

GRIEVANCE ADMINISTRATOR,
Petitioner/Appellee,
v
MICHAEL J. PAVKOVICH, P-31052
Respondent/Appellant.

File No. DP-127/84

Decided: July 12, 1985

OPINION OF THE BOARD

The Respondent, Michael J. Pavkovich, was charged with neglect prejudicial to the rights of his client, material misrepresentations to the Attorney Grievance Commission and engaging in the practice of law in violation of a disciplinary order of suspension of 15 days. Respondent has filed a Petition for Review of the six (6) month suspension imposed by the Hearing Panel. The Panel found that Respondent violated GCR 953(1)-(4), DR 1-102(A)(5)(6), DR 3-101(B), DR 6-101(A)(1)-(3) and DR 7-101(A)(1)-(3), warranting the six (6) month suspension. We affirm the finding of misconduct, but reduce the discipline to a four (4) month suspension.

Respondent was assigned by his employer, Attorney James J. Zimmer, to handle a breach of contract action for Edmund S. Evans. When he commenced work on the file, Respondent had not yet been admitted to the Michigan Bar. Following his admission to the Bar on February 20, 1980, a suit was instituted on behalf of Evans in the Genesee County Circuit Court, listing Mr. Zimmer as the attorney for Mr. Evans. Respondent was first personally identified in the court's records as attorney for Plaintiff, Evans, on October 16, 1980 when he filed a Discovery Pre-Trial Questionnaire. The attorney for the Defendant filed a counter-complaint and the first interrogatories to Respondent in February 19, 1981. Respondent failed to at any time file an answer to the interrogatories despite an order to compel the answers. In defense of his failure to answer, Respondent contends that he did not receive proper notice of motions or trial dates. Although it is true that Respondent changed addresses several times, he appeared at the hearing for the Motion to Compel Answers for Interrogatories and, in fact, signed the order for the interrogatories to be answered in less than thirty (30) days.

Following the aforementioned hearing, the matter was heard by a Mediation Panel. A Mediation Evaluation filed on December 1, 1981 In re Pavkovich, File No. DP 127/84 Opinion of the Board without Complainant's knowledge and included recommendation of no cause of action and a substantial award to the defendant based on the counterclaim. However, the Complainant was only spared serious consequences, incurring no resulting loss because neither Respondent nor Defendant's counsel filed a written response to the Mediation Evaluation, thereby rendering it of no effect.

Subsequent to the rejection of the mediation report, the trial was adjourned twice, apparently because the Defendant had filed for bankruptcy. On May 6, 1983, Respondent authorized his signature to be placed on a Stipulation for a second continuance. However, during the period from April 8 through November 15, 1983, Respondent was ineligible to practice law due to the fact that

he failed to file an Affidavit for Automatic Reinstatement following a prior 15-day disciplinary suspension.

Respondent failed to file objections to a proposed Order of Dismissal and his client's matter was dismissed on July 16, 1983. A meeting was held with the client (Complainant here) in November, where Respondent provided him with assurances that he would file a Motion for Reinstatement; Respondent failed to file any such motion in pursuit of Complainant's claim.

We agree with the Panel's determination that Respondent failed to adequately, competently, and zealously represent his client. Respondent also failed to file the required affidavit of compliance before returning to practice after serving a prior 15 day suspension, although we do not find that this was an intentional flagrant act or a direct violation of the prior order. Respondent was certainly negligent, however nothing in the record indicates Respondent wilfully or intentionally prejudiced the rights of his client. Respondent's youth and relative inexperience operate as mitigating factors. The Board has noted Respondent's prior 15 day suspension and the charges leading thereto. A substantial period of suspension, with a requirement for reinvestigation and reinstatement hearings, is warranted. This can be accomplished with a suspension of 121 days and the discipline will be modified accordingly.

The Board's action modifying the present suspension should not be misconstrued; the panel's suspension was not outside of the range of appropriate sanction and Respondent is warned that any future violation of disciplinary rules or orders could be the basis for severe disciplinary action. A four-month suspension requires lengthy and rigorous reinstatement proceedings prior to re-admission to the Bar. During these proceedings, a suspended attorney must present clear and convincing evidence that there has been full compliance with the prior suspension order and that the individual is competent and fit to resume the practice of law. For this reason, we think that a four-month suspension will serve as a sufficient deterrent for such conduct and will protect the public. Therefore, the suspension is reduced from 180 days to 121 days.

ALL CONCUR.