

Attorney Discipline Board

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GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner,

v

Case Nos. 15-144-JC; 15-145-GA

ALEXANDER MELNIKOV, P 73960

Respondent.

ORDER AFFIRMING HEARING PANEL ORDER OF SUSPENSION WITH CONDITION

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

This matter arises from a Consolidated Notice of Filing of Judgment of Conviction and Formal Complaint filed by the Grievance Administrator. The Judgment of Conviction was based on respondent's three misdemeanor convictions of two counts of disturbing the peace and assault and battery in a matter titled *People v Alexander A. Melnikov*, Oakland County Circuit Court Case No. 2015-253175-FH. The formal complaint was based on respondent's no contest plea to disorderly person in a matter titled *People v Alexander A. Melnikov*, 44th District Court Case No. 84152.

This matter was assigned to Tri-County Hearing Panel #67 of the Attorney Discipline Board and heard before the panel on April 14, 2016.¹ On July 28, 2016, the hearing panel issued an order suspending respondent's license to practice law in Michigan for 180 days and ordering him to, within 30 days, provide written verification to the Grievance Administrator and the Attorney Discipline Board that he entered into a three-year monitoring contract with the State Bar of Michigan's Lawyers and Judges Assistance Program (LJAP). Respondent petitioned for review seeking a one day decrease in the suspension imposed by the hearing panel on the basis that it is "inconsistent" with the American Bar Association Standards for Imposing Lawyer Sanctions (ABA

¹ With regard to the judgment of conviction, the hearing panel found misconduct based on MCR 9.120(B)(2), which provides that a certified copy of the judgment of conviction is conclusive proof of the commission of the criminal offense. With regard to the formal complaint, respondent's default was entered for his failure to file an answer to the complaint. In addition, respondent did not move to set aside the default, and at the hearing, respondent offered no documentary evidence and acknowledged most, if not all, of the facts alleged by the Administrator to establish the basis for both the judgment of conviction and the formal complaint. (Tr 4/14/16, pp 12-13, 20.)

Standards) and the Michigan Supreme Court's opinion in *Grievance Administrator v Lopatin*, 462 Mich 235; 612 NW2d 120 (2000). Respondent further argued that reducing his suspension from 180 days to 179 days would ensure that "similar misconduct receives a similar sanction." Respondent did not file a request for a stay of discipline, thus his suspension went into effect on August 19, 2016.

The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118, including review of the evidentiary record before the panel and consideration of the briefs and arguments presented by the parties at a review hearing conducted October 19, 2016.

The Board's review of sanctions imposed by a hearing panel is not limited to the question of whether there is proper evidentiary support for the panel's findings, rather, the Board possesses "a greater degree of discretion with regard to the ultimate result." *Grievance Administrator v Benson*, 06-52-GA (ADB 2009), citing *Grievance Administrator v Handy*, 95-51-GA (ADB 1996). See also *Grievance Administrator v August*, 438 Mich 296, 304; 304 NW2d 256 (1991). This greater discretion to review and, if necessary, modify a hearing panel's decision as to the level of discipline, is based, in part, upon a recognition of the Board's overview function and its responsibility to ensure a level of uniformity and continuity. *Grievance Administrator v Brent S. Hunt*, 12-10-GA (ADB 2012), citing *Matter of Daggs*, 411 Mich 304; 307 NW2d 66 (1981).

However, the levels of discipline set out in the ABA Standards are not absolute but are described in the preface to the Standards as *recommended* sanctions which are generally appropriate, *absent aggravating or mitigating circumstances*. In this matter, the hearing panel's report clearly and precisely explains the panel's reasoning why they felt a suspension greater than even what the Grievance Administrator was requesting be imposed was appropriate in this matter:

On at least two separate occasions, respondent behaved in a grossly vulgar and antisocial manner. He did this by his own admission, when he was both severely intoxicated and when, according to his testimony, he was completely sober. (Tr 4/14/16, pp 21-22, 24.) His conduct since being placed on probation for two separate crimes demonstrates clear evidence that he is unremorseful. His conduct the day of the hearing, both by his tardiness and remarkable lack of preparation, drew understandable comment from all of the panel members. Respondent himself has demonstrated highly questionable skills to allow for continuation in the practice of law without substantial discipline and oversight. (7/28/16 Report, p 4.)

Ensuring a level of uniformity and continuity are important goals to achieve, however, we have previously articulated that:

Different circumstances can lead to adjustments in discipline, and this Board is not inclined to "simplistically characterize conduct by labels (e.g., 'assault') and then allow that characterization to dictate the level of discipline to be imposed irrespective of actual distinctions." *Grievance Administrator v Lisa Londer*, 07-127-JC (ADB 2008), citing *Grievance Administrator v Martin Deutch*, 455 Mich 149, 166; 565 NW2d 369 (1997) (attorney misconduct cases

are fact-sensitive inquiries that turn on the unique circumstances of each case); and, *Grievance Administrator v Arnold M. Fink*, 96-181-JC (After Remand) (ADB 2001), p 13, lv den 465 Mich 1209 (2001).

In this matter, it is undisputed that respondent's conduct fell within the suspension range of the ABA Standards, specifically ABA Standard 5.12. In addition, the hearing panel determined based on "respondent's failure to file an answer to the formal complaint, to timely attend the hearing, and his lack of preparation for the hearing," (7/28/16 Report, p 4), that ABA Standard 7.2 also applied. On review, respondent does not take issue with the panel's findings in that regard. Instead, he argues that the hearing panel allowed its frustration with respondent to influence its decision to impose a 180-day suspension, requiring reinstatement under MCR 9.123(B)(1)-(9) and MCR 9.124.

While the record certainly shows that the hearing panel was frustrated with respondent during the hearing, it does not show that this frustration was the sole reason why the panel imposed a 180-day suspension rather than a 179-day suspension. In fact, the panel found that there were a number of aggravating factors that applied:

[A] suspension longer than 179 days is appropriate in light of the number of applicable aggravating factors, which include a prior disciplinary offense (contractual probation); a pattern of misconduct; bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary process; submission of false evidence, false statements or other deceptive practices during the disciplinary practice; and illegal conduct. (ABA Standards 9.22(a), (c), (e), (f), and (k), respectively.) (Report 7/28/16, p 5.)

Consideration of these factors included respondent's failure to disclose to the Grievance Administrator and the panel that he was the subject of probation violation hearings in *both* underlying criminal matters and that it was because of one of those hearings, not simply an "appointment" that ran late, that respondent was late for his disciplinary hearing on April 14, 2016. Respondent presented no evidence, beyond his own testimony, of any applicable mitigation and the hearing panel found that no mitigating factors applied.²

Finally, while the cases cited by respondent in his brief in support of his petition for review provide a guide as to proportionality, the facts and circumstances of this matter, which includes the numerous applicable aggravating factors, make distinguishing those cases unnecessary.

Upon careful consideration of the whole record, the Board is not persuaded that the hearing panel's decision to order a 180-day suspension, with a condition, was inappropriate.

² In fact, respondent is currently the subject of a show cause proceeding initiated by the Grievance Administrator on February 3, 2017. The petition for order to show cause seeks an increase in the discipline imposed for respondent's failure to enter into a monitoring contract with LJAP and rejecting LJAP's recommendation for treatment. *Grievance Administrator v Alexander Melnikov*, 17-9-MZ (Ref. 15-144-JC; 15-145-GA).

NOW THEREFORE,

IT IS ORDERED that the hearing panel's order of suspension issued July 28, 2016, is **AFFIRMED**.

IT IS FURTHER ORDERED that respondent shall, pay court reporting costs incurred by the Board for the review hearing conducted on October 19, 2016, in the amount of \$135.67. This cost shall be added to the payment plan currently in effect. Respondent's final payment shall now be due on or before **August 22, 2017**, in the amount of **\$131.94**. Costs may be paid by check or money order 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.

ATTORNEY DISCIPLINE BOARD

By:



Louann Van Der Wiele, Chairperson

DATED: February 24, 2017

Board members Louann Van Der Wiele, Rev. Michael Murray, Dulce M. Fuller, James A. Fink, John W. Inhulsen, Jonathan E. Lauderbach, Barbara Williams Forney, Karen O'Donoghue, and Michael B. Rizik, Jr., concur in this decision.