unless prescribed by a physician); 3) attended meetings of Alcoholics Anonymous, Narcotics or a comparable program on a regular basis; and, 4) continued a program of substance abuse counseling or therapy or has successfully completed a recognized program for the treatment of substance abuse.

Board Members John F Burns, C Beth DunCombe, Marie Farrell-Donaldson, Elaine Fieldman, Barbara B Gattorn, Albert L Holtz, Linda S Hotchkiss, M.D. and Miles A Hurwitz.

Board Member George E Bushnell, Jr. did not participate.