

STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,
State of Michigan
Attorney Grievance Commission,

Petitioner/Appellee,

v

Lonnie T. Smith, P 23602,

Respondent/Appellant.

90-49-GA

Decided: May 16, 1991

BOARD OPINION

The panel found that the respondent neglected a legal matter entrusted to him and failed to file a timely answer to a Request for Investigation. The respondent has filed a petition seeking review of a hearing panel order suspending his license to practice law for ninety days and ordering him to make restitution. The Attorney Discipline Board is not persuaded that the respondent was denied due process of law during the proceedings before the hearing panel. The Board has concluded, however, that modification of the level of discipline is warranted. Discipline is therefore to a reprimand with the further condition that restitution of \$500 be made to the complainant.

The complaint filed by the Grievance Administrator charged that the respondent was retained in November 1987 to handle a personal injury case but that he failed to appear for a status conference, failed to advise his client that her case had been dismissed, failed to notify her of an award in the amount of \$10,250 after the case was reinstated, accepted the mediation award without his client's permission, failed to appear for another status conference, failed to advise his client that her case had been dismissed a second time, and failed to answer the Request for Investigation in a timely manner. The respondent filed an answer to this complaint and this matter was tried before a hearing panel in accordance with MCR 9.115.

In its separate report on misconduct, the hearing panel concluded that Count I, paragraph "D-i", alleging the respondent's failure to appear for a status conference in October 1988, and Count II, alleging certain violations with respect to the mediation award, were not established by a preponderance of the evidence and those charges were dismissed. The remaining charges of misconduct were sustained. A separate hearing on discipline was conducted by the panel which then issued its report.

The respondent has raised four procedural objections. Briefly stated, the respondent argues that 1) The panel refused to allow him an opportunity to appeal the decision of the Board chairperson denying his motion to disqualify the entire panel; 2) The hearing panel should have been disqualified on the basis of actual bias or prejudice; 3) The hearing panel erred in its ruling that his examination of the Grievance Administrator's counsel would be limited to questions pertaining directly to a certain memo contained in the Grievance Commission's files; and 4) The respondent was denied the opportunity to call a necessary witness.

The Board is unable to conclude that the respondent was denied procedural due process or that the rulings of the hearing panel or the Board chairperson constituted prejudicial error. With regard to the disqualification motion, the respondent has not shown that the panel chairman's request that respondent produce his file constituted prima facie evidence that the panel was attempting to assist the Grievance Administrator or that the panel members were biased or prejudiced against the respondent - After the disqualification motion was referred to the Board chairperson for decision in accordance with MCR 9.115(F)(2), the panel had no further role to play in that decision.

The respondent's arguments that the panel improperly limited the scope of his defense have been reviewed and it is the Board's conclusion that the panel's decisions were within the its discretion.

Based upon its review of the whole record, as well as consideration of the respondent's remarks to the Board at the review hearing conducted in accordance with MCR 9.118, the Board has reached the conclusion that a reduced level of discipline will be sufficient to achieve the stated goals of these disciplinary proceedings, that is, the protection of the public, the courts and the legal profession. MCR 9.105.

The respondent has candidly admitted his failure to appear for a status conference in a personal injury on May 11, 1989. Respondent was engaged in another matter on that date outside of the State of Michigan but it appears from the record that his failure to attend the status conference was the result of an oversight and not the result of deliberate contempt. We have declined to disturb the panel's findings that the respondent failed to advise his client of certain orders entered in her case. Obviously, a lawyer's failure to notify his or her client that an order of dismissal has been entered cannot be condoned, even if the lawyer considers the dismissal to be "technical" or if the situation is promptly rectified.

We have also considered the findings in this case that the first dismissal was followed by a motion for reinstatement and a subsequent reinstatement of the case and that the respondent informed his client's husband of the second dismissal. It should also be noted that the respondent filed an answer to the Request for Investigation, albeit in an untimely manner. The relevant documents from the Grievance Commission's

file which were received into evidence include a memo which may be construed as an extension of time to answer to approximately January 10, 1990. His answer to the Request for Investigation was received January 23, 1990, approximately one and one-half months before the formal complaint was filed. There is evidence in the record of the respondent's good-faith efforts to seek an extension of time to answer.

Finally, we believe that it is appropriate in this case to recognize the mitigating effect of the respondent's prior unblemished record during eighteen years as a licensed attorney. There is no question that the respondent's handling of the legal matter which led to these disciplinary proceedings included several instances of poor judgment. The hearing panel's findings of professional misconduct have evidentiary support in the record and should be affirmed. On balance, however, we are unable to conclude that a suspension of the respondent's license would be appropriate and discipline is therefore reduced to a reprimand. The panel's decision to order restitution in the amount of \$500, without interest, is affirmed.

All concur

Remona A. Green not participating