

GRIEVANCE ADMINISTRATOR,
Petitioner/Appellant,
v
LEE O. WILLIAMS, P-22347,
Respondent/Appellee.

ADB 130-87

Decided: December 29, 1988

BOARD OPINION

The respondent misappropriated funds held in his trust account on behalf of a client. During the course of the Grievance Administrator's investigation, he falsely stated that his client's money was maintained in cash at his home. The hearing panel ordered that respondent's license to practice law be suspended for three years. On review of the petition filed by the Grievance Administrator seeking an increase in discipline in light of the serious nature of the misconduct and respondent's prior disciplinary history, the order of discipline is modified and the respondent's license to practice law is revoked.

During the year 1984, the respondent received funds from the sale of stock belonging to his neighbors and clients, Mr. and Mrs. Smith. Mr. Smith, who had been in a nursing home, died and the respondent continued to hold funds belonging to Dorothy Smith who was then 81. By December 24, 1984, the respondent held the total of \$5871.12 in his client trust account, all of it belonging to Mrs. Smith. During the next year and one-half, from January 1985 to June 1986, the respondent made various withdrawals from the account, eventually removing the sum of \$5860.25 of Mrs. Smith's money, in violation of his duty to maintain those funds in an identifiable account and to promptly pay them to Mrs. Smith as requested. Although respondent offered testimony that some of that money was kept at his home, he candidly admitted that approximately \$3000 was used to discharge his own financial obligations.

During the course of the Grievance Administrator's investigation, the respondent was interviewed by an employee of the Attorney Grievance Commission and was asked the whereabouts of the \$5800 belonging to Mrs. Smith. A written transcript of that interview was signed by the respondent and submitted to the Attorney Grievance Commission on June 11, 1987. In that statement, the respondent made the following representations:

Question: How much money do you have?

Answer: I have approximately \$5800.00.

Question: Where is this money?

Answer: In my home, I took it out of my trust account.

Question: And where is the money?

Answer: In my home in a safe place.

In his testimony to the hearing panel, the respondent conceded that his previous statement to the Grievance Commission was not accurate and that, to the best of recollection, he may have had only \$4000 at his home when that representation was made. The hearing panel concluded that the respondent was less than candid and that his statements constituted a knowing misrepresentation of a fact or circumstances surrounding a Request for Investigation within the meaning of MCR 9.104(6).

Conversion of client funds by attorneys in Michigan has resulted in a wide range of disciplinary sanctions depending upon the unique mitigating or aggravating factors recognized in each case. The Board has never lost sight, however, of the seriousness of such misconduct. In Matter of Douglas E. H. Williams, the Board considered the appropriate discipline where an attorney had admittedly converted client funds in the amount of \$7000. In discussing its decision to increase discipline from a sixty-day suspension with probation to a suspension of eighteen months, the Board stated:

"The admitted misconduct here ranks among the most serious breach 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." Matter of Douglas E. H. Williams, DP 126/81, March 30, 1984, Brd. Opn. p. 313.

The Board found in that case mitigating factors including severe family and personal conflicts which led to alcohol and drug abuse and a gradual debilitation including a deterioration of the respondent's capacity to make appropriate moral judgments. In other cases, the Board has recognized the mitigating effect of a prior unblemished record, Matter of John D. Hasty, ADB 1-87, Board Opinion February 8, 1988 (affirming three-year suspension); Matter of Kenneth Scott, DP 178/85, Board Opinion February 8, 1988 (increasing 180-day suspension to three-year suspension), and alcoholism, Matter of Muir B. Snow, DP 211/84, Board Opinion January 17, 1987 (increasing suspension from two years to three years).

The record in this case is devoid of such mitigating factors. No claim is made on the respondent's behalf that his use of his client's money was inadvertent or was the result of careless bookkeeping practices. (Compare to Matter of Robert R. Cummins, ADB 159-88, Board Opinion December 5, 1988 and Matter of Steven J. Lupiloff, DP 34/85, Board Opinion March 24, 1988.) Although the respondent attempted to articulate to the panel certain "personal" problems, no supporting medical or psychiatric testimony was offered. No causal link was established between the respondent's

conduct in 1985 and 1986 and certain personal or family problems occurring as long as fourteen years before.

Of greatest concern, however, is this respondent's prior disciplinary history. Respondent has been disciplined on three prior occasions and has been subject to an order of reprimand (File DP 69/80 effective 10/13/80); a thirty-day suspension (DP 13/83 effective 12/27/83); and a suspension of 120 days (DP 14/84 effective 3/14/85). The respondent's misconduct in those cases did not involve misuse of client funds but was based upon findings that he made misrepresentations to a client regarding the status of a case, failed to answer a Request for Investigation, failed to carry out a contract of employment, failed to properly supervise a non-lawyer, failed to communicate with clients, and failed to account to his client for his handling of numerous collection cases.

A 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 counsellor and as an officer of the court. MCR 9.103(A). Respondent's disciplinary history leads us to the conclusion that this individual is no longer entitled to the right and privileges which accompany the license to practice law. The respondent's license is revoked.

All concur.