

GRIEVANCE ADMINISTRATOR,  
Petitioner/Appellant,  
v  
EVERETT GORDON KNOX, JR., P-16092,  
Respondent/Appellee.

File No. DP 161/85

Argued: November 11, 1986

Decided: February 2, 1987

Respondent was retained in April 1984 to substitute as the counsel for the personal representative of a decedent's estate then pending in the Wayne County Probate Court and he accepted a retainer fee of \$1500.00. Although notices were sent by the Court warning that the personal representative would be suspended if certain omissions were not corrected, the Respondent failed to file an Inventory or an Annual Account and in September 1985 an Order was entered removing his client as personal representative. A further Order was entered by the Court in May 1986 specifically disallowing the requested reimbursement of the \$1500.00 attorney fees paid to the Respondent.

The Hearing Panel found that the Respondent's neglect of the legal matter entrusted to him and his failure to carry out a contract of employment with his client constituted professional misconduct. The Panel summarized its findings in its Report and included a summary of Respondent's prior discipline consisting of a Reprimand in 1981 and two additional Reprimands issued in 1985. The Panel ordered that Respondent's license be suspended for thirty days and that he return the retainer fee of \$1500.00.

Neither party disputes the Panel's findings. We are urged by both parties, however, to modify the discipline imposed. The Respondent argues that a suspension of any length is unduly harsh in a case involving neglect of a single legal matter while the Grievance Administrator argues the position that the aggravating effect of Respondent's prior disciplinary history warrants a more severe sanction.

Respondent was licensed to practice law in Michigan in 1966 and for a period of fifteen years he enjoyed an unblemished record. In 1981, Respondent Knox was reprimanded as the result of a Stipulation for Consent Order of Discipline agreed to by the Grievance Administrator as the result of Respondent's conviction for failure to file income tax returns. In April 1983 and March 1985, Formal Complaints were filed by the Grievance Administrator charging that Respondent had neglected legal matters entrusted to him by two separate clients and that he had failed to communicate with those clients. Those Complaints resulted in two additional Reprimands which became effective October 25, 1985 and July 17, 1985 respectively.

Previous opinions of the Board have stressed the aggravating effect of a prior disciplinary history, especially when it reveals a pattern of misconduct. For example, In the Matter of Carl Ruebelman, File No. DP 121/81, 1982 (Brd. Opn. p. 234), the Board noted Respondent's three prior

suspensions and stated "not least among our concerns is the fact that the Respondent is a discipline recidivist; the record in prior discipline files also reflects an attitudinal problem and a pattern of misconduct which must be taken more seriously."

The attitudinal problem exhibited by this Respondent does not appear to be toward the discipline system itself but seems to be an inability, in some cases, to communicate with his clients and to explain to them his strategy in a particular matter. In this case, when Respondent was discharged by his client for his lack of progress and his failure to communicate with her, Mr. Knox was the subject of two discipline proceedings charging similar misconduct and which eventually resulted in Reprimands.

In his comments to the Hearing Panel, Respondent acknowledged that he had not acted appropriately in the handling of the probate matter and that some sanction was appropriate. His argument to the Board that discipline for his neglect in the probate matter should be limited to the lowest possible form of discipline, a Reprimand, carries the implication that the Hearing Panel should have closed its eyes to the aggravating impact of his prior discipline.

We cannot agree. A disciplinary history consisting of four consecutive Reprimands within a five year period is not consistent with the Board's responsibility to supervise and discipline Michigan attorneys as the adjudicative arm of the Michigan Supreme Court. The Board would not be fulfilling its responsibility if it did not recognize that three prior Reprimands have not been sufficient to impress upon this Respondent the importance of his duty to act at all times in conformity with the standards imposed upon members of our profession. Nor is respect for the legal profession enhanced by the appearance of a revolving door system of discipline in which recurring acts of misconduct result in repeated Reprimands. We therefore conclude that the thirty day suspension ordered by the Hearing Panel was appropriate and it is affirmed.

Martin M. Doctoroff, Remona A. Green, Hanley M. Gurwin, and Charles C. Vincent, M.D. all concurred.

#### DISSENTING OPINION

Patrick J. Keating

I would reduce the suspension in this case to a Reprimand. I agree that prior misconduct may, in some cases, be a significant aggravating factor. However, the Board has considered previous arguments made by the Grievance Administrator that later assessments of discipline should exceed previous assessments and we stated that "we cannot accept the inflexibility of such a proposed policy of discipline, and must reaffirm that 'former misconduct is never a basis for exact formulation of discipline in the context of a subsequent and completely separate factual situation,'" Matter of Carl Ruebelman, 36527-A 1980 (Brd. Opn. p. 97). This case demonstrates the soundness of our decision to reject such a policy. This Respondent's first Reprimand, in 1981, was the result of matters totally unrelated to any work performed for clients and the other cases resulting in Reprimands are not factually similar beyond a superficial level. The Hearing Panel has ordered that Respondent refund the \$1500.00 paid to him by his client. As the result of Respondent's neglect of a probate matter, he

will be subjected to the stigma of a Reprimand Notice published in the Bar Journal. Further discipline in this matter would be purely punitive.