

IN THE MATTER OF STANTON BEATTY,
A Member of the State Bar of Michigan,
Respondent.
File No. DP-97/81

Decided: August 12, 1982

OPINION OF THE BOARD

Respondent was appointed counsel for the Complainant in this matter who was a plaintiff in a federal discrimination suit filed in the Eastern District of the United States District Court. Respondent, appointed after filing of the employment discrimination complaint, caused an Amended Complaint to be filed, but failed to communicate with the complainant or to respond to the complainant's inquiries regarding the status of the matter. Complainant filed a Request for Investigation which Respondent failed to answer. The hearing panel found that misconduct was proved by a preponderance of the evidence and entered an order of suspension of 120 days. Respondent petitioned the Board for review; we modify and reduce the suspension to 60 days.

At the time of the civil case assignment, Respondent was sharing office facilities and space with attorney Hubert Morton. Mr. Morton was consulted and brought into the case as co-counsel, apparently after a personality conflict arose between Respondent and Complainant. Morton was to perform the trial work and Respondent would undertake research and drafting.

After certain disagreements and difficulties between attorney Morton and Respondent, the office sharing arrangement was terminated in early 1978. Unable to locate Complainant's file upon Morton's departure, Respondent concluded that Morton had taken the file with him.

Complainant testified that his calls to Respondent were not returned [Panel Tr, p 64]. Respondent contended that he could not contact the Complainant because Complainant's phone had been disconnected [Panel Tr, p 138].

The employment discrimination case was dismissed without prejudice in January 1980 for failure to prosecute, although Respondent claims the statute of limitations does not expire until 1983. Complainant paid no fees to Respondent and Respondent had advanced some filing costs. Respondent claims to have sent Complainant a letter withdrawing as counsel; however, no writing to this effect was introduced in support of this defense.

The Board notes that Respondent was, at the time of the conduct in question, relatively young and inexperienced. Although Respondent was suspended in a prior matter for 60 days, the record does not sufficiently reflect a pattern of misconduct over a period of time which might warrant a heavier sanction as held in Schwartz v Hoffman 1 Mich Discip Rptr 336 (1981) and Schwartz v Ruebelman, 1 Mich Discip Rptr 378 (1981). We note that the prior discipline was related to the same period of time in which the present transaction occurred; it appears that this was

a period of time involving certain difficulties with Respondent's prior associate as well as his inexperience. Krell v Halpin, 1 Mich Discip Rptr 265 (1981). While modifying the suspension rendered by the panel, the Board's decisions should serve as a warning -- neglect such as that which occurred in this case is not viewed lightly and reoccurrence could constitute a pattern calling for more severe discipline.

The suspension of 120 days is reduced to 60 days.

ALL CONCUR except Board Member William G. Reamon who would reduce the suspension to 60 days solely on the basis of the misconduct involved, and not on the basis of mitigating factors such as inexperience.