

Grievance Administrator,
State of Michigan
Attorney Grievance Commission,

Petitioner/Appellee,

v

Sandra S. Schultz, P-30269,

Respondent/Appellant.

Case No. 94-49-RD

Decided: August 23, 1995

BOARD OPINION

On January 10, 1994, the Wisconsin Supreme Court suspended respondent Schultz for two years for misconduct described by the court as follows:

neglect of a client's medical malpractice claim, failure to keep the client informed of the status of that claim, misrepresenting to her client that the claim remained pending after the circuit court action had been dismissed and the appeal of that dismissal had also been dismissed, misrepresenting in the circuit court her ability to obtain an expert witness in the action and failing to comply with the circuit court's scheduling order, an order of the appellate court and three orders of the referee in this disciplinary proceeding. [In Re Sandra S. Schultz, 180 Wis 2d 485, 486; 509 NW2d 287 (1994).]

On March 15, 1994, the Grievance Administrator commenced these proceedings seeking reciprocal discipline pursuant to MCR 9.104. A hearing was held on July 29, 1994. Respondent contended that she was not afforded due process in Wisconsin. On October 20, 1994, the Saginaw County Hearing Panel filed its report and an order suspending respondent for two years commencing November 11, 1994. We affirm the hearing panel's order, but modify the effective date of respondent's discipline so that her suspension in this state is concurrent with that in Wisconsin.

After timely answering the complaint and order to answer in the Wisconsin proceedings, respondent failed to attend a telephonic scheduling conference. Wisconsin procedure requires that the referee in attorney discipline matters hold a scheduling conference within twenty days after the time for answer. Wis SCR 22.13(1). The referee in respondent's case, Jean W. DiMotto issued an order on April 25, 1993 setting a telephonic scheduling conference for May 6, 1993 and requiring respondent to provide, in writing, by May 4, 1993, a telephone number at which she could be reached for the conference. April 25, 1993 was a Sunday. The order was mailed on April 26, 1993.

On May 5, 1993, the referee received several telephone messages from Russell Slade indicating that respondent requested that he call and inform the referee that respondent would be unable to participate at the scheduling conference "due to her employment"; Slade further indicated that he could participate on her behalf or alternatively requested that the referee reschedule. No telephone number was provided by Slade in any of messages. On the morning of May 6, Slade reached the referee and left a telephone number at which he could be reached that morning. The hearing proceeded as scheduled with Mr. Slade on the line and without respondent. Slade introduced himself as "the former law partner of Sandra Schultz." He further indicated "I am not an attorney and not practicing in Wisconsin but I am conducting the hearing at [respondent's] request so that this could go ahead and she could have the information from the pre-trial conference."

Referee DiMotto declined to accept an appearance from Mr. Slade, but indicated that the hearing was public and he would be able to stay on the line. She then found that respondent failed to comply with both aspects of the April 25, 1993 scheduling order, and noted that that was the second disciplinary proceeding in Wisconsin against respondent. The referee then indicated that she would issue an order to show cause why default judgment should not

be entered, and proceeded to set a date for a telephonic hearing on the order to show cause with the input of Mr. Slade as to respondent's schedule. The hearing on the order to show cause was set for Friday, May 21, 1993.

At the May 21, 1993 telephonic hearing before the referee, respondent testified that she received the April 25, 1993 order on the evening of Friday, April 30, 1993. When asked why she did not attempt to comply with the order to provide a telephone number in writing by May 4, respondent replied that it would have been impossible and "there isn't any overnight mail." The referee questioned respondent about Slade's role in the proceedings and respondent questioned the relevance of these inquiries. Finally, the referee stated "you may now give the response that you indicated that you were prepared to give in reference with the order to show cause hearing." Respondent persisted in questioning the relevance of the referee's questions, and the referee eventually struck the respondent's answer, found her "in default," and set a briefing schedule and a hearing date on discipline.

The entire record of the Wisconsin proceedings has not been filed with the Board. However, it appears that after the May 21, 1993 hearing the referee gave respondent another chance to address the issues raised there. In her August 4, 1993 decision and order the referee stated:

Notwithstanding the respondent's flaunting of past orders and her willful and outrageous demeanor and behavior during the May 21 hearing, she was subsequently provided an additional opportunity to respond by virtue of the referee's June 3 Order allowing submission of written material or briefs on any issue raised in the May 21 hearing. Any opportunity she complains was denied her on May 21 was afforded her by that Order, and she chose not to use that opportunity in the 3 1/2 weeks given for response.

By her conduct and attitude between April 30 and June 28, the respondent has indicated

she does not wish to cooperate and participate in these proceedings.

A hearing on disposition ("aggravating and mitigating factors bearing on the recommendation for discipline to be made to the Supreme Court") was scheduled for September 17, 1993. Respondent admitted that she did not attend the scheduled hearing on disposition (7/29/94 Tr, pp 61). Respondent also admitted that she did not file an appeal of the referee's report with the Wisconsin Supreme Court. (7/29/94 Tr, pp 73-74).

Respondent now argues that she was denied due process because: she was not afforded a hearing on the merits of her case; she was "denied mandatory procedural requirements for notice and compliance"; the referee was biased and used an unrelated disciplinary file to prejudge respondent; and, the order striking respondent's answer and entering judgment by default violates due process under Wisconsin Supreme Court decisions.

We cannot conclude that respondent was deprived of due process (i.e., denied a "meaningful opportunity to be heard") when she did not: (1) avail herself of an opportunity to brief issues addressed at the May 21, 1993 hearing; (2) attend the hearing on discipline or submit a brief regarding those issues; or (3) exercise her right to challenge all of the referee's actions and recommendations in an appeal to the Wisconsin Supreme Court.

We agree with the panel's conclusions that respondent was not denied due process in the Wisconsin proceedings and that imposition of the identical discipline is not clearly inappropriate. However, the effective date of the panel's order is modified so that respondent's two-year suspension shall run from January 10, 1994, concurrent with her suspension in Wisconsin. In all other respects the panel's order is affirmed.

Concurring: John F. Burns, Marie Farrell-Donaldson, Elaine Fieldman, Barbara B. Gattorn, Albert L. Holtz and Miles A. Hurwitz.

Board Members George E. Bushnell, Jr., C. Beth DunCombe and Paul D. Newman did not participate.