GRIEVANCE ADMINISTRATOR,
Petitioner/Appellee,

v

RUSSELL G. SLADE, P-24726,
Respondent/Appellant.

ADB 95-89

Decided: May 7, 1990

BOARD OPINION

The hearing panel in this matter issued an order suspending the respondent's license to practice law for thirty days based upon its conclusion that the respondent's admitted failure to file timely answers to three Requests for Investigation constituted professional misconduct. The Attorney Discipline Board has considered the petition for review filed by the respondent who argues that the panel erred in proceeding to a separate hearing on discipline immediately following the announcement of its decision on the issues of misconduct. He further argues that the level of discipline and the costs assessed are both excessive. The Board is unable to conclude that the respondent was prejudiced by the procedures followed by the panel. Upon review of the record, however, the Board is persuaded that the mitigating circumstances presented by the respondent warrant reduction of the discipline in this case to a reprimand.

A six-count complaint was filed by the Grievance Administrator on July 5, 1989 and the matter was assigned to a hearing panel composed of three attorneys who practice in the upper peninsula. (The respondent is engaged in the practice of law in Ironwood, Michigan) As the result of the disqualification of two of the original panel members, substitute panelists from Petoskey and Harbor Springs were appointed by the Board. The hearing in this matter was conducted in Bessemer, Michigan on October 24 and 25, 1989 in conjunction with the panel's consideration of Complaint ADB 96-89, Grievance Administrator v Sandra S. Schultz. (Mr. Slade and Ms. Schultz are associated in the practice of law and the two complaints involved certain common issues of fact.)

In its report, the panel concluded that the allegations of misconduct in Count I (neglect of a medical malpractice matter), Count III (neglect of an adoption matter), and Count IV (failure to fully inform his client of the status of her case) were not established by the evidence and those counts were dismissed. Based upon his answer to the complaint, the panel found that the respondent had admitted his failure to file timely answers to three Requests for Investigation as alleged in Counts II, V and VI. That conduct was found to be in violation of MCR 9.113(B)(2), MCR 9.103(G) and MCR 9.104(7).

After announcing its decision on the issues of misconduct, the panel reconvened to conduct a separate hearing on discipline, as required by MCR 9.115(J)(2). The panel ordered

that respondent Slade be suspended for thirty days and that the costs incurred in the hearing of the two consolidated cases be apportioned between respondents Slade and Schultz. The panel directed that respondent Slade reimburse the State Bar of Michigan for two-thirds of the expenses of the hearing in the amount of $2040.30.

The respondent concedes that the hearing panel announced its decision with regard to misconduct on the record and then reconvened to conduct a "separate" hearing on discipline as required by MCR 9.115(J)(2). He argues, however, that he was not given sufficient time to prepare for that separate hearing and that he was thus denied due process.

As the Grievance Administrator has pointed out, the respondent, having admitted failure to answer three Requests for Investigation in a timely manner, knew or should have known that a finding of misconduct on those counts would be made and that a hearing on discipline would be held. Respondent has failed to show that the panel's failure to adjourn the proceedings prevented him from presenting further evidence in mitigation. As we have noted in our companion opinion in Matter of Sandra S. Schultz, issued this date in ADB 96-89, hearing panels should give careful consideration to a respondent's good-faith request for an adjournment of the proceedings in order to prepare for a separate hearing on discipline but MCR 9.115(J)(2) does not categorically require that the separate hearings on misconduct and discipline be conducted on separate dates and the decision to grant such a request will generally rest within the sound discretion of the panel.

As noted in its report, the mitigating factors recited by the respondent included various personal and professional matters which impacted his life at or about the time he was served with these Requests for Investigation. These included personal domestic problems and a health problem. We further note respondent's prior unblemished record. Our decision in this case is not a departure from our warning to the profession in Matter of David A. Glenn, DP 91/86, Board Opinion February 23, 1987, that lawyers who ignore the duty imposed by Court Rule to answer Requests for Investigation do so at their peril and may generally expect a discipline greater than a reprimand. Bearing in mind the Supreme Court's pronouncement in MCR 9.105 that discipline for misconduct is not intended as punishment for wrongdoing but is assessed for the protection of the public, the courts and the legal profession, we are persuaded that, in this case, a reprimand will be sufficient to afford that protection.

Finally, we are not unsympathetic to the respondent's request for relief from the costs assessed. The amount of these costs was due, in large part, to the travel costs incurred by the Grievance Administrator's counsel and the two panel members who traveled to the hearing in Bessemer from their residences in the lower peninsula. The Board is satisfied that the travel expenses for the panel members were unavoidable and were the result of the unavailability of panel members located in the upper peninsula.

The assessment of costs in these proceedings is governed by MCR 9.128 which directs that:

> The hearing panel and the Board in the order for discipline or for reinstatement must direct the attorney to reimburse the State Bar for the expenses of that hearing, review, and appeal, if any. (emphasis added)

In accordance with the Board's authority under MCR 9.118(D) to amend a hearing panel order in whole or in part, the hearing panel Order of Suspension

and the supplemental order regarding costs are modified. The expenses of the hearing and review assessed against the respondent shall be reimbursed to the State Bar of Michigan in quarterly payments during the period of one year.

Hon. Martin M. Doctoroff, Remona A. Green, Hanley M. Gurwin, Robert S. Harrison, Linda S. Hotchkiss, M.D., and Theodore P. Zegouras

Board Member John F. Burns would affirm the discipline imposed by the panel for the reason that such discipline is consistent with the Board's opinion in Matter of David A. Glenn, DP 91/86, Board Opinion February 23, 1987 and for the reason that respondent has failed to establish a sufficient causal connection between the personal and professional matters asserted in mitigation and his failure to answer three separate Requests for Investigation in a timely manner.