

STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,

Petitioner/Appellant,

v

Kerry Leon Jackson, P 41971,

Respondent/Appellee,

Case Nos. 00-162-GA; 00-181-FA

Decided: November 28, 2001

BOARD OPINION

The Grievance Administrator petitioned for review of the hearing panel order of reprimand entered in this matter on July 9, 2001. The Grievance Administrator seeks increased discipline and has requested the imposition of a 30-day suspension. The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118, including review of the record below, consideration of the brief filed by the Grievance Administrator and the arguments presented to the Board at a review hearing conducted on October 18, 2001. For the reasons discussed below, discipline in this case is increased to a suspension of 30 days.

The hearing panel was not persuaded, based upon the testimony of the complainant, that the respondent's representation of the complainant as set forth in Count I of the formal complaint involved professional misconduct warranting discipline. While the Board is inclined to agree with the hearing panel, further discussion of that issue is not necessary for the reason that the increased discipline requested by the Grievance Administrator is warranted in this case for other reasons.

It is uncontested that respondent failed to file a written answer to a request for investigation as alleged in Count II of formal complaint 00-162-GA; that he failed to answer formal complaint 00-162-GA; that he failed to answer formal complaint 00-181-FA; and that respondent was admonished by the Attorney Grievance Commission in March 2000 and November 2000 based, in part, on his failure to submit timely written answers to requests for investigation. The Grievance Administrator points out that in the absence of aggravating and mitigating factors, respondent's violation of a clear duty owed to the legal system would be considered under ABA Standard 6.23 which suggests that a reprimand would generally be appropriate. We agree with the Grievance Administrator, however, that the respondent's repeated failures to file timely responses to requests for investigation and formal complaints must be considered as a significant aggravating factor in this case.

While it is true that respondent provided some information in response to the underlying

grievance in this case in a transcribed statement at the office of the Attorney Grievance Commission, that information was obtained only after the Grievance Administrator had been put to the time and expense of demanding respondent's personal appearance. As the result of the respondent's failure to provide the written answer to a request for investigation required by MCR 9.113(A), both the Grievance Administrator and the complainant were deprived of an expeditious resolution of the complainant's grievance. As the result of respondent's failure to file the answers to formal complaints required under MCR 9.115(D)(1), the Grievance Administrator was deprived of the opportunity to prepare for a hearing in which the issues were framed in advance by properly filed pleadings.

It is always troubling when an attorney fails to comply with the obligations which are clearly spelled out in rules 9.113 and 9.115. However, when an attorney's disregard for those obligations continues, despite two recent admonishments for similar infractions, stronger measures may be called for.

Respondent has arguably expressed remorse, a mitigating factor identified under ABA Standard 9.32(l). Nevertheless, his belated expression of remorse is substantially outweighed by the aggravating effect of his unfortunate pattern of failing to comply with his obligations under the rules [ABA Standard 9.22(c)] despite prior admonitions [ABA Standard 9.22(a)]. That aggravation is sufficient to warrant an increase in discipline in this case from a reprimand to a suspension of 30 days.

Board Members Wallace D. Riley, Theodore J. St. Antoine, Nancy A. Wonch, Ronald L. Steffens, Marsha M. Madigan, M.D., and Marie E. Martell concurred in this decision.

Board Members Grant J. Gruel and William P. Hampton did not participate.