STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,
State of Michigan
Attorney Grievance Commission,

Petitioner/Appellee,

v

Ethan Vinson, P 26608,

Respondent/Appellant.

Case No. 91-90-GA

Decided: February 24, 1992

BOARD OPINION

The respondent did not appear at a hearing conducted by a panel on July 3, 1991 and filed no response to the formal complaint which was the subject of that hearing. The panel concluded that his default constituted his admissions to the charges that he violated a prior order of suspension and failed to answer Requests for Investigation. The panel considered the respondent's reprimand in 1988 and his suspension for seventy-five days in 1990 and issued an order revoking his license.

The respondent has filed a petition for review which asserts that he did not receive the Requests for Investigation, the formal complaint or the notice of hearing. He claims that he was totally unaware of these proceedings until the hearing panel specifically directed that a copy of the revocation order be mailed to him at an address other than his address registered with the State Bar of Michigan but which appeared in the evidence submitted to the panel.

Based upon its review of the whole record, the Board has concluded that the respondent has failed to establish good cause for setting aside the default which was properly entered. The misconduct charged in the complaint is deemed to be established. We further conclude, however, that the Grievance Administrator's service of the complaint and notice of hearing to the respondent's registered address, to the exclusion of at least one other address known to the Attorney Grievance Commission, was not reasonably calculated to provide actual notice of these proceedings to the respondent. MCR 9.115(C) directs that service of the complaint and all subsequent pleadings must be made by personal service or by registered or certified mail to an attorney's last known address which is defined as the address on file with the State Bar as required by Rule 2 of the Supreme Court Rules concerning the State Bar of Michigan. In accordance with fundamental notions of due process, we do not believe that a fair reading of this rule precludes mailing of the complaint and other pleadings to

other addresses which may be known to the Commission. Therefore, this matter is remanded to Tri-County Hearing Panel #26 of the Attorney Discipline Board for the hearing on discipline which is mandated by MCR 9.115(J)(2).

The complaint filed by the Grievance Administrator on May 21, 1991 was accompanied by the Attorney Grievance Commission's transmittal letter which identified the respondent's address registered with the State Bar as 15151 W. Eight Mile Road, Detroit, MI 48235. The proof of service filed by the Grievance Administrator on May 29, 1991 showed that the complaint and notice of hearing were served upon respondent Vinson by regular and certified mail at that address. Further pleadings mailed to the respondent at that address included a default and affidavit filed June 19, 1991 and the Grievance Commission's Itemized Statement of Expenses dated August 23, 1991.

At the hearing conducted on July 3, 1991, the Grievance Administrator's counsel introduced a number of exhibits including a State Bar of Michigan Certificate of Address showing that the respondent's address of record was 15151 W. Eight Mile Road, Detroit, Michigan 48235 and had been since March 17, 1989. (Petitioner's Exh. #1)

In support of the charge that the respondent practiced law while his license was suspended, court records from the 32A District Court in Harper Woods were introduced listing the respondent's address in the fall of 1990 as 12741 Indiana, Detroit, Michigan 48238. (Petitioner's Exh. #12) When questioned about this address by the panel chairman, the Grievance Administrator's counsel responded:

> "We are aware of the Indiana address. In fact, we have attempted to locate him there. He has been seen, but of course it's his responsibility to keep a current address on record with the State Bar at all times and that's address we must use for proper service". (Tr. p. 18)

At the conclusion of the panel proceedings, the panel announced that it was prepared to enter an order revoking the respondent's license to practice law and the panel specifically requested that such an order be served upon the respondent at the address on Indiana Street in addition to the address registered with the State Bar.

The panel's Order of Revocation was mailed to the respondent at both addresses on September 13, 1991. On October 4, 1991, the respondent filed his pleading entitled "Motion to Set Aside Default or, In the Alternative, Petition for Review". In that pleading, the respondent asserted that he had not received the Request for Investigation, the Formal Complaint or the Notice of Hearing. In partial response to the allegations in the complaint, the respondent acknowledged drafting legal documents at a time that his license was suspended in order to "help a friend of a friend".

The respondent's "Motion to Set Aside Default" does not comply with the minimum requirements of MCR 2.603(D)(1) which governs the setting aside

of a default. The respondent's motion was not accompanied by an affidavit of facts showing a meritorious defense. Nor has the respondent shown "good cause" within the meaning of that rule inasmuch as he acknowledges that he alone is responsible for the failure to notify the State Bar of Michigan of his current address. Therefore, we find no adequate basis to set aside the default. We affirm the hearing panel's conclusion that the misconduct alleged in the complaint was established by virtue of that default.

Once the panel determined that misconduct was established, it was obligated under MCR 9.115(J)(2) to conduct a separate hearing on the issue of discipline. Prior to the adoption of this sub-rule, which became effective June 1, 1987, the Board had recognized that the defaulted party in a discipline proceeding should be able to participate in a hearing before the panel to determine the level of discipline. Matter of Daune Elston, DP 100/82, (Brd. Opn. p. 238 1982).

In the final analysis, the respondent has no one to blame but himself for his failure to receive the pleadings and notices mailed to him at the address on W. Eight Mile Road. As a member of the State Bar of Michigan, albeit one whose license was the subject of a suspension order, the respondent was subject to the requirements of Rule 2 of the Supreme Court Rules concerning the State Bar of Michigan which require:

> "Members shall notify the State Bar of Michigan promptly in writing of any change of name, or business or residence address."

Frankly, that it borders on the incomprehensible that respondent Vinson, having complained of non-delivery to a never address, had still failed to provide a new address to the State Bar at the time of his appearance before the Board on December 12, 1991.

On the other hand, we are troubled by the position taken on behalf of the Grievance Administrator with regard to the duty to serve pleadings and notices upon a respondent in accordance with the rules. In the colloquy cited above between the Administrator's counsel and the panel chairman, it appears to be the Administrator's position that strict compliance with the letter of MCR 9.115(C) would relieve that office of any further attempts to obtain service even if another, more current addresses, was known.

This strict interpretation was echoed by the Administrator's counsel in arguments to the Board. Acknowledging that the Attorney Grievance Commission had knowledge of another address for the respondent, counsel denied any obligation to serve the respondent at such an address noting that "actual notice is not required by the Court Rules" and that service by mail to the attorney's address on f ile with the State Bar is all that is required. Counsel further observed that any decision by the Board requiring the Commission to use another address of which it had notice would be "an erroneous decision by the Board and an improper interpretation of the Rule".

Noting that the respondent in this case apparently chose to reside at several locations and chose not to update the State Bar's records, the Administrator notes in his brief that "Surely the petitioner should not be made to walk the streets looking for respondent". We do not suggest that the Administrator or his staff should be made to walk the streets. We are suggesting, however, that when an attorney's license is at stake, the preparation of an additional envelope to an additional address would not appear to be an unreasonable burden.

We do not believe it is necessary to issue an order in this case which purports to alter the service requirements in the existing court rules promulgated by the Supreme Court. We believe, however, that a fair reading of MCR 9.115(C), in light of the most basis tenets of due process, suggests that while the Grievance Administrator must serve the complaint and subsequent pleadings upon the respondent at the last address on file with the State Bar as required by Rule 2, the Court Rules do not preclude service of such pleadings at other addresses which may known to the Administrator. As a general proposition, we find it difficult to accept the argument that additional mailings to other addresses would constitute an " extra burden", especially when weighed against the potential consequences to the respondent/attorney.

John F. Burns, C. Beth Duncombe, Elaine Fieldman, Linda S. Hotchkiss,. M.D., and Theodore P. Zegouras

CONCURRING OPINION: George E. Bushnell, Jr.

I concur in the Board's decision in this matter. Nevertheless, I am compelled to make certain observations concerning the conduct of the Attorney Grievance Commission in this case (and in other matters that have been before the Board) where the Commission has knowledge of alternate postal addresses of the respondent. The Commission's insistence on the language of Rules 9.112 and 9.115(C) to relieve it of any responsibility to make an effort to assure that a respondent receives notice of pending proceedings is, in my judgment, a matter of grave concern.

In the first instance, the Commission's blind and stubborn adherence to its interpretation of the printed rule raises serious issues of due process.

Additionally, the Commission's obstinate behavior demonstrates a lack of courtesy, common sense and-most importantly-a lack of professionalism which this member of the Attorney Discipline Board finds shocking and in derogation of the public's right to the highest standards of conduct by all involved in the administration of the justice system.

DISSENTING OPINION: Miles A. Hurwitz

I acknowledge the sentiments expressed in the majority and concurring opinions with regard to the due process concerns which have been

raised. The Court Rule places the burden of maintaining a current address solely upon the licensed attorney. The Rules provide that the Grievance Administrator may institute proceedings which could ultimately result in the revocation of the attorney's license by mailing to that address and "non-delivery does not affect the validity of the service". These Rules spell out the minimum steps which must be taken to obtain service. The disciplinary system is ill-served if those who enforce and adjudicate adhere only to the minimum requirements. Additional effort in some cases would greatly increase the chances of providing actual notice to the respondent/attorney.

Respondent represented to the Board that he vacated the premises on W. Eight Mile Road in the spring of 1990. Although he may have f iled a change of address notice with the post office, he made no effort to notify the State Bar of Michigan that the address was obsolete. In October 1991, he filed a petition for review in this case based upon non-delivery of pleadings and notices from the Grievance Commission and the Discipline Board. Yet, at the hearing before the Board on December 12, 1991 he had still taken no steps to change his registered address with the State Bar.

Respondent admits the misconduct charged in the complaint but alleges he was deprived of an opportunity to present mitigating evidence since he did not receive actual notice of the proceedings. The actions of the Grievance Administrator in failing to provide notice of all proceedings at an alternative address appear to be inadvertent. Respondent is culpable for his failure to provide a proper address and apparently is indifferent to his responsibility clearly outlined in the rules. Respondent has no grounds for relief. The proceedings below should be affirmed.