

GRIEVANCE ADMINISTRATOR,
Petitioner/Appellant,
v
STEPHEN M. LAZZIO, P-30468
Respondent/Appellee.

File No. DP 81/86

Decided: March 24, 1988

BOARD OPINION

It was determined by a hearing panel that Respondent, Stephen M. Lazzio, failed to provide competent legal representation in his handling of a probate matter. The Panel's order provided that Respondent was to be suspended for a period of sixty days unless he attended and completed a total of twelve hours of continuing legal education on the handling of personal injury cases and the administration of estates. The Attorney Discipline Board has considered the Petition for Review filed by the Grievance Administrator and modifies the discipline imposed by the Panel. Respondent is Reprimanded with specific conditions that he complete twelve hours of continuing legal education, including courses in the fields of probate, domestic relations, and criminal law within 18 months.

Respondent was retained in May 1982 by the daughter of one Nanny Lee who died while residing in a nursing home and he was charged with the responsibility of representing the estate in any claim which could be made under the wrongful death statute and to supervise the administration and closing of the estate. A claim against the nursing home was settled in September 1982 for the sum of \$6,000. The settlement draft from the insurance company was held, uncashed, by Mr. Lazzio for approximately three years.

The Respondent has not filed an appeal and the Grievance Administrator's Petition for Review is limited to the discipline imposed. Therefore, there is no issue before the Board as to Panel's finding that:

1. Respondent did not request a determination of inheritance tax;
2. He did not fully advise his client of the status of her case;
3. There was "an absolute failure" by the Respondent to properly administer the probate estate;
4. Respondent was not familiar with the wrongful death statute and did not become familiar with it during his handling of the estate;
5. Respondent had no valid reason for holding the uncashed settlement check from the insurance company.

The Panel did not sustain the allegations in the complaint regarding Respondent's answers to the Request for Investigation and they dismissed the charge regarding an excessive fee, finding that "in this case the fee was correct; the representation was not."

In its report on discipline, the Panel noted Respondent's prior Reprimands in 1983 and 1985 for failure to provide competent legal representation in other matters. The order of the hearing panel contained a further provision that until the educational requirements were fulfilled, Respondent was not to accept new cases in the areas of probate and wrongful death and to complete existing cases only under the supervision of another attorney.

The Hearing Panel's findings in this case do not include any finding that Mr. Lazzio is dishonest or that he is morally or temperamentally unfit to practice law. There was, however, ample evidence in the record to support the Panel's finding that his understanding of the applicable laws which should have been applied in the wrongful death claim and the administration of the decedent's estate were woefully inadequate and prevented Mr. Lazzio from achieving his client's legal objectives competently and expeditiously. In the past, Respondent has been found to have violated the standards of conduct for lawyers by neglecting criminal appeal and divorce matters. We note that the Panel which had an opportunity to observe Mr. Lazzio, felt that if his level of competence in these fields could be raised to an acceptable level, further corrective measures in the nature of a suspension would not be necessary. We agree and our modification of the Panel's order is largely a matter of form rather than of substance.

The Grievance Administrator has objected to the Panel's attempt to restrict Respondent's license to practice law, saying that such restrictions, however well intended or remedial, are in direct contravention of a rule announced by our Supreme Court in In re Trombley, 398 Mich 377 (1976). In that case, the Court affirmed a decision of the State Bar Grievance Board to deny Trombley's Petition for Reinstatement and the Court affirmed the Hearing Panel's rejection of his stated intention to limit his practice to the preparation of wills. Having determined that Mr. Trombley could not be safely recommended to the public as an attorney in many fields of the law, such a limitation to a single field was recognized "as not being feasible under our licensing statutes".

While we agree that open-ended restrictions which attempt to limit an attorney's practice of law are generally both impractical and unenforceable, we must also be aware that any "rule" embodied in the Trombley case must be considered in light of the Court's amendment to MCR 9.106, effective June 1, 1987, which defines the types of discipline which may be imposed, including a reprimand or a suspension "with such additional conditions relevant to the established misconduct as a hearing panel, the Board, or the Supreme Court may impose".

We need not take this opportunity to explore the semantic differences between a "restriction" and a "condition". According to the staff commentary which accompanied that rule change, MCR 9.106(2)and(3) were expanded by the Court to "allow the adjudicative bodies greater discretion to impose temporary restrictions or requirements such as continuing legal education, reformation of law office operations, personal counseling, and other conditions relevant to established misconduct and the causes thereof". We therefore rule that the legal education requirements and the temporary

restriction on Respondent's practice of law in certain fields for a definable period of time were not ultra vires by reason of the Court's ruling in Trombley.

It is clear, however, that the conditions which may be imposed in these disciplinary proceedings must be in conjunction with a reprimand or a suspension. In this case, the "suspended sentence" handed down by the Hearing Panel in the form of a sixty day suspension to take effect only if Respondent fails to complete legal education requirements was presumably intended to provide an incentive for Respondent to complete the legal education ordered by the Panel.

We believe that, in the long run, protection of the public, the Courts, and the legal profession will be better served by imposing a reprimand with the specific condition, as allowed by MCR 9.106(3), that Respondent complete six hours of continuing legal education in the field of probate law within 18 months. During that period, Respondent shall also complete three hours of legal education in the field of criminal defense and three hours on the subject of divorce practice, two areas in which Respondent has exhibited some deficiencies in the past. Failure to comply with these conditions will not result in the automatic imposition of a predetermined discipline but will, instead, constitute a violation of a discipline order which could itself be the subject of further disciplinary proceedings instituted by the Grievance Administrator. We are hopeful, however, that such further action will not be necessary and that Respondent will, in the future, handle his clients' legal affairs in an appropriate manner.