

GRIEVANCE ADMINISTRATOR,
Petitioner/Appellant,

v

JAMES E. ZANN, P-22694,
Respondent/Appellee.

ADB 180-89; 90-3-FA

Decided: October 4, 1990

BOARD OPINION

The respondent failed to answer and failed to appear before the hearing panel in response to a two-count formal complaint filed by the Grievance Administrator charging that he practiced law while his license was suspended and that he failed to answer a Request for Investigation. The Grievance Administrator seeks review of the hearing panel's decision to impose a suspension of 120 days on the grounds that such discipline is insufficient in light of the aggravating factors in this case; including the respondent's continuing failure to respond and his record of public discipline in two other matters. We agree and increase discipline in this case to a suspension of three years.

Respondent, James E. Zann, was the subject of an order of reprimand which became effective January 11, 1988 in an unrelated case. (See Matter of James E. Zann, ADB 153-87.) Count I of the complaint in this case charged that the respondent was suspended automatically effective February 17, 1988 as the result of his failure to comply with the order to pay the costs of that disciplinary proceeding, but that he subsequently engaged in the practice of law while his license was suspended. Count II was based upon his failure to answer the Grievance Administrator's Request for Investigation. The respondent was defaulted for his failure to answer the complaint and he failed to appear before the panel although such an appearance is specifically required by MCR 9.115(H). His failure to appear before the Board at the review hearing was a violation of MCR 9.118(C)(1).

The respondent's failure to appear in these proceedings appears to be a continuation of a pattern of indifference exhibited in prior proceedings. In Matter of James E. Zann, ADB 153-87, the respondent did not appear before a hearing panel in response to a formal complaint which charged that he had failed to answer a Request for Investigation. The panel's Order of Reprimand, effective January 12, 1988, was not appealed by either party, but the respondent's failure to comply with the cost provision of the reprimand order resulted in his automatic suspension from the practice of law. In Matter of James E. Zann, ADB 115-89; 140-89, the respondent failed to answer two formal complaints and failed to appear at a hearing before a panel on December 14, 1989. That hearing panel found that the respondent's violation of his duty to refrain from the practice of law while subject to the automatic suspension, his neglect of legal matters and his failure to answer a Request for Investigation warranted a one-year

suspension which became effective February 23, 1990.

In the appeal now before the Board, counsel for the Grievance Administrator has explained the dilemma which she faced at the hearing panel proceedings conducted in this case on February 1, 1990. It was not until the following day that the order of the previous panel suspending Mr. Zann's license for one year was issued and she determined that it would therefore not be appropriate to disclose that matter to the panel as an aggravating factor to be considered. Her subsequent Motion for Reconsideration and/or to Reopen Proofs was denied by the panel. As a consequence, it is argued, the suspension of 120 days ordered in this case has no practical effect since it is entirely subsumed by the earlier one-year suspension.

The Board does not ascribe to the theory that the overlapping terms of successive suspensions must necessarily be reviewed and corrected by the Board. This is especially true where the separate complaints filed by the Grievance Administrator are based, in part, upon related acts of misconduct. (This case and the previous case both charge that the respondent engaged in the practice of law following his automatic suspension in February 1988.)

In this case, however, we believe that the hearing panel did not have an adequate opportunity to consider the full extent of the respondent's demonstrated inability to comply with the rules governing the conduct of attorneys. In three successive cases tried before three hearing panels, the respondent has failed to answer a Request for Investigation, failed to answer a formal complaint and failed to appear before the panel. During the course of these combined proceedings, he has not complied with a single order of the Board or its hearing panels in a timely manner. His practice of law while his license was suspended would alone warrant increased discipline. The decision to increase discipline to a suspension of three years is based upon a conclusion that enough is finally enough. Our responsibility to the public, the courts and the legal profession requires that the burden be shifted to the respondent to come forward and offer any explanation concerning his failure to respond to the requirements of the discipline process.

Concurring: Hon. Martin M. Doctoroff, Remona A. Green, Hanley M. Gurwin, Linda S. Hotchkiss, M.D., Theodore P. Zegouras

Robert S. Harrison, member, not present

John F. Burns, member, did not participate