GRIEVANCE ADMINISTRATOR,
Petitioner/Appellee,

v

FLETCHER J. CAMPBELL, P-11544,
Respondent/Appellant.

ADB 25-88; 133-88

Decided: October 25, 1990

BOARD OPINION

The respondent has filed a petition in accordance with MCR 9.118 seeking review of a hearing panel Order of Revocation. The hearing panel entered its order following its adoption of the findings and conclusions of a master who received the testimony and evidence submitted by the parties and reported his findings to the panel. The panel ruled that the evidence established that the respondent, in connection with his representation of the conservator of an estate, collected a $600 retainer fee without approval of the Probate Court or the affected parties; charged and collected an excessive contingency fee in a probate case; violated an order of the Michigan Court of Appeals directing him to reimburse the estate for excessive fees; and violated an order of the Wayne county Probate Court enjoining him from transferring or spending funds received from the estate.

In a separate case consolidated for hearing, the panel found that the evidence established that the respondent was retained to prosecute an insurance claim for damages sustained in a fire loss. During the course of that representation, the respondent was found to have failed to deposited client funds in an identifiable bank account; to have misappropriated those funds; and to have knowingly provided false information to an Attorney Grievance Commission investigator.

The grounds for the respondent's petition for review may be grouped in three categories: 1) Alleged procedural and constitutional defects in the proceedings; 2) Errors committed by the hearing panel in its findings of fact and conclusions of law; and, 3) Error by the hearing panel in assessing the most severe form of public discipline.

Based upon its review of the whole record and the arguments of the parties, the Attorney Discipline Board has concluded that the proceedings before the hearing panel and master should not be set aside on the basis of the irregularities or defects claimed by the respondent. The Board further finds that the findings and conclusions of the panel have ample support in the record and should be affirmed. With regard to the discipline imposed, the Board concludes that reduction to a suspension of three years is warranted.

A six-count formal complaint in case ADB 25-88 was filed by the Grievance

Administrator February 17, 1988. A second complaint, ADB 133-88, containing three counts, was filed May 25, 1988. The respondent timely answered both complaints. The matters were consolidated administratively by the Board and assigned to Wayne County Hearing Panel #11.

The various procedural defects alleged by the respondent have each been considered by the Board. The Board is not persuaded that any phase of these proceedings has been compromised by a prejudicial irregularity or an error resulting in a miscarriage of justice. See MCR 9.107(A). The Board's considerations of these issues has been conducted in light of MCR 9.102(A) which directs that these rules are to be liberally construed for the protection of the public, the courts and the legal profession.

The Board specifically rejects the respondent's claim that the provision of MCR 9.111(B) that a public hearing on a complaint be held within fifty-six days after the date the complaint is filed is jurisdictional and must be strictly construed to require dismissal if the hearing is not commenced within that period. The Board has previously ruled that automatic dismissal of a complaint under a strict reading of that rule would not be consistent with the goals of these proceedings. Matter of Ronald R. Kubik, DP 186/84, (Brd. Opn. February 2, 1987) citing State Bar Grievance Administrator v Posler, 393 Mich 38 (1974); State Bar Grievance Administrator v Donigan, 403 Mich 172 (1978).

In this case, the panel acted within its discretion by adjourning the hearing scheduled for April 7, 1988 to April 29, 1988. Review of the record discloses that that hearing was further delayed by the replacement of two hearing panel members following the respondent's April 6, 1988 motion to disqualify panel members Zemmol and Jordan. The Board is unable to conclude that these proceedings have been unduly protracted in light of the volume and complexity of the issues raised by the parties during the course of the proceedings.

The respondent also challenges to the Board's appointment of a master to conduct the evidentiary hearings. The respondent's claim that MCR 9.110(D)(3) must be given the strictest and most literal interpretation was considered by the Board and rejected in its order of February 17, 1989. It has not been shown that that order was entered erroneously. The Board remains unpersuaded that the decision to appoint a panel or a master can be made only at the time the complaint is filed. Under that rule, assignment of a complaint to a master may be made "if it appears that the hearing will be a prolonged one." In actuality, it is highly unlikely that the staff members of the Attorney Discipline Board would be able to predict which complaints are likely to result in prolonged proceedings. In this case, the request for the appointment of a master came from the hearing panel after two days of hearing on preliminary matters and consideration of a record which, at that point, included 230 pages of pleadings and a transcript of 200 pages. The appointment of a master is affirmed.

The testimony presented before Master Steven Kaplan comprises a transcript of an additional 1100 pages. The Board's review of the record below is guided by the appellate standard enunciated by the Supreme Court. The Board's decision is based upon the conclusion that there is proper evidentiary [support] in the whole record for those findings. Grievance Administrator v Crane, 400 Mich 484 (1977); In re Del Rio, 407 Mich 336 (1977). The Board

has traditionally deferred to a hearing panel's assessment of credibility, Schwartz v Sauer, DP 25/84 (Brd. Opn., p. 359, 1985). In this case, the detailed report of the master includes appropriate references to the evidentiary support for his conclusions and it has not been shown to be erroneous.

Finally, we review the level of discipline imposed in this case. The misconduct which has been established, including misappropriation of client funds and the subsequent misrepresentation that client funds were held in cash, falls within that category of misconduct which the Board has found "ranks among the most serious breaches of professional ethics and seriously undermines public confidence in the legal profession. We have stated that, depending upon several factors, discipline ranging from a suspension of three years to disbarment would be appropriate for such an offense." Matter of John Hasty, ADB 1-87, Brd. Opn. February 8, 1988; Matter of Douglas E.H. Williams, DP 126/81 (Brd. Opn. p. 313, 1984).

The respondent does not enjoy an unblemished disciplinary record, having been reprimanded in 1978. We agree, however, with the conclusion of the panel that the 1978 reprimand is sufficiently remote in time that it has virtually no aggravating effect. In considering the level of discipline, we include as a factor the respondent's otherwise unmarred practice of law in Michigan for twenty-one years.

We have also reviewed the respondent's testimony at the discipline hearing conducted before the panel together with the pleadings and arguments presented on his behalf in these review proceedings.

Based upon the unique factors present in this case, we conclude that a suspension of three years is sufficient to achieve the stated goals of these disciplinary proceedings and falls within the range of discipline imposed for similar misconduct in prior cases.

All concur.

Member Hanley M. Gurwin did not participate.