

STATE OF MICHIGAN
Attorney Discipline Board

FILED
ATTORNEY DISCIPLINE BOARD

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Grievance Administrator,

Petitioner/Appellant,

v

Chad M. Lucia, P 41277,

Respondent/Appellee,

Case No. 13-56-GA

Decided: August 22, 2014

Appearances:

Kimberly L. Uhuru, for the Grievance Administrator, Petitioner/Appellant
Chad M. Lucia, In Pro Per, for the Respondent/Appellee

BOARD OPINION

On December 18, 2013, Genesee County Hearing Panel #3 filed its report on misconduct and discipline, and entered an order of reprimand against respondent.¹ The Grievance Administrator petitioned for review on the grounds that the hearing panel imposed insufficient discipline given its finding that respondent made misrepresentations to his client. The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118 which included review of the record before the hearing panel, and consideration of the briefs and arguments presented by the parties at a public review hearing conducted on March 19, 2014.

In its report on misconduct, the hearing panel made the following statement:

¹ The formal complaint filed by the Grievance Administrator originally charged respondent with two counts of misconduct in two separate, unrelated client matters. At a hearing held on September 26, 2013, the Grievance Administrator voluntarily dismissed Count One of the complaint. Thereafter, the matter continued regarding the allegations of misconduct charged in Count Two of the complaint which involved respondent's representation of William Workman and alleged that he neglected Mr. Workman's child support matter, that he made multiple misrepresentations to Mr. Workman about the status of his matter and that he failed to refund unearned fees, in violation of MCR 9.104(2)-(4); and MRPC 1.1(c); 1.3; 1.16(d); and 8.4(a) and (b) .

The testimony presented through Mr. Workman and the Respondent, Mr. Lucia, indicated that, in fact, representations were made by Respondent which were not accurate. Mr. Lucia tried to explain how it occurred, which, in all likelihood, were not in compliance with the best legal practices. He explained plausible reasons for part of the delay and miscommunication. In conclusion, it did not appear from the facts in evidence that the representations were intentionally false or deliberate, but nevertheless, they misrepresented the facts, and perhaps, delayed the proceedings. There also appeared to be no serious injury to Mr. Workman as this matter was, eventually, satisfactorily concluded.

Based upon the testimony presented and arguments of the parties, the panel finds that Respondent did make misrepresentations to his client by a preponderance of the evidence in violation of Michigan Rules of Professional Conduct 8.4(a). The panel, however, does not believe that the misrepresentations were deliberate. [HP Report 12/18/13, p 2.]²

The standard of review in attorney discipline proceedings in Michigan is well established, as stated in *Grievance Administrator v Edgar J. Dietrich*, 99-145-GA (ADB 2001), p 2:

In reviewing a hearing panel decision, the Board must determine whether the panel's findings of fact have "proper evidentiary support on the whole record." *Grievance Administrator v August*, 438 Mich 296, 304; 475 NW2d 256 (1991). See also, *Grievance Administrator v T. Patrick Freydl*, 96-193-GA (ADB 1998). "This standard is akin to the clearly erroneous standard [appellate courts] use in reviewing a trial court's findings of fact in civil proceedings." *Grievance Administrator v Lopatin*, 462 Mich 248 n12 (2000) (citing MCR 2.613(C)).

Because the hearing panel has the opportunity to observe the witnesses during their testimony, the Board defers to the panel's assessment of their demeanor and credibility. *Grievance Administrator v Neil C. Szabo*, 96-228-GA (ADB 1998); *Grievance Administrator v Deborah C. Lynch*, No 96-96-GA (ADB 1997). See also *In re McWhorter*, 449 Mich 130, 136 n 7 (1995).

² As indicated, the panel's December 18, 2013 report specifically referenced its finding that respondent made misrepresentations in violation of MRPC 8.4(a). However, misrepresentations made by an attorney are specifically covered under MRPC 8.4(b). This subsection was cited in Count Two of the formal complaint therefore, we assume that the panel's reference to MRPC 8.4(a) was an error and that the panel instead meant to reference MRPC 8.4(b) when making its finding that respondent made misrepresentations to Mr. Workman.

In short, “it is not the Board's function to substitute its own judgment for that of the panels' or to offer a de novo analysis of the evidence.” *Grievance Administrator v Carrie L. P. Gray*, 93-250-GA (ADB 1996), lv den 453 Mich 1216 (1996).

This case presents a relatively straightforward issue; did respondent make deliberate, intentional misrepresentations to his client with the intention of deceiving him about the status of his child support matter? After hearing all of the testimony and examining the exhibits admitted, the panel did not believe so. Now on review, this Board must determine whether the record in this case provides proper evidentiary support for the findings of the hearing panel. The Board does not conduct a de novo review of the factual findings; nor does the Board substitute its own judgment for the judgment and credibility determinations of the panel. *Id.*

Based upon the record before us, we find that there is proper evidentiary support in the record to support the panel's determination that although respondent made misrepresentations to his client, they were not deliberate misrepresentations. To that end, therefore, American Bar Association (ABA) Standard 4.63, which states: “reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information, and causes injury or potential injury to the client,” appears to be the appropriate standard to apply. The *Beisch* case, and the others cited in the Grievance Administrator's brief to support the request for a suspension, all involve findings that the respondent made deliberate misrepresentations to his/her client(s).

The Grievance Administrator also argues that the aggravating factors further support a suspension and that the most serious aggravating factor is respondent's lack of remorse and refusal to acknowledge the wrongful nature of his conduct. (Petitioner's Brief, 1/29/14, p 9.) We disagree. The record below is replete with apologetic statements by respondent for how he handled the filing of Mr. Workman's motion and for the confusion his statements may have caused. (Tr 9/26/13, pp 17-25, 40-41.) The fact that respondent consistently throughout these proceedings denied ever intentionally misleading his client, should not now be used against him as an aggravating factor.

Respondent was paid a total of \$360 for Mr. Workman's matter. Ultimately, the motion respondent filed was heard at the January 7, 2013 hearing and subsequently granted after the Friend of the Court review. The panel, in its report noted that “[t]here also appeared to be no serious injury to Mr. Workman as this matter was, eventually, satisfactorily concluded.” (HP Report 12/18/13, p

2.) Again, there is proper evidentiary support in the record for the panel's determination to not order restitution.

While we are persuaded that respondent's misrepresentations are more accurately characterized as negligent conduct for which a reprimand would be appropriate, we further find that such conduct as that which occurred in this matter is more accurately characterized as a form of lack of diligence as referenced in MRPC 1.3 rather than a misrepresentation that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer as described in MRPC 8.4(b). As a result, we modify the panel's finding of misconduct as a violation of MRPC 1.3 rather than MRPC 8.4(b) and affirm the panel's order of reprimand.

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

Board members Rosalind E. Griffin, M.D. Carl E. Ver Beek and were absent and did not participate.