STATE OF MICHIGAN

Attorney Discipline Board
Grievance Administrator,
State of Michigan
Attorney Grievance Commission,

Petitioner/Appellant,

v

Leonard R. Eston, P 13231,

Respondent/Appellee.

Case No. 90-91-GA

Decided: April 14, 1992

BOARD OPINION

The Grievance Administrator has filed a petition for review in accordance with MCR 9.118 seeking review of a hearing panel's Order of Dismissal. The panel's "Opinion and Order of Dismissal" is based upon its determination that it was without subject matter jurisdiction as the result of the Grievance Administrator's failure to serve a Request for Investigation by mailing to the respondent at his home address. Based upon review of the record below, it is the Board's conclusion that the service of the Request for Investigation was not fatally defective. It is the Board's specific conclusion that the Request for Investigation was mailed to the respondent at an address which he had provided to the Attorney Grievance Commission and that any technical deficiency in the service was within the scope of MCR 9.107(A) which directs that "An investigation or proceeding may not be held invalid because of non-prejudicial irregularity or an error not resulting in a miscarriage of justice."

The formal complaint filed by the Grievance Administrator on May 10, 1990 arises out of the respondent's alleged representation of Ardell and Dorothy Pope. Count I of the complaint charged that the respondent was retained by the Popes in October 1986 to represent them in a personal injury matter but failed to take action on behalf of his clients and failed to respond to their inquiries in violation of the applicable provisions of Canons 1, 6 and 7 of the Code of Professional Responsibility.

Count II charged that the Request for Investigation filed with the Grievance Commission by the Popes was served on the respondent on January 22, 1990. The complaint alleged that the respondent's failure to file an answer, despite written warnings mailed to him by certified mail on February 22, 1990 and March 13, 1990, constituted violations of Rule 8.14(a,b,c) of the Michigan Rules of Professional Conduct and certain provisions of MCR 9.104, MCR 9.103 and MCR 9.133.

Finally, Count III alleged that the respondent was suspended from the practice of law in orders which became effective July 29, 1987 and August 10, 1987 but that he violated the provisions of those orders by continuing to represent Mr. and Mrs. Pope and by failing to notify his clients of his suspension.

The service of a Request for Investigation upon an attorney is governed by MCR 9.112(C)(1)(b) which directs that the Administrator shall:

> b) "Serve a copy of the Request for Investigation on the respondent by ordinary mail at the respondent's address on file with the State Bar as required by Rule 2 of the Supreme Court Rules concerning the State Bar of Michigan. Service is effective at the time of mailing, and non-delivery does not affect the validity of the service . . ."

At the prehearing conference conducted by the hearing panel, it was established that the Request for Investigation submitted by Mr. and Mrs. Pope was mailed to the respondent on January 22, 1990 addressed to Leonard Eston, P. 0. Box 32558, Detroit, MI 48232. The Grievance Administrator's counsel demonstrated to the panel that when that Request for Investigation was returned to the Grievance Commission by the postal service, additional correspondence was sent to the respondent on February 22, 1990 by certified mail to both the P. 0. Box and the respondent in care of 1102 Lafayette Building, Detroit, MI. When that mail was returned, another final notice was mailed to the respondent in March 1990 in care of an attorney known to be representing the respondent in another matter. That envelope was also returned.

The record below contains a certificate issued by the State Bar of Michigan certifying that the respondent's address maintained with the State Bar from May 1, 1987 to June 1990 was 1102 Lafayette Building, Detroit, MI. The respondent argued to the hearing panel that the Grievance Administrator and his counsel had reason to know in January 1990 that the respondent was not located at that address and that other files and records maintained by the Grievance Commission at that time contained the respondent's home address, 22100 Cloverlawn, Oak Park, MI 48037.

Based upon this record, the hearing panel concluded that the Grievance Administrator's failure to provide service of the Request for Investigation at the respondent's home address constituted a violation of the respondent's fundamental constitutional right to due process of law. The panel further ruled that the lack of appropriate service deprived the panel of subject matter jurisdiction and required dismissal of the complaint, without prejudice.

In its opinion, the hearing panel's attention is focused on only two addresses to which a Request for Investigation could have been mailed to the respondent in January 1990. The record is clear that the respondent's address maintained with the State Bar in accordance with Rule 2 was 1102 Lafayette

Building, Detroit. Although the respondent has argued that he had not occupied that office since 1988, he concedes that he did not change his address on file with the State Bar. The Grievance Administrator has agreed that the Grievance Commission had no reason to believe he was at that address in 1990.

There is evidentiary support for the panel's conclusion that the respondent's home address 22100 Cloverlawn, Oak Park was an address known by the Attorney Grievance Commission inasmuch as the Commission's staff had sent correspondence to the respondent at that address in November 1989 in connection with another matter.

We agree with the hearing panel's conclusion that the language of MCR 9.112(C)(1)(b) does not preclude reasonable attempts to serve a Request for Investigation upon an attorney by mailing to other addresses which may be known to the Grievance Commission in addition to the respondent's Rule 2 address. We believe, as the panel does, that the service requirements under these rules must always be interpreted within the broader framework of the constitutional guarantees of due process. In this case, we believe that the Grievance Administrator's good-faith attempt to serve the respondent at the address provided by the respondent was well within that constitutional framework.

The Request for Investigation was mailed to respondent Eston on January 22, 1990 addressed to P. 0. Box 32558, Detroit, MI. The record before the panel clearly shows that the respondent himself had requested that the Grievance Commission use this address. In an unrelated investigation file which was then pending at the Commission, there is a note dated January 2, 1990 stating "Mr. Eston called. He Just got RI today. Says he uses the P. O. Box exclusively. Asked for ext. til 1-20." In that file, No. 2938/89, the respondent filed his answer to a Request for Investigation which he signed on January 22, 1990. Below his signature, he gave only one address--"P. O. Box 32558, Detroit, MI 48232". We are at a loss to understand how the respondent can claim that he was treated unfairly when the Request for Investigation mailed to him on January 22, 1990 was mailed to the address which he provided to the Grievance Commission, in writing, on the same date.

The hearing panel's conclusion that the Grievance Administrator should have served the respondent by mailing to his home address is grounded upon the due process requirements set forth in Mullane v Central Hanover Bank & Trust, 339 U.S. 306, 94 LEd 865 (1950). In distilling the general principle for which Mullane is commonly cited, the U. S. Supreme Court declared that:

> "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections". Mullane, supra 94 LEd 865 at 873.

As applied to this case, this principle does not place a burden on the Grievance Administrator to show that every conceivable effort has been made to locate a respondent. We should not lose sight of the fact that this issue is before the Board in this case only because the respondent himself failed to comply with the requirements of Rule 2 regarding the maintenance of a current address. Under all of the circumstances in this case, we must conclude that the mailing of a Request for Investigation to the address provided by the respondent, and which he requested be used exclusively, must be considered notice reasonably calculated to be delivered to the respondent. We do not f ind that such service was defective.

All concur.