

GRIEVANCE ADMINISTRATOR,  
Petitioner/Appellee,

v

JAMES D. HILLS, P 24978,  
Respondent/Appellant.

File No. DP 116/85; DP 3/86

Decided May 15, 1986  
Issued: September 30, 1986

OPINION OF THE BOARD

MAJORITY OPINION

The Respondent, an attorney licensed to practice in the State of Michigan since 1966, was served with a five count Formal Complaint alleging acts of professional misconduct including neglect of a legal matter, the making of deliberate misrepresentations to his client, the failure to comply with the previous Order of Discipline, and the making of false statements in connection with his reinstatement to the practice of law. The Respondent did not file an Answer to that Formal Complaint, nor to a second Complaint based upon the failure to answer. At the hearing, the Respondent did not challenge the Hearing Panel's ruling that the Defaults constituted admissions to the charges of misconduct, nor did he challenge the factual allegations themselves.

The Hearing Panel, noting this Respondent's prior suspension for a period of 121 days effective September 23, 1983, entered an Order suspending his license for a period of two (2) years. As a result of the Petition for Review filed by the Respondent, we have considered the whole record in this case, including the pleadings and arguments presented by the parties in these review proceedings. We affirm the findings and conclusions of the Hearing Panel but modify the discipline imposed by reducing the two year suspension ordered by the Panel to a suspension of one (1) year.

In prior proceedings before this Board, the Respondent was charged in a six count Formal Complaint filed in May, 1982, with neglecting legal matters entrusted to him by three clients, misrepresenting the status of those cases to his clients and making false statements in his answer to a Request for Investigation. The Respondent did not answer the Formal Complaint, and the Hearing Panel concluded that the gravity of the misconduct warranted disbarment. Following the Board's review of further evidence submitted to a Master regarding the Respondent's eligibility for an Order of Probation, the Board concluded that probation was not appropriate in that case, but reduced the revocation to a suspension of 121 days. That suspension became effective in September, 1983 and was terminated by a Hearing Panel Order of Reinstatement effective November 8th, 1984.

The record in the present case discloses that Mr. Hills was retained by a client in 1978 to institute a civil action, but that Mr. Hills neglected that legal matter well past the statutory period of limitations. We adopt the Panel's finding that when asked about the status of that case by the client, the Respondent did not deal candidly with his client, but instead led him to believe that the case had

been settled. In addition to the Respondent's Default which operated as an admission to those allegations, the Panel received the Respondent's testimony at the hearing that he discussed the matter with his client in January of 1985 at which time, "I told him I was trying to settle the case" (T 34) and, later, "I told him I was going to settle this case. I don't think I told him where I was going to get the money." (T 36) Mr. Hills acknowledged paying the sum of \$4,475 to the client out of his own pocket.

Finally, the record below contains the Panel's finding that the Respondent failed to notify that client of his 121 day suspension in 1983, although he was required to do so by the terms of the Discipline Order; that his Petition for Reinstatement filed with the Supreme Court under GCR 1963, 973.1 [now MCR 9.124(A)] alleged that he had notified all of his clients of his suspension and that petition was therefore false; and that Respondent's sworn testimony to the Hearing Panel considering his Petition for Reinstatement that he had fully complied with the Order of Suspension was false as it pertained to his notification to his clients.

We are presented in this case with an attorney who, having been disciplined by this Board for neglect and misrepresentation, has continued to engage in a pattern of deceit towards his client, the reinstatement panel and the Attorney Grievance Commission. As the Hearing Panel Chairman observed on the record at the conclusion of the hearing:

"Here was an opportunity for Mr. Hills to demonstrate that the prior discipline had, in fact, had significance and meaning to him, and he had an opportunity to handle the matter in a manner that would probably have not resulted in any disciplinary action.

In light of the fact that you had previous discipline for the very same thing, we feel that the disciplinary action in this case must demonstrate to the public and to other practicing attorneys that this type of conduct cannot be tolerated." (Hearing transcript, pages 51 and 52)

A pattern of deceit towards clients and the disciplinary agencies has, in previous cases, warranted the imposition of the highest level of discipline. Schwartz v Meisner, DP 75/83, June 21, 1985 Opinions of the Board, page 369 (increasing a two year suspension to disbarment). Furthermore, this Respondent's conduct is aggravated by his failure to answer the two Formal Complaints and by his less than candid response to the Request for Investigation filed by the Grievance Administrator. We reemphasize that full and fair responses to inquiries by the Grievance Commission are an essential element of accountability by the legal profession and that the failure to answer a Request for Investigation or a Formal Complaint constitutes misconduct per se. Schwartz v Flynn, DP 65/84 and DP 94/84, April 16, 1985, Opinions of the Board, page 356.

Nevertheless, while the egregious conduct of the Respondent cannot be tolerated, we would note that there exists substantial mitigation in this case, leading us to the conclusion that the two year suspension ordered by the Hearing Panel should be reduced.

We note first that the underlying neglect of the civil action entrusted to him by a client commenced during the period of misconduct which resulted in the Respondent's prior discipline. While we do not minimize the seriousness of the Respondent's neglect of a client matter from 1978 through 1984, we have previously had occasion to consider Respondent's "psychological difficulties" during the period which preceded Respondent's suspension for 121 days in September, 1983. See In the Matter of James D. Hills, DP 487/82 and DP 124/82, September 2, 1983, Opinions of the Board, page 292. Respondent's neglect of this client matter is therefore closely related to the series of acts for which he has already been subjected to the punitive effects of a suspension.

We are also impressed by Respondent's conscious effort to change the nature of his practice in order to avoid the type of situation which resulted in his prior difficulties. Finally, we must recognize that Mr. Hills has apparently enjoyed the continuing support of a substantial segment of the bench and bar in the Kalamazoo area.

In light of all these factors, together with our own appraisal of Respondent's sincerity in his presentation to the Board, we determine that a suspension of one (1) year will be sufficient to achieve the primary goal of these disciplinary proceedings, the protection of the public, the courts and the legal profession.

By majority: Patrick J. Keating, Chairman; Charles C. Vincent, M.D., Secretary; and Robert S. Harrison, concurring. Martin M. Doctoroff, Vice Chairman and Member Hanley M. Gurwin have filed a separate dissenting opinion. Members Remona A. Green and Odessa Komer did not participate in the deliberations or decision in this matter.

## DISSENTING OPINION

By: Martin M. Doctoroff, Vice Chairperson and  
Hanley M. Gurwin

We would affirm the two year suspension imposed by the Hearing Panel. We agree with the characterization by the Grievance Administrator that the Panels discipline was, if anything, “merciful”. More importantly, it is our view that a suspension of two years is well within the range of discipline which would be appropriate under the circumstances presented in this case and that the sound discretion of the hearing panel should not be overturned.

The majority faithfully recites those aggravating factors which, in our opinion, amply justify the suspension imposed by the Hearing Panel. The Respondent lied to his client, telling him that the case had been settled when he knew that no suit had been filed and there had been no settlement discussions or offers from the supposed Defendant. The Respondent did not comply with the Order of Discipline and did not tell his client that he was suspended from practice for more than a year between September, 1983 and November, 1984. The Respondent did not tell the truth in his Petition for Reinstatement, he was not candid in his testimony to the Hearing Panel which heard that petition, and he was not candid in his Answer to the Request for Investigation filed by the Grievance Administrator. Finally, he simply failed to answer these two Complaints.

While the majority finds substantial mitigation in the fact that Respondent's neglect of this client commenced at a time when he was engaging in the misconduct which led to his previous suspension, we would focus on the fact that the Respondent continued to neglect the client matter in this case after the termination of that suspension and that his acts of deceit to the client, the Hearing Panel and the Grievance Commission all occurred after his reinstatement. We agree with the observation of the Hearing Panel that Mr. Hills had opportunities, in his dealings with his clients and with the Grievance Commission, to demonstrate that the prior discipline had some significance and meaning to him. Instead, the Respondent demonstrated by his actions that he had not acquired an understanding of his fundamental obligation to tell the truth.

Members Martin M. Doctoroff and Hanley M. Gurwin join in this dissent.