IN THE MATTER OF CHARLES D. LUSBY,
A Member of the State Bar of Michigan,
Respondent.
No. DP-84/80

Decided: July 10, 1981

OPINION OF THE BOARD

Respondent was accused in a Request for Investigation of various misconduct. The Complainant was a former client whom Respondent had been appointed by Recorder's Court to defend in a criminal matter. The Grievance Commission eventually decided that the substance of the Grievance was meritless, but in a Formal Complaint charged Respondent with failure to answer the Request for Investigation. The Wayne Circuit Hearing Panel "D" reprimanded Respondent. Respondent appeals, and we reverse and dismiss the Formal Complaint.

Respondent did not file a written response to the Request for Investigation until he answered the Formal Complaint. He had, however, telephoned the Grievance Commission within twenty days of receiving the Request, and had spoken with one of the attorneys at the Commission. Respondent claims that the Commission's attorney told him "not to worry" about answering the Request. Respondent was not advised in the telephone conversation that a written answer was necessary, nor was it specified that an oral response would suffice. Panel tr. at 91, 98-99.

GCR 1963, 962 does not explicitly require that an answer to the Request for Investigation be in writing, nor does the rule indicate that the answer be "filed," which would infer a written document. The rule states:

> .1 Answer.
> Within 20 days after a request for investiga-tion is served on him ... the respondent shall fully and fairly disclose all the facts and circumstances pertaining to his alleged misconduct. The administrator may allow further time to answer. Misrepresentation in the answer is grounds for discipline.
>
> .2 Refusal or Failure to Answer,
> (a) A respondent may refuse to answer a request for investigation on expressed constitutional or professional grounds.
> (b) The failure of a respondent to answer within the time permitted is misconduct.

The following rule, however, implies that such an answer must be written.

> .1 Action After Investigation,
> After an answer is filed or the time for filing expires, the administrator may assign the request and answer for further investigation or informal hearing. GCR 1963, 963. [Emphasis supplied.]

The use of the word "filed" in connection with the answer to a Request in this rule strongly suggests that a writing is required. Although the principal rule relating to answers, GCR 1963, 962, is somewhat ambiguous, we think the only reasonable conclusion an attorney could reach, when the rules are taken as a whole, is that answers to Requests for Investigation must be written. The use of the word "answer" as commonly cons trued from the rules alone should indicate such an intent. The days of parol answers and other pleadings passed several centuries ago in England, and parol pleadings have never been normal practice in American jurisdictions. See generally, W. Blackstone, Commentaries on the Laws of England; L. Friedman, A History of American Law. Even If a response to a Request for Investigation is strictly considered a pre-pleading, the use of the word "answer," when taken in its usual sense, reasonably contemplates standard pleading procedure. We hold, therefore, that a fair interpretation of the Michigan court rules requires answers to Requests for Investigation to be in writing.

Respondent's communication with the Grievance Commission, however, was not intended as an "answer." Instead, he was acting under GCR 1963, 962.2(a), supra, and was expressing an objection to answering. Respondent's basis for refusing to answer the Request was that attorney-client confidences between Complainant and himself might be revealed in a full and complete answer. Complainant's criminal case was being appealed, and Respondent did not wish to jeopardize the appeal by revealing what he considered to be privileged and confidential information. Although Respondent may have been ethically able to reveal such confidences after having been accused of misconduct by the client, Canon 4., DR 4-101(C)(4), he apparently chose to try to protect the Complainant's appeal.

GCR 1963, 962.2(a) requires that an objection to answering be made "on expressed constitutional or professional grounds." The provision does not characterize such objections as simply another species of answer; it is a separate type of communication altogether. One could conclude that such expressed objection need not be in writing, and Respondent's telephone conversation will be deemed to be in satisfaction of 962.2(a). Certainly, in future cases, the prudent attorney should make any objections to answering a Request for Investigation in writing, which he will properly serve on the Grievance Administrator.

The Formal Complaint is dismissed.

REVERSED.

Board Members McDevitt and Lewis took no part in the consideration of this case.