IN THE MATTER OF HENRY C. ROSLEY,
A Member of the State Bar of Michigan,
Respondent.
No. DP-28/81

Decided: March 1, 1982

OPINION OF THE BOARD

Respondent, a former Macomb County Assistant prosecutor, presented his paycheck to a Mount Clemens bank on December 7, 1979. The endorsed check was inadvertently returned to him by the teller along with cash in the amount of the check. The check was cashed again that month by Respondent's wife, at a second bank. Respondent was charged in a Formal Complaint with two counts. Count I alleged that Respondent made false statements to the first bank when it inquired about the incident, and that he knew that the check was presented for payment a second time. Count II charged that Respondent made false answers in response to a Request for Investigation. The Wayne Circuit Hearing Panel . "P" found Count I to have been proven in part, and that the facts underlying aunt II were proven, but that not all rules alleged were violated.[1] A reprimand was assessed. The Grievance Administrator moved for review, arguing that the panel's conclusion in Count II were inconsistent with its factual findings, and that more severe discipline should have been ordered. We agree. We affirm the findings of Count I and assess a reprimand on that Count. We reverse the conclusions of the panel on Count II insofar as they find that Respondent did not violate the rules of discipline charged. We order a suspension of fifteen days on Count II.

I.

Count I is not before us for review. We note that the hearing panel found that Respondent did not knowingly make false statements to the bank employee when he was first contacted by the bank regarding the transaction in question.

II.

Respondent was charged in Count II with making false answers in his response to the Grievance Administrator's Request for Investigation. In his answer, Respondent effectively denied that the particular draft presented at the two banks was the draft identified by the Complainant, the president of the first bank. This answer was prepared in November 1980, and the Grievance Administrator alleged that Respondent knew by that time that this response was false.

The hearing panel found that this answer "[was] known by [Respondent] to be false at the time he prepared, executed and filed the Answer." Report of the Hearing Panel at 4, Para F. However, the panel indicated that Respondent did not violate DR 1-102(A)(1)(3-5) or GCR 1963, 953(2)(3)(5)(6), but had violated DR 1-102(A)(6) and GCR 1963 953(4), because the panel believed that the proofs were required to establish fraud, deceit, dishonesty or misrepresentation regarding the transactions complained of, and illegal conduct involving moral turpitude or obstruction of justice in order to constitute a violation of the disciplinary rules. The panel found these violations

were not established.

However, we believe that the hearing panel misapprehended the scope of the rules alleged, and reach a different conclusion based on the same proofs relating to Count II -- the proofs do support a finding of deceit, dishonest and misrepresentation in violation of DR 1-102(A)(4).[2] We also find it appropriate to increase discipline on Count II to a suspension of 15 days.

The conclusion of the hearing panel that the proofs were insufficient to show "fraud, deceit, dishonesty or misrepresentation" is inconsistent with its factual findings on Count Il that Respondent made a false answer in his response. The Request for Investigation itself clearly charged that the check in question was the paycheck Respondent received on December 7, 1979. His answer to the Request for Investigation was evasive on this point. In his supplemental answer dated January 23, 1981, Respondent stated:

> "In answer to your specific request to identify the nature or source of the $724.96 check delivered to the Mount Clemens Bank on December 7, 1979, please be informed that through all of my efforts and apparently through all of the Mount Clemens Bank's efforts, specific identification was never able to be accomplished. Certainly there is an inference from the facts able to be reconstructed that the payroll check issued to me December 7, 1979, may have been the check tendered to the bank. However, that inference is rebutted by the contradictory fact that the payroll check in question was in fact, by direct evidence, tendered fourteen days later by my wife to the First Federal Savings and Loan Association of Oakland, and since the Mount Clemens Bank admits to taking possession and control of the check tendered December 7, it seems incongruent that both transactions involve one and the same check."

This statement was, when made on January 23, 1982, known by Respondent to be false and misleading; furthermore, it is not a full and fair disclosure. Much of relevance to a reasonable resolution of the case is omitted. Respondent knew that the payroll check in question had been twice presented for payment, on December 7 and again on December 21, 1979. His answer is both obscure and misrepresentative of the essential facts and circumstances.

Respondent in outlining his subsequent contacts with the bank, did not make a full and fair disclosure in his response and exhibited a lack of candor tantamount to deceit or knowing misrepresentation. Such concealing is not merely harmless tactical maneuvering, but it is deemed to be a transgression of the Canons of Ethics and a disregard for the policies and rules supporting the disciplinary system.

> "Members of the Bar have an unavoidable duty to answer Requests for Investigation. * * * Beyond the self-interest which should impel conscientious lawyers to answer, it is an affirmative duty to do so. This duty has two faces: responsibility to the Bar, and to help the

> public. The duty to the Bar is to help clarify complaints made about its members, so that grievances with merit may proceed, and those without substance may be disposed of quickly. The Bar should not suffer the effects of uncertainty resulting from dangling complaints. The duty to the public relates to fairness to lay-people who may have a legitimate grievance." Schwartz v Kennedy, No. DP-48/80 (Mich ADB 1981).

Just as failure to answer altogether shows an attorney to be "professionally irresponsible and contemptuous," In re Moore, No. 35620-A (Mich St BC Bd 1979), an evasive answer is equally unfulfilling. A member of our predecessor Board once commented that a "half-truth is as false as a total lie; in fact, it is a bigger lie, because it is more difficult to disprove." In re McGinnis, No. 32344-A (Mich St BG Bd 1975). Respondent's knowingly incomplete answer to the Request for Investigation constitutes deceit and misrepresentation, and a reprimand is insufficient.

We affirm Count I and impose a reprimand; we reverse the conclusion on Count II, insofar as the panel found that the rules alleged were not violated, and we impose a suspension of 15 days.

AFFIRMED IN PART AND REVERSED IN PART.

ALL CONCUR.

FOOTNOTES:

1. Count II of the Formal Complaint alleged that the following rules were violated; GCR 1963, 953(2), conduct exposing the legal profession to contempt; (3) conduct contrary to justice; (4) conduct violating a standard of responsibility; (5) conduct violating a criminal law; and (6) knowing misrepresentation of any facts or circumstances surrounding a grievance complaint; Canon 1, DR 1-102(A)(1), violation of a disciplinary rule; (3) illegal conduct involving moral turpitude; (4) conduct involving dishonesty, fraud, deceit, or misrepresentation; (5) conduct prejudicial to the administration of justice; and (6) other conduct adversely reflecting on fitness to practice law. Of these, the panel found that Respondent had violated only DR 1-102(A)(6), and GCR 1963, 953(4).

2. The Board specifically finds a violation of GCR 1963, 953(2), (3) and (6) and Canon 1, DR 1-102(A)(4) (forbidding misrepresentation), whereas the panel found factual basis for a finding of misrepresentation, but no violation of the rules cited in Count II of the formal complaint.