

GRIEVANCE ADMINISTRATOR

v

JOHN P. CONLEY,  
A Member of the State Bar of Michigan,  
Respondent-Appellant

File No. DP-169/83

Decided: May 9, 1985

OPINION OF THE BOARD

The hearing panel found that the Respondent was retained in a criminal appeal matter and was paid in advance his complete fee of \$1,500. Respondent failed to pursue the matter, failed to return the fee and certain papers to the complainant-client and allegedly made oral misrepresentations regarding the same to an investigator for the Attorney Grievance Commission. The Respondent failed to answer the Formal Complaint and a default was entered. Approximately 1 and ½ years after payment of the retainer (but prior to the panel hearing), the complainant received a refund check from the Respondent. However, the Respondent failed to appear before the hearing panel as required and a panel order of suspension of 180 days was entered. Respondent filed a Petition for Review and a stay of discipline has been in effect.

The Respondent has appealed to the Board, through counsel Philip Van Dam, requesting that the default be set aside pursuant to former GCR 1963, 520.4. In lieu of setting aside default and remanding for further proceedings, the Board will modify the Order of Suspension from 180 days to 60 days.

Respondent has offered statements in mitigation including an assertion that he has been suffering from a prolonged and severe illness which was the cause of his neglect in this matter. While the Board is unable to accept this late-offered evidence for purposes of exculpation, we take note of Respondent's long, unblemished record and the fact that he did make some effort to rectify his omissions in this matter. Although he failed to respond to the Formal Complaint and notice of hearing before the hearing panel, Respondent did respond to the Board's order to show cause setting this matter for review hearing, filed a detailed brief and appeared before the Board personally with counsel.

The Respondent was found, by default, to have made a misrepresentation regarding the Request for Investigation to a staff investigator during a telephone conference. In assessing an appropriate discipline in this matter, it is noted that the record, taken as a whole, may be insufficient to support a finding that Respondent intended to submit a false statement or otherwise deceive the grievance authorities.

Given the lack of timely and appropriate responses resulting in default, the hearing panel was justified in imposing a discipline which would require reinstatement proceedings. However, taking into consideration all circumstances, we are persuaded that a suspension of 180 days is unnecessary and would have an unduly punitive effect. The suspension will be reduced to a period of 60 days.

All concur.