

GRIEVANCE ADMINISTRATOR

v

DUANE ASHLEY, P-10275

Respondent/Appellee.

File No. DP 201/85; DP 61/86

Decided: July 23, 1986

Opinion issued: September 30, 1986

PRESENT: Patrick J. Keating, Chairman
Martin M. Doctoroff, Vice-Chairman
Charles C. Vincent, M.D., Secretary
Remona A. Green, Member
Hanley M. Gurwin, Member
Robert S. Harrison, Member
Odessa Komer, Member

OPINION OF THE BOARD

On March 13, 1986, the Grievance Administrator, Attorney Grievance Commission, filed a three Count Formal Complaint, File No. DP 201/85. Respondent's Default for failure to answer the Complaint was filed in April 1986 and a second Complaint, File No. DP 61/86 was filed charging that the failure to answer a Formal Complaint constituted an additional act of professional misconduct. No Answer was filed by the Respondent. The Hearing Panel assigned to consider the consolidated cases ruled that the Defaults constituted admissions to the allegations and found that misconduct had been established, to wit: Respondent's neglect of a civil matter in 1983 and false statements to the client that suit had commenced in 1984 when, in fact, he did not commence suit until January 1985; Respondent's violation of a prior 119 day suspension, including his representation of a client during the term of that suspension, his failure to comply with an Order of Restitution, his failure to pay the costs in the Order and his failure to notify his clients of his suspension; Respondent's failure to answer the Request for Investigation served on him by the Grievance Administrator in November 1985; and, finally, his failure to answer the Formal Complaint.

The Hearing Panel Report, which noted that the Respondent did not appear at the hearing and offered no mitigating factors for the Panel's consideration, set forth the Panel's conclusion that Respondent's license to practice law should be suspended for a period of nine months.

The Petition for Review filed by the Grievance Administrator urged that a suspension of nine months is inappropriate in light of this Respondent's prior disciplinary history, which includes a Reprimand and three prior suspensions, and the nature of the misconduct in this case, which includes his violation of a previous suspension. We agree, and increase the discipline imposed in this case to a Revocation of Respondent's license to practice law.

Respondent is a recidivist. The discipline imposed in this case represents the third suspension order issued against this Respondent in a fourteen month period. Coupled with a Reprimand in 1975 and a sixty day suspension in 1976, it is a dismal record.¹

The instant case and the two previous cases in 1985 and 1986 contain common patterns of misconduct with regard to neglect of client matters, misrepresentation to clients and failure to answer Requests for Investigation and Formal Complaints. The Board has previously ruled that a pattern in each of these areas is cause for concern. For example, in the Matter of John D. Hagy, File Nos. DP 153/82; DP 66/82; DP 99/82, DP 122/82; DP 128/82, May 13, 1983 (Brd. Opn. p. 266), the Board increased a 100 day suspension to a suspension of two years noting that “flagrant disregard for the Grievance Commission’s investigation and complaints could have resulted in greater sanction; however the Board will give some weight to Respondent’s relative youth and experience . . .” .

The mitigating effect of youth and inexperience are, unfortunately, not available to this Respondent. He has been admitted to practice in this State since 1965 and has taken four previous bites from the disciplinary apple.

This case introduces an additional element, however, which constitutes significant aggravation. Respondent has been found to have violated the term of his previous Order of Discipline in all respects including his failure to pay costs, failure to pay restitution, failure to notify his clients and engaging in the practice of law while suspended. It is, perhaps, not surprising that the Respondent did not answer these Formal Complaints, did not appear before the Hearing Panel and did not appear in response to the Order to Show Cause issued by the Board.

The Board notes that it is not entirely clear from the record below whether or not the Hearing Panel was fully informed of the full extent of Respondent’s prior disciplinary history at the time that it convened to consider the appropriate sanction. We find no need, however, to remand this matter to the Panel for reconsideration. The record before us leads to the conclusion that this Respondent’s repeated violations of his responsibilities to his clients and his disregard for a prior discipline order, constitutes conduct which strikes at the very heart of the Supreme Court’s effort to protect the public. We therefore increase the discipline in this case to a revocation of Respondent’s license to practice law.

Patrick J. Keating, Chairman; Martin M. Doctoroff, Vice-Chairman; Charles C. Vincent, M.D., Secretary; Remona A. Green; Hanley M. Gurwin; Robert S. Harrison; Odessa Komer all concurred.

¹. This Respondent’s prior disciplinary history consists of a Reprimand effective 7/1/75, File No. 32842-A; a sixty day suspension effective 4/8/76, File No. 33491-A; a 119 day suspension effective 3/12/85, File No. DP 163/85 and a 120 day suspension effective 2/24/86, File No. DP 139/85.