

Grievance Administrator,
State of Michigan
Attorney Grievance Commission,

Petitioner/Appellee,

v

Sonja Branham, P 37754,

Respondent/Appellant.

Case No. 93-179-GA

Decided: April 22, 1994

BOARD OPINION

The respondent failed to answer the formal complaint which charged that she accepted a retainer to represent a client at a time when her license to practice law in Michigan was automatically suspended for non-payment of bar dues. A second complaint for failure to answer was filed. The respondent failed to appear at the hearing conducted by Tri-County Hearing Panel #76 on October 18, 1993. The panel directed that the respondent's license be suspended for 120 days and that she be required to petition for reinstatement.

The respondent has petitioned for review of that order of suspension and she appeared personally, with counsel, at a review hearing before the Board on March 17, 1994. Based upon a review of the whole record, we conclude that reinstatement proceedings are not required in this case. The respondent's suspension is reduced to sixty days.

Rule 4 of the Supreme Court's rules concerning the State Bar of Michigan directs that the annual dues required to maintain active membership in the State Bar must be paid no later than November 30th. If the dues and late charges are not paid within thirty days after the State Bar has sent a written notice of delinquency by registered or certified mail to the attorney's last recorded business address, that individual is automatically suspended from active membership in the State Bar. In this case, the record discloses that the respondent was suspended in accordance with that rule on February 6, 1992. It is undisputed that the respondent had not paid those dues or otherwise taken action to reinstate her license in September 1992 when she was retained to represent an individual charged with unlawful driving away of a motor vehicle, unarmed robbery and assault. On September

5, 1992, the respondent accepted a retainer fee for that representation in the amount of \$2350.

On appeal, the respondent claims that prior to this representation, she had spent much of the previous nine months commuting between Michigan and Nevada and had not engaged in the regular practice of law. In the spring of 1993, the respondent attempted to visit her client but was denied admittance to the jail because she could not produce a current bar membership card. She then contacted the State Bar and, she claims, learned for the first time that her license had been suspended more than one year earlier. The respondent paid her annual bar dues and was automatically reinstated on May 17, 1993.

The hearing panel's decision to impose a suspension of 120 days was appropriate under the circumstances presented to the panel. The Attorney Discipline Board has ruled that an attorney's failure to answer or appear at any stage of public disciplinary proceedings should generally result in a suspension of sufficient length to require reinstatement proceedings. Matter of Peter H Moray, DP 143/86; DP 157/86, Brd. Opn. 3/4/87; Matter of Alvin McChester, 93-132-GA; 93-168-FA, Brd. Opn. 2/2/94.

However, the Board has also recognized that an attorney who subsequently appears before the Board and establishes that failure to answer was not the result of a willful disregard for these proceedings may persuade the Board that reinstatement proceedings are not required in his or her case.

Such a situation was presented to the Board in Matter of James H Harris, ADB 147-88, Brd. Opn. 3/13/89. There, respondent Harris had left the State of Michigan to practice patent law, first in Texas and then in Illinois. The respondent's automatic suspension for failure to pay his bar dues for 1988 resulted in a Request for Investigation which was sent to the respondent's last known Michigan address. The respondent's failure to answer that Request for Investigation, failure to answer the resulting complaint and failure to appear before the hearing panel resulted in the hearing panel's order that his license be suspended for one year.

Upon receiving notice of that order of discipline, the respondent petitioned for review and appeared personally before the Board to explain his failure to maintain an up-to-date mailing address. Noting the respondent's sincere if belated efforts to address the situation, the Board concluded that continued suspension and reinstatement proceedings were not necessary to insure the protection of the courts, the public and the legal profession which are the primary goals of these proceedings.

This case presents a similar situation. As in Harris, the respondent has belatedly appeared and has offered an explanation for her failure to respond to the notices from the State Bar or the

disciplinary agencies. Although these explanations do not exonerate the respondent for her failure to meet her obligations under the rules regarding maintenance of her active status as an attorney we are unable to conclude that the circumstances in this case warrant a 120-day suspension followed by the lengthy reinstatement proceedings contemplated by MCR 9.123(B) and MCR 9.124. Discipline is therefore reduced to a suspension of sixty days.

Board Members C Beth DunCombe, Elaine Fieldman, Linda S Hotchkiss, M.D. and Albert L Holtz.

Board Members Barbara B Gattorn and Miles A Hurwitz would affirm the hearing panel order of discipline.

Board Members John F Burns, George E Bushnell, Jr. and Marie Farrell-Donaldson did not participate.