

Grievance Administrator,
State of Michigan
Attorney Grievance Commission,

Petitioner/Appellee,

v

Joseph B Evanski, P 13252,

Respondent/Appellant.

Case No. 91-228-GA

Issued: December 20, 1993

BOARD OPINION

The respondent, Joseph B Evanski, represented a client in a civil matter. The written fee agreement provided for a contingency fee to be paid to the respondent equal to one-third of any amount recovered, with a specific agreement that the respondent was "to receive no fee if nothing is obtained on the claim. . .". In September 1988, the respondent obtained a default judgment on his client's behalf. The default judgment was immediately appealed by the defendant to the Michigan Court of Appeals.

While the case was on appeal, the respondent executed on real property owned by the defendant. On March 20, 1989, the respondent secured a sheriff's certificate of sale valued at \$39,044.50. On March 30, 1989, the respondent demanded from his client his contingent fee of \$13,013.86. Those fees plus costs were paid to the respondent. In December 1989, the Court of Appeals reversed the default judgment. The case was remanded for trial and, eventually, a judgment was rendered against the respondent's client.

The hearing panel concluded, based upon the testimony and exhibits presented, that the respondent misrepresented the value of the sheriff's certificate of sale to his clients by failing to advise that the judgment and sheriff's sale could be nullified by an adverse ruling in the Court of Appeals; that the respondent violated the terms of his fee agreement by refusing to return the fee of \$13,013.86 even though his clients recovered nothing; and that the respondent improperly attempted to void the contingent fee agreement and charge an hourly fee for his services. The panel concluded that the respondent had violated MCR 9.104(1,4) and Michigan Rules of Professional Conduct 4.1 and 8.4(a,c).

Following a separate hearing on discipline, the panel ordered that the respondent be reprimanded, that he make restitution to the complainant in the amount of \$13,013.86 with interest computed from the filing of the formal complaint and that he reimburse the State Bar of Michigan for expenses incurred by the Attorney Discipline Board and Attorney Grievance Commission in the total amount of \$1473.61.

The respondent's petition for review filed is limited to the narrow issues of whether the respondent should be required to pay the costs incurred by the Discipline Board and Grievance Commission and whether the respondent is entitled to an award of attorney fees and costs.

The respondent's arguments are based upon a fundamental misperception of the nature of these proceedings. While restitution to a complainant may be ordered as a condition of an order of discipline [MCR 9.106(5)], the resolution of monetary disputes involving attorneys is not a primary function of the public disciplinary process. In furtherance of his obligations to prosecute a complaint authorized by the Attorney Grievance Commission, the Grievance Administrator filed a formal complaint against the respondent on the grounds that the respondent had violated specified standards of professional conduct. That complaint requested adjudication of the allegations of misconduct and the imposition of discipline in order to achieve the primary goal of discipline system--the protection of the public, the courts and the legal profession. [MCR 9.105] Grievance proceedings are not intended to provide a forum for litigating claims of individual clients against their attorneys. In re McWhorter, 284 NW2d 472 (1979).

We reject the argument that sub-chapter 2.400 of the Michigan Court Rules [Pretrial Procedures; Mediation; Offers of Judgment and Settlements] is applicable to public discipline proceedings conducted by a hearing panel under the provisions of MCR 9.115. The rules cited by the respondent, MCR 2.403 and MCR 2.405, apply specifically to mediation proceedings and offers to stipulate to the entry of a judgment in a civil action involving a claim for monetary damages. Neither of those rules is applicable, in letter or in spirit, to a discipline proceeding.

The respondent claims to have consented to the discipline imposed by the panel. Under MCR 9.115(F)(5), the Grievance Administrator and the respondent may enter into a stipulation for consent order of discipline. However, such a stipulation must be approved by both the Attorney Grievance Commission and a hearing panel. There is no evidence in the record that the stipulation contemplated by MCR 9.115(F)(5) was executed by the Grievance Administrator and the respondent or that such a stipulation was presented to the Grievance Commission or the hearing panel for approval.

The payment of costs by an attorney disciplined for professional misconduct is governed by MCR 9.128. That rule provides, in part, that:

"The hearing panel and the Board in the order for discipline or for reinstatement must direct the attorney to reimburse the State Bar for the expenses of that hearing, review, or appeal, if any".

The duty of a hearing panel to include such an order for reimbursement of costs in a discipline order, even though some counts of the formal complaint were not established by a preponderance of the evidence, was affirmed by the Board in Matter of Russell G Slade, ADB 95-89, Brd.Opn. 5/7/90.

The hearing panel's order of reprimand dated August 6, 1993 and the panel's order of further clarification dated August 25, 1993 are affirmed. The respondent's request for an award for costs or attorney fees is denied.

