

GRIEVANCE ADMINISTRATOR

v

Ross B. Meretsky,
Respondent

File No. DP-244/82

March 29, 1984 & May 11, 1984

Decided: August 16, 1984

OPINION OF THE BOARD

Respondent was charged in a four count formal complaint as follows: pursuing representation of two separate clients having diverse interests, constituting a conflict of interest, in violation of Canon 5 of the Code of Professional Responsibility; failure to correctly and properly communicate the status of litigation to a client and/or failure to properly withdraw from said matter; failure to take reasonable steps to avoid foreseeable prejudice to the rights of a client by notification to the client of Respondent's intent to withdraw, without sufficient time for substitution of counsel and without delivery to the client of all papers relative to the litigation; issuance of a letter containing threats to disclose information, constituting an improper attempt to use confidences or secrets of a client to the disadvantage of the client; imposing an improper and excessive fee in response to a client's termination of services and demand for return of files and papers, and failure to cooperate with substituted counsel; making an improper loan in the amount of \$400 to a client in violation of DR 5-302(B), Canon 5 of the Code of Professional Responsibility.

The hearing panel, finding that the Grievance Administrator did not carry his burden of proof by preponderance of the evidence with respect to the charges, found no violation of the disciplinary rules and dismissed all the counts in the formal complaint. The Attorney Grievance Commission has not appealed the findings of the hearing panel; however, the Complainant-client, Mr. Joseph Gagne, filed a petition for review, challenging dismissal of the allegations of neglect, improper threat to disclose client confidences and the late withdrawal of Respondent from pending litigation allegedly resulting in prejudice to Complainant's case. Upon careful review of the record and consideration of the arguments of the parties, the Board affirms the dismissal of all counts, with the exception of Count II, paragraph K which constitutes a violation of GCR 1963, 953(1-4) and the Code of Professional Responsibility, Canon 1, DR 1-102(A)(1),(5-6). Based upon this finding of misconduct, a reprimand will be imposed.

The Complainant-client was charged with manslaughter. The Respondent represented the Complainant in this criminal matter and also filed a civil suit on behalf of Complainant. Respondent and Complainant had a number of disagreements, including a difference over the payment of legal fees, which resulted in Respondent's initial notice to the client of Respondent's withdrawal from the civil litigation on June 24, 1981. On July 22, 1981, Respondent forwarded a letter to the Complainant, threatening to "tell the true facts" with regard to the Complainant's criminal case and advising the Complainant that he should seek substitute counsel for the civil (personal injury) matter scheduled for August 4, 1984. The Respondent explained to the hearing panel that he made the

written threat in a moment of anger and because he had discovered that his client had lied to him regarding certain aspects of the criminal defense. The Complainant characterizes Respondent's threat as extortion for payment of legal fees, and further claims that the late withdrawal from the civil matter resulted in prejudice to Complainant.

With regard to the threatening letter, Respondent, appearing before the Board, admits that the letter was improper and expresses his regret and remorse for having directed this communication to the Complainant; however, Respondent denies that the letter was an attempt to obtain unpaid legal fees (the amount of which was disputed by the Complainant). Nevertheless, the letter goes beyond mere poor judgment and lack of professional decorum and severely undermines the image of the legal profession as well as the integrity of the attorney/client privilege. The adverse impact upon the legal profession of this written communication simply cannot be condoned regardless of the character or intentions of the client as perceived by the Respondent. It is absolutely essential to our system of justice that the public be uninhibited in seeking legal advice; the public must have firm confidence in the confidentiality of their communications with legal counsel whether they be to secure a defense against formal civil or criminal charges, or an effort to comply with the requirements of the law with respect to business, personal or civic affairs. While there is no evidence of actual disclosure of client confidences in this case, the very threat of disclosure is a serious breach of ethics.

Respondent will be reprimanded and assessed costs; all concur except Board Member Leo A. Farhat who recused himself from deliberation in and decision of this matter.