GRIEVANCE ADMINISTRATOR,
Petitioner/Appellee,

HUSSEIN Z. KEILANI, deceased
by representative,
Complainant/Appellant,

v

RICHARD DURANT, P-13037
Respondent/Appellee.

ADB 208-88

Decided: May 9, 1990

MEMORANDUM OPINION

Disciplinary proceedings were instituted in the Matter of Richard Durant, P-13037, ADB 208-88 with the filing of a three-count formal complaint on September 7, 1988. The complaint charged that the respondent had neglected certain obligations owed to his client, Hussein Z. Keilani, as the result of his representation of Mr. Keilani in various legal matters. Mr. Keilani was identified as the complainant in the initial documents provided to the Board by the Grievance Administrator and the complainant received copies of subsequent notices of hearing.

An answer to the complaint was filed on behalf of the respondent and the parties engaged in the limited discovery allowed by MCR 9.115(F)(4). After two adjournments, the case was scheduled to be heard before Oakland County Hearing Panel #20 of the Attorney Discipline Board on October 11, 1989.

On August 28, 1989, the Grievance Administrator and the respondent filed a stipulation which stated in its entirety:

> Now comes Deborah J. Gaskin, Grievance Administrator, Attorney Grievance Commission by associate counsel, William E. Lang, and the respondent Richard Durant, by his attorney Robert P. Siemion and hereby stipulate and agree to the dismissal with prejudice of the above-captioned matter.

The Administrator's Proof of Service shows that the stipulation was served upon the respondent, his counsel, and the three members of the hearing panel. Notice of filing of the stipulation was not provided to the complainant. On September 5, 1989, the hearing panel acted upon the stipulation by filing an Order of Dismissal with prejudice. A copy of that order was mailed to the complainant by the Board and he filed a timely petition for review as provided by MCR 9.118(A)(1).

The complainant's petition for review recites that the stipulation was filed without prior notice to the complainant. The Grievance Administrator's counsel did send the complainant a letter dated August 31, 1989 advising him that the Grievance Administrator had determined that the respondent's affirmative assertions filed with his answer to the Formal Complaint had persuaded the Administrator that Counts I and II could not be sustained. The complainant further objected to the entry of the Order of Dismissal without a hearing and he requested that the matter be remanded to the hearing panel for public proceedings.

Following the issuance of the Board's order directing the parties to show cause why the panel's order of dismissal should not be affirmed, the matter was scheduled for hearing before the Board on January 11, 1990. On January 10, 1990, the Board received written notice from the complainant's attorney that complainant Keilani was deceased.

The Board has asked that the representatives of the various parties, including those of the late Mr. Keilani, advise the Board in writing of their various positions with regard to the continuation of these review proceedings. The Board was notified by the complainant's son, Badieh A. Keilani, temporary personal representative of his father's estate, that the complainant's children wished to substitute as complainants in this matter.

This is a case of first impression for the Attorney Discipline Board. We have not previously been asked to consider whether the death of a complainant automatically precludes the Board's consideration of issues raised in the complainant's petition for review. While we are not prepared to rule that the death of the complainant must foreclose the Board's subsequent consideration of a petition for review in every case, we do not believe that the facts and circumstances of this case warrant the relief requested by Mr. Keilani in the petition for review filed prior to his death.

The brief filed on the complainant's behalf relies upon the Board's decision in the Matter of William E. Bufalino, II, 36580-A, 1 Misc Disc Rptr 405 (1981). As in this case, the Board considered a petition for review filed by a complainant who objected to an order of dismissal entered by a hearing panel upon the stipulation of the Grievance Administrator and the respondent. The Board remanded the matter to the hearing panel and directed that the Grievance Administrator "state on the record the precise reasons dismissal is sought and allow complainant to challenge those reasons before the panel."

The Board ruled in that case that the statutory provisions governing the entry of a nolle prosequi order in a criminal case should be applied, by analogy, to the Attorney Grievance Commission's withdrawal of a complaint. The Board gave three reasons for adopting such a rule.

> First, the Grievance Commission is confided with a comprehensive responsibility in prosecuting public grievances against members of the bar. It is therefore accountable to the public when it chooses to discontinue such an action, as is the Board (or Panel) in entering an order of approval. The Board, its hearing panels and the Commission are especially accountable to the Complainant, who

> participates in disciplinary proceedings, at most, as a witness. It is only fair that, after a Complainant has brought a grievance, it has been investigated, a Formal Complaint filed, and perhaps proceedings begun, that the Commission state on the record the grounds upon which dismissal may be sought, if for no other reason that to inform the bewildered Complainant.
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> Second, both the panel and the Board, when the Order is appealed, must be properly informed before their discretion can be exercised in accepting or rejecting the Request for Dismissal. If the reasons dismissal is sought are not clearly or adequately stated on the record, the Panel and the Board cannot reach an informed decision in the matter . . .
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> Third, such reasons should be mentioned on the record for the protection of the respondent. Where the Grievance Commission seeks dismissal due to a perceived defect in the case, the respondent has a right to know of such defects. If dismissal is sought for tactical or other reasons unrelated to the merits, the respondent should be equally informed.

We take this opportunity to affirm our opinion in Matter of Bufalino, supra. We continue to believe that the Attorney Grievance Commission and the Attorney Discipline Board, as representatives of the Michigan Supreme Court and the legal profession, are accountable to the complainant. The complainant should receive prior notice that the Attorney Grievance Commission intends to dispose of the allegations in a formal complaint by stipulating to a dismissal or a consent discipline.

We do not mean to imply in any way that the complainant has a right to veto such decisions by the Grievance Commission or the Grievance Administrator nor do we question the Commission's authority to seek dismissal of actions which may become unworthy of prosecution. As we said in Bufalino, supra, "such authority is inherent in the Commission as the prosecution arm of the Supreme Court."

On the other hand, we do not believe that public or judicial confidence in the discipline system is enhanced by allowing the Board's hearing panels to consider and rule upon stipulations for dismissal or consent discipline without prior notice to the complainant. The Supreme Court has given complainants a role in these proceedings and they are entitled to certain rights which include the right of appeal to the Supreme Court if the Grievance Administrator or Grievance Commission dismisses a Request for Investigation [MCR 9.112(A)(2)]; the right to receive notice of a hearing before a hearing panel [MCR 9.115(G)]; the right to file a petition for review of a hearing panel order [MCR 9.118(A)]; and the right of a complainant to appeal a final order of discipline or dismissal entered by the Board [MCR 9.112(A)].

MCR 9.126 (Open hearings; confidential files and records) provides generally that

investigations by the administrator or the staff of the commission may not be made public but that once a complaint has been filed with the Board, hearings before a hearing panel and the Board must be open to the public and the pleadings, reports, findings, recommendations, transcripts and orders resulting from those hearings must also be open to public inspection. The spirit and intent of that rule is seriously compromised if the Grievance Administrator and respondent are able to agree to the dismissal of a formal complaint, submit that agreement to a panel and obtain the entry of an order of dismissal without any notification or explanation to the complainant or the public as a whole.

In the instant case, we find nothing to be gained by remanding this matter to a hearing panel. Although prior notice of the filing of the Stipulation to Dismiss was not provided to complainant Keilani and there is nothing in the record to indicate that the panel had further information before it upon which to make an informed decision, the Grievance Administrator's brief filed on November 29, 1989 does set forth an adequate basis for consideration of the stipulation. In lieu of remanding the matter, we conclude that the Grievance Administrator and the Attorney Grievance Commission acted within their authority in seeking dismissal of this action and that the dismissal was consistent with the goals of these disciplinary proceedings.

In this case, we need not consider the third ground set forth in Bufalino, supra, namely protection of the respondent inasmuch as he was represented by experienced counsel and stipulated voluntarily to the dismissal with prejudice.

In summary, we have reviewed the whole record in this case and find that the Administrator has appropriately, if belatedly, provided a sufficient basis for granting the request that this case be dismissed with prejudice. A remand to the hearing panel would serve no useful purpose. There has been no showing that the estate of the complainant has any actual or potential interest in the outcome of these disciplinary proceedings.

Consistent with our ruling in Matter of Bufalino, supra, we further rule that in future cases the filing by the Grievance Administrator of a stipulation to dismiss a complaint, in whole or in part, or a stipulation for consent order of discipline should be accompanied by a proof of service showing that the stipulation has been provided to the complainant(s) of record.

John F. Burns, Hon. Martin M. Doctoroff, Remona A. Green, Hanley M. Gurwin, Linda S. Hotchkiss, M.D. and Theodore P. Zegouras.

DISSENT

Robert S. Harrison

I join in the Board's conclusion that no useful purpose would be served by remanding this matter to a hearing panel for further consideration of the stipulation to dismiss filed by the Grievance Administrator and the respondent in this case. I strongly disagree, however, with the majority's decision to include with its opinion a sweeping pronouncement that notice should be provided to the complainants in future cases involving stipulations to dismiss or stipulations for

consent discipline. Such language is unnecessary to a proper resolution of this case. I do not believe that the public interest is properly served by such a policy and I fear the potential abuses which may result from the interjection of a complainant--usually a nonlawyer--into this stage of the disciplinary process.