

GRIEVANCE ADMINISTRATOR

v

CLINTON C. LOVETT,
Respondent

File No. DP-119/83

Decided: June 26, 1984

OPINION OF THE BOARD

Respondent was appointed to handle a criminal appeal for an indigent client in January 1981. Almost two years later, in November, 1982, he filed for leave to appeal. Leave was granted, and Respondent was assessed costs by the Court of Appeals for his late filing. Respondent filed his appeal brief in March 1983, but only after a warning by the court. As a result of the late filing, Respondent's client lost his right to oral argument in the Court of Appeals.

Respondent was charged with misconduct based on the above facts. The hearing panel ordered a suspension of fifteen days. The Grievance Administrator appeals, asserting that the panel failed to consider prior discipline assessed against Respondent, and further that a suspension of fifteen days is inadequate in the circumstances. We increase discipline to a suspension of sixty days. However, thirty days of the suspension period shall be vacated upon Respondent's filing with the Board a plan of lawyer-supervised law practice, and approval of that plan by the Board. The time of supervision shall be one year, and shall begin following the end of the thirty days remaining in the suspension period.

In his defense, Respondent claimed that following his lay-off from the Appellate Defender's Office, his files there were inadvertently destroyed, so that he did not know who his appointed clients were. He also attributes part of the delay in Complainant's case to confusion over his briefing schedule in the Court of Appeals. As the panel noted, however, Respondent made no attempt to contact the court to discover what cases he had been assigned. Respondent currently has no clients, but works as a research attorney for other members of the bar.

The Board finds that Respondent had inadequate control over his files and office operation. A prior reprimand for neglect of a divorce matter is also noted here. The present offense alone is considered serious, and similar cases have resulted in suspension; i.e.: sixty days in the case of In re Harrington, File No. 35542-A (1979). However, due to the absence of aggravating circumstances, and our conclusion that Respondent appears able to function well under supervision, we limit our increase of the discipline while affording Respondent an opportunity to submit a plan to the Board for supervised practice. Although Respondent is not a candidate for supervision within the context of probation, GCR 1963, 970.3(b)(2), we believe that supervision is available to the Board as an option under the broad grant of GCR 1983, 967.4, allowing the Board to "affirm, amend, reverse, or nullify the order of the hearing panel in whole or in part or order other discipline." [Emphasis supplied.] "Other discipline is deemed to include all the forms of sanctions enumerated as such under GCR 1963, 955 as amended.

AFFIRMED IN PART AND MODIFIED IN PART.

Board Secretary DENNING, and Members COTE', FARHAT, KEATING, and VINCENT,
CONCUR.

Chairperson REAMON, Concurring in part and dissenting in
part:

I concur to the extent that discipline is increased to a thirty (30) day suspension. I disagree that a plan of supervision can be imposed outside the framework of formal probation which is available only under GCR 1963, 970.3. Although subsection (b)(2) allows that a “probation order may... (2) require the respondent to practice law only under the direct supervision of other lawyers . . .,” this condition of probation cannot be read as distinct from the eligibility language in the rule. Nor does the broad grant of authority to amend discipline combine with GCR 955(4) to allow conditions of supervision in suspension orders. GCR 955(4) clearly provides that probation is available under GCR 1963, 970.3. Nowhere else in the court rules does a law practice supervision clause appear. The probation provisions apply to only certain psychologically and physically disabled respondents and must be construed to apply in that limited context. I would impose a suspension of thirty days without adding the requirement of supervision.