STATE OF MICHIGAN

Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner,

v Case No. 11-128-GA

ARNOLD D. DUNCHOCK, P 13013 ,

Respondent.
_____/

ORDER AFFIRMING HEARING PANEL ORDER OF SUSPENSION

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

Genesee County Hearing Panel #5 of the Attorney Discipline Board issued an order on June 19, 2014, suspending respondent's license to practice law in Michigan for a period of 30 days. Respondent filed a petition for review and specifically requested that the effective date of his suspension not be automatically stayed pursuant to MCR 9.115(K), and that the Board consider his request to reduce the actual costs imposed. As a result, respondent's 30-day suspension became effective June 17, 2014. The cost portion of the hearing panel's order of suspension was stayed until respondent's request for a reduction could be reviewed and decided by the Board along with respondent's petition for review.

The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118, including review of the evidentiary record before the hearing panel and consideration of the briefs and arguments presented by the parties at a review hearing conducted September 17, 2014.

The formal complaint in this matter was filed against respondent in November 2011. At the time the complaint was filed, respondent was serving a suspension from a separate, unrelated prior disciplinary matter, *Grievance Administrator v Arnold D. Dunchock*, 09-51-GA, that suspended his license for one year, effective August 31, 2010.[1] The formal complaint in this matter charged that respondent agreed to represent a client in a child custody matter after the order of suspension had been issued but before the effective date and, thereafter, failed to promptly notify his new client and opposing counsel that his license was going to be, and then was, suspended. By the time respondent finally told the parties and the court of his suspension, his client had paid $600 to respondent for the representation. Respondent denied his client's requests for a refund and informed her that he would be billing her for additional fees. The formal complaint specifically charged that respondent violated MCR 9.104(A)(2) and (A)(3)[2]; MCR 9.119(A), (D) and (E); MRPC 1.5(a); 1.16(d); 6.5(a); and 8.4(b) and (c).

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[1] Respondent remains suspended from that order.

[2] MCR 9.104 was amended in April 2011 and the letter "A" was dropped from the rule effective September 1, 2011. It is presumed that the inclusion of the "A" in this matter was merely a clerical error.

The hearing panel found that only two of the ten charges of misconduct, practicing law while suspended, in violation of MCR 9.119(E); and failing to give reasonable notice to a client of termination of the representation and failing to take reasonable steps to protect the interest of a client upon termination of the representation, in violation of MRPC 1.16(d), had been established. Of the remaining eight charges, one was withdrawn by the Grievance Administrator and the rest were dismissed. The hearing panel subsequently ordered that respondent's license be suspended for 30 days and rejected the Grievance Administrator's request for restitution.

In reviewing a hearing panel's findings and conclusions, the Board must determine whether the panel's findings have proper evidentiary support in the whole record. *Grievance Administrator v August,* 438 Mich 296; 304 NW2d 256 (1991); *In re Grimes,* 414 Mich 438; 326 NW2d 380 (1982). Four hearings were held during the misconduct portion of the proceedings. Six witnesses, including respondent, testified. The hearing panel's report on misconduct set forth its specific reasons why a particular charge had, or had not, been established and specifically noted both the strength and weakness of the evidence submitted to support each charge. Applying the above referenced standard to the hearing panel's report on misconduct issued November 20, 2013, the Board concludes that there is ample support in the whole record for the hearing panel's findings and conclusions as to the two charges of misconduct found.

With regard to the sanction imposed, the Supreme Court has previously recognized that the Board possesses a greater measure of discretion with regard to the ultimate decision. *August,* supra; see also *Grievance Administrator v Eric S. Handy,* 95-51-GA; 95-89-GA (ADB 1996). The panel's sanction report specifically set forth its reasons for imposing a 30-day suspension:

> The panel has considered the arguments of the parties, including the applicable ABA Standards and aggravating and mitigating circumstances. Despite the argument by the Grievance Administrator that a suspension under ABA Standard 8.2 is appropriate, in reviewing ABA Standard 8.0 (Prior Discipline Orders), the panel finds that Standard 8.3 (reprimand) is more appropriate, as we specifically found that respondent was negligent in failing to advise Mr. Kronzek that he was a suspended attorney at the time of their telephone conversation. Additionally, in reviewing ABA Standard 7.0 (Violations of Duties Owed As A Professional), we find that Standard 7.2 more appropriately applies as respondent's failure to give his client reasonable notice of his impending suspension was also negligent. Finally, the panel finds that restitution is not appropriate in this case. Unlike the respondent in *McCallum,* respondent did quite a bit of work on his client's custody matter and there is no evidence that respondent's client was harmed by respondent's actions or inaction. [6/19/14 Sanction Report, p 5.]

The panel carefully considered the applicable ABA Standards, the aggravating and mitigating factors present, and prior precedent of this Board, as cited by the parties, before determining the discipline to impose. Upon careful consideration of the whole record, the Board is not persuaded that the hearing panel's decision to order a 30-day suspension was inappropriate.

At the conclusion of the panel proceedings, the Grievance Administrator submitted an itemized statement of expenses in accordance with MCR 9.128(B)(2). Those itemized expenses totaled $189.12. The actual expenses incurred during the panel proceedings, which include transcript and teleconference fees incurred over seven separate days, as well as an administrative fee of $1,500, totaled $4,428.53.

On review, respondent argued that it would be unfair for him to bear the full cost of the hearings in this matter since eight of the ten *charges* (i.e., alleged rule violations) brought by the Grievance Administrator were dismissed by the panel. In Michigan, there have been two prior cases in which disciplined attorneys were only required to pay a portion of their assessed costs; *Grievance Administrator v Kirby Wilson,* 92-268-GA; 92-287-FA (ADB 1995); and *Grievance Administrator v Fried,* 94-223-GA (ADB 1996). Both of those decisions, however, involved situations in which multi-count complaints were filed and later, certain *counts* were dismissed, either voluntarily by the Grievance Administrator or involuntarily by a hearing panel.

In one other matter, *Grievance Administrator v Ivan D. Brown,* Case No. 97-136-GA (ADB 1998), which did not involve a multi-count complaint but contained five separate charges of misconduct, Respondent Brown argued that it would be "manifestly unjust" for him to bear the full cost of the hearings since the only charge found by the panel, after two days of hearing, was the one charge Respondent Brown admitted in his answer to the formal complaint. This Board, on review, was persuaded that a reduction in the assessed costs would be appropriate, but we specifically noted that "this reduction of costs should be viewed as neither a precedent in future cases nor a reflection on the good-faith prosecution by the Grievance Administrator and his staff." *Id.* at 9.

In this matter, the Grievance Administrator did not file a multi-count formal complaint. Rather, the complaint contained ten separate charges of misconduct all relating to respondent's representation of Ms. Wheat and his dealings with opposing counsel in Ms. Wheat's matter, much like the complaint filed in *Brown.* However, respondent did not admit to any of the charges of misconduct when he answered the formal complaint. Regardless, all of the above referenced decisions were issued prior to the 2002 amendment to MCR 9.128, which allocated a greater share of the cost of operating the discipline system to those who are disciplined and permitted an assessment for basic administrative costs as well as actual expenses that expressly include investigative costs. MCR 9.128(A) and (B), as currently written, provide that "costs assessed in a discipline order must include, in addition to the actual expenses of investigation, prosecution and adjudication, a basic administrative cost of $750 for a discipline by consent and $1,500 for all other orders imposing discipline." MCR 9.128(A) further provides that "under exceptional circumstances, the Board may grant a motion to reduce administrative costs assessed under this rule, but may not reduce the assessment for actual expenses." Respondent requests that the Board do exactly that, reduce the actual expenses to those incurred only for the two findings of misconduct made by the panel. The court rule, as currently written, does not allow for such a reduction and we therefore decline to do so.

As for respondent's request for a reduction in the administrative costs assessed, insufficient evidence has been presented to show that exceptional circumstances exist to warrant such a reduction. Upon the filing of a motion by respondent that is properly supported with the averments of respondent and/or including other evidence to demonstrate the existence of exceptional circumstances, the Board may then consider any request to reduce the assessment of administrative costs.

NOW THEREFORE,

IT IS ORDERED that the hearing panel Order of Suspension entered June 19, 2014, is **AFFIRMED**.

IT IS FURTHER ORDERED that respondent shall, on or before February 28, 2015, pay costs in the amount of **$4,764.65** consisting of costs assessed by the hearing panel in the amount of $4,617.65 and court reporting costs incurred by the Attorney Discipline Board in the amount of $147.00 for the review proceedings conducted on September 17, 2014. 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: James M. Cameron, Jr.
James M. Cameron, Jr., Chairperson

DATED: January 30, 2015

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

Board member Louann Van Der Wiele did not participate.