

STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,
State of Michigan
Attorney Grievance Commission,

Petitioner/Appellant,

v

Timothy A. Wright, P 37471,

Respondent/Appellee.

Case No. 91-184-GA; 91-269-FA

Decided: August 11, 1992

BOARD OPINION

The Grievance Administrator has appealed only that portion of the order of Revocation in this case which directs that the Administrator take affirmative steps to seek the appointment of a receiver to assist the respondent's former clients in obtaining the return of their files or other property.

The Grievance Administrator agrees that he is authorized under MCR 9.119(G) to seek the appointment of a receiver to protect the interests of an attorney's clients when that attorney is suspended or disbarred and that he is empowered under MCR 9-127(B) to enforce a discipline order by proceeding against a respondent in a contempt action filed in the appropriate circuit court. The Grievance Administrator emphasizes, however, that he has been given discretion in these matters. Under the rules cited above, the Administrator "may" enforce a discipline order by proceeding against the respondent for contempt of court and "may" ask for the appointment of a person to be given powers analogous to those of a receiver.

We agree with the Grievance Administrator that the powers of a hearing panel are limited and that certain actions taken by the hearing panel in this case were beyond those powers and duties enumerated in MCR 9.111(B).

While the court rules which govern these disciplinary proceedings do not give a hearing panel the authority to order the Grievance Administrator to take certain actions, a panel may request that the Administrator take actions which, in the panel's judgment, may be necessary to protect the interests of specific clients or the public in general. Indeed, as an

integral part of the discipline process, a hearing panel may have an obligation to identify a problem not addressed by the parties and to suggest a reasonable course of action.

In this case, we perceive that the panel's frustration was not directed at the Grievance Administrator but was the result of the panel's inability to assist the complainant and other clients who had been abandoned by the respondent.

When one of the complainants in this case retained the respondent in August 1991, the respondent was already the subject of the first of sixteen formal complaints which would be filed against him between August 7, 1990 and February 26, 1992. Eight of those complaints were based solely upon the respondent's failure to answer other complaints. The complaint filed in this case is one of eight complaints which outline a pervasive pattern of neglect of client matters, failure to communicate with clients, failure to refund unearned fees and failure to return files and records.

At the hearing on discipline conducted on January 7, 1992, it was disclosed to the panel that respondent Wright had been suspended from the practice of law in Michigan since May 1991 and was then the subject of four separate orders of suspension ranging from nine months to two years. It was against this background that the panel received testimony from complaint Kenneth Barnes that he had paid a retainer fee of \$500-00 to the respondent in August 1990 to initiate temporary custody proceedings but had been unable to locate the respondent since then to obtain the return of his records and papers.

Respondent Wright did not answer the complaint in this case nor did he appear at the hearing.

The record before this panel disclosed that the respondent had not complied with the requirements of his previous suspension orders to notify his client's of his change of status or the location of his client's files. There is ample support in the record for the panel's conclusion that the respondent lacked the professional capability to represent the public in this state. The panel also recognized, however, that the entry of another order of discipline would do little to assist the complainant in his efforts to recover the documents entrusted to the respondent.

The hearing panel's Interim Order of Revocation, issued pending the preparation and filing of the hearing transcript, contained a provision directing the Grievance Administrator or his counsel to file a written report within fourteen days describing the actions which had been taken, or would be taken, against the respondent under those provisions of the Court Rules authorizing the Grievance Administrator to seek the appointment of a receiver and to institute contempt proceedings. That interim order did not direct the Grievance Administrator to take any specific action against the respondent but merely directed that a report be filed. The panel's interim order was appropriate under the circumstances.

While the panel may have exceeded Its authority in its final Order of Revocation by directing the Grievance Administrator to institute specific enforcement proceedings, the panel appears to have been motivated by a sincere desire to protect the interests of the complainants in this case. By the same token, the Grievance Administrator is to be commended for the further efforts of his staff to seek the results requested by the panel. By exercising his power under MCR 9.127(B), the Administrator has now secured the release of the files held by the respondent and those files have been returned to the former clients.