

GRIEVANCE ADMINISTRATOR,  
Petitioner/Appellant,  
v  
ANN BEISCH, P-32875,  
Respondent/Appellee.

File No. DP 122/85

Decided: February 8, 1988

OPINION OF THE BOARD

The Grievance Administrator filed a Petition for Review urging that the thirty-day suspension imposed by the Hearing Panel was insufficient in light of the Respondent's deliberate misrepresentations to her client regarding the status of a criminal appeal and her alleged misrepresentations to the Attorney Grievance Commission. It was also argued that the Hearing Panel's Report failed to fully set forth its actual findings, reasons and legal conclusions. We affirm the Hearing Panel findings and conclusions with regard to the acts or omissions which constituted professional misconduct. Upon careful review of the mitigating and aggravating circumstances which appear in the record, we increase discipline to a suspension of 120 days.

The four-count Complaint in this matter charged that Respondent neglected two criminal appeals entrusted to her by her client, Lawrence Shelly; that she misrepresented the status of those appeals to her client; and that her response to the Request for Investigation was deliberately misleading and deceptive.

The Grievance Administrator has not appealed the Panel's dismissal of Count I and its finding that the Respondent was not in fact retained to appeal a conviction entered in Wayne County. Those allegations are therefore not considered by the Board. We do find, however, that there is ample evidentiary support in the record for the Panel's findings that the Respondent agreed with Mr. Shelly to pursue an appeal of a conviction entered in St. Joseph County before the appeal period expired, that her correspondence with her client "lacked candor and an honest appraisal of the circumstances"; that she failed to disclose to her client that the appeal had been rejected and "clearly misrepresented the status of her client's appeal" in a letter dated March 29, 1984. The Panel further found that her answer to the Request for Investigation was not entirely truthful.

While the record contains conflicting testimony, especially with regard to whether or not Mr. Shelly requested Ms. Beisch (then Semaan) to handle the appeals from the convictions in Wayne County and St. Joseph County, the Board recognizes that the Hearing Panel was uniquely qualified to consider the credibility of the witnesses before it. The Hearing Panel's findings of fact should be given deference, Schwartz, v Walsh, DP 16/83 (Brd. Opn. 1984, p. 333).

The Hearing Panel imposed a suspension of thirty days, finding in mitigation that Respondent had only been an attorney for four months when she undertook the representation of the complainant in this case and that she had never previously filed a criminal appeal. The Panel found that her actions were neither deliberate nor calculated attempts to injure the client, but were the result of "lack of experience and a sense of frustration in her inability to satisfy what appeared to be an overwhelming burden". The Panel further noted that certain aspects of the complainant's testimony appeared to be self-serving and manipulative.

In its review of the discipline imposed, the Board must draw from its broad overview of these disciplinary proceedings to assure, to the extent possible, reasonable uniformity among the disciplinary orders issued by the various hearing panels and, most importantly, to insure the discipline imposed in each case is consistent with our overriding duty to protect the public, the courts and the legal profession. While the Board has increased discipline to suspensions ranging from two years to revocation in cases involving misrepresentation to clients, those cases have generally been characterized by a pattern of misconduct involving several clients or acts of outright forgery, see Schwartz v Hagy, (Brd. Opn. 1983) p. 266 and Schwartz v Meisner, (Brd. Opn. 1985) p. 369.

In other cases involving one or two clients, however, the Board has recognized the existence of significant mitigation and has imposed a suspension in the range of 120 days. For example, in Schwartz v Oesterle, (Brd. Opn. 1985) p. 337 a two-year suspension imposed by a hearing panel was reduced to 121 days in an opinion affirming the panel's findings of neglect aggravated by Respondent's intentional misrepresentations to the client (for more than a year he told his client that her Petition for Modification of Child Support was held up by court procedures when he knew the petition had not been filed). In a 1983 case, the Board reduced a revocation imposed by a panel to a suspension of 121 days In the Matter of James Hills, (Brd. Opn.) p. 292. Mr. Hills told two clients that two cases had been settled when, in fact, he had never filed a claim. The Board admitted that Mr. Hills conduct was "cause for serious concern" but found as substantial mitigation that Respondent did not intend to achieve personal or financial gain and his conduct resulted from "a mental conflict causing Respondent to deceive his clients rather than take appropriate constructive action".

We agree with the Hearing Panel that Respondent's inexperience contributed to her inability to be entirely candid with her client when faced with a situation in which she could not possibly satisfy her client's expectations. Respondent's reaction was clearly inappropriate. Protection of the public and the legal system as a whole requires that reinstatement of Respondent's license to practice law in this State be conditioned upon her affirmative showing, in reinstatement proceedings described in MCR 9.123(B) and MCR 9.124. We therefore increase the discipline in this case to a suspension of 120 days.

All concur.