

GRIEVANCE ADMINISTRATOR,
Petitioner/Appellant,
v
CHARLES B. EVANS, P-13240
Respondent/Appellee.

File Nos. DP 23/86; DP 60/86

Argued: January 28, 1987

Decided: March 4, 1987

OPINION OF THE BOARD

Respondent was served with a two Count Formal Complaint charging professional misconduct for his failure to comply with the provisions of a prior discipline order and for his failure to answer the Request for Investigation served by the Grievance Administrator seeking an explanation for his failure to comply with that order.

No Answer to the Complaint was filed and Respondent's Default was entered. A second Formal Complaint went unanswered by Respondent and his Default was entered in that case. Respondent did not appear at the trial.

The Board is asked to consider the appropriateness of the sixty day suspension ordered by the hearing panel. We find that Respondent's failure to answer the Request for Investigation and the Formal Complaints, compounded by his failure to appear, demands that discipline be increased to a suspension of 120 days.

Since March 1984, this Respondent has been the subject of seven Formal Complaints, including the two Complaints which are the subject of the proceedings now before us. Respondent Evans has not answered any of those Complaints.

An attorney served with a Request for Investigation or a Formal Complaint is under an obligation to respond. MCR 9.113(A) and MCR 9.115(D). The attorney may refuse to answer a Request for Investigation on expressed constitutional or professional grounds [MCR 9.113(B)(1)] and may elect to assert the grounds for failure to admit, deny or explain the allegations in a Complaint [MCR 9.115 (D)(2)]. The rules promulgated by our Supreme Court do not, however, allow a licensed member of the Bar to ignore his or her duty to answer.

The attorney who consistently fails to answer Requests for Investigation and Formal Complaints brings before a hearing panel a prima facie showing that he or she is unwilling or unable to comply with the rules governing the conduct of attorneys who have come in contact with the discipline system. The attorney may appear before the panel to offer relevant mitigating factors even though a Default has been entered, Matter of Daune Elston, File No. DP 100/82 1982 (Brd. Opn. p. 238), but the attorney who then fails to appear at the hearing not only waives that right to introduce evidence which might properly be considered in mitigation but raises further questions regarding his

or her fitness to practice law in light of the requirement of MCR 9.115(H) that respondent "shall personally appear at the hearing and subject to cross-examination as an opposite party."

In such cases, a suspension of at least 120 days triggers the reinstatement requirements of MCR 9.123(B) and MCR 9.124 and insures that respondent will come forward if he or she, desires to practice law. The Board has recognized that the reinstatement procedure described in the foregoing Court Rules effectively lengthens the suspension originally ordered. The Board has warned that "some factors which may influence the decision that requires such a procedure are a pattern of serious misconduct, repeated disregard for the rules of the Court, and failure to appear at a disciplinary hearing," In the Matter of Albert A. Chappell, DP 21/81 1981 (Brd. Opn. p. 170).

In this case, Respondent was served, on March 3, 1986, with a Complaint charging that he had failed to comply with the provision in a previous order of discipline directing that he pay costs in the amount of \$200.10 and further charging that he had failed to answer the Request for Investigation served by the Grievance Administrator in an attempt to inquire as to the reason for that deficiency. Respondent's Default for failure to answer the Complaint was entered and a new Complaint was filed, File No. DP 60/86 reciting the provisions of MCR 9.104(7) which defines the failure to answer a Formal Complaint as a separate act of professional misconduct. Respondent failed to answer that Complaint and did not appear at the hearing although notice was sent to the address which Respondent has provided to the State Bar of Michigan.

The Hearing Panel Report contained the required summary of Respondent's previous discipline and noted that Respondent was, at the time of the hearing, suspended from the practice of law for a period of 120 days and until completion of the reinstatement proceedings described in MCR 9.123(B) and MCR 9.124. While the Panel's conclusions make reference to its consideration of mitigation and aggravation, it is clear from a review of the record that no mitigating factors are to be found in this case. Respondent, by his non-communication and non-appearance, waived his right to present mitigating evidence and no such evidence can be inferred. On the contrary, the Report itself refers to the aggravating effect of Respondent's prior discipline which was based, in part, upon Respondent's failure to answer and failure to appear at the hearing in a previous discipline case. When a Respondent exhibits his continuing contempt for the rules by repeating a pattern of misconduct, we are unable to understand why repeated transgressions should be rewarded by reducing the level of subsequent disciplines.

As a general rule, respondents who fail to answer the Request for Investigation, fail to answer the Formal Complaint and fail to appear at the hearing should be suspended for a minimum period of 120 days and we impose that sanction in this case.

All concurred.