

IN THE MATTER OF MELVIN R. SMITH,
A Member of the State Bar of Michigan,
Respondent.
No. 35229-A

Decided: April 26, 1979

OPINION

Pursuant to the requirements of State Bar Grievance Administrator v Gillette, 393 Mich 26, 222 NW2d 513 (1974), the Board issues this opinion in support of the order amending the order of the hearing panel.

FACTS

The Formal Complaint alleged two substantive violations of the Code of Professional Responsibility involving neglect of a legal matter, misrepresentations regarding said neglect and, failure to fulfill certain trustee obligations relative to maintenance of records and the production of funds when requested by the entitled client. The panel determined that evidence was insufficient to support said substantive charges.

The complaint further alleged, in two separate counts, violations of former Supreme Court Rule 15, Sec. 2 (7) which provides that failure to answer the Grievance Administrator's Requests for Investigation itself constitutes misconduct. This rule was effectively continued with the adoption of the court rule presently governing disciplinary procedure, specifically GCR 1963, 962.2.

The hearing panel determined that Respondent, "... a sole practitioner without a secretary . . ." had been "... careless and indifferent in the matter of making sure the mail addressed to [Respondent] was received and properly handled . . ." (Panel's Report and Order filed October 6, 1978). However, the panel concluded that Respondent had not deliberately ignored the Grievance Administrator's inquiries and that, therefore, no Order of Discipline was warranted.

DECISION BY THE BOARD

The Board affirms the dismissal by the hearing panel of the two counts alleging substantive violations of DR 1-102, 6-101, and 9-102, prohibiting neglect, misrepresentation and failure to preserve identity of funds and property of a client for the reasons stated in the report of said panel.

In regard to counts II and IV of the complaint, the Board accepts the position of the Grievance Administrator, (Review Hearing Tr, p 8) in applying the requirements of the former State Bar Grievance Rule on Service of Notices and Other Papers which provided as follows:

"(b) Service shall be effective at the time of mailing, and non-delivery shall not impair the validity of the service." Procedural and Administrative Rules of the State Bar Grievance Board, 16.28(d).

The above rule has been recently incorporated into the present Court Rules. GCR 1963, 964.3. Therefore, failure to answer a Request for Investigation or Formal Complaint within the prescribed time is deemed to be misconduct under the applicable former and present rules regardless of actual delivery of said documents to a Respondent.

The rule regarding service of process does more than establish a rebuttable presumption of notice to an attorney who is the subject of the grievance. This rule, in the Board's view, is based upon at least two important policies:

(a) Reasonable accessibility of attorneys licensed to practice in this state.

and,

(b) The expeditious processing of grievances brought by, or affecting the interests of, clients and the public at large.

Respondent urges that he, in essence, intended no harm and avoided no responsibility by his failure to receive and respond to the correspondence of the Grievance Administrator. The evidence discloses that Respondent was, indeed, "careless and indifferent" in the management of correspondence on numerous occasions. Such is unacceptable as the basis for a defense to the charges in this matter and would obviously lead to procrastination prejudicial to Complainants and clients and the avoidance of one's duty of professional accountability to the Supreme Court.

The Board affirms the factual findings of the panel but amends the panel's conclusions. Respondent shall be issued a reprimand for failure to answer two Requests for Investigation. Counts I and III of the Complaint remain dismissed.