Grievance Administrator,

Petitioner/Appellee,

v

Frederick A. Patmon, P-18695,

Nos. 93-47-GA; 94-157-GA.

Decided: April 24, 1997

BOARD OPINION

Respondent was suspended for 90 days in an earlier case (DP 66/85). The two formal complaints in these consolidated cases allege, among other things, that respondent continued to practice during that suspension. The hearing panel found that respondent committed misconduct, and entered an order suspending him for 180 days. We affirm.

I. Facts.

A. Grievance Administrator v Patmon, No DP 66/85.

On December 28, 1989, a hearing panel found that Mr. Patmon had committed misconduct (failing to return money given to him by his client, James DelRio, which was intended for investment in a limited partnership). The panel suspended respondent for 90 days. Respondent petitioned for review and the Board affirmed.[1] Respondent then sought leave to appeal from the Michigan Supreme Court. Leave was denied in an order dated May 31, 1991 (S Ct No 89921).

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[1] As to the level of discipline, the Board said:

> The withdrawal of the Grievance Administrator's petition for review precludes our consideration of whether an increase in discipline would be appropriate. We therefore emphasize that the decision to affirm a ninety-day suspension in this case will not prevent the Board from considering the imposition of more stringent discipline in future cases involving the willful failure to deliver funds entrusted by a client. [GA v Patmon, DP 66/85 (ADB 1990).]

When the Supreme Court order was issued, respondent was representing a client in a Wayne County Circuit Court action captioned Edward J. Holland, Jr. v Jobete Music Co, Inc, et al, No 88-815355-CK. Respondent was also representing a client named Avis Holmes in a case before the Michigan Court of Appeals.

On June 6, 1991, respondent filed a motion with the Michigan Supreme Court entitled: "Respondent/Appellant's Motion for Stay of Discipline And Order of 5/31/91, Pending Filing of and Decision on, Motion for Reconsideration and Pending Appeal to the U.S. Supreme Court."[2] In orders dated August 5, 1991, the Michigan Supreme Court denied respondent's motion for stay,[3] and his motion for reconsideration.[4]

Also on June 6, 1991, this Board sent a standard letter (enclosing respondent's order of discipline) to various courts, agencies, and bar associations, notifying the recipients of the suspension. A copy was sent to respondent and his counsel. Respondent's counsel replied to this notice in a letter dated June 11, 1991.[5] The June 11, 1991 letter claims that "the Supreme Court's order of 5/31/91 has not become effective," citing MCR 7.313(D) and (E). The letter also states: "As soon as Respondent received notice of the Supreme Court's order of 5/31/91, an appropriate motion for stay was filed . . . ."

B. Grievance Administrator v Patmon, No. 93-47-GA.

The First Amended Formal Complaint in the case numbered 93-47-GA alleges that respondent "failed to notify opposing counsel or the tribunal, in the Holland v Jobete case, that his license to practice law had been suspended" (¶ 13[b]). The complaint also alleges that respondent

> continued to practice law and to hold himself out as a licensed Michigan attorney, after the

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[2] Petitioner's exhibit #5.

[3] Petitioner's exhibit #7.

[4] Petitioner's exhibit #8.

[5] Attached as part of Plaintiff's exhibit 15.

> effective date of the Order of Suspension, in that on the dates of June 12, 14, 17-21, 1991, he appeared in the State of California, without a license to practice law in that state . . . and deposed certain witnesses on Mr. Holland's behalf in the Holland v Jobete litigation. [¶ 13(c).][6]

The hearing panel found that these allegations were proven by a preponderance of the evidence and that these acts violated several rules.

The record reflects that the defendants in Holland v Jobete were represented by attorneys James Vlasic and David Nelson. They testified before the panel that respondent deposed certain witnesses in California on June 12, 14, 17, 18, 19, 20, and 21, 1991 (Tr 5/10/95, pp 21, 66-67). They learned that respondent had been suspended effective May 31, 1991, according to a notice in Michigan Lawyer's Weekly (part of Respondent's exhibit 2). They wrote to the State Bar of Michigan for an ethics opinion, and received one telling them that they had a duty to report respondent's conduct (id.). On October 4, 1991, they reported the conduct to the Attorney Grievance Commission, attaching pages from the deposition transcripts (id.). Both Vlasic and Nelson testified that they received no notice from respondent regarding his suspension (Tr 5/10/95, pp 24, 69). Respondent did not testify.

C. Grievance Administrator v Patmon, No 94-157-GA.

The formal complaint in case 94-157-GA contains the following allegations, which the panel found were sustained by a preponderance of the evidence and were grounds for discipline:

> Respondent violated his duties and responsibilities in that he continued to hold himself out as an attorney and to practice law during his suspension and to otherwise violate the terms of the Order of Discipline, as follows:
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> a) He failed to remove himself as an attorney of record for the plaintiff in Holmes v National Union Fire Insurance Company, et al, Court of Appeals Case No. 117857;

[6] The allegations in ¶ 13(a) were dismissed by the panel.

> b) He failed to notify the tribunal and the opposing party of his suspension in the Holmes case or to advise the tribunal by written notice, of his disqualification from the practice of law;
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> * * *
>
> d) During the period of suspension he continued to file, or cause to be filed, pleadings on behalf of the plaintiff in the Holmes appeal; . . . [Formal Complaint, ¶14.][7]

Petitioner's exhibit #9 is a certified copy of a document entitled "Reply to Answer of Defendants-Appellees to Plaintiff-Appellant's Motion for Rehearing." It was signed by respondent and was filed with the Michigan Court of Appeals on June 11, 1991, in the Avis Holmes v NUFIC case.

Attorney John Jacobs was respondent's opposing counsel in Holmes v NUFIC. Respondent also named him as a defendant in the case. Jacobs testified that he never received a notice from respondent indicating that he was suspended. (11/2/95 Tr, p 67.)

Petitioner's exhibit 10 is a certified copy of the docket entries by the Michigan Court of Appeals in Holmes v NUFIC. It contains no indication that respondent notified the Court of his disqualification to practice law, or that he removed himself as attorney of record. Respondent introduced no evidence to rebut these allegations.

II. Sufficiency of the Evidence and Propriety of the Panel's Legal Conclusions.

Respondent asserts generally that the Grievance Administrator did not meet his burden of proof. See Respondent's Brief, p 12 (citing to "[e]ntire record"). Respondent also makes more specific arguments.

First, respondent asserts that "the AGC presented no evidence to show that John Jacobs was an opposing party." This is simply incorrect. Petitioner's exhibit #10 lists Mr. Jacobs as a party to

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[7] The panel dismissed the allegations in subparagraphs (c), (e), and (f) of ¶ 14.

the appeal, with the designation DF-AE (defendant-appellee). Petitioner's exhibit #12 contains the Court's opinion which expressly states that Mr. Jacobs was named as a defendant. Holmes v NUFIC, unpublished opinion per curiam of the Court of Appeals, decided April 25, 1991 (Docket No 117857), p 1. Moreover, Mr. Jacobs testified to this fact.

Respondent raises other spurious arguments in this regard, only two of which we shall address.

Respondent apparently argues the panel incorrectly found that he filed a "pleading" in the Holmes appeal after he was suspended, and/or that the complaint failed to give him notice of the charges. It is true that while most lawyers use the term "pleading" in a generic sense to refer to most papers filed with courts, the definition of pleading contained in MCR 2.110(A) does not include briefs, or a response to a motion or a reply thereto. But, respondent's overly literal argument is without merit. It misses the clear import of the charge in paragraph 14 of case 94-157's formal complaint -- respondent continued to represent a client in the Court of Appeals after his suspension became effective. The complaint (quoted above) effectively informed respondent of the charge against him and in no way prejudiced his opportunity to defend himself adequately. Grievance Administrator v Crane and Roth, 400 Mich 484; 255 NW2d 624 (1977).

Respondent also points out that Vlasic was not an opposing party in the Holland v Jobete case. Apparently, respondent contends that he had no duty to notify opposing counsel (Vlasic) of his disqualification from the practice of law, and, therefore, that the panel erred in finding misconduct on the charge that respondent "failed to notify opposing counsel . . . in the Holland v Jobete case." (Case no. 93-47-GA, ¶ 13[b].) A suspended attorney is required in litigated matters to "file with the tribunal and all parties a notice of the attorney's disqualification from the practice of law." MCR 9.119(B). Except in certain enumerated circumstances not applicable here, "[s]ervice required or permitted to be made on a party for whom an attorney has appeared in [an] action must be made on the attorney . . . ." MCR 2.107(B).

In sum, respondent can offer nothing to factually challenge the charges that he continued to hold himself out as an attorney and practice law while suspended. With respect to case 93-47-GA, we find ample evidentiary support for the panel's conclusion that respondent violated MCR 9.104(1), (4), (8), and (9). We also find ample evidentiary support, in case 94-157-GA, for the panel's conclusion that respondent violated MCR 9.104(1), (4), (8), and (9), as well as MRPC 3.4(c) and MCR 9.119.

In addition to respondent's challenge to the sufficiency of the evidence, respondent argues that he was not really suspended at the time he conducted the depositions in Holland v Jobete and filed the reply to an answer to his motion for rehearing in the Holmes v NUFIC appeal.

III. The "continuing automatic stay" issue.

Respondent argues that the order of discipline in the underlying case was not effective until 21 days after the Michigan Supreme Court denied leave to appeal on May 31, 1991. Respondent argues that the panel erred in concluding otherwise. We disagree. Although the law is clear and well-settled, we address this issue at some length because it relates to some of respondent's primary claims on review.

A.

Respondent asks this Board to adopt the conclusion set forth at the first full paragraph on page 8 of his brief:

> Respondent submits that the proceedings in DP 66/85 were stayed by ADB final order of 8/14/90, upon entry of the Mich S Ct order of 5/31/91: (1) by operation of MCR 9.122(C) 21 days after the "conclusion of [Respondent's] appeal or further order of the Supreme Court" (which didn't occur before 6/21/91); and/or (2) until 21 days after the conclusion of Respondent's appeal, or alternatively, at the least, until 21 days after 5/31/91, by continuation of the automatic stay provisions of MCR 9.115(J)(3) -- MCR 9.118(D) -- MCR 9.122(C).

MCR 9.115(J)(3) provides that: "The order of discipline shall take effect 21 days after it is served on the respondent unless the

panel finds good cause for the order to take effect on a different date . . . ." Similarly, MCR 9.118(D), which applies after this Board has conducted its review, provides that: "A discipline order is not effective until 21 days after it is served on the respondent unless the board finds good cause for the order to take effect earlier." These rules do not afford respondent a stay after the Michigan Supreme Court has denied leave to appeal, nor does the rule which expressly governs in that situation (MCR 9.122).

When respondent filed an application for leave to appeal from the Board's decision, he was entitled to a stay under MCR 9.122 which provides in pertinent part:

> **(C) Stay of Order.** If the discipline order is a suspension of 179 [119 at the time of respondent's suspension] days or less, a stay of the order will automatically issue on the timely **filing of an appeal** by the respondent. The stay remains effective until **conclusion of the appeal** or further order of the Supreme Court. The respondent may petition the Supreme Court for a stay pending appeal of other orders of the board. [Emphasis added.]

In addition to MCR 9.122(C), other rules make it clear that the stay ended when the order denying leave to appeal was entered. See MCR 7.313(E) ("The filing of a motion for reconsideration does not stay the effect of the order addressed in the motion."); MCR 7.317(D) ("Unless otherwise stated, an order or judgment is effective the date it is entered."). See also, Eston v Van Bolt, 728 F Supp 1336, 1340-1341 (WD Mich, 1989) (attorney not deprived of due process when additional discipline proceedings commenced for practicing while suspended; attorney knew or should have known that stay of initial suspension was dissolved upon entry of Michigan Supreme Court's order denying application for leave to appeal).

B.

Respondent subpoenaed Corbin Davis, Clerk of the Michigan Supreme Court, and John Van Bolt, Executive Director of the Attorney Discipline Board, and questioned them as to their understanding of the effect of the Court's May 31, 1991 order denying respondent leave to appeal. He now argues that the panel's

admission of the testimony was "highly prejudicial and egregiously erroneous." We disagree.

First, this argument is not preserved for appeal. MRE 103(a)(1).[8] Second, a review of the record shows that the panel was aware of its responsibility to find and interpret the law.[9] Compare Grievance Administrator v Dennis M. Hurst, No 95-32-GA (ADB 1996) (rejecting Administrator's claim that admission of expert legal testimony required reversal). Finally, the panel reached the correct legal conclusion.

This case does not present a novel question. This Board has previously rejected the argument advanced by respondent here. In Grievance Administrator v Hubert J. Morton, Jr., DP 135/86 (ADB 1988), we explained in detail the effect of the rules under similar circumstances:

> Both parties filed timely applications for leave to appeal to the Supreme Court and it is agreed by both parties that the suspension of the respondent's license was stayed while the appeals were pending. On March 5, 1986, the Supreme Court entered an order denying application for leave but, without further comment, increasing the respondent's suspension from sixty to ninety days. Mr. Morton acknowledges receiving that order within a day or two and he concedes that he performed

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[8] "Error may not be predicated upon an erroneous ruling which admits or excludes evidence unless a substantial right of the party is affected, and . . . [if evidence is admitted] a timely objection or motion to strike appear of record, stating the specific ground of objection . . . ." MRE 103(a) (emphasis added).

[9] For example, counsel for the Grievance Administrator asked Mr. Van Bolt on cross-examination whether the order of discipline was effective on May 31, 1991 (Tr 5/10/95, p 142). Respondent's counsel did not object (id.). On redirect, respondent re-entered the area with Mr. Van Bolt and the following exchange ensued:

> CHAIRMAN URSO: You're asking Mr. Van Bolt to, I think, make legal decisions --
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> MR. YOUNG: Well, he's been making legal decisions on cross-examination . . ., your honor.
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> CHAIRMAN URSO: Well, I'm not sure he has. He asked him to walk us through the procedure, but you're taking us one step further. I mean, if no one has any objection to listening to Van Bolt on the law, I suppose we could take that, but isn't that our job. I mean, I'm not jealously guarding our parameters here, but isn't it our job to determine the legal affect [sic] of a Supreme Court Order . . . . [Tr 5/10/95, p 14.]

> legal services on March 7, 10 and 11. His defense rests on the argument that the automatic stay of discipline remained in effect after the Court denied his application for leave to appeal and he "assumed" that his filing of a motion for reconsideration on March 26, 1986 created a further automatic stay.
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> We affirm the panel's ruling that the respondent had no reasonable grounds for making such an assumption. The Court Rules dealing with practice before the Supreme Court are clear. A motion for rehearing of an "opinion" results in a stay in accordance with MCR 7.313(D)(2). A motion for reconsideration of an "order" filed under MCR 7.313(E) does not create a stay.
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> The respondent testified that he thought that motions for rehearing or reconsideration were basically the same thing and he assumed that the difference was just a matter of semantics. (Hrg. 6/25/87 Tr. p 45) In fact, the label placed by respondent on his subsequent motion was not determinative. The order issued by the Supreme Court on March 5, 1986 was clearly not an opinion as defined by MCR 7.317(A). Just as clearly, it was an order which was effective on the date it was entered [MCR 7.317(D)] and the filing of respondent's subsequent motion did not stay the effect of the order [MCR 7.313(E)].

We affirm the panel's legal conclusion and reiterate our own. The May 31, 1991 order denying leave to appeal was effective upon entry. Respondent's suspension became effective on that date.

This is not a case where respondent's application was denied on day 1, he practiced on day 2, and received the order denying leave on day 3. Respondent's actual notice of the Court's order is established by, among other things, his motion for reconsideration and stay (Petitioner's Exhibit #5), and is not contested.

This is also not a case where respondent forthrightly moved for a stay on the grounds that he needed more time to wind up his practice. Rather, in the motion for reconsideration he filed with the Court (see Petitioner's Exhibit #5), respondent simply relied on the manifestly erroneous argument that a stay remained in place. We conclude that he knew or clearly should have known that "the stay of his [90 day suspension in case No DP 66/85] was dissolved

upon the entry of the [Michigan] Supreme Court's order denying application for leave to appeal." Eston, 728 F Supp at 1342-1341.

C.

Finally, with regard to respondent's continuing stay argument, we are compelled to address the following portion of respondent's brief in support of his petition for review:

> In 6/91, when VanBolt fashioned, authored and withheld mailing of his letter dated 6/17/91 (Resp Exh 3) until 6/21/91, he did so to give effect to the ADB's construction and recognition of the general 21-day rule under MCR 9.115(J)(3) or MCR 9.122(C). (VanBolt, 5/10/95, TR 138-146.) [Respondent's brief, pp 6-7.]

Respondent cites to pages 138-146 of the May 10, 1995 transcript, and to Respondent's exhibit #3, for the proposition that this Board considered respondent's suspension to be effective 21 days after the Court had denied leave. Neither supports this claim.

The testimony clearly establishes that the exhibit is a form letter which is sent to suspended attorneys who have not filed affidavits of compliance under MCR 9.119.[10] That rule requires such attorneys to notify tribunals, clients, and others of the suspension within 14 days after the effective date of the order of discipline. Thus, the very fact that such a letter was sent, proves that the effective date was prior to the date of the letter (June 17, 1995). The letter itself bears this out.

Respondent's Exhibit #3 states that it is regarding "Non-compliance with . . . MCR 9.119," and references case No DP 66/85. The body of the letter goes into detail about the notices required and the affidavit demonstrating compliance with the rule which must be filed with the Board. The first sentence of the letter is significant:

> The Order of Discipline which became effective in

[10] In addition to the testimony at May 10, 1995 transcript at pages 138-146, Mr. Van Bolt was recalled to the stand by respondent and again testified on March 28, 1996, that the letter was regarding "noncompliance with MCR 9.119." (Tr 3/28/96, p 16.) Counsel for respondent indicated a similar understanding of Respondent's Exhibit #3. (Id., p 24.)

> this matter on May 31, 1991 contained a provision in accordance with MCR 9.119(C) requiring that an Affidavit of Compliance be filed . . . within fourteen (14) days of the effective date of the Order. [Respondent's Exhibit #3.]

No reasonable person could read this exhibit as supporting the claim that the effective date of the order of discipline was other than May 31, 1991. This argument is utterly devoid of merit.

IV. Respondent's Constitutional Claims.

Respondent asserts that the formal complaints

> were brought and prosecuted primarily for the improper purposes of: (i) disciplining Respondent for exercising his federal constitutional rights; and (ii) intentional [sic] violating Respondent's 1st, 5th, 6th, and 14th Amendment rights. [Respondent's brief, p 10.]

This conclusory recitation of alleged constitutional violations is deficient. Accordingly, these issues are abandoned on review. Mitcham v City of Detroit, 355 Mich 182, 203 (1959), and Taunt v Moegle, 344 Mich 683, 686-687 (1956).

Elsewhere in his brief,[11] respondent asserts that he is being disciplined for exercising his right of access to the courts, and his right to self representation. We can only assume that this is a reference to his appeal, in the Holmes v NUFIC litigation, from the circuit court's order sanctioning him for knowing violation of MCR 2.113(C)(2) and 8.111(D)(3) (requiring counsel filing a complaint to notify the court of other actions arising out of the same transaction or occurrence).[12] This claim lacks merit.

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[11] See p iv (Statement of Questions Presented, Question IV).

[12] Despite having represented plaintiff Holmes in a bench trial which resulted in a directed verdict after 16 days, plaintiff filed a complaint against some of the same parties arising out of the same transaction or occurrence as the first case and certified that:

> There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this complaint pending in this court, nor has any such action been previously filed and dismiss or transferred after having been assigned to a judge.

Respondent was sanctioned by the circuit judge, and the case was reassigned to the

While respondent may have been entitled to appeal an award of sanctions against him, that was not the basis of the panel's order of discipline. Rather, respondent was disciplined for filing a paper entitled "Reply to Answer of Defendants-Appellees to Plaintiff-Appellant's Motion for Rehearing" on his client's behalf while he was suspended from the practice of law. The Reply commences with the statement: "Now comes Plaintiff-Appellant, and submits her reply . . ." (emphasis added). It addresses the arguments raised on the client's behalf (propriety of lower court's reassignment and ultimate dismissal of the case), not simply the award of sanctions against respondent. (See Petitioner's Exhibit #9.)

V. Jurisdiction of the Board and Hearing Panels.

Respondent apparently argues that the disciplinary system established by subchapter 9.100 of the Michigan Court Rules may violate due process. Although the argument is not clearly presented, it is implied in respondent's citation to the federal district court opinion in Fieger v Thomas, 872 F Supp 377 (ED Mich, 1994), remanded with instructions to dismiss, 74 F 3d 740 (CA 6, 1996).

To the extent that respondent argues that he is entitled to have all discipline proceedings conducted by a "court," he has abandoned this argument by failing to cite applicable authority. Moreover, it has been held that the Michigan disciplinary system does not offend due process. Grievance Administrator v Tucker, 94-12-GA (ADB 1995), lv den 449 Mich 1206 (1995). See also Fieger v Thomas, 74 F 3d 740, 749 (CA 6, 1996) (provision for appeal by leave satisfies the requirement that there be an adequate opportunity to raise constitutional challenges in state proceedings before a federal court will abstain from exercising jurisdiction).

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original judge. When respondent did not pay the costs or appear to argue a motion to dismiss, the circuit court dismissed the case. The Court of Appeals affirmed the circuit court's reassignment of the case, and its ultimate dismissal, as well as the award of sanctions against respondent. (Holmes v NUFIC, unpublished opinion per curiam of the Court of Appeals, decided April 25, 1991 (Docket No 117857), in Petitioner's exhibit 12.)

Similar claims relying on state law have also been rejected by the federal courts. See Ortman v Thomas, 99 F 3d 807 (CA 6, 1996). In Ortman, the Sixth Circuit considered the argument "that the Michigan attorney discipline system is unconstitutional because the Michigan Constitution prohibits delegation of judicial power." Ortman, 99 F 3d at 811. The Court found the argument to be "patently meritless." Id.

VI. Disqualification & other issues.

Throughout these proceedings, respondent has asserted that various entities or individuals are out to get him. While his frivolous tactics must try the patience of everyone, there is no credible evidence for the claim that any disciplinary agency, member, panelist, or employee is biased or has acted improperly. Although respondent needlessly prolonged these proceedings with baseless legal and factual contentions, we conclude that the panel acted fairly and impartially in its rulings and report.

Respondent filed several motions to disqualify hearing panel members. The motions were denied by the Board Chairperson. Respondent also filed motions to disqualify the Board Chairperson. These motions were also denied. The motions to disqualify were, without exception, baseless. They were properly denied.

We find no merit to any of the remaining issues raised by respondent.

VII. Level of Discipline.

Respondent argues that any misconduct he may have committed was de minimis. We do not agree.

At the hearing on discipline, the Grievance Administrator cited ABA Standard 8.1 for the proposition that disbarment is appropriate when a lawyer knowingly violates a discipline order causing harm or potential harm to a client, the public, legal system, or profession. As to harm, the Grievance Administrator pointed out that then-circuit Judge White suppressed the depositions conducted by respondent in Holland v Jobete.

Respondent's counsel argued:

> There's no evidence in this record . . . that there was any harm to any client, that there was any harm to the public. There's no evidence of any intentional or conscious misconduct on Mr. Patmon's part, and we've argued the good faith position, and when you really boil it down in terms of mitigation, it's our position that the alleged conduct was de minimis. It wasn't a long, drawn [out] practice kind of thing, and you're talking about a period between June the 11th of '91 and June 21st '91. That's the window of misconduct. [Tr 9/12/96, pp 50-51.]

By suspending respondent for 180 days, the minimum period triggering reinstatement proceedings under MCR 9.123(B) and MCR 9.124, the panel impliedly rejected respondent's "good faith position." We agree that there is ample evidentiary support for the finding that respondent's violation of the order of discipline in case DP 66/85 was intentional.

Respondent's de minimis argument is at odds with our prior pronouncements in this area. Disregard of an order of discipline "is a very serious offense that strikes at the very heart of the Supreme Court's effort to protect the public." Grievance Administrator v Phillip E. Smith, Nos. DP 123/82, DP 65/82 (ADB 1983). The panel's imposition of a 180-day suspension requires respondent to establish his fitness in reinstatement proceedings, and is in no way excessive.

VIII. Conclusion.

For all of the foregoing reasons, we affirm the hearing panel's order of discipline.

Board Members Elizabeth N. Baker, C. H. Dudley, M.D., Barbara B. Gattorn, Albert L. Holtz, Miles A. Hurwitz, Kenneth L. Lewis concur in this decision.

Board Members Michael R. Kramer and Nancy A. Wonch were absent and did not participate.

Board Member Roger E. Winkelman did not participate in this decision.