

IN THE MATTER OF WILLIAM H. O'BRIEN,
A Member of the State Bar of Michigan, Respondent-Appellant.

No. 33975-A

Attorney Discipline Board of Michigan

Argued November 16, 1978

Decided December 7, 1978

OPINION OF THE BOARD

Respondent-Appellant, William H. O'Brien, pursuant to the former State Bar Grievance Rule 16.15, filed on August 16, 1978, a Petition for Review of the Order of Discipline of the Wayne County Hearing Panel No. 1. A Cross-Petition was filed by the Grievance Administrator appealing on the basis that the discipline of a ninety-day suspension was inadequate and did not comport with the purposes of former State Bar Grievance Rule 15.1 and 16.34(d).

The Respondent, a part-time law practitioner and full-time executive for a local political candidate screening organization, was charged with violations of Canon 1, DR 1-102(A)(1)(4-6) alleging conduct which was fraudulent, deceitful or a misrepresentation of facts or circumstances; conduct prejudicial to the administration of Justice, and conduct that adversely reflected on Respondent's fitness to practice law. Respondent was also charged with a violation of Canon 6, DR 6-106(A) (3) which involves allegations of neglect of a legal matter. Respondent was also charged with violations of Canon 7, DR 7-101(1-3) (5), which involves failure of Respondent to seek the lawful objectives of his client through reasonably available means; failure to carry out a contract of employment entered into with a client; and conduct that is prejudicial or damaging to his client.

There were charges of two separate misrepresentations by the Respondent; one relating to Respondent's claim that he had filed a first and final accounting [of an estate] on November 11, 1974, and a second charge of misrepresentation in relation to Respondent's promise to file a supplemental account and keep the State Bar Grievance Administrator advised of his progress in closing this estate, which promise was made in 1977. The hearing panel determined, and the Board affirms a finding that there was no misrepresentation in regard to the filing of a first and final account on November 11, 1974. However, the Board disagrees with the finding of the hearing panel that Respondent committed a knowing misrepresentation of a material circumstance by his alleged promise to file a supplemental final account and otherwise keep the Grievance Administrator advised of his progress in 1977. Nothing on the record supports the allegations of a knowing misrepresentation of material fact or circumstance at any time during the handling of the estate in question.

The averments of neglect in the Complaint of the Grievance Administrator were never contested by the Respondent; in fact, counsel for the Respondent and the Grievance Administrator managed to expedite the hearings in this matter by a good faith attempt to stipulate, to the greatest

extent possible, to the allegations in the Complaint and the exhibits submitted in support thereof. In his argument before the Board, Respondent, through his counsel, acknowledged his culpability for the dilatory manner in which the probate estate remained open for several years longer than necessary as a result of neglect and procrastination on the part of the Respondent. The hearing panel noted, and this Board agrees, that the neglect in this matter can perhaps be attributed as much to inexperience as careless procrastination.

The Board has taken note of the fact that Respondent has paid from his own funds the aggregate of the interest and penalties assessed by the Internal Revenue Service against the estate in the amount of \$45,497.99 (as reflected by testimony in the transcript and the affidavit of Respondent dated July 13, 1978 and submitted as an exhibit herein). It is further noted that Respondent submitted no billing for attorney's fees in the probate matter in question and received no reimbursement other than statutory executor's fees in the amount of \$5,800; nor has any other attorney received any fees incidental to the probating of said estate. It is also noted on the record on appeal that Respondent has retained the services of competent counsel to assist him in the closing of the probate estate in question. Finally, there is no record of any previous misconduct on the part of the Respondent since his admission to practice in this state in 1958.

It is a well-established principle that the extent of discipline of attorneys is a matter of discretion of the court empowered to decide such matters. 7 Am Jur 2d, Attorneys at Law, sec. 18, pp 52-53. The Supreme Court has frequently enunciated its power to adjust orders of discipline affecting attorneys and has made such adjustments taking into consideration the equities of individual cases. See In re Estes, 390 Mich 585, 212 NW2d 903 (1973). The Attorney Discipline Board is the adjudicative arm of the Supreme Court for the discharge of its exclusive constitutional responsibility to discipline Michigan attorneys. GCR 1973, 959.1.

In consideration of the lack of fraudulent, deceitful or misrepresentative conduct on the part of Respondent and in light of the aforementioned factors in mitigation and pursuant to GCR 1963, 959.1, the discipline rendered by the hearing panel shall be reduced from a ninety-day suspension to a reprimand, with costs to be paid by Respondent as assessed by the hearing panel.

Costs of this appeal shall also be assessed to Respondent.

AFFIRMED IN PART AND REVERSED IN PART.