

IN THE MATTER OF JIMMYLEE GRAY,  
A Member of the State Bar of Michigan,  
Respondent  
File No. DP-163/81

Decided: March 17, 1983

OPINION OF THE BOARD

Respondent was disciplined for suspicion of conspiracy to obstruct Justice. Respondent appealed, challenging the findings of the hearing panel and claiming he was disciplined without notice of the charge against him. We agree. The hearing panel order of discipline is vacated and the formal complaint is dismissed.

In April, 1981, Respondent was retained as defense counsel in a criminal case. The defendant was charged with Assault with Intent to Commit Murder and Possession of a Firearm in the Commission of a Felony. The assaulted party was romantically involved with the criminal defendant (Tr, November 12, 1982, 20). She refused to testify claiming that the alleged crime was an accident.

The presiding magistrate in the district court incarcerated the witness pursuant to MCLA 617.25 until she was willing to testify (Tr, November 12, 1982, 19-20). The defendant requested respondent's intercession on his girlfriend's behalf (Tr, November 12, 1982, 20). Both the defendant and his girlfriend indicated they wanted Respondent to help obtain her release (Tr, November 12, 1982, 20; GA Exhibit 01; Tr, May 28, 1982, 4). Respondent initiated a habeas corpus action in Oakland County Circuit Court on behalf of the witness. Respondent's representation of the woman was limited to this action (GA Exhibit 01; Tr, May 28, 1982, 4).

Before the habeas corpus action could be concluded, the assaulted party agreed to testify and was released from custody.

The preliminary examination of the defendant was held on May 28, 1982. The district court judge raised the issue of an apparent conflict of interest tainting the Respondent's involvement in the criminal matter (GA Exhibit 01; Preliminary Exam Tr, 1-5). Respondent replied that he did not believe there was a conflict of interest which would prevent his representation of the criminal defendant. The judge filed a request for investigation with the Attorney Grievance Commission.

A formal complaint was filed against Respondent. Count I alleged violations of Canon 5, DR 5-105(A), employment by a client with interests adverse to those of another client, Canon 7, DR 7-104(A)(2), giving legal advice to a person with interests adverse to those of a client and Canon 9, DR 9-101, appearing to act in an improper manner. Count II (alleging misrepresentative characterizations of the district court) was dismissed by the hearing panel.

The hearing panel reprimanded Respondent for "suspicion of conspiracy to thwart the ends of justice" (Hearing Panel Report,

Conclusions of Law, Para 5, p 3-4). We find that the hearing panel made a mistake of law in regard to this finding.

An examination of the violations alleged discloses nothing which would give Respondent notice of a charge of “suspicion of conspiracy to thwart the ends of justice.” Neither DR 5-105(A) or DR 7-104(A)(2) cited in the complaint, deal with conspiracy to thwart the ends of justice. Likewise, the allegation of a violation of DR 9-101 is inappropriate - the subsections of this rule proscribe the appearance of impropriety in contexts unrelated to the circumstances in the case before us. None of the allegations in the formal complaint gave Respondent notice that he was being charged with conspiratorial misconduct.

Failure to give Respondent notice of the charge for which he was disciplined compels dismissal of the formal complaint. Proper notice of disciplinary charges is a fundamental requirement. In re Buffalo, 390 US 544, 88 S Ct 1222, 20 L Ed 2d 1n (1968); State Bar Grievance Administrator v Jackson, 390 Mich 147, 211 NW2d 38 (1973); State Bar Grievance Administrator v Freid, 388 NW2d 711, 202 NW2d 692 (1972).

Respondent's actions on behalf of the “hostile” prosecution witness might have been construed as an improper obstruction of the district court order intended to compel testimony. Under such a theory, however, the disciplinary complaint would have to allege violations of GCR 1963, 953(1) and DR 1-102(5) which forbid interference with the proper administration of justice. However, we find nothing in the record to support a finding of misconduct even if these rules had been included in the formal complaint.

The hearing panel report at one point states that there was no conflict based upon interests of the defendant and the witness (Hearing Panel Report, Conclusions, Para 2, p 3). Elsewhere in its report, however, the panel went on to conclude that there was a conflict in Respondent's representation of these two parties. (Hearing Panel Report, Para 4, p 3). We find, of course, that these conclusions are inconsistent. This ambiguity warrants repeated clarification - we conclude that there was no professional conflict. Respondent made full disclosure to both his client and the witness, clearly had their implicit if not express consent and limited his representation of the witness to the habeas corpus action.

We conclude from our examination of the record before us that Respondent made a good faith attempt to obtain a just result in a difficult situation. The hearing panel decision reprimanding Respondent is reversed because Respondent did not receive notice of the violation for which he was disciplined and because the hearing panel conclusion of a violation is not supported by the record. Further, there was no showing in fact of a conflict of interest in this case. The complaint is dismissed.

[Board Vice-Chairperson Lynn H. Shecter, Board Member William G. Reamon and Board Member Dr. McDevitt did not participate in the hearing or decision of this matter.]