

STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,
State of Michigan
Attorney Grievance Commission,

Petitioner/Appellant,

v

Vincent W. Dent, P 36828,

Respondent/Cross-Appellant.

ADB 98-89; 105-89
Case No. 90-24-GA; 90-44-FA
Case No. 90-38-GA; 90-57-FA

Decided: November 25, 1991

BOARD OPINION

The Attorney Discipline Board has considered the Petitions for Review filed by the Grievance Administrator and the respondent in three cases tried separately before three different hearing panels. Arguments were presented to the Board in the first two cases at review hearings conducted on July 18, 1991. At that hearing, counsel for the respective parties acknowledged the pendency of a third petition for review scheduled to be argued before the Board on September 11, 1991. It was agreed that the cases could be consolidated and that a single order of discipline could be entered.

Following oral arguments at a further hearing on September 11, 1991, the Board considered the petition for review filed by the respondent and three petitions for review filed by the Grievance Administrator - The Board agrees that for purposes of imposing discipline, the cases may be considered to be consolidated. It is the Board's conclusion that the respondent's professional misconduct warrants a suspension from the practice of law for a period of three years, commencing May 24, 1991.

In case ADB 98-89; 105-89, the respondent was suspended for 121 days and ordered to pay restitution following a finding that he commingled and misappropriated client funds, failed to pay a client's share of settlement proceeds, neglected legal matters entrusted to him and failed to refund an unearned fee. The respondent's petition for review cites alleged procedural deficiencies in the actions of the hearing panel and the Attorney Grievance Commission and seeks a dismissal of the complaint or a reduction in the level of discipline. The petition for review filed by the Grievance Administrator asks that discipline be increased.

Case No. 00-38-GA; 90-57-FA is before the Board as the result of a petition for review filed by the Grievance Administrator seeking an increase in the sixty-day suspension ordered by a hearing panel. In that case, the panel concluded that the respondent neglected a legal matter and filed an answer to a Request for Investigation which was not truthful.

A third petition for review seeking an Increased level of discipline was filed by the Grievance Administrator in Case No. 90-24-GA; 90-44-FA. In that case, a hearing panel sustained the charges that the respondent had neglected six separate legal matters entrusted to him by clients and had failed to file timely answers to three Requests for Investigation.

The respondent's license to practice law was suspended for a period of sixty days effective May 24, 1991. The panel's decision in that case was not appealed by the respondent and neither party has challenged the panel's conclusion that the respondent was retained to represent a client for damages as the result of an automobile accident, but failed to institute appropriate proceedings on behalf of his client and made a false statement in his answer to the Request for Investigation. The respondent's conduct was found to be in violation of MCR 9.104(1-4,6); MCR 9-113(A) and the Michigan Rules of Professional Conduct, 1-1(c), 1-2(a), 1.3, 3.2, 3.3(a)(1,2,4), 3.4(a,b) and 8.4(a,c).

A second suspension for a period of nine months became effective June 20, 1991 in case no. 90-24-GA; 90-44-FA. Again, the only issue before the Board in that case is the level of discipline and we rely upon the panel's findings of misconduct. The panel concluded that the respondent failed to take action on his client's behalf and failed to return an unearned fee after he was retained to assist a client in an action to quiet title. The respondent was also retained to represent a client for recovery of life insurance proceeds but failed to take action on his client's behalf and failed to return the unearned fee.

In a separate civil matter, respondent failed to appear at a pretrial hearing and failed to timely answer the Request for Investigation served by the Grievance Administrator.

In a bankruptcy matter, the respondent failed to file a timely bankruptcy petition and failed to timely answer a Request for Investigation. In his representation of a client in a divorce action, the respondent failed to bring the matter to a timely hearing. In a separate civil matter, the respondent failed to perform the necessary services on his client's behalf, failed to turn over the client's documents and failed to answer the Request for Investigation.

In that case, it was determined that the respondent's conduct was in violation of MCR 9.104(1-4,7); MCR 9.103(C); MCR 9.113(B)(2), Canons 1, 6 and 7 of the Code of Professional Responsibility, DR 1-102(A)(1,5,6), DR 6-101(A)(3), DR 7-101(A)(1-3) and the Michigan Rules of Professional Conduct 1.1(c), 1.2(a), 1.3, 3.2 and 8.14(a-c).

In the final matter considered by the Board, a 121-day suspension was automatically stayed by the filing of the respondent's petition for

review. Both parties have requested review of the panel's conclusions that the respondent deposited settlement funds belonging to his client into an off Ice general account, thereby commingling client funds with his own. Thereafter, the panel concluded, respondent failed to pay the client's share of the settlement funds as requested by the client and it was established that those funds were withdrawn from the respondent's general account.

In his representation of another client, the panel found that the respondent failed to refund unearned fees. The panel found that the respondent's conduct violated MCR 9.104(1-4) and Canons 1, 2 and 9 of the Code of Professional Responsibility, DR 1-102(A)(1,5,6), DR 2-110(A)(3), DR 9-102(A) and DR 9-102(B)(4).

The petition for review filed by the respondent in Matter of Vincent W. Dent, ADB 98-89; 105-89, alleges that the panel committed several procedural errors including a failure to allow the respondent to subpoena certain documentary evidence and the failure to exclude certain testimony alleged to constitute hearsay. The procedural Irregularities claimed by the respondent have been considered by the Board. They have been found to be without support in the record.

The acts of misconduct described in the three matters before the Board cover a period from January 1987 to December 1989. The separate hearing panels and the Board have each considered the mitigating factors cited by the respondent which include his lack of experience in the management of a law office and the "administrative nightmare" he encountered in his association with another attorney. However, we must also consider the aggravating effect of respondent's prior discipline consisting of a thirty-day suspension in 1988 as the result of a stipulation for consent order of discipline. That suspension was the result of acts or omissions during the period December 1986 through March 1988 including failure to seek the lawful objectives of a client, failure to adequately communicate with the client, failure to return unearned fees and failure to answer a Request for Investigation.

It is apparent to the Board that the pattern of neglect presented here cannot simply be attributed to poor organizational skills or administrative problems. The mitigating effect of these problems is also overshadowed by the respondent's failure to respond to the Inquiries of his clients and the Grievance Administrator. However, our decision to increase the discipline now in effect is based primarily on our consideration of those acts involving the commingling and misappropriation of client funds as alleged in Count I of case ADB 98-89; 105-89.

The evidence considered by the panel in that case established that the respondent received settlement funds on behalf of a client. Those funds were not deposited into a separate identifiable trust account as then required by DR 9-102(A) but were commingled in his firm's general account. He testified that he then withdrew the funds from that account on the advice of his partner in order to safeguard the funds from seizure by the Internal Revenue Service. He was unable to explain to the panel why the funds were not deposited into another account or delivered to the client.

The respondent's claim that the funds were withheld from the client as the result of a fee dispute is unpersuasive. A similar argument was considered by the Board in Matter of Fernando Edwards, ADB 31-88; 47-88, Brd. Opn. /3/88 in which the Board stated that the respondent's commingling and misappropriation of client funds warranted an increase in discipline from a suspension of two years to disbarment. (In lieu of granting leave to appeal, the Supreme Court reduced the discipline, without an opinion, to a suspension of three years). In Edwards, the Board noted:

"The respondent insists in characterizing his misconduct as a legitimate fee dispute which was poorly handled. It is clear from the record below and the pleadings filed by the respondent that he either does not understand or has a callous disregard for two of the most important duties of an attorney: The duty to safeguard client funds and the duty to tell the truth."

Respondent Dent's claim that he was unfairly disciplined for "technical misconduct" casts similar doubt on his understanding of his duty to safeguard client funds. We take this opportunity to re-emphasize that problems with the Internal Revenue Service, poor bookkeeping practices or real or imagined fee disputes are never valid reasons for failing to deposit client funds into a separate identifiable trust account.

Under the definitions of misappropriation adopted by the Board, the respondent commingled and misappropriated client funds. His actions in that regard were not inadvertent. He deliberately withheld the funds from his trust account. He failed to keep records concerning those funds. He failed to deliver any portion of the settlement to his client.

In Matter of Kenneth M. Scott, DP 178/85, Brd. Opn. 2/8/88, the Board increased a six-month suspension to a suspension of three years where the attorney commingled and misappropriated funds belonging to an estate. As in this case, respondent Scott testified that client funds were kept out of the trust account to protect them from seizure by the Internal Revenue Service. There, the Board stated:

"We agree with the panel's assessment that the respondent was aware of the commingling of funds and allowed those funds to be misappropriated, if not deliberately then by a complete lack of supervision"

Respondent's failure to maintain records of his client's funds and his inability to make timely delivery of those funds constituted further violations of Canon 9.

Based upon its consideration of the factors presented in these combined cases, the Board concludes that the respondent's suspension from the practice of law in Michigan for a period of three years is required. The restitution ordered by Tri-County Hearing Panel #80 in Case No. 90-24-GA; 90-44-FA is affirmed.

All concur.