

GRIEVANCE ADMINISTRATOR,
Petitioner/Appellee,
v
THOMAS L. STANLEY, P-26060,
Respondent/Appellant.

File No. DP 175/84

Argued July 23, 1986
Decided: November 3, 1986

OPINION OF THE BOARD

The Formal Complaint filed by the Grievance Administrator charged that the Respondent, a member of the State Bar of Michigan since 1976, was retained in 1982 to represent a client in a personal injury case but that, contrary to the duties imposed upon him by the Michigan Court Rules and the Code of professional Responsibility, he failed to provide the legal services for which he was retained, failed to adequately communicate with his client, did not furnish his client with a copy of a written Contingent Fee Agreement, and did not truthfully acknowledge the attorney-client relationship in his Answer to the Request for Investigation filed by the client and served by the Grievance Administrator.

In his Answer to the Formal Complaint, the Respondent admitted that he was retained by Frances Lamphier in June 1982 to represent her in a claim for damages and stated that there was no written fee agreement. The Respondent denied the allegations of neglect and denied misrepresenting the nature of the attorney-client relationship, although he acknowledged in his answer that he was, in fact, attorney of record.

Based upon the exhibits presented at the hearing and the testimony of the Respondent, the Panel concluded that the Respondent's failure to reduce the Contingent Fee Agreement to writing and to deliver a copy to his client constituted a violation of then existing GCR 928.6 [now MCR 8.121(F)] and that "repeated and disorganized attempts to commence litigation without success, whether the result of his personal failures or the ineptitude of his office personnel, do clearly reflect a neglect in attending to (or properly supervising) a legal matter entrusted to him by his client". The Panel noted that the Respondent first filed a Complaint on his client's behalf in October 1982 which was dismissed in January 1983 for failure to name the proper defendant and that the Respondent had not, at the time of his discharge in May of 1984, managed to file a viable lawsuit.

With regard to his dealings with the office of the Grievance Administrator during their investigation, the Panel found that those dealings reflected a neglectful handling of communications which had been typified by his communications with his client, but they found insufficient evidence to support a finding that he had made knowing misrepresentations. Count II of the Complaint was therefore dismissed. A Reprimand was imposed for Respondent's violations as alleged in Count I.

In the Petition for Review filed by the Respondent, Mr. Stanley reiterates the central argument presented to the Hearing Panel that Mrs. Lamphier did not retain the Respondent personally but instead retained the law firm with whom the Respondent was associated. In short, the Respondent argues that he did not have supervisory control over the staff employed by the firm with which he was associated and therefore cannot be held accountable for their neglect.

Based upon our review of the whole record in this case, and our consideration of Respondent's explanation of his relationship with that law firm, the Board is persuaded that the record below is not sufficiently clear to support a finding by a preponderance of the evidence that the Respondent entered into a direct contract of employment with the Complainant or that he assumed sole responsibility for the handling of this personal injury case. The finding of the Hearing Panel is therefore reversed and the Complaint is dismissed.

In making this determination we hasten to emphasize that we do not suggest any intent to depart from the general rule that attorneys may be held responsible in disciplinary proceedings for the acts of their employees In the Matter of James H. Hudnut, ADB Case No. 36454, Brd. Opn. p. 73 (1979) (citing Black v State Bar of California, 7 Cal 3rd 676, 499 P2d 968, 103 Cal Rptr 288 (1972), nor do we disturb the conclusion of the Hearing Panel that failure to reduce a Contingent Fee Agreement to writing constitutes a clear violation of MCR 8.121(F).

Rather, we are persuaded by Mr. Stanley that he did not, in any real sense, have the ability to direct the actions of the employees of the law firm with which he was associated. We, like the Hearing Panel, are troubled by this Respondent's vague descriptions of a "loose association" of attorneys. Respondent acknowledges that the original Complaint filed on behalf of Mrs. Lamphier listed her attorneys as the law firm of "Waterman, Stanley, Spinks and Collier-Nix" and that the firm was not, as implied by its title, a partnership.

The Formal Complaint in this matter did not charge the Respondent with a violation of Canon 2 of the Code of Professional Responsibility DR 2-102(C). We take this opportunity, however, to remind Mr. Stanley and other members of the Bar that DR 2-102(C) specifically directs that "a lawyer shall not hold himself out as having a partnership with one or more other lawyers unless they are in fact partners." We issue a warning that members of the Bar who continue to hold themselves but as partners when they are merely involved in space-sharing arrangements with other lawyers or, as in this case, in a "loose association" risk the possibility of disciplinary action.

Again, we stress that the filing of an Appearance by an attorney at the commencement of an action obligates that attorney to see that the case is handled with zeal and competence. It is not a defense in a disciplinary proceeding that another attorney in the law firm may have had closer contact with the client or supervised the progress of the case. In the instant case, our decision to enter an Order dismissing the Complaint is based upon questions of fact peculiar to this case which, in our judgment, have not been resolved against the Respondent based upon the evidence presented.

Patrick J. Keating, Chairman; Martin M. Doctoroff, Vice-Chairman; Charles C. Vincent, M.D., Secretary; Remona A. Green, Hanley M. Gurwin, Robert S. Harrison and Odessa Komer concurring.