

GRIEVANCE ADMINISTRATOR,
Petitioner/Appellant,
v
ERNEST L. CITRON
Respondent/Appellee.

File No. DP 135/184

Decided: September 30, 1985

BOARD OPINION

This is an appropriate case for disbarment given Respondent's history of discipline and prior felony conviction. Therefore, we amend the hearing panel order of discipline and revoke Respondent's license.

The present discipline proceedings follow Respondent's July 1984 conviction in Detroit Recorder's Court of forgery, and of a signature of a client's wife on a deed. He has been automatically suspended since the day of conviction pursuant to MCR 9.120(A)(2). He was sentenced to two year's probation, a \$200 fine, and 80 hours of community work. The hearing panel suspension of three years has been appealed by the Grievance Administrator.

In 1982, the Board suspended Respondent for 180 days after a conviction for tax evasion. The facts of that case as then outlined by the Board are in sharp contrast to the facts before us today.

None of the considerable mitigation presented in Respondent's prior (income tax evasion) case is before us in the record today. See In re: Citron, No. DP 22/81 (Mich ADB 1982).

In yet another 1982 discipline case, Respondent was also suspended by a panel for six months. In re: Citron, No. DP 150/81 (Mich ADB 1982). He had deposited a settlement check into his firm's general account, commingling the funds. He surrendered his client's money to her fourteen months later. The Board did not review the matter. A panel reinstated Respondent from both suspension in 1983.

Respondent in the present appeal before us urges that a three year suspension is excessive, and that a two year suspension, roughly concurrent with his criminal probation sentence, would allow him to rehabilitate himself. It is our duty, however, to be primarily concerned with the protection of the public, the courts and the legal profession. Respondent also asserts on appeal, for the first time, that his criminal activities were connected to personal and family difficulties. Further, he notes that others involved in the forgery were given immunity or were allowed to plea bargain to a misdemeanor, and that he was denied due process by the hearing panel in a "pro forma" hearing because he was without counsel, without funds to obtain counsel, and obviously too ill to represent himself. Counsel was appointed for Respondent to handle his review hearing.

Respondent requested an adjournment at the panel hearing in November 1984, but was denied one because he had known of the hearing in July 1984, and admitted he had only "half-heartedly" sought counsel -- the asserted purpose of the adjournment request. Respondent claimed mental confusion at the hearing, but had filed an Answer to the Show Cause Order about a month earlier. In it, he was able to set forth some mitigation. He did not request an adjournment, orally or in writing, before the date of hearing. When asked by the panel members if he was capable of defending himself, Respondent said:

A. No. I, I -- yeah, I guess I can -- I, I don't know. I really don't know.

Q. Do you understand what these proceedings are about?

A. I do * * *

Q. You should be able to handle the mitigation before us without the benefit of a lawyer, don't you think?

A. Well, the only mitigation that I can conceive of is the psychiatric care, and I, I don't have a witness.

Q. Well, you can tell us what happened. * * *

A. I can do that * * * [but] I would say [I want an adjournment] of thirty days, sir * * * I feel that I'd like to have testimony or at least an affidavit from the psychiatrist.

(Panel Tr. 9-10). No explanation was given why psychiatric testimony could not have been secured for the scheduled hearing and, therefore, the adjournment was denied. The transcript further shows that the panel invited Respondent to present mitigation evidence. (Panel Tr. 13, 22). We conclude that the panel did not abuse its discretion in denying Respondent's Motion for an Adjournment.

Since MCR 9.120(A)(3) provides "the judgment of conviction is conclusive evidence of the conviction of a crime," Respondent cannot attack the conviction in these proceedings. He admitted this in his Answer to the Order to Show Cause: "I recognize that this is not the Proper forum to determine my guilt or innocence regarding the subject matter of this Order * * *" In that same Answer, Respondent listed as mitigation what the Board has called "perceived defects in the prosecution's case," In re: Leonard, No. DP 47/80 (Mich ADB 1980). These are:

- (1) Respondent's belief that the evidence was inadequate to convict him.
- (2) The pendency of his appeal of the criminal conviction.
- (3) Comments made by judges during his preliminary examination and trial that the evidence was weak.

- (4) Res gestae witnesses were not called.
- (5) The trial judge made an incorrect statement of law about the person whose signature was forged.

At the panel hearing, Respondent tendered the following contentions in mitigation:

- (6) He is under psychiatric care, but the psychiatric treatment does not seem to be improving his condition.
- (7) He is married and has a small child at home.
- (8) He suffers acute depression.
- (9) His crime had nothing to do with the practice of law.
- (10) He received no money from the criminal activity.

To these was added on appeal the assertion that he would not have been prosecuted for a felony if he were not a lawyer.

We agree with the hearing panel that Respondent's asserted statements in mitigation are not persuasive. We have defined mitigation as circumstances which, in fairness and mercy, may be considered as extenuating or reducing the degree of Respondent's moral culpability. In re: Fazio, Nos. DP 105/80; DP 143/80 (Mich ADB 1981). None of the factors recited above reduces Respondent's culpability in committing the felony of which he has been convicted.

The pattern of misconduct created by this Respondent cannot be ignored; mitigation inevitably appears less persuasive as a Respondent extends his trail of misconduct. In re: Hoffman, No. 93/80 (Mich ADB 1980). Forgery as part of a fraudulent scheme ranks high in the hierarchy of professional offenses. See In re: Zisman, Nos. DP 66/80; DP 25/80 (Mich ADB 1980). [W]e believe that our order in this case fulfills the protective purpose of attorney disciplinary proceedings. In re: Grimes, 414 Mich 483, 326 NW2d 380, 385 (1982). Respondent's license is revoked.