

IN THE MATTER OF ROSS JOHN FAZIO,
A Member of the State Bar of Michigan,
Respondent.
File No. DP-36/82

Argued: August 23, 1983
Decided: September 13, 1983

OPINION OF THE BOARD

Respondent has been charged with neglect of an estate and failure to answer a request for investigation. He failed to answer the Formal Complaint and did not appear before the hearing panel. The hearing panel imposed a 90 day suspension. The Grievance Administrator has petitioned for review claiming that the severity of the misconduct, the record of prior similar neglect and Respondent's disregard for these disciplinary proceedings warrant increased discipline. We agree and increase the suspension to 121 days.

In July 1980 Respondent was retained to probate an estate valued at \$114,000.00. Respondent was appointed Special, and later, General Representative, and an inventory was filed in December 1980. An abortive attempt to sell the decedent's house was made and, in April 1981, the inheritance tax was paid. Thereafter, the complainants made repeated attempts to contact the Respondent, both by telephone and in writing, but received no satisfactory response regarding the status of the matter. In April 1982, Respondent was notified by Probate Court that his accounting was overdue. Respondent was granted several extensions, but as of the commencement of this disciplinary action in April 1983, no accounting had been filed. Complainants hired substitute counsel to have Respondent removed as Representative.

Respondent did not answer the Request for Investigation. He did not answer the Formal Complaint. He did not appear before the hearing panel. He also disregarded the Board's Order to Show Cause and failed to appear at his review hearing before the Board. He has been disciplined by this Board before for neglect of an estate over a period of several years. Grievance Administrator v Fazio, 1 Mich Dis Rptr 368 (1981). In that case a thirty day suspension was reduced to a reprimand in light of Respondent's prior record and testimony in mitigation.

Respondent has presented no evidence in mitigation in the present case. He has made no effort to explain his actions in allowing this estate to remain open for three years; nor has he attempted to justify his lack of communication with his clients. In short, Respondent's lack of concern regarding these matters has severely aggravated the charges against him.

Prolonged neglect of an estate is serious misconduct in and of itself. See Grievance Administrator v Kennedy, 1 Mich Dis Rptr 342 (1981). Here it is aggravated by Respondent's recidivism and his conscious disregard for the discipline system. See Grievance Administrator v Hoffman, 1 Mich Dis Rptr 336 (1981); Grievance Administrator v Ruebelman, 1 Mich Dis Rptr 277 (1980). These three factors - neglect, a pattern of misconduct, failure to answer and an absence of mitigating evidence - were also present in Kennedy, *supra*, where a suspension of 121 days was

imposed.

An increase in discipline is clearly warranted given the aforementioned facts and considering that both this Board and the complainants remain in the dark regarding Respondent's reasons for the delays in closing the estate and the status and whereabouts of the assets of the estate.

We increase Respondent's suspension to 121 days to require that Respondent will have to petition for reinstatement and show by "clear and convincing evidence" that he has fulfilled his obligations to the estate and is fit to practice law pursuant to GCR 1963, 972.2. Perhaps, since the future of his legal career rests on his appearance at the reinstatement hearing, the import of these proceedings will be brought home to the Respondent and he will participate cooperatively before the panel.

All concur.