

IN THE MATTER OF HUBERT J. MORTON,
A Member of the State Bar of Michigan,
Respondent.
File No. DP-24/81

Decided: December 1, 1981

OPINION OF THE BOARD

Respondent was charged with failure to pursue a probate matter, and failure to answer a Request for Investigation. The Wayne Circuit Hearing Panel "C" suspended him for thirty days. Respondent moved for review, claiming that the discipline assessed was, under the circumstances, too harsh. We agree, and reduce discipline to a reprimand.

Mr. Morton entered the bar in 1976. He is a registered pharmacist as well as an attorney, and is married with two dependent children. Complainant lives in East Lansing where she was a student. Her mother died early in 1980, and left a house in her will to Complainant and Complainant's sister. Complainant was referred to Respondent by an acquaintance, and met Mr. Morton at his Detroit office in March 1980. At that meeting, Complainant gave Mr. Morton several documents needed for the probate proceedings: the death certificate, a quit claim deed, a closing statement, and survey and abstract information. No money ever changed hands for fees or costs, at this meeting or thereafter. Panel Tr. at 36-37.

Complainant's sister also attended the meeting, and Respondent had the two women sign what apparently were consent forms. Complainant also has a brother, although she testified she did not know where he was at the time of her meeting with Mr. Morton. Panel Tr. at 33-34. Respondent told Complainant that he would need her brother's signature on the consent forms as well, and claims she told him she would get in touch with her brother and have him contact Mr. Morton. Complainant denies ever saying this. Panel Tr. at 34. The brother never contacted Respondent.

The initial meeting between Respondent and Complainant occurred in March, 1980. They made another appointment for April, 1980. On the appointment day Complainant arrived from East Lansing but Respondent was not in his office. Panel Tr. at 16-17. Complainant then wrote to Mr. Morton asking for return of her documents, but she received no response. Her attempts to contact Respondent by telephone were also unsuccessful. Respondent eventually talked to Complainant in September, 1980, and said he would send the documents to her immediately. She received no documents, however, and filed a Request for Investigation in November, 1980. Complainant did receive her documents by mail in January, 1981.

Respondent testified that Complainant told him at their initial meeting that she would have her brother get in touch with him to sign the consent. Panel Tr. at 94, 51, 55. Respondent did not work on the case except to check to see if the occupants of the mother's house intended to stay under the lease. No petition for commencement of probate proceedings was filed. Respondent, though uncertain, seems to recall that he told Complainant during a telephone conversation that he had misplaced her file, but Complainant does not remember such an explanation. Although Respondent did promise at one point to send the documents immediately, the file was being handled by young, inexperienced office personnel, and Respondent did not personally follow-up to see if his instructions had been fulfilled. When he discovered in January, 1981 that the materials had not been sent to Complainant, he attended to the matter himself.

Although Respondent claims he did not answer the Request for Investigation due to a heavy trial schedule, he did send a letter to the Grievance Administrator in January, 1981, after his default had been entered, explaining that he had returned the Complainant's documents.

Respondent was guilty of simple neglect. However, there is no question of his competence to practice, and this is his first offense. Further, it appears that Respondent's neglect was caused more by misunderstanding than by intent or carelessness.

Respondent admitted that he was tardy in returning Complainant's documents, due to the inexperience of his office staff. Attorneys, of course, are responsible for the actions and errors of their supervised staff. In re Hudnut, No. 34884-A (Mich ADB 1979). It is also clear that some neglect occurred. Yet, office disorganization may be a point in mitigation, where the attorney was not personally at fault. Cf. Chappell v Schwartz, No. DP-21/81 (Mich ADB 1981). In addition, although Respondent did not timely answer the Request for Investigation, he believed in good faith that his letter of January, 1981 constituted an adequate, albeit late, answer.