

IN THE MATTER OF DOUGLAS E. H. WILLIAMS,
A Member of the State Bar of Michigan,
Respondent.
File No. DP-126/81

Decided: April 30, 1984

OPINION OF THE BOARD

Respondent was charged in a single count formal complaint with conversion of client funds in the amount of \$7,000. He was represented by counsel and ultimately filed an admission to the charges. The matter was adjourned by the hearing panel to afford Respondent an opportunity to obtain and submit mitigating evidence in support of a plea for probation under GCR 1963, 970.3. Respondent, as ordered by the hearing panel, filed on September 27, 1982 the requisite affirmative defense of physical and mental impairment. The hearing was thereafter concluded on November 16, 1982 at which time the panel considered substantial evidence of alcohol and cocaine abuse commencing some time in 1977 and resulting in psychiatric hospitalization in September of 1980.

The hearing panel determined that Respondent was eligible for probation under GCR 1963, 970.3 and issued its report and order on December 9, 1982 imposing a suspension of sixty (60) days in conjunction with probation for a period of two years ending in December, 1984. The Grievance Administrator filed a petition for review challenging the disciplinary action as inadequate. No stay having been requested, the suspension has since been served and Respondent although remaining on probation, was reinstated automatically on February 28, 1983 upon the filing of an affidavit of compliance with the hearing panel order.

The Board agrees with the Grievance Administrator that Respondent is not an appropriate candidate for probation and that probation would present serious risks not in the best interest of protecting the public, the courts and the legal profession as mandated by GCR 1963, 954. Allowing Respondent to practice law under the status of probation at this time would also be inconsistent with GCR 1963, 952.1 which states: "The license to practice law in Michigan is, among other things, a continuing proclamation by the Supreme Court that the holder is fit to be entrusted with professional and judicial matters and to aid in the administration of justice as an attorney and counselor and as an officer of the court."

The Board, by order dated April 22, 1983, remanded this matter to the Hearing Panel Chairperson who was appointed a Master for further proceedings and supplementary findings regarding the nature and extent of the psychological disorder and substance abuse addiction which Respondent claims caused him to convert the funds of his client. The Master filed a supplemental report on August 31, 1983 and a letter of clarification on September 12, 1983 referring to the psychological evaluation obtained from the Multi-Resources Center; the Master recommended affirmance of the panel order of probation. On September 30, 1983, the Board entered an order for additional psychological evaluation, a report of which was filed by Elliott D. Luby, M.D. on October 20, 1983. The parties were provided with a copy of this evaluation and the Board thereafter reconsidered the matter.

After careful review of the psychological and psychiatric evidence, as well as the record of the hearing panel proceedings and the well-drafted review briefs of both parties, the Board finds that the Respondent does not qualify for probation under GCR 1963, 970.3, primarily because there remains substantial doubt whether the psychological impairment and/or drug and alcohol addiction directly caused or contributed to the misconduct in this case, and further because Respondent's debilitated condition continues to render him ill-equipped to assume the responsibilities and high level of trust reposed in all members of the Bar by the Supreme Court. Therefore, the hearing panel order of probation is vacated and the discipline is increased from a suspension of sixty days to a

suspension for a period of eighteen (18) months; the reinstatement process shall include a psychological or psychiatric evaluation to assure Respondent's readiness to reenter the practice of law.

The admitted misconduct here ranks among the most serious breaches of professional ethics and seriously undermines public confidence in the legal profession. Depending upon several factors, discipline ranging from a suspension of three years to disbarment would be appropriate for such an offense. The Board, however, is mindful of the most unfortunate, severe family and personal conflicts which lead to alcohol and drug abuse and the gradual debilitation of Respondent including a deterioration of his capacity to make appropriate moral judgments. The Board also finds that Respondent has expressed genuine remorse and takes note of the opinion of Dr. Luby indicating that the Respondent demonstrates a positive motivation at this time and evidences no permanent character disorder.

However, the Board rejects other evidence offered in mitigation, to-wit: that Respondent consulted an associate attorney regarding the propriety of merely using the money of a client without the client's consent. If the Respondent truly had any doubt regarding the legitimacy of using such funds, the Code of Professional Responsibility, the State Bar Ethics Committee, or the Grievance Commission would have been far more authoritative sources. The credibility of the entire defense in this matter is reduced considerably by the transparency of the assertion of uncertainty regarding the propriety of such unauthorized use of the client's funds. Furthermore, this depiction of the transaction by the Respondent only highlights the deliberate nature of the act of conversion and diminishes the claim of a causal link between psychological states or conditions and the clearly prohibitive offense in question.

While the psychological and psychiatric evaluations provide an explanation of personal mitigating factors, there remains a very serious doubt regarding Respondent's continuing incapacitation and propensity for ongoing conflict and difficulty. Indeed, Respondent, as recently as the review proceedings, has not been able to come to grips with his alcoholism. Dr. Luby, stated in his report of October, 1983,:

“[Respondent] still drinks occasionally and does not fully recognize or acknowledge the fact that he is an alcoholic.”

Similarly, the hearing panel report of December 9, 1982 (at page 4), states:

“Since the discharge from the psychiatric unit, Respondent has continued with a program of outpatient therapy with the medical social worker at the University Hospital, though he has not joined Alcoholic's Anonymous or any other group of that nature. He admits to having a propensity for alcoholism, though he continues to drink socially.” (emphasis added).

While Respondent has sought some treatment for his problems, there has never been offered a specific, structured plan for treatment as required by GCR 1963, 970.3(4); nor has there been submitted any documentation of improvement.. While the Board is sympathetic to the depth of Respondent's personal suffering which is based upon a history of unfortunate familial circumstances, protection of the public, the courts and the legal profession is tantamount under the rules governing these disciplinary proceedings. Dr. Luby states, in the most current available diagnosis of the Respondent, that there is “chronic alcohol dependence” and “recurrent unipolar depression.” The extent of the psychiatric problem plaguing the Respondent is such that a substantial period of suspension with an opportunity for continuous intensive treatment is the only alternative consistent with the high standards imposed upon the legal profession and the applicable court rules.

ALL CONCUR.