

State of Michigan
In The Supreme Court

Henry C. Mishkoff,

Plaintiff,

vs.

Attorney Grievance Commission,
State of Michigan,

Defendant.

Supreme Court
Case No. 125466

AGC File
No. 2401/03

Brief in Support of
Answer to Complaint for Superintending Control

ROBERT L. AGACINSKI (P-10065)
Grievance Administrator

CYNTHIA C. BULLINGTON (P-33989)
Assistant Deputy Administrator
Attorney Grievance Commission
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Counter-Statement of Facts

On September 18, 2003, Plaintiff filed a Request for Investigation with the Attorney Grievance Commission ("Commission") against Attorney Douglas W. Sprinkle (AGC File No. 2401/03). The Request for Investigation was served on Attorney Sprinkle on September 26, 2003, who filed an Answer to it on October 16, 2003.

Staff counsel's review of the information submitted by Plaintiff did not establish any evidence of professional misconduct. On the basis of the information furnished to the Commission by Plaintiff, staff counsel closed the investigation by letter dated October 20, 2003.

Additional correspondence was received from Plaintiff on October 28, 2003, which the Assistant Deputy Administrator treated as a request for reconsideration. On October 30, 2003, the Assistant Deputy Administrator wrote to Plaintiff advising him that the file would remain closed.

On November 7, 2003, additional correspondence was received from Plaintiff. On November 20, 2003, the Assistant Deputy Administrator wrote to Attorney Sprinkle requesting his response to new allegations raised by Plaintiff, which Attorney Sprinkle responded to on December 10, 2003.

On December 16, 2003, Attorney Sprinkle's correspondence was forwarded to Plaintiff for his comments, which were received on December 30, 2003. On January 7, 2004, the Assistant Deputy Administrator wrote to Plaintiff advising him that the file would

remain closed.

On or about January 20, 2004, Plaintiff filed the present Complaint for Superintending Control. Plaintiff's allegations that the Commission failed to thoroughly investigate his allegations of misconduct against Attorney Douglas W. Sprinkle are without merit.

ARGUMENT

The Attorney Grievance Commission Did Not Abuse Its Discretion In Dismissing The Plaintiff's Request For Investigation.

To justify a complaint for superintending control action pursuant to MCR 9.122(A)(2) Plaintiff must establish that the Attorney Grievance Commission abused its discretion when it closed his Request for Investigation. Leitman v State Bar Grievance Board, 387 Mich 596, (1972); Meyer v Attorney Grievance Commission, 406 Mich 1124 (1979). MCR 9.112; 9.114. No such showing has been made.

In his Request for Investigation, Plaintiff alleged that Attorney Sprinkle knowingly made false statements of material fact to a tribunal. The statement at issue was a claim that Plaintiff, an alleged cybersquatter, sought payment of \$1,000 to release a registered web domain name, which was actually the name of Attorney Sprinkle's client. Plaintiff states that he never had substantive discussions with Attorney Sprinkle. Attorney Sprinkle acknowledged that his statement to the court was inaccurate but only in regards to the timing of an offer to resolve the matter for \$1,000. Attorney Sprinkle thought the offer came at an earlier time in the

litigation process. While Attorney Sprinkle handled oral argument, it was his partner who had been more heavily involved in the action. Nonetheless, it is clear that, at some point, an offer was extant to resolve the matter for \$1,000. There is no evidence showing that Attorney Sprinkle knowingly misrepresented the timing of the \$1,000 offer. There is no evidence to support Plaintiff's other allegations of harassment.

The term "abuse of discretion" means far more than simply a difference of opinion between this Court and the Commission concerning the disposition of a Request for Investigation. Before an exercise of discretion can be deemed an abuse of discretion, "...the result must be so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias." Spalding v Spalding 355 Mich 382, 384-385 (1959). No abuse of discretion can be established in this matter.

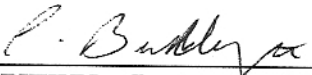
Conclusion

For the foregoing reasons, the Commission requests that the relief requested in Plaintiff's Complaint for Superintending Control be denied.

Dated: February 12, 2004

Respectfully submitted:

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Grievance Administrator


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