

Grievance Administrator,  
Petitioner/Appellant,  
v  
James A. Hamilton, P-38387,  
Respondent/Appellee.

ADB 145-88

Decided: March 13, 1989

BOARD OPINION

The Board has considered the Petition for Review filed by the Grievance Administrator seeking an increase in the level of discipline imposed by the hearing panel below. The Board is persuaded that a thirty-day suspension is insufficient in light of the respondent's failure to answer or appear at any stage of these proceedings and in light of his previous suspension of 135 days in a case involving similar misconduct. The discipline in this case is increased to a suspension of 150 days.

On February 8, 1988, a Request for Investigation was filed by the Grievance Administrator and served on the respondent. The record below discloses that the Request for Investigation was prompted by the respondent's automatic suspension for failure to pay his annual dues to the State Bar of Michigan. The formal complaint filed by the Grievance Administrator on June 3, 1988 alleges that the respondent's failure to answer that Request for Investigation constituted professional misconduct. The respondent failed to answer that complaint and his default was filed July 5, 1988. The respondent failed to appear at the hearing in Lansing on July 20, 1988.

In accordance with MCR 9.115(J)(2), the hearing panel first considered the charges of misconduct. Based upon the respondent's default, the panel determined that his failure to answer the Request for Investigation constituted professional misconduct. Such a finding was mandated by MCR 9.113(B)(2) and Canon 1 of the Code of Professional Responsibility, DR 1-102(A)(7). A separate hearing on the issued of discipline was then held and the panel was advised that the respondent was currently suspended from the practice of law as the result of a 135-day suspension imposed in Case No. DP 280/87; DP 20/88, effective June 8, 1988.

In an opinion issued by the Attorney Discipline Board March 4, 1987 in Matter of Peter H. Moray, P-17953, File No. DP 143/86; DP 157/85 (1987), the Board stated:

Apart from any consideration 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.

The Board noted in that case that a suspension of 120 days is the minimum discipline required to invoke the reinstatement provisions of MCR 9.123(B). That opinion was cited to the panel during the discipline phase of these proceedings. Although the hearing panel's report is silent as to its reasons for imposing a thirty-day suspension, the comments of the individual panel members at the hearing indicate their awareness that Mr. Hamilton was already subject to the reinstatement requirements of MCR 9.123(B) as the result of the earlier suspension for 135 days.

However, this case presents another issue which, we believe, should be considered in determining the appropriate discipline. Mr. Hamilton's prior suspension for 135 days involved, as this case does, his failure to answer a Request for Investigation, failure to answer a formal complaint and failure to appear before the hearing panel. We agree with the Grievance Administrator's argument that a reduction in the level of discipline for subsequent identical misconduct serves no disciplinary purpose.

The Standard for Imposing Lawyer Sanctions formulated by the American Bar Association's Joint Committee on Professional Sanctions and approved by the ABA in February 1986 goes so far as to suggest "disbarment is generally appropriate when a lawyer has been suspended for the same or similar misconduct and intentionally and knowingly engages in further acts of misconduct that cause injury or potential injury to a client, the public, the legal system or the profession."

We are unable to determine from the record before us whether respondent Hamilton has intentionally ignored his responsibility to the legal system, whether his total failure to answer or appear at any stage of these proceedings is the result of careless indifference, or if he is physically or mentally incapacitated to the point that he is unable to participate in these proceedings. Under these circumstances, we do not believe that disbarment or lengthy suspension would necessarily be appropriate. However, we are equally convinced that the respondent's continuing misconduct should not result in a reduced level of discipline. The suspension imposed by the hearing panel is modified and it is increased to a suspension of 150 days.

All concur.