

Grievance Administrator,
Petitioner/Appellee,
v
Robert G. Rooyakker, P-19607,
Respondent/Appellant.

ADB 72-88

Decided: March 13, 1989

BOARD OPINION

Respondent's license to practice law in Michigan was suspended for one year by a hearing panel following its findings that respondent neglected various legal matters, made misrepresentations to his clients regarding the status of their cases and misused client funds. The respondent seeks review of that order on the grounds that evidence of respondent's severe depression at the time of the misconduct warranted dismissal of the complaint, a transfer to inactive status or an order of probation. Based upon that review, the hearing panel order is affirmed.

The respondent substantially admitted the allegations of misconduct contained in a fifteen-count complaint filed by the Grievance Administrator. In 1980, the respondent represented Katherine VanHollebeke in a divorce case. The proceeds from the sale of the marital and certain securities were entrusted to the respondent. It was contemplated that the securities would be sold and the proceeds held in trust for distribution to his client in the form of monthly alimony and child support payments. For approximately six years, respondent neglected to transfer the ownership of the securities to himself as trustee. The dividend checks during that period were allowed to accumulate, uncashed. Respondent continued to make the monthly payments to his client but he was not replenishing the trust account with proceeds from the sale of the stock or the dividends. Those monthly checks were, in fact, paid from funds in the trust account which rightfully belonged to other clients. The commingling charges arises from the respondent's deposit of \$10,000 of his own money to the trust account to cover the shortfall when it was discovered. The remaining counts charge that the respondent neglected various legal matters entrusted to him by six other clients and that in each case he made misrepresentations to the clients regarding his efforts and the status of the case.

The hearing panel was presented with testimony from the respondent, the respondent's wife (who worked part-time in his office as a secretary) and a psychologist in support of his claim that his ability to practice law was impaired by a severe and debilitating psychological depression. The panel ruled that the evidence did not establish that the respondent was so depressed and incapacitated that he was not accountable or responsible for his actions. The panel further concluded, by a majority, that the order of probation requested by the respondent could not be entered

in the absence of a finding, required by MCR 9.121(C)(1), that such an order would not be contrary to the public interest.

In reviewing the panel's findings, the Board has adopted the standard which the Supreme Court has declared to be applicable in these proceedings. We conclude that there is proper evidentiary support in the record for the panel's findings. In re Del Rio, 407 Mich 336 (1979). We are persuaded that the decision to suspend the respondent's license rather than to approve the request for probation was correct. The hearing panel properly considered the apparent ambivalence in the testimony of Dr. Totin, Mrs. Rooyakker and the respondent himself as to his current ability to resume "the full practice of law." It is clear that the panel's order of suspension was not intended to be punitive but was motivated by a desire to protect the public, the courts and the legal profession.

The hearing panel's report does not specifically address the respondent's request that he be placed on inactive status other than to note that the request appeared to have been withdrawn by respondent's counsel. The petition for review filed by the respondent renews the request that he be transferred to inactive status in accordance with MCR 9.121. Such a transfer, if it could be accomplished, would allow the respondent to petition for reinstatement after one year, in accordance with MCR 9.121(E). In that respect, a transfer to inactive status would have a practical effect similar to the one-year suspension. It is clear, however, that a transfer to inactive status on the grounds of disability may not be ordered by the Board in the absence of judicial declaration in accordance with MCR 9.121(A) or the filing of a complaint by the Administrator alleging incapacity, as provided by MCR 9.121(B).

Concurring: Hon. Martin M. Doctoroff, Remona A. Green, Hanley M. Gurwin and Theodore P. Zegouras.

DISSENT

Robert S. Harrison and Patrick J. Keating

We dissent with regard to the length of suspension imposed and would order that respondent be suspended for 119 days with conditions relating to his continued professional counseling for a period of one year. The evidence presented to the hearing panel clearly establishes a causal connection between the respondent's depression and his neglect of legal matters as described in the formal complaint. Similarly, the evidence established that the so-called "misappropriation" was not the result of any intent by the respondent to use client funds for his own purposes. On the contrary, the shortfall in the trust account caused by his failure to replenish the VanHollebeke account was corrected by the respondent's deposit of \$10,000 of his own funds.

We believe that protection of the public, the courts and the legal profession could be accomplished more appropriately by a 119-day suspension coupled with the condition that the respondent

submit further evidence that he is mentally and emotionally prepared to resume the practice of law and the condition that he continue his therapy for one year.

DISSENT

Linda S. Hotchkiss, M.D.

I believe that the one-year suspension imposed by the hearing panel and affirmed by the Attorney Discipline Board is appropriate in view of the misconduct which was established and the evidence relating to the respondent's continuing treatment for depression. I would, however, couple the one-year suspension with further conditions, as allowed by MCR 9.106(2). Specifically, the interests of the public and the respondent would be well served by a requirement that respondent's reinstatement to the practice of law be followed by a one-year period during which the respondent would be required to submit quarterly reports from Dr. Totin regarding his continuing therapy.