

IN THE MATTER OF ALBERT A. CHAPPELL,
A Member of the State Bar of Michigan,
Respondent
File Nos. DP-135/81 & DP-87/81

Decided: December 16, 1982

OPINION OF THE BOARD

Respondent did not answer complaints charging neglect and failure to answer prior discipline complaints, resulting in entry of a default. The hearing panel found the rules of professional responsibility were violated as charged. The panel decided sua sponte that Respondent was a suitable candidate for probation under GCR 1963, 970. The Grievance Administrator appealed, contending the elements necessary for probation had not been affirmatively pleaded by Respondent as required by the court rule. The Attorney Discipline Board referred the matter to a Master to allow Respondent an opportunity to establish his eligibility for probation. The Respondent failed to appear before the Master. No supporting documentation was offered to establish the prerequisites of probation. The Master recommended a suspension. We agree and impose a suspension of 121 days.

The purpose of GCR 1963, 970.3 is to assist attorneys who assert impairment due to psychological or physical causes beyond their control. If a Respondent meets the requirements of the rule he or she can be placed on probation, permitting Respondent to continue in the practice of law as long as specific conditions are met.

In order to qualify for probation, a Respondent must assert in his or her answer that:

“(1) during the period when the conduct which is the subject of the complaint occurred, his or her ability to practice law competently was materially impaired by reasons of physical or mental disability or drug or alcohol addiction,

(2) the impairment was the cause of or substantially contributed to that conduct, and

(3) the cause of the impairment is susceptible to treatment,

(4) he or she in good faith intends to undergo treatment, and submits a detailed plan for such treatment

GCR 1963, 970.3(1-4).

In the present case, Respondent was placed in default for failure to answer a Formal Complaint (DP-87/81). A second Formal Complaint (DP-135/81) alleging misconduct for failure to answer the Prior complaint (DP-87/81) also was not timely answered. Nevertheless, the hearing panel set aside the default in DP-87/81 and extended to Respondent an additional 10 days to file an

answer in DP-135/81. (Tr, p 19, October 23, 1981 and in the Report of the Hearing Panel at p 6). In typical fashion, Respondent failed again to follow through and did not file the answer. A default was entered. Respondent did not appear at the hearing; although in default he could and should have appeared before the panel. Despite his repeated failures to answer and appear, he was once again recused by the compassion and concern of the hearing panel members who were apparently moved by the Respondent's contrite demeanor and his apparent intention to seek professional help. Seeing hope for Respondent's rehabilitation, the panel waived the technical requirements of GCR 970.3 regarding assertion of impairment in the answer, and ordered that Respondent be placed on probation for two years; psychological treatment was required. The Grievance Administrator appealed claiming the record did not support the panel findings and that Respondent's pleadings were inadequate to support the decision of probation.

The Board, on appeal, was impressed by the effort and concern of the panel, but is troubled about the continuing pattern of omissions and the procedural and factual deficiencies reflected in the record before us. The Board, in an effort to sustain the rehabilitative effort of the panel, ordered Respondent to file an amended answer and remand the case to a Master for supplemental findings pursuant to GCR 1963, 959.4. A Board order to that effect was served on Respondent July 22, 1982. A notice of hearing before the Master was served on Respondent July 26, 1982.

The Master's hearing was held on August 11, 1982. The pattern continued: Respondent failed to appear at the hearing and no supporting documents were offered by Respondent (Supplemental Report of Master, DP-135/81 & DP-87/81, p 1). The Master recommended Respondent be suspended (Supplemental Report of Master, p 3). The Master's report was served by registered mail on Respondent August 20, 1982. Respondent filed a motion for rehearing on August 26, 1982, fifteen days after the hearing and six days after the report was sent by registered mail. Respondent's amended answer was finally filed September 9, 1982 -- 49 days after the Board order was issued, 29 days after the Master's hearing and 19 days after the Master's report was filed and served.

A review of Respondent's disciplinary history makes it painfully clear that he is unlikely to succeed if allowed to continue in practice at this time. Respondent has been afforded opportunities by the Board to amend his pleadings and renew his efforts to seek relief and he has repeatedly failed to take advantage of experience and leniency. Several Formal Complaints have been filed against Respondent during the past 2 years. A review of these files discloses several failures by Respondent to answer, or timely answer, the Requests for Investigation and Formal Complaints; he has repeatedly been in default and has failed to appear as required. The record includes two prior reprimands (DP-1/80 & DP-177/80), a hearing panel suspension of 180 days which was reduced by the Board to a suspension of 30 days (DP-200/80 & DP-21/80), and a hearing panel order of suspension of 10 days and until payment of costs which was affirmed by the Board (DP-71/81).

Respondent is unwilling or unable to comply with discipline orders and procedures and by all indications is simply unable to cope with his own important legal affairs, much less than those of private clients.

While the substantive misconduct originally charged is not of the most offensive nature, there has developed a pattern of misconduct -- a factor which is given considerable weight. Schwartz v Hoffman, 1 Mich Disc Rptr 336 (1981), Schwartz v Kennedy, 1 Mich Disc Rptr 216 (1980).

Conclusion

In the public interest, and to provide for re-evaluation prior to possible reinstatement, Respondent will be suspended for a period of 121 days. Psychological evaluation is recommended as part of any reinstatement proceeding under GCR 1963, 972.

All concur.