IN THE MATTER OP ROBERT F. LEONARD,
A Member of the State Bar of Michigan,
Respondent,
No. DP-47/80

Decided: September 4, 1980

OPINION OF THE BOARD

Respondent was convicted of embezzlement, making false statements, interstate transportation of stolen property, and filing false income tax returns. He was charged with misconduct by the Grievance Administrator, and disbarred by a Hearing Panel. Respondent petitioned for review on these grounds: (1) the sanction was too harsh; (2) the Panel did not consider his previously unblemished record; and (3) the Panel did not consider his pending appeal of the criminal conviction. The Grievance Administrator asserted that disbarment was proper after Respondent's conviction; that the Panel had considered Respondent's previous record; and that Respondent freely chose not to enter evidence in mitigation. We affirm the Order of the Hearing Panel.

The Respondent was formerly Prosecutor for Genesee County, Michigan. He was convicted of various crimes in violation of 18 U.S.C. Sections 641, 1001, 2341, and 26 U.S.C. Section 7206 (1). Respondent was sentenced to three five-year and one three-year concurrent terms of imprisonment, and fined $15,000. He is appealing to the Sixth Circuit Court of Appeals.

Respondent admitted his conviction, Panel Tr. at 5, but maintained his innocence before the Panel. Under advice from his attorney, he would not detail the grounds of his appeal. Id. 10, 17. He apparently feared incrimination in the event of a new trial. Id. 10, 17, 18. After a somewhat superficial digression into some of the weaknesses of the government's case, id. 11, Respondent pointed out that the jury acquitted him on two of the six counts in the indictment. Id. 12. Respondent also pointed to his previously untarnished record as a member of the bar. Id. 11. Although he was appearing "primarily on the issue of mitigation," id. 12, Respondent presented nothing more, even when pressed by panel members. Id. 15-21.

The Record supplies no reason to disturb the Panel's action. There is virtually nothing here in mitigation. Respondent did not file a brief with this Board. The members of the Panel repeatedly invited him to demonstrate some basis for withholding disbarment; Respondent merely maintained his innocence and referred to his appeal. He gave the Panel only the barest defense to consider, and made their conclusion inevitable. A convicted Respondent should be able to explain satisfactorily, though generally, perceived defects in the prosecution's case without incriminating himself. Respondent did not even indirectly suggest that a review of the criminal trial transcripts might disclose a basis for continued Panel proceedings, nor did he ask for an adjournment to obtain the transcript of his criminal trial for the Panel to review. Despite a passing reference to In re Lewis, 389 Mich 668, 209 NW2d 203 (1973), Panel Tr. at 9, the point was not explicitly mentioned either in argument or in the Petition for Review.

In re Sauer, 390 Mich 449, 213 NW2d 102 (1973), would require examination of the criminal trial transcripts only if Respondent requests the same and asserts that the same would presage reversal of the conviction. Even before the Board, Respondent failed to generally or specifically point out defects in his trial. To require routine review of criminal trials in the absence of some good cause demonstrated would be superfluous and an unmanageable burden for the hearing panels. Certainly, the panels do not have the expertise or resources of a court of appeals in criminal matters, and the post-trial judgments of the Panel should not displace that of the court or jury in such criminal matters, absent some clear showing of error and likelihood of reversal.

The Board finds no basis for a change in the Hearing Panel Order, and it is affirmed.