

IN THE MATTER OF WILLIAM E. BUFALINO, II,
A Member of the State Bar of Michigan,
Respondent,
No. 36508-A

Decided: September 9, 1981

OPINION OF THE BOARD

Respondent was charged with neglect and misrepresentation, A hearing was held before the Oakland Circuit Hearing Panel "H" on February 5, 1980. Following Complainant's testimony, the panel adjourned for the day, intending to continue proceedings at a future time. In the interim the Grievance Administrator became convinced that there were irreconcilable inconsistencies in Complainant's testimony and statements, and stipulated with Respondent for dismissal. An Order of dismissal was entered by the hearing panel, and Complainant appeals. We vacate the Order of Dismissal, and remand to the Oakland Circuit Hearing Panel "H". The Grievance Administrator shall state on the record the precise reasons dismissal is sought, and allow Complainant to challenge those reasons before the panel.

We do not question the authority of the Grievance Commission to seek dismissal of actions which may become unworthy of prosecution. Such authority is inherent in the Commission as "the prosecution arm of the Supreme Court for discharge of its constitutional responsibility to supervise and discipline Michigan attorneys." GCR 1963, 957.1. As a "prosecution arm," however, the Commission is procedurally bound by statutes and decisions relating to criminal prosecutors, where an appropriate analogy may be drawn. Although discipline proceedings are governed by court rules pertaining to civil cases, GCR 1963, 964.1, it has been long recognized that they are also quasi-criminal in nature. In re Woll, 387 Mich 154, 194 NW2d 835 (1972); In re Blauss, 28 Mich 507 (1874). We think this is an appropriate instance in which to apply a standard of criminal procedure.

MSA 28.969; MCL 767.29, directs that prosecuting attorneys shall not enter a nolle prosequi upon an indictment, or discontinue or abandon an indictment, without stating on the record the reasons for discontinuance or abandonment. We now apply this provision, by analogy, to disciplinary actions. There are three reasons for doing so.

First, the Grievance Commission is confided with a comprehensive responsibility in prosecuting public grievances against members of the bar. It is therefore accountable to the public when it chooses to discontinue such an action; as is the Board (or panel) in entering an order of approval. The Board, its hearing panels, and the Commission are especially accountable to the Complainant, who participates in disciplinary proceedings, at most, as a witness. It is only fair that, after a Complainant has brought a grievance, it has been investigated, a Formal Complaint filed and, perhaps, proceedings begun, that the Commission state on the record the grounds upon which dismissal may be sought, if for no other reason than to inform the bewildered Complainant.

Second, both the panel and the Board, when the order is appealed, must be properly informed

before their discretion can be exercised in accepting or rejecting the request for dismissal. If the reasons dismissal is sought are not clearly and adequately stated on the record, the panel and Board cannot reach an informed decision in the matter.

Third, such reasons should be mentioned on the record for the protection of the Respondent. Where the Grievance Commission seeks dismissal due to a perceived defect in the case, the Respondent has a right to know of such defects. If dismissal is sought for tactical or other reasons unrelated to the merits, the Respondent should equally be informed. In the criminal context, the statute cited above was primarily enacted, in fact, to protect defendants. People v Nelson, 66 Mich App 60, 238 NW2d 201 (1975). That a nolle prosequi may be entered for tactical reasons adverse to a defendant was recognized long ago. See United States v Shoemaker, Fed. Case. No, 16,279 (1840). The policy of requiring reasons on the record is not a new one. MSA 28.969; MCL 767.29, was originally adopted by the Michigan Legislature in 1846, People v Curtis, 389 Mich 698, 209 NW2d 243 (1973) (en banc), and was amended in 1929 to require prosecutors to state their reasons on the record, 1929 PA No. 24, ch, VII, Sec. 29.

We vacate the Order of Dismissal entered by the Oakland Circuit Hearing Panel “H” and remand to that panel. Counsel for the Grievance Administrator shall state specifically the grounds upon which dismissal is desired and, if dismissal is sought due to perceived inconsistencies in Complainant's statements and testimony, these inconsistencies must also be precisely and explicitly set out. The Complainant must then be given an opportunity to refute these reasons before the panel, so that the panel may intelligently exercise its discretion to grant or reject the request for dismissal.

VACATED AND REMANDED.