

IN THE MATTER OF ROBERT E. HELM,
A Member of the State Bar of Michigan,
Respondent.
No. 36292-A

Decided: August 7, 1980

OPINION OF THE BOARD

Both parties appeal from the hearing panel order of a 15-day suspension. The Grievance Administrator claimed certain errors by the Hearing Panel and requested a new proceeding. Respondent pointed to mitigating circumstances and asked that the discipline be reduced. Upon review, we do find a number of persuasive mitigating factors, and reduce discipline to a reprimand.

Complainant owned an automobile which was destroyed in a repair garage fire. Respondent was retained by Complainant to handle the matter, and obtained a settlement in the amount of \$2,500. Instead of receiving the settlement, Respondent was notified that the sum had been garnished by the bank which had a lender's lien on the automobile. Respondent tried to contact Complainant, Complainant's mother, and his roommate without success. He then took it upon himself to negotiate with the Creditor Bank. Respondent was able to regain half of the settlement, paid by the insurance draft made out to Respondent and Complainant. After repeated attempts to contact Complainant, Respondent decided to sign or have his secretary sign Complainant's name as endorsement on the draft. Respondent then deposited the funds in a clients' trust account under Complainant's name, and did not remove it until Complainant eventually called him. Complainant had been out of state and upon returning met Respondent, learned of the intervening events, and received the half-settlement less a retainer fee and an additional charge for the negotiations with the Bank-Creditor. About a month later, Complainant called Respondent, unhappy at the final distribution of funds. He eventually charged Respondent with misconduct in signing Complainant's name to the draft without permission.

The Grievance Administrator argued that the Panel had committed three potentially reversible errors: (1) it failed to make findings and conclusions regarding Respondent's admission to charges of "simulating" Complainant's signature; (2) it accepted two purported examples of the secretary's handwriting without authentication by the secretary; and (3) it refused to allow rebuttal to the admittance of these samples of the secretary's handwriting.

Respondent admitted that he is responsible for the client's name appearing on the draft without the client's consent. Respondent maintained that no fraud or deception of the client had occurred; that he had made a good faith effort to protect the client's funds, and that testimony established his moral character and professional ability.

We hold that the delay in Complainant's protest, the lack of harm to Complainant, and Respondent's lack of intent to defraud, deceive, or unlawfully profit mitigates that gravity of Respondent's technical misconduct to such a degree that we should reduce discipline to a reprimand. We do not, however, condone Respondent's action which was "unprofessional and constituted both faulty practice and bad form." In re Donnelly, File No. 35637-A at 1 (Mich Atty. Discip. Bd. Oct. 10, 1979).¹

The errors alleged by the Grievance Administrator are not substantial. The distinction between a signature being "placed," and being "simulated" does not affect the degree of culpability. Respondent is responsible for signing Complainant's name to the draft without consent, and has so conceded from the beginning. The samples of the secretary's handwriting, though hearsay, had little effect on the Panel, and none on this Board. On the other hand, Respondent's showing of continued efforts on his client's behalf, his good faith dealing and lack of intent to defraud his client, coupled with the substantial testimony to the credit of his moral and professional character leads us to our decision. This reduction in no way implies approval of Respondent's actions, but in the circumstances show that Respondent was attempting to act in the best interests of his client.²

Respondent's suspension is reduced to a reprimand.

FOOTNOTES

1. Respondent in Donnelly filed a notarized pleading upon which he had signed his client's name. We affirmed dismissal of the Complaint but, unlike the present case, Donnelly had power of attorney, and his client was not the complainant.
2. We question the direct application of the client's half-settlement to Respondent's fee, but since the Grievance Administrator did not charge such as misconduct, we will not consider this as an issue.