

STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,

Petitioner/Appellee,

v

Dennis H. Snyder, P 29791,

Respondent/Appellee,

Case No. 12-81-GA

Decided: April 1, 2015

FILED
ATTORNEY DISCIPLINE BOARD
15 APR -2 AM 11:24

Amended¹ Appearances:

Patrick K. McGlinn, for the Grievance Administrator before the Hearing Panel
Dina P. Dajani, for the Grievance Administrator on review, only, Petitioner/Appellee
Tedd E. Bean, for the Respondent/Appellee
Reginald Weston, Complainant/Appellant, *in pro per*

BOARD OPINION

The complainant in this matter, Reginald Weston, filed a petition for review in accordance with MCR 9.118(A) seeking review of the order of dismissal entered by Genesee County Hearing Panel #4 on June 19, 2014. The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118, including a careful review of the record before the panel and consideration of the briefs and arguments presented by the parties at a review hearing conducted November 19, 2014.²

Respondent was charged with misconduct that included failing to adequately communicate with his client, charging an excessive fee, failing to hold client funds separately, failing to exercise

¹ This Opinion is amended as to appearances only. Patrick K. McGlinn represented the former Grievance Administrator before the hearing panel on March 12, May 31, and October 31, 2013. Dina P. Dajani represented the current Grievance Administrator on review before the Attorney Discipline Board on November 19, 2014.

² Mr. Weston appeared at the review hearing via video conferencing from his MDOC facility.

independent professional judgment, and dishonesty, fraud, deceit, and misrepresentation in connection with his representation of Mr. Weston who is serving a 27-50 year sentence for assault with intent to commit murder. Before respondent was retained, Mr. Weston had filed unsuccessful appeals, motions for new trial, re-sentencing, rehearing, and for relief from judgment pursuant to MCR 6.500. Respondent was paid \$10,000 for the representation pursuant to his written nonrefundable fee agreement and thereafter deposited those funds into his IOLTA.

The formal complaint specifically alleged that respondent purposely failed to advise Mr. Weston that there was little to no relief left to pursue on his behalf and that respondent deliberately failed to do so in order to deceive Mr. Weston and his family into believing that respondent's \$10,000 fee was warranted. During the misconduct portion of the proceedings, the Grievance Administrator's counsel voluntarily dismissed all but the charges that respondent failed to adequately communicate with Mr. Weston, in violation of MRPC 1.4(a) and (b). On June 19, 2014, Genesee County Hearing Panel #4, finding that violations of the remaining charges had not been established, entered an order of dismissal.

In reviewing a hearing panel decision, the Board must determine whether the panel's findings of fact have "proper evidentiary support on the whole record." *Grievance Administrator v August*, 438 Mich 296, 304 (1991). See also, *Grievance Administrator v T. Patrick Freydl*, 96-193-GA (ADB 1998). "This standard is akin to the clearly erroneous standard [appellate courts] use in reviewing a trial court's findings of fact in civil proceedings." *Grievance Administrator v Lopatin*, 462 Mich 248 n 12 (2000) (citing MCR 2.613(C).) Under the clearly erroneous standard, a reviewing court cannot reverse if the trial court's view of the evidence is plausible. *Thames v Thames*, 191 Mich App 299, 301-302 (1991), *Iden* 439 Mich 897 (1991). Additionally, although the Board reviews the record very closely and carefully, it does not re-sift the evidence and weigh it anew. *Grievance Administrator v Wilson A. Copeland, II*, 09-48-GA (ADB 2011).

MRPC 1.4(a) states that "a lawyer shall keep a client reasonably informed about the status of a matter and comply promptly with reasonable requests for information." The duty to keep a client reasonably informed under MRPC 1.4 is independent of the duty to comply promptly with reasonable requests for information. See *Grievance Administrator v Hayim Gross*, 97-138-GA (ADB 1999). MRPC 1.4 sets forth a rule of reason regarding communication. A treatise on professional responsibility explains some of the dimensions of this duty:

Both the duty to volunteer information and the duty to provide information upon request are qualified by a requirement of reasonableness under the circumstances. First, as the Comment to Model Rule 1.4 notes at several points, a reasonable level of communication in one context may be wholly inappropriate or even impossible in another.... Second, the detail and frequency of communication required to keep a client "reasonably informed" will differ from client to client.... Third, reasonableness may depend upon the legal sophistication of the client coupled with the history of dealings between the lawyer and the particular client. [1 Hazard, Hodes & Jarvis, *The Law of Lawyering* (3rd ed 2011), § 7.3, p 7-6, *Grievance Administrator v Wilson A. Copeland, II*, 09-48-GA (ADB 2011).]

In these review proceedings, Mr. Weston emphasized that the two periods in which respondent was unresponsive to him for approximately four months each (May 2009 - September 2009 and again from January 2010 to May 2010), was "the actual issue in this cause." However, the panel's report acknowledged there were communication problems between respondent and Mr. Weston, and they appear to have weighed these problems against the times in which respondent was responsive to Mr. Weston and/or his family.

MRPC 1.4(b) provides that "a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." The panel found that there was no evidentiary support for a finding that respondent violated MRPC 1.4(b). The panel's report noted that respondent testified that when he first met with Mr. Weston, they went over the list of issues Mr. Weston wanted respondent to address, but respondent saw three issues he thought he could pursue: (1) the possible perjury of one of the officers at trial; (2) actual innocence; and (3) the calling of an expert in gunshot residue. (HP Report 6/19/14, p 8.) Mr. Weston's testimony revealed that he too believed those to be the issues to pursue, along with a possible alibi defense he had Leonard Accardo³ investigating before respondent was retained. (HP Report 6/19/14, p 4.) Mr. Weston testified that he did not believe respondent was doing any work on his matter, but the evidence admitted did not indicate that Mr. Weston was not aware, did not understand, or disagreed with, the strategies respondent was pursuing.

³ Mr. Accardo is an investigator Mr. Weston hired prior to respondent's involvement in his matter.

Reviewing the testimony as a whole, along with the exhibits, there is support for the panel's finding that "the communication issues that are evident in the record do not, in fact, give rise to misconduct by a preponderance of the evidence." (Tr 10/31/13, p 78.)

The remaining issue Mr. Weston raised on review is that respondent has not provided sufficient evidence of the work he did to justify keeping the entire \$10,000 fee paid to him for the representation. This argument involves charges that were voluntarily dismissed by the Grievance Administrator. While the Board has discretion to affirm, amend, reverse, or nullify a hearing panel's order, it does not have the discretion to reinstate charges that are voluntarily dismissed by the Grievance Administrator. Nor will the Board question the authority of the Grievance Commission to seek dismissal of actions which may become unworthy of prosecution. Such authority is inherent in the Commission as "the prosecution arm of the Supreme Court for discharge of its constitutional responsibility to supervise and discipline Michigan attorneys." GCR 1963, 957.1; (now MCR 9.108(A).) *In the Matter of William E. Bufalino, II, A Member of the State Bar of Michigan, Respondent*, No. 36508-A (ADB 1981).

Upon a careful review of the whole record, the Board has determined that there is proper evidentiary support for the panel's findings, and the hearing panel's order of dismissal, entered June 19, 2014, is therefore affirmed.

Board members James M. Cameron, Jr., Lawrence G. Campbell, Dulce M. Fuller, Sylvia P. Whitmer, Ph.D., Louann Van Der Wiele, James A. Fink, and John W. Inhulsen concur in this decision.

Board member Michael Murray was absent and did not participate.

Board member Rosalind E. Griffin, M.D. abstained.