STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,

Petitioner-Appellee/Cross-Appellant,

v

Richard A. Meier, P 38240 ,

Respondent-Appellant/Cross-Appellee,

Case No. 12-29-GA

Decided: June 16, 2015

Appearances:

John K. Burgess, for the Grievance Administrator, Petitioner-Appellee/Cross-Appellant
Michael Alan Schwartz, for the Respondent-Appellant/Cross-Appellee

BOARD OPINION

Respondent petitions for review of Tri-County Hearing Panel #5's order suspending his license to practice law in Michigan for a period of 30 days and ordering restitution of fees paid by two clients.[1] Respondent seeks dismissal or a decrease in the discipline imposed. The Grievance Administrator filed a cross-petition for review seeking an increase in the discipline imposed. The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118, including a review of the record before the hearing panel and consideration of the briefs and arguments presented by the parties at the hearing on review. For the reasons set forth below, we modify the order of discipline.

Respondent practices employment and labor law.[2] The two-count formal complaint in this case alleges misconduct arising out of two separate matters in which clients of respondent retained him for representation with regard to distinct claims that each was wrongfully terminated from their employment. Each count alleges that respondent failed to have a reasonable level of communication

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[1] Respondent's discipline was stayed upon the filing of a request for same under MCR 9.115(K).

[2] Tr 7/10/2012, p 88.

with the clients (MRPC 1.4),[3] neglected and failed to prepare adequately for and pursue diligently both matters (MRPC 1.1 and 1.3), and, that he charged and collected a clearly excessive fee, deposited an advance fee (and costs) in his business account, and failed to refund the monies when he should have (MRPC 1.5(a), 1.15 (d) and (g) and 1.16(d)).

I. Count One – MRPC 1.1, 1.3 & 1.4

The allegations of Count One include these:

> 12. Subsequent to retaining Respondent's services, Ms. Smith placed two telephone calls to Respondent on March 2, 2010, and March 23, 2010, for updates as to the status of her case. Ms. Smith was unable to speak with Respondent on either occasion.
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> 13. On April 28, 2010, Respondent emailed Ms. Smith a copy of a civil complaint that Respondent intended to file against Carson Health Systems in circuit court.
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> 14. The civil complaint that Respondent provided to Ms. Smith was incomplete, lacked basic punctuation, contained several spelling and grammatical errors, failed to allege damages with any specificity, and did not cite statutory authority for a whistleblower claim.
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> 15. Upon receipt of the complaint, Ms. Smith informed Respondent that she was going to review the complaint and make corrections where appropriate.
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> 16. Respondent again did not tell Complainant that the statute of limitations for her whistleblower complaint would expire on May 17, 2010.

Respondent argues persuasively that the findings and conclusions of misconduct lack proper evidentiary and legal support with respect to Count One.[4] Among other things, respondent argues that the charges of neglect, failing to adequately prepare in the circumstances, and failure to communicate with Ms. Smith as required by MRPC 1.4 are not supported in the report or in the record by evidence or legal authority explaining or establishing precisely how these rules were violated.

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[3] Count One alleges a violation of MRPC 1.4(a) and (b); Count Two alleges a violation of MRPC 1.4(a).

[4] The Board reviews findings of fact for proper evidentiary support on the whole record. See *Grievance Administrator v Gregory J. Reed*, 10-140-GA (2014). Questions of law are reviewed de novo. *Grievance Administrator v Wilson A. Copeland, II*, 09-48-GA (ADB 2011).

Respondent argues, and the record shows, that he met with Ms. Smith for approximately 90 minutes and went through a box of documents she provided at an initial consultation in late February 2010. In the following weeks, Ms. Smith made phone calls and sent emails, and she spoke with respondent on the phone in "mid-March," at which time he told her he had been working on a complaint and would get it to her.[5] She spoke with him in the following weeks and he again said he would send the draft.[6] He emailed it to her "on or after April 10, 2010."[7] Ms. Smith thought it "looked awful," and a week later she emailed him that she thought it needed detail and that she was "working on it."[8] Thereafter, she spoke with respondent on the phone and asked to sit down with him, with her documentation again, and add detail.[9] According to Ms. Smith, he "blew [her] off," i.e., informed her that detail would be added in discovery and that there was no need to add detail to the complaint.[10] Thereafter, respondent was discharged.

With respect to the asserted expiration of the period of limitations for a claim under the Whistleblowers Protection Act, or respondent's conduct in apparently failing to communicate the date such period would run, or, perhaps, the respondent's inclusion of the statutory count in the draft complaint, we must conclude that the record, the findings, and the argument by petitioner are confusing as to this issue and simply do not cohere.

The panel found that all reasonable attorneys should find the count "non-viable."[11] However, there is also the suggestion that communication regarding this nonviable claim was insufficient, or that it's skeletal nature and reference to an agency which was not, in the end, a governmental agency amounts to misconduct. A failure to commence litigation before the expiration of a statute of limitations certainly could constitute more than mere negligence or malpractice, and may rise to the

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[5] Tr 7/10/2012, p 23.

[6] *Id.*, p 24.

[7] Ex 7 (letter from Denise M. LaFave Smith). See also, Tr 7/10/2012, p 24 (suggesting April 18, 2012 may be the date the complaint was sent).

[8] Tr 7/10/2012, p 26.

[9] Tr 7/10/2012, p 27.

[10] *Id.* We are crediting Ms. Smith's testimony, as we assume the panel did.

[11] HP Misconduct Report, p 6.

level of a violation of one or more Rules of Professional Conduct.[12] However, given the circumstances here, including the lack of proof that a viable claim existed, the elements of such rules have not been established in this case.

With respect to Count One, respondent examined the evidence provided by his client, researched the claims, and drafted a complaint including a whistleblower claim as well as a common law claim to serve as an alternative, all within six weeks of being retained. The communication between attorney and client was not optimal on this and other points, but it was truncated by his dismissal and we cannot conclude that the facts establish that he failed to keep his client reasonably informed about the status of the matter, failed to comply with reasonable requests for information, or failed to explain the matter to the extent reasonably necessary to permit her to make informed decisions regarding the representation.

II. Count Two – MRPC 1.1, 1.3 & 1.4

Whereas the complainant in Count One "did not regularly receive responses"[13] to her attempts to communicate with respondent, the complainant in Count Two had a phone conversation about one week after meeting with and retaining respondent on November 11, 2010, and, despite calls to his office twice weekly, did not hear from respondent thereafter until a written demand was made for a refund on or about February 1, 2011. Respondent then forwarded a document with the email message: "Here is a copy of the complaint."[14]

We recognize that what may be considered by the Rules of Professional Conduct to be a reasonable degree of communication under particular circumstances may not always satisfy some

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[12] See, e.g., MRPC 1.1(b) (failure to adequately prepare) or MRPC 1.1(c) (neglect), MRPC 1.3 (lack of diligence), or MRPC 1.4 (reasonable communication with the client).

[13] HP Misconduct Report, p 3.

[14] Tr 7/10/12, pp 55-58; 83; Ex 13 (1/31/2011 certified letter delivered 2/1/2011 demanding refund because the complaint was not filed and no phone calls were returned for two months); Ex 11 (2/3/2011 email from respondent with attachment). While the testimonial evidence is not as clear, it is plain from the documentary evidence that respondent received a letter demanding a refund on February 1, 2011, at 12:09 p.m. (Ex 13), and emailed a draft complaint to his client, Ms. Sheffer, on February 3rd (Ex 11). Thus, the panel, in considering the question of restitution, decided not to allow the retention of any of the $4,000 for this tardy, hasty effort to generate something which would justify keeping complainant's money after his termination. This, and the meeting on intake, while taking some time and legal judgment, cannot be said to be of value to a client who had, for good reason, completely lost faith in respondent to act in her best interest, or to act at all on her behalf.

clients. And attorneys may not always manage, or even be able to manage, a relationship with certain clients in a manner that will prevent grievances and complaints. However, without stating a general rule to be applied in all cases, nearly three months of absolutely no response to client communications suffices, under these circumstances, to establish a violation of MRPC 1.4(a). This record is, however, insufficient to establish professional misconduct as to the allegations in Count Two regarding MRPC 1.1 and 1.3. On review, petitioner merely restates the conclusions as to misconduct and occasionally references part of the record instead of analyzing all of the pertinent evidence and measuring it against the legal standards in the relevant rule and cases applying it.

III. Counts One & Two – MRPC 1.5(a), 1.15 (d) and (g) and 1.16(d)

The panel's report on misconduct and the parties' briefs on review discuss the remaining charges of misconduct in both counts (alleged violations MRPC 1.5(a), 1.15 (d) and (g) and 1.16(d)) together, and the Court's order in *Grievance Administrator v Patricia Cooper*, 482 Mich 1079 (2008), figures prominently in the analysis and arguments.

The representation agreements signed by both clients contained the following provision regarding attorney fees: "The client agrees to pay an engagement fee of $4000 at the beginning of the lawsuit. This money is earned when paid and is non-refundable." The agreement involved in Count One, further states: "There is also a 20 percent contingent fee at the end of the case." The agreement in Count Two states: "The client will owe a 10 percent contingent fee at the conclusion of the case."[15]

As for the allegations in both counts that respondent committed misconduct by "Charging and collecting a clearly excessive fee, in violation of MRPC 1.5(a)," we conclude that this allegation has not been established. The petitioner bore the burden of proving that the fees charged or collected were clearly excessive. No allegation or argument with respect to the contingent portion of the agreement has been made, and thus no claim that the percentages charged at the signing of the agreements were excessive can be sustained. The argument that the $4,000 charged and collected in each case was excessive has not been adequately presented and established in either count, and this is true whether the fees were engagement fees or fees paid in advance.

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[15] These provisions should not be emulated. MRPC 1.5(c) provides that: "A contingent-fee agreement shall be in writing and shall state the method by which the fee is to be determined." These agreements do not even state that the percentages relate to a recovery in the case. No MRPC 1.5(c) charge is contained in the formal complaint, however, and this note is merely a caution to the reader.

With respect to MRPC 1.15(d) and (g) and 1.16(d) respondent asserts that *Cooper* led him to believe he was not required to deposit a fee labeled "nonrefundable" into a trust account or refund any portion on the ground that it is unearned. The view of the panel and petitioner that this $4,000 fee was probably not an engagement fee or "true retainer" appears to be correct.[16] Respondent's understanding of such a fee (which is for availability only and not for legal services) is incomplete, but he understands this much: traditionally a true retainer or engagement fee is treated as earned upon receipt and therefore should not go into a trust account.

We agree with the panel and petitioner that the $4,000 fee charged, while labeled an "engagement fee," does not have the key provision required for an engagement fee or "true retainer" to produce the necessary client assent and be considered earned on receipt, i.e., a plain declaration that the fee is not for legal services but is solely to procure the attorney's availability (commitment to represent the client). But, it is not clear to us that the *Cooper* Court viewed this as essential, so long as the fee was labeled "nonrefundable."

In *Cooper*, it was alleged that an attorney charged an excessive or illegal fee in violation of MRPC 1.15(a), failed to promptly pay funds a client is entitled to receive in violation of (now numbered MRPC 1.15(b)(3)), and failed to refund, upon termination of representation, "any advance payment of fee that has not been earned," in violation of MRPC 1.16(d). *Grievance Administrator v Patricia M. Cooper*, 06-36-GA (ADB 2007), p 1, rev'd 482 Mich 1079 (2008). The fee agreement stated that $4,000 was paid to Ms. Cooper for work to be performed in a divorce matter, and further provided, in part:

> 1. Client agrees to pay Attorney a MINIMUM FEE OF $4,000 which shall be payable as follows:
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> | | |
> |---|---|
> | Retainer | $4,000 |
> | Balance | $0 |
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> * * *
>
> This MINIMUM FEE shall entitle Client to a combined amount of Attorney and Legal Assistant time computed in accordance with the hourly rate set forth in paragraph 3 below.

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[16] The representation agreement does not explain that the $4,000 is paid only for the attorney's availability, which is the central element of an engagement fee.

> 2. Client understands that NO portion of the MINIMUM FEE referred to above is REFUNDABLE, to the client, under any circumstances.
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> 3. Hourly rate: Attorney $195.00
> Assistant $
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> 4. In the event the combined Attorney and Legal Assistant time shall exceed the MINIMUM FEE, Client agrees to pay for such time at the rates set forth in Paragraph 3 above.
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> * * *
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> 11. . . . The Client is entitled to terminate this agreement subject to its contractual liability to the law firm for services rendered. [*Cooper*, 06-36-GA (ADB 2007), pp 2-3.]

Less than a month after retaining the respondent, the client wanted to reconcile with her spouse and asked for an itemization and a refund of unearned fees. Ms. Cooper prepared an invoice reflecting 6.4 hours expended on the client's matter, for a total charge of $1,228.50, and a remaining balance of $2,771.50. Ms. Cooper offered the client $1,385.75, which she characterized as "half of the unearned fees."

The hearing panel dismissed the formal complaint. This Board vacated the order of dismissal and found that the attorney's failure to refund the balance of the "unearned fees" constituted a violation of MRPC 1.16(d) and MRPC 1.15(b). *Cooper*, 06-36-GA (ADB 2007), p 30. After an exhaustive survey of disciplinary decisions, ethics opinions, and other authorities, the Board acknowledged "what has been a somewhat confused and evolving area of the law," and held:

> It is now clear that fees paid in advance for services to be performed in the future are refundable if unearned. And use of the term "nonrefundable" in a fee agreement providing that a sum paid will be earned by the rendering of legal services does not convert such a deposit (advance fee) into a general retainer.
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> The requisites or propriety of a true or "general" retainer are beyond the scope of this opinion. At a minimum, however, the lawyer must be able to prove that the client clearly understood that the fee is for availability only and that the client will be billed separately for any legal work to be performed. "The client's understanding of what the retainer is buying is crucial." One court has adopted the following approach, which we consider helpful to all

> parties: "unless the fee agreement expressly states that a fee is an engagement retainer and explains how the fee is earned upon receipt, we will presume that any advance fee is a deposit from which an attorney will be paid for specified legal services." [*Cooper*, 06-36-GA (ADB 2007), p 29; footnotes omitted.]

Ms. Cooper filed an application for leave to appeal to the Supreme Court. In lieu of granting leave to appeal from the Board's decision, the Court issued an order reinstating the panel's dismissal for the following reason(s):

> The Attorney Discipline Board erred in holding that the July 29, 2002 fee agreement was ambiguous as to whether the $4,000 minimum fee was nonrefundable. As written, the agreement clearly and unambiguously provided that the respondent was retained to represent the client and that the minimum fee was incurred upon execution of the agreement, regardless of whether the representation was terminated by the client before the billings at the stated hourly rate exceeded the minimum. So understood, neither the agreement nor the respondent's retention of the minimum fee after the client terminated the representation violated existing MRPC 1.5(a), MRPC 1.15(b) or MRPC 1.16(d). [*Grievance Administrator v Patricia Cooper*, 482 Mich 1079; 757 NW2d 867 (2008).]

In light of the record in this case, and the order in *Cooper*, we are unable to conclude that a violation of MRPC 1.15(d) and (g) and 1.16(d) have been established.[17]

The fee agreements and the rest of the record in this case do not clearly explain the nature of the fee arrangement here (engagement fee or advance) even though both clients testified that they understood the terms. We know from dealing with our docket that clients who pay sums like the $4,000 each paid here for cases such as these do not expect that such payment is unrelated to the lawyer's work on the client's matter. When that work is not forthcoming, they understandably seek a refund. We believe that lawyers should have the responsibility of clarifying for clients precisely what their money is being paid for, how it will be handled until it is earned, and what will happen to the money if the client exercises his or her right to terminate the relationship with the lawyer.

While there remain questions to be answered about the order in *Cooper*, we can only hope

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[17] 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") had not been adopted at the time of the conduct in *Cooper*, and therefore was not charged in that case. We recognize that this provision might be considered a ground for distinguishing *Cooper*. However, as we pointed out in our opinion, "This effectuated a clarification and not a change in the law." *Cooper*, 06-36-GA, p 29 n 53.

that it will not be read as a departure from well-settled principles of legal ethics and interpreted to allow commingling and misappropriation of fees paid in advance (i.e., deposited with a lawyer to secure payment upon completion of work), or the forfeiture of such deposits, whenever the term "nonrefundable" is used.

Petitioner argues that the fee agreement in this case is distinguishable from the agreement in *Cooper* on the ground that the agreement here is ambiguous, in part because the fee agreement provides: "The client agrees to pay an engagement fee of $4000 at the beginning of the lawsuit." Both clients here paid $4,000 at the commencement of the representation, which respondent contends is what his agreement meant by "beginning of the lawsuit." Of course, this language does not clearly convey such a meaning. However, any ambiguity in the agreement regarding when the retainer is to be paid is not material to the issues presented here. The fees were, in fact, paid, and when they were paid has nothing to do with the dispositive issues in this case.

The Administrator also argues that the filing costs for any civil complaint which might be filed in state or federal court should have been extracted from the $4,000 fee and segregated from respondent's own funds. MRPC 1.15(d). The agreements provide, in pertinent part, that: "The costs of litigation is [sic] the responsibility of the client. The attorney will pay the costs of filing the lawsuit with a jury demand plus service of the Complaint out of the original engagement fee." We are not persuaded that respondent has violated this rule, but the question is somewhat close and the terms of the agreements on this point are otherwise problematic.[18]

Although we do not find a violation of MRPC 1.5(a), 1.15 (d) and (g), and 1.16(d) in this matter, we agree with the Administrator that *Cooper* does not say that the use of the term "nonrefundable," "minimum," or, indeed, any other language in an agreement with the client can insulate an attorney from the consequences of failing to comply with the Rules of Professional Conduct. An attorney must still render competent, diligent representation and communicate with clients to the extent prescribed by the Rules. MRPC 1.1, 1.3, and 1.4. Also, attorneys may not enter into an agreement for, charge, or collect a clearly excessive fee, and they must refund any fee paid

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[18] If, as the respondent asserts, these fees were entitled to be considered earned upon receipt, then the agreements, as worded, may present concerns in light of MRPC 1.8(e) because it does not appear from the fee agreement that the client remains responsible for the costs. However, the complaint contains no charge that this rule was violated and our decision does not, therefore, address this issue.

in advance that has not been earned. MRPC 1.5(a); MRPC 1.16(d). Notwithstanding possible interpretations of *Cooper* offered following entry of the Court's order, we will not presume that the Court intended its order to effectively rescind or eviscerate these fundamental rules, or allow members of the bar to contract out of their application. Rather, the Michigan Rules of Professional Conduct are implied terms in an agreement between lawyer and client, and apply in addition to contractual language. *Plunkett & Cooney, P.C. v Capitol Bancorp*, 212 Mich App 325, 330-331 n 3 and 4; 536 NW 2d 886 (1995).

Finally, we share the concerns of the panel and the Administrator for the public, and the reputation of the profession and the judiciary, if lawyer ethics rules are interpreted to allow members of the bar to accept funds based on the promise that legal services will be rendered and then to retain such monies irrespective of whether the services are in fact rendered at all or provided in accordance with the rules and standards governing attorney conduct and practice. However, as we have noted above, we do not read *Cooper* to say that such conduct will be permitted. Also, it does not appear that respondent even makes this argument.

Respondent's position is not that he may keep the $4,000 paid to him because his agreement contains "magic" words[19] (like "nonrefundable" or "earned when paid") but because (1) it does unambiguously say "nonrefundable," *and* (2) it is not an advance fee but an engagement fee (even though such is not set forth in his agreement), and an engagement fee may, in his view, be considered earned upon receipt because, as he testified:

> THE WITNESS: When an attorney signs a retainer agreement, they're giving up their time, they're spending their time on your case. And the question is if they're giving up their time and not going out and they could go out possibly and take another case or a couple more cases or whatever they're going to do, but they're reserving that time in their schedule for you as an individual person, and they found that that's what sets that aside is because your time as an attorney, hopefully, and I think we all agree our time is worth something. If I'm sitting down there taking a client saying, okay, I'm going to take care of your matter, I'm going to answer your questions, and I'm going to review whatever, the court said at that time, as soon as you reserve the time and you take it off your schedule, you don't do somebody else, that's why the quid pro quo, that's why it's earned at that time.[20]

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[19] Respondent's brief in support of petition for review, p 10.

[20] Tr 4/23/13, pp 82-83.

Thus, it does not appear that respondent advances the absurd argument that an attorney may extract money from a member of the public on the promise that the attorney will be available to handle the client's legal matter, and then, despite never actually being available or despite having committed misconduct, keep the money. To the contrary, respondent acknowledges that *Cooper* does not address the situation where misconduct has been established. As his counsel argued at the review hearing, "general case law tells us that . . . if the lawyer engaged in . . . professional misconduct, then he would not be entitled to any fee."[21] Because that is the situation here, in light of respondent's violation of MRPC 1.4 in Count Two, we now address the panel's award of restitution to the complainant in that count.

IV. Restitution as a Sanction for the Misconduct Established in Count Two

Next, we consider the propriety of the panel's order of restitution with respect to the misconduct finding and conclusion we have upheld in Count Two. As the panel noted in its Report on Sanctions:

> Hearing panels have "the discretion to require restitution as a condition of an order of discipline." *In Re Reinstatement of Joel S. Gehrke*, 08-107-RP (ADB 2010); see MCR 9.106(5) and Standard 2.8(a) [of the ABA Standards for Imposing Lawyer Sanctions, adopted by the Court in *Grievance Administrator v Lopatin*, 462 Mich 235; 612 NW2d 120 (2000)]. See also *Grievance Administrator v Gregory A. Mikat*, 09-56-GA (ADB 2010) (upholding hearing panel's award of restitution of attorney fees in the amount of $1,500.00, and increasing award of restitution by $3,500.00, which the client had paid for services of a private investigator, which were found to be directly related to the respondent's misconduct). [HP Sanction Report, p 4.]

The panel has correctly analyzed the precedent in this regard. Indeed, there is ample authority for its action. Restitution is an important sanction established by the Court to further the goals of the attorney discipline system. The Board explained, in a case remanding a matter to a panel for consideration of the propriety of an order of restitution, that:

> A review of our cases demonstrates that restitution is frequently ordered in cases involving neglect when the attorney has failed to return an unearned fee taken in advance. See, e.g,

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[21] Tr 1/22/14 (review hearing), p 8.

> *Grievance Administrator v John S. Synowiec*; *Grievance Administrator v Richard G. Parchoc*, 94-39-GA; 94-68-FA (ADB 1994); *Grievance Administrator v G. Michael Doroshewitz*, ADB 138-89; 154-89; 156-89; 163-89 (ADB 1990); *Grievance Administrator v Clifford R. Williams*, ADB 43-87; 69-87 (ADB 1988). While the primary purpose of discipline is to protect the public from unfit lawyers and not to adjust all complaints between client and lawyer, restitution can have an important rehabilitative and deterrent effect. Therefore, in deciding whether to accept a proposal for consent discipline, the panel may consider the presence or absence of a provision regarding restitution. [*Grievance Administrator v Craig A. Tank*, 06-116-GA (ADB Order dated 9/28/2007).]

Even where the lawyer may have done some work, full or partial restitution has been ordered where, due to the lawyer's misconduct, little or no benefit accrues to the client. See, e.g., *Grievance Administrator v Thomas J. McCallum*, 90-18-GA (ADB 1990); *Grievance Administrator v Dennis Mitchenor*, 08-62-GA (ADB 2010); *Grievance Administrator v Paul S. Schaefer*, 01-140-GA (ADB 2004) (discussing various cases involving failure to return unearned fees after neglect and other misconduct), and compare *Grievance Administrator v Che A. Karega*, 99-65-GA (ADB Order dated 4/19/2002) (ordering partial refund of fees as restitution).

Restitution in the form of an order requiring the refund of fees paid by clients, has been imposed notwithstanding the fact that the fee may be designated nonrefundable. See *Grievance Administrator v David A. Monroe*, 12-20-GA (ADB 2012).

V. Conclusion

In sum, as to Count One, it has not been established as a matter of fact and law that respondent committed the rule violations charged in the formal complaint.

With regard to Count Two, the record is sparse but clear enough to support factual findings that respondent took an initial phone call, had an intake meeting, took one more phone call, and then apparently ignored client communication for nearly three months, until he received a demand for the return of the moneys paid by his client, which can only be read as a termination of the relationship. We agree with the panel that the draft complaint he emailed after his termination does not warrant compensation and that restitution of the fee paid is a proper sanction for this Rule 1.4 violation.

For the reasons set forth above, we cannot conclude on the record and arguments presented here, that the other charged rule violations have been established. Accordingly, we are not persuaded

that discipline should be increased under ABA Standard 4.4 or the precedents cited by the Administrator. In light of the single charge of misconduct sustained, we agree with respondent's argument that a reprimand is the appropriate sanction.

Board members James M. Cameron, Jr., Sylvia P. Whitmer, Ph.D., Rosalind E. Griffin, M.D., Carl E. Ver Beek, Lawrence G. Campbell, Dulce M. Fuller, Louann Van Der Wiele, and Michael Murray concur in this decision.

Board Member Craig H. Lubben was absent and did not participate.