

Grievance Administrator,  
Petitioner/Appellant,

v

Alvin McChester, P 32849,  
Respondent/Appellee.

93-132-GA; 93-168-FA

Decided: February 2, 1994

BOARD OPINION

The respondent was retained to institute bankruptcy proceedings on behalf of a client and to commence divorce proceedings for another client. The formal complaint charged that he failed to take appropriate action in either case, failed to respond to his clients' inquiries and failed to answer a Request for Investigation served by the Grievance Administrator. The respondent failed to answer the formal complaint and his default was entered. The respondent failed to appear at the hearing before a hearing panel.

The Grievance Administrator has filed a petition for review of the hearing panel's conclusion that the respondent should be reprimanded for his neglect of client matters and that his license to practice law should be suspended for consecutive thirty-day terms for the failure to answer a Request for Investigation and failure to answer a formal complaint. We increase discipline to a suspension of 180 days.

The three-count complaint filed by the Grievance Administrator on July 21, 1993 charged that the respondent's failure to provide diligent and expeditious representation to two clients and his failure to keep those clients reasonably informed concerning the status of their cases constituted violations of MCR 9.104(1-4) and the Michigan Rules of Professional Conduct: 1.1(c), 1.3, 1.4, 3.2 and 8.4(a,c). A third count charged that a Request for Investigation filed by a third client in September 1992 had not been answered, in violation of MCR 9.103(C), MCR 9.104(1-4,7), MCR 9.113(A)(B)(2) and MRPC 8.1(b) and 8.4(a,c).

The respondent's default for failure to answer that complaint was filed. A supplemental complaint, 93-168-FA, charging that the failure to answer the first formal complaint constituted a separate act of professional misconduct, was served on the respondent by regular and certified mail on August 18, 1993.

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At the hearing on September 2, 1993, the panel granted the Grievance Administrator's request that the supplemental complaint, 93-168-FA, be dismissed without prejudice because the twenty-one day answer period provided by MCR 9.115(D)(1) had not expired. The hearing panel concluded that the respondent's license should be suspended for thirty days based upon his failure to answer a Request for Investigation, as alleged in complaint 93-132-GA, Count III.

The panel mistakenly concluded that an additional suspension of thirty days should be based on "the counts in the formal and supplemental complaints of respondent's failure to answer the formal complaint." The only charge that the respondent failed to file a timely answer to a formal complaint appears in the supplemental complaint, 93-168-FA, filed September 2, 1993. That complaint was voluntarily dismissed by the Grievance Administrator and a separate finding of professional misconduct based upon that complaint was in error.

Considered separately, the panel's decisions to impose a reprimand for the neglect and non-communication charged in 93-132-GA, Count I, a reprimand for similar misconduct charged in Count II and a thirty-day suspension for the failure to answer a Request for Investigation charged in Count III would appear to be appropriate, absent aggravating or mitigating factors. We do not believe, however, that the separate charges can or should be considered as separate unrelated events.

An attorney's pattern of misconduct is recognized by the American Bar Association's Standards for Imposing Lawyer Sanctions as a factor which may be considered in aggravation. Standards for Imposing Lawyer Sanctions (1986) Sec. 9.22(C). Similarly, the Board has recognized the aggravating effect of an attorney's pattern of misconduct as, for example, in Matter of Fazio, DP 36/82, 1983, Opn. of Brd. p. 294 [increasing suspension from ninety days to 121 days]. Not only are the factors cited by the Board in Fazio--neglect pattern of misconduct, failure to answer and an absence of mitigating evidence--present in this case but the respondent's pattern of misconduct takes on added significance in light of the disclosure to the hearing panel that the respondent was previously admonished by the Attorney Grievance Commission in February 1992, March 1993 and June 1993.

Finally, we believe that the hearing panel underestimated the significance of the respondent's complete failure to answer or appear at any stage of these disciplinary proceedings after the filing of the complaint on July 16, 1993.

In Matter of Peter H Moray, DP 143/86; DP 157/86, (3/7/87), the Board increased a reprimand to a suspension of 150 days in a

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case involving neglect of a client matter, failure to answer Requests for Investigation, failure to answer the formal complaint and failure to appear at the hearing. In that opinion, the Board stated:

"By reprimanding the attorney who fails to answer or appear, or by suspending for a period which will be automatically terminated by the filing of an affidavit of compliance, the discipline system sends a message to the public and to the profession that we are willing to gamble that an attorney's repeated failure to comply with the rules is not the result of a physical or mental problem which jeopardizes the rights of the attorney's clients or the administration of justice.

We are not willing to take that chance. Apart from any considerations of deterrence, we conclude that protection of the public and the legal system demands that, as a general rule, the respondent who has failed to answer a Request for Investigation, failed to answer the formal complaint and failed to appear before the hearing panel should be suspended for a period of a 120 days.

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We note that the attorney seeking reinstatement in proceedings under MCR 9.123(B) and 9.124 must, among other things, establish by clear and convincing evidence that he or she has a proper understanding of and attitude toward the standards that are imposed on members of the bar and will conduct himself/herself in conformity with those standards. [MCR 9.123(B)(6)] We conclude that a respondent who fails to answer Requests for Investigation, fails to answer formal complaints and fails to appear at the hearing has, by definition, made a prima facie showing that he/she does not have a proper attitude toward the standards imposed on members of the bar and the he/she cannot or will not conform to those standards.

In the present case, we do not find it at all unreasonable that respondent be suspended for more than 120 days and until he has, at long

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last, come forward to explain his apparent indifference to his responsibilities under the Court Rules." <sup>1</sup>

The factors which required increased discipline in Moray, supra,--failure to answer or appear following the filing of a formal complaint--are present in this case and the rationale for the discipline imposed in Moray is applicable here.

Upon consideration of the respondent's failure to take appropriate action on behalf of two clients, his failure to answer a Request for Investigation, the aggravating effect of the respondent's three prior admonitions and his failure to answer or appear after the filing of the formal complaint, we conclude that a suspension of 180 days is warranted.

Board Members John F Burns, George E Bushnell, Jr., Marie Farrell-Donaldson, Elaine Fieldman, Linda S Hotchkiss, M.D., and Miles A Hurwitz concur.

Board Members C Beth DunCombe, Barbara B Gattorn and Albert L Holtz did not participate.

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<sup>1</sup> By an amendment to MCR 9.123(B) which will take effect March 1, 1994, the length of suspension required to trigger the reinstatement process deemed necessary by the Board in Moray will be increased to 180 days.