

IN THE MATTER OF WILLIAM G. JENKINS,
A Member of the State Bar of Michigan,
Respondent
Nos. DP-45/81 (Formal Complaint)
and 35224-A (Reinstatement)

Decided: April 1, 1982

OPINION OF THE BOARD

This is a consolidation of two appeals pending before the Board including the Grievance Administrator's appeal of a hearing panel order dismissing a formal complaint without prejudice (heard by the Board on December 1, 1981) and Respondent Jenkins' appeal of a separate hearing panel order denying reinstatement (heard by the Board on February 18, 1982).

Mr. Jenkins has been suspended from the practice of law since December 8, 1978 pursuant to a disciplinary order of suspension of 1 year. His amended petition for reinstatement was filed on August 28, 1980. At the reinstatement hearing it was established that Mr. Jenkins had not fully complied with the terms of his suspension order, to-wit: he corresponded on behalf of clients regarding an insurance claim with the Lincoln National Life Insurance Company [DP-45/81, Respondent's Exhibit 1] and asserted a claim against the Michigan State University Employee Benefits Office [DP-45, 81, Exhibits D, E, and F]. Reinstatement was denied, the panel having found that Mr. Jenkins did engage in the practice of law contrary to the order of suspension. We affirm the denial of reinstatement at this time based upon findings that Mr. Jenkins violated the original order of suspension. We apply these same findings to the pending formal complaint and assess additional discipline of suspension of one (1) year retroactive to December 9, 1979.

I.

In addition to opposing reinstatement based upon violations of the original order of suspension, the Grievance Administrator filed a formal complaint [DP-45/81]. However, the formal complaint was dismissed without prejudice by the Calhoun 37th Circuit Hearing Panel because of an alleged technical defect in the form of the Grievance Administrator's request for investigation which was the basis for the complaint [DP-45/81; Panel Tr. at 38]. The request for investigation form had not been signed by the complainant, Mr. Nolan of the Lincoln National Life Insurance Company, however, Mr. Nolan's letter was stapled to the Grievance Administrator's standard form served on Mr. Jenkins pursuant to GCR 1963, 961.3(a). Regarding the contents of the request for investigation, the Court Rule provides as follows:

“RULE 961 REQUESTS FOR INVESTIGATION

.2 Form of Request.

A request for investigation of alleged misconduct must

(1) be in writing;

(2) describe the alleged misconduct, including the approximate time and place of it;

(3) be signed by the complainant; and,
(4) be filed with the administrator.”
GCR 1963, 961.2.

In examining the request for investigation documents and the entire record, the requirements of the above rule were fulfilled. The pending formal complaint was dismissed for technical procedural irregularities which did not result in a denial of due process or other injustice.

“An investigation or proceeding may not be held invalid because of a non-prejudicial irregularity or an error not resulting in a miscarriage of justice.” GCR 1963, 956.1.

Therefore, the Board finds that the Respondent-Mr. Jenkins was adequately advised of the charges against him, as reflected in his answer to the charges [Hearing Tr. at 23]. It is also noted that Respondent failed to raise these procedural objections in his answer to the request for investigation [Hearing Tr. at 23]. Although the form cover sheet entitled “Request for Investigation” did not contain specific information, the attached letter did provide sufficient information apprising Respondent of the details of the charges against him. It is also noted that the hearing panel,

“Dismissed [the complaint] without prejudice, but that in no way should this decision and action by the panel be construed in any way as a decision on the merits. We are dealing strictly with procedural aspects of it and particularly with the prerequisite of bringing the complaint on for hearing.” Hearing Panel Tr. at 38-39.

Although we specifically find that the form of the request for investigation was adequate in all circumstances being considered - warranting remand to the hearing panel for proceedings on the complaint - the charges in the formal complaint overlap the concurrently pending reinstatement matter and both files will be resolved on a consolidated basis inasmuch as the central overlapping issue in these cases involves the alleged practice of law in violation of the original order of suspension.

II.

Respondent’s argument that he was denied his constitutional rights to confront his accusers is without merit. Although disciplinary proceedings are quasi-criminal, Respondent has not been afforded the right to demand that the Grievance Administrator produce as a *res gestae* witness the original complaining party who submits the grievance. Of course, during the hearing on the Complaint, Respondent has the right to cross-examine any witnesses presented by the Grievance Administrator, including the original Complainant. Also, the Complainant may be subpoenaed as a witness by either party.

The Attorney Grievance Commission is responsible for deciding whether to pursue a charge, GCR 1963, 963.1. Furthermore, the unwillingness of a complainant to prosecute or a settlement between the complainant and the Respondent does not itself affect the right of the Administrator to

proceed, GCR 1963, 964.2, see also 958.1(b). It is clear, then that disciplinary proceedings are sui generis and that the applicable court rules taken individually or in total context do not provide a disciplinary Respondent with the full panoply of criminal procedural safeguards.

The Michigan Supreme Court ruled on this point,

“The duty to present all res gestae witnesses to a transaction or event has been applied only in criminal cases. . . We have discovered no authority suggesting the duty to call res gestae witnesses applicable to bar discipline proceedings. We decline to so extend the rule of criminal law.” In re Jaques, 401 Mich 516 at p 533, 258 NW2d 433 at p 499 (1977).

III.

The key issue in both matters before the Board is whether the actions of Respondent-Mr. Jenkins in writing the letters in question constituted the “practice of law” as prohibited by the order of suspension. The term “practice of law” has never been clearly defined for disciplinary purposes. Respondent urges that the correspondence in question could have been written by an unlicensed lay person as an agent. However, we do not consider a suspended attorney to be in precisely the same position as an unlicensed lay-person. Taking such a position would allow suspended attorneys to undertake certain responsibilities on behalf of clients or legal employers; this could be a contradiction of the disciplinary proceedings.¹ Enforcement of orders of suspension and revocation would become difficult, if not impossible, if disciplined attorneys were permitted to undertake certain aspects of the practice of law, albeit, practices which might be performed by a paralegal or even a lay-person.

We adopt the findings of the reinstatement hearing panel that at least part of Respondent’s activities constituted the “practice of law.” The decision of the reinstatement hearing panel is res judicata on the central issue. See In re the Matter of Bessman, 401 Mich 45, 257 NW2d 76 (1977). Regarding Mr. Jenkins' letter to the Lincoln National Life Insurance Company, it remains unclear whether such an activity could be conducted by a suspended attorney on behalf of a third party; however, such representation of another in writing could be undertaken by a lay-person inasmuch as it merely involved inquiry regarding the rights of a beneficiary to an insurance policy. In writing this letter Mr. Jenkins acted as little more than a scrivener for the beneficiary.

More determinative of the outcome in this case, however, is the second series of letters to Michigan State University [DP 45/81, Exhibits D, E, and F]. Respondent Jenkins wrote several letters on behalf of a former Michigan State University employee whom he had represented in a criminal proceedings prior to his original suspension. The writing of these letters was clearly a practice reserved to licensed attorneys in good standing. The legal conclusions expressed by Respondent in the Michigan State University correspondence indicates that he depended upon legal knowledge and experience; further, his written assertions carried the force of his status as an attorney. In that correspondence, Mr. Jenkins stated that he represented one party to the controversy.

IV.

Applying the findings of the reinstatement panel to the pending formal complaint pursuant to Bessman, supra, the Board affirms the findings of fact of the reinstatement hearing panel and imposes a suspension of 1 year which will be effective retroactively to December 9, 1979. The discipline is imposed on a retroactive basis in consideration of the length of time Mr. Jenkins has been barred from the practice of law beyond the 1 year suspension originally imposed.

The violation of any order of suspension should not indefinitely prejudice any future petition for reinstatement - any other approach to such cases would be a punitive measure denying reappraisal of a disciplinary Respondent's fitness to re-enter the practice of law based upon personal and/or professional rehabilitation. When a disciplinary Respondent is otherwise qualified for re-entry to the practice of law according to the other criteria set forth in GCR 1963, 972.2, he should be eligible for readmission notwithstanding prior denial of reinstatement based upon a violation of the original disciplinary order.

“Discipline for misconduct is not intended as punishment for wrongdoing, but for the protection of the public, the courts and the legal profession.” GCR 1963, 954.”

We find that the public, the courts and the legal profession will be adequately protected by the action of the Board imposing the additional discipline, but allowing Mr. Jenkins to reapply for reinstatement at some future date.

V.

Pursuant to the Grievance Administrator's Petition for Review of the Panel dismissal of the formal complaint based upon a procedural irregularity in File No. DP-45/81, the Board finds that the request for investigation in said file substantially complied with GCR 961.2. The Board affirms the findings of the reinstatement panel in File No. 35224-A with a determination that Respondent did violate the original order of suspension. The reinstatement panel findings being res judicata on the issue of violation of the original order of suspension, the Board imposes an additional suspension of 1 year effective retroactively on December 9, 1979.

All concur except for Board Member Leo A. Farhat who abstained from participation in this matter.

1. The State Bar Committee on Professional and Judicial Ethics has arrived at the same conclusion. That Committee determined that suspended attorneys should not act in any professional or quasi-professional capacity, individually or as an employee of another. State Bar of Michigan, Committee on Professional and Judicial Ethics, Formal Opinion C-211, (July, 1982). See also, American Bar Association, Committee on Ethics and Professional Responsibility, Informal Opinion 1434 (February 16, 1979).

2. The original suspension was effective December 8, 1978 and Mr. Jenkins would have been eligible for reinstatement on December 9, 1979. Rather than remand to the "formal complaint hearing panel" which dismissed the complaint for the aforementioned technical reasons, the Board imposes the additional suspension pursuant to its plenary powers to *** affirm, amend, reverse, or nullify the order of the hearing panel in whole or in part or order other discipline ***" GCR 1963, 967.4.