IN THE MATTER OF ROBERT A. GRIMES,
A Member of the State Bar of Michigan,
Respondent.
No. 35939-A

Decided: January 9, 1981

OPINION OF THE BOARD

Respondent was indicted for filing false and fraudulent income tax returns for 1971 and 1972. He was convicted after a jury trial, and sentenced to one year's imprisonment and a $5,000 fine on each of two counts, the sentences to run concurrently. His prison term was then reduced to thirty days, with an additional one-year probation period. His federal appeal was denied.

Apart from this conviction, the Grievance Administrator alleged separate misconduct arising from the government's pre-trial investigation. Respondent allegedly antedated in 1976 a promissory note or loan agreement "1972," and gave it to a client, asking her to tell government agents that she had actually received it in 1972.

The panel found misconduct based on Respondent's conviction, his antedating of the document, and his effectively counseling a client to make misleading statements to the government. Respondent was suspended for sixty days. The Grievance Administrator appealed, arguing that a suspension of that length was inadequate in light of the gravity of Respondent's misconduct. We agree, and increase discipline to a suspension of 120 days.

In determining appropriate discipline, we have, in this case, considered several factors. Firstly, we are impressed by the seriousness of the offenses, particularly since they reflect an attorney's lack of regard for the law as applied to him and for the legal system in his handling of the criminal charges. Another factor includes any threat or danger to the public or clients which we do not find directly involved here. A respondent's competence or lack thereof is very often a factor in determining whether to require reinstatement proceedings by imposing a suspension of 121 days as opposed to 120 days; because neither the charges nor the record demonstrate a need for reappraisal of Respondent's abilities or fitness to handle legal matters, reinstatement proceedings will not be required.

Further, there are mitigating factors present including Respondent's unblemished record of thirty years in law practice and endorsements from the bench, bar, and public. See In re Swainson, No. 34144-A (Mich. St. B. Grievance Bd. 1978); In re Charlip, No. 26340-A (Mich. St. B. Grievance Bd. 1976). Also, the panel found that Respondent "knew or should have known" that he was inducing the client to mislead the IRS regarding Respondent's tax return (emphasis supplied), thus reducing the charges in Count II from willful, knowing, and intentional counseling of a client to make false statements to the IRS. Indeed, he was not prosecuted for this particular offense in the criminal forum.

The instant case is similar in one respect to Schwartz v Freed, No. 36487-A (Mich. Att'y Discip. Bd. 1980). There, respondent pled nolo contendere in federal court to three counts of failure to pay income taxes, and was sentenced to three concurrent one-year terms of imprisonment. A hearing panel suspended him for one year; we reduced discipline to a 120-day suspension. In mitigation, there were favorable character testimonials from former clients of Mr. Freed and a psychiatric report outlining certain relevant emotional difficulties. We concluded, as we do here, that on balance, the hearing panel in the best of faith incorrectly applied its discretion in its assessment of discipline in the circumstances; this may, as a matter of legal technicality, be characterized as "abuse" though we do not feel that this fine panel abused its powers.

Our dissenting brother would apply a definition of "abuse of discretion" sometimes applied to courts of law as follows: "'perversity' rather than free exercise of will, 'defiance of judgment' and the influence of `passion or bias'". Certainly these represent the more severe degree of abuse of discretion among numerous characterizations by the appellate courts. Also, these standards are applied to courts. The Discipline Board will exercise its broad review powers and will apply its broader overview when assessing appropriate discipline based upon comparative cases and appellate circumstances. This in no way discounts the hearing panel's most valued expertise in these matters, in the area of trial procedure and more particularly in the vagaries and standards of proper law practice.

Furthermore, regardless of whether there is, in any case, an "abuse of discretion," technical or otherwise, the Board, when indicated in a particular case and in the interests of fairness and uniformity, will exercise the very comprehensive powers of review granted to it by the Supreme Court as follows:

> GCR 967.4 Decision.
> After the hearing on the order to show cause, the board may affirm, amend, reverse, or nullify the order of the hearing panel in whole or in part or order other discipline. A discipline order is not effective until 20 days after it is served on the respondent unless the board finds good cause for the order to earlier take effect.

The present rules (GCR 971) provide for a Supreme Court appeal by leave only. Having the most frequent exposure to appellate disciplinary matters, the Board, in these unique proceedings, must assure, to the extent possible, reasonable uniformity among the numerous volunteer hearing panels. The Board provides an opportunity for respondents, complainants, and the Grievance Commission to receive at least a second stage of consideration.

The findings of fact of the hearing panel are affirmed, and discipline is increased from sixty to 120 days. (Dissenting Opinion attached)

NOTE: The Michigan Supreme Court increased the discipline to Revocation of License, amending the Board's findings regarding the allegation that Respondent sought to have a client misrepresent certain facts to the federal authorities.

DISSENTING OPINION OF DAVID LEWIS, SECRETARY

I dissent from the board's increase of discipline because there has not been a persuasive showing of an abuse of discretion by the panels involved.

I fear the phrase "abuse of discretion" has become a catch-word for changing the decisions of hearing panels at will. As I said in my dissent in Schwartz v Kennedy, No. 36454 (Mich. Att'y Discip. Bd. 1980) (Lewis, D.B., dissenting), (wherein Supreme Court reduced Board-imposed suspension increase), good practice dictates that the Board refrain from amending panel decisions which have a rational basis and adequate support in the record. As defined by the Michigan courts, an "abuse of discretion" must be an obvious violation of fact and logic, and show a "perversity" rather than an exercise of will; a defiance of judgment, and the influence of "passion or bias." Wendel v Swanberg, 384 Mich 468, 185 NW2d 348 (1971); Spalding v Spalding, 355 Mich 382, 94 NW2d 810 (1959). In none of these cases has the Grievance Administrator demonstrated such error by the hearing panels. In contrast, the present record reveals that the Grimes panel comprised three distinguished members of the bar, who deliberated sometime before reaching a decision, and who issued a judiciously worded report. Bd. tr. at 6-8. There is no evidence that the other panels were any less prudent in reaching their decisions.

The order of the hearing panel should be affirmed.