IN THE MATTER OF ALBERT A. CHAPPELL,
A Member of the State Bar of Michigan,
Respondent,
No. DP-21/81

Decided: September 22, 1981

OPINION OF THE BOARD

Respondent was retained to handle a criminal case, received a sum of money toward the fee, but was subsequently requested to return the fee. Respondent agreed to return the unearned portion of the fee, but failed to do so. Respondent defaulted after failing to answer the Formal Complaints, and Oakland Circuit Hearing Panel "A" suspended him for one hundred-eighty days. Respondent petitioned for review, and we modify discipline to a suspension of thirty days and until the unearned fee is returned to Complainant.

Respondent failed to answer either of the two Formal Complaints filed against him, and defaults were entered on each. Respondent thereby admitted the facts as recited in those Complaints. On March 16, 1979, Complainant conferred with and retained Respondent to represent Complainant's brother in a criminal matter. Mr. Chappell requested and received from Complainant a retainer of $300 cash to be applied to the bill for services to be rendered. On behalf of the client, Respondent had a brief conference with a probation officer. On the following day, March 17, Complainant discovered that his brother had retained his own counsel without advising Complainant, Complainant immediately advised Respondent of this, and requested return of the $300 retainer. Mr. Chappell told Complainant that since he had expended only a modest amount of time on the case, he would refund $250. Although Complainant repeatedly requested return of the money, Respondent failed or refused to return the $250.

On January 12, 1981, the Grievance Administrator filed a Formal Complaint against Respondent, reciting the facts above. The Complaint was served on Respondent the following day at his last known residence address and on February 3, 1981 at his last known office address. The period for answering the Complaint passed without response, and a default was entered.

Respondent was served with notice of the panel hearing, but did not appear. The Oakland Circuit Hearing Panel "A" adopted the facts alleged in the Complaints, and suspended Respondent for one hundred-eighty days.

We agree that a suspension of one hundred-eighty days is excessive in the circumstances. A suspension of one hundred twenty-one days or longer requires an attorney to undergo the long and sometimes complex hearing panel procedure for reinstatement. See GCR 1963, 972.2; 973. Some factors which may influence a decision to require such a procedure are a pattern of serious misconduct, a repeated disregard for the rules of the court, and failure to appear at disciplinary hearings. Schwartz v Ruebelman, No. DP-5/81 (Mich ADB 1981). Another may be Respondent's competence to practice, but we do not think Respondent here presents such concerns.

We recognize that Respondent has had difficulties with his practice, and has been plagued with inadequate office organization. Office problems have been viewed in the past as factors in mitigation. In In re Shirley, No. 35976-A (Mich ADS 1979), the Board considered in mitigation that the misconduct occurred at a time when Respondent was moving from a large city to a small upstate community, and confusion in office organization resulted. Although careless office management is not a defense, In re Smith, No. 35299-A (Mich ADB 1979), we think it may, in some circumstances, be mitigation. We note that Mr. Chappell claims to have taken steps to rectify his practice difficulties.

It is also mitigation that Respondent attempted to refund the $250, panel tr. at 26, albeit unsuccessfully, In re Shirley; In re Dunn, No. 35169-A (Mich St BC Bd 1978!); evidence showed that Complainant was difficult to locate during the period that Respondent attempted to return the money. In re Greenspan, Nos. 34209-A; 35057-A (Mich St BC Bd 1978).

While it would appear that there may have been a technical violation of procedural requirements because of the panel's inquiries into prior misconduct prior to entry of its findings of fact on the record, there is `no evidence that the panel did, in fact, base its findings upon the prior record. The record is unclear as to whether the panel may have made unstated determinations of fact prior to the ill-timed inquiry regarding a prior history of discipline. All evidence had been received prior to the panel's inquiries. In view of this, and in light of the substantial reduction of the suspension, the Board is not persuaded that there has been prejudicial error. Due to Respondent's admission to some degree of culpability (at the review hearing before the Board) and this substantial reduction in discipline from one hundred-eighty days to thirty days, we find it unnecessary to address Respondent's remaining arguments on appeal.

Respondent has objected to the scope of the Order of Suspension. The Board and Panel Orders, as a matter of standard form, forbid "the practice of law in any form, either as principal or agent, clerk or employee of another . . .". The Board hereby upholds the scope of the suspension sanction as expressed through this language; this effectively precludes employment of a suspended attorney as a paralegal or law clerk.[1]

We order Respondent suspended not only for thirty days, but also until he files with the Board satisfactory evidence that the $250 has been repaid to Complainant, should that take longer.

AFFIRMED AS MODIFIED.

ALL CONCUR.

---

1. This interpretation of the scope of disciplinary orders of suspension has been adopted by the State Bar Ethics Committee. Michigan Formal Ethics Opinion C-211 (July 1971).