GRIEVANCE ADMINISTRATOR,
Petitioner/Appellee,

v

STEPHEN E. MORGAN, P-28536,
Respondent/Appellant.

ADB 167-89

Decided: June 29, 1990

BOARD OPINION

The respondent failed to answer a two-count formal complaint which charged that he neglected a client matter, failed to respond to the client's inquiries, failed to return the client's file and documents when requested, failed to advise the client that the case had been dismissed and failed to answer the client's Request for Investigation. The respondent failed to appear before the hearing panel at the scheduled hearing on December 27, 1989. Based upon its conclusion that the misconduct charged in the complaint.was established by the respondent's default, and in view of the aggravating effect of the respondent's failure to answer the complaint and his failure to appear, the hearing panel entered an order suspending his license to practice law for 120 days.

The respondent filed a timely petition for review in accordance with MCR 9.118 and appeared before the Board with counsel to address the circumstances surrounding his failure to respond to these discipline charges. Based upon its consideration of these factors, the Attorney Discipline Board is satisfied that a suspension which requires the lengthy reinstatement proceedings outlined by MCR 9.123(B) is not required in this case. Discipline is reduced to a suspension of thirty days.

Although misconduct as alleged in the complaint was established as the result of his default, the respondent specifically waived any challenge to the panel's factual findings. It is noted that the panel had an opportunity to hear the complainant who testified that she and her husband paid the respondent a retainer of $200 in 1985 to file a claim against a mobile-home broker who had failed to transfer title to their mobile home. The complainant testified that after some time had passed, she discovered independently that the matter had been dismissed without her knowledge and without notice from Mr. Morgan. The respondent then refused to return any of the original documents or to return her phone calls.

In his pleadings filed with the Board, the respondent acknowledged that his clients' suit was dismissed for lack of progress, but he now attempts to justify his inaction by stating that the defendant had a valid affirmative defense. He has admitted, however, that he failed in his obligations to his client, both with regard to the completion of the legal task they had entrusted to him and his responsibility to communicate with them.

The respondent does not seriously argue that the panel erred in imposing a suspension of 120 days. The respondent's failure to answer or appear at any stage of the proceedings below constitutes the precise situation addressed by the Board in its opinion in Matter of Peter H. Moray, DP 143/86; DP 157/86, Brd. Opn. March 4, 1987. In that case, the Board increased a hearing panel order of reprimand to a suspension of 120 days for an attorney who had failed to answer or appear, noting that the only mechanism in the Michigan Court Rules by which a panel or the Board can insure the respondent's eventual contact with disciplinary authorities prior to reinstatement is by ordering a suspension of sufficient duration to require the respondent's appearance before a reinstatement panel under the provisions of MCR 9.123(B). Apart from considerations of deterrence, we concluded that the failure to answer or appear places a burden upon the respondent to come forth and offer an explanation of his or her apparent inability to conform to the standards expected of all attorneys.

Although the respondent's conduct in this case cannot be condoned or excused, he has come forward by filing a timely petition for review and by appearing personally before the Board with his counsel. The respondent has explained that upon his receipt of the complaint and his realization that the charges were well-founded, "It became very difficult for me to answer . . . my anger at myself for not being able to properly respond to their complaint consumed me and I froze."

We note that this failure to respond to his clients and to the disciplinary charges was apparently confined to this case. The respondent was the subject of two earlier Requests for Investigation which were promptly answered and dismissed by the Attorney Grievance Commission. The respondent has no prior record of discipline. The Board is persuaded that he now has a proper understanding of his obligation to answer a disciplinary inquiry and that he would be able to seek the assistance and advice of another attorney should another Request for Investigation be served in the future.

Under the circumstances, the Board has concluded that reinstatement proceedings under the provisions of MCR 9.123(B) and MCR 9.124 are not warranted. Discipline in this case is therefore reduced to a suspension of thirty days, consistent with the Board's opinion in Matter of David A. Glenn, DP 91/86, Brd. Opn. February 23, 1987.

John F. Burns, Hon. Martin M. Doctoroff, Remona A. Green, Hanley M. Gurwin, Robert S. Harrison and Linda S. Hotchkiss, M.D.

Board Vice-chairman Theodore P. Zegouras would reduce discipline in this case to a reprimand.