

STATE OF MICHIGAN
Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner/Appellant,

v

Case No. 21-63-GA

STEPHEN LACOMMARE, P 52718,

Respondent/Appellee.

**ORDER INCREASING DISCIPLINE FROM A TWO-YEAR SUSPENSION
TO DISBARMENT AND AFFIRMING RESTITUTION AND CONDITION**

Issued by the Attorney Discipline Board
333 W. Fort St., Ste. 1700, Detroit, MI

On March 10, 2022, Ingham County Hearing Panel #6 of the Attorney Discipline Board issued an order suspending respondent's license to practice law in Michigan for a period of two years, commencing November 16, 2021.¹ The order also imposed \$4,250 in restitution, and included a condition to be completed prior to the filing of any petition for reinstatement. The Grievance Administrator has petitioned for review of the hearing panel's order of suspension, arguing that, based upon the undisputed evidence and the panel's findings of misconduct, the appropriate sanction is disbarment under ABA Standard for Imposing Lawyer Sanctions 4.11, and that the mitigation relied upon by the hearing panel - absence of a prior discipline record - is insufficient to reduce the appropriate sanction from disbarment to a suspension.

The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118, which included a review of the record before the hearing panel and consideration of the arguments and brief presented by the Grievance Administrator, at a review hearing conducted on June 15, 2022. Although not required to do so, respondent did not file a response to the petition for review. Further, respondent failed to appear at the review hearing, either in person or via Zoom videoconferencing, in violation of MCR 9.118(C)(1), and was not otherwise excused by the Board. For the reasons discussed below, we increase the discipline imposed to disbarment and affirm the restitution and condition imposed by the hearing panel.

¹ Respondent failed to file an answer to the Formal Complaint, and a default was filed on October 7, 2021. The hearing panel then issued an order of interim suspension pursuant to MCR 9.115(H)(1) for failure to appear at the disciplinary hearing, which suspended respondent's license to practice law effective November 16, 2021.

The facts are not in dispute here. The panel summarized the misconduct found:

[W]ith respect to Counts One through Four, [respondent] neglected legal matters, in violation of MRPC 1.1(c); failed to act with reasonable diligence and promptness in representing clients, in violation of MRPC 1.3; failed to keep his clients reasonably informed about the status of their matters and failed to comply promptly with reasonable requests for information, in violation of MRPC 1.4(a); failed to take reasonable steps to protect his clients' interests upon termination of representation, including a failure to refund any advance payment of fees that had not been earned, in violation of MRPC 1.16(d) (only as to Counts One, Two and Four); and engaged in conduct that involved dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflected adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, in violation of MRPC 8.4(b) (only as to Count Three).

With regard to Count Five, the panel [finds] that respondent commingled and misappropriated client funds, in violation of MRPC 1.15(b)(3) and MRPC 1.15(d); failed to safeguard client funds in an IOLTA, in violation of MRPC 1.15(d); and misused his IOLTA by paying personal expenses from it, in violation of MRPC 1.15(d) and (f).

With regard to Count Six, the panel [finds] that respondent knowingly failed to respond to a lawful demand for information from a disciplinary authority, in violation of MRPC 8.1(a)(2); failed to answer a request for investigation in conformity with MCR 9.113(A)-(B)(2), in violation of MCR 9.104(7) and MRPC 8.1(a)(2); and engaged in conduct that violated the Michigan Rules of Professional Conduct, in violation of MCR 9.104(4).² [Hearing Panel Report, pp 3-4 (footnote added).]

The Board's review of sanctions imposed by a hearing panel is not limited to the question of whether there is proper evidentiary support for the panel's findings. Rather, the Board possesses "a greater degree of discretion with regard to the ultimate result." *Grievance Administrator v Benson*, 08-52-GA (ADB 2010), citing *Grievance Administrator v Handy*, 95-51-GA; 95-89-GA (ADB 1996). See also *Grievance Administrator v August*, 438 Mich 296, 304; 304 NW2d 256 (1991). This greater discretion to review and, if necessary, modify a hearing panel's decision as to the level of discipline, is based upon a recognition of the Board's overview

² As charged in the entire complaint, the panel also found that respondent engaged in conduct that was prejudicial to the proper administration of justice, in violation of MCR 9.104(1); engaged in conduct that exposed the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2); and engaged in conduct that was contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3).

function and its responsibility to ensure a level of uniformity and continuity. *Grievance Administrator v Brent S. Hunt*, 12-10-GA (ADB 2012), citing *Matter of Daggs*, 411 Mich 304; 307 NW2d 66 (1981).

It is clear that the most serious allegations, established by respondent's default, are that he commingled and misappropriated client funds, in violation of MRPC 1.15(b)(3) and MRPC 1.15(d); he failed to safeguard client funds, in violation of MRPC 1.15(d); and he misused his IOLTA by using it to pay personal expenses, in violation of MRPC 1.15(d) and (f). Such misconduct constitutes the intentional conversion of funds and falls squarely under Standard 4.11, which provides "[d]isbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client."

The hearing panel agreed with the Grievance Administrator that the recommended sanction for the misconduct found is disbarment under Standard 4.11. To depart from this Standard and decrease the sanction, the panel relied on only one mitigating factor, absence of a prior disciplinary record [9.32(a)]. However, under the ABA Standards, when "absence of a prior disciplinary record" is the sole mitigating factor presented, many courts give it little weight, concluding that it is not sufficient to justify a departure from the generally appropriate sanction, especially where misappropriation or conversion of client funds is involved. See e.g., *Grievance Administrator v Terry A. Trott*, 10-43-GA (ADB 2011) (2½ year suspension increased to disbarment for misappropriation of unearned fees, despite 30 years as a practicing attorney with no prior disciplinary offenses); *People v Hindman*, 958 P2d 463, 464 (Colo 1998) (only mitigating factor was absence of prior discipline, a factor that "by itself does not convince us that anything but disbarment is warranted" for misconduct that included neglect of client matters and misappropriation of client funds); *People v Adkins*, 57 P3d 750 (Colo OPDJ 2001) (lack of prior discipline alone does not call for sanction less than disbarment for lawyer's failure to hold client's property separately and knowing conversion of client funds); *Lawyer Disciplinary Board v Barton*, 690 SE2d 119 (W Va 2010) (where the only mitigating factor was lack of a prior disciplinary record, annulment of law license was still appropriate sanction for lawyer's misconduct that included converting settlement proceeds and providing client with a fraudulent accounting of those proceeds).

Furthermore, a panel should consider the seriousness of the offense and weigh it against the absence of a prior disciplinary record. Therefore, even when a lawyer has had a long and unblemished career, the lack of disciplinary record will not mitigate the sanction when the offense is very serious, such as, for example, conversion of client funds. See, e.g., *Grievance Administrator v Donnelly W. Hadden*, 15-105-GA (ADB 2019) (acknowledging that, in the context of a misappropriation case, a lack of prior disciplinary offenses has never been found to be sufficient to justify a downward departure from the disbarment standard); *People v Brown*, 161 P3d 1286 (Colo OPDJ 2007) (although hearing board considered absence of prior disciplinary record in over 35 years of law practice, it ultimately disbarred the lawyer for conversion of funds); *People v Haines*, 179 P3d 1021 (Colo OPDJ 2006) (disbarment warranted for lawyer who misappropriated \$70,000, even though it was his first and only breach of ethics rules in nearly 22 years of practice); *VI Bar v Bruschi*, 49 VI 409 (VI 2008) (absence of prior disciplinary record considered among other mitigation, but still did not alter disbarment for respondent's misconduct; "[i]ndeed, the circumstances in these cases present a picture of a highly experienced, reputable attorney who inexplicably engaged in a pattern of misconduct that included a total failure to communicate with clients, knowingly converting client funds, and violating several rules and Court

orders associated with the ensuing disciplinary proceedings”); *In re Stevenson*, 979 P2d 1043, 1044 (Colo 1999) (a lawyer was disbarred after abandoning one client and misappropriating that client’s funds, and noted that the lawyer’s failure to participate in the disciplinary proceeding underscored the decision that disbarment was appropriate).

Here, “absence of a prior disciplinary record” is the sole mitigating factor presented and should not have been given so much weight under the circumstances. The misconduct found in this case involves multiple instances of neglecting client matters and failing to protect client interests, engaging in dishonest conduct, commingling and misappropriating client funds, and the misuse of an IOLTA. In addition, respondent failed to participate in his disciplinary proceedings by failing to timely answer requests for investigation, continuously made misrepresentations to the Attorney Grievance Commission, failed twice to appear for his statement under oath, failed to answer the Formal Complaint, and failed to appear at the discipline hearings.

In addition, there were also extensive aggravating factors present here: dishonest or selfish motive [9.22(b)]; pattern of misconduct [9.22(c)]; multiple offenses [9.22(d)]; bad faith obstruction of the disciplinary process [9.22(e)]; submission of false evidence, false statements, or other deceptive practices during the disciplinary process [9.22(f)]; refusal to acknowledge the wrongful nature of the conduct [9.22(g)]; vulnerability of the victims [9.22(h)]; substantial experience in the practice of law [9.22(i)]; and indifference to make restitution [9.22(j)].

With regard to mitigation sufficient to justify a downward departure from the disbarment standard, there simply is none. This case is not unlike the many others in which a lawyer has been disbarred for intentionally converting client funds. Although it is true that respondent lacks a prior disciplinary record, given the seriousness of respondent’s misconduct here, such mitigation is insufficient, particularly in light of the aggravating factors. See *Hadden, supra*; *Grievance Administrator v Tyslenko*, 12-17-GA (ADB 2013). Accordingly, we increase the discipline imposed to disbarment.

NOW THEREFORE,

IT IS ORDERED that the discipline in this case is **INCREASED** from a two-year suspension of respondent’s license to practice law in Michigan, to **DISBARMENT EFFECTIVE NOVEMBER 16, 2021**, and until further order of the Supreme Court, the Attorney Discipline Board or a hearing panel, and until respondent complies with the requirements of MCR 9.123(B) and (C) and MCR 9.124.

IT IS FURTHER ORDERED that restitution in the amount of \$750 to Paul Birchall and \$3,500 to Allie Nalepka, as ordered by Ingham County Hearing Panel #6, is **AFFIRMED**. Respondent shall file written proof of payment with the Attorney Grievance Commission and the Attorney Discipline Board within 10 days of the payment of restitution.

IT IS FURTHER ORDERED that respondent shall not be eligible for reinstatement in accordance with MCR 9.123(B) unless respondent has fully complied with the restitution provisions of this order.

IT IS FURTHER ORDERED that the condition ordered by Ingham County Hearing Panel #6, to be completed prior to the filing of any petition for reinstatement, is **AFFIRMED**.

IT IS FURTHER ORDERED that respondent shall, on or before August 5, 2022, pay costs incurred by the Attorney Discipline Board for the transcript of review proceedings conducted on June 15, 2022, in the amount of **\$97.50**. This amount is in addition to the costs previously assessed in the hearing panel order of March 10, 2022, together with interest pursuant to MCR 9.128. Total costs assessed and owed are **\$2,364.01**. Please refer to the attached cost payment instruction sheet for method and forms of payment accepted.

ATTORNEY DISCIPLINE BOARD

By:



Michael B. Rizik, Jr., Chairperson

DATED: July 7, 2022

Board members Michael B. Rizik, Jr., Linda S. Hotchkiss, M.D., Rev. Dr. Louis Prues, Karen D. O'Donoghue, Peter A. Smit, Alan Gershel, and Jason M. Turkish concur in this decision.

Board members Linda M. Orlans and Michael S. Hohausser were recused and did not participate.