

IN THE MATTER OF WILLIAM J. HAYES,
A Member of the State Bar of Michigan,
Respondent.
File No. DP-29/80

Decided: September 2, 1982

OPINION OF THE BOARD

Respondent entered into retainer agreements with several clients involved in divorce actions. Parts of the agreement and a "Divorce Handbook" were given to the clients with copies of the retainer agreement; it is the handbook which forms the basis of the complaint against Respondent. The hearing panel found that certain clauses in the handbook, when considered as incorporating parts of the retainer agreement, constituted prohibited language and actionable misconduct. The panel issued an order of suspension of 30 days. The Board reduces the discipline to a reprimand.

The facts of the case are undisputed. Two clauses in the lawyer retainer agreements are under scrutiny here. Clause IX attempts to bind the client to arbitration if there is a fee dispute [GA Exhibit 7]. Clause XI states Respondent will not act on a case until all fees are paid [GA Exhibit 7]. Additionally, the Divorce Handbook given to the client states in pertinent part:

“[W]here property (exclusive of automobiles) of a value of more than \$1,000 is involved in an action, a fee of 5% of the net value of the property shall be assessed in addition to all other fees for proceeding the suit [GA Exhibit 1, paragraph 5].”

There is no proof that Respondent attempted to enforce any of the above language. The language concerning the contingent fee assessment was only in the printed and bound "Divorce Handbook" and was not contained in the retainer agreement itself.

The Board views the aforementioned language with skepticism. Clause IX unnecessarily attempts to abridge the legal rights of the client and is overbearing in the context of the attorney/client relationship inasmuch as it can be construed only to the benefit of the attorney against whom a client is at the definite disadvantage. Similarly, we find Clause XI objectionable, since enforcement of this language would be tantamount to withholding of services pending payment of the lawyers fee by a divorce client, See Grievance Administrator v Daggs, 384 Mich 729; 187 NW2d 277 (1971). Both clauses are violations of the letter and spirit of Canon 6, DR 6-102 to the extent that they are an attempt to limit Respondent's liability vis-a-vis a client. Therefore, the language goes beyond mere overreaching.

The contingency provision described in the handbook would be a clear violation of Canon 7, DR 7-106(c) which bars contingent fee arrangements in a divorce action, except for the fact that it was not actually included in the retainer instrument. Nevertheless, it was clearly Respondent's intent to apply the provisions in the handbook in dealing with his clients and objectionable language in the handbook, which was given to each client together with the agreement, is deemed as de facto a part of the agreement between the parties,.

The Board concludes that the aforementioned language, in both the handbook and the retainer agreement, are unethical attempts by Respondent to limit his liability to his clients, to take advantage of a client in the early stages of the formation of the attorney/client relationship, and to contravene the express prohibition against contingent fees in divorce actions. Although Respondent claims he has not sought to enforce the language in question, and has, since the time of the original grievance in this matter, discontinued the use of such language in retainer agreements and the handbook, the record contains adequate evidence for the finding of misconduct as alleged in the Formal Complaint.

The Board notes that the "Divorce Handbook" in question is not completely without value and merit; certain of the information might be a helpful guide to a client. Considering all the facts and circumstances in the record, a suspension is not warranted.

The discipline will be reduced from a suspension of 30 days to a reprimand.

ALL CONCUR.