

GRIEVANCE ADMINISTRATOR,
Petitioner,
v
EVERETT G. KNOX,
Respondent.

File No. DP 41/83

Decided: September 13, 1985

BOARD OPINION

PRESENT: William G. Reamon, Chairman
Patrick J. Keating, Vice-Chairman
Martin Doctoroff, Member
Charles C. Vincent, M.D., Member

The Respondent was charged in a five count complaint with willful neglect of his client's matters, charging the client excessive fees, an attempt to have the grievance withdrawn by promise of a fee refund and threats of disclosure of alleged perjury by the client. The Hearing Panel found that the evidence presented by the Grievance Commission was insufficient and did not warrant any imposition of discipline. We concur with the hearing panel dismissal of Counts II-V but find that Respondent did not utilize all available avenues in the representation of his client; such was admitted by the Respondent. Therefore, the Board imposes a reprimand and costs with respect to Count I of the Formal Complaint.

The Complainant retained Respondent in February, 1981 to challenge an adverse decision of the Civil Service Board in Indiana regarding a complaint filed against Complainant, a fireman, regarding sexual conduct which took place while he was on duty. The Complainant told Respondent that he wanted to be completely vindicated of all charges and initially sent Respondent \$100.00 to look over the file. He then sent an additional \$2,500.00 for Respondent to handle his appeal. There was no written fee agreement. Complainant's local attorney agreed to motion for Knox's admission in the Indiana court.

Complainant had previously taken a polygraph test in which he denied the sexual misconduct charges. However, in November, 1981, he took another polygraph test in which he admitted that the charges were true. This surprised Respondent who then felt that he had to re-evaluate the case itself and alternative defenses which could be used. Respondent requested and received an additional \$1,500.00 to pursue the case based on the new developments.

On April 13, 1983, a Formal Complaint was filed against Respondent and in May, 1983 Complainant demanded return of all fees paid. Respondent returned the last payment of \$1500.00. In October of 1983, a settlement and compromise was reached between Complainant and the City of South Bend which resulted in dismissal with prejudice of the proceedings against Complainant.

The Board agrees with the Panel's findings that the fees charged by Respondent were not excessive and that work had been done on the case despite the fact that Respondent did not keep efficient records of his time. The Board also recognizes that the Complainant had misled Respondent initially which made Respondent's job more difficult in eventually formulating a defense.

We find no evidence to support the (Count V) allegation of threats to or undue influence over complainant nor do we find that Respondent acted improperly in failing to attempt to compel answers from a witness at the deposition in South Bend, Indiana. We find that the Complainant's records allegedly wrongfully withheld by Respondent were copies rather than originals. However, we do find that Respondent should have kept his client better informed of the developments of the case. Respondent also failed to look at the file and did not introduce all possible defenses, including a court decision which had been issued in a similar dispute.

A Reprimand is appropriate here; further disciplinary action would be unduly punitive in light of all circumstances. The record supports the findings of the panel, and we find no error, with respect to Counts II through V; we amend only on the basis of admitted neglect as alleged in Count I.