FILED
ATTORNEY DISCIPLINE BOARD
May 6, 2021

STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,

Petitioner/Appellee/Cross-Appellant,

v

Anthony J. Szilagyi, P 56473,

Respondent/Appellant/Cross-Appellee,

Case No. 18-56-GA

Decided: May 6, 2021

Appearances:

Sarah C. Lindsey, for the Grievance Administrator, Petitioner/Appellee/Cross-Appellant
Trent B. Collier and Donald D. Campbell, for the Respondent/Appellant/Cross-Appellee

BOARD OPINION

This case arises out of a property dispute between two brothers, Lee and Tod Barr, over property owned by their mother, Ruby Barr. Respondent's involvement stems from his representation of Ruby and Barr Sand & Gravel (BS&G) in the litigation. Respondent was also involved in the handling of various real estate matters, including the preparation of several real estate documents, involving Ruby's property.

I. Background

The Litigation

Ruby was the sole owner of three parcels of land where her home sat and BS&G had operated: a 77-acre parcel, a 95-acre parcel, and a 3-acre parcel where Ruby's house was located. Because of some bad blood between Ruby and her son Lee, Ruby executed a trust in which Tod was to receive the two large parcels and her estate, and Lee was to receive nothing. In response, Lee filed suit against Ruby Barr and the now defunct BS&G, seeking to obtain title to the two properties.

At the time Lee filed suit, Ruby was 83 years old and was living on social security and a $30 a month pension. In order to help pay the fees and costs of the litigation, Tod Barr provided the funds. (Tr 9/12/18, p 336.) In exchange, Tod obtained a mortgage on the 3 properties for $39,000, the amount he advanced. (Tr 9/12/18, pp 288-89.) Ruby gave Tod a promissory note, secured by a mortgage on the 77 acre and 95 acre parcels in addition to the 3 acre parcel upon which Ruby Barr's home was located. The mortgage was signed, notarized, and recorded with the Ingham County Register of Deeds. Additionally, Bruce and Barbara Ketchum, who were neighbors of Ruby, gave Ruby a cash loan of $19,500, in exchange for the right to purchase the property after the litigation was over.

Sale of the Properties

On June 6, 2014, Ruby entered into a Purchase Agreement with the Ketchums for the two parcels, for a total price of $400,000. The agreement indicated that the $19,500 loan would be credited toward the down payment of $200,000 if the litigation was settled or resolved in Ruby Barr's favor; if it was not, the loan was due to the Ketchums within six months of final judgment. Respondent prepared the 2014 purchase agreement.

However, on June 12, 2014, the Ingham County Treasurer's Office filed a complaint to foreclose on the 77-acre parcel, the 95-acre parcel, and Ruby Barr's 3-acre home. The Ingham County Treasurer's office was set to enter a foreclosure judgement on these properties by February 25, 2015. (Tr 9/12/18, p 263.)

Tod tried to obtain a loan to pay Ruby's back taxes, but was unable to do so. As a result, Tod decided to foreclose on the mortgage and sell the properties to the Ketchums. However, believing that the mortgage foreclosure process under his mortgage would take too long and could not be completed before the County's foreclosure judgment was entered, Tod asked Ruby to deed the 77-acre and 95-acre parcels in lieu of foreclosure. (Tr 9/12/18, p 247-48.) Ruby agreed to do so.

At some point thereafter, Tod created Farm Properties LLC. In January of 2015, the mortgage on the properties was transferred to Farm Properties LLC and Ruby conveyed a "Quit Claim Deed in Lieu of Foreclosure" to Farm Properties LLC for the two parcels. Respondent prepared both the assignment of mortgage and the quit claim deed.

On January 21, 2015, Farm Properties entered into a new Purchase Agreement with the Ketchums to sell the parcels for a total sale price of $400,000. When the Ketchum's arrived at respondent's office and prior to moving forward with the sale, respondent advised them that he represented neither the Ketchums nor Tod Bar or Farm Properties LLC. (Tr 7/25/18, pp 117, 160-61, 170-71, 173). Few changes were made to the January 2015 agreement from the June 2014 agreement, except the new agreement removed all references to the litigation. However, a tape recording made by respondent of conversations at the signing of the agreement clearly demonstrated that the Ketchums were advised of the problems with the title, including the possibility that they could lose the property should Lee Barr prevail in his litigation.

The Ketchums provided checks to Farm Properties totaling $180,500, in exchange for a Quit Claim Deed prepared by respondent that conveyed the 77-acre parcel from Farm Properties to the Ketchums. A land contract was also entered into between Farm Properties and the Ketchums for the Ketchums to purchase 90 acres of the 95-acre parcel. Respondent also prepared the land contract agreement.

On January 30, 2015, Tod Barr gave his deposition in the litigation. During the deposition, when asked if anyone had made an offer to purchase the parcels, Tod failed to disclose that the purchase agreement with the Ketchums had been signed nine days earlier, and failed to disclose the land contract. Respondent testified that he had concerns about Tod's testimony, but he did not want it to hurt Ruby's case, so he talked to Ruby and told her "we need to clear it up." (Tr 6/11/19, p 965.) On February 19, 2015, respondent called Lee's attorney and informed him about the sale of the parcels. (Tr 6/11/19, p 966.)

On March 13, 2015, a facilitative mediation was held regarding the pending Ingham County litigation. At that time, respondent again disclosed the sale of the parcels to Lee Barr's counsel, both orally and in writing. Lee subsequently filed a motion to escrow the sale proceeds. Respondent filed a response to the motion on March 23, 2015, in which he represented to the court that the Defendants, Ruby and BS&G, did not take part in any sale of the property, and that they do not possess nor have control over any sale proceeds.

A hearing was held on March 25, 2015, at which time the trial court orally ordered Ruby to escrow funds with the Court, and for respondent to file an affidavit accounting for disposition of the funds received from the sale of the property. On March 31, 2015, Lee Barr's counsel submitted a proposed order memorializing the court's ruling.

On April 1, 2015, respondent filed his objection to the order, asserting that the property was foreclosed upon by a third party by virtue of a mortgage the third party possessed for over a year and for which Plaintiffs were fully aware of since February 2014, the buyers did not pay any funds to Ruby or Tod, and that the checks paid by the buyers were paid to Farm Properties LLC. Respondent also indicated that he could not prepare an affidavit because "there is no ability to obtain this information from the non-parties to this litigation," but indicated that they "were aware that certain funds were used to pay the taxes and liens upon the properties . . ." (Petitioner's Exhibit 15.)

Tod Barr testified that, after the March 25, 2015 hearing, respondent told him that the court was going to attach the money and that "we needed to put the money somewhere where it would be available to us to finance the lawsuit that was now pending" against Tod, the Ketchums and Ruby. (Tr 9/12/18, pp 254-55.) Tod testified that respondent told him to transfer $60,000 from Farm Properties to Autumnwood Properties LLC, a real estate investment company. (Petitioner's Exhibit 38.) Tod testified that he had never heard of Autumnwood Properties, but he believed respondent was going to give the $60,000 check to Autumnwood and then respondent would get it back and put it in his trust account so they could have the money to finance the lawsuit. (Tr 9/12/18, p 256.)

Completely contrary to Tod Barr's testimony about Autumnwood Properties, respondent testified that he was not aware Tod had any dealings with Autumnwood until April 2, 2015, when Michael Markey, the managing agent for Autumnwood Properties, came to his office. (Tr 11/27/18, pp 408-12.) Mr. Markey was a prior client of respondent, but respondent testified that he did not introduce Mr. Markey to Mr. Barr. (Tr 11/27/18, p 411-12.) Mr. Markey's testimony supports respondent's version of the events. (Tr 4/10/19, pp 817-823.) Mr. Markey explained that he had approached Ruby when he saw the foreclosure notice, and Ruby told him her son Tod and his attorney, Frank, were handling it and to go talk to Tod. (Tr 4/10/19, p 818.) Mr. Markey then contacted Tod, and ultimately they entered into a business loan agreement. (Tr 4/10/19, p 820-21.)

Tod had given Autumnwood a check for $60,000 on March 25, 2015, and requested that $55,000 of the funds be escrowed to respondent's account because he wanted to use them to pay for his legal fees. (Tr 11/27/18, p 409; Tr 4/10/19, p 822-23.)

On April 2, 2015, respondent prepared an escrow agreement between Autumnwood Properties LLC and respondent's law firm for past and future attorney fees. Respondent's firm acted as both the escrow agent and the recipient of the funds. At the time, respondent was aware the money came from Farm Properties LLC, but was not aware the money came from the sale of the parcels. (Tr 11/27/18, p 416.)

Bankruptcy Filings

On April 8, 2015, Ruby Barr filed for Chapter 7 bankruptcy in the United States Bankruptcy Court for the Western District of Michigan, followed by BS&G on April 10, 2015. Both Ruby and Tod testified that respondent advised Ruby to file for bankruptcy. However, a tape recording submitted during the misconduct hearing revealed the opposite - that respondent advised Ruby not to file bankruptcy, and explained the negative effects of filing bankruptcy. Ruby also signed an affidavit indicating that respondent advised her of this, and also that she understood respondent did not represent either Tod or Farm Properties in the transfer or sale of Ruby's property.

As a result of the bankruptcy, the Ingham County litigation was automatically stayed, and there was an administrative closing of the case on April 10, 2015. However, despite the stay, a hearing was held on April 15, 2015, regarding respondent's objection to the March 25, 2015 ruling. An order regarding escrow of funds and allowing amendment of the complaint was entered by the court the same day. (Petitioner's Exhibit 20.) The order required Tod Barr and/or Farm Properties to deposit with the court by April 30, 2015, any monies received from the sale of the properties. The order further directed respondent to provide an affidavit and accounting of funds, and allowed the plaintiff to amend the complaint to add Tod Barr, Farm Properties, and the Ketchums as defendants.

Respondent's Affidavit

Although respondent claims the affidavit was drafted on April 1, 2015, it was not filed with the Court until April 30, 2015. The affidavit detailed the disposition of sale proceeds as follows: checks were issued from Bruce and Barbara Ketchum to Farm Properties, LLC in the amount of

$80,000 and $100,500. Farm Properties LLC, under agreement with Ruby Barr, then issued three checks totaling $60,000 to the Law Offices of Anthony Szilagyi, PLLC. These checks were placed in trust and then used to pay Ruby's back taxes, past due attorney fees, various expenses associated with the litigation, and a retainer fee for Barbara and Bruce Ketchum.

Of the $60,000 identified, respondent represented that he had received only $5,308.03 for past due attorney fees in the litigation. The Grievance Administrator claimed, however, that as of April 30, 2015, respondent had actually received $22,616 from Ruby for attorney fees, plus $55,000 identified in the escrow agreement and $20,000 from his IOLTA from the proceeds of the sale of the properties, neither of which were included in the affidavit filed with the court.

II. Panel Proceedings

The Grievance Administrator filed a four-count formal complaint on May 30, 2018. Specifically, Count One alleged that respondent failed to seek the lawful objectives of his client, in violation of MRPC 1.2(a); counseled a client to engage, or assisted a client, in conduct that the lawyer knows is illegal or fraudulent, in violation of MRPC 1.2(c); defended a proceeding, or asserted an issue therein, for which there was no basis for doing so that was not frivolous, in violation of MRPC 3.1; made a false statement to a tribunal, in violation of MRPC 3.3(a); knew that the lawyer's client or other person intended to engage, was engaging, or had engaged in criminal or fraudulent conduct related to an adjudicative proceeding involving the client, and failed to take appropriate remedial measures, in violation of MRPC 3.3(b); knowingly disobeyed an obligation under the rules of a tribunal, in violation of MRPC 3.4(c); in the course of representing a client, knowingly made a false statement to a third person, in violation of MRPC 4.1; engaged in conduct involving dishonestly, fraud, deceit or misrepresentation, in violation of MRPC 8.4(b); and engaged in conduct that violates a criminal law of a state, in violation of MCR 9.104(5).[1]

[1] Count One, as well as the other three counts, also alleged that respondent violated or attempted to violate the Rules of Professional Conduct in violation of MRPC 8.4(a); engaged in conduct prejudicial to the administration of justice, in violation of 9.104(1) and MRPC 8.4(c); engaged in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2); and engaged in conduct contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3).

Count Two involved alleged conflicts of interest in respondent's representation of Ruby Barr and the Ketchums, and Count Three involved alleged false statements made to the Ketchums and the Attorney Grievance Commission. The hearing panel dismissed these counts however, and they are not involved in this appeal.

Count Four is unrelated to the Barr litigation or transactions and involves respondent's representation of one Annette Hill and settlement of a subsequent lawsuit filed by Ms. Hill against respondent. It was alleged respondent settled a claim for malpractice with a former client without first advising her in writing that independent representation is appropriate in connection therewith, in violation of MRPC 1.8(h)(2); and knowingly made a false statement of material fact in connection with a disciplinary matter, in violation of MRPC 8.1(a)(1). The hearing panel dismissed alleged violations of MRPC 8.1(a)(1), 8.4(b), MCR 9.104(2), and 9.104(3). This Count is also not involved in the appeal, but was considered by the Board in determining an appropriate sanction in this matter as fully explained below.

The matter was assigned to Ingham County Hearing Panel #3. Over the course of a year, six hearings on misconduct were held, 15 witnesses testified, and over 70 exhibits were admitted into evidence. After hearing all of the evidence, including testimony from the respondent himself, the hearing panel issued a 15-page misconduct report on January 31, 2020, meticulously laying out the allegations and evidence to support their findings. The hearing panel found that respondent committed some of the misconduct alleged in Counts One and Four, and dismissed Counts Two and Three in their entirety.

Both parties filed sanction briefs, and a sanction hearing was held on June 18, 2020, where respondent testified on his own behalf. The Administrator's counsel had no witnesses but presented argument regarding the appropriate discipline to impose, and referred the panel to the ABA Standards for Imposing Lawyer Sanctions (ABA Standards).

On August 19, 2020, the hearing panel issued its sanction report, and found that ABA Standards 6.12 and 4.34 were the most appropriate - the former requiring a suspension, and the latter an admonition. Ultimately, the panel concluded that respondent should be suspended for 30 days, and required to take an "appropriate professional ethics class that provides education on the

procedural and technical requirements of the Michigan Rules of Professional Conduct as a refresher, and to complete such a course within six months." (Sanction Report, p 9.)

On review, respondent seeks a review of the findings of misconduct made regarding Count One of the formal complaint, and the discipline imposed by the panel, arguing that a suspension is excessive. Specifically, respondent argues that the hearing panel erred in finding that his affidavit was inaccurate, but even if it was, there were no knowing or intentional false statements made so it did not violate either MRPC 3.3(a)(1) or 8.4(b). Respondent also asserts that, based on the hearing panel's findings, a reprimand is a more appropriate sanction. Finally, respondent argues that the Board should reduce the costs assessed against him, because the Grievance Administrator was unable to prove all of the disputed charges. Respondent also filed a petition for stay of discipline pending review, which resulted in an automatic stay in accordance with MCR 9.115(K).

The Grievance Administrator filed a cross-petition for review, seeking review of the panel's dismissal of some allegations of misconduct and an increase in discipline. Specifically, the Grievance Administrator asserts that the hearing panel failed to consider respondent's participation in facilitating a fraudulent conveyance of property, as well as several additional false statements made by respondent in an affidavit and in other documents submitted to the court. The Grievance Administrator also seeks an increase in discipline to a suspension of at least one year, or at the very least, one requiring reinstatement under MCR 9.123(B).

III. Standard of Review

When a hearing panel's findings are challenged on review, 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 (1991). See also *Grievance Administrator v Ernest Friedman*, 18-37-GA (ADB 2019). "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 n 12 (2000) (citing MCR 2.613(C)). Under the clearly erroneous standard, a reviewing court cannot reverse if the trial court's view of the evidence is plausible. *Thames v Thames*, 191 Mich App 299, 301-302 (1991), Iv den 439 Mich 897 (1991).

The Board's review of sanctions imposed by a hearing panel, however, 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*, 06-52-GA (ADB 2009), citing *Grievance Administrator v Handy*, 95-51-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 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).

IV. Discussion

On review, the determinative issue is whether respondent knowingly made false statements in his affidavit. We conclude that he did not.[2]

Michigan Rule of Professional Conduct 3.3(a)(1) provides that "[a] lawyer shall not knowingly . . . make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact previously made to the tribunal by the lawyer[.]" Here, there is no evidence of any knowingly false statements of material fact and thus no violation of MRPC 3.3(a)(1).

Although the hearing panel ultimately concluded that respondent's conduct was "knowing," the misconduct and sanction reports imply that this was more a situation of negligence. For example, in the misconduct report, the hearing panel uses the word "knowing," but contradicts that finding and even somewhat justified respondent's conduct by stating: "The panel is cognizant, however, of the fact that the filing of the bankruptcy should have stayed the proceedings in Circuit Court, and that respondent may have been careless or somewhat sloppy with regard to the contents of the Affidavit filed as a result of being distracted by the Circuit Court proceeding with the matter and ignoring the stay." (Misconduct Report, p 9.)

[2] Although there is some dispute as to whether the affidavit is accurate, we do not need to address that here to resolve the case.

The panel then goes on to explain how applying the "False Statements, Fraud, and Misrepresentation" Standard (ABA Standard 6.1) was difficult, because "much of respondent's misconduct appeared to be in the form of an isolated instance of negligence or carelessness brought on by the unique dynamic of a Circuit Court that may have no longer had jurisdiction to order the filing of the Affidavit." (Sanction Report, p 5.) The panel also noted that "while the court ordering the disclosure seems to have been swayed by a suspicion that respondent engaged in other dishonesty, the evidence presented during the misconduct hearing indicates otherwise." (Sanction Report, p 5.) The panel expressed its surprise and disappointment "that the formal complaint was not amended to narrow the focus in advance of the hearing to address the numerous facts that were clearly rebutted by counter evidence (through audio tapes - which the petitioner stipulated to the admission of - in particular." (Sanction Report, p 5, n 3.)

The hearing panel seemed to qualify its findings of "knowing" misconduct, determining in the sanction report that there was no evidence that respondent had a selfish or dishonest motive and that this was "a clear example of lack of attention to detail." We agree. No evidence was offered to indicate that respondent knowingly misrepresented any facts to the court or opposing counsel. Even if the affidavit was inaccurate as submitted, there is no evidence that the alleged misrepresentations were knowingly made, or that there was a dishonest motive in submitting the affidavit to the court. Respondent's conduct here is more properly characterized as an isolated instance of neglect. Accordingly, we reverse the hearing panel's findings of misconduct in Count One.

In the Grievance Administrator's cross-petition for review, the Grievance Administrator first argued that the hearing panel erred in dismissing alleged violations of MRPC 1.2(a), 1.2(c), and MRPC 3.1, and by failing to find respondent was involved in or facilitated a fraudulent conveyance of property. These fraud allegations are tied to the Grievance Administrator's theory in the formal complaint that respondent masterminded Ruby Barr's bankruptcy and property transfers - a theory that should have been dropped once respondent disclosed the existence of the tape recordings in his answer to the formal complaint, and which were later introduced into evidence.

Nevertheless, the evidence presented does not support the Grievance Administrator's assertions. First, Tod Barr's affidavit confirmed that it was he and his attorney who orchestrated the transfer of Ruby's properties to Farm Properties LLC. In addition, the audio recording established that respondent strongly advised Ruby not to move forward with the transfer, and Ruby even signed a statement indicating that she had been advised against the transfer by respondent. Likewise, the evidence clearly supported respondent's position that he was against Ruby filing for bankruptcy, that he counseled her in this regard, and Ruby acknowledged as much. Based upon this evidence, the hearing panel properly dismissed the allegations that respondent violated MRPC 1.2(a), for failing to seek the lawful objectives of his client; MRPC 1.2(c), for counseling a client to engage in conduct that is illegal or fraudulent; MRPC 3.1, for defending a proceeding, or asserting an issue therein, for which there was no basis for doing so that was not frivolous; and MRPC 3.3(b), for failing to take appropriate remedial measures when he knew his client was engaged in criminal or fraudulent activity.

The Grievance Administrator also argued that the hearing panel failed to address other false statements made by respondent in documents submitted to the court, outside of the affidavit. Respondent asserted that considering these additional documents would be a violation of his due process rights because these allegations were not set forth in the formal complaint, but rather only raised for the first time in the Grievance Administrator's written closing argument, after the hearing closed.

We agree with respondent. These allegations were not charged, and as a matter of due process, a respondent may not be found guilty of misconduct that is not alleged in the formal complaint. See *Grievance Administrator v Thomas J. Shannon*, 91-76-GA (ADB 1992), citing *In re Freid*, 388 Mich 711; 202 NW2d 692 (1972), and *In re Ruffalo*, 390 US 544 (1968). Here, the only factual allegations relating to false statements in the formal complaint are those relating to the affidavit. A finding of misconduct based on additional allegedly false statements would be a violation of due process under *Ruffalo, supra.*

The next issue on review is the level of discipline. The Grievance Administrator argued that discipline should be increased to a suspension requiring reinstatement, whereas respondent argued

that the discipline should be decreased to a reprimand because his conduct was not knowing, but rather negligent or careless. Based on the Board's dismissal of Count One, the issue of discipline with regard to Count One is moot. However, the hearing panel also found several rule violations based upon the facts alleged in Count Four. Discipline was not addressed with regard to Count Four because Count One was the more serious conduct. Therefore, we will address it now.

In Count Four, the panel found that respondent settled a claim for the lawyer's liability with an unrepresented person or former client, without first advising that person in writing that independent representation is appropriate, in violation of MRPC 1.8(h)(2), and by doing so, he violated the rules of professional conduct, in violation of MRPC 8.4(a). The panel also found that this conduct was prejudicial to the administration of justice, in violation of MRPC 8.4(c) and MCR 9.104(1). The Board finds that a reprimand is an appropriate sanction for these violations. See *Grievance Administrator v James M. O'Briant*, 12-90-GA (HP Report 2/28/13) (Reprimand, by consent, for violation of MRPC 1.8(h)(2)).

The final issue on review is costs. Because the hearing panel rejected the majority of the Grievance Administrator's claims, including dismissing two counts in their entirety, respondent asked the Board to reduce the costs assessed against him. MCR 9.128 provides, in pertinent part:

> (A) Generally. The hearing panel and the board, in an order of discipline or an order granting or denying reinstatement, must include a provision directing the payment of costs within a specified period of time. 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. Reimbursement must be a condition in a reinstatement order.

The Board does not find that exceptional circumstances exist warranting a reduction in the administrative costs assessed here. Although ultimately three of the counts were dismissed, there is an order imposing discipline regarding Count Four. Therefore, respondent was properly assessed a $1,500 administrative cost pursuant to MCR 9.128(B)(1)(b), as an order imposing discipline was issued.

The Board finds, however, that the only actual costs that should be charged to respondent are only those incurred in prosecuting Count Four. The Grievance Administrator's claims failed, in part, because of recordings and affidavits that the Grievance Administrator possessed before the hearing. (Tr 9/12/18, p 372-74.) Based on this evidence, Counsel for the Grievance Administrator should have known that many of the allegations lacked merit, and should have dismissed these claims prior to the hearing. In fact, out of seven days of hearings, only one was primarily dedicated to Count Four.[3]

In an order of discipline, MCR 9.128 requires the hearing panel and the Board to include a provision directing the payment of costs. Here, the "order of discipline" relates to Count Four only.[4] The hearing panel dismissed Counts Two and Three, and thus these counts are not part of the order

[3] Count Four was unrelated to the litigation involved in Counts One, Two, and Three, and involved respondent's representation of a client and the settlement of a subsequent lawsuit filed against respondent by that client. On July 25, 2018, the first day of the misconduct hearing, the panel heard opening statements and then the client involved in Count Four briefly testified. (Tr 7/25/18, pp 57-98.) The remainder of that hearing, as well as the other six days of hearings, was dedicated almost exclusively to Counts One, Two, and Three. [But see Tr 11/27/18, pp 454-55; Tr 2/19/19, pp 676-77, 701-02; Tr 4/10/19, pp 802-03, 879-897; Tr 6/11/19, pp 1024-1039, 1065; Tr 6/18/20, pp 12-23; 41-43, 48-49; 57-60; 64-80, 86-88.]

[4] Although "order of discipline" is not defined by the Michigan Court Rules, a local rule for the United States District Court for the Eastern District of Michigan, which applies the Rules of Professional Conduct adopted by the Michigan Supreme Court, provides:

> (1) "Order of discipline" means an order entered against an attorney by the Michigan Attorney Discipline Board, a similar disciplinary authority of another state, or a court
>
> (A) revoking or suspending an attorney's license or admission before a court to practice law,
>
> (B) placing an attorney on probation or inactive status,
>
> (C) reprimanding an attorney for misconduct,
>
> (D) requiring an attorney to make restitution, or
>
> (E) transferring an attorney to inactive status in lieu of discipline. ED Mich LR 83.22(a)(1).

Therefore, the order of discipline here consists of the reprimand regarding Count Four. The dismissal of Counts One, Two, and Three are not part of the order of discipline.

of discipline. See MCR 9.115(J)(4). Similarly, since the Board finds that the charges of misconduct were not established in Count One, this count is also not part of the order of discipline. Therefore, the actual costs recoverable here are limited to those incurred as a result of Count Four only.

There have been circumstances where disciplined attorneys have only been required to pay a portion of the assessed costs. In *Grievance Administrator v Ivan D. Brown*, Case No. 97-136-GA (ADB 1998), which involved five separate charges of misconduct, the respondent 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 admitted in his answer to the formal complaint. The Board, on review, was persuaded that a reduction in the assessed costs would be appropriate, relying on hearing panel decisions in *Grievance Administrator v Kirby L. Wilson*, 92-268-GA; 92-287-FA (ADB 1995) (panel found that it would be "fundamentally unfair" to assess full costs against the respondent when the Grievance Administrator voluntarily dismissed eleven of the twelve counts and ordered respondent to pay 1/12 of the transcript costs), and *Grievance Administrator v David H. Fried*, 94-223-GA (ADB 1996) (panel ordered that respondent was responsible for 1/3 of the transcript costs incurred).

Although these decisions were issued prior to the 2002 amendment to MCR 9.128, which permits an assessment for basic administrative costs as well as actual expenses that expressly include investigative costs, the cases are still instructive and show that the panels and this Board have acted to ensure that the costs assessed are reasonable. In this case, we are persuaded that a reduction in the assessed costs is appropriate. It would be unfair to require respondent to pay nearly $8,000 in costs, when the hearing panel dismissed part of Count One, all of Counts Two and Three, and part of Count Four - especially where the Grievance Administrator was made aware of the audio tapes prior to the hearings. Therefore, we find that respondent is required to pay one-fourth of the actual costs incurred in the original proceeding. The Grievance Administrator's itemized costs, plus costs for hearing transcripts, total $7,885.38. One-fourth of these costs amounts to $1,971.35.

V. Conclusion

For the foregoing reasons, we reverse the hearing panel's finding of misconduct regarding Count One, and affirm the hearing panel's partial dismissal of Count One. As such, Count One is

dismissed in its entirety. Furthermore, we find that the appropriate sanction here for the misconduct established in Count Four is a reprimand. Also affirmed is the condition imposed by the hearing panel that respondent take an appropriate professional ethics class that provides education on the procedural and technical requirements of the Michigan Rules of Professional Conduct as a refresher within 6 months. Finally, based upon our dismissal of Count One and the hearing panel's dismissal of Counts Two, Three, and part of Count Four, we find that the costs assessed should be limited to one-fourth of the actual costs incurred, plus the administrative fee assessed pursuant to MCR 9.128(B)(1)(b).

Board members Jonathan E. Lauderbach, Michael B. Rizik, Jr., Barbara Williams Forney, Karen D. O'Donoghue, Linda S. Hotchkiss, M.D., Peter A. Smit, and Linda M. Orlans concur in this decision.

Board member Michael S. Hohauser was absent and did not participate.

Board member Alan Gershel was recused and did not participate.