

GRIEVANCE ADMINISTRATOR,  
Petitioner/Appellant,  
v  
Gerald W. Banks, P-23905,  
Respondent/Appellee.

ADB 176-87

Decided: April 12, 1988

BOARD OPINION

This matter comes before the Attorney Discipline Board upon the filing of a Petition for Review by the Grievance Administrator seeking modification of the effective date of a hearing panel order suspending Respondent's license for one year, retroactive to the commencement of a one-year suspension imposed in the State of Ohio. Upon consideration of the Grievance Administrator's position, the hearing panel's order is modified. Respondent's license to practice law in Michigan is suspended for one year, commencing on December 21, 1987, the date the hearing panel order was entered.

Disciplinary proceedings in this State against Respondent, Gerald W. Banks, were instituted September 7, 1987 by the Grievance Administrator's filing of an order issued by the Supreme Court of the State of Ohio suspending Respondent's license to practice law in that jurisdiction for one year effective December 24, 1986.

An Order to Show Cause was issued by the Attorney Discipline Board directing Respondent to appear before a hearing panel for proceedings in accordance with MCR 9.104 which states:

Proof of an adjudication of misconduct in a disciplinary proceeding by another state or United States court is conclusive proof of misconduct in a disciplinary proceeding in Michigan. The only issues to be addressed in the Michigan proceeding are whether the respondent was afforded due process of law in the course of the original proceedings and whether imposition of identical discipline in Michigan would be clearly inappropriate.

Respondent did not appear at the scheduling hearing before Wayne County Hearing Panel #16 on November 10, 1987 and has not communicated with the Attorney Discipline Board or the Attorney Grievance commission at any stage of these proceedings. Based upon the documents submitted which establish that Respondent was suspended by the Supreme court of the State of Ohio following the entry of findings of fact, conclusions of law and recommendations from the Board of commissioners on Grievances and Discipline of the Bar of the Supreme court of Ohio, the hearing panel filed an order on December 21, 1987 suspending Respondent's license in Michigan for a period of one year effective December 24, 1986.

We adopt the argument of the Grievance Administrator that MCR 9.104 does not require that the “identical discipline” imposed in reciprocal discipline be made retroactive to coincide with the discipline imposed in the other jurisdiction. Such an over-literal interpretation of the rule may, as in this case, result in the entry of an ex post facto suspension which, as a practical matter, may be unenforceable. When an attorney is suspended in another jurisdiction, immediate suspension in Michigan is not automatic. Following entry of the order by the Ohio Supreme court on December 24, 1986, Respondent Banks could have traveled to Michigan and continued to practice law in our courts so long as he maintained his active membership in the State Bar of Michigan. In fact, there is nothing in the record which indicates whether or not he did engage in the practice of law in Michigan during the last week of 1986 or the year 1987.

We affirm the hearing panel's decision to impose reciprocal discipline of a one-year term identical to the suspension in Ohio, but we rule that Respondent is entitled to reasonable notice of that suspension. Respondent's license to practice in Michigan is therefore suspended for one year effective December 21, 1987, the date the hearing panel order was mailed to the Respondent at the address which he was required to register with the State Bar of Michigan. In making this decision, the Board has considered the Grievance Administrator's prompt action in filing the Petition for Order to Show Cause after discovering that Mr. Banks had been disciplined in another state. We caution that substantial delay in the filing of such a petition might, in another case, produce a different result.