

STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,
State of Michigan
Attorney Grievance Commission,

Petitioner/Appellant,

v

William J. Eaton, P 13084,

Respondent/Appellee.

Case No. 90-125-GA

Decided: May 17, 1991

BOARD OPINION

The Grievance Administrator has filed a petition for review seeking reversal of a hearing panel order of dismissal. The single-count complaint filed by the Administrator alleged that the respondent issued a check from his clients' trust account which was returned marked "account closed" and that the respondent then failed to answer the Request for Investigation which sought his full and fair disclosure to the circumstances surrounding the returned check. The hearing panel's decision to dismiss the complaint is based upon the Grievance Administrator's admitted failure to serve a copy of the Request for Investigation on the respondent by ordinary mail at his address on file with the State Bar, in accordance with MCR 9.112(C)(1)(b). Based upon its review of the whole record and the applicable court rules, the Attorney Discipline Board agrees with the hearing panel and its decision is affirmed.

The Grievance Administrator urges that a review of the exhibits submitted to the panel is crucial to the Board's consideration of this matter. It is from our review of those exhibits that we conclude that service of the Request for Investigation was insufficient. According to the record, a Request for Investigation was received by the Attorney Grievance Commission on January 26, 1989 complaining of the conduct of respondent William J. Eaton. The Request for Investigation had been filled out by a client and listed Mr. Eaton's address as 1115 Holland, Birmingham, MI 48009. According to a certificate from the membership records department of the State Bar of Michigan (Petitioner's Exhibit #4) Mr. Eaton had supplied that address to the State Bar on December 6, 1988. Had the Request for Investigation been mailed to Mr. Eaton at 1115 Holland by regular mail, there would have been unquestioned compliance with the applicable provision of MCR 9.112(C)(1)(b) which requires:

"(1) Request for Investigation of Attorney. After making a preliminary investigation, the administrator shall either

(a) . . . or

(b) serve a copy of the request for Investigation on the respondent by ordinary mail at the respondent's address on file with the State Bar as required by Rule 2 of the Supreme Court Rules Concerning the State Bar of Michigan. Service is effective at the time of mailing, and nondelivery does not affect the validity of service. If a respondent has not filed an answer, no formal complaint shall be filed with the board unless the administrator has served the request for investigation by registered or certified mail return receipt requested".

Instead, it is undisputed that the Request for Investigation was mailed by the Attorney Grievance Commission on February 9, 1989 addressed at 25 W. Long Lake, Suite 206, Bloomfield Hills, MI 48013. (Petitioner's Exhibit #1). That address had been registered by the respondent with the State Bar of Michigan prior to December 6, 1988 and appeared in the annual directory issue of the State Bar Journal published in April 1988. In his answer to the complaint, respondent Eaton denied receipt of the Request for Investigation (R/I) mailed to his former address and he repeated this denial under oath in his testimony to the panel. (Tr p. 30).

Having received no answer to the Request for Investigation, two copies of the R/I were then mailed by certified mail, return receipt requested, on March 15, 1989. One copy addressed to the respondent at his former address in Bloomfield Hills, was returned unopened by the postal service marked "refused" (Petitioner's Exhibit #2). The second copy addressed to him at his then current address in Birmingham was returned by the postal service marked "unclaimed" (Petitioner's Exhibit #3).

According to his testimony, his first notice of the R/I which forms the basis for the Grievance Administrator's complaint was contained in the complaint itself filed July 25, 1990 and served July 30, 1990. No evidence was introduced tending to show that the R/I had, in fact, been received by Mr. Eaton prior to the filing of the formal complaint nor does it appear from the record that any attempts were made to contact him in person or by telephone.

In this appeal, the Grievance Administrator acknowledges that the Request for Investigation was not served upon Mr. Eaton by ordinary mail addressed to him at his address on file with the State Bar of Michigan. It is first argued that the Commission's staff relied upon the address which was listed in the directory issue of the State Bar Journal and that this was "an appropriate vehicle to determine the Rule 2 address". This argument is not persuasive. There is no language in the Michigan Court Rules or the Supreme Court Rules concerning the State Bar which purports to make the

State Bar Journal's annual directory issue an official registry of a Michigan lawyer's current address. Up-to-date information concerning a lawyer's current address may be obtained from the State Bar of Michigan by telephone.

The Grievance Administrator further argues that although the original mailing of the R/I on February 9, 1989 was defective, this defect was cured by the subsequent mailing of a copy of the R/I by certified mail to the respondent's correct address on March 15, 1989. We also decline to accept this argument for the reason that MCR 9.112(C)(1)(b) is explicit in requiring mailing by ordinary mail and because there has been no showing that mailing by certified mail increases the likelihood of actual delivery.

Had a copy of the R/I been mailed to Mr. Eaton by ordinary mail at the address he had properly registered with the State Bar of Michigan, at some point between the receipt of the R/I on January 26, 1989 and the filing of the formal complaint on July 25, 1990, it is likely that a different result might have been reached in this case. Absent any evidence that respondent Eaton actually received a copy of the R/I prior to the filing of the complaint, we believe that dismissal is warranted where the service requirements of MCR 9.112(C)(1)(b) have not been met.