GRIEVANCE ADMINISTRATOR,
Petitioner/Appellant,
v
LEONARD R. ESTON, P 13231,
Respondent/Appellee.

File No. DP 48/85

Argued: January 28, 1987
Decided: March 4, 1987

OPINION OF THE BOARD

The Grievance Administrator filed a two count Formal Complaint which alleged that the Respondent assaulted a court officer at Detroit Recorder's Court and, in an unrelated incident, was abusive and threatening towards another attorney. The Hearing Panel filed its written report at the conclusion of the trial which included a determination that the evidence established that Respondent "did make an inappropriate display of anger, did use foul language and was verbally abusive toward a Court Security Officer and toward a fellow attorney. The Respondent's conduct was socially reprehensible and was not in conformance with either the public or the Bar's expectation of behavior, but such conduct does not violate the Michigan Court Rules or Canons." The Panel found that the allegations in both counts of the Complaint had not been established by a preponderance of the evidence and that the Complaint should be dismissed.

The Attorney Discipline Board has considered the Petition for Review filed by the Complainants in Count II of the Complaint, Dennis Vatsis, Esq. and Susan Radulovich, Esq. Upon our review of the record below and the findings of the Panel, we conclude that the conduct found by the Panel to have been committed by the Respondent as alleged in Count II constitutes a violation of MCR 9.104(2). We reverse the Hearing Panel Order of Dismissal as to Count II and order that Respondent be reprimanded.

Count II of the Complaint is based upon an incident on November 22, 1985 at the office of the Complainant, Attorney Dennis Vatsis. The Complaint alleged that a disgruntled client of Vatsis, Robert Cole, appeared at Vatsis' office on the 19th Floor of the Penobscot Building at approximately 5:00 p.m. accompanied by Respondent Leonard Eston and Eston's associate, Michael Hall. It is further alleged that while Respondent was demanding the file and the settlement check, Mr. Hall "stood over Mr. Vatsis in an apparently threatening manner." Finally, it is alleged, Respondent and his party refused to leave until security guards from the Penobscot Building were called.

In support of that Count, counsel for the Grievance Administrator presented the testimony of Complainant Vatsis, Complainant Sue Radulovich, an attorney who shares space with him, and Deborah Plemmons, their receptionist. All three witnesses testified that Mr. Cole appeared at the office with Mr. Eston and Mr. Hall, a "burly young man. . .a muscle man type." According to these witnesses, Mr. Eston leaned over Vatsis' desk in a "threatening manner" and demanded

the return of Cole's file while poking his finger toward Vatsis and using extremely abusive language. All three testified that Michael Hall stood behind Vatsis with his arms folded or silently pounding a fist into his hand. They testified that there was no physical contact, that Penobscot security was called and the Respondent and his party then left the office, remarking that "we will settle this later."

In his defense, Respondent Eston presented his own testimony together with the testimony of Mr. Cole and Mr. Hall. All three testified that Mr. Vatsis "waved him into the office" and that Mr. Eston and Mr. Cole were seated in chairs in front of Vatsis' desk while Mr. Hall remained standing behind Mr. Eston. The defense witnesses acknowledge an exchange of words but deny the use of abusive language or threatening gestures. They testified that they were in the process of leaving voluntarily when Penobscot security officers arrived and that the parting comment by Mr. Eston referred to future legal consequences.

The record below contains sharp contrasts between the testimony of the two groups of witnesses on several factual issues, for example whether Respondent "stormed in" to the office of Mr. Vatsis or was "waved in;" whether or not Respondent and Mr. Cole were seated during the discussion; whether Mr. Hall wore a tight-fitting T-shirt or business clothes; and whether or not profanity was used.

In reviewing Hearing Panel discussions, the Board has stated in the past:

> The hearing panel receives evidence in the first instance and has the opportunity to judge. . .credibility. The hearing panel's finding of fact should be given deference whenever possible. Schwartz v Walsh, DP 16/83, 1984 (Brd. Opn. p. 333).

As a general rule, the panel's findings will be supported where "upon the whole record, there is proper evidentiary support." In Re Del Rio, 407 Mich 336; 285 NW2d 277 (1979). In this case, we find evidentiary support in the record for the panel's finding that Respondent Eston was "verbally abusive toward a fellow attorney," that his conduct was "socially reprehensible," and that his conduct did not include the "apparent threats" recited in the Formal Complaint.

We do not, therefore, disturb the Panel's findings as to the reprehensible nature of Respondent's abusive conduct toward a fellow attorney. We disagree, however, with the Panel's conclusion that such conduct does not, as a matter of law, constitute professional misconduct. The Court Rules promulgated by the Supreme Court to govern the conduct of attorneys declares that professional discipline may be imposed upon a finding that a lawyer has engaged in conduct "that exposes the legal profession to obloquy, contempt, censure or reproach." MCR 9.104(2). We are unable to find the line apparently drawn by the Hearing Panel between, conduct which it described as "socially reprehensible" and "not in conformance with either the public or the Bar's expectation of behavior" on the one hand, and conduct exposing the legal profession to obloquy, contempt, censure or reproach on the other. While Respondent's inappropriate method of confronting another attorney in order to gain possession of his client's file stopped short of outright strong-arm tactics, such behavior cannot be condoned.

Having determined that Respondent's conduct does fall within the letter and spirit of MCR 9.104(2), we must rule that discipline is warranted. A Reprimand is the appropriate sanction in this case.

Concurring: Martin M. Doctoroff, Remona A. Green, Odessa Komer, and Charles C. Vincent, M.D.

DISSENTING OPINION

Hanley M. Gurwin
Patrick J. Keating

We must respectfully dissent. The three attorneys who heard and decided this case as members of the hearing panel were uniquely qualified to judge the demeanor of the six witnesses who testified regarding the incident in Mr. Vatsis' office on November 22, 1986. As an appellate body, the Board did not share with those panelists the experience of closely observing the six witnesses who recounted their versions of the events in question. We certainly cannot say that there is no evidentiary support in the record for the Panel's unanimous conclusion that Respondent's behavior, while not admirable, did not rise to a level of misconduct warranting discipline. Those conclusions by the panel should not be disturbed.