

STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,  
State of Michigan  
Attorney Grievance Commission,

Petitioner/Appellant,

v

Charles S. Brown, P 11266,

Respondent/Appellee.

Case No. 91-150-GA; 91-166-FA

Decided: February 7, 1992

BOARD OPINION

The Grievance Administrator has filed a petition for review seeking an increase in the 119-day suspension ordered by a hearing panel based upon its conclusion that the respondent neglected a personal injury matter for which he was retained, failed to communicate adequately with his client and failed to answer the formal complaint. It is the Grievance Administrator's position that these factors, coupled with the respondent's failure to appear at the hearing, warrant the imposition of a suspension of sufficient duration to trigger the reinstatement provisions of MCR 9.123(B). We agree. The hearing panel's order of discipline is modified by increasing the suspension to 120 days and until the respondent has established his eligibility for reinstatement in accordance with MCR 9-123(B) and MCR 9.124.

In our consideration of the appropriate level of discipline which should be imposed, the Board has considered its prior ruling in Matter of Peter H. Moray, DP 143/86; DP 157/87, (Brd. Opn- 3/4/87). In that case, the Board stated:

"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 120 days . . . Under the Court Rules governing these disciplinary proceedings, the only mechanism by which a panel or the Board can insure contact with disciplinary authorities is by ordering a suspension of sufficient duration as to require reinstatement proceedings under the provisions of MCR 9.123(B) and MCR 9.124."

Factually, this case is similar to Matter of Peter H. Moray in that both cases involved allegations that the attorney neglected a client's legal matter, failed to answer the complaint and failed to appear or communicate with the hearing panel. Unlike Moray, however, it appears that respondent Brown did answer the Request for Investigation and, in fact, presented himself in person at the office of the Attorney Grievance Commission to give a statement concerning the matters contained in the grievance against him. We are aware of the respondent's statements during that interview that he considered himself to be retired and did not intend to resume the active practice of law. There is no evidence in the record regarding any prior blemish during the respondent's legal career nor is there evidence that his apparent neglect of this legal matter was part of a larger pattern.

Once formal proceedings are instituted in our discipline system's adjudicative branch by the filing of a complaint in accordance with MCR 9.115(B), the respondent is under an affirmative duty to file an answer to that complaint [Rule 9.115(D)(1)] and to appear personally before the hearing panel [MCR 9.119(H)]. When the hearing panel's decision was appealed to the Board by the Grievance Administrator, the respondent was afforded a further opportunity to communicate with the Board in writing and in person. His failure to fulfill these obligations or to take advantage of these opportunities leaves the Board no choice but to increase discipline to a suspension of 120 days in order to trigger the reinstatement requirements of MCR 9.123(B).

John F. Burns, George E. Bushnell, Jr., Elaine Fieldman, Linda S. Hotchkiss, M.D. , Miles A. Hurwitz and Theodore P. Zegouras

C. Beth DunCombe did not participate in the discussion or the decision.