Grievance Administrator,
State of Michigan
Attorney Grievance Commission,

Petitioner/Appellant,

v

Donald W. Teichman, Jr., P 37817

Respondent/Cross-Appellant.

Case No. 92-31-GA

Issued: March 11, 1993

BOARD OPINION

The three-count complaint filed by the Grievance Administrator charges that the respondent failed to represent his client diligently in a workers' compensation matter; made certain statements to his client which he knew to be false; and made a statement to the Attorney Grievance Commission in an answer to a Request for Investigation which he knew to be false. The hearing panel concluded that the misconduct alleged in the complaint was established by a preponderance of the evidence. Following a separate hearing to determine the appropriate level of discipline, the panel ordered that the respondent be reprimanded.

The Grievance Administrator has filed a petition for review seeking an increase in discipline to a suspension of 120 days or more on the grounds that the respondent represents a "clear and present danger to the public." The cross-petition for review filed by the respondent seeks reversal of the hearing panel's findings of misrepresentation to the client and to the Attorney Grievance Commission as alleged in Counts II and III. Based upon its review of the whole record, the Board is persuaded that the findings of misconduct as alleged in Counts II and III are without proper evidentiary support. Counts II and III are dismissed. The findings of misconduct as alleged in Count I are affirmed. The respondent is reprimanded.

The hearing panel's report contains its findings, without elaboration, that the respondent advised his client on October 15, 1989 that it would be unnecessary for her to appear for an October 17, 1989 trial date because the case would be settled and that the respondent advised the client in November 1989 that he had "taken care of the matter." The panel found that both statements were false and were known by respondent to be false at the time they were made.

The standard of review of the factual findings of a hearing panel are whether or not those findings have adequate evidentiary support in the whole record. Grievance Administrator v August, 348 Mich 296; 475 NW2d 276 (1991). As to the first statement, both the respondent and his former client, Sheila Hemphill, testified that the respondent spoke with Ms. Hemphill by telephone shortly before a scheduled hearing on October 17,

1989 and that the respondent advised his client that it would not be necessary for her to appear at the compensation bureau because the respondent was going to attempt to settle the matter. (Tr. p. 33, Tr. p. 53). Absent from the record is evidence that this statement was false and was known by the respondent to be false at the time.

As to the allegation that the respondent falsely stated to Ms. Hemphill that he had "taken care of the matter," it is without evidentiary support. Ms. Hemphill's testimony to the panel was that she spoke with the respondent after she received a notice of dismissal and that:

> "He told me don't worry about it, that he would take care of it, that he would talk to them and go through some kind of paperwork, or don't worry about it, he would take care of it. It needed time." (Tr. p. 54)

Again, the record is devoid of evidence from which to conclude that this statement by the respondent of his future actions was known by him to be false when he made it.

The Grievance Administrator's request for increased discipline is based upon the above-mentioned charges coupled with the panel's conclusion that the respondent's answer to a Request for Investigation served by the Attorney Grievance Commission contained a statement which he knew was false. These false statements, it is argued, confirm that the respondent is a clear and present danger to the public who should be purged from the legal profession until he has established his fitness to practice law in reinstatement proceedings.

The formal complaint against Mr. Teichman in Count III, Paragraph "E" charged that the respondent violated his duty to be truthful, candid and honest in his answer to a Request for Investigation by stating:

> "On October 17, 1989, I was at the Workers' Compensation Bureau in Flint regarding Ms. Hemphill's matter . . ."

The respondent concedes that the statement was not, in fact, true (although he has testified, he believed it was true when he filed his answer). However, the allegation for which evidentiary support must be found is not whether or not the respondent was in Flint on October 17, 1989 but whether or not he knew that statement was false when he submitted his answer to the Request for Investigation in May 1991. Such evidence is lacking in the record below.

In both his testimony to the panel and the May 15, 1991 answer to Request for Investigation (Exh. 2), the respondent stressed that he had no independent recollection of the events in question but that he had prepared the answer in good faith based upon review of his personal calendar and the information supplied from another attorney. In the absence of any evidence in rebuttal, there was no basis for the conclusion that the charge of making a statement "known by respondent to have been false at the time it was made" was established by a preponderance of the evidence required by MCR 9.115(J)(3).

The hearing panel's findings as to Count I, that the respondent failed to file an appearance on his client's behalf, failed to appear for trial, and failed to keep his client informed regarding the status of her case, are not challenged by the parties. The

reprimand imposed by the hearing panel is an appropriate sanction for the misconduct established under that count. The reprimand is therefore affirmed.