STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,

Petitioner/Appellee,

v

R. Reid Krinock, P 36162,

Respondent/Appellant,

Case No 12-26-GA.

Decided: May 21, 2013

Appearances:

Wendy A. Neeley, for the Petitioner/Appellant
R. Reid Krinock, Respondent, In Pro Per

BOARD OPINION

Washtenaw County Hearing Panel #4 issued an order on October 17, 2012, suspending Respondent R. Reid Krinock's license to practice law for 30 days. The panel also ordered restitution of $400.00 and directed him to return all files and papers in his possession to the complainant. Respondent petitioned for review and the Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118. For the reasons discussed below, the hearing panel's order entered October 17, 2012, is affirmed.

Central to respondent's petition for review, and to the eventual outcome of the proceeding before the panel are (1) the undisputed fact that respondent failed to file an answer to the Grievance Administrator's formal complaint within the 21 day period provided in MCR 9.115(D)(1), and (2) the question of whether the hearing panel erred in its decision to deny respondent's motion to set aside his default for failure to answer.

Respondent's default was filed by the Grievance Administrator on April 10, 2012. On April 18, 2012, respondent filed a motion to set aside the default in which he acknowledged that he received the formal complaint on or about March 19, 2012. He explained that he is a sole practitioner and that at the time his response was due, he was "involved in numerous cases along

with a deadline for an appellate brief." He also explained that he did not file an answer because, "this matter was overlooked and the fact that the matter was set for hearing which would suggest that a response was not needed."

The Grievance Administrator filed a response to that motion and on June 20, 2012, the hearing panel entered its opinion and order denying respondent's motion to set aside default. The panel concluded that respondent had failed to meet the good cause requirement in MCR 2.603(D):

> The panel finds that Respondent has failed to demonstrate good cause to set aside default. His submissions state only that he was involved in other matters when he received the Complaint (Affidavit ¶6) and at the time the response was due. (Motion ¶4) His affidavit states that he did not review the complaint in this matter until he received the default. (Affidavit ¶6). Respondent does not claim he was unaware of the complaint.
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> The panel concludes respondent's submissions do not demonstrate any reasonable excuse for his failure to calendar and meet the deadline for an answer to the complaint in this matter. An attorney's busy schedule and heavy case load are not good cause for not meeting deadlines. See *Daugherty v State of Michigan*, 133 Mich App 593, 598; 350 NW2d 291 (1984), citing *Midwest Mental Health Clinic, P.C. v Blue Cross & Blue Shield of Michigan*, 119 Mich App 671, 674-75; 326 NW2d 599 (1982).

The Board will review a hearing panel's decision to grant or deny a motion to set aside a default under an abuse of discretion standard. *Grievance Administrator v Gerald C. Simon, et al*, 02-83-GA; 03-40-GA; 03-38-GA (ADB 2003). In its memorandum opinion in *Simon*, the Board discussed the high threshold set by an abuse of discretion standard, citing *Alken-Ziegler, Inc. v Waterbury Headers Corp*, 461 Mich 219; 600 NW2d 638 (1999):

> An abuse of discretion involves far more than a difference in judicial opinion. *Williams v Hofley Manufacturing Co.*, 430 Mich 603, 619; 424 NW2d 278 (1988). It has been said that such abuse occurs only when the result is "so palpably and grossly violative of fact and logic that it evidences not the exercise of will, but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias." *Marrs v Board of Medicine*, 422 Mich 688,694; 375 NW2d 321 (1985), quoting *Spalding v Spalding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959), and noting that, although the *Spalding* standard has been often discussed and frequently paraphrased, it has remained essentially intact. *Alken-Ziegler, supra*, 461 Mich at 227.

As respondent himself points out in his brief on review, the court's decision in *Alken-Ziegler* also stands for the proposition that a decision to set aside a default must be based upon a sufficient showing as to both good cause and a meritorious defense. In this case, we conclude that the hearing panel below acted well within its discretion in finding that respondent's excuse that he was "busy" when he received the formal complaint did not meet the "good cause" requirement of MCR 2.603. We therefore decline to disturb the hearing panel's decision.

Respondent also petitioned for review on the grounds that even if the misconduct established by his default is upheld, the hearing panel erred in its imposition of a 30 day suspension. After reviewing the hearing panel's report on discipline, respondent's argument on review and the aggravating factors in his case, we conclude that the sanction imposed by the hearing panel is in accord with the American Bar Association Standards for Imposing Lawyer Sanctions and is appropriate under the circumstances of this case.

As directed by the Supreme Court in *Grievance Administrator v Lopatin*, 462 Mich 235 (2000), the hearing panel looked to the Standards for guidance and found,

> Respondent's neglect in attending to Mr. Kattula's matter - and his failure to communicate with his client about it - appear to be knowing failures to perform the services which he agreed to perform which carried the potential of causing injury to the client. (ABA Standard 4.42.) In addition, respondent's charging for services he had not performed was the knowing violation of his duties of professional conduct which caused injury or potential injury to both the client and the legal system. (ABA Standard 7.2.)

Both Standard 4.42 and Standard 7.2 suggest that a suspension is generally appropriate, rather than reprimand or disbarment, absent mitigating or aggravating factors. In this case, the panel was presented with evidence of respondent's three prior admonishments in 2002, 2003, and 2007 (an aggravating factor under Standard 9.22(a)), and the panel noted the aggravating effect of respondent's substantial experience in the practice of law and his indifference to making restitution to his former client (Standards 9.22(i) and (j)). Although the Grievance Administrator argued to the panel for the imposition of a 60 day suspension, the panel elected to impose a suspension of 30 days, the minimum suspension under MCR 9.106(2), coupled with an order that respondent make restitution of $400.00 and return any and all files and records belonging to the client.

Respondent has argued to the Board that because there was no injury or potential injury to the complainant, neither a suspension under Standard 4.42 nor a reprimand under Standard 4.43 is

warranted in this case.[1] Respondent's minimalist argument regarding the inapplicability of ABA Standards 4.42 or 4.43, based upon his conclusory statement that there was no injury or potential injury to the client, is not persuasive.

Moreover, it is clear to the Board that in addition to respondent's failure to acknowledge any responsibility for his indifferent attitude toward his obligations to his client, respondent's conduct throughout this proceeding has demonstrated an apparent indifference toward the discipline process, a further aggravating factor in itself.

As noted by the hearing panel, respondent acknowledged receiving the formal complaint served by the Grievance Administrator and he stated in his affidavit to the panel, "I did not review the complaint until I received the default." (Respondent's Affidavit, May 10, 2012, ¶ 6.) Apparently, respondent also did not read the Attorney Discipline Board's "Important Procedural Instructions" which were served along with the complaint and which included this pointed notice:

> **WARNING**: *FAILURE TO FILE A TIMELY ANSWER WILL RESULT IN **DEFAULT** AND CONSTITUTES SEPARATE, ACTIONABLE MISCONDUCT. See MCR 9.113 and 9.115(D)(2).* [Emphasis in original.]

After he was served with a copy of the default on April 10, 2012, respondent filed a motion to set aside default on April 18th, but did not include the affidavit of facts showing a meritorious defense which is required under MCR 2.603(D). Respondent did file an affidavit on May 10, 2012, after the omission was pointed out by the Grievance Administrator.

On June 20, 2012, the hearing panel issued its opinion and order denying respondent's motion to set aside default and a copy was mailed to respondent by the Board.[2]

The hearing panel's order and report were issued October 17, 2012, and mailed to respondent on that date. Again, the mailing was accompanied by instructions and references to the applicable court rules, including two separate references to MCR 9.115(K), which states that:

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[1] The respondent's brief does not address the hearing panel's finding as to the applicability of ABA Standard 7.2, nor does respondent explain what sanction, if any, would be appropriate.

[2] Notwithstanding the issuance of the panel's order denying the motion to set aside default and the Board's written notice to the parties that the proceeding before the panel on July 16, 2012, would be conducted as a "hearing on discipline," respondent nevertheless stated to the Board at the review hearing conducted March 27, 2013, that "I did not learn that that default was not set aside until I walked in the hearing door. I was hoping to cross-examine Mr. Kattula because I am sure that I would have made him look [sic] or embarrassed him about what he intended me to do for $400.00, but I wasn't given that opportunity."

> K) **Stay of Discipline**. If a discipline order is a suspension of 179 days or less, a stay of the discipline order will automatically issue on the timely filing by the respondent of a petition for review and a petition for the stay of discipline. [Emphasis added.]

On November 7, 2012, the last day for filing a timely petition for review under MCR 9.118(A), respondent filed a petition for review which stated, in its entirety, "Now comes R. Reid Krinock, respondent to petition the Attorney Discipline Board to review the hearing panel's decision." Respondent did not file a petition for a stay of discipline, as explicitly required by the Court Rule. By email on November 7, 2012, respondent was advised that his petition for review did not meet the minimum requirements of MCR 9.118(A)(1) in that it did not set forth the reasons and grounds on which review was sought. However, the Board's email further advised respondent that he could submit an amended petition for review that day by fax or email, with an original signed petition to follow by regular mail.

Respondent did not fax or email an amended petition for review on November 7, 2012, but did fax an amended petition to the Board on November 13, 2012. Again, respondent did not file a petition for a stay of discipline. His amended petition prompted further correspondence from the Board advising that his petition would be considered as a delayed petition under MCR 9.118(A)(3). In this correspondence from the Board's Executive Director, respondent was once again reminded of the requirement to obtain a stay of the panel's order:

> The cover letter which accompanied the order of suspension mailed October 17, 2012, also included a specific reference to MCR 9.115(K) [stay of discipline]. In the absence of a timely filed petition for review and a petition for a stay of discipline, the 30 day suspension ordered by the panel is deemed effective **Thursday, November 8, 2012**. [Letter from Executive Director John Van Bolt to respondent, Nov. 13, 2012. Emphasis in original.]

That letter was both mailed and faxed to respondent on November 13, 2012. Having received no response and, specifically, having received no petition for stay of discipline as required under MCR 9.115(K), the Board then prepared and issued a notice of suspension and restitution on November 14, 2012. In accordance with MCR 9.115(J)(3) and the correspondence to respondent, the 30-day suspension ordered by the hearing panel was deemed effective November 8, 2012. A copy of that notice was mailed to respondent on November 14, 2012.

Despite these written warnings that his 30-day suspension would take effect on November 8, 2012, unless he filed a petition for stay, and despite the written notice to respondent on November

14, 2012, that the suspension had, in fact, become effective, respondent either did not read or did not understand these written communications and continued to engage in the practice of law until December 26, 2012, when he sent a letter addressed to the Chairperson and Executive Director of the Board advising that he had just learned from the Livingston County Circuit Court Administrator that she had received a notice of his suspension from the Board. All evidence to the contrary, respondent stated in his letter to the Board,

> At the panel hearing held on July 16, 2012, I was advised that a stay of enforcement would automatically take place upon the filing of the Petition for Review with the Board. I have received no documentation from the Board office indicating the stay was not in place. . . . If John F. Van Bolt, Executive Director had notified me prior to the issuance of the suspension that the automatic stay was not in place, I would have taken the necessary steps to have the stay in place. . . . I request the Board honor the automatic stay of enforcement and remove the wrongly issued suspension. I need a notice from the Board sent to the Circuit Court Administrator of the lifting of the suspension.

On January 2, 2013, respondent and the Grievance Administrator stipulated to the entry of an order staying the hearing panel's order of suspension, retroactive to November 8, 2012. With the Board's approval of that stipulation, the question of respondent's continued practice of law contrary to the panel's order of suspension became moot.

Nevertheless, the Board is both perplexed and concerned by respondent's consistent pattern during the course of this discipline proceeding of failing to heed repeated warnings of the consequences of a failure to file a timely answer to the complaint or a failure to file a petition for stay of discipline. In this case, respondent's failure to file a timely answer to the complaint, in violation of MCR 9.104(7), was not charged as a separate act of misconduct in a supplemental complaint. Nevertheless, respondent's pattern of wilful indifference to the court rules, instructions and notices, as described above, could weigh heavily as an aggravating factor supporting discipline in excess of the 30-day suspension imposed by the panel. Because respondent has offered no meritorious arguments to establish error below, we will enter an order affirming the hearing panel's order.

Board members Thomas G. Kienbaum, Carl E. Ver Beek, Sylvia P. Whitmer, Ph.D., Rosalind E. Griffin, M.D., Craig H. Lubben, Lawrence G. Campbell, Dulce M. Fuller, and Louann Van Der Wiele concur in this decision.

Board member James M. Cameron, Jr. did not participate.