

Grievance Administrator,
State of Michigan
Attorney Grievance Commission,

Petitioner/Appellant,

v

Robert L Wiggins, Jr., P 32359,

Respondent/Cross-Appellant.

Case No. 93-57-JC

Decided: April 4, 1994

BOARD OPINION

The respondent was convicted on May 21, 1990 in the Oakland County Circuit Court of the offense of resisting or obstructing a police officer in violation of MCL 750.479-B. The respondent was ordered to serve one year in the Oakland County Jail. That term of imprisonment commenced October 13, 1993.

In December 1992, the Michigan Court of Appeals affirmed the respondent's conviction. On April 4, 1993, a Judgment of Conviction was filed with the Attorney Discipline Board by the Grievance Administrator in accordance with MCR 9.120(A)(3).

On October 28, 1993, the respondent provided written notice to the hearing panel that he had been remanded to the Oakland County Jail on October 13, 1993, and that he was scheduled for enrollment in a work-release program on December 7, 1993. The respondent requested that any suspension imposed by the panel run concurrently with his regular incarceration. On November 9, 1993, the hearing panel ordered that the respondent be suspended for sixty days commencing October 13, 1993, the date of his incarceration. The Grievance Administrator has filed a petition for review seeking increased discipline.

Discipline in this case is increased to a suspension of 120 days and until the respondent has established his eligibility for reinstatement in accordance with MCR 9.123(B) and MCR 9.124. The suspension is deemed to have become effective November 9, 1993, the date of the hearing panel's order. In computing the 120-day suspension, the respondent shall be given credit for the sixty-one day period from November 9, 1993 to the date of his automatic reinstatement, pending appeal, on January 10, 1994.

In reviewing a decision of a hearing panel, the Board must determine whether or not the hearing panel's factual findings have

proper evidentiary support in the record. At the same time, the Board possesses a measure of discretion with regard to its ultimate decision. Grievance Administrator v August, 483 Mich 296, 304 (1991). In this case, there is no challenge to the panel's conclusions that the respondent was convicted of the crime of resisting or obstructing a police officer or that the imposition of professional discipline is warranted. The only issue to be reviewed is whether or not the sixty-day suspension imposed by the panel is appropriate under all of the circumstances.

The hearing panel received testimony from the respondent, respondent's wife, his secretary and several attorneys attesting to his character and reputation and the considerable impact which this conviction has had on the respondent's personal and professional life. These factors were appropriately considered in mitigation.

Nevertheless, we are deeply troubled by the evidence in the record which discloses that the respondent's conviction in 1990 was not the only stain on an otherwise unblemished record.

On March 20, 1987, then Grievance Administrator Michael Alan Schwartz filed a Judgment of Conviction pursuant to MCR 9.120 showing that the respondent had been convicted in the Oakland County Circuit Court of resisting and obstructing a police officer contrary to MCL 750.479-A; of being an habitual offender--second offense, contrary to MCL 769.10; possession of a firearm while intoxicated contrary to MCL 750.237; and use of cocaine contrary to MCL 335.341(5)(a). The hearing panel assigned to that case received evidence from the parties and issued a preliminary report on November 13, 1987. In that report, the panel took notice of the probationary terms imposed in the Oakland County Circuit Court along with the effect of the conviction upon the respondent's personal life, his family and his practice. The panel ordered that the proceedings be adjourned to January 1989.

That hearing panel conducted a further hearing on January 24, 1989 and issued its final report on March 24, 1989. The panel reported that, as a result of his 1987 conviction, the respondent had spent seventy-eight days in the Oakland County Jail Work-release Program, completed 100 hours of community service, participated in probation and successfully completed a substance abuse program. The hearing panel's order of March 24, 1989 reprimanding the respondent with the condition that he refrain from the use of alcohol or non-prescription controlled substances until December 31, 1990 was not appealed by either party.

It is against the background of the respondent's prior conviction and resulting reprimand that we weigh the sufficiency of the discipline imposed in this case. The testimony in the record below concerning the effect of the 1990 conviction on the respondent's family and his law practice would be given considerably more weight if it were not remarkably similar to the

testimony given to another panel in the earlier proceeding. We do not necessarily imply that the respondent's testimony on both occasions was not sincere. However, respondent's continued inability to conform his conduct to the standards expected of all citizens requires reinstatement proceedings to determine, among other things, that he is an individual who has a proper understanding of and attitude toward the standards that are imposed on members of the bar and that he can safely be recommended to the public, the courts and the legal profession as a person fit to aid in the administration of justice as a member of the bar and as an officer of the court.

The overriding duty to insure the protection of the public, the courts and the legal profession requires that the respondent undergo the reinstatement process described in MCR 9.124.

Board Members C Beth DunCombe, Elaine Fieldman, Linda S Hotchkiss, M.D. and Miles A Hurwitz concur.

Board Members John F Burns, George E Bushnell, Jr., and Marie Farrell-Donaldson would affirm the sixty-day suspension imposed by the hearing panel.

Board Member Albert L Holtz was recused.

Board Member Barbara B Gattorn did not participate.