

IN THE MATTER OF ALVIN O. BRAZZELL,
A Member of the State Bar of Michigan,
Respondent
DP-100/81 & DP-125/82

Decided: March 17, 1983

OPINION OF THE BOARD

Respondent was charged with neglect of 16 criminal appeals, failure to make full disclosure in answering a request for investigation, and failure to answer a Formal Complaint. The defaults were set aside over the Grievance Administrator's objection. The hearing panel entered an order of reprimand. The Grievance Administrator seeks review of the hearing panel decision to set aside the default and the level of discipline imposed.

Between June, 1978 and January, 1979, Respondent was assigned as appellate counsel in 16 criminal appeals [GA Exhibit #4]. In 15 of those 16 cases no progress warnings were sent to Respondent. The Michigan Court of Appeals issued a show cause order on the 16th case requiring that Respondent explain why he was not progressing on these matters.

The result of the show cause hearing was an agreement between Respondent and the Court of Appeals whereby Respondent would not accept any appeal appointments until further notice [Tr, October 1, 1982, p 10]. The Court of Appeals deemed this to be sufficient remedial action in Respondent's case.

However, independently of the action taken by the court, an employee of that Court filed a request for investigation resulting in a Formal Complaint. Respondent failed to timely answer the Complaint, and a second Formal Complaint was filed for violation of GCR 1963, 953(7) - failure to answer a discipline complaint.

The hearing panel conducted a hearing on the Complaint and the evidence supported the claim that Respondent had neglected the appeal over an extended period of time, although the neglect of these cases does not appear to be characteristic of Respondent's law practice in general. Respondent offered medical evidence in mitigation, to-wit-an eye infection and related operations which he claimed caused in inability to give proper attention to the appeals he had assumed responsibility for handling. [Tr, October 1, 1982, p 34-36]. The hearing panel, apparently considering the mitigating evidence, reprimanded Respondent.

We will not review the hearing panel's exercise of its discretion in granting Respondent's motion to set aside defaults [Tr, July 27, 1982, p 29; Tr, October 1, 1982, p 3]. We do find that Respondent's misconduct warrants a greater sanction. For the reasons set out below, Respondent is suspended from the practice of law for 120 days. Ninety days of the suspension will be stayed. We note the restriction of the Court of Appeals barring Respondent from handling criminal appeals until further notice, Compliance with that Court's prohibition will be condition of the Board's order of discipline.

We have repeatedly stated that neglect of criminal appeals is serious misconduct. Given the dependent nature of the criminal appellant's relationship with appellate counsel, the magnitude of misconduct increases when such appeals languish due to neglect. In re Harrington, 1 Mich Dis Rptr 75 (1979). Neglect of a criminal appeal is not only a serious breach of trust between the attorney and his imprisoned client, but this form of neglect discredits and impedes the entire criminal justice system which is faced with overwhelming administrative burdens.

Respondent testified about medical problems to be considered in mitigation. We find this uncorroborated testimony to be of limited value. The seriousness of the eye problem was not substantiated by any other testimony or medical documentation. It was not clear exactly how the medical problem was related to the neglect of the appeal matters; therefore, it cannot be considered as a substantial factor in assessing the appropriate sanction.

The vision impairment alleged certainly in no way should have obfuscated the awareness of the pendency of this large group of important cases. If Respondent was physically impaired, proper performance of his professional duties demanded prompt substitution of counsel or procurement of co-counsel. Lawyers are entrusted with the most serious of human affairs - personal freedom, the means of livelihood and matters impacting directly upon the welfare of the family and society at large. The profession simply cannot condone from its members habits or attitudes which seem to reflect an inability to act when dealing with a personal difficulty such as offered here. Regardless of our sympathy for the unfortunate circumstances of the disciplinary respondent, the paramount concern must always be the protection of the public and the profession. In re Grimes, 414 Mich 483, 326 NW2d 380 (1982).

In formulating our order of discipline in this case we note that Respondent's neglect was limited to his appellate practice, There is no indication that Respondent has neglected his trial practice. Indeed, he appears to be a capable trial advocate. With these factors in mind we will limit the actual period of suspension to 30 days. We issue a note of caution that neglect of this extent (especially when exacerbated by failure to properly and timely answer the grievances) could very well warrant a more lengthy suspension. It is the Board's hope and intent that this action will sufficiently protect the public while deterring any possible future neglect.

[Board Member Dr. McDevitt did not participate in the hearing or decision of this matter.]