IN THE MATTER OF JAMES H. HUDNUT,
A Member of the State Bar of Michigan,
Respondent.
No. 34884-A

Decided October 19, 1979

OPINION

FACTS

The Board has reviewed the findings of Oakland County Hearing Panel No. 9. The Panel found violations of DR 3-101(A), 1-102(A) (4), and former State Bar Rules 15.2(2-4)and(6) [now MGCR 1963, 953(2-4)and(6)]. We affirm.

The case involved the activities of Dudley Davies, who was employed by Respondent as an "investigator." Bd. tr. at 23, 33. Davies is a former member of the Michigan Bar. Ne was investigated in the 1950's by the State Bar Counsel in connection with criminal activities and was permitted to resign from the Bar after conviction. Respondent knew of Davies' background when Davies was hired. Bd. tr. at 28-29.

In 1973, Davies met client-complainant Vecchioni at the home of Vecchioni's parents to discuss an automobile accident claim. Hearing Panel Proceedings, at 33-35. Vecchioni signed a form retainer agreement at the meeting. The agreement bore only Respondent's name. State Bar Exhibit 1. Davies later negotiated an insurance settlement for Vecchioni. Respondent's first substantial connection with the case came only at the settlement conference. Transcript of Hearing Panel Proceedings, at 42-43. Although Respondent had not explicitly presented Davies as an attorney, Vecchioni assumed that he was. It was only upon filing a Request for Investigation that Vecchioni learned Davies was not a lawyer. Id. at 77.

Client-complainant Czapiewski had been a passenger with Vecchioni, and was a co-plaintiff. Id. at 34, 119. Czapiewski signed a retainer agreement in Respondent's office. State Bar Exhibit 12. While there, Respondent introduced Davies as someone who "would be helping out" with the case. As the case progressed, Czapiewski telephoned Respondent's office several times, always speaking with either Respondent or Davies. Transcript of Panel Proceedings, at 123-24. Czapiewski discovered that Davies was a layman when his Request for Investigation was filed. Id. at 145-46.

When handling complainants' case, Respondent shared an office suite with Davies. Each had a private office, but they shared a waiting room and secretary. Id. at 153, 162-63. Only Respondent's name appeared on the office door and letterhead, but Davies signed letters mailed from the office. State Bar Exhibit 9.

Prior to settlement of the Vecchioni case, Davies recommended acceptance of the insurance company's offer. Transcript of Hearing Panel Proceedings, at 108. Within the factual context presented, such advice clearly constitutes the unauthorized practice of law by Davies. Subsequently,

the complainants made a personal loan to Davies, but did not discuss the loan with Respondent until Davies failed to make the promised repayment. Id. at 88.

After Respondent was served with complainants' Requests for Investigation, his written Answer included the statement that Dudley Davies does not and never has worked for me in any capacity wherein he would have occasion to come into contact with clients of this office." State Bar Exhibit 21. Respondent asserted Davies performed investigations for him, but was not "employed" as such. Transcript of Board Review Hearing, at 4, 5.

FINDINGS BY THE BOARD

The Board affirms the Panel's findings of facts:

1. Respondent knowingly misled complainants to believe Davies was an authorized practitioner of law;

2. Respondent should have known whether Davies was or was not a member of the Bar, or should have inquired into Davies' status, particularly since he knew that Davies had been convicted of a crime and incarcerated;

3. Davies' acts in working upon complainants' personal injury claims constituted unauthorized practice of law, and at no time did Davies reveal to complainants that he was not a lawyer;

4. Respondent's written Answer to Requests for Investigation filed in connection with Davies' activities was not truthful; and

5. Respondent's testimony and that of his witnesses does not reflected his truthfulness.

The Board also recognizes that Respondent had lack of notice regarding the subpoena of Complainant Vecchioni and his subsequent testimony before the Panel. Bd. tr. at 40.

DECISION BY THE BOARD

A reasonable person would have had cause to believe that Davies, acting as he did and silent about his professional status, was a lawyer associated with Respondent at the time of complainants' case. Although not the basis of misconduct here, the loan to Davies by complainants points out the need for proper supervision of a lawyer's quasi-professional staff, see Fitzpatrick v State Bar of California, 20 Cal. 3d 73, 569 P.2d 763, 141 Cal. Rptr. 169 (1977); State v Barrett, 207 Kan. 178, 483 P.2d 106 (1971), and the affirmative duty of a lawyer to avoid misunderstandings about staff status and authority. Respondent does not claim to have described Davies' status to complainants. In view of the extent of client contact by Davies and the number of times he appeared on Respondent's behalf, Respondent had an affirmative duty to inform his clients that Davies was not a lawyer. The failure to so inform resulted in a misunderstanding and misappropriation of trust by the two clients.

Respondent knew that Davies was a convicted felon. Bd. tr. at 28-29. It is settled in Michigan that an attorney's duty of loyalty to clients requires him to give them all pertinent information regarding their case. Kukla v Perry, 361 Mich 311, 105 MW2d 176 (1960); Storm v Eldridge, 336 Mich 424, 58 NW2d 129 (1953). Furthermore, although Davies did not appear in court, the practice of law embraces more than representation in court, Grand Rapids Bar Association v Denkema, 290 Mich 56, 287 NW 377 (1939), and Respondent failed to supervise Davies' contacts with the clients.

The perceptions of a client are important in his relationship with an attorney. A client may trust a person whom he believes to be a lawyer more readily than he will trust a lay employee. Since staff members of a law office are not directly subject to the Code of Professional Responsibility, proper supervision of such staff is essential for protection of the public. Likewise, attorneys must assume responsibility for the work product of their legal assistants, particularly in affairs directly involving clients. Mich. Bar Informal Ethics Op. CI-112 (1973).

The Code suggests "delegation is proper if the lawyer maintains a direct relationship with his client, supervises the delegated work, and has complete professional responsibility for the work product." Code of Professional Responsibility, CE 3-6 (1969). It is agreed that attorneys may employ laymen to do many tasks, "so long as the non-lawyers do not do things that lawyers may not do or do the things that lawyers only may do." ABA Comm. On Professional Ethics, Opinions, No. 310 (1967). Recent literature in the area only briefly addresses potential ethical violations, pointing out that permissible delegation enables a lawyer to render services economically and efficiently. Ethics Opinion E.C. 3-6 (1969) would permit non-lawyers to undertake certain casework previously deemed to be reserved to the attorney, and views such employment as ethical so long as the delegation does not interfere with the direct attorney-client relationship. However, E.C. 3-6 "places a responsibility ... on the attorney to be accountable for all work that he delegates." Stevenson, Using Paralegals in the Practice of Law, 62 Ill. Bar J. 432, 435 (1974).

Attorneys have been held responsible for any and all acts of their employees. In Black v State Bar of California, 7 Cal. 3d 676, 499 P2d 968, 103 Cal. Rptr. 288 (1972), an attorney's secretary embezzled a large amount of money from the office trust account and vanished. Although the attorney was not criminally culpable, he was disciplined for the act of his employee. See Also Vaughn v. State Bar of California, 6 Cal. 3d 847, 494 P.2d 1257, 100 Cal. Rptr. 713 (1972).

A legal division of authority will not discharge a lawyer's responsibility; neither will an attorney's insistence that he did not know of his employee's actions. A lawyer may not assume that clients know which persons in the office are members of the Bar and which are not. Our State Supreme Court has emphasized the importance on those things reasonably perceived by clients as being apparently true. See e.g., Grievance Adm'r v. Estes, 390 Mich 585, 212 NW2d 903 (1973).

We need not decide whether Davies has technically been disbarred. We find what Respondent knew about Davies' past would make a reasonable person question Davies' veracity and trustworthiness. This is not to say that Respondent should not have hired Davies in any capacity, but he should have been careful to limit Davies' contact with clients. Furthermore, assuming client contact was permissible here, Respondent should have informed the clients of Davies' non-licensed

status.[1]

Davies' activities during the crucial time constituted the unauthorized practice of law. Apparently without supervision, Davies, as mentioned above, bound Respondent to a contract of employment, advised clients, and negotiated a settlement. Respondent stated in reply to the Request for Investigation, however, that Davies . . . "never has worked for me in any capacity wherein he would have occasion to come into contact with clients of this office;" (State Bar Exhibit 21) the evidence is to the contrary. The Panel Record indicates that there were at least three occasions when Davies conducted the Respondent's business with clients. Transcript of Hearing Panel Proceedings, at 38-40, 41-44, 44-48, 107-09. On two of these occasions, the Respondent himself was present.

The Hearing Panel inquired into the loans made by the complainants to Davies which, although influencing complainants' desire to file a grievance, had nothing to do with whether Respondent permitted Davies to practice law. These loans and the difficulties complainants encounter in recovering them reflect more upon Davies' moral character than upon Respondent, who repaid them himself -- a mitigating factor.

Respondent urges reduction of the Panel's recommended 150-day suspension to a reprimand; since the record discloses that he is a recidivist, this degree of modification is unjustified. However, the discipline will be reduced to a suspension of 90 days.

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[1] Mich. Bar Informal Ethics Op. CI-180 (1975) prohibits the employment of a disbarred or suspended attorney at perform "any acts of a legal or quasi-legal nature." In addition, Michigan Bar Comm. on Professional and Judicial Ethics, Opinions, No. C-211 on which Respondent relies, specifies:

> . . . there would have to be a rigid, absolute prohibition against any contact whatsoever between (a disbarred employee) and the clientele of the employing lawyer ... such an employee would never be permitted to have anything to do with the practice of law which is to say that he may do nothing which he could have done as a lawyer before his disbarment.