

GRIEVANCE ADMINISTRATOR,
Petitioner/Appellee,
v
CLIFFORD R. WILLIAMS, P-22337,
Respondent/Appellant.

ADB 43-87; 69-87

Decided: April 14, 1988

BOARD OPINION

The Attorney Discipline Board has considered the Petition for Review filed by Respondent, Clifford R. Williams, seeking modification of hearing panel order suspending his license to practice law for 120 days. Although the hearing panel's findings of misconduct were properly based upon Respondent's default for failure to answer the Formal Complaint, the testimony submitted to the panel in mitigation warrants a decrease in the discipline imposed by the panel. The discipline in this case is reduced to a suspension of sixty days.

The Formal Complaint prepared and filed by the Grievance Administrator alleged that Respondent's neglect resulted in the dismissal of a divorce case involving his client and that Respondent refused to return to his client unearned fees in the amount of \$650.00. This Formal Complaint was served on Respondent March 31, 1987 and a default for failure to answer was filed by the Administrator on April 22, 1987. On the following day, April 23rd, Respondent filed a Motion to Set Aside Default which was accompanied by a proposed Answer. At the hearing conducted on June 11, 1987, the panel ruled that Respondent's default would not be set aside for the reason that Respondent had failed to file an affidavit of facts showing a meritorious defense as specifically required by MCR 2.603(D)(1). Furthermore, the panel ruled that he had not established "good cause" for setting aside the default. The default was accepted by the panel as an admission to the allegations of misconduct and a separate hearing was then conducted to determine the appropriate level of discipline.

The hearing panel's report recites its finding that Respondent was retained in June 1982 to represent a client in a divorce matter and that he prepared, executed and filed an answer and counter-claim on the client's behalf. The dismissal of the complaint and the counter-claim in April 1986 was cited as a result of Respondent's failure to prosecute his client's claim in a diligent manner. The panel also found that Respondent was paid an attorney fee of \$650.00 in that divorce case but failed to perform the legal services for which he was retained and committed professional misconduct by failing to return the unearned fees at the client's request.

At the separate hearing on discipline, the panel received the testimony of the Respondent, the client and the attorney who represented the plaintiff/wife in the divorce proceedings. Based on this testimony, the panel rejected Respondent's claims that his client was uncooperative and that the client was not prejudiced because he never actually wanted a divorce in the first place. The panel considered the aggravating effect of Respondent's three prior reprimands, in 1974, 1978 and 1986

and ordered that his license be suspended for 120 days and until he had established his eligibility for reinstatement to the satisfaction of a hearing panel in accordance with the procedure described in MCR 9.124. In addition, the panel order restitution to the client in the amount of \$650.00

Upon appeal, Respondent has expressed his understanding that a suspension is warranted in this case but argues that the goals of our disciplinary system do not require the imposition of a suspension requiring separate reinstatement proceedings. We agree.

The allegations of misconduct were established not only as the result of the default which was entered but by the testimony offered by both parties during the discipline phase of the hearing. We think that it is important to note, however, that Respondent did communicate with opposing counsel and that, in fact, proposed settlement agreements were prepared and exchanged. When plaintiff's counsel lost contact with his client, the case languished and died because both attorneys apparently assumed that their respective clients were no longer interested in finalizing the divorce. We do hasten to point out that we agree with the observation of the panel that whether or not Respondent received regular communications from his client, it was his obligation to proceed vigorously on his client's behalf until he determined what his client's objectives were.

At the time he was retained, Respondent had been a member of the Bar for at least eleven years, and it is clear that he did not have an appropriate office procedure to ensure regular communication with his client in a case which he may have viewed as a "routine" divorce. By reducing the discipline in this case, we relieve Mr. Williams of the obligation to appear before a new panel in reinstatement proceedings to establish his understanding of his obligations to his clients. We take this opportunity, to however, to remind him that legal matters, especially divorce cases, are anything but "routine" to the client and that regular communication between the attorney and client ensures that the attorney will be able to make informed decisions as the case progresses.

Finally, the order issued by the hearing panel is further modified by reducing the restitution requirement from \$650.00 to \$600.00. Although the Complaint alleged that a fee of \$650.00 was requested and received by Mr. Williams, the testimony of both Mr. Williams and the client during the discipline phase of the hearing clearly established that the amount actually paid was \$600.00.