

GRIEVANCE ADMINISTRATOR,
Petitioner/Appellant,
v
HARRY H. GEMUEND, JR., P-13916,
Respondent/Appellee.

ADB 80-87; 105-87

Decided: March 24, 1988

BOARD OPINION

Upon consideration of the Petition for Review filed by the Grievance Administrator, the Board increases the 120 day suspension imposed by the hearing panel to a suspension of 180 days. Respondent has exhibited an indifference to his duties to a client as well as a total disregard for the disciplinary process as evidenced by his failure to answer or appear at any stage of these proceedings.

The Formal Complaint filed May 18, 1987 charged that Respondent was retained in August 1983 and filed suit against an insurance company in September 1983. In 1985, the suit was dismissed by stipulation at which time the Respondent agreed to submit the matter to arbitration. The Complaint alleges that he failed to perform any further services in that matter, failed to comply with an order to answer interrogatories in different litigation against another defendant and failed to respond to his client's continuing inquiries regarding the status of her cases. A separate count charged that Respondent failed to answer the Request for Investigation filed by the client in November 1986.

Respondent failed to answer either of the Complaints filed by the Grievance Administrator and did not appear at the hearing. Based upon Respondent's default and the further testimony from the complainant, the panel concluded that the allegations were established and that a suspension of 120 days was warranted.

On appeal, the Grievance Administrator has urged that this discipline be increased to insure that Respondent is required to establish his eligibility for reinstatement to the practice of law by demonstrating, among other things, his understanding of the rules imposed upon members of the legal profession.

The 120 day suspension imposed by the hearing panel is, on its face, consistent with the Board's ruling In the Matter of Peter H. Moray, DP 143/86; DP 157/86, Brd. Opn. March 4, 1987. In that case, this Board declared that:

“Apart from any considerations 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.”

In that opinion, the Board went on to describe the reinstatement procedure described by MCR 9.123(B) and MCR 9.124 which is required when an attorney has been suspended for 120 days or more.

Since the issuance of the Board’s opinion in Matter of Peter Moray, our supreme Court adopted, effective June 1, 1987, certain amendments to the Court Rules governing these discipline proceedings including an amendment to MCR 9.106(2). That Rule which had previously directed that misconduct is grounds for “suspension of the license to practice in Michigan for a specified term and, if the term exceeds 119 days until a further order of a hearing panel, the Board or the Supreme Court” was changed and currently authorizes “suspension of the license to practice in Michigan for a specified term . . . and, if the term exceeds 179 days, until the further order of a hearing panel, the Board, or the Supreme Court.” In its comments accompanying those amendments, however, the Court indicated that the reinstatement procedure described by MCR 9.123(B) and MCR 9.124 was the subject of continuing review by the Court and no changes were made to those rules.

MCR 9.123(A),(B) requires, at this time, that the longer reinstatement process applies when the suspension exceeds 119 days. It is the Board’s position that automatic reinstatement upon the filing of an affidavit is available only when the term of suspension is 119 days or less. Nevertheless, in order to avoid any unintended result of this current anomaly between the provisions of MCR 9.106(2) and MCR 9.123, we increase discipline in this case to 180 days.

There is nothing in the record below which sheds light on Mr. Gemuend's whereabouts. The complainant testified that she was unable to contact her attorney and was told repeatedly that he was either ill or out of town. The Board has received notification from the State Bar of Michigan that Respondent has not paid his mandatory bar dues for 1986 or 1987 and, in accordance with the Supreme Court Rules governing the State Bar of Michigan, Mr. Gemuend has been unable to practice law since January of 1986. It is not necessary that we speculate as to the reasons for Respondent’s unavailability. As we stated in our opinion in the Matter of Peter Moray, we are not willing to gamble as to whether an attorney’s repeated failure to comply with the rules “ is the result of a contempt for his responsibilities as an attorney or is the result of a physical or mental condition which jeopardizes the rights of the attorney’s clients. In either case, we feel compelled to insist that such an attorney not return to the active practice of law without appearing at a reinstatement hearing.