IN THE MATTER OF CARL R. RUEBELMAN,
A Member of the State Bar of Michigan,
Respondent.
No. 36527-A

Decided: September 26, 1980

OPINION OF THE BOARD

Respondent was charged in the Formal Complaint with six counts of misconduct. Count I was dismissed by the Hearing Panel on motion of counsel for the Grievance Administrator. Tr. of Jan. 3, 1980, at 12, 13. Three of the remaining counts charged failure to answer Requests for Investigation. The other two substantive counts related to failure to take any action on behalf of a criminal defendant whom Respondent had been appointed to represent on appeal, and failure to honor the bill of another attorney who had been consulted by Respondent. The Hearing Panel found that Counts II-VI had been proved, and suspended Respondent for 120 days. The Grievance Administrator appealed, claiming that the Panel abused its discretion in imposing a suspension under which Respondent could be reinstated without undergoing a hearing to establish his fitness to re-enter practice. The appeal also noted that greater emphasis should have been given to Respondent's prior record of misconduct. We agree that Respondent should be required to present evidence of his fitness to re-enter practice, and we extend the period of his suspension to 121 days.

GCR 972.2 requires attorneys suspended for more than 120 days, when petitioning for reinstatement, to establish "by clear and convincing evidence" that they have complied with various criteria outlined in the rule. Such attorneys should show evidence of "rehabilitation, compliance with all applicable discipline or disability orders and rules, fitness to practice and competence." Standards for Lawyer Discipline and Discipline Proceedings, American Bar Association, Standard 6.4. The Board is convinced that Respondent should have to make some showing before reinstatement. Respondent has been disciplined in the past, the present misconduct is serious and, especially in the counts involving failure to answer the Requests for Investigation, indicates a conscious disregard for the Rules of the Court. The Rules require accused attorneys to make some response to charges against them. GCR 954 (7); 962. Respondent has repeatedly refused to answer the Requests filed against him, and failed to appear at one of the sessions of the Hearing Panel. See Tr. of Jan. 3, 1980. These constant transgressions of the spirit and letter of the Court Rules compel us to require some showing of fitness to re-enter practice before being considered for reinstatement.

Respondent received an opinion on a tax matter from a colleague and failed to satisfy repeated billings for these services. The other substantive charge is quite serious: Respondent failed to take any action after being appointed by the Oakland County Circuit Court to represent a criminal defendant on

appeal. The importance of diligent representation of an imprisoned client-appellant is outlined in a State Bar Formal Ethics Opinion. Mich. Ethics Op. No. 203 (October 1965). The Ethics Opinion amplifies the provisions of Canons 6 and 7 and sets forth several duties placed upon appellant's counsel in such cases. Respondent not only omitted these obligations but failed to take even minimal action.

This Board has twice before dealt with Respondents who neglected criminal appeals after appointment by the court. See In re Daggs, No. 35447-A (Mich. Att'y Discip. Bd., Dec. 12, 1979); In re Harrington, No. 35542-A (Mich. Att'y Discip. Bd., Jan. 9, 1979). Respondent in Harrington failed to communicate with his client, and to proceed with an appeal. Despite a demonstration of certain mitigating evidence, the Board increased the discipline in that case from reprimand to suspension of 60 days, and in Harrington, in contrast with the case at bar, Respondent was charged with no other misconduct. We think the discipline rendered here is commensurate with the total record and charges before us.

The record also shows that Respondent has been suspended before. The Grievance Administrator argues that later assessments of discipline should exceed previous assessments. See Memorandum Brief of Grievance Administrator. We cannot accept the inflexibility of such a proposed policy of discipline, and must reaffirm that "former misconduct is never a basis for exact formulation of discipline in the context of a subsequent and completely separate factual situation." Schwartz v Hovey, No. 36409-A at 2 (Mich. Att'y Discip. Bd., Aug. 18, 1980).

The findings of the Hearing Panel are affirmed, but the period of suspension is extended by one day to 121 days.