Grievance Administrator,
Petitioner/Appellant,
v
Leo C. Gilhool, P-27184
Respondent/Appellee.

ADB 155-88

Decided: June 28, 1989

BOARD OPINION

The hearing panel concluded that the respondent neglected a workers' compensation matter entrusted to him by a client, willfully misrepresented the status of the case to the client and failed to answer the Request for Investigation. The respondent's misconduct was aggravated by his failure to answer the formal complaint and by a prior disciplinary record consisting of a reprimand imposed in 1984. The Attorney Discipline Board has considered the Grievance Administrator's petition for review which argues that the nine-month suspension imposed by the hearing panel should be increased. It is the Board's conclusion that the nature of the respondent's misconduct warrants a suspension of the respondent's license for a period of four years.

The charges against the respondent are set forth in a three-county complaint filed by the Grievance Administrator on June 7, 1988. The respondent's default for failure to answer that complaint was filed; he did, however, appear before the panel to admit the essential allegations in the complaint.

Mr. Gilhool was retained by Earline McMurtry to prosecute a workers' compensation case resulting from the death of her husband in an industrial accident. The case was instituted by the respondent but was dismissed in March 1983 for his failure to appear at trial. The case was refiled but was dismissed a second time for lack of progress. Count I charged that the respondent's neglect and failure to carry out his contract of employment with Mrs. McMurtry constituted violations of Canons 1, 6 and 7 of the Code of Professional Responsibility.

From November 1984 until mid-1987, the respondent continued to tell his client that the workers' compensation case was proceeding. He knew these representations were false. The complaint specified that he told his client in November 1986 that the case was settled and that she would receive a settlement check by Christmas of that year. The panel received the testimony of Mrs. McMurtry who testified that she did receive a notice form the Bureau of Workers' Disability Compensation that the case had been dismissed but that she was constantly reassured by Mr. Gilhool that the matter had been reinstated. In July 1987, she was called by Mr. Gilhool and told that the case had been settled. She went to his office where she signed papers which appeared to authorize a settlement of her claim for $80,500. In September 1987, she was advised by the

respondent that the settlement funds had, in fact, been received and that he would pay her interest at the rate of twelve percent.

After Mrs. McMurtry filed a Request for Investigation with the Attorney Grievance Commission in 1897, she received money from Mr. Gilhool and, at the time of the hearing in this case, had received approximately $30,000.

Count II of the complaint is based upon the respondent's willful misrepresentations to his client. Count III charges that he failed to answer the Request for Investigation filed by Mrs. McMurtry and served by the Grievance Administrator in accordance with the Court Rules.

At a separate mitigation hearing, the hearing panel was advised of the respondent's prior reprimand in 1984 for misconduct involving neglect of a legal matter and misrepresentation to the client. In mitigation, the respondent presented testimony regarding a nearly unmanageable case load, disorganized office procedures, and his intention to reorganize his practice. With regard to restitution, it is the respondent's position that $80,500 represented an appropriate settlement of Mrs. McMurtry's case and if the case had been settled for that amount, her net recovery would be $46,000 after reimbursement of first-party benefits and payment of attorney fees. The respondent acknowledged that, using these calculations, he owed his client an additional $16,000 but offered no plan for restitution.

The Grievance Administrator's petition for review is based partly on the fact that the nine-month suspension in this case was ordered to run concurrently with a two-year suspension imposed by another panel in an unrelated matter. It is argued that the respondent is, in effect, getting a "free ride" since the misconduct established in this case would not result in any greater discipline. We do no think that the argument justified an increase in discipline in this case. The nine-month suspension imposed by the hearing panel in this case was disclosed to the other panel which considered that discipline as an aggravating factor. It would not be appropriate to use the two-year suspension as a further aggravating factor in the instant case.

A far more compelling basis for an increase in discipline is found in the nature of respondent's repeated, calculated deceptions in his communications with his client.

Deliberate misrepresentation to a client has traditionally been viewed by the Board as misconduct warranting strict sanctions. For example, the Board issued an opinion in February 1988 in Matter of Ann Beisch, DP 122/85 (Brd. Opn. February 8, 1988) increasing discipline from thirty days to 120 days. The respondent in that case failed to file an appeal on behalf of a client in a criminal matter but advised the client that an appeal had been taken. Although the Board noted that the respondent had a prior unblemished record and that her actions were neither deliberate or

calculated attempts to injure the client, the Board ruled that such conduct reflects directly upon an attorney's character. Adequate protection of the public and the legal profession demands in such cases that the attorney be suspended for a sufficient period of time to require reinstatement proceedings as described in MCR 9.123(B) and MCR 9.124.

Review of prior Board Opinions discloses that among cases involving misrepresentations to clients, there is a separate class of cases in which the deception has been aided by the presentation of fictitious documents. It could be argued that the attorney who makes a deliberate effort to create a false document abandons any claim that his or her misrepresentations were inadvertent. The Board has also recognized that the administration of justice depends in large part upon an assumption that documents prepared and presented by attorneys are what they purport to be.

In 1983, the Board considered the Matter of John D. Hagy, DP 153/82; DP 66/82 (Brd. Opn. p. 266, 1983). That respondent lied to four bankruptcy clients by telling them that he had filed petitioners on their behalf. A fifth client relied upon a forged divorce judgment which was presented to conceal the respondent's neglect of her case. Although the Board cited the mitigating effect of respondent's youth, inexperience, lack of professional guidance and heavy case load, the 100-day suspension imposed by the panel was set aside and respondent was suspended for two years.

In a 1985 case, the Board increased a two-year suspension to disbarment in Matter of Anthony B. Meisner, DP 75/83 (Brd. Opn. p. 369, 1985). The fifteen-count complaint in that case charged that the respondent lied to clients regarding the status of their cases and submitted forged documents to several of them, including copies of complaints alleged to have been filed and a forged report of a military officer in connection with respondent's representation of a sailor charged with going AWOL.

The instant case is factually similar to Matter of Mary E. Gerisch, ADB 171-87 (Brd. Opn. April 28, 1988). In that case, the respondent falsely advised a client that a civil case had been settled. To aid in the deception, she sent the client a copy of a check and "settlement agreement" purportedly signed by the defendant. Both documents were forgeries. The Board increased the three-year suspension to disbarment noting that:

> "An attorney who created forged pleadings or documents not only destroys the trust of the client but does incalculable harm to the legal system. Clients, court officers and other lawyers who receive pleadings or documents from a lawyer should never have to question the document's authenticity . . . 'Truth is the cornerstone of the judicial system and the practice of law requires an allegiance and fidelity to truth.' Office of Disciplinary

> Counsel v Wittmaack, No. J-245-1986, PA S.Ct. 311-87 . . . We believe that revocation of the license to practice law is an appropriate sanction when an attorney violates the fundamental obligation to be truthful. This would seem to be especially true when a deliberate calculated intent to deceive is evidenced by the preparation of a forged document."

This case involved deception to the client for a substantial period of time (November 1984 to September 1987) aggravated by the preparation of false settlement documents for the client's signature. The case is further aggravated by a prior reprimand for similar misconduct in 1984. As the Administrator's counsel notes in her brief, the ink was scarcely dry on the previous discipline order when the respondent embarked on a similar course of misconduct in this case.

On the mitigation side, the respondent's testimony regarding his unmanageable caseload and his intention to reorganize his practice might have had some weight had this case been limited to the respondent's admitted neglect of a workers' compensation case. We find those factors to have little or no mitigating effect when weighed against respondent's dishonesty. The mitigating effect of respondent's restitution of $30,000 to his client is substantially lessened by the fact that he did not make any payments to the client until after she filed the Request for Investigation and by his failure to submit a specific proposal for paying the additional funds to which she is entitled. Nevertheless, we cannot overlook such restitution entirely and it has been considered as a factor in our decision to increase discipline to a suspension of four years.

Hon. Martin M. Doctoroff, Remona A. Green, Hanley M. Gurwin, Linda S. Hotchkiss, M.D., Patrick J. Keating and Theodore P. Zegouras.