

IN THE MATTER OF V. PAUL DONNELLY,
A Member of the State Bar of Michigan,
Respondent.
35637-A

Decided: October 10, 1979

OPINION

Respondent was charged in the Formal Complaint with misconduct arising out of litigation he handled against General Motors in 1975. Following a motion for accelerated or summary Judgment by General Motors, Respondent filed a notarized Affidavit of Merits purportedly signed by his client. It had in fact been signed by Respondent himself and apparently notarized by his employee. Prussing v General Motors Corporation, (Wayne County Cir. Ct. 1975), record at 116, 119. At the hearing on General Motors' motion, it was discovered that the signature was not that of the client. The General Motors attorney notified the State Bar of Respondent's conduct. Panel Record of October 13, 1978, at 10. A Request for Investigation was filed in September of 1977. Wayne County Hearing Panel 07 dismissed the Complaint against Respondent, and we affirm.

We must state that Respondent's actions, signing the Affidavit and presenting it as his client's signature, were unprofessional and constituted both faulty practice and bad form. Although undisputed that Respondent possessed valid power of attorney (State Bar Exhibit 2), the representation of his own handwriting as a client's signature without notice or contrary indication could only have misled the court. In such a case, some additional wording clearly showing that the signature was executed by counsel under power of attorney is required. Within the factual context of this case, however, no discipline is warranted. The circuit Judge, commenting on Respondent's behavior, expressed his belief that no malice or evil intent was present on Respondent's part. Panel Record of July 17, 1979, at 90. It should also be noted that the client himself was not a complainant.

The Formal Complaint alleged other misconduct, apparently not addressed by the Hearing Panel. The record contains no reference to these charges, and they were not mentioned in the Grievance Administrator's Petition for Review. Specifically, these concern a verified pleading supposed to have been signed by another at Respondent's direction [Formal Complaint 4(D)], and Respondent's alleged failure to properly prepare himself in the General Motors litigation. [Formal Complaint 4(F)]. These issues have not been raised before us, and will not be considered.

Neither need we probe Respondent's claim of invasion of privacy in the opening of his State Bar file so that his signature could be photocopied and handwriting compared with that on the affidavit of merits. Panel Record of October 13, 1978, at 23-33. The matter is moot, since Respondent subsequently admitted in open court to having signed the document (Panel Record of October 13, 1978, at 9), and his handwriting was available for inspection on the pleadings of the case.

We note the long delay from initial notification of the State Bar in July, 1975, to the Request for Investigation in September, 1977, during which time Respondent had no notice that he was under

investigation. Panel Record of October 13, 1978, at 10.

Finally, we feel It necessary to consider whether, as counsel for the Grievance Administrator asserts, we are compelled to make a finding of misconduct because both the circuit Judge and court of appeals opined that the Affidavit of Merits was executed in bad faith and for the purpose of delay. Board Record at 73. We do not think ourselves compelled. The purpose of the Attorney Discipline Board is quite different from that of the court system at large. We are the adjudicative arm of the Supreme Court for discharge of its exclusive constitutional duty to supervise and discipline Michigan attorneys. GCR 959.1. As such, we are not necessarily bound by the Judicial determination of matters arising out of the same set of facts we are examining. Additionally, in the instant case, the circuit Judge granted summary Judgment solely on the ground that plaintiff's Affidavit was insufficient, in its content, to controvert facts averred by General Motors in support of its motion. Prussing v General Motors Corporation, No. 24903, slip op. at 1 (Mich. Ct. App., April 8, 1976). In affirming, the court of appeals merely reiterated the circuit Judge's observations concerning the circumstances surrounding the affidavit. The circuit Judge eventually concluded on the record that Respondent had acted without evil intent. At both Judicial levels, the views expressed regarding Respondent's possible motives, bad faith and delay were dicta and not intended to affect the Judgments rendered.

The Order of the Hearing Panel dismissing the complaint is affirmed.