

IN THE MATTER OF GEORGE J. HARRINGTON,
A Member of the State Bar of Michigan,
Respondent.

No. 35542-A

Decided: January 9, 1979

OPINION

The Grievance Administrator appeals the Order of the 3d Congressional District Hearing Panel No. 1 which issued a reprimand and assessed costs in the amount of \$84.11.

The Board affirms the Findings of Fact reported by the Hearing Panel which are essentially uncontested throughout the proceedings in this matter. Because the whole record of said proceedings supports those findings by evidence and acknowledgment by the Respondent, the Attorney Discipline Board affirms and adopts the report of the Panel. State Bar Grievance Administrator v Estes, 390 Mich 585, 212 NW2d 903 (1973).

The facts affirmed by this Board are as follows: On or about March 20, 1975 Respondent was appointed Appellate Counsel for Gerald E. Hartley by the Circuit Court for the County of Wayne and upon receiving a copy of the transcript of the proceedings in the Wayne County Circuit Court, Respondent read the same but took no further action. Respondent failed to communicate with the Complainant, Gerald E. Hartley, and failed to proceed with the appeal of said client and on or about April 20, 1977 the Michigan Court of Appeals affirmed the Judgment of the trial court involving the trial of Gerald E. Hartley. On or about July 10, 1977 the Complainant, Gerald E. Hartley, filed a request for investigation with the State Bar Grievance Administrator setting forth the above facts. On August 29, 1977, 29 months after receiving the court appointment, Complainant filed a Motion for Withdrawal of Appointed Counsel and for Appointment of Substitute Court-appointed Counsel. Other counsel was appointed to represent the Complainant, Gerald E. Hartley, and the Court of Appeals did allow the Filing of a late Brief upon payment of a charge of \$100 which was paid by the Respondent. Respondent, George J. Harrington, failed to answer the request for investigation filed with the State Bar Grievance Administrator and failed to answer the Formal Complaint filed herein. None of the aforementioned facts have been disputed by the Respondent either before the Hearing Panel or upon appeal to this Board.

It appears that the Hearing Panel considered a number of mitigating factors in arriving at its decision to issue a reprimand in this matter. For several months early in the year of 1975 Respondent was experiencing familial and emotional problems which were a distraction from his responsibilities to his clients. However, there are two factors which seriously concern this Board and which reflect upon Respondent's attitude toward his professional responsibilities:

1. During the emotionally troublesome period in Respondent's life (early 1975), Respondent neglected three separate cases including the instant matter, all of which resulted in complaints

to the State Bar Grievance Administrator. Respondent was reprimanded by Wayne County Hearing Panel No. 15 on November 22, 1977 in regard to two of those matters. He had received a Formal Reprimand five months prior to issuance of the Formal Complaint in this matter (i.e. prior discipline issued November 22, 1977, date of Formal Complaint in this matter issued March 12, 1978). Notwithstanding the prior grievance proceedings, Respondent failed to answer the Grievance Administrator's request for investigation and failed to answer the Formal Complaint herein. Respondent asks this Board to excuse his dilatoriness because he was unfamiliar with the grievance rules. Surely by this time, Respondent should have been cognizant of the procedures required by the State Bar Rules.

2. The Board is not insensitive to Respondent's urging that he was experiencing serious strain at the time that he neglected his responsibilities to his clients. However, as emphasized by Counsel for the Grievance Administrator, we cannot ignore the prejudice to Respondent's client resulting from Respondent's neglect occurring for a period of 29 months, and the serious emotional and mental consequences to a prisoner which would result from the total lack of progress in a criminal appeal and the total lack of communication to such a client from the attorney responsible for said appeal. Even accepting the defense that Respondent had simply forgotten the file due to a mental vacuum created by a difficult period of several months, the Board must find that an attempt should certainly have been made to review Respondent's files before allowing 29 months to elapse; indeed, Respondent acknowledged that he had actual initial notice of his court assignment reputation and general competence of Respondent.

In his argument on appeal before the Board, Respondent urged that, although culpable for the misconduct averred in the Formal Complaint, his negligence in this matter and two others matters arising out of the same circumstances of personal stress in the spring of 1975 is not characteristic of his behavior or attitude. This view, however lacks persuasion in light of the following:

(a) Respondent's ability to properly attend to a volume of cases has been recently untested since the Respondent has taken on no new cases since March of 1978 (Tr, p 13) and has been maintaining responsibility only for seven or eight cases for which he had prior responsibility (Tr, p 12).

(b) As a factor material to discipline, and not applied in any way as a basis for a finding of misconduct in the matter now on appeal, the Board has considered the facts relating to a separate grievance. Respondent acknowledges that a separate client suffered

a civil action default in the amount of \$1,000 as a result of Respondent's admitted neglect in failing to file an answer. Respondent was granted a motion to set aside said default on the condition that \$100 be paid to the court in that matter (Tr. p 16, 17). Respondent failed to make this payment and the default was reinstated; the court refused to set it aside a second time. Respondent agreed to pay the \$1,000 default amount to his client.

(c) In regard to the aforementioned obligation to pay \$1,000, Respondent has made no payment whatsoever toward the debt since his promise of restitution was made in 1975.

In consideration of the above factors, which were raised by the Respondent himself during oral arguments, and in consideration of Respondent's acknowledged failure to abide by the former State Bar Rules governing grievance procedures even after he had experienced the filing of a Formal Complaint presently discussed, the Board concludes that the misconduct occurring in the spring of 1975 is not an isolated event but, tends to reflect a pattern of professional conduct occurring since 1975.

It has been held that the burden to properly inform a convicted client regarding the progress of an appeal and the withdrawal of appointed counsel increases in direct proportion to the harm that may result to the client for lack of such communication or notice to the client. The Florida Bar v Dennis R. Dingle, 220 So 2d 9, (Fla. 1969). It is the view of this Board that practitioners responsible for the appeal of criminal matters carry a particularly serious responsibility in preserving the constitutional safeguards of their clients and, in the case of an imprisoned client, maintaining communications which are obviously of such importance to the prisoner.

Because of the seriousness of the neglect in question which constitutes a violation of Canon 6, DR 6-101(A)(3) and because of Respondent's violation of Canon 1, DR 1-102(A)(5)and(6) forbidding conduct prejudicial to the administration of Justice and conduct adversely reflecting on one's fitness to practice law, and, finally, in recognition of Respondent's particularly culpable failure to answer the request for investigation and the Formal Complaint which are dual violations of the Supreme Court Rules of Standards of Conduct, SCR 15.2 (7), the Board is constrained to increase the discipline assessed by the Hearing Panel and impose a discipline of suspension.

Costs shall be taxed to Respondent.