STATE OF MICHIGAN

Attorney Discipline Board

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Grievance Administrator,

Petitioner/Appellant,

v

Donna L. Jaaskelainen, P 49751,

Respondent/Appellee,

Case No 14-105-GA.

Decided: September 2, 2015

Appearances:

Kimberly L. Uhuru, for the Grievance Administrator, Petitioner/Appellant
Steven M. Kaplan, for the Respondent/Appellee

BOARD OPINION

On February 24, 2015, Upper Peninsula County Hearing Panel #1 issued an order of suspension and restitution with conditions, suspending respondent, Donna Jaaskelainen's license to practice law for 179 days. The Grievance Administrator filed a petition for review and the Attorney Discipline Board conducted review proceedings, in accordance with MCR 9.118, on July 15, 2015, which included a review of the whole record before the panel and consideration of the parties' briefs and the arguments presented. For the reasons discussed below, we increase the discipline imposed from a 179-day suspension and restitution with conditions to a 180-day suspension of respondent's license to practice law and modify the conditions.

On October 21, 2014, the Grievance Administrator filed a four-count formal complaint against respondent. Counts One through Three involved respondent's representation of four clients in three separate, unrelated matters. In all three of those counts, respondent was charged with serious neglect, that ultimately resulted in the dismissal of the clients' actions, and with failing to adequately communicate with her clients and/or respond to their requests for information about the status of

their matters.[1] In Count Two, respondent was also charged with failing to return papers to her client and, in Count Three, respondent was also charged with failing to promptly render a full accounting of client funds upon request and failing to refund unearned fees to that client. Finally, Count Four charged respondent with failing to answer the three requests for investigation filed by the clients referenced in Counts One through Three, and with failing to appear for a sworn statement although subpoenaed to do so and despite requesting and receiving a rescheduled date to appear.

Respondent did not file an answer to the complaint and a default was filed on November 20, 2014. Based on respondent's default, the panel's subsequent report found that the allegations in the formal complaint were admitted and that respondent had committed professional misconduct, as charged in the formal complaint. The Grievance Administrator's counsel argued for a one-year suspension of respondent's license to practice law with restitution and conditions relevant to the established misconduct. The panel ordered that respondent's license be suspended for 179 days with conditions that included participation in the Lawyers and Judges Assistance Program (LJAP) offered by the State Bar of Michigan; a $2,000 refund to complainant, Rachelle Rodriguez, (or if respondent could document that some payment had already been made, then the balance still owed); and the return of the client file to complainant, Gail Wagner-Frank.

At the hearing before the panel, and on review, counsel for the Grievance Administrator argued that a one-year suspension of respondent's license was the appropriate sanction to impose under ABA Standards 4.42 (lack of diligence) and 4.62 (lack of candor) and prior precedent. In particular, it was argued that the discipline imposed by the panel should be increased because it did not reflect the fact that respondent's conduct not only involved serious neglect and harm, but also dishonest statements made to a client. We agree with the Grievance Administrator that cases involving such conduct typically warrant serious sanctions.[2] However, making a knowing misrepresentation to a client, in violation of MRPC 8.4(b) and engaging in conduct that is contrary

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[1] Count One contains two factual statements that certain representations respondent made to the client referenced in Count One, were "knowingly false," (¶¶ 11 and 13).

[2] A suspension of at least 180 days is generally appropriate when a lawyer has knowingly deceived his or her client about the status of the client's case. *Grievance Administrator v Harvey Zamek,* 07-34-GA (ADB 2008), citing *Grievance Administrator v Ann Beisch,* DP 122/85 (ADB 1988); *Grievance Administrator v Gary Wojnar,* 91-174-GA (ADB 1994); and, *Grievance Administrator v Perry T. Christy,* 94-125-GA (ADB 1996).

to honesty, as specifically referenced in MCR 9.104(3), was not charged in the formal complaint in this matter.

While the entry of a default against a respondent relieves the Grievance Administrator of an obligation to establish factual allegations in the complaint, a default establishes only the well-pleaded allegations in the complaint. *Grievance Administrator v Michael G. Sewell,* ADB 58-88; 113-88 (ADB 1989). The failure to cite to the particular rule provisions, given the specificity of the factual statement that respondent's statements to her client were "knowingly false," is not necessarily fatal to a finding that respondent made a knowingly false statement. It does however leave the impression that this case really involved serious neglect aggravated by dishonest conduct, (ABA Standard 9.22(b)), rather than a typical misrepresentation case as contemplated under ABA Standard 4.62 and prior case law cited by counsel for the Grievance Administrator.

Our review of the record leaves us with the impression that this is a case in which discipline should be imposed for respondent's serious neglect, failure to seek her clients' objectives, lack of diligence and promptness, failure to return papers upon termination, failure to properly account for client funds on request, failure to refund unearned fees, failure to answer three requests for investigation and appear for a sworn statement. It is not a case in which discipline should be imposed for making dishonest statements to a client, given the absence of the specific rule violations for such conduct, and it should therefore not be cited as such.

Finally, we do not agree with the Grievance Administrator that the panel gave excessive mitigating effect to respondent's ankle injury. In fact, the record reveals that the panel had the same concerns as counsel for the Grievance Administrator regarding the remoteness of the injury to the neglect that had already occurred.

After careful consideration, the Board finds that, given respondent's testimony at the December 18, 2014 hearing, the 179-day suspension imposed by the hearing panel should be increased to a 180-day suspension of respondent's license to practice law. With respect to the conditions imposed by the panel, the Board notes that respondent has provided proof of payment of the $2,000 in restitution ordered by the panel and that, since the Grievance Administrator's petition for review was filed, information was received from LJAP that indicated that a biopsychosocial assessment of respondent was completed with a health care provider in respondent's area over a period of four sessions during April and May 2015. On June 24, 2015, LJAP provided respondent

with a written recommendation that she participate in a two-year monitoring agreement with LJAP with certain stipulations. Accordingly, we will modify the condition imposed in the panel's order that respondent "participate in LJAP." Instead, we will require that respondent enter into the two-year monitoring agreement and comply with the stipulations as set forth in the June 24, 2015 recommendations made by LJAP. We further require respondent to provide quarterly reports to the Grievance Administrator and the Attorney Discipline Board of her progress in that regard. Finally, we affirm the condition that respondent return the client file to complainant, Gail Wagner-Frank, and further hold that respondent shall not be eligible to file a petition for reinstatement until such time as she can provide written proof that the file has in fact been returned.

We conclude that a 180-day suspension of respondent's license is the appropriate sanction to impose in this matter, thus we will enter an order increasing discipline and modifying the conditions as discussed and referenced above.

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

Board member Michael Murray was absent and did not participate.

Board member Rosalind E. Griffin, M.D. dissents from this decision, and states:

I dissent from the majority decision to increase discipline to a 180-day suspension. I would increase the suspension imposed by the hearing panel to a one-year suspension of respondent's license to practice law. I agree with the modifications to the conditions as referenced in the majority decision.