

GRIEVANCE ADMINISTRATOR,
Petitioner/Appellant,

v

RICHARD R. NELSON, P 18237
Respondent/Appellee.

File No. DP 177/85

Decided: July 23, 1986
Issued: September 30, 1986

PRESENT: Patrick J. Keating, Chairman
Martin M. Doctoroff, Vice-Chairman
Charles C. Vincent, M.D., Secretary
Remona A. Green, Member
Robert S. Harrison, Member
Odessa Komer, Member

(Board Member Hanley M. Gurwin recused himself and did not participate in these deliberations)

BOARD OPINION

The five (5) Count Complaint filed by the Grievance Administrator charged that the Respondent represented a client in divorce proceedings which were terminated by the entry of a Judgment of Divorce in Oakland County Circuit Court in August 1981 and that his subsequent acts or omissions in connection with his failure to deliver a Mortgage Discharge in accordance with the terms of the Judgment, or to reply in a timely manner to the inquiries and requests from opposing counsel and the office of the Grievance Administrator, constituted professional misconduct warranting discipline.

Although the Grievance Administrator filed a Default alleging Respondent's failure to Answer that Formal Complaint, it was determined at the hearing that the Respondent had filed an Answer with the Attorney Discipline Board and had served copies upon the Panel Members although a copy was apparently not delivered to the office of the Grievance Administrator and the Respondent did not file a Proof of Service. At the conclusion of the hearing, which consisted of the cross-examination of the Respondent by counsel for the Grievance Administrator and the admission into evidence of the correspondence referred to in the Complaint, the Panel determined that misconduct had not been established and the Complaint was dismissed.

The Petition for Review filed by the Grievance Administrator argues that the Panel disregarded admitted violations of the Code of Professional Responsibility and that the Dismissal should be vacated. Based upon our review of the record below and our consideration of the arguments presented, we must decline to disturb the Panel's conclusions with regard to Counts I, II and III that Respondent's actions on behalf of his client and his dealings with opposing counsel did

not rise to a level of misconduct warranting discipline. We find, however, that the record below contains ample support for the conclusion that Respondent failed to fulfill his obligations to respond promptly and candidly to a Request for Investigation served by the Grievance Administrator. We, therefore, vacate the Dismissal as to Counts IV and V of the Formal Complaint and impose a Reprimand.

On August 17, 1981, a Judgment of Divorce was entered in Oakland County Circuit Court with the consent of all parties, including the Plaintiff/wife and her attorney, the Respondent. That Divorce Judgment contained a specific provision “. . . Plaintiff shall execute a Discharge of Mortgage to be held in escrow by her attorney, Richard R. Nelson, to be tendered to the Defendant when the property settlement has been paid in full”.

As alleged in the Complaint and as admitted by the Respondent in his testimony to the Hearing Panel, there followed an exchange of correspondence between the attorney for the Defendant/husband and the Respondent commencing with a letter to Mr. Nelson in August 1983 notifying him that all property settlement payments had been made and requesting delivery of the Mortgage Discharge which Respondent was to have held in escrow. That correspondence was attached to the Request for Investigation filed by the Defendant/husband with the Attorney Grievance Commission one (1) year later in August 1984 complaining that he had still not been provided with a Discharge of Mortgage in recordable form.

Upon its consideration of Respondent's explanation that he was less concerned with the demands from opposing counsel than his client's over-riding desire to prevent her former husband from learning her new address, the Panel concluded without additional comment that misconduct had not been demonstrated. While our review of the proceedings below leads us to the conclusion that there was support in the record for that determination and that the Panel, consisting of three (3) experienced trial attorneys, did not abuse its discretion in that regard, we must observe that we cannot condone this Respondent's cavalier attitude in his dealings with opposing counsel.

We agree that the Respondent's first duty was to his client. However, such a duty was not necessarily inconsistent with the prompt preparation of a recordable Mortgage Discharge in accordance with the Divorce Judgment.

However, the Board finds that Respondent's failure to comply with the requirements of prompt and candid dealings with the disciplinary system, as charged in Counts IV and V of the Formal Complaint does constitute misconduct which must result in the imposition of a Reprimand. The Request for Investigation served upon the Respondent by the Grievance Administrator on August 27, 1984 required an Answer by the Respondent within twenty (20) days in accordance with GCR 1983, 962.1 [now MCR 9.113(A)]. At the hearing, Respondent acknowledged that he did not file an Answer within twenty (20) days and that he waited until after a Final Notice had been sent to him by Certified Mail and filed an Answer on October 2, 1984. That Respondent's Answer was approximately two (2) weeks overdue is of somewhat less concern to the Board than the attitude exhibited by Respondent in the following testimony to the Panel:

Q. Do you have any present' recollection why it took from August 27th to October 2nd to file an Answer?

Respondent: probably because I didn't believe that Westhaus was really serious about this whole thing, to be quite frank with you. (Tr. 30, 2/19/86)

This Board has in the past emphasized the importance of lawyers duty to answer Request for Investigation, and we have noted that beyond the self- in teres t which should impel conscientious lawyers to answer, every lawyer has an affirmative duty to the public and to the profession to assist in the process of resolving grievances in a timely manner, In the matter of James H. Kennedy, File No. DP 48/80, March 10, 1981 (Brd. Opn. p. 132). Failure to fulfill this duty is in itself substantive misconduct and should never be ignored by a Hearing Panel or excused as a peccadillo unworthy of drawing discipline. A Respondent failing to answer Requests for Investigation may be considered professionally irresponsible and contemptuous In Re: Moore, NO. 35620-A, (State Bar Grievance Board, 1979).

In Respondent's untimely Answer dated October 2, 1984, he acknowledged that the first Discharge of Mortgage which he prepared was unrecordable but that a second document had been sent to his client for her signature. The exhibits received by the Hearing Panel, however, include a letter to Mr. Nelson from Deputy Grievance Administrator on November 8, 1984 requesting a response within fifteen (15) days; the Deputy Grievance Administrator's letter of December 5, 1984 asking for a response to the November 8th letter, a letter from the Grievance Commission to the Respondent on January 28, 1985 asking whether a Mortgage Discharge had been provided; a letter dated April 2, 1985 to Mr. Nelson requesting the courtesy of a response to the January 28th letter; a letter from the Deputy Grievance Administrator to the Respondent on April 23, 1985 requesting reply to the Commission's letters of January 28th and April 2nd and subpoenas issued by the Attorney Grievance Commission on May 9, 1985 and July 19, 1985 seeking Mr. Nelson's personal appearance to discuss the matter.

The Board's review of that correspondence leads inevitably to the conclusion that cooperation with the disciplinary process was simply not a matter of great concern to this Respondent.

Under the circumstances, we therefore vacate the Hearing Panel Dismissal as to Counts IV and V and impose a Reprimand. Had the record below been somewhat clearer in detailing the attempts by the Attorney Grievance Commission and opposing counsel to communicate with the Respondent, the sanction imposed might well have been more severe.

Patrick J. Keating, Chairman; Charles C. Vincent, M.D. Secretary; and Board Members, Robert S. Harrison, Remona A. Green and Odessa Komer concurred in this Opinion.

DISSENTING OPINION

I agree that this Respondent's indifference toward his responsibilities to the disciplinary system, as supported by the record below, must result in a sanction, but would impose a suspension for a period of thirty (30) days based upon a further finding that the Respondent's conduct with regard to opposing counsel was personally reprehensible. The record is clear that the Respondent had an affirmative duty, as set forth in a Judgment of Divorce entered with his consent, to obtain an executed Mortgage Discharge from his client and to hold it in escrow for delivery to the opposing party. Respondent was notified in writing on August 31, 1983 that the opposing party had fulfilled the conditions of the Court's Order and was entitled to the Mortgage Discharge ordered to be held in escrow by the Respondent. A recordable Discharge of Mortgage was not provided by the Respondent until August 1985. In order for our legal system to function, lawyers must be held accountable if they fail to do what they promise to do.

Separate Dissenting Opinion filed by Martin M. Doctoroff.