

Grievance Administrator,

Petitioner/Appellant,

v

John S. Synowiec, P 48140,

Respondent/Appellee,

97-293-GA; 97-315-FA

Decided: September 8, 1998

BOARD OPINION

The hearing panel found, by default, that respondent, John S. Synowiec, neglected a civil matter entrusted to him by a client, failed to return the unearned fees to that client, failed to answer a request for investigation and failed to answer the formal complaint. Respondent failed to appear before the panel at the scheduled hearing on January 13, 1998. Tri-County Hearing Panel #106 issued an order on May 5, 1998 suspending respondent's license for a period of ninety days and directing respondent to make restitution to complaint Hani Samona in the amount of \$400. The Grievance Administrator has petitioned for review on the grounds that respondent's complete failure to answer or appear at any stage of this disciplinary proceeding warrants, at a minimum, a suspension of 180 days coupled with reinstatement proceedings as outlined in MCR 9.123(B) and MCR 9.124. We agree. Discipline in this case is increased to a suspension of 180 days. The order for restitution is affirmed.

Unless other conditions are imposed, an attorney suspended for a period of 179 days or less may be automatically reinstated to the active practice of law by simply filing an affidavit of compliance in accordance with MCR 9.123(A) showing that the attorney has fully complied with the terms and conditions of the suspension. A

suspension of 180 days or more, on the other hand, triggers the reinstatement process described in MCR 9.123(B) and MCR 9.124(A).

During that process, the attorney seeking reinstatement must participate in a recorded interview conducted by the Grievance Administrator and must appear personally before a hearing panel to offer evidence in support of his or her reinstatement.

The Board has consistently ruled that when an attorney has utterly failed to respond to the Grievance Administrator's inquiries or to participate in proceedings before the panel or the Board, the burden must be shifted to the attorney to come forward in person. Under the current rules, this may only be accomplished by imposing a suspension of sufficient length to trigger the reinstatement process. Such a suspension is, in effect, an indefinite suspension which will remain in place unless and until the attorney offers an explanation as to his or her apparent inability or unwillingness to conform to the standards imposed on members of the bar.

The rationale for such a policy was articulated by the Board in Grievance Administrator v Peter H. Moray, DP 143/86 (1987). In that opinion, the Board stated:

By suspending for a period which will be automatically terminated by the filing of an affidavit of compliance, the discipline system sends a message to the public and to the profession that we are willing to gamble that an attorney's repeated failure to comply with the rules is not the result of a physical or mental problem which jeopardizes the rights of the attorney's clients or the administration of justice.

We are not willing to take that chance. Apart from any considerations of deterrence, we conclude that protection of the public and the legal system demands that, as a general rule, the respondent who has failed to answer a request for investigation, failed to answer the formal complaint and failed to appear before the hearing panel should be suspended for a period [requiring reinstatement proceedings]. Grievance Administrator v Moray, Board Opinion, p. 4.

For the reasons stated in Grievance Administrator v Moray, supra, the suspension imposed by the panel is increased to 180 days and until respondent has established his eligibility for reinstatement in accordance with MCR 9.123(B) and MCR 9.124.

Board Members Elizabeth N. Baker, C. H. Dudley, Barbara B. Gattorn, Grant J. Gruel, Albert L. Holtz, Michael R. Kramer, Roger E. Winkelman and Nancy A. Wonch concur in this decision.

Board Member Kenneth L. Lewis did not participate in this decision.