

Grievance Administrator
v.
JAMES S. RICHARDS,
A Member of the State Bar of Michigan,
Respondent-Appellee,
File Nos. DP-51/82, DP-52/82,
DP-168/81 & DP-12/82

Argued: March 31, 1983

Decided: July 18, 1983

OPINION OF THE BOARD

Respondent has admitted the charges set forth in the Formal Complaints filed against him which include conversion, misrepresentation, neglect and improper advances of money to a client. For this misconduct the hearing panel suspended the Respondent's license for one year. The Grievance Administrator has appealed. We feel the circumstances of this case warrant an increase of discipline to a suspension for three years and one day.

Before his admission to the Bar, the Respondent worked for the complainant law firm as a law clerk. After his admission, Respondent was hired by the firm as an associate and office manager and as such was in charge of the firm's accounts. In July of 1981, Respondent converted Funds from the firm's trust account by writing a check from that account in the sum of \$6,792 to a construction company to satisfy a personal debt. This was done without the knowledge or consent of the partners in the firm. Respondent repaid the firm within approximately one month's time.

Respondent also worked for the Flint Legal Aid Agency prior to his admission to the Bar. Through this agency, he represented a client in an auto accident claim. Respondent misrepresented to this client that her case had been settled for \$7,500. These misrepresentations continued after Respondent's admission to the Bar. In October of 1981, Respondent gave his client a personal check in the amount of \$4,060 which he falsely represented to her as net proceeds from the settlement. In fact, no settlement had been reached. The check was returned for insufficient funds, and the client has not been reimbursed for her loss.

Respondent also told this client that he had filed a second suit for her and was negotiating a settlement when actually he had done nothing with her claim. Respondent also made improper advances of money totaling \$500 to the client, thereby obtaining a personal financial interest in the case in violation of Canon 5, DR 5-103(B).

Respondent offers as mitigation the fact that he has had serious medical problems involving major surgery on his spine which he feels impaired his ability to make sound judgments. He also urges that he was inexperienced, that he repaid his law firm, and that he is truly remorseful. While any offense as serious as aggravated conversion of client funds and misrepresentation are usually grounds for disbarment, our appraisal of this Respondent and the particular circumstances involved leads us to conclude that the public would be adequately protected by suspension of the

Respondent's license for a period of three years and one day.

Under certain circumstances Respondent's inexperience might be considered a mitigating factor, see Krell v Halpin, 1 Mich Dis Rptr 265 (1980). However, we do not believe that there is a logical nexus between time in legal practice and basic character and judgment preventing a lawyer from abusing his or her position of trust by embezzlement. Therefore, Respondent's recent admission to the Bar does little to mitigate the misconduct in this instance. However, other factors do have some mitigating effect including Respondent's illness -- a serious spinal problem requiring major surgery. Also, Respondent's genuine remorse is a mitigating factor as it was in Schwartz v Floyd, 1 Mich Dis Rptr 398 (1981). Lastly, Respondent's prompt repayment of the funds converted from his law firm's trust account can be accepted as mitigation. See Schwartz v Smith, 1 Mich Dis Rptr 304 (1981). We note, however, that no restitution has been made to the client injured by Respondent's misrepresentation and neglect.

The seriousness of the misconduct in this case warrants an increase of Respondent's discipline. In light of the mitigating factors presented, however, we feel an increase of discipline to the level of revocation would be unduly punitive and contrary to the primary purpose of disciplinary proceedings which is to protect the public. GCR 1963, 954. See, In re Dunn, 1 Mich Dis Rptr 56 (1978). Respondent's discipline is increased to suspension for three years and one day. Respondent must be recertified by the Board of Law Examiners prior to reinstatement pursuant to GCR 1963, 972.3.

All concur.