

IN THE MATTER OF THOMAS M. L. WOLVEN,  
A Member of the State Bar of Michigan,  
Respondent.  
No. DP-27/81

Decided: November 6, 1981

OPINION OF THE BOARD

Respondent was charged in a Formal Complaint with twice calling his clients to the stand at a hearing of the State Board of Law Examiners, "with the knowledge and expectation that" the clients would perjure themselves, and eliciting from them, "under oath, on direct examination, testimony which Respondent knew at that time to be perjurious." He was further charged with submitting written statements to the Board of Law Examiners which were untrue, and causing his clients to swear under oath to the truth of these statements. Respondent, it is also alleged, took no action to "rectify the fraud perpetrated upon the Board of Law Examiners." An additional count charged him with submitting a false statement to an investigator of the State Bar. These actions were alleged to violate various court rules, and Canons 1 and 7 of the Code of Professional Responsibility.

Respondent stipulated with the Grievance Administrator for imposition of a reprimand by consent. In the Stipulation Respondent stated he "admit[s] the charges of professional misconduct contained in the Formal Complaint herein, as follows: Respondent admits in full to all of the charges contained in the Formal Complaint." The Board is required, under GCR 1963, 964.6(e) to review the proposed discipline by consent, and approve or reject it. It is rejected.

We adopt the facts as recited in the Formal Complaint, which have been admitted as true. Mr. Wolven undertook the representation of two law students, one of whom had recently taken the Michigan Bar Exam. They were to appear before the State Board of Law Examiners in connection with alleged improprieties concerning the February, 1978 Examination. A third student had alleged that one of Respondent's clients stole questions from the Bar Exam before the administration, and that the other, who was to take the exam, accepted the questions knowing they were stolen. The Law Examiner's hearing was held March 30, 1978. Several days before the hearing, Mr. Wolven was present during a conversation between his two clients in which he discovered that the one had, in fact, stolen the questions and that the other had knowingly accepted them. At the March 30 hearing, Respondent called both clients to the stand, with the knowledge and expectation that each would perjure himself, and elicited from them, under oath, on direct examination, testimony which Respondent knew to be perjurious. Respondent took no subsequent action to call upon the clients to recant the perjury, or otherwise rectify the fraud imposed upon the Board of Law Examiners. Respondent also submitted to the Board written statements from the clients which Respondent then knew to be false, and caused the clients to swear under oath before the Board to the truth of the statements, while knowing this oath was a further act of perjury. Mr. Wolven also made false statements to an investigator of the State Bar. In his Stipulation, Respondent admitted not only these factual allegations, but also the conclusionary allegations concerning violation of court rules and Canons of Professional Responsibility.

It is true, as counsel for Respondent argued before the Board, that the ethical obligations of an attorney who knows his client will commit perjury are not entirely clear-cut.<sup>2</sup> We think, however, that “[w]here counsel has prior knowledge thereof, at a minimum, his or her duty is to prevent the presentation of such testimony.” People v Collier, -- Mich App --, 306 NW2d Adv Sh 387, 392 (1981). The facts admitted do not describe an agonized Respondent trapped between conflicting considerations of his adversary role and his duty to the tribunal. They illustrate, instead, serious and willful misconduct that strikes at the heart of attorney licensure and public accountability of the legal profession. Misconduct of this gravity makes a reprimand wholly inappropriate, despite the recommendations of the Grievance Commission. Our predecessor Board once denied dismissal of a Complaint with prejudice, due to

“[t]he seriousness of the charges \*\*\* [and where] the general welfare of the public and the Bar would suffer by the dismissal of [the] case with prejudice. We believe that the matters alleged in this Complaint should be investigated thoroughly by the hearing panel if evidence is available relative there to.” In re Woll, No. 33811-A (Mich St BG Bd 1976), aff'd and remanded, 401 Mich 155; 257 NW2d 650 (1977).

Similarly, we think misconduct of this nature and gravity should be evaluated by a hearing panel, if a stipulation for no more than a reprimand can be reached.

The Stipulation for consent discipline is disapproved, and the matter shall be assigned to a hearing panel for proceedings.

CONSENT DISCIPLINE REJECTED. (Dissent Attached)

#### FOOTNOTES:

1. The specific rules and Canons alleged were GCR 1963, 953 (1-4); Canon 1, DR 1-101(B) (a lawyer shall not further the application for admission to the bar of a person known by him to be unqualified in respect to character); 1-102(A)(1) (violation of a disciplinary rule); (4) (conduct involving dishonesty or deceit); (5) (conduct prejudicial to the administration of justice); (6) other conduct adversely reflecting on his fitness to practice law; Canon 7, DR 7-102(A)(2) knowingly advancing a defense unwarranted under existing law); (4) (knowingly using perjured testimony); (6) participation in the creation of evidence he knows is false); (7) (assisting his client in fraudulent conduct); (8) knowingly engaging in other conduct contrary to a Discipline Rule); 7-102(B)(1) (failing to promptly call upon his client to rectify a fraud perpetrated upon a tribunal, and failing to reveal the fraud to the tribunal).
2. These obligations, however, are not as obscure as counsel for Respondent suggests. See, e.g., DR 7-102(A)(4), and 7-102(B) (1). See also ABA Informal Ethics Opinions 1314 (March 25, 1975) (Duty of a Lawyer Regarding Commission of Perjury by a Client); 1318 (January 13, 1975) (Withdrawal from Case When Client Proposes to Commit Perjury); Michigan Informal Ethics Opinions CI-255 (February 4, 1976) (attorney knowing in advance that client will perjure self must withdraw or report fraud to tribunal); CI-392 (August 9, 1979) (lawyer may not knowingly use perjured testimony); CI-394 (March 9, 1979) (attorney knowing in advance that client will perjure self must withdraw or report fraud to tribunal).
3. The Board also considered an unsolicited letter it received from the State of Law Examiners,

expressing their view that Respondent should receive nothing more than a reprimand.

LEWIS, D. B. DISSENTING:

I would approve the Stipulation for Consent Discipline. The record illustrates the care and thought invested by the Grievance Commission in this matter, before the Commission “determined based upon all of the facts that a Reprimand was appropriate.” Bd. Tr. at 3. The Board is to give “substantial weight to the Grievance Commission’s carefully studied recommendations when considering approval of consent discipline agreements on a case-by-case basis.” In re Barbara, No. DP-195/80 (Mich ADB 1981). We should not presume, absent extreme circumstances, that the Commission would act other than in the best interests of the public in stipulating for discipline.

Not only do we have the recommendation of the Grievance Commission before us, but also that of the State Board of Law Examiners. The Commission received an unsolicited letter from the Board of Law Examiners suggesting a reprimand for Respondent. Bd. Tr. at 23-24. The State Board of Law Examiners comprises "experienced lawyers who have been entrusted with valued judgment with respect to qualifications of attorneys to be licensed" and "their judgment is a similar type of activity [to that of the Discipline Board] \* \* \* evaluating persons who first apply to determine whether they should be allowed to be lawyers in the first place." Bd. Tr. at 10-11. In addition, the Board of Law Examiners has thoroughly questioned Respondent, under oath, about his involvement in the situation leading to the Formal Complaint. They were satisfied with a reprimand, the Grievance Commission was satisfied with a reprimand, and we should be as well. The Stipulation for Consent Discipline should be approved.