

Grievance Administrator,  
Petitioner/Appellee,  
v  
John F. Gilhool, P-13981,  
Respondent/Appellant.

ADB 81-88

Decided: August 15, 1989

BOARD OPINION

The respondent in this case has appealed the imposition of a reprimand for his failure to deliver certain papers and receipts held on behalf of a client. The hearing panel found the respondent to be in violation of Canon 9 of the Code of Professional Responsibility. We are persuaded by the argument of the respondent that this isolated instance of ordinary negligence is not sufficient to warrant disciplinary action. The order of reprimand is therefore vacated and the complaint is dismissed.

The factual findings of the hearing panel have not been contested by either party. The respondent was retained in August 1986 to represent a client in post-judgment divorce proceedings involving the custody and visitation of a minor child. The client testified that she also requested that respondent obtain the return of certain items of personal property awarded to her in the judgment of divorce. This property included personal papers, checkbook stubs and income tax documents. There is no dispute that the items in question were turned over to the respondent by opposing counsel although the testimony differed as to whether a file folder containing the documents was delivered to respondent in November 1986 or as late as February 1987.

According to Mr. Gilhool, he brought the folder back to his office and placed it on a chair. Respondent's client, receiving no response to a letter in December 1986 requesting that he file a motion to secure her personal property, hired another lawyer in January 1987 to file a claim and delivery action against her former husband. The client then learned that her property had been turned over to the respondent. In response to the client's subsequent request for investigation, the respondent admitted that he was unable to locate the file and that its contents had been lost.

The hearing panel found that the respondent's failure to notify his client promptly of his receipt of her property constituted a violation of Canon 9, DR 9-102(B)(1) and that his inability to deliver possession of those papers constituted a violation of DR 9-102(B)(4).

The panel further found that, given the nature of the property and the lack of any evidence that the failure to turn over that property interfered with the proper administration of justice or resulted in any serious inconvenience to the client, the

respondent's violations of those provisions were, at best, de minimus.

Respondent's urges that his failure to notify his client and his failure to turn over that folder were the result of negligence and inattention as opposed to any willful disregard of his obligations to his client. We believe that the record below supports that characterization. In a case cited by respondent, the New Jersey Supreme Court considered an attorney's failure to properly record a title insurance policy and concluded that even though the respondent was "plainly negligent and careless in his handling of a title policy matter", his inaction "was not willful or of such a character as to warrant a conclusion of unethical conduct." In re: Gelzer, 158 A2d 331 (Sct. NJ, 1960). We reach a similar conclusion in this case.

All concur.