

IN THE MATTER OF JAMES MOORE,
A Member of the State Bar of Michigan,
Respondent.
File No. 35620-A

Decided: April 4, 1979

OPINION

Respondent, through his attorney, filed a Petition for Review and Rehearing with supporting Affidavits on December 14, 1978. Respondent requested an opportunity to be heard in this matter after a Default was entered against him and asserts in his Petition for Review that he has a meritorious defense to the charges in the formal complaint. Attached to the Petition are Affidavits from members of the Bar attesting to the good character and reputation and general competence of Respondent.

Respondent failed to answer the formal complaint as required by GCR 962.2(b) and failed to appear before the Hearing Panel as required by GCR 964.8. The Board is inclined to agree with counsel for the Grievance Administrator with regard to the lack of persuasion in Respondent's offered excuse that he panicked and had intended to retain counsel to represent him at the hearing before the Hearing Panel. Aside from Respondent's fear, panic or possible lack of good Judgment, there does appear to be merit in his defense to the substantive allegations in the formal complaint.

Respondent was charged with the neglect of his duty to prosecute an action on behalf of his client and to carry out his contract of employment with said client. The client's case in question was apparently dismissed for lack of progress by the 54-A District Court in Lansing, Michigan. The record disclosed, however, that Respondent did not obtain a notice of such dismissal and that he had properly filed his client's complaint.

The Hearing Panel found that Respondent had completely disregarded the Orders and Request for Investigation of the State Bar and had ignored the Hearing Panel; this conduct was held to be professionally irresponsible and contemptuous. Such a conclusion on the part of the Hearing Panel is certainly reasonable in light of the evidence before them and the lack of response by Respondent. However, the formal complaint does not contain an allegation of failure to answer the Request for Investigation; therefore, the Board will not independently pursue such a charge.

Upon a review of the entire record and consideration of the arguments of counsel in this matter, the Board feels unanimously that Respondent's failure to answer the formal complaint was not characteristic of his general attitude or professional conduct. Although Respondent should have been aware of his serious responsibility to correspond with the Grievance Administrator and to submit an answer to the complaint, we are not convinced that such action is a reflection of a contemptuous or habitually irresponsible attitude.

Therefore, in light of Respondent's meritorious defense to a substantial portion of the formal complaint and in consideration of the lack of any prior record of discipline, it is the decision of the

Board that the Order of Discipline imposing a suspension of six months be modified and that the discipline should be reduced to a reprimand.

It is noted that the Reprimand to be issued is based upon: (1) a finding that some degree of neglect of the client's matter was established by the Grievance Administrator, and (2) Respondent's failure to answer the complaint although based, in part at least, upon Respondent's apparent fear, cannot be ignored by the Board. In regard to the disciplinary rules which were violated, the Board finds only a violation of Canon 6, DR 6-101(A)(3) which Rule prohibits neglect of a client's matter; the formal complaint did not include allegations of misconduct due to a failure to answer the formal complaint and the Board, therefore, finds no violation of Canon 7.

Because the Board was supplied with sufficient information at the time of the Appeal Hearing, there is no necessity for a rehearing by the Panel in this matter. Therefore, Respondent's Motion for Review is granted and the matter is resolved by Board without reassignment for the taking of further testimony.