Grievance Administrator,

Petitioner,

v

Robert E. Caron, P 25020,

Respondent.

Case Nos 95-183-GA; 95-209-FA

Decided: August 7, 1996

BOARD OPINION

On March 15, 1996, Tri-County Hearing Panel #60 entered an order suspending the respondent's license to practice law in Michigan for a period of two years with the further conditions that the respondent shall make restitution, with interest, to Lynwood P. David in the amount of $34,000 and to Gian Marco Romano in the amount of $2,500 and respondent shall, prior to the filing of a petition for reinstatement, complete one class each in law office management and legal ethics at either ICLE or an accredited law school.

The respondent has petitioned for review in accordance with MCR 9.118 on the grounds that he was not properly served with the formal complaint in accordance with MCR 9.115(C); that the application of that rule as the basis for the entry of a default constituted a denial of respondent's rights to due process and equal protection; that his motion to set aside default was accompanied by an affidavit of meritorious defense and established good cause for the setting aside of his default; and that the discipline imposed by the panel is excessively harsh. The Grievance Administrator petitioned for review seeking increased discipline and an increase in the restitution be paid to respondent's former client, Mr. Romano.

The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118, including review of the whole record

and consideration of the arguments and briefs submitted by the parties. The record in this case amply demonstrates that the Grievance Administrator served the formal complaint on the respondent on August 21, 1995 by regular and certified mail and that service was made in accordance with MCR 9.115(C). The respondent does not deny receipt of the formal complaint. Nor does he deny that he had actual notice of the proceedings. The record further demonstrates that the respondent did not file a timely answer in accordance with MCR 9.115(D)(1). We conclude that the respondent's default was properly entered in this case.

Also, we reject respondent's argument that MCR 9.115(C) is unconstitutional as applied in this case. Respondent contends the rule's provision that service of a formal complaint is effective at the time of mailing did not afford him "the full 21 days" to answer. Respondent refers to the 21 days a personally-served defendant has to answer a complaint in circuit court. See MCR 2.108(A)(1). He also complains that a respondent who has been personally served has more time to answer than one who was served by registered mail, and that differences in mail delivery may mean that some respondents have more time to answer than others. Respondent's arguments are unsupported by apt authority and lack merit.

It is well-settled that the equal protection and due process clauses do not require uniformity of procedure. Dohany v Rogers, 281 US 362 (1930); Moore v Spangler, 401 Mich 360 (1977). Neither the Michigan nor the federal constitution prescribes the number of days required between the stages of various judicial or administrative proceedings. In federal court, answers must generally be served within 20 days of service of the complaint. Fed R Civ P 12(a)(1)(A). In circuit court, a defendant has 28 days from receipt of the complaint to answer if served by registered mail. MCR 2.108(A)(2); MCR 2.105(A)(2). Finally, under MCR 9.116(C), a judge must answer a complaint filed by the Grievance Administrator within 14 days after it is served. Plainly, states may establish varying timetables for different types of judicial or administrative proceedings, so long as persons in like

circumstances are treated similarly.

While the mode of service may occasionally give some respondents more time to answer than others, we do not believe that minor disparities such as this rise to the level of a deprivation of constitutional rights. Such incidental inequalities do not violate the guarantee of equal protection. And, "[t]he essence of due process is that a deprivation of a property or liberty interest must 'be preceded by notice and opportunity for hearing appropriate to the nature of the case.'" Brickner v Voinovich, 977 F2d 235 (CA 6, 1992). See also Dohany, supra. In this case, the formal complaint was mailed to respondent on August 21, 1995, and received by his office the next day. He received adequate notice.

We have reviewed the hearing panel's decision to deny the respondent's motion to set aside default. We conclude the hearing panel did not abuse its discretion. Notwithstanding the entry of respondent's default, the record in this case includes the testimony of the respondent and the complainants which, together with other testimony and the documentary evidence submitted by the parties, amply illustrates the wrongful nature of the respondent's conduct and his appalling disregard for his obligation to safeguard his clients' funds. We are unable to discern in the record mitigating factors sufficient to remove this case from the range of discipline which the public and the legal profession may anticipate for this type of offense.[1] We therefore increase the respondent's suspension in this case from two years to three years.

Finally, with regard to the restitution provision in the hearing panel's order, we are persuaded by the respondent's argument that interest was not properly assessed in addition to the sum of $34,000 ordered to be paid to Lynwood P. David. However, we also conclude that the facts and circumstances in this case require

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[1] The Board has ruled that discipline ranging from a suspension of three years to disbarment is appropriate in misappropriation cases. Grievance Administrator v Charbonneau, DP 108/83 (Bd Op 1984); In the Matter of Douglas E. H. Williams, DP 126/81 (Bd Op 1984); Grievance Administrator v Muir B. Snow, DP 211/84 (Bd Op 1987); Grievance Administrator v Gary B. Perkins, ADB 124-87 (Bd Op 1989). See also Grievance Administrator v Fernando Edwards, 437 Mich 1202; 466 NW2d 281 (1990) (ADB Order of Revocation peremptorily reduced to three-year suspension).

that respondent make restitution to Gian Marco Romano in the amount of $5,500 representing the fees paid by the client to the respondent. By ordering restitution to Mr. Romano in this amount we do not decide any civil claims or defenses which may be asserted by either party.

Board Members George E. Bushnell, Jr., C. H. Dudley, M.D., Elaine Fieldman, Barbara B. Gattorn and Miles A. Hurwitz concur in this decision.

Board Members Marie Farrell-Donaldson, Albert L. Holtz, Michael Kramer and Kenneth L. Lewis were absent and did not participate.