

STATE OF MICHIGAN

FILED
ATTORNEY DISCIPLINE BOARD

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Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner/Appellant,

v

Case No. 14-37-GA

PETER S. TANGALOS, P 52969,

Respondent/Appellee.

ORDER INCREASING DISCIPLINE FROM A 60-DAY SUSPENSION TO A 180-DAY SUSPENSION

Issued by the Attorney Discipline Board
211 W. Fort St., Ste. 1410, Detroit, MI

Tri-County Hearing Panel #81 issued an order suspending respondent's license to practice law for 60 days, effective August 12, 2015. Respondent served the 60-day suspension and his license to practice law was reinstated, effective October 13, 2015. The Grievance Administrator filed a petition for review and a hearing was held before a sub-board consisting of members Van Der Wiele, Campbell, Fuller and Murray. The Attorney Discipline Board conducted review proceedings in accordance with MCR 9.118, which included a review of the whole record before the panel, consideration of the parties' briefs and the arguments presented, the transcript of the review hearing, and the recommendation of the sub-board. For the reasons discussed below, we increase the discipline imposed from a 60-day suspension to a 180-day suspension of respondent's license to practice law.

On April 7, 2014, the Grievance Administrator filed a two-count formal complaint alleging that respondent committed professional misconduct. Count One alleged that respondent failed to hold client and third-party funds in connection with a representation separate from the lawyer's funds; failed to deposit the client and third-party funds into an IOLTA or non-IOLTA account; and failed to promptly pay or deliver funds that the client or third party was entitled to receive due to insufficient funds in his IOLTA account, in violation of MRPC 1.15(d) and MRPC 1.15(b)(3). Count Two alleged that respondent made knowing misrepresentations of facts or circumstances surrounding a request for investigation; failed to answer a request for investigation; and failed to fully disclose all facts and circumstances pertaining to the alleged misconduct, in violation of MCR 9.104(6) and (7), and MCR 9.113(A). The complaint also alleged violations of MRPC 8.4(a)-(c) and MCR 9.104(1)-(3).

The misconduct stemmed from a \$390,000 settlement respondent obtained on behalf of his client, CP Wind, in a commercial dispute against DTE. Between April and August 2012, respondent initiated several transactions involving the balance in the IOLTA that were cause for

concern. Although the funds in the IOLTA account belonged to CP Wind (save \$20), respondent initiated several transactions transferring money from the IOLTA account to his general business account. These transactions resulted in a shortfall in the IOLTA account. After CP Wind requested their settlement, respondent delivered a check for the full amount, which was returned for non-sufficient funds. Respondent obtained funds to cover the deficit, and delivered CP Wind a cashier's check for the amount they were owed shortly thereafter. (Tr 9/10/14, pp 61, 288.)

Respondent admitted to violating MRPC 1.15(b)(3) and MRPC 1.15(d). However, he contended that the violations occurred because of carelessness and lack of oversight, as opposed to intentional conduct, as argued by the Grievance Administrator. Respondent stated, "Due to mismanagement and negligence, funds were removed from the trust account in error prematurely depleting the funds held on behalf of CP Wind which produced the NSF check that was promptly cured." (Respondent's Answer 5/16/14 ¶ 39.) Regarding Count Two, respondent denied all allegations of misconduct.

During proceedings before the panel, respondent and Ms. Doss, one of respondent's employees, testified at length regarding bookkeeping, banking and office management procedures. Their combined testimony highlighted "glaring irregularities in the trust accounting for which respondent is responsible." (HP Report 12/29/14, p 3.) As the panel appropriately summarized, both respondent and Ms. Doss testified that:

1. The system for accounting was poorly managed and not double checked on any regular basis;
2. Respondent paid little attention to whatever system they did maintain, leaving most of that to the bookkeeper;
3. There was a clear disconnect between the bank statements and the internal reconciliations presented during the hearing, reinforcing the idea that no one was paying attention to the Client Trust account, and;
4. Once respondent was made aware that the CP Wind clients wanted their money, he wrote a check and it bounced. [HP Report 12/29/14, p 4.]

Ultimately, the panel concluded that the Grievance Administrator failed to prove that respondent acted knowingly in failing to safeguard client funds as alleged in Count One, and therefore did not find violations of MRPC 8.4(b) and (c), and MCR 9.104(1)–(3). The panel also declined to find misconduct as alleged in Count Two, because the Grievance Administrator failed to prove that respondent made knowing misrepresentations in his answer to the request for investigation or that he failed to answer the request for investigation in conformity with MCR 9.113 and MCR 9.115(D). The panel found violations of MRPC 1.15(b)(3) and MRPC 1.15(d), as admitted by respondent.

Following a hearing on the appropriate level of discipline, the panel issued an order suspending respondent's license to practice law for 60 days. The panel declined to grant the Grievance Administrator's request that respondent forfeit \$61,130 in attorney fees. The Grievance Administrator petitioned for review, alleging that the hearing panel erred by imposing insufficient

discipline of a 60-day suspension for respondent's unauthorized use of client funds from his IOLTA; in dismissing Count Two of the formal complaint; and by failing to consider and order fee forfeiture.

For the reasons described below, we find that the hearing panel imposed insufficient discipline. Accordingly, we increase discipline to a 180-day suspension. In addition, we conclude that the hearing panel appropriately dismissed Count Two of the formal complaint and declined to order fee forfeiture.

With regard to the discipline imposed, and after careful consideration, we find that the hearing panel's application of Standard 4.12 is appropriate, and the panel's findings as to respondent's mental state have proper evidentiary support. The panel thoroughly assessed the evidence presented, including the credibility of the testimony given by respondent and Ms. Doss, and the panel was ultimately not convinced that respondent acted "knowingly" or "intentionally" as the Grievance Administrator suggested. In our independent judgment, we also find that Standard 4.12 is applicable here, because at a minimum, it is clear that respondent *should have known* that he was dealing improperly with client property. As that standard provides, "Suspension is generally appropriate when a lawyer *knows or should know* that he is dealing improperly with client property and causes injury or potential injury to the client." (Emphasis added.)

Although we agree with the panel's assessment of respondent's mental state, and the application of ABA Standard 4.12, we find that a 60-day suspension is insufficient discipline to impose in light of the misconduct committed. Due to respondent's cavalier abandonment of his duty to properly manage and oversee client funds, a suspension warranting the filing of a petition for reinstatement pursuant to MCR 9.124 is necessary to ensure public protection.

Additionally, we find that the panel did not err in dismissing Count Two, which alleged that respondent made several misrepresentations in his answer to the request for investigation. After reviewing the evidence, the panel was not convinced that respondent made any *knowing* misrepresentations as charged by the Grievance Administrator. The panel thoroughly evaluated the credibility of the witnesses, and their determinations in this regard informed their conclusion. As such, we defer to the panel's assessment of demeanor and credibility of the witnesses and will not substitute our judgment for that of the panel's or offer a *de novo* review of the evidence. *Grievance Administrator v Carrie L. P. Gray*, 93-250-GA (ADB 1996), lv den 453 Mich 1216 (1996). Thus, we find that the dismissal of Count Two of the formal complaint is based on a plausible interpretation of the evidence presented, and should therefore be affirmed.

Finally, fee forfeiture is not appropriate in this case. The Grievance Administrator argued that respondent should forfeit the attorney fee from the CP Wind litigation. Fee forfeiture is well-established as an equitable remedy employed by the Michigan courts and disciplinary bodies. MCR 9.106(5) provides that misconduct is grounds for "requiring restitution, in an amount set by a hearing panel, the board, or the Supreme Court, as a condition of discipline." Restitution in the attorney discipline system serves the dual purposes of making a complainant or third party whole and protecting the public and the legal system through deterrence and sanctions. *Grievance Administrator v Joel S. Gehrke*, 05-29-GA (2008). In this case, we find that fee forfeiture is not necessary because there is no need to make respondent's client whole; respondent's client received their full settlement amount; and, the harm caused by any delay was likely *de minimus*, alleviating the need for deterrence and/or sanctions in addition to the suspension imposed herein.


NOW THEREFORE,

IT IS ORDERED that the discipline in this case is increased from a 60-day suspension to a **SUSPENSION OF RESPONDENT'S LICENSE TO PRACTICE LAW IN MICHIGAN FOR 180 DAYS, EFFECTIVE OCTOBER 5, 2016**, and until further order of the Supreme Court, the Attorney Discipline Board or a hearing panel, and until respondent complies with the requirements of MCR 9.123(B) and MCR 9.124.

IT IS FURTHER ORDERED that respondent shall, on or before October 5, 2016, pay costs in the amount of **\$137.49**, consisting of court reporting costs incurred by the Attorney Discipline Board for the review proceedings conducted on November 17, 2015. Check or money order shall be made payable to the Attorney Discipline System and submitted to the Attorney Discipline Board, 211 West Fort St., Ste. 1410, Detroit, MI 48226, for proper crediting. (See attached instruction sheet).

ATTORNEY DISCIPLINE BOARD

By:



Louann Van Der Wiele, Chairperson

Dated: September 6, 2016

Board members Louann Van Der Wiele, Lawrence G. Campbell, Dulce M. Fuller, Rosalind E. Griffin, M.D., Rev. Michael Murray, James A. Fink and John W. Inhulsen concur in this decision.