GRIEVANCE ADMINISTRATOR,
Petitioner/Appellant,

v

JAMES D. HILLS, P-14978,
Respondent/Appellee.

ADB 100-89; 108-89

Decided: March 22, 1990

MAJORITY BOARD OPINION

The respondent failed to answer the formal complaint and his default was accepted as a basis for a determination that he accepted a $300.00 retainer (but performed no legal services) while his license to practice law was suspended and that he failed to answer a Request for Investigation. The hearing panel imposed a reprimand with the further conditions that the respondent make restitution of $300.00 to the complainant and that for a period of two years he limit his practice of law to the defense and/or prosecution of criminal cases. The petition for review in this case has bee filed by the Grievance Administrator who argues that the discipline imposed is inappropriate. We agree. The respondent's license to practice law is suspended for thirty days, subject to the condition that restitution of $300.00 be made to the complainant.

The respondent's default for failure to answer the two-count complaint in ADB 100-89 was filed August 9, 1988. A second complaint, ADB 108-89, was filed but dismissed by the Administrator because the twenty-one day answer period had not expired on the date of the hearing. At the hearing on August 30, 1988, Mr. Hills appeared personally. He has not contested the entry of the default and does not contest the factual allegations in the complaint.

Respondent Hills was suspended for a period of one year effective October 21, 1986 by an order of the Attorney Discipline Board. At the conclusion of that suspension period, he petitioned for reinstatement. He acknowledges that the reinstatement panel made a verbal finding that he was eligible for reinstatement, but that he would be required to pay costs in the total amount of $904.00. In his testimony to the panel below, respondent admitted receiving the panel's order which specifically conditioned reinstatement upon the payment of those costs. He was not able to pay those costs until January 1989. Nevertheless, he admits that after he received the panel's order in June 1988, he accepted the sum of $300.00 from a former client who was seeking expungement of a criminal matter. It is his unrebutted testimony that he cashed the check and put the money and the file aside, at his home, because he knew that he was not yet licensed. Until his reinstatement in January 1989, nothing was accomplished for the client. "I completely forgot about it. I didn't go to court. He called me a couple of times and I didn't do anything with it. It just sat there." (Tr. p. 17) The respondent was unable to explain to the panel why he failed to answer either the Request for Investigation or the complaint.

There is nothing in the record to indicate that Mr. Hills "practiced law" while suspended to the extent that he prepared pleadings or appeared in court. In fact, it appears that he initially told the client when he accepted the $300.00 retainer that he could not handle the matter "right now." Nevertheless, his acceptance of that retainer was clearly improper.

Unfortunately, the hearing panel's report provides little guidance with regard to the rationale for imposing a reprimand with certain conditions. Nevertheless, we are inclined to give considerable weight to the panel's judgment with regard to sanctions.

We can neither excuse nor condone the respondent's acceptance of $300.00 from a potential client before the effective date of his reinstatement. He did not, however, actively give advice or engage in the practice of law. In some ways, the gravamen of his offense is his failure to take action.

However, even if little or no weight is given to that finding of misconduct, we are unable to justify the imposition of a reprimand in this case. As the Grievance Administrator points our, the board has addressed the issue of failure to answer Requests for Investigation and formal complaints and has suggested that such failure, in the absence of exceptional circumstances, will generally result in a suspension of thirty days or more. See Matter of David A. Glenn, DP 91/86 (Brd. Opn. December 17, 1986). In this case, respondent has offered no good explanation for his failure to answer. Moreover, his conduct is aggravated by his prior discipline. A thirty-day suspension in this case is therefore the minimum discipline which we can impose in good conscience.

By all objective accounts brought to the attention of the Board in this case as well as Mr. Hill's prior appearances before us, he is a competent attorney in the field of criminal law. In a prior opinion, we noted that the respondent has apparently enjoyed the continuing support of a substantial segment of the bench and bar in the Kalamazoo area. Matter of James D.Hills, DP 116/85; DP 3/86 (Brd. Opn. May 15, 1986).

We are vacating the hearing panel's requirement that the respondent limit his practice to the field of criminal law in accordance with the ruling of the Supreme Court that such limitations are not feasible under our licensing statutes. See Matter of Trombly, 398 Mich 377 (1976). The requirement that respondent make restitution to $300.00 to the complainant is affirmed.

John F. Burns, Hanley M. Gurwin and Theodore P. Zegouras.

MINORITY OPINION

To a greater extent than my colleagues on the majority, I have taken the position in the past that the Board should defer to the judgment of the hearing panel, both with regard to their findings of fact and their decisions to impose discipline. Those decisions are, after all, based upon their first-hand hearing of the testimony and they are in a far better position to make judgments concerning the essential character of the respondent before them. Based upon the record, I am persuaded that the discipline imposed by the panel, while lenient, is nevertheless consistent with our duty to protect the public. The respondent's candor and remorse in his appearances before the panel and the Board should, in all fairness, be given considerable weight. I would therefore adopt the decision of the hearing panel although I agree that the provision limiting his practice is not feasible and should be removed.

Robert S. Harrison