

GRIEVANCE ADMINISTRATOR,  
Petitioner/Appellant,  
v  
ANDREE J. DUFRESNE, P-13000,  
Respondent/Appellee.

File No. ADB 82-87

Decided: May 18, 1988

Issued: July 19, 1988

OPINION OF THE BOARD

The Hearing Panel ruled that the Respondent made a misrepresentation to a court in order to obtain a judge's signature on a proposed order in a divorce case. The Panel concluded that Respondent's actions amounted to professional misconduct. However, upon consideration of the facts and circumstances surrounding the Attorney Grievance Commission's decision to reopen their investigation after issuing a letter of admonishment to the Respondent, the Hearing Panel concluded that the instant complaint should be dismissed. The Attorney Discipline Board affirms the order of dismissal entered by the Rearing Panel.

For purposes of these review proceedings, there is no substantial dispute regarding the Panel's factual findings. Respondent DuFresne represented a client in a divorce case in Wayne County Circuit Court. She appeared before Judge William J. Giovan at a hearing on May 17, 1985 at a hearing on objections to the recommendation of the Friend of the Court. Following the hearing, opposing counsel presented a written order which did not exactly conform to the judge's ruling and the Hearing Panel chairman implied that opposing counsel's conduct was not entirely above reproach. Nevertheless, Judge Giovan signed the written order. Rather than take an appeal, Ms. DuFresne prepared a new order which did comply with Judge Giovan's oral ruling and took it to Judge Lucille Watts who was then sitting as the miscellaneous presiding judge. In presenting the order to Judge Watts, she signed a certification that the order "includes all provisions of the Friend of the Court recommendation or is in conformity with the decision of Judge Giovan rendered on May 17, 1985". On hearing, Judge Giovan set aside the Watts order, held Respondent's client in contempt, and assessed \$500.00 in costs payable by the Respondent and her client.

The Hearing Panel concluded that Respondent's conduct in obtaining an inconsistent order from Judge Watts constituted misconduct in violation of MCR 9.104 (1 and 4) and Canons 1 and 7 of the Code of Professional Responsibility DR 1-102 (A)(1, 4-6); DR 7-102(A)(1,3 and 7); DR 7-106(A) and DR 7-106 (C)(7).

The Panel then proceeded to a separate hearing on discipline as required by MCR 9.115(J)(2) and received into evidence Respondent's exhibit C, a letter dated March 11, 1986 from the Attorney Grievance Commission to the Respondent and the Complainant. This letter contains a review of the facts which formed the basis for the Grievance Administrator's Formal Complaint in this matter. The letter, signed by Louis Rosenzweig, counsel to the Grievance Administrator, closed with the following paragraphs:

It is clear that the Respondent should not have gone to another judge to try and aside the order of Judge Giovan, but it is also clear that Judge Giovan has taken care of the matter by his various orders. For the Respondent's action in having Judge Watts enter another order, she is admonished.

The Attorney Grievance Commission, after a careful review of the matter presented to it, has determined that there is no basis for any further action by the Commission. Accordingly, this file is closed.

The Grievance Administrator's counsel in the instant proceedings conceded that the admonishment letter had been issued, but explained that further information was received by the Commission subsequent to March 11, 1986. She offered into evidence the Complainant's further correspondence to the Commission which specifically called the Commission's attention to the allegedly false certification presented to Judge Watts -- a matter which was not specifically mentioned in Mr. Rosenzweig's admonishment letter.

A letter of admonition issued by the Grievance Administrator is not a form of discipline. Under the court rules in effect in March, 1986, the Grievance Administrator was authorized, upon completion of the investigation of a grievance filed against a lawyer, to admonish the Respondent or refer the matter to the Attorney Grievance Commission which could direct that a complaint be filed or that the matter be dismissed. MCR 9.114(A).<sup>1</sup> Rule 9.106, entitled "types of discipline" further provided that misconduct is grounds for revocation, suspension, reprimand or probation and further directed that "with the Respondent's consent, the Administrator may admonish the Respondent without file a complaint. An admonition does not constitute discipline."<sup>2</sup>

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<sup>1</sup> MCR 9.114(A) was amended effective June 1, 1987 and now provides "when investigation is complete, the Administrator shall refer the request to the Commission for its review. The Commission may direct that a complaint be filed, that the request be dismissed, or that the Respondent be admonished with his or her consent."

<sup>2</sup> The June 1, 1987 amendment to MCR 9.106 explicitly provide that misconduct is grounds for admonishment by the Commission without filing a complaint. MCR 9.106(6) details the procedure by which the Respondent may consent to that disposition. Objection to an admonition results in reconsideration by the Commission which may a direct that a Formal Complaint be filed or that the matter be dismissed.

In its report, the Panel noted that the facts in this case would otherwise warrant the imposition of a reprimand at most. They concluded:

Given the facts of this matter, however, the panel believes Ms. DuFresne's admonishment has already served its purpose and that further punishment, when the Commission has already acted to admonish, would be harsh and, in light of the quasi-criminal nature of our proceedings, smack of double jeopardy.

We agree with the result reached by the Panel. We emphasize, however, that our decision is not based upon principles of double jeopardy or res judicata which are not applicable to these disciplinary proceedings. Nor do we imply that the Attorney Grievance Commission may not reopen an investigation when it receives new evidence or evidence of continuing misconduct, even when a letter of admonition has been issued.

While an admonishment is not a form of discipline, it is clearly one of the possible consequences of a determination by the Grievance Administrator and/or the Attorney Grievance Commission that professional misconduct has occurred. Ms. DuFresne was admonished by the Commission in March, 1986, approximately ten months after the improper conduct occurred. An additional fourteen months elapsed before a Formal Complaint, based upon the same conduct, was filed. The record in this case does not clearly establish that the Commission received any "new" evidence following its decision to admonish Ms. DuFresne or that such evidence was unavailable during the original investigation. The Hearing Panel's decision to dismiss the complaint was correct insofar as it was based upon principles of fundamental fairness.