GRIEVANCE ADMINISTRATOR,
Petitioner/Appellant,
v
RALPH T. JOHNSON, P-15542,
Respondent/Appellee.

ADB 175-87; 195-87

Decided: June 15, 1988

BOARD OPINION

The hearing panel concluded that Respondent's neglect of two probate matters warranted a reprimand. Upon consideration of a Petition for Review filed by the Grievance Administrator, the Attorney Discipline Board has concluded that additional counts charging that Respondent failed to answer two Requests for Investigation, failed to appear when subpoenaed and failed to answer a Formal Complaint were established. Discipline is increased to a suspension of 120 days.

On January 12, 1986, Respondent was served with a Request for Investigation filed by Gerald Yeager complaining that Respondent Ralph T. Johnson had been retained in January 1984 to handle the administration of the estate of Yeager's father, Edgar L. Yeager, but that he had neglected his responsibilities as an attorney. Despite a final notice sent to Respondent by the Grievance Administrator on February 9, 1986 advising him that failure to answer a Request for Investigation was itself an act of professional misconduct warranting discipline, Respondent Johnson failed to reply as required by Michigan Court Rule 9.113. On September 18, 1986, Respondent was served with a separate Request for Investigation filed by Ms. Katherine Wills who complained that Mr. Johnson had been retained in January 1984 to administer the estate of Clarence Kretschmer and that he had failed to file the necessary documents in that case and failed to correspond with her regarding the estate. A final notice was sent to the Respondent by the Grievance Administrator on October 15, 1986 again advising that failure to answer a Request for Investigation would subject him to formal charges of professional misconduct. No answer was filed to that Request for Investigation.

On October 5, 1987, a Formal Complaint was filed by the Grievance Administrator alleging that Respondent had neglected his duties as an attorney in the Kretschmer and Yeager estates, that he failed to answer the two Requests for Investigation and, in addition, that he had failed to appear with his files and records concerning those estates in response to a subpoena issued and served by the Grievance Administrator.

Respondent's failure to file an answer to that Complaint resulted in the entry of his default and the filing of a new Complaint under ADB 195-87. The Respondent appeared at the scheduled hearing. He filed no answer and made no attempt to set aside the default.

The hearing panel ruled that the misconduct alleged in the Complaint was established by entry of the default. See Matter of Daune Elston, DP 100/82, (1982) (Brd. Opn. p. 238). The panel then received testimony relevant to the issue of the appropriate level of discipline to be imposed.

Under cross-examination, Respondent substantially admitted the allegations of neglect and could give no explanation for his failure to respond to the grievance proceedings. Mr. Johnson testified that he not only failed to answer the Complaint filed by the Administrator but that he had not even read it. (Hrg. Tr. p. 12) Further testimony was elicited from Complainant Gerald Yeager who testified as to Mr. Johnson's neglect of his father's estate.

In its report, the Panel stated that it "recognized Mr. Johnson's failure to respond to the Complaint and Mr. Johnson's failure to appear when subpoenaed before the Administrator on one occasion. However, the panel concluded that Mr.Johnson has a right not to answer a formal complaint filed against him." It was the panel's conclusion that Respondent be reprimanded "for his knowing neglect of an important probate matter in the estates of Kretschmer and Yeager. The hearing panel's conclusion is based upon consideration of both aggravating and mitigating circumstances. . ." Those mitigating factors included findings that Respondent charged no fee for his legal services on behalf of either estate, that he had apparently advanced funds to pay real estate taxes on behalf of the Yeager estate, that no selfish or dishonest motive had been shown and that no "serious" injury resulted to the clients. The panel imposed a reprimand which has been appealed by the Grievance Administrator.

The hearing panel erred in its decision to impose discipline only for Respondent's admitted neglect of two probate matters. The hearing panel apparently chose not to consider Respondent's admitted failure to answer two Requests for Investigation and concluded that he had a "right" not to answer the formal complaint.

The right of a Michigan attorney to refuse to answer Complaints or Requests for Investigation is narrowly limited to those cases in which the Respondent refuses to answer on expressed constitutional or professional grounds. See MCR 9.113(B)(1) and MCR 9.115(D)(2). Attorneys do not have a right simply to ignore the duty to answer charges of professional misconduct. This responsibility was emphasized by the Board in Matter of James H. Kennedy, DP 48/80, March 10, 1981 (Brd. Opn. p. 132):

> Members of the Bar have an unavoidable duty to answer Requests for Investigations. These requests are complaints generally made by members of the public, against attorneys. Beyond the self interest which should impel conscientious lawyers to answer, it is an affirmative duty to do so. This duty has two faces: responsibility to the Bar and to the public. The duty to the Bar is to help clarify complaints made about its members, so that grievances with merit may proceed, and those without substance may be disposed of quickly. The Bar should not suffer the effects of uncertainty resulting from dangling complaints. The duty to the public relates to fairness to lay people who may have a legitimate grievance. Matter of Kennedy, supra, (Brd. Opn. p. 134).

The Board has noted in the past that a Respondent failing to answer Requests for Investigation may be considered "professionally irresponsible and contemptuous", Matter of Moore, #35620-A, (1979)

and that failure to answer may indicate a "conscious disregard for the rules of the Court". Matter of Ruebelman, #36527-A, (1980) (Brd. Opn. p. 97).

In an opinion issued by this Board in February 1987, we took special pains to re-emphasize the importance of an attorney's affirmative duty to answer Requests for Investigations and our concern at the surprisingly high number of respondents who ignore that duty. See Matter of David A. Glenn, DP 91/86, ADB Opinion February 23, 1987. In that case, the reprimand imposed by the hearing panel solely for failure to answer a Request for Investigation was increased to a suspension of thirty days and the Board's opinion included notice to that respondent and the Bar generally "that the lawyer who ignores the duty imposed by court rule to answer Requests for Investigation and Formal Complaints does so at his or her peril and that, absent exceptional circumstances, that attorney may expect a discipline greater than a reprimand". Respondent Johnson has offered no reasonable excuse or explanation for his failure to answer and the record contains no circumstances warranting a limitation of discipline to a reprimand.

Respondent Johnson failed to answer not one but two Requests for Investigation. His excuse for failing to appear in response to a subpoena issued by the Attorney Grievance Commission was that "perhaps I was just not interested in doing so". He failed to answer the Formal Complaint and testified that he had not even read it. In response to an Order to Show Cause issued by the Attorney Discipline Board in accordance with MCR 9.118, he failed to appear at hearing before the Board to show cause why discipline in this case should not be increased. We would be remiss in our duties to the public and the legal profession if discipline was not increased to a suspension of sufficient length to require that he establish his eligibility for reinstatement by appearing at some future date before a hearing panel to establish that he has a proper understanding of and attitude toward the standards that are imposed on members of the Bar and will conduct himself in conformity with those standards. See MCR 9.123(B)(6). It is clear from this record that Respondent does not presently have such an understanding or attitude toward those standards.

Apart from his repeated failures to answer or appear in these proceedings, Respondent's neglect of the two probates estates are cause for concern. Respondent was appointed personal representative of the Estate of Clarence Kretschmer by the Macomb County Probate Court in February 1984. He was removed as personal representative by the Court in October 1986, having failed to obtain a determination of inheritance taxes, failed to distribute the assets according to the terms of the Will and having failed to respond to the inquiries of counsel for a devisee under the Will. In the matter of the Estate of Edgar L. Yeager, Respondent was appointed as co-personal representative by the Macomb County Probate Court in January 1984 and was also removed in October 1986, having failed to file timely accountings, failed to distribute the assets of the estate and having failed to respond to the inquiries of Edgar Yeager's son.

We cannot agree with the panel that any significant mitigating effect should be given to the fact that Respondent received no attorney fees in either estate or that he had advanced funds to pay delinquent real estate taxes in the Yeager estate. Neither are we entirely comfortable with the panel's conclusion that his neglect of these estates was mitigated by the fact that "no serious injury resulted to the clients." While it is true that no evidence was presented concerning any monetary loss, the Board has recognized that Michigan lawyers are held to a high professional standard in probate

matters and that "the slow handling of an estate causes a client harm". Matter of James H. Kennedy, DP 48/80, March 10, 1981 (Brd. Opn. p. 132, 134); Matter of Ross John Fazio, DP 36/82, September 13, 1983 (Brd. Opn. p. 294).

Prolonged delay in the closing of a decedent's estate may result in injury to the decedent's family and beneficiaries which is not necessarily limited to monetary damages. For example, the record discloses that Edgar Yeager died in December 1983 and that the primary asset of the estate, a house, was sold in June 1985. According to Yeager's son, reimbursement of some estate related expenses was made by Respondent but no further action was taken by Respondent to close the estate and distribute the assets. Yeager's widow died in January 1987, three years after the death of her husband and eighteen months after the sale of the house without ever realizing her share of her husband's estate. This unhappy result of Respondent's neglect is, if anything, an aggravating circumstance.