GRIEVANCE ADMINISTRATOR,
Petitioner/Appellant,
v
G. STEWART ISLEY, P-31615,
Respondent/Appellee.

File Nos. ADB 30-87; 48-87

Decided: May 18, 1988
Issued: July 19, 1988

OPINION OF THE BOARD

MAJORITY OPINION

Robert S. Harrison, Chairman
Patrick J. Keating, Member
Theodore P. Zegouras, Member

The Hearing Panel in this case imposed a suspension of thirty (30) days as the result of its findings the Respondent had neglected a divorce matter, misrepresented the status of the case to his client, failed to return the unearned portion the fee paid by the client, failed to answer a Request for Investigation and failed to answer a Formal Complaint. The Grievance Administrator has filed a Petition for Review seeking an increase in the level of discipline imposed by the panel. The Hearing Panel order is modified by increasing discipline to a suspension of sixty (60) days.

The Respondent, G. Stewart Isley, failed to answer a Request for Investigation submitted to the Attorney Grievance Commission by Ms. Ruby Ehren and failed to answer the Formal Complaint filed by the Grievance Administrator on March 18, 1987. He did, however, appear before the panel at a hearing on May 6, 1987. He explained that he was attending the hearing to acknowledge that the allegations in the complaint were "substantially correct". The Respondent did not seek to set aside the default which had been entered for his failure to answer the complaint. Notwithstanding that default, the panel asked for testimony from the complainant, Ms. Ehren, who related that she had retained Mr. Isley in July, 1986 to defend her in a divorce case and had paid him a $1000.00 retainer. Ms. Ehren was aware that a hearing had been set in her case for September 15, 1986. On September 11, she was advised by Mr. Isley that the hearing had been adjourned. On September 15, she was told by Mr. Isley that he had not been able to get to the court in time to adjourn the case, that a default had been entered against her, and that he would immediately file a motion to have the default set aside. She testified that she was specifically advised by her lawyer that she was not divorced and that a motion to set aside the judgment of divorce would be heard later that month. She testified that Mr. Isley told her of further hearings scheduled in November and December, 1986. However, when she went to the office of the court clerk, she discovered that no motions had been filed by Mr. Isley, that no hearings had been scheduled and that her divorce had, in fact, been entered by default on September 15, 1986.

In answer to questions posed by the panel, the Respondent admitted the basic allegations in the complaint. After forgetting to adjourn the original hearing in September, 1986, he was too embarrassed to go to the judge to set aside the default or to admit to his client what had happened. He admitted that he failed to answer the Request for Investigation and the Complaint.

A separate portion of the hearing was devoted to the issues of aggravation and mitigation. The Respondent testified that he had been in practice for seven years with no prior difficulties and had represented his clients well. He stated that he made a mistake in this case and kept compounding the mistake "perhaps because I-felt that I ought to be called on the carpet for it . . . it was inexcusable not to obey the rules. I know I was supposed to respond the first time, and I know I was supposed to respond the second time. I just didn't . . . I am my own harshest critic...you can't be any tougher on me than I have already been on myself."

By virtue of the default, Respondent's admissions, and the testimony of his former client, Respondent Isley's misconduct is firmly established and the only issue before the Board is whether or not a thirty day suspension is appropriate. Respondent mistreated his client by failing to seek her legal objectives in a diligent manner and by misrepresenting the status of her case to her. Furthermore, his failure to answer the Request for Investigation and Formal Complaint might be interpreted as a disturbing indifference to his obligation to comply to the rules which govern the conduct of all Michigan attorneys.

Ordinarily, the deliberate misrepresentation to a client or the failure to respond to the disciplinary process might each justify an increase in discipline to a suspension of sufficient duration to trigger the reinstatement process described in MCR 9.123(B). While we agree with the Grievance Administrator that an increase in discipline is called for, we feel that Respondent has demonstrated a sufficient change in attitude to obviate the need for such drastic measures.

Mr. Isley has a prior unblemished record. The record in this case does not suggest a pattern of misconduct on his part. Rather, we accept his explanation that his failure to be candid with his client or to respond to the Grievance Administrator's investigation were prompted by a combination of fear and embarrassment. Mr. Isley appeared in person before the Panel and the Board to admit the allegations of misconduct and to acknowledge the impropriety of his conduct. The absence of a prior disciplinary record and the Respondent's remorse are identified as factors which may be considered in mitigation in the Standards for Imposing Lawyers Sanctions drawn by the Joint Committee on Professional Sanctions of the American Bar Association and adopted by the ABA House of Delegates in February, 1986. Both factors have, of course, been considered in mitigation in prior opinions of this Board. See, for example, Matter of John C. Mouradian, File DP 144/82, March 17, 1983, (Opinions of the Board, page 255); Matter of Kenneth S. Karasick, File DP 55/81, December 1, 1981, (Opinions of the Board, page 186).

In our view, a suspension of 120 days followed by an additional suspension during a lengthy reinstatement process is not necessary to achieve our overriding goal which is the protection of the public, the courts and the legal profession. We therefore increase discipline in this case to a suspension of sixty (60) days.

MINORITY OPINION

Hon. Martin M. Doctoroff
Hanley M. Gurwin

The Respondent in this case has admittedly neglected a legal matter entrusted to him by a client, actively misrepresented the status of that case to his client and failed to return the unearned fees which were paid to him. In direct violation of the Court Rules, he failed to answer a Request for Investigation and failed to answer a Formal Complaint. Our dismay that this Respondent is not required to appear before a panel to establish his eligibility for reinstatement is not the result of any animosity toward the Respondent or a desire to inflict punishment. We agree with our colleagues on the majority that our primary concern is the protection of the public, the courts and the legal profession. We feel, however, that the facts of this case raise serious concerns about the Respondent's fitness to practice law and that the burden should be on him to appear before a Hearing Panel in reinstatement proceedings to demonstrate his eligibility for reinstatement.

Lawyers, like everyone else, make mistakes. We accept Mr. Isley's testimony that he was not prepared for a hearing in his client's divorce case and that he made a mistake by not taking the appropriate steps to have the case adjourned. Lawyers have a special duty, however, to be honest and forthright. Rather than being candid with the judge, opposing counsel and his client regarding a relatively simple mistake, the Respondent deliberately told his client that her divorce judgment had not been entered and that further court hearings were scheduled when he knew those statements were false. In a recent opinion involving an inexperienced attorney whose misrepresentations to her client resulted from a lack of experience and a sense of frustration rather than a deliberate attempt to injure her client, the Attorney Discipline Board increased the thirty (30) day suspension imposed by a hearing panel to a suspension of 120 days; Matter of Ann Beisch, File No. DP 122/85, February 8, 1988. In that case, the Board ruled unanimously that protection of the public and the legal system as a whole required that reinstatement of the Respondent's license be conditioned upon an affirmative showing of a fitness to practice law in reinstatement proceedings conducted before a hearing panel. With regard to Respondent Isley's misrepresentations to his client, this case would seem to call for a similar result.

Moreover, Respondent's conduct in this case is significantly aggravated by his failure to answer the Request for Investigation or the Formal Complaint. While we are pleased that Mr. Isley personally attended the hearings before the panel and the Board, his presence at those hearings was required by MCR 9.115(H) and MCR 9.118(C). An attorney whose license to practice law has been suspended for more than 120 days must establish, among other things, that he or she has a proper understanding of and attitude toward the standards that are imposed on members of the Bar, MCR 9.123(B)(6). At the very least, this Respondent has demonstrated, by his failure to answer, that he did not have such an understanding when the Request for Investigation and Formal Complaint were served on him. We would increase discipline to a suspension of 120 days.