

IN THE MATTER OF GORDON S. SMITH,  
A Member of the State Bar of Michigan,  
Respondent  
No. DP-208/80

Decided: April 1, 1982

OPINION OF THE BOARD

Respondent was charged in a formal complaint with neglect and failure to seek the lawful objectives of his client. At the close of the hearing the Grievance Administrator moved to amend the formal complaint pursuant to GCR 1963, 118.3, amendments to conform to evidence. The amendment alleged Respondent had failed to maintain complete records of client property entrusted to the Respondent. The motion was taken under advisement. In its report, the panel found Respondent not guilty of the original charges in the formal complaint but the panel found that the charge added by amending the complaint had been established by a preponderance of the evidence and imposed a reprimand therefor. Respondent appeals the panel ruling on the amended complaint, and the Grievance Administrator cross appeals on the basis of the panel's dismissal of Count I. The Grievance Administrator's cross-appeal is denied and the panel's ruling on the amendment to the complaint is reversed.

I.

Two hearings were conducted in this matter by Oakland Circuit Hearing Panel "H" At the first hearing on July 9, 1981 evidence was submitted regarding the client's execution of a warranty deed conveying title in his residential property to the Respondent's law firm under the terms of a mutually agreed upon plan to discharge debts to client creditors and Respondent for legal fees. [Tr. at 22, 102].

At the close of the second hearing on July 22, 1981 (13 days after the first hearing), the Grievance Administrator made the motion to amend adding the additional charge. The Respondent, through counsel, strenuously objected. The panel took the motion under advisement and issued its ruling in favor of the Grievance Administrator with this report. Respondent timely appealed the panel's ruling arguing that Respondent was not afforded an opportunity to defend against the amended charge. Respondent also urged that the Grievance Administrator did not file a timely appeal. The record reflects that the Grievance Administrator's appeal was filed approximately 19 days after the 20 day appeal period provided by GCR 1963, 967.1. The Grievance Administrator takes the position that he should be afforded an additional 20 day period for "cross-appeal" inasmuch as the Respondent waited to file his appeal until the last day of the appeal period provided by the Court Rule.

We find no basis in the General Court Rules governing discipline procedure for allowing what is actually a "cross petition for review." The pertinent Court Rule provides as follows:

"RULE 967.1 REVIEW OF ORDER OF HEARING PANEL

.1 Review of Order, Time.

The administrator, the complainant, or the respondent may move the board in writing to review the order of the hearing panel filed under rule 964.10. The motion must set forth the reasons and the grounds on which review is sought and must be filed with the board within 20 days after the order is served.”

The above rule does not provide appeal rights similar to those allowed under GCR 1963, 807. GCR 967 omits any reference to “cross-appeal” or “cross-petition for review” and the Board finds no reason to broaden the scope of this rule. If the hearing panel decision warrants review, this determination can be made by all three parties - Respondent, Grievance Administrator and Complainant - within the time provided. These parties may proceed with appeals on an equal footing and no chilling effect upon Respondent’s right to file an appeal should be allowed. Therefore, the petition for cross-appeal is denied.

II.

The Board reverses the panel ruling allowing amendment to the formal complaint pursuant to GCR 1963, 118.3, because the amendment was not made in a timely fashion and Respondent was not afforded an opportunity to defend thereon. It is well established that discipline proceedings are considered quasi-criminal and certain criminal procedural safeguards have been extended to disciplinary respondents. Spevak v Klein, 385 US 511 (1967); In re Woll, 387 Mich 154, 194 NW2d 385 (1872). The disciplinary Respondent’s right to notice' of the charges against him is one of the most fundamental of the criminal safeguards extended to disciplinary proceedings. State Bar Grievance Administrator v Jackson, 390 Mich 147, 211 NW2d 38 (1973).

It is noted that 13 days lapsed between the first and second panel hearings. It was evidence submitted at the first hearing that gave rise to the added charge and the complaint could have been amended in advance of the second hearing date. Additionally, GCR 1963, 118.3, requires that the party not moving for amendment of the complaint give express or implied consent to such an amendment. The record discloses that Respondent's counsel immediately and vehemently objected to the motion to amend. Contrary to arguments of counsel for the Grievance Administrator, there is no basis for finding that Respondent or his counsel stipulated to amendment of the complaint. Rather, it appears that Respondent merely agreed that the panel would decide the motion to amend and objections thereon subsequent to the hearing. For these reasons we reverse the hearing panel's decision on the motion to amend the formal complaint.

The Board reverses the hearing panel decision of a reprimand for Count II and affirms the hearing panel findings relative to Count I. The order of reprimand is vacated and the formal complaint is dismissed. The Grievance Administrator's petition for cross-appeal is denied.

ALL CONCUR.