

IN THE MATTER OF DAUNE ELSTON,  
A Member of the State Bar of Michigan,  
Respondent.  
File Nos. DP-139/82 & DP-166/82

Decided: May 13, 1983

OPINION OF THE BOARD

Respondent was suspended by a hearing panel for failure to answer a request for investigation and for failure to answer two formal complaints. The substantive misconduct counts were dismissed because the complainant (client) failed to appear. The hearing panel suspended Respondent for 30 days. Respondent petitioned for review. We modify the discipline to a reprimand.

On July 20, 1982, Respondent was served with a formal complaint alleging four counts of misconduct [DP-139/82] which he failed to answer. The fourth count alleged that Respondent did not answer a request for investigation served April 23, 1982. A second complaint (DP-166/82) was filed and served alleging only failure to answer the first complaint [DP-139/82]. Respondent again did not answer. He was placed in default on both complaints.

Some time before the panel hearing was scheduled Respondent discussed the substantive counts of the first complaint with counsel for the Grievance Administrator [Board Tr, 17, 24]. When the panel convened Respondent did not appear. Counsel for the Grievance Administrator mentioned briefly to the panel Respondent's attempt to orally address the complaints [Board Tr, 24-28].

We begin our discussion of this case by reiterating that it is fundamental to our discipline system that attorneys cooperate fully with the Grievance Commission and Discipline Board. This cooperation is mandated by the Michigan Supreme Court through Chapter 95 of the court rules and the first Canon of the Code of Professional Responsibility. The most essential of these rules, in terms of the accountability of the profession, are those mandating an answer to requests for investigation and formal complaints. GCR 1963, 953(7); 962; 964.2.

Oral disclosures will not suffice and Respondent's failure to properly answer warrants discipline. However, given the facts and circumstances of the case we will vacate the order of suspension of 30 days and enter an order of reprimand.

The order of discipline is modified in part because of Respondent's attempt (albeit inadequate) make the required disclosures to the Grievance Commission [Panel Tr, 7; Board Tr, 24]; we also consider as mitigation that Respondent has no record of final discipline at this time and that the substantive charges were dismissed. Finally, we note that the hearing panel did not receive relevant mitigation concerning Respondent's attempt to respond to the charges. We believe that disclosure of the conversation initiated by Respondent, and its contents, would or should have been considered as mitigation by the hearing panel.

Board Members Clement H. Kern and Prank J. McDevitt did not participate in the

deliberations of this case.