STATE OF MICHIGAN

Attorney Discipline Board

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Grievance Administrator,

Petitioner/Appellee/Cross-Appellant,

v

Robin H. Kyle, P 33330,

Respondent/Appellant/Cross-Appellee,

Case No. 13-14-GA

Decided: April 6, 2016

Appearances:
Rhonda Spencer Pozehl, for the Grievance Administrator, Petitioner/Appellee/Cross-Appellant
Michael Alan Schwartz, for the Respondent/Appellant/Cross-Appellee

BOARD OPINION

Tri-County Hearing Panel #28 issued an order on October 7, 2014, suspending respondent Robin H. Kyle's license to practice law for 60 days. Respondent filed a petition for review and the Grievance Administrator filed a cross-petition. The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118, including review of the record before the hearing panel and consideration of the briefs and arguments presented to the Board at a review hearing. For the reasons discussed below, the hearing panel's order of suspension is affirmed.

I. Hearing Panel Proceedings

The Grievance Administrator filed a formal complaint against respondent on January 25, 2013, after receiving three overdraft notifications from PNC Bank that indicated that there were insufficient funds in respondent's IOLTA account to cover a $99.90 electronic debit. Specifically, the formal complaint alleged that respondent routinely used his IOLTA account to pay business debts that were unrelated to any specific client matter, and that he regularly deposited and maintained personal funds in his IOLTA account. The complaint further alleged that respondent intentionally misused the IOLTA account in order to avoid garnishments or levies by his creditors, and to shield

his personal funds from the State of Michigan and IRS for payment of outstanding state and federal tax liens. Respondent was charged with violations of MRPC 1.15(a)(3) and (f); 8.4(b); and MCR 9.104(2)–(4).

Respondent filed an answer to the formal complaint, admitting to the IOLTA account overdraft charges. He further admitted that he routinely paid his office telephone bill out of his IOLTA account, and that he had pending tax liens. However, respondent denied that he maintained any personal funds in his IOLTA account or that he placed personal funds into the IOLTA account to avoid paying his tax liens. Five misconduct hearings were held before the panel from September 2013 through April 2014. Respondent was the only witness called to testify during the misconduct phase of the proceedings.

Following the hearings, the panel found that respondent committed professional misconduct by holding funds other than client funds in his IOLTA account, in violation of MRPC 1.15(a)(3); depositing his own funds into his IOLTA account in excess of the amount reasonably necessary to pay service charges or fees, in violation of MRPC 1.5(f).[1]

The panel ruled that there was insufficient evidence admitted to support a finding that respondent violated MRPC 8.4(b)[2] and MCR 9.104(3).[3] The Grievance Administrator had argued that, based on a preponderance of the evidence, one could conclude that respondent misused his IOLTA account in order to shelter funds from the IRS and other creditors. However, no evidence was presented in support of this claim, aside from the fact that respondent had "ongoing tax issues," and that he had suffered various financial hardships over the past two decades. (Petitioner's Proposed Findings of Fact and Conclusions of Law, pp 8, 11-12, 18.) Respondent maintained that he only used his IOLTA account as a general operating account to avoid paying the cumbersome service charges and fees associated with his business account. (Tr 9/11/13, pp 69–70.) The

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[1] The panel also found that respondent engaged in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2); and engaged in conduct that violates the standards or rules of professional conduct adopted by the Supreme Court, in violation of MCR 9.104(4).

[2] MRPC 8.4(b): "It is professional misconduct for a lawyer to: (b) engage in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer."

[3] MCR 9.104(3): "The following acts or omissions by an attorney, individually or in concert with another person, are misconduct and grounds for discipline, whether or not occurring in the course of an attorney-client relationship: (3) conduct that is contrary to justice, ethics, honesty, or good morals."

Grievance Administrator's counsel did not submit any additional evidence to refute this testimony. Instead, she urged the panel to conclude that respondent misused his IOLTA account to intentionally defraud the government and his other creditors without offering any additional substantiating evidence. The panel found that the Grievance Administrator failed to satisfy his burden of proof in this regard, thus finding that respondent did not violate MRPC 8.4(b) and MCR 9.104(3).

A sanction hearing was held on May 27, 2014 to determine discipline in accordance with MCR 9.115(J)(2). The parties submitted sanction briefs prior to the hearing. The Grievance Administrator argued for the imposition of a 90-day suspension. Respondent advocated for the imposition of an order imposing "no discipline" or a sanction that would not prohibit him from practicing law for any period of time. Employing the American Bar Association Standards for Imposing Lawyer Sanctions (ABA Standards), pursuant to the Court's directive in *Grievance Administrator v Albert Lopatin,* 462 Mich 235 (2000), the hearing panel imposed a 60-day suspension.

Respondent filed a timely petition for review of the hearing panel's order of suspension, arguing that the discipline imposed by the panel was excessive and not supported by the record. The Grievance Administrator subsequently filed a cross-petition for review contending that the panel erred in not imposing a greater sanction.

II. Discussion

A. The hearing panel did not err in relying, in part, on Standard 4.12.

Respondent argues that the panel inappropriately applied ABA Standard 4.12[4] because "what was found by the hearing panel was that respondent placed his own money in the IOLTA account, and nothing more." While it is true that the crux of this case involves violations of MRPC 1.15(f) (prohibiting the deposit of lawyer funds in a trust account beyond what is reasonably necessary to pay or avoid financial institution charges), and that Standard 4.1 is primarily directed toward proposing sanctions generally appropriate for "Failure to Preserve the Client's Property,"[5] and,

[4] Standard 4.12 provides that 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 a client.

[5] See Standard 4.1's heading, and Standards 4.12-4.14, all of which reference "dealing with" client property.

further, that a violation of MRPC 1.15(d)[6] was not proven, or even alleged in the formal complaint, the panel's partial reliance on Standard 4.12 was clearly appropriate.

A brief review of MRPC 1.15's key provisions and concepts may be helpful to place the violation established here in context. Like its predecessor, DR 9-102 of the Code of Professional Responsibility, MRPC 1.15 is concerned with the fundamental "obligations of safekeeping, accounting, and delivery when a lawyer comes into possession of someone else's money or property."[7] One of the most significant requirements of the rule, that a lawyer's money be held separate from that of clients or third persons, is now found in paragraph (d):

> A lawyer shall hold property of clients or third persons in connection with a representation separate from the lawyer's own property. All client or third person funds shall be deposited in an IOLTA or non-IOLTA account. Other property shall be identified as such and appropriately safeguarded.[8]

Nowhere in the text of MRPC 1.15 will one find the words "misappropriation" or "commingling," but parties, hearing panels, this Board, and others have traditionally used the terms to describe conduct prohibited by MRPC 1.15(d).

Many disciplinary bodies have used the word "misappropriation" as a synonym for theft, or, at times, for any unauthorized taking or use of the funds not belonging to a lawyer, whether accompanied by bad intent or no intent at all. In other words, we have said that misappropriation is a "per se offense," meaning that "'once the running balance of the [trust] account fell below the amount [required to be] held in trust for the client, misappropriation had occurred.'" *Grievance Administrator v Deborah C. Lynch*, 96-96-GA (ADB 1997) (discussing cases involving "inadvertent misuse" of client funds), pp 5-6.

Often, the modifier "intentional" or "knowing" is attached to the word "misappropriation" to signal the some of the most serious conduct prohibited by MRPC 1.15(d). With the increased use

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[6] MRPC 1.15(d) provides: "A lawyer shall hold property of clients or third persons in connection with a representation separate from the lawyer's own property. All client or third person funds shall be deposited in an IOLTA or non-IOLTA account. Other property shall be identified as such and appropriately safeguarded."

[7] Annotated Model Rules of Professional Conduct (8th ed, ABA 2015), p 261.

[8] MRPC 1.15(d). Prior to amendments in 2005, this requirement was set forth in the rule's first paragraph.

of the ABA Standards since the Court's *Lopatin* decision adopting them in 2000, the word "conversion" has been used much more frequently to refer to knowing misuse of client funds.[9] A lawyer who knowingly takes money belonging to others has failed to keep it separate from his own in the most flagrant way. Thus, this kind of "[m]isappropriation of client funds . . . is an obvious violation of the rule."[10] The lawyer has failed to keep funds safe and separate from his own by appropriating them to his or her own use.

Various formal complaints, panel reports and orders, and opinions and orders of this Board dealing with claims of misappropriation also recite violations of MRPC 1.15(b)(3) (failure to promptly pay or deliver and account for funds or property in possession of an attorney and belonging to another).

"Commingling" often means, simply, the failure to hold separate lawyer and client or third party funds, as required by MRPC 1.15(d). When used by itself the term generally suggests that the balance in the trust account has not fallen below the sum(s) required to be held on behalf of the lawyer's client(s), i.e., that the funds of the lawyer and others have been mixed together but no misuse or expenditure of client or third party funds (be it knowing, reckless, or negligent) has occurred. Like misappropriation, commingling may be accompanied by different mental states.

Nothing in this opinion's review of concepts and terminology should be considered to alter existing law or set forth new requirements of pleading or analysis. And the prohibition against "misappropriation" and "commingling" may be found in other parts of the rule. See, e.g., MRPC 1.15(g) ("Legal fees and expenses that have been paid in advance shall be deposited in a client trust account and may be withdrawn only as fees are earned or expenses incurred.").[11] We discuss these terms, in part, because the use of the term "commingling" figured prominently below. We do not seek to encourage the use of labels to the exclusion of an analysis under the rules.

MRPC 1.15 is focused on protection of the property and funds of clients and third persons in the possession of a lawyer. As we have seen, this includes a prohibition against conversion or

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[9] See Standard 4.11.

[10] Annotated Model Rules of Professional Conduct (8th ed, ABA 2015), p 262.

[11] Cases citing MRPC 1.15(g) in connection with knowing conversion or misappropriation include *Grievance Administrator v William L. Fette*, 10-70-GA (ADB 2011) and *Grievance Administrator v David A. Monroe*, 12-20-GA (ADB 2012).

taking that is well-established, even if it must be teased out of the requirements that the money or property of others be kept separate from the lawyer's and turned over promptly and accounted for upon request. We have also discussed the fact that MRPC 1.15 prohibits the failure to keep funds separate, which is sometimes referred to as "commingling." However, MRPC 1.15 contains other provisions to implement the central mission of the rule and essentially require the proper maintenance of a trust account. For example, it is misconduct for a lawyer to fail to promptly notify a person that funds belonging to that person have been received, or for a lawyer to fail to maintain trust account records for five years after termination of the representation. MRPC 1.15(b)(1)-(2).

Also, MRPC 1.15 has, over the years, accumulated increasingly detailed provisions regarding the two types of trust accounts into which *all* client or third person funds "shall be deposited." MRPC 1.15(d).

The first, and probably most common, type of trust account is defined in MRPC 1.15(a)(3):

> "IOLTA account" refers to an interest- or dividend-bearing account, as defined by the Michigan State Bar Foundation, at an eligible institution from which funds may be withdrawn upon request as soon as permitted by law. An IOLTA account shall include only client or third person funds that cannot earn income for the client or third person in excess of the costs incurred to secure such income while the funds are held.

If the funds held by the lawyer could earn a net return for the client, after considering fees and other expenses, the lawyer should place them in a "non-IOLTA account,"[12] which is defined in MRPC 1.15(a)(4). In addition to the definitions set forth in the first paragraph of MRPC 1.15, various provisions regarding IOLTA and non-IOLTA accounts, and their selection and maintenance, are peppered throughout the rule. See MRPC 1.15(a), (e), (h), (i), and (j). A lawyer's good-faith decision regarding the deposit or holding of funds in an IOLTA account versus a non-IOLTA account is not reviewable by a disciplinary body. MRPC 1.15(j).

We now turn, at last, to the provision of the rule found to have been violated in this case. The panel found that respondent deposited personal funds into the trust account in sums greater than "reasonably necessary to pay financial institution service charges or fees or to obtain a waiver of

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[12] See MRPC 1.15(e). See also MRPC 1.15(a)(3)

service charges or fees." MRPC 1.15(f).[13] Some view this type of rule as an "exception" to the anticommingling rule.[14] While this may be seen as true in some circumstances, the respondent's contentions in this case illustrate that it may not always be an accurate description. In other words, our rule's prohibition does not depend upon whether or not client funds are actually in the trust account. Even if no client funds are in the account, MRPC 1.15(f) prohibits the deposit of lawyer funds in an amount beyond that "reasonably necessary" to pay or avoid the charges or fees referenced in the rule.

Respondent argues that there was no commingling because there were no client funds in the account. After receiving evidence, including generalized testimony from respondent that he placed some unearned fees in the account, the panel concluded that the "the proofs are not clear with respect to the actual mixing of client and attorney funds here." In any event, the formal complaint did not allege a violation of MRPC 1.15(d), and the Administrator disavowed such a charge.[15] Understandably, this informed much of respondent's argument, as he sought to make it clear that client funds were not invaded and that the absence of a Rule 1.15(d) charge took commingling off the table. The panel agreed, and so do we.

However, we are not persuaded by respondent that it is error for the panel to cite Standard 4.12 in determining the appropriate discipline simply because a violation of MRPC 1.15(d) was not alleged. First, Standard 4.1 itself is not so narrowly circumscribed. It is true that, "[t]he most common cases under Standard 4.12 involve lawyers who commingle client funds with their own or

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[13] The panel also found that respondent violated MRPC(a)(3), quoted above, which contains the definition of an "IOLTA Account." The formal complaint references the first part of the rule's second sentence, which reads: "*An IOLTA account shall include only client or third person funds* that cannot earn income for the client or third person in excess of the costs incurred to secure such income while the funds are held." (Emphasis added.) Assuming this definitional section of the rule contains a ground for discipline, which we seriously question, it must be read in conjunction with MRPC 1.15(f), which expressly permits some lawyer funds to be deposited. The violation of MRPC 1.15(f) is the critical one we consider here.

[14] See, e.g., Illinois State Bar Association Professional Conduct Advisory Opinion No. 15-02 (May 2015), p 2, discussing Illinois Rule of Professional Conduct 1.15(b) which states: "A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose."

[15] See HP Report 10/7/14, p 8 ("the Grievance Administrator has disavowed a commingling claim here").

fail to remit client funds promptly."[16] However, in addition to harsher sanctions for conversion or commingling, an admonition may be appropriate "when a lawyer's sloppy bookkeeping practices make it difficult to determine the state of a client trust account, but where all the client funds are actually properly maintained."[17] Thus, although a hyper-technical reading of Standard 4.1 might lend support to an argument that it does not "apply" here, the Standard actually provides assistance in gauging proportional sanctions to parties and adjudicators dealing with factual circumstances closely related to those more often treated in the Standard.

Our second reason for concluding that Standard 4.12 affords guidance here, and was appropriate for the panel to consider, is related to the first. Certainly, the application of one Standard as opposed to another, depending upon particular factors in the Standards and the case at hand, may be a basis for argument or inquiry before panels or the Board. In such instances, it may be reasonable to assert that it is error to apply a particular Standard. However, where, as here, it is acknowledged that no other Standard comes closer to the facts than one under consideration,[18] it is not improper to consider an analogous or nearly-applicable standard as one authority, adjusted as necessary, for a possibly proper range of sanctions. As we have said on several occasions, the Standards

> "do not provide rigid guidelines for a level of discipline to be imposed in every conceivable factual situation." *Grievance Administrator v Harvey J. Zamek*, 98-114-GA; 93-133-FA (ADB 1999). They are "not designed to propose a specific sanction for each of the myriad of fact patterns in cases of lawyer misconduct." ABA Standards, p 6. Nonetheless, under *Grievance Administrator v Lopatin*, 462 Mich 235; 612 NW2d 120 (2000), they are the starting point for the discharge of "our responsibility on review . . . to examine the factors affecting the assessment of the appropriate level of discipline in light of the ABA Standards and applicable Michigan

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[16] Annotated Standards for Imposing Lawyer Sanctions, Standard 4.12, Annotation, p 141 (2015); Standard 4.12, commentary, p 27 (1986).

[17] Annotated Standards for Imposing Lawyer Sanctions, Standard 4.14, Annotation, p 147 (2015); Standard 4.12, commentary, p 28 (1986).

[18] Respondent's Sanction Memorandum asserted, at page 2, that "[h]ad Respondent been found to have failed to preserve client property . . . the appropriate sanction under the Standards would have been an admonition," and that '[r]eview of the Standards fails to disclose any other Standards which arguably could be applicable."

> precedents and attempt to ensure continuity and proportionality in discipline." *Grievance Administrator v Kathy Lynn Henry*, 09-107-JC (ADB 2010). [*Grievance Administrator v Michael L. Stefani*, 10-113-GA (ADB 2013), p 14, citing *Grievance Administrator v Valerie Colbert-Osemuede*, 09-46-GA (ADB 2012), pp 13-14.]

In conclusion, the hearing panel did not err in relying, in part, on Standard 4.12.

B. The hearing panel did not err in imposing a 60-day suspension.

In reviewing the sanctions imposed we "review and, if necessary, modify a hearing panel's decision as to the level of discipline" in light of the our "responsibility to ensure a level of uniformity and continuity" in disciplinary matters. *Grievance Administrator v Brent S. Hunt,* 12-10-GA (ADB 2012), p 7, citing *Grievance Administrator v August,* 438 Mich 296, 304; 475 NW2d 256 (1991).

Here, in accordance with the dictates of *Lopatin,* the panel began its inquiry with the ABA Standards for Imposing Lawyer Sanctions, identified the duty violated, the lawyer's mental state and the potential or actual injury caused by the lawyer's misconduct under ABA Standard 3.0, and thoroughly considered potentially applicable Standards. The panel also considered precedent and the existence of aggravating and mitigating factors. Finally, the panel carefully and aptly articulated its rationale for imposing a 60-day suspension:

> Respondent's testimony establishes that he was aware of those specific limitations proscribed by the court rules. By his own admissions, respondent chose to eliminate his separate business/operating account in order to treat his IOLTA account as his office operating account, in direct contravention of the proscriptions of MRPC 1.15(a)(3) and (f).
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> MRPC 1.15(d) addresses the prohibition of commingling by lawyers by specifically declaring that "a lawyer shall hold property of clients or third persons in connection with a representation separate from the lawyer's own property." However, the formal complaint in this matter did not charge a violation of this specific subparagraph of MRPC 1.15. Although Standard 4.12 deals with the mishandling of client funds, most often commingling, and counsel for the Grievance Administrator has disavowed a commingling claim here, the gist of the anti-commingling rule, MRPC 1.15, is aimed at the protection of client funds against intentional or unintentional dissipation or levy by a creditor or other such risk. Although the proofs are not clear with respect to the actual mixing of client and attorney funds here, it is

> clear that respondent's misconduct put any client funds he might receive at risk of commingling if not actual loss. Again, respondent admitted that he purposely closed his business/operating account in order to exclusively use his IOLTA account. That action is only compounded by his failure to produce records in response to a subpoena, to confirm his testimony about how he managed the funds in his IOLTA account or how he insured that no client funds would be jeopardized. Finally, respondent was cognizant, based on his own testimony, of the existence of both his ex-wife's potential rights and claims as well as the IRS liens when he made the decision to proceed in that fashion. Respondent should have been aware that to the extent he used his IOLTA account as his sole personal account, he potentially exposed that account to adverse action by known creditors with established rights against him.
>
> The absence of client funds in the IOLTA account does not provide respondent with a viable defense. Simply put, respondent inappropriately used his IOLTA account as a business/personal account. Moreover, respondent's conduct was not episodic. It was, by his own admissions throughout these proceedings, intentional and ongoing over a substantial period of time. Central to our finding in this regard is the fact that respondent put the "integrity" of his IOLTA account in jeopardy. [HP Report, pp 8-9.]

Respondent argued below that the appropriate discipline would be "no discipline" or reprimand. The panel was certainly correct in concluding that it would not be appropriate to impose no discipline. *Grievance Administrator v Ralph E. Musilli*, 98-216-GA (ADB 2010) (no discipline is to be "exceedingly rare" and "reserved for situations in which it would be utterly pointless to impose professional discipline notwithstanding that misconduct exists under the letter of the law"). This was not a trivial or technical violation.

Respondent asserted that there was no risk to client funds, because there were no client funds in the account. However, this assertion is inconsistent with respondent's own testimony at the September 11, 2013 hearing and two of the bank record exhibits offered by petitioner and admitted into evidence by the panel.[19] The hearing panel's report appropriately noted the potential for injury

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[19] Respondent testified that some of the funds contained in his IOLTA account were earned fees, but he also acknowledged that some of the funds were unearned fees, which could therefore only be client funds. (Tr 9/11/13, pp 52, 79.) Additionally, two of the bank record exhibits admitted during the misconduct hearings showed that client funds were actually in the IOLTA account for a short time period from late July 2012 through early August 2012. (Petitioner's Exhibits 10-62, 10-63.)

that respondent's predicament with his creditors created.[20] We agree with the panel's observation that respondent's misuse of his IOLTA account, and his predicament with his creditors, did put his clients' funds at risk and therefore caused the potential for injury. Therefore, as we have discussed, it was not improper for the panel to look to the suspension standard found in Standard 4.12 under the facts and circumstances of this matter.

Finally, the panel considered the aggravating and mitigating factors argued by the parties. Even if we grant, for the sake of argument, that 4.12 is not applicable because a violation of MRPC 1.15(d) was not found and that a reprimand was an appropriate sanction for the panel to consider as a starting point, respondent disregards significant aggravating factors. As noted in the portion of the panel's report quoted above, the panel found that respondent's conduct was not episodic. Rather, he intentionally engaged in misconduct over a continuous period of time, which, among other considerations, brings into play Standard 9.22(c) (a pattern of misconduct). Also, the panel specifically noted that respondent's failure to respond to the Grievance Administrator's subpoena[21] was "an especially important aggravating factor to consider," making Standard 9.22(e) (bad faith obstruction of a disciplinary proceeding) appropriate to consider. The panel also noted evidence of various mitigating factors offered by respondent, including his "unblemished disciplinary record in 32 years of practicing (Standard 9.32(a))," and "respondent's excellent reputation amongst his peers for honesty, integrity and professionalism (Standard 9.32(g))."

Precedent is also a proper and important consideration for a panel when determining the appropriate level of discipline to impose. *Musilli, supra,* at p 2 (citing *Lopatin*, 462 Mich at 248 n 13). Of the eight cases cited by the Administrator's counsel in support of her request for a suspension, the panel found two of those cases, *Grievance Administrator v Pinsky*, 13-23-GA (2012), and *Grievance Administrator v. Judith H. Zock,* 11-96-GA (2012), to be helpful in determining the appropriate discipline to impose.

Respondent Zock was charged with drawing checks from her two separate IOLTA accounts

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[20] Respondent acknowledged that the IRS levied all of his bank accounts in 2000, with the exception of his IOLTA account. (Tr 9/11/13, p 40.) It follows that if the IRS subsequently discovered that respondent had personal funds in his IOLTA account and was using that account as his general business account, they could have levied that account as well; exactly the predicament the rules protecting client property seek to prevent.

[21] Respondent failed to comply with a disciplinary subpoena issued on December 20, 2013, that required him to bring certain records to the next scheduled hearing to support his testimony about how he managed funds in his IOLTA account and how he ensured that no client funds were at risk. (Petitioner's Exhibit 13.)

to pay both personal and business related expenses, and with making cash deposits of her own money into one of these accounts. In addition to charges that included failing to answer four separate Requests for Investigation issued as a result of overdraft notifications issued by both banks where her IOLTA accounts were located, the formal complaint charged a violation of MRPC 1.15(d). However, at the hearing when Respondent Zock protested that neither of her IOLTA accounts contained client funds, the Grievance Administrator's counsel moved to amend the allegation to a violation of MRPC 1.15(a)(3) instead. The panel granted the request, and based on her default, found that she had deposited her own funds into the IOLTA accounts, in violation of MRPC 1.15(a)(3), among the other violations relating to her failure to answer the Requests for Investigation. The Administrator's counsel citing to Standard 4.12, argued for the imposition of a 180-day suspension. The panel agreed that a suspension was appropriate, but imposed a 90-day suspension with a condition that Respondent Zock attend the State Bar's trust account seminar. The Grievance Administrator did not seek review of the panel's decision.[22]

The Administrator asserts that *Pinsky* is "the most factually comparable" to the case at hand. Respondent Pinsky was also charged with routinely drawing checks on his IOLTA account to pay for personal and business related expenses, for routinely depositing earned fees into his IOLTA account, taking a "loan" from the IOLTA account which was subsequently reimbursed, and with knowingly and improperly using his IOLTA account to "shield his personal funds from the IRS and the State of Michigan to avoid his tax obligations." However, prior to the scheduled hearing, the parties entered into a stipulation for consent order of discipline in which Respondent Pinsky pleaded no contest to the factual allegations of an amended formal complaint that no longer contained any reference to his tax liens or to his alleged attempt to avoid paying his tax obligations. The parties further stipulated that Standard 4.12 was the applicable standard to apply and that Respondent Pinsky's license would be suspended for 90 days for depositing client or third person funds in an IOLTA account, in violation of MRPC 1.15(a)(3); failing to hold client funds separate from his own property, in violation of MRPC 1.15(d); depositing his own funds into an IOLTA account, in excess of an amount reasonably necessary to pay financial institution service charges, in violation of MRPC 1.15(f) and MRPC 8.4(b).

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[22] Respondent Zock did file a petition for review, but her petition was subsequently dismissed as untimely and not filed in conformity with MCR 9.118(A)(1).

It is clear why the Administrator brought these cases forward and why the panel found them helpful. The panel's reliance on them was not misplaced.

Having consistently argued in the underlying proceedings that a 90-day suspension was appropriate given the misconduct found by the panel, petitioner now argues, based on the same facts, findings of misconduct,[23] aggravating and mitigating factors, and prior case law, that respondent's license to practice law must be suspended for at least 179-days and that we must set this as a presumptive level of discipline for similar cases. As noted, we consider the panel's thorough consideration of this matter to have led to an appropriate sanction, and we have not been persuaded that a more severe sanction is required under these circumstances for purposes of guidance or deterrence. We think the panel's decision was within an appropriate range of discipline to be imposed for the violation here, and that it is a meaningful sanction given all of the circumstances.

III. Conclusion

For the reasons discussed above, we conclude that the 60-day suspension of respondent's license is the appropriate sanction to impose in this matter, and we will enter an order affirming the hearing panel's order of suspension.

Board members James M. Cameron, Jr., Lawrence G. Campbell, Dulce M. Fuller, Sylvia P. Whitmer, Ph.D., Louann Van Der Wiele, Michael Murray, and John W. Inhulsen concur in this decision.

Board member James A. Fink was absent and did not participate.

Board member Rosalind E. Griffin, M.D., was recused and did not participate.

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[23] The Grievance Administrator has not sought review of the hearing panel's finding that there was insufficient evidence presented to support a finding that respondent violated MRPC 8.4(b) or MCR 9.104(3).