

IN THE MATTER OF JAMES HOVEY,
A Member of the State Bar of Michigan,
Respondent,
No. 36409-A

Decision: August 7, 1980

OPINION OF THE BOARD

Complainants consulted Respondent in 1976 regarding a possible cause of action involving PBB poisoning and a related Social Security claim. Respondent filed suit but did no further work in the case. Subsequently, the action was dismissed for lack of progress. Complainants filed a Request for Investigation In 1978. Respondent was charged by the Grievance Administrator with neglect. The Hearing Panel found misconduct, and suspended Respondent for one year. Respondent appealed the decision, arguing that the findings of the Panel were not supported by the record, and that the discipline was excessive. We think the finding of misconduct was proper; however, the length of suspension is excessive in light of mitigating circumstances, and it is reduced from one year to one hundred twenty days.

The Grievance Administrator argued that Respondent is a recidivist and that he should be disciplined such that a subsequent showing of fitness to practice law will be required via petition for reinstatement. Because Respondent has been disciplined twice before, the one-year suspension, it is argued, is appropriate. Respondent claims that it is not clear he had been retained by Complainants, as no retainer agreement was signed. He also argues that since Complainants cannot show actual damages, his discipline, if any, should be mitigated accordingly.

We think there is sufficient evidence of misconduct, but feel the discipline is excessive. Although Respondent has been disciplined in the past, former misconduct is never a basis for exact formulation of discipline in the context of a subsequent and completely separate factual situation. These prior incidents of misconduct occurred when Respondent was an active-alcoholic, and arose out of the events now more than a decade old, Respondent has since overcome his alcoholism. This is an all too rare achievement which should not be lightly regarded. Respondent deserves our encouragement. Excessive discipline may have a severely punitive effect. We also note that testimony shows Respondent underwent a full reinstatement hearing in 1975, at which his qualifications for practice were carefully examined. Respondent's actions in the present instance were not intentional or malicious, but rather neglectful.

In conclusion, because the Hearing Panel's findings of misconduct is supported by the record taken as a whole, Respondent must be disciplined. GCR 964.10 (2). We determine, however, that there is sufficient mitigating evidence to reduce the Panel's order from one year to one hundred twenty days.