Grievance Administrator,

Petitioner/Appellant,

v

Perry T. Christy, P 11874

Respondent/Cross-Appellant.

94-125-GA

Decided: January 18, 1996

BOARD OPINION

The Grievance Administrator petitioned for review of a hearing panel order suspending the respondent's license for 160 days on the grounds that a higher level of discipline is warranted in this case. On August 29, 1995, the Board granted the respondent's motion to file a delayed petition for review. The respondent argues that 1) the hearing panel erred by recognizing the respondent's default; 2) the panel's findings of misconduct were not supported by the evidence; 3) a suspension of 160 days is unduly punitive; and, 4) the hearing panel did not have jurisdiction to order restitution to the client in the amount of $403.29.

we affirm the hearing panel's findings of misconduct and their decision to order restitution to the complainant. We conclude, however, that the respondent's misconduct warrants an increase in discipline to a suspension of one year.

The Grievance Administrator filed a four-count formal complaint in this matter on July 19, 1994 together with a discovery demand pursuant to MCR 9.115(F)(4). The respondent filed an answer, answer to discovery request and demand for discovery on August 18, 1994. On August 30, 1994, the Grievance Administrator filed a motion to strike the respondent's answer and/or a motion for more definite answer pursuant to MCR 2.115(A). At the commencement of

the scheduled hearing on September 13, 1994, the hearing panel chairperson ruled, on the record, that the respondent's answer was satisfactory and that the Administrator's motion for more definite statement was denied. The record does not support the respondent's argument that he was improperly defaulted or that the panel's findings of misconduct were based upon a default. The respondent's confusion on this point apparently arises from the panel's decision to proceed with the hearing on September 13, 1994 despite the respondent's unexplained failure to appear and the panel's subsequent denial of the respondent's request to reopen that hearing.

Careful review of the record below discloses that the proceedings before the hearing panel were conducted appropriately. The respondent does not dispute that the Grievance Administrator served him with copies of the formal complaint, the discovery demand and a notice of hearing setting the matter for hearing on September 13, 1994 by sending those documents to the respondent by regular and certified mail on July 21, 1994. On August 18, 1994, the respondent filed his answer to the complaint. In explaining to the panel on October 24, 1994 why he did not appear at the September 13, 1994 hearing, respondent referred only to the notice which was mailed to the parties setting a hearing for October 24, 1994. However, that notice was prepared and mailed on September 14, 1994. There is simply no basis for the respondent's unexplained and unsupported assumption that the hearing on September 13, 1994 had been adjourned.

At that hearing, the Grievance Administrator's counsel appropriately advised the panel that, despite the respondent's non-appearance, his filing of an answer to the complaint precluded the entry of a default. She was therefore obliged to introduce evidence in support of the charges of misconduct. [1]

We have reviewed the record below for proper evidentiary support for the hearing panel's findings and conclusions on the

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[1] See Grievance Administrator v VanTreese, ADB Case No. 90-137-GA, (Brd. Opn. 2/7/92.

charges of misconduct in the formal complaint. Grievance Administrator v August, 438 Mich 296; 475 NW2d 256 (1991). Having found ample evidentiary support in the whole record for the hearing panel's findings as to misconduct, they are affirmed.

We have also considered the hearing panel's decision to order restitution to the respondent's former client in the amount of $403.29. The hearing panel reviewed the respondent's billing records, including a statement which was prepared, but not presented to the client, in July 1994. The panel concluded, that at the time the Request for Investigation was filed, the client was owed a credit of $403.29. We agree with the panel that, under the circumstances of this case, restitution of the amount owed to the client at the time the Request for Investigation was filed is appropriate.

Finally, we have considered the Grievance Administrator's request for increased discipline. Of particular concern to the Board are the respondent's misrepresentation to his client in June 1993 that the client's case was active, the respondent's misrepresentations to the client in September 1993 that the case was still pending but that additional discovery would require the payment of additional fees, and his false statements in his answer to a Request for Investigation that he did not know the case had been dismissed.

In Grievance Administrator v Ann Beisch, DP 122/85, Brd. Opn. (1989), the Board increased discipline from a suspension of thirty days to 120 days [the minimum suspension at that time required to trigger reinstatement proceedings under MCR 9.123(B)] for that respondent's misrepresentations to a client regarding the status of a criminal appeal. Although the Board noted there that the respondent had a prior unblemished record and that her actions were neither deliberate or calculated attempts to injure the client, the Board ruled that such conduct reflects directly upon an attorney's character. In this case, the respondent's misrepresentations to the client were accompanied by misrepresentations to the Grievance Administrator. The making of false statements during the

disciplinary process is recognized as an aggravating factor when considering the appropriate level of discipline which should otherwise be imposed. See ABA Standards for Imposing Lawyer Sanctions (1986) Sec. 9.22(f). The aggravating effect of such statements are magnified when, as in this case, a pattern of deception has emerged.

At the review hearing conducted by the Board on December 14, 1995, the Grievance Administrator's counsel was invited to suggest an appropriate level of discipline in this case. We adopt the Administrator's recommendation that discipline be increased to a suspension of one year.

Board Members George E. Bushnell, Jr., C. Beth DunCombe, Elaine Fieldman, Barbara B. Gattorn, Miles A. Hurwitz and Michael R. Kramer concur.

Board Members Marie Farrell-Donaldson and Albert L. Holtz did not participate.