Grievance Administrator,
State of Michigan
Attorney Grievance Commission,

Petitioner/Appellant,

v

Edward Brady Denton, Jr., P 12687,

Respondent/Appellee.

Case No. 92-208-GA

Decided: January 27, 1994

MEMORANDUM OPINION

In prior discipline proceedings involving this respondent, a hearing panel order of discipline was issued on February 19, 1991. That order directed that the respondent's license to practice law be suspended for forty-five days effective March 13, 1991. Matter of Edward B Denton, Jr. Case No. 90-117-JC. On March 13, 1991, the Board ordered a stay of the hearing panel's order. In a further order issued by the Board on March 28, 1991, the Grievance Administrator's motion to withdraw a petition for review was granted and it was ordered that the stay of discipline would remain in effect until April 17, 1991.

Although the respondent was eligible under MCR 9.123(A) to be reinstated at the conclusion of the forty-five day suspension period by filing an affidavit with the clerk of the Supreme Court showing that he had fully complied with the terms and conditions of the suspension order, it is not disputed that the respondent did not, in fact, file the affidavit required under that rule until September 9, 1991.

The forty-count complaint filed in this case charges that the respondent failed to notify his clients of his suspension as required by MCR 9.119(A); that he accepted new cases after the entry of the order of suspension (February 19, 1991) and its effective date (April 17, 1991) in violation of MCR 9.119(D); that he engaged in the practice of law during the period April 17, 1991 to September 9, 1991; that his statement at a prior hearing and in his affidavit with the Michigan Supreme Court that he had fully complied with the order of suspension were false and were known to be false.

An answer was filed by the respondent and an evidentiary hearing was conducted by a hearing panel. The panel concluded that

the respondent's unintentional failure to comply with certain aspects of MCR 9.119 did not constitute grounds for discipline, that his practice of law during the period April 17, 1991 to September 9, 1991 was the result of his good-faith misinterpretation of MCR 9.123(A), and that any statements made by the respondent regarding his eligibility during that period were not "knowingly" false.

The Grievance Administrator filed a petition for review. The Board has conducted a hearing in accordance with MCR 9.118 and has reviewed the whole record. The standard of review is not whether the Board, hearing the same evidence, would necessarily reach the same result but whether, taking the record as a whole, there is proper evidentiary support for the panel findings. Grievance Administrator v Irving August, 475 Mich 256 (1991). We conclude that there is evidentiary support in the record for the panel's decision to dismiss those charges that respondent failed to give proper notice of his change of status to certain clients and tribunals. There is also support for the panel's dismissal of the charges that he made false statements to disciplinary authorities and to the Supreme Court, which statements were known by the respondent to be false when he made them. However, we reverse the hearing panel's decision in two other respects.

It is undisputed that the effective date of the respondent's forty-five day suspension in Case No. 90-117-JC was April 17, 1991 and that the respondent did not file the affidavit required by MCR 9.123(A) until September 9, 1991. There is no question that the respondent engaged in the practice of law from June 2, 1991 to September 9, 1991 while the suspension of his license to practice law was in effect.

During the proceedings before the panel, respondent took the position that he filed a "certificate of compliance" on or about April 30, 1991 which, he believed, satisfied the requirement of MCR 9.123(A). He testified that he mistanenly believed that no further action on his part was required to terminate his suspension. He resumed the practice of law on or after June 2, 1991. By a majority, the hearing panel accepted this argument and found in its report that the respondent was apparently confused by the separate requirements of MCR 9.119(C) and MCR 9.123(A).

The first sub-rule, MCR 9.119(C) requires that within fourteen days of the effective date of an order of revocation, suspension or transfer to inactive status, the affected attorney must file an affidavit with the Grievance Administrator and the Attorney Discipline Board showing that he or she has notified clients, opposing counsel and tribunals of his or her change in status as required by MCR 9.119(A,B). This affidavit must include copies of the disclosure notices themselves and mailing receipts showing that

the notices were sent by registered or certified mail.

An entirely different affidavit is described in MCR 9.123(A):

> A) Suspension, 119 Days or Less. "An attorney whose license has been suspended for 119 days or less is automatically reinstated by filing with the Supreme Court clerk and the administrator an affidavit showing that the attorney has fully complied with the terms and conditions of the suspension order. A false statement contained in the affidavit is ground for disbarment".

The respondent's claim that he was "confused" by these rules and thought that a single affidavit fulfilled the requirements of both rules is untenable. The respondent was required to file the affidavit of compliance described by MCR 9.119(C) within fourteen days after the effective date of his suspension. The plain meaning of MCR 9.123(A), on the other hand, makes it clear that an affidavit for automatic reinstatement could not have been filed until after the full term of the respondent's forty-five day suspension had elapsed.

Both the hearing panel order of suspension issued February 19, 1991 and the instruction sheet from the Attorney Discipline Board which accompanied that order specifically directed the respondent's attention to the requirements of MCR 9.119 and MCR 9.123(A). That the respondent did not avail himself of the opportunity to review these rules carefully does not alter the fact that the respondent did not file the necessary affidavit to terminate his suspension until September 9, 1991. While the respondent is entitled to introduce evidence in mitigation, including his confessed confusion over the requirements of those rules, his admitted practice of law while his license was still suspended constituted professional misconduct warranting discipline.

The hearing panel's report is silent as to the charges by the Grievance Administrator that the respondent accepted new retainers or engagements after the entry of an order of suspension on February 19, 1991 but prior to its effective date of April 19, 1991. The evidence below clearly established that the respondent undertook new legal matters during that period. Unless specifically authorized by the Board chairperson, acceptance of new matters after the entry of an order of suspension and prior to its effective date is prohibited by MCR 9.119(D). The charges that the respondent violated that sub-rule were established.

The hearing panel's dismissal of certain charges of misconduct having been reversed, this case must be remanded to a panel for the

hearing on discipline which is required by MCR 9.115(J)(3). In determining the discipline to be imposed, the panel should consider any and all relevant evidence of aggravation or mitigation submitted by the parties.

Board Members John F Burns, George E Bushnell, Jr, C Beth DunCombe, Elaine Fieldman, Miles A Hurwitz and Theodore P Zegouras, concur.

Board Member Linda S Hotchkiss, M.D. did not participate.