

GRIEVANCE ADMINISTRATOR,
Petitioner/Appellee,
v
JOHN C. MOURADIAN, P-18040,
Respondent/Appellant.

File No. DP 131/84; DP 130/85

Argued: August 27, 1986
Decided: November 3, 1986

OPINION OF THE BOARD

MAJORITY OPINION

The Formal Complaints filed by the Grievance Administrator and consolidated for hearing charged that the Respondent had failed to comply with provisions contained in three prior Discipline Orders requiring the payment of costs to the State Bar of Michigan as reimbursement for the expenses incurred in the investigation and trial of those cases. Specifically, it was alleged that he had failed to comply with orders requiring the payment of \$112.71 on or before June 7, 1983; the payment of \$108.79 on or before November 8, 1983; and the payment of \$239.51 payable on or before November 24, 1984. The Complaints also charged that the Respondent had not filed timely Answers to the Requests for Investigation served upon him by the Grievance Administrator and that he had failed to Answer the Formal Complaint served on August 30, 1985.

At the hearing before the Hearing Panel, the Respondent admitted to the allegations contained in both Complaints stating, in essence, that because of a heart attack suffered in 1982, he was unable to work until 1984 and had no funds to pay the costs assessed. He admitted taking no action to arrange for extensions or partial payment plans and testified to the panel that he was too embarrassed to answer the Complaints.

The Hearing Panel concluded that the Respondent had committed acts of professional misconduct and, in its Report, summarized Respondent's prior disciplinary history. That history consists of six prior Complaints resulting in Findings of Professional Misconduct and the imposition of two Reprimands, a Suspension of 30 days and a Suspension of 60 days. The Panel ordered that Respondent's license to practice law be Suspended for a period of 121 days. The Board now considers the Petition for Review filed by Respondent on the grounds that the Suspension ordered by the Panel is excessive.

Based upon our review of the record and our assessment of the arguments presented by the Respondent, we conclude that a Suspension of 121 days which requires a lengthy reinstatement process, would be unduly harsh in view of this Respondent's status as a sole practitioner who is still suffering from the physical, emotional and economic hardships resulting from a heart attack in 1982. We therefore modify the Hearing Panel Order of Suspension and reduce the discipline in this case to a suspension of sixty (60) days.

In otherwise affirming the findings of the Hearing Panel, the Board rejects Respondent's contention that he is being subjected to discipline as punishment for a financial inability to pay costs resulting from prior disciplinary actions. Rather, the Panel concluded that misconduct was established by this Respondent's failure to respond in a timely manner to the Requests for Investigation sent to him by the Grievance Administrator, his failure to initiate any action which might result in his compliance with those orders and his failure to answer the resulting Formal Complaint. The Board has previously recognized that failure to comply with the provision of a discipline order requiring the payment of costs may constitute grounds for discipline, especially when coupled with a failure to make any requests for an extension of time in which to pay. See In the Matter of J. Michael Kopp, DP 12/81 and DP 120/81, (Opinions of the Board, page 232, September 2, 1982) Furthermore, we have consistently ruled that a Respondent's failure to answer Requests for Investigation or Formal Complaints displays "a conscious disregard for the rules of the Court" Schwartz v Ruebelman, No. 36527-A (Michigan Attorney Discipline Board 1980). We note in this case, however, that neither the Requests for Investigation nor the Complaint were the result of grievances filed by clients. The record is devoid of information reflecting directly upon his competence in his representation of clients. This factor, when considered with the long-lasting emotional and physical results of a heart attack, lead us to the conclusion that Suspension in this case should be reduced to sixty (60) days.

By Majority: Patrick J. Keating, Chairman, Charles C. Vincent, M.D., Secretary and Robert S. Harrison, Member concurring. Martin M. Doctoroff, Vice-Chairman and Member Hanley M. Gurwin filed a separate dissenting opinion. Members Remona A. Green and Odessa Komer did not participate in the deliberations or decision in this matter.

DISSENTING OPINION

By: Martin M. Doctoroff, Vice Chairman and
Hanley M. Gurwin, Member

We would affirm the Hearing Panel Suspension for a period of 121 days for the reason that there has been no showing that the Panel abused its discretion in its consideration of discipline or that the Suspension is not within an appropriate range of discipline under the circumstances presented in this case. On the contrary, we would heartily endorse the Hearing Panel's Conclusion that this Respondent's prior record of discipline amply justifies a Suspension requiring that he establish his eligibility for reinstatement to the practice of law. Mr. Mouradian has now appeared before the Attorney Discipline Board on four occasions since March 1983 seeking review of a Hearing Panel Order of Discipline. In File DP 144/82, the Board reduced a Panel Ordered Suspension of 30 days to a Reprimand in light of mitigating factors which included Respondent's lack of prior discipline, his remorse and the effect of his heart attack upon his ability to Answer the Request for Investigation. In Cases DP 269/82 and DP 19/83 the Board affirmed a Suspension of 30 days and in Files DP 76/83 and DP 122/83, the Board affirmed a Suspension of 60 days. In his arguments to the Board, Counsel to the Grievance Administrator has pointed out that this Respondent appeared before the Hearing Panel having been the subject of eight Formal Complaints and having failed to file a single timely Answer. That record alone would, in our view, justify the decision of the Hearing Panel to impose a Suspension of sufficient length to require that the

Respondent appear before a reinstatement panel to establish by clear and convincing evidence that he has a proper understanding of and attitude toward the standards that are imposed on members of the Bar and that he will, at long last, conduct himself in conformity with those standards.