

IN THE MATTER OF HUBERT J. MORTON,
A Member of the State Bar of Michigan,
Respondent.
Nos. DP-166/81, DP-11/82,
DP-56/82 & DP-55/82
(Consolidated)

Decided: December 16, 1982

OPINION OF THE BOARD

Respondent was charged with neglect of legal matters in two formal complaints, DP-166/82 and DP-11/82. Complaints DP-55/82 and DP-56/82 involve Respondent's failure to answer said neglect complaints. The neglect charges were dismissed because the complainants did not appear. The hearing panel found Respondent violated GCR 1963, 953(7) and 962.2(B) for his failure to answer the Requests for Investigation and Formal Complaints and reprimanded the Respondent. The Grievance Administrator appealed claiming an error in the hearing panel report and seeking a review of the level of discipline imposed. Respondent filed a delayed petition for review which was denied by the Board on September 8, 1982.

Respondent has been charged in several matters and should be well-acquainted with the requirement that he answer the Requests for Investigation and the Formal Complaints. See GCR 1963, 953(7) and GCR 1963, 962.2(B). Because of his previous contacts and because Respondent has offered no persuasive explanation for his omissions we increase Respondent's discipline from a reprimand to a suspension of 60 days.

A review of Respondent's previous contacts with this agency will clearly show that he has reason to be familiar with the requirements of the Court Rules and points to a pattern of misconduct and an attitude of carelessness regarding these matters.

In assessing the appropriate level of discipline, the Board must deal with the exacerbating factor of Respondent's previous history of discipline including a board order of reprimand (which was a modification of a panel 60 day suspension and reprimand) and a hearing panel suspension of 60 days. The record of these prior proceedings is replete with examples of Respondent's attitude regarding these proceedings and includes failure to answer or timely file answers, a failure to appear, and failure to make timely payment of costs.

Regarding the four Complaints presently before us, Respondent has again failed to answer resulting in entry of defaults and additional Formal Complaints for the failures to answer. These additional Complaints (DP-55/82 & DP-56/82) also went unanswered resulting again in default.

Respondent filed a Delayed Answer and Motion to Set Aside Default on April 13, 1982, one day before the panel hearing was scheduled on the four Complaints. No supporting affidavits were attached as required by the court rule (GCR 1963, 520). The hearing panel denied the motion and struck the belated Answers.

The panel issued an order of reprimand on July 13, 1982. The Grievance Administrator petitioned for review on July 29, 1982. Typically, Respondent filed a "Delayed Petition for Review" on August 17, 1982. This was 35 days after the Panel Order was served on him and fifteen days after the period for filing appeals had expired. GCR 1963, 967.1. Respondent's petition for review was denied, however, the Grievance Administrator's petition for review remains before the Board.

Review of the Respondent's appearances before the Board disclosed that he is, or certainly ought to be, only too familiar with the requirements of Chapter 95 of the General Court Rules, particularly 961, 962 and 964. We also note that the Proofs of Service on each of these matters clearly indicate that Attorney Discipline Board instruction sheets, outlining the major procedural requirements, were attached to each of the above Complaints [See DP-266/81, DP-11/82, DP-55/82 & DP-56/82].

We conclude that a pattern of procedural violations and omissions militates toward heavier discipline than would be imposed if only the substantive violations were proved. The misconduct (including four defaults against the Respondent entered here) is similar to the pattern of misconduct which disturbed us in Schwartz v Floyd, DP-44/82, 1 Mich Dis Rptr 398 (1980) and Schwartz v Chappell, DP-135/81 and DP-87/81 (ADB Opinion issued December 16, 1982).

Respondent has offered the Board no plausible excuse for his failure to answer the complaints in question. The alleged depressive state which supposedly contributed to this misconduct was unsubstantiated by adequate medical documentation. Ne has offered no other persuasive evidence in mitigation or excuse of his omissions.

The Board increases Respondent's discipline to a suspension of sixty (60) days. The effectiveness of the disciplinary process depends upon timely answers to pleadings and requests for investigation. Our decision today will serve notice to Respondent and the bar at large that a full, fair and timely response to requests for investigation and formal complaints is critically important.

All concur.