

GRIEVANCE ADMINISTRATOR,
Petitioner/Appellant,
v
ELGIN L. WHEELER, P-31456,
Respondent/Appellee.

File No. DP 89/86

Argued: March 23, 1987

Decided: April 7, 1987

OPINION OF THE BOARD

The Respondent in this case failed to answer the Formal Complaint which was served on him July 3, 1986 and he did not appear at the hearing before Oakland County Hearing Panel #4 on August 1, 1986. Based upon the Default which had been entered, the Panel concluded that the allegations in the Complaint were admitted and that Respondent neglected a legal matter, failed to communicate with his client and failed to answer a Request for Investigation, all in violation of MCR 9.104(1-4, 7), MCR 9.113 and Canons 1, 6 & 7 of the Code of Professional Responsibility, DR 1-102(A)(4-6), DR 6-101(A)(3) and DR 7-101(A)(1-3). This matter comes before the Board by a Petition for Review filed by the Grievance Administrator seeking an increase in the thirty-day suspension ordered by the Panel.

In accordance with our prior decisions, we modify the discipline imposed by increasing to a suspension of 120 days and until Respondent has established his eligibility for reinstatement in accordance with MCR 9.123(B) and MCR 9.124.

The record in this case discloses that this Respondent has made no effort at any stage of these disciplinary proceedings to comply with the rules imposed as a condition of the privilege to practice law. In February, 1986, Respondent's client Wilhemenia Jones submitted a Request for Investigation to the Attorney Grievance Commission complaining that she had paid a \$500.00 retainer to Mr. Wheeler to assist her in legal matters related to her establishment of a small business. She also complained that her attorney would not reply to her inquiries regarding the status of those matters. The Respondent did not answer that Request for Investigation, contrary to the provisions of MCR 9.113. The Respondent then failed to answer the Formal Complaint, in violation of MCR 9.115(D), and he failed to appear at the hearing, contrary to MCR 9.115(H). In response to the Petition for Review filed by the Grievance Administrator, this Board issued an Order to Show Cause directing that Respondent show cause before the Board on March 23, 1987 at 9:00 a.m. why the Hearing Panel Order should not be affirmed or amended. Respondent Wheeler neither appeared nor communicated with the Board.

In an opinion issued in 1981 reversing a hearing panel Order of Dismissal and imposing a suspension of 121 days, the Board emphasized the seriousness of an attorney's failure to answer a Request for Investigation:

Members of the Bar have an unavoidable duty to answer Requests for Investigation. 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 . . . failure to fulfill the dual duty of responsibility is in itself substantive misconduct and should never be ignored by a hearing panel or excused as a peccadillo unworthy of drawing discipline. A respondent failing to answer Requests for Investigation may be considered "professionally irresponsible and contemptuous." In re Moore #35620-A, State Bar Grievance Board (1979). This Board has recognized that failure to answer also indicates "a conscientious disregard for the rules of the Court." Schwartz v Ruebelman, #36527-A, Attorney Discipline Board 1980. Matter of James H. Kennedy, DP 48/80, March 1981 (Brd. Opn. p 132).

As we have noted in other cases, we conclude that an attorney who has utterly failed to cooperate with our profession's system of discipline must be required to appear before a panel to demonstrate his or her fitness to resume the practice of law. Absent the most unusual circumstances, a Reprimand or a short suspension accompanied by an automatic reinstatement in such cases would not be consistent with our primary concern which is the protection of the public, the courts and the legal profession. In the recent case of Grievance Administrator v Peter H. Moray, DP 143/86, DP 157/86 (Attorney Discipline Board March 4, 1987), we concluded that the attorney who fails to answer or appear must, at some point, come forward to offer an explanation concerning his or her failure to respond to the requirements of the discipline process. We are simply unwilling to assume that the attorney who displays indifference to these proceedings will nevertheless act with diligence and competence on behalf of clients.

Martin M. Doctoroff, Robert S. Harrison, Charles C. Vincent, M.D., Remona A. Green, Hanley M. Gurwin, and Patrick J. Keating concurring.