

GRIEVANCE ADMINISTRATOR,  
Petitioner/Appellant,  
v  
DAVID F. CASSLEMAN, P-23407,  
Respondent/Appellee.

File Nos. DP 38/86; DP 154/86

Argued: March 23, 1987

Decided: May 20, 1987

BOARD OPINION

The Hearing Panel in this case imposed a Suspension of six months based upon its finding that the Respondent neglected a legal matter entrusted to him by his client that he made false statements to that client, and that he failed to answer a Request for Investigation filed by a second client in an unrelated matter. Respondent Cassleman did not file an Answer to the Complaint filed by the Grievance Administrator nor did he appear before the Hearing Panel. Although Mr. Cassleman filed a Delayed Petition for Review seeking an opportunity to address the Board, he did not file the required brief in support of his Petition and he did not appear at the review hearing which he requested.

Counsel for the Grievance Administrator has argued persuasively that the record in this case warrants a suspension of greater than six months. We agree and increase discipline to a suspension of one year.

In making this determination, the Board has considered both the seriousness of the misconduct charged in the Complaint and admitted by the Respondent by virtue of his default and our consideration of the aggravating factors which appear in the record of these proceedings.

While the Default entered for Respondent's failure to answer formed a sufficient basis for a finding of misconduct, Matter of Daune Elston, Attorney Discipline Board, DP 100/82, 1982, (Opinions of the Board, page 238), the unrebutted testimony of Complainant Nancy Faber emphasizes Respondent's deliberate efforts to deceive his client and conceal his inactivity. Ms. Faber related to the Panel that she and her attorney attended a Court hearing on December 24, 1984 to resolve certain child support and custody issues. At the conclusion of the hearing, Mr. Cassleman told his client that her husband had been ordered to pay \$40 a week in child support and that the necessary order would be prepared immediately. (T12) In response to his client's direct inquiry, Respondent later advised her that the necessary documents had been filed with the Court and the Friend of the Court and he continued to make those representations to Ms. Faber on a weekly basis in March and April. In mid April, Respondent admitted to his client that no papers had been filed but that he would take care of the matter and he promised to reimburse Ms. Faber for any child support payments which could not be collected as a result of his negligence. (T15) It was not, however, until July, 1985 that, an appropriate Order was entered. Although Respondent did execute a promissory note to his client to reimburse her for child support payments which could not be

collected from her husband, Respondent defaulted on the note and his client eventually obtained a Small Claims Court Judgment against him in the amount of \$1,231.44.

Respondent's misrepresentations to his client during the months of March and April, 1985 concerning the status of her case were not the result of a negligent failure to provide a client with complete information but were the result of an intentional pattern of deception. A lawyer has an obligation to be candid and truthful with his or her client at all times. However, a deliberate misrepresentation by an officer of the Court regarding the filing or non-filing of pleadings or court documents injures not only the client but the legal system as a whole. In this case, Respondent told his client that her failure to receive child support payments must be the result of a mix-up in the office of the Friend of the Court. An attorney has a special duty to promote public confidence in our legal institutions and not to use the legal process as a scapegoat.

In reviewing the level of discipline, we must also consider any mitigating or aggravating factors which appear in the whole record. In this case, the only communication from Mr. Cassleman to the Attorney Grievance Commission, the Hearing Panel or the Attorney Discipline Board is his letter to the Board dated January 8, 1987 requesting a review of the Panel's Order. In that letter, Mr. Cassleman conceded that many of the allegations in the Complaint would have been admitted had he appeared before the Panel but he requested an opportunity for the Board "to make its decision with as much knowledge of me as possible". Unfortunately, we have no explanation for Respondent's failure to appear at the review hearing on March 20, 1987. By his failure to answer or appear at any stage of these proceedings, Respondent Cassleman has waived his right to present mitigating evidence for our consideration.

The aggravating factors in this case warrant our attention. Respondent's failure to answer the Request for Investigation as alleged in Count III of the Complaint and his failure to answer the Formal Complaint constitute conduct which has been considered by the Board to be professionally irresponsible. Schwartz v Kennedy, DP 48/80, ADB 1981 (Opinions of the Board, page 132). We must also consider Respondent's prior discipline, an Order entered In the Matter of Schwartz v Cassleman, File No. DP 101/85, dated August 26, 1986, suspending his license for a period of 120 days and until reinstatement in accordance with the applicable Court Rules.

Under the circumstances, we conclude that a suspension for a period of one year is appropriate. The Hearing Panel Order of Suspension is affirmed in all other respects, including the requirement that restitution be made to Respondent's client Nancy Faber.