

IN THE MATTER OF CARL R. RUEBELMAN,
A Member of the State Bar of Michigan,
Respondent.
No. DP-5/81

Decided: July 15, 1981

OPINION OF THE BOARD

Respondent was accused of neglect, misrepresentation, prejudicial conduct, and failure to answer a Request for Investigation. The Wayne Circuit Hearing Panel "B" ordered a suspension of sixty days. The Grievance Administrator petitioned for review, requesting an increase of discipline in light of Respondent's past record of misconduct. The findings of fact made by the hearing panel are affirmed, and Respondent's suspension is increased to one hundred twenty-one days.

Complainants consulted Respondent in 1972 after their three-year-old daughter had been bitten by a neighbor's dog. Respondent agreed to represent the daughter in a suit for damages on a contingent fee basis. From 1972 to 1980 Respondent had Complainants sign various papers purportedly connected with the case. He also represented to his clients that a complaint had been filed and that court dates had been set, but canceled. Respondent also indicated that a settlement offer had been made for \$3500. Complainant was willing to accept this settlement, but never received a check. Investigation by the Grievance Commission's staff later showed that no suit had been filed.

A Request for Investigation was filed In 1980. Respondent subsequently Informed Complainants that he no longer represented their daughter. Complainants obtained other counsel who asked Respondent to forward the appropriate files. Respondent twice agreed to send the files, but the new attorney never received them. Because the potential plaintiff is still a minor, the statute of limitations has not yet run.

Evidence showed that Respondent did not answer the Request for Investigation, although the hearing panel made no findings on this point. Respondent filed no pleadings at all in the disciplinary proceedings, and did not appear at either the panel hearing or the review hearing before the Board.

Respondent's prior record of misconduct warrants an increase of discipline from a suspension of sixty to one hundred twenty-one days. Respondent was suspended for sixty days In 1977 after neglecting an estate for six years, In re Ruebelman, No. 33692-A (Mich. St. B. Grievance Bd. 1977), aff'd, 402 Mich 501, 265 NW2d 161 (1978), and for one hundred twenty-one days in 1980 for neglecting the appeal of an indigent criminal defendant, failing to honor the bill of another attorney, and failing to answer several Requests for Investigation, Schwartz v Ruebelman, No. 36527-A (Mich. Att'y Discip. Bd. 1980). As we commented in the second case involving Respondent, supra,

"[w]e 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. Respondent has been disciplined in the past, the present misconduct is serious and, especially in the [Count] involving failure to answer the [Request] for Investigation, indicates a conscious disregard for the Rules of the Court. . . . Respondent has repeatedly refused to answer the Requests filed against him, and failed to appear at . . . the sessions of the hearing panel. . . . These constant transgressions of the spirit and letter of the Court Rules compel us to require some showing of fitness to re-enter the practice before being considered for reinstatement."

Respondent remains under his previous suspension, imposed in the above case, and has offered no petition for reinstatement. If at some time in the future Respondent does choose to petition to re-enter the Bar, he should undergo stricter scrutiny by the appropriate panel than he would have had only the 1980 suspension been in effect.

Respondent presents a pattern of misconduct. "Neglect and failure to respond to inquiries of the Grievance Administrator are common grievances. The Board takes such matters earnestly, especially in the case of an attorney who has repeated such misconduct." Schwartz v Kennedy, No. 36454-A (Mich. Att'y Discip. Bd. 1980). In addition, failure to appear at panel or Board hearings is also an aggravating factor. Id.

Although the panel made no findings on the Count relating to failure to answer the Request for Investigation, the record satisfactorily supports this allegation. We are empowered to make findings based on the whole record, GCR 1963, 967.3(a), and we find that Count II of the Formal Complaint has been proven.

A contingent fee contract, such as the one entered into here, is a "two-way street imposing substantial responsibility on plaintiff's counsel," including "the duty to promptly investigate the case" and pursue it to its end "unless relieved by his client or by the court." In re Crane and Roth, No. 33077-A (Mich. St. B. Grievance Bd. 1976), *aff'd in part and rev'd in part*, 400 Mich 484, 255 NW2d 624 (1977). Neglect of such a case over a period of eight years, misrepresentations to a client, failure to answer a Request for Investigation, and a clear pattern of neglect and failure to adhere to the Court Rules relating to disciplinary proceedings require that Respondent remains suspended until he can persuade a panel of his fitness to practice law.

Respondent is suspended for one hundred twenty-one days.

AFFIRMED AS MODIFIED.