

IN THE MATTER OF JAMES D. HILLS,
A Member of the State Bar of Michigan,
Respondent.
DP-48/82 & DP-124/82

Argued: May 26, 1983
Decided: September 2, 1983

OPINION OF THE BOARD

The Formal Complaint in this case charged that Respondent neglected a client's civil claim, made misrepresentations to the client regarding the status and progress of the case, and that he paid his client certain sums which he falsely represented as partial payment of purported judgments. Respondent was also charged with making false statements in his answers to the Grievance Administrator's Requests for Investigation and with making misrepresentations to one of his clients regarding the identification and role of the investigator for the Grievance Commission. The hearing panel dismissed a third charge due to insufficient proof.

Respondent has admitted the facts of this case. He stated before the hearing panel that he told the client that a civil suit had been filed and a judgment obtained, when in fact no such suit had been filed. Respondent paid the client \$8,500 and misrepresented that it was part of the settlement. When the matter was referred to an Attorney Grievance Commission investigator, Respondent falsely told the client that the investigator was from an insurance company.

Respondent also admitted, regarding a second client matter, that he misrepresented that a settlement had been reached when in fact he had yet to pursue the client's claim. He paid the client \$2,317.82 and misrepresented that it was an interest payment on the overdue settlement. While these misrepresentations are certainly cause for serious concern, the Board finds substantial mitigation and is persuaded that Respondent did not intend to achieve any personal or financial gain by the false excuses made to the clients.

There is now documented support in the record for the claim that Respondent's deceitful conduct was due to a personality adjustment problem manifested to a limited degree. The record reflects no corrupt or amoral motive; rather, the psychological evidence indicates that this is perhaps a case of a misapplied sense of conscience and an obsessive need to meet the expectations of colleagues and clients regardless of self-harm and limited productive capacity. The conduct in question appears to be atypical and inconsistent with a record of good public and private service.

The hearing panel found several violations of the disciplinary rules and, finding no evidence in mitigation, revoked Respondent's license; apparently the Respondent was not prepared to adequately defend this matter when it was originally heard by the panel. However, our initial review of the charges indicated that revocation of license was somewhat severe and after a partial hearing, the matter was remanded to a Master to hear additional evidence in mitigation offered on a delayed basis as part of Respondent's petition for review. The Master, who was a member of the original hearing panel adjudicating the complaint, concluded that Respondent had provided many years of

outstanding legal service and that Respondent's actions were caused by psychological difficulties and recommended probation under GCR 1963, 970.3. The Deputy Grievance Administrator, before the Board at the Review Hearing, seemed to agree that substantial evidence in mitigation had been produced after remand to the special Master.

However, Respondent's "psychological difficulties" cannot be characterized as a mental disability coming within the scope of GCR 1963, 970.3 and therefore probation cannot be granted in this case. The existence of a limited area of psychological immaturity does not reach the level of mental impairment required for probation under the court rule.

It has been shown that the Respondent, prior to the relatively isolated period of misconduct charged here, had an excellent reputation based upon good service for over 16 years. It is now reflected in the record that the incidents giving rise to the grievances in this case, although of a serious nature, resulted from Respondent's personal inability to cope with unforeseen stresses in private practice, responsibility for matters Respondent may have not been qualified to handle and a mental conflict causing Respondent to deceive his clients rather than take appropriate, constructive action to advance the client's litigation. The seriousness of this conduct is also mitigated by the fact that Respondent's misrepresentations were not part of any scheme for Respondent's benefit, but were due solely to Respondent's inability to admit to his clients that he had neglected their claims.

In light of the mitigating evidence in the record, including the report of the consulting psychologist, and given the nature of the charges, it is clear that revocation of Respondent's license is too severe. Substantial discipline, however, is warranted here, particularly in light of Respondent's effort to dissemble the facts of the Grievance Administrator's investigation and the duration of the neglect resulting in harm to the clients. These characteristics and the facts as admitted raise sufficient doubt to warrant reexamination before a hearing panel as a prerequisite to any future reinstatement. We reduce the discipline from revocation of license to a suspension of 121 days.

All concur.