

GRIEVANCE ADMINISTRATOR,
Petitioner/Appellant,
v
JOHN C. MOURADIAN, P-18040,
Respondent/Appellee.

File Nos. DP 82/86; DP 149/86

Argued: December 17, 1986

Decided: January 30, 1987

OPINION OF THE BOARD

The Respondent, John C. Mouradian, was appointed by the Wayne County Circuit Court in July 1985 to serve as appellate Counsel for Mr. Herbert Jackson and to represent Mr. Jackson in post-conviction proceedings. In March 1986, Mr. Jackson submitted a Request for Investigation to the Attorney Grievance Commission advising that he was incarcerated in the State prison at Jackson and complaining that his court appointed attorney had taken no action and that Mr. Mouradian had refused to reply to at least three written inquiries regarding the status of the case. That Request for Investigation was served on the Respondent on March 26, 1986. When no answer was received, a written notice was sent to Respondent reminding him of his obligation under the Court Rules to submit an Answer.

On July 11, 1986, the Grievance Administrator served a Formal Complaint on the Respondent charging violations of the Michigan Court Rules and the Code of Professional Responsibility for Mr. Mouradian's failure to take action on behalf of Mr. Jackson and for his failure to answer the Request for Investigation. Respondent's Default for failure to answer that Formal Complaint was filed August 7, 1986 and a second Complaint was filed and served charging that the failure to answer a Formal Complaint is itself an act of professional misconduct. Respondent filed no answer to that Complaint and a second Default was filed.

Although the Respondent did not attempt to file a written answer to either Complaint with the Attorney Discipline Board as required by MCR 9.115(D), he did, apparently, submit a letter to the Grievance Administrator in late July 1986 (the Respondent's letter to the Grievance Administrator and the Administrator's reply are referred to by the parties and the panel members in the transcript of the panel proceedings of September 22, 1986. Those letters, however, were neither filed with the Attorney Discipline Board nor offered into evidence at the hearing and they are not a part of the record before us). Respondent's oral motion on the day of the hearing that his Defaults be set aside was denied by the Panel and it concluded that Respondent's professional misconduct as set forth in the two Formal Complaints was established. Specifically, Respondent was found to have neglected his duty to represent Herbert Jackson competently and expeditiously and to advise his client of the status of his efforts. He was found to have violated his duty under the Court Rule to answer the Request for Investigation filed by the Grievance Administrator and he was found to have violated his duty prescribed by Court Rule to answer the Formal Complaint, all in violation of

MCR 9.104(1-4)(7); MCR 9.113(A) and Canons 1, 6 & 7 of the Code of Professional Responsibility; to wit: DR 1-102(A)(4-6); DR 6-101(A)(3) and DR 7-101(A)(B).

Although in Default, the Respondent was afforded an opportunity at the hearing to enter mitigating evidence and the Panel Report summarizes the Respondent's statements to the Panel that, in his opinion, his clients had received good professional representation and that these disciplinary proceedings were the result of a personal animosity toward him on the part of the Grievance Administrator and his staff. The Panel Report also noted the aggravating effects of Respondent's prior disciplinary history and concluded that a 120 day suspension was appropriate in this case. The Petition for Review filed by the Grievance Administrator seeks an increase in the level of discipline and asks that it be reviewed in light of this Respondent's five prior disciplines.

The Board has reviewed this Respondent's disciplinary history and find that its aggravating effects on the misconduct established in this case warrants an increase in discipline to a suspension of 180 days.

Respondent's personal appearance before the Board at a review hearings conducted in December 1986 marked his fifth such appearance before this Board in four years.

In File DP 114/82, a Hearing Panel concluded that Respondent's failure to file pleadings on behalf of a client in a criminal matter warranted a Reprimand but that his failure to answer the Request for Investigation served by the Grievance Administrator should result in a 30 day suspension. In that case, Respondent had not filed an answer to the Formal Complaint but in his appearance before the Board, persuaded this body to reduce discipline to a Reprimand in light of his prior blemished and the mitigating effect of a heart attack in 1982 which disrupted his personal and professional life. That reprimand was effective in April 1983.

In June 1983, Respondent's license to practice law was suspended for a period of 30 days. In that case, we affirmed the suspension ordered by the Hearing Panel for Mr. Mouradian's failure to file a Claim of Appeal on behalf of a client, his failure to answer a Request for Investigation, and his failure to answer the Formal Complaint. Respondent's third discipline in the year 1983 was a Reprimand imposed in File DP 12/83 for Respondent's failure to file a brief as appointed appellate Counsel and for his failure to answer a Request for Investigation. That Order was not challenged by either party and was not considered by the Board.

In 1984, the Board heard further arguments from this Respondent in connection with a 60 day suspension imposed as the result of his failure to file pleadings for a client in a criminal matter, his failure to answer a Request for Investigation and his failure to answer a Formal Complaint. We affirmed the 60 day suspension which became effective July 30, 1984.

On August 27, 1986, Mr. Mouradian appeared before this Board appeared to argue for the reduction of a 121 day suspension imposed by a Hearing Panel in Files DP 131/84 and DP 130/85, upon a finding that he had failed to comply with cost reimbursement provisions in three prior Orders of Discipline and that he had failed to answer a Formal Complaint. By a majority, the Board declined to affirm that suspension and ruled that to subject Respondent to reinstatement proceedings

which accompanies any suspension in excess of 119 days would be “unduly harsh” in view of his status as a sole practitioner still suffering from the physical; emotional and economic hardships resulting from a heart attack in 1982. Discipline in that case was therefore reduced to a suspension of 60 days (Files DP 131/84 and DP 130/85--suspension is stayed upon Respondent’s filing of an application for Leave to Appeal with the Supreme Court, and that stay is currently in effect).

It is against the background of Respondent's prior appearances before the Board that we now consider the all too similar findings by a Hearing Panel that Respondent has neglected a legal matter entrusted to him by a client, that he failed to communicate with that client, that he refused to answer a Request for Investigation served by the Grievance Administrator and that he has not seen fit to answer either of the Formal Complaints consolidated for hearing before the Hearing Panel. We note that Respondent has, in four prior matters, been found to have neglected a legal matter on behalf of a client. He has, in the course of these proceedings, failed to answer five Requests for Investigation although such answers are specifically required MCR 9.113(A) [former GCR 962.1]. Finally, Respondent has not answered a single one of the ten Formal Complaints which have been served upon him.

In previous appearances before the Board, Respondent has stressed the devastating effect which his 1982 heart attack had upon his ability to function as a sole practitioner and, indeed, the Board did conclude that Respondent's inattention to several appellate matters was mitigated, if not excused, by his testimony regarding that heart attack. In this case, however, the record below is devoid of any evidence suggesting a causal connection between Respondent’s recovery from a heart attack in early 1982 and his failure to take appropriate action following his appointment as appellate counsel for Herbert Jackson in July 1985. Although the Respondent stated in mitigation that his client had decided not pursue a motion for a new trial for fear that his sentence could be increased, the charges that Respondent failed to take action on behalf of his client and failed to reply the client’s legitimate inquiries are un rebutted. Reviewed as a part of a pattern of misconduct established in previous cases, Respondent’s lack of effort on behalf of his client is a matter of great concern.

“It is the view of this Board that practitioners responsible for the appeal of criminal matters carry a particularly serious responsibility in preserving the constitutional safeguards of their clients and, in the case of an imprisoned client, maintaining communications which are obviously of such importance to the prisoner”, In the Matter of George Harrington, 35542-A (1979) (Brd. Opn. p. 5).

Similarly, Respondent has offered no legitimate excuse for his failure to answer the Request for Investigation. Apart from any other aspect of Respondent's record, his failure to answer this Request for Investigation, coupled with similar failures on four prior occasions, would lead us to the conclusion that Respondent is indifferent or contemptuous to the requirements of MCR 9.113(A).

The Attorney Discipline Board has emphasized that failure to answer a Request for Investigation within the time allowed is misconduct per se, MCR 9.104(7) and MCR 9.113(B)(2); Schwartz v Kennedy, DP 40/80, 1981 (Brd. Opn. p. 132); Schwartz v Ruebelman, DP 5/81, 1981

(Brd. Opn. p. 150); In Re: Smith, No. 35229-A, 1979 (Brd. Opn. p. 21) As the Board explained in Kennedy:

“Members of the Bar have an unavoidable duty to answer Requests for Investigation . . . a Respondent failing to answer Requests for Investigation may be considered professionally irresponsible and contemptuous . . . this Board has recognized that failure to answer also indicates a conscious disregard for the rules of the Court.”, Schwartz v Kennedy, DP 40/80, 1981 (Brd. Opn. p. 132)

Closely related to an attorney's obligation to answer Requests for Investigation is the duty imposed by MCR 9.115(D)(1) file an answer to a Complaint in formal disciplinary proceedings instituted by the Grievance Administrator. Failure answer a Formal Complaint is, per se, an act of professional misconduct which warrants discipline, MCR 9.104(7). Upon Respondent's failure to file a timely answer to Complaint No. DP 82/86, a second Complaint was filed by the Administrator charging that the failure to answer the first Complaint constituted a separate act of misconduct. Similar Complaints have been filed against this Respondent in three prior discipline proceedings (See Complaints DP 19/83; DP 122/83 and DP 130/85) In each instance, the Respondent failed to answer the second Complaint. In all, this Respondent has been served with ten Formal Complaints. Each and every Complaint has been followed by a Default for Respondent's failure to answer.

This Board has, perhaps, been too lenient in its imposition discipline in its prior decisions involving Respondent Mouradian. The imposition of two Reprimands, a 30 day suspension and two 60 day suspensions have, apparently, failed to make an impression. We are not optimistic that an increase in discipline to a suspension of 180 days will foster a new-found understanding by Mr. Mouradian of his obligation to comply with the rules. We note, however, that the Rules governing the reinstatement of attorneys suspended for 120 days or more will require that Mr. Mouradian appear before a hearing panel and establish that he has proper understanding and attitude toward the standards that are imposed on members of the Bar and that he will conduct himself in conformity with those standards in the future, MCR 9.123(B)(6). The findings of the panel are affirmed. The Order of Discipline is modified and discipline is increased to a suspension of 180 days.

Martin M. Doctoroff, Remona A. Green, Hanley M. Gurwin, Odessa Komer all concurred.