

Grievance Administrator
v.
JOHN H. HOFFMAN,
A Member of the State Bar of Michigan,
Respondent-Appellee.
No. DP-23/81

Argued July 9, 1981
Decided Aug. 27, 1981

OPINION OF THE BOARD

Respondent was charged with neglect and failure to carry out a contract of employment. He failed to answer the Request for Investigation, and a default was entered. The Muskegon 14th Circuit Hearing Panel assessed suspension of one hundred-twenty days. The Grievance Administrator petitioned for review, arguing that Respondent was a recidivist and should undergo formal reinstatement procedures before re-entering the Bar. We agree, and increase Respondent's suspension to one hundred twenty-one days.

In June 1980, Respondent was hired by Complainant to handle litigation related to an alleged breach of contract by another party who agreed to sell a liquor license to Complainant. Complainant paid Mr. Hoffman a \$250 retainer. Respondent eventually filed a complaint in the matter, but did not adequately communicate with Complainant, and neglected the case. When a Request for Investigation was filed, Respondent did not answer. At the panel hearing, Respondent returned to Complainant the files relating to her case, and promised to quickly repay the \$250. The retainer was refunded several weeks later through Respondent's father.

Respondent has a considerable past record of discipline. He was reprimanded in 1972; suspended for thirty days in 1977; received a one hundred-twenty day suspension from this Board, effective April 8, 1981, see Schwartz v Hoffman, No. DP-9 3/80 (Mich ADB 1981); and a ninety day suspension, also beginning April 8, 1981, to run concurrently with the longer suspension, and to be followed by two year's probation. We note that Respondent was recently involved in divorce proceedings, and has left Michigan to seek non-legal employment elsewhere. Certain mitigating factors including personal conflicts and a voluntary effort to obtain employment outside the legal profession, have been considered; yet as we commented in the last case involving Respondent, "mitigation inevitably appears less persuasive as a Respondent extends his trail of misconduct." Hoffman.

We think Respondent should undergo panel scrutiny should he choose to petition for reinstatement. GCR 1963, 972.2 and 973 place the burden on attorneys suspended for longer than one hundred-twenty days to establish "by clear and convincing evidence" that the various requirements of the rules have been met.

As we observed about Mr. Hoffman before, "[o]verall, Respondent presents a pattern of misconduct which the Board cannot overlook." Hoffman. The existence of such a pattern is one

legitimate reason for requiring a formal reinstatement procedure. "We agree that Respondent should be required to present evidence of his fitness to re-enter practice * * * The Board is convinced that Respondent should have to make some showing before reinstatement." Schwartz v Ruebelman, No. DP-5/81 (Mich ADB 1981); Schwartz v Kennedy, No. DP-48/80 (Mich ADB 1981).

Respondent is suspended for one hundred twenty-one days.

AFFIRMED AS MODIFIED.

LEWIS, M., dissents without opinion.