

STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,
State of Michigan
Attorney Grievance Commission,

Petitioner/Appellee,

v

Jill M. Kopec, P 27552,

Respondent/Appellant.

Case No. 91-39-GA

Decided: November 18, 1991

BOARD OPINION

The respondent admitted, by default and by her explicit admissions, that she failed to take appropriate action on her client's behalf following the dismissal of a wrongful discharge case, failed to advise the client of the dismissal and misrepresented the status of the case to her client. The Attorney Discipline Board has considered the petition for review filed by the respondent seeking a reduction of the 121-day suspension imposed by the hearing panel. While it has carefully considered the seriousness of the misconduct which has been established, the Board has concluded that the primary purpose of these proceedings will be achieved through the entry of an order which includes remedial conditions intended to reduce the likelihood of a recurrence of these acts. Discipline is therefore modified to a suspension of forty-five days coupled with conditions requiring the commencement of personal counseling by a qualified therapist for a period of one year and the submission of quarterly reports to the Board and the Grievance Administrator on the course of her therapy.

The complaint in this case was filed March 1, 1991 and a default for the respondent's failure to answer was filed March 28, 1991. The respondent appeared at the hearing on April 19, 1991 where she acknowledged that the default was properly entered. In these proceedings, default is an admission of the misconduct alleged and the respondent's participation at the hearing is limited to assessment of discipline. Matter of Duane Elston, DP 100/82 (Brd. Opn. p. 238) (1982); Matter of David A. Glenn, DP 91/86 Brd. Opn. 12/17/86. Moreover, in her statements to the panel and her pleadings filed in these review proceedings, the respondent has admitted the essential allegations of misconduct.

The respondent was retained in 1982 to prosecute an employment discrimination suit against the Michigan Department of Mental Health. The complaint was filed in June 1982 and was eventually dismissed in September 1988. While the case was pending, Ms. Kopec failed to keep her client informed of developments in the case on a timely basis and, in general, did not adequately communicate with her client. More importantly, the respondent failed to notify her client of the dismissal of the case in September 1988 and gave assurances to her client as late as July 1989 that

the case was proceeding well. The hearing panel concluded that the respondent's conduct violated the provisions of MCR 9.104(1-4); Rules 1.1(c), 1.2(a), 1.3, 1.4(a) and 8.4(a,c) of the Michigan Rules of Professional Conduct and Canons 1, 6 and 7 of the Code of Professional Responsibility, DR 1-102(A)(1,5,6), DR 6-101(A)(3) and DR 7-101(A)(1-3).

The hearing panel's report on discipline recites its consideration of the comments of the complainant who attended the hearing. Understandably, the complainant expressed her sense of betrayal upon discovering her attorney's lack of candor. The panel was advised of the respondent's lack of any prior disciplinary history. No other mitigating factors were presented to the hearing panel.

In arguments to the panel regarding the appropriate level of discipline, the Grievance Administrator relied primarily on two prior opinions of the Board. Of these, the Matter of Leo Gilhool, ADB 155-88, Brd. Opn. 6/28/89 is of limited value. In that case, the Board increased a nine-month suspension to a four-year suspension where the respondent continued to advise his client of the progress of a workers' compensation case for approximately three years after the case had been dismissed. In that matter, however, the attorney's deception was aided by his preparation of false settlement documents prepared for the client's signature. That factor, which is not present here, allowed the Board to compare the case to others involving the preparation of false documents.

The other case cited by the Administrator and the panel, Matter of Ann Beisch, DP 122/85, Brd. Opn. 2/8/88 is more relevant. As in this case, a respondent failed to disclose to her client that the client's case was no longer pending and clearly misrepresented the status of the matter in verbal and written communications.

As in other cases involving misrepresentation to clients, we emphasize that such conduct is not merely inappropriate, it is fundamentally at odds with every lawyer's obligation as an officer of the court to be truthful.

We also recognize, however, that there is no inflexible formula which can be applied to these cases when considering the appropriate level of discipline. Indeed, the Supreme Court has ruled that in reviewing the discipline imposed in a given case, it maybe mindful of the sanctions meted out in similar cases, but recognizes that such analogies are not necessarily of great value. Matter of Grimes, 414 Mich 483; 326 NW2d 380V 382 (1982). The Board's authority to reduce the length of a suspension ordered by a panel has been affirmed by the Court as an exercise of its overview function. Matter of Daggs, 411 Mich 304; 307 NW2d 66, 71 (1981).

While the Board and the hearing panels must consider in each case the appropriate means to achieve the goals of these proceedings, the primary goal itself as stated in MCR 9.105 is protection of the public, the courts and the legal profession. We have carefully considered the facts and circumstances in this case and we are persuaded that such protection will be afforded by reducing the length of the suspension but adding remedial conditions intended to insure that this attorney will not engage in this type of aberrant behavior in the future.

Therefore, the suspension ordered by the hearing panel is modified by reducing the length of suspension to forty-five days. During that suspension, the respondent shall commence personal counseling with a qualified therapist. The respondent shall not be eligible for reinstatement in accordance with MCR 9.123(A) until written notice has been provided to the Grievance Administrator and the Attorney Discipline Board of the name, address and telephone number of the therapist with whom she has consulted. This personal counseling shall continue for a period of one year during which the respondent shall submit quarterly reports from the therapist regarding the status of her treatment.

Concurring: John F. Burns, George E. Bushnell, Jr., Elaine Fieldman, Remona A. Green, Linda S. Hotchkiss, M.D., and Theodore P. Zegouras

Board Member Hanley M. Gurvin would affirm the hearing panel's decision for the reasons stated by the Board in Matter of Ann Beisch, DP 122/85, Brd. Opn. 2/8/88