

IN THE MATTER OF CLINTON C. LOVETT,
A Member of the State Bar of Michigan,
Respondent.
NO: DP-51/83

Decided: March 7, 1984

OPINION OF THE BOARD

Respondent had been charged with neglect and failure to return his client's fee upon demand. In February 1981 Respondent was retained to handle an uncontested divorce. At that time Respondent was paid \$150 of his \$250 retainer fee. The remaining portion of the fee was paid over the next seven months. Respondent then prepared a complaint, but it was never filed. Respondent stated that, according to the agreement with his client, no action was to be taken by Respondent until the client had paid the full retainer. Respondent testified that the reason for his failure to file the divorce complaint after the fee was paid was that he required additional information from the client which he was unable to obtain because both he and his client had moved and they had lost contact with each other.

The client demanded the return of his \$250 fee and filed a request for investigation. Respondent maintains that he always intended to repay his client but that, due to his unemployment, he has been unable to do so. Respondent's license is currently suspended for non-payment of his bar dues.

The hearing panel ordered a 30-day suspension and restitution to the client. Due to the mitigating factors present, the Board reduces the ordered discipline to a reprimand. Restitution of the client's \$250 shall be required.

The Board found Respondent's testimony credible. It is clear that the \$150 originally paid did not represent the entire fee since the client paid another \$100 over time. There is no disciplinary rule prohibiting an attorney from conditioning the commencement of professional services on receipt of an unpaid portion of a retainer fee. This case can be distinguished from In re Daggs, 384 Mich 729; 187 NW2d 227 (1911) in which an attorney who had already begun work, refused to complete it and allowed the case to be dismissed for lack of progress, because the client did not pay him additional funds. There the Michigan Supreme Court stated:

Once a lawyer accepts retainer to represent a client he is obliged to exert his best efforts wholeheartedly to advance the client's legitimate interest with fidelity and diligence until he is relieved of that obligation either by his client or the court. Id. at 228.

Here, however, Respondent's retainer was not fully paid until seven months after his initial meeting with his client. It was at that time that his duty to pursue his client's case began. Of course, even after the complete retainer was paid, the Respondent still did not file the complaint, ostensibly

because at that point Respondent had inadequate information on which to proceed. Respondent should have obtained all the necessary information to file a divorce complaint in his initial meeting with his client. His failure to do so was probably due to his inexperience in this area. Aware that he needed additional information to complete the complaint, Respondent should have made a more diligent effort to keep track of, and communicate with, his client. Respondent's conduct is in violation of Canon 6, DR 6-101 and for this he will be reprimanded. It appears that Respondent's problems are more economic than ethical and, noting his current suspension for failure to pay Bar dues, further suspension under these circumstances would be merely punitive.

Chairman Cote' and Board Member Reamon dissent and would affirm the thirty day suspension.