GRIEVANCE ADMINISTRATOR,
Petitioner/Appellant,

v

MARK L. DAVIS, P-35657,
Respondent/Appellee.

ADB 47-89

Decided: March 22, 1990

MAJORITY BOARD OPINION

The Grievance Administrator has filed a petition for review seeking to increase discipline ordered by a hearing panel which suspended the respondent's license to practice law in Michigan for a period 119 days and until he has provided certification that he has been reinstated to the practice of law in the State of Colorado. Discipline was imposed by the panel under the reciprocal discipline provisions of MCR 9.104 following the Grievance Administrator's filing of an order of discipline entered by the Supreme Court of Colorado. The order was based upon the respondent's plea of guilty in that state to a misdemeanor charge of possession of less than eight ounces of marijuana. Based upon a review of the whole record, we are persuaded that the discipline imposed by the hearing panel was appropriate and should be affirmed.

On September 12, 1986 the respondent, Mark L. Davis, entered a guilty plea in the State of Colorado to a misdemeanor charge of possession of marijuana. The record discloses that he had obtained the marijuana from a bankrupt client in exchange for legal services. The respondent was given a deferred sentence with the following conditions: that he not violate any law for two years; that he pay a $5000 fine; that he be required to undergo periodic urinalysis; and that he perform four hundred hours of public service.

In disciplinary proceedings instituted in Colorado, the Grievance Committee in that state recommended a public censure as the appropriate discipline. The Supreme Court of Colorado rejected that recommendation and suspended the respondent from the practice of law in Colorado for a period of one year. In an opinion dated February 13, 1989, that Court ruled that the respondent's conduct constituted "serious criminal conduct" of a type which violates the most fundamental moral obligation owed by a lawyer to the public--to maintain personal honesty and integrity. That Court stated:

> Although the respondent's misconduct would ordinarily merit the severe sanction of disbarment, we recognize that there are extraordinary mitigating circumstances in this case that may be appropriately considered in arriving at a fair disciplinary sanction. See Standards for Imposing Lawyer Sanctions, Sec. 9.1 Commentary. In light of the mitigating factors outlined in the hearing

> board's recommendation, especially the respondent's exceptional efforts to rehabilitate himself and his previously unblemished record, we believe an appropriate sanction under the circumstances of this case is suspension from the practice of law for one year.

On March 20, 1989, the Grievance Administrator filed a petition for order directing the respondent to show cause why an order of reciprocal discipline should not be entered. Respondent appeared at the hearing conducted under the provisions of MCR 9.104 which directs, in pertinent part:

> Proof of an adjudication of misconduct in a disciplinary proceeding by another state or a United States court is conclusive proof of misconduct in a disciplinary proceeding in Michigan. The only issues to be addressed in the Michigan proceeding are whether the respondent was afforded due process of law in the course of the original proceedings and whether imposition of identical discipline in Michigan would be clearly inappropriate.

At the hearing, the parties stipulated that the respondent was afforded due process in the course of the proceedings in Colorado. The sole issue presented on appeal is whether one-year suspensions in Colorado and Michigan are "identical" for purposes of applying the reciprocal discipline provisions of MCR 9.104.

Based upon its review of the applicable court rules in each jurisdiction, the panel concluded that while a one-year suspension in Colorado does not require separate reinstatement proceedings, a one-year suspension in Michigan is extended anywhere from two to six months by the reinstatement proceedings described in MCR 9.123(B) and MCR 9.124. The panel concluded that a one-year suspension would therefore be clearly inappropriate since it would not, by definition, involve and "identical discipline". The 119-day suspension imposed by the panel is the maximum suspension which may be imposed without triggering the reinstatement process under MCR 9.123(B). The panel imposed as a further condition that respondent may not file his affidavit for automatic reinstatement under MCR 9.123(A) until he has certified that his license to practice has been restored in Colorado. For purposes of these proceedings, both parties have assumed that the respondent's one-year suspension in Colorado will terminate March 15, 1990, approximately one month after the expiration of the 119-day suspension period.

We believe that the hearing panel's decision was appropriate in light of the specific circumstances presented in this case.

The Supreme Court of Illinois has recognized the occasional difficulty in imposing reciprocal discipline where there are significant differences between the disciplinary rules of the two states involved. In an opinion cited by the respondent, In re Witte, 99IL2d 301; NE2d 484 (1983), the Court attempted to fashion a reciprocal discipline order for an attorney disciplined by the Supreme Court of Missouri. Noting that "exact reciprocal discipline cannot always be imposed," the Illinois Court rules that respondent Witte should be suspended in Illinois until his

reinstatement by the Supreme Court of Missouri. The Court specifically ruled that once respondent had been reinstated in Missouri, he should not be required to suffer the delays associated with a separate petition for reinstatement in Illinois.

In this case, we are persuaded by respondent's argument that if we are to give full faith and credit to the disciplinary sanction imposed by the Supreme Court of Colorado, we should be equally willing to give full faith and credit to that Court's decision that respondent's suspension should be terminated without the additional time and expense of a lengthy reinstatement process.

We hasten to emphasize that there is considerable merit to the Grievance Administrator's argument that the nature of the respondent's misconduct could support a more severe form of discipline. If the respondent had been subject to discipline in Michigan solely on the basis of his drug-related conviction, it is entirely possible that this Board might have imposed a longer suspension. Our decision in this case is based upon our recognition of the "extraordinary mitigating circumstances" described by the Supreme Court of Colorado and our recognition of the difficulty in imposing "identical" reciprocal discipline. Our decision to affirm the hearing panel's action in this case should not be construed as a decision to set a precedent in future cases involving attorneys found to have participated in the distribution of an illegal drug.

John F. Burns, Hanley M. Gurwin and Robert S. Harrison.

MINORITY OPINION

I disagree with the majority in this case. I would reverse the hearing panel's decision and would imposed a suspension of one year with reinstatement conditioned upon the respondent's successful completion of the reinstatement proceedings described in MCR 9.123(B) and MCR 9.124.

As I read the court rule in question, the panel was required to make only one finding--if the respondent was suspended for one year in Colorado, would an identical discipline in Michigan be inappropriate? First, I would not be offended by a finding that a one-year suspension in Michigan is "identical" to a one-year suspension in Colorado. (This view may go even farther than the relief requested by the Grievance Administrator who argues only that the panel erred in not suspended the respondent "for 120 days or more." More importantly, I am convinced that a one-year suspension is "appropriate" for an attorney whose acceptance of marijuana in place of his legal fees aids, rather than hinders, the flow of illegal drugs in this country.

Both the hearing panel below and the Board majority are willing to go to great lengths to protect the respondent from the time and expense of the reinstatement process which applies to any attorney suspended for more than 119 days. This concern is misplaced. We are charged with the duty to administer professional discipline in a way which protects the public, the courts and the legal profession. I am not [at] all troubled by the thought that an attorney who has knowingly violated the criminal laws of a state should be required to establish his eligibility for reinstatement before he is again allowed to present himself to the public as an officer of the court.

On the contrary, I am surprised that I am alone in asserting this view.

Theodore P. Zegouras.