

STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,
State of Michigan
Attorney Grievance Commission,

Petitioner/Appellee,

v

Samuel V. Thomas, P 26693,

Respondent/Appellant.

Case No. 90-84-GA; 90-104-FA

Decided: May 16, 1991

BOARD OPINION

Based upon the evidence presented, including the testimony of the respondent and the complainant, the hearing panel found that the acts of misconduct charged in the complaint had been established. Specifically, the panel concluded that the respondent failed to appear at two hearings in a workers' compensation case, failed to respond to the inquiries of his client and failed to notify his client of court dates. Further allegations that the respondent failed to advise his client of settlement offers and that he made a false statement in his answer to the Request for Investigation were dismissed by the panel. The panel concluded that a suspension of sixty days was warranted. A petition for review has been filed by the respondent who argues that the evidence presented to the panel did not support the specific charges of professional misconduct contained in the complaint and that the panel found the respondent culpable of misconduct which was not properly charged. The Board has considered the whole record and is persuaded that, with one exception, the specific charges of professional misconduct have proper evidentiary support in the record. The panel's decision is therefore affirmed.

The charges against the respondent arise from his representation of a client in a workers' compensation case against Ford Motor Company. The respondent was retained in June 1987 (Tr. p. 34). The client testified that he received a telephone message from the respondent that his case had been transferred to another attorney in June 1989 (Tr. p. 107). The complaint charged and the panel found that during that two-year period between June 1987 and June 1989, the respondent's failure to appear at two separate hearings resulted in the dismissal of his client's case and that the respondent neglected the matter, failed to exercise diligence on his client's behalf and failed to communicate with his client.

Although the respondent now asks that the Board consider the credibility of the complainant, the Board is satisfied that the panel was well aware of the inconsistencies between the testimony of the respondent and the complainant. Credibility of the witnesses was for the panel to evaluate. The record reveals nothing upon which to conclude the preponderance of evidence standard was not met. Matter of Daggs, 411 Mich 304; 307 NW2d 66, 69 (1981).

The standard of review by the Board is whether, upon the whole record, there is proper evidentiary support, In re DelRio, 407 Mich 336; 285 NW2d 277 (1979), and whether the panel's findings are supported by competent material and substantial evidence, Matter of Philip E. Smith, 35166-A, Brd. Opn. p.115 (1981). It is with that standard in mind that the Board has considered the specific arguments raised by the respondent.

A) The Michigan Rules of Professional Conduct

The Michigan Rules of Professional Conduct (MRPC) became effective October 1, 1988 and apply only to acts or omissions which occurred after that date. The respondent now argues that there was no conduct alleged to have occurred on or after October 1, 1988 and that the charges under MRPC must be dismissed. The Rules in question are MRPC 1.1(c) (a lawyer shall not neglect a legal matter); Rule 1.3 (a lawyer shall act with reasonable diligence and promptness); and Rules 1.4(a)(b) (a lawyer shall keep a client reasonably informed, shall reply promptly with requests for information and shall explain the matter to the client).

In this case, there is competent testimony by the complainant that his case was entrusted to the respondent in June 1987 and remained in his care until June 1989 and that during that period he was not advised of the dismissal of his case and had difficulty in communicating with Mr. Thomas. Respondent's failure to take action in the case after October 1, 1988 was established by the documentary evidence. There is evidentiary support for the panel's findings that the respondent's conduct subsequent to October 1, 1988 constituted violations as charged under the Michigan Rules of Professional Conduct.

B) DR 1-102(A)(1,5,6)

The respondent's conduct prior to October 1, 1988 was subject to the provisions of the Code of Professional Responsibility and the disciplinary rules contained in that Code. The respondent has characterized the charges of misconduct under Canon I of the Code of Professional Responsibility as "make weight" charges. It is true that these charges are, by their nature, extremely broad. Nevertheless, we cannot find that the panel erred in sustaining the charges under Canon 1.

C) DR 6-101(A)(3)

The respondent was charged with a violation of the disciplinary rule which directs that a lawyer shall not neglect a legal matter entrusted to

him. Respondent argues that he could not be disciplined, as a matter of law, for failing to appear at the two hearings because it was not shown that he had notice of those hearings. The Administrator has countered with the argument that minimal diligence on his part mandated that he make some inquiry to the Bureau of Workers' Disability Compensation during the two years he was responsible for the case. It is not necessary that the Board rule on the panel's conclusion that the respondent had a duty to inquire as to any hearing dates. The complainant specifically testified that he advised his lawyer of the trial dates (Tr. p. 97) and that the respondent was given one of the dates by a magistrate (Tr. p. 103). There is competent evidence in the record that the respondent was notified of the hearings and the panel's conclusion that his failure to appear at those hearings constituted "neglect" therefore has support in the record.

D) DR 7-101(A)(1-3)

These three sub-sections of Canon 7 of the Code of Professional Responsibility are couched in terms of a lawyer's intentional failure to seek a client's lawful objectives, intentional failure to carry out a contract of employment and intentional prejudice or damage to the client. The respondent argues that he was not charged with "intentional" acts or omissions and that misconduct under Canon 7 cannot be established as a matter of law. The rule that an attorney may be disciplined for misconduct only when it has been properly charged in the complaint does not require that every charge of misconduct be repeated, word-for-word, in connection with every factual allegation. The Board is satisfied that the allegations in the complaint against respondent Thomas provided adequate and reasonable notice of the charges he was expected to defend. The complaint included charges that the respondent "failed to respond to the inquiries of Matsey concerning the status of the [case]" and that his actions therefore constituted violations of certain specified disciplinary rules. Based upon the whole record, there is evidence from which the trier of fact could reasonably conclude that the respondent intentionally avoided the inquiries from his client regarding the status of his case and that he intentionally failed to provide such information.

The respondent's argument is well-taken, however, with regard to the charge under DR 7-101(A)(3) that respondent "intentionally" prejudiced or damaged his client during the course of the professional relationship. It does not necessarily follow that a lawyer who intentionally fails to seek a client's objectives and fails to carry out a contract of employment has also formed the intent necessary to "intentionally prejudice or damage" the client. There is not sufficient evidence in the record to sustain the charge under DR 7-101(A)(3).

The respondent's petition for review is directed solely at the legal sufficiency of the panel's findings and it seeks reversal of the panel's decision to impose discipline of any kind. With the exception of the finding of a violation of DR 7-101(A)(3), we conclude that the panel's

findings of misconduct were appropriate. We specifically affirm the hearing panel's decision to suspend the respondent's license to practice law for a period of sixty days. It is noted that during the years 1987 and 1988, the respondent was the subject of five formal complaints which resulted in three consecutive orders placing him on probation.

All concur

Remona A. Green did not participate