

IN THE MATTER OF GEORGE F. SHIRLEY,
A Member of the State Bar of Michigan,
Respondent.
No. 35976-A

Decided: April 4, 1979

OPINION

The sole, material issue confronting the Board in this matter is whether the Hearing Panel was too severe in rendering a discipline of Suspension of 60 days.

Respondent has admitted virtually all of the factual allegations contained in the Formal Complaint filed by the Grievance Administrator. Respondent was charged with failure to carry out a contract of employment with his clients who were spouses seeking a formal will. The Respondent was retained for the purpose of preparing the wills on or about June 21, 1977. On February 1, 1978 the clients allegedly conferred with Respondent by phone and were advised that the wills were almost ready for execution. In fact, the wills were never completed and the clients filed a Request for Investigation with the Grievance Administrator on March 2, 1978 approximately nine (9) months after having retained Respondent.

The record discloses that Respondent was available to answer the inquiries of the clients even though he failed to satisfy their demand for a timely performance of the services for which he was retained. It is duly noted that the clients were inconvenienced without any explanation from Respondent. However, the Board does not feel that the discipline of suspension is warranted in light of the following circumstances: (a) Respondent remained available to the inquiries of the clients; (b) Respondent returned the fee and has acknowledged his failure to attend to the matter entrusted to him; (c) the Respondent has convincingly displayed a genuine sense of responsibility and apology for his omissions; (d) the Respondent has no prior record of misconduct and, according to all available information, enjoys a good reputation in his community; (e) the neglect of the legal matter in question occurred at a time when Respondent was moving from a metropolitan area to a small northern community and the resulting confusion in office organization, although not an excuse, has been considered in mitigation.

Finally, it is noted that a discipline of suspension would severely affect a general practitioner in a very small community.

The Board remains concerned with Respondent's failure to answer the Request for Investigation admittedly received by Respondent from the Grievance Administrator. When asked why he failed to answer the Request, Respondent could not produce an explanation. Eventually, of course, Respondent did obtain counsel and did submit pleadings in support of his argument on appeal. The Board has considered that Respondent may have failed to answer the Investigation and Complaint out of fear, embarrassment, or lack of knowledge of the Court Rules requiring such an answer.

In any event, there is no excuse for Respondent's failure to answer the Grievance Administrator's pleadings and correspondence with the hearing panel. Nevertheless, the Hearing Panel did not address the issue of failure to respond to the Request for Investigation or Formal Complaint in its Report and Order; it is deemed unnecessary, at this time, to further pursue that area of the Formal Complaint relating to failure to respond.