STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,

Petitioner/Appellant/Cross-Appellee,

v

Carl M. Weideman, III, P 47032,

Respondent/Appellee/Cross-Appellant,

Case No. 05-79-GA

Decided: September 28, 2007

Appearances:

Nancy R. Alberts, for the Grievance Administrator, Petitioner/Appellant/Cross-appellee
Robert H. Golden, for the Respondent/Appellee/Cross-Appellant,

BOARD OPINION

The hearing panel found that respondent breached his fiduciary obligations, as executor of a California decedent's estate, in loaning the estate funds to himself and/or his firm to finance litigation and pay personal debts, and made misrepresentations regarding the availability of the funds to the California court, to counsel, and to the Grievance Administrator. The panel imposed a suspension of 90 days. The Grievance Administrator filed a petition for review arguing that the panel erred in failing to find that respondent violated the criminal law of California, and in failing to impose greater discipline in light of respondent's mishandling of estate funds and his misrepresentations. Respondent filed a cross-petition arguing that the panel had no jurisdiction to consider respondent's conduct as a California fiduciary, or to determine whether his conduct violated California law, and that the panel erred in concluding respondent lied to others about the amount of estate assets in respondent's trust account. We affirm the panel's findings of misconduct and modify the order of discipline to require a suspension of four years.

I. Factual Background.

Robert H. Weideman lived and died in California. Respondent, a Michigan lawyer, practiced law with his father, who was the first cousin of the decedent. Respondent was appointed executor of the estate in February, 2001. The amended formal complaint charged respondent with various misconduct stemming from respondent's "loan" of estate funds to himself as a shareholder of Weideman & Weideman, P.C.

We will set forth in some detail the chronology of respondent's receipt of the estate funds, his use of the funds, the delay in distributing assets to beneficiaries, misrepresentations to the California court and counsel, a misleading response to the Request for Investigation, and, ultimately, payment of estate proceeds to the most assertive beneficiaries who had retained counsel. This payment was made only after respondent received funds from the settlement of an unrelated matter handled by his firm.

On June 30, 2001, respondent's IOLTA account had a balance of $10,927.88. On or about July 2, 2001, respondent received $264,905.20 on behalf of the Weideman estate, which he deposited into his IOLTA account contrary to the requirements of the California Probate Code. During July, 2001, varying amounts were withdrawn and paid to Weideman and Weideman PC, and $25,000 was transferred to the Savings Bank of Albania to repay a personal loan made to respondent by his brother-in-law. As of July 31, 2001, the balance in respondent's IOLTA account was $224,920.08.

Respondent is not a California attorney. He retained California counsel to assist in probating the estate. In August, 2001, respondent's counsel wrote the first of several letters requesting accounting information from respondent. On March 18, 2002, counsel filed a motion for leave to withdraw as attorneys for the executor reciting respondent's failure to answer these letters. The motion further stated that a final certified letter was sent January 25, 2002, that respondent's father replied on February 7, 2002 "indicating that the Executor was ready to submit the accounting information," and that as of March 18, 2002, the date the motion was filed, no such information had been received by counsel.

Finally, on September 12, 2002, respondent filed, through counsel, a First and Final Account and Report of Executor, Petition for Approval of Accounts, etc. The Account, signed by respondent under the penalty of perjury, showed cash on hand in the amount of $258,888.23. On that day, September 12, 2002, the balance in respondent's IOLTA account was $171,714.01.

In February, 2003, respondent's counsel renewed his motion to withdraw explaining that respondent now refused to sign a supplemental accounting. Respondent filed, in pro per, objections to his counsel's fee requests and a request that he be allowed to distribute only half of the estate's cash to beneficiaries. On that day, May 5, 2003, respondent's IOLTA account had a balance of $147,202.78.

On May 7, 2003, the California court issued an Order Settling the First and Final Account, etc., which recited that the "total value of the property on hand is $266,609.48, of which $258,888.23 is cash." Respondent was directed to distribute the decedent's entire residuary estate. Respondent did not do so. On December 4, 2003, the surety company filed petition requiring various relief including deposit into court of estate funds. On January 6, 2004, various beneficiaries represented by California attorney James Morris filed an application for order to show cause regarding respondent's failure to obey the court's order authorizing final distribution. Attorney Morris also filed a Request for Investigation reciting the history of respondent's refusal to distribute the estate to beneficiaries and stating Morris's suspicion that respondent may have commingled and misappropriated estate funds. The Request for Investigation was received by the Attorney Grievance Commission on February 2, 2004.

On March 29, 2004, respondent deposited a check for $269,292.03 into his IOLTA account which check was from the settlement of an unrelated lawsuit in which respondent represented one Harold Kowal. On or about April 30, 2004, respondent issued a check to James Morris, attorney for several beneficiaries, in the sum of $191,552.44 for distribution to his clients.

Respondent's answer to the Request for Investigation does not respond to the allegations of misappropriation and attaches an account certification letter from Comerica dated April 5, 2004, and showing that as of April 2, 2004, there was $423,324.74 in the Weideman and Weideman PC IOLTA.

II. Misconduct Found By The Hearing Panel.

During an investigatory statement under oath at the offices of the Attorney Grievance Commission on January 19, 2005, respondent produced a "Line of Credit Agreement" reciting that "[respondent] is desirous of financing" the Kowall litigation in Oakland Circuit Court, and that the estate "has money available for which it would be preferable to earn interest." The document

provides that "for the duration of [the] case" the estate shall make funds available to respondent "as he shall deem appropriate for the prosecution of [the case]." Interest at 7% per annum is provided and respondent signed as executor and again as the president of Weideman and Weideman, P.C. The only beneficiary, indeed the only person, respondent told about the loan was his father. At the time, respondent's father was engaged in the practice of law with him. As we have set forth above, respondent did not keep the estate funds in a separate account and preserve them, but instead placed them in the Weideman and Weidman P.C. IOLTA account and used the funds to pay business and personal expenses.

The hearing panel concluded that respondent violated MRPC 3.3(a)(1), (2), and (4)[1] as charged in Count One of the complaint:

> [R]espondent represented to the probate court that he had cash on hand belonging to the estate in the amount of $258,888.23. Respondent knew at the time that he made the representation to the California probate court that he did not have cash on hand in this amount. As a result, by making this representation and failing to inform the California probate court of the deposit of the funds in his law firm's IOLTA and subsequent loan to himself, respondent misrepresented the amount of cash on hand belonging to the estate. [HP Report, p 7.]

The panel also found, with respect to Count Two, that "respondent did intentionally make false, misleading and deceptive statements to attorneys Allard and Gibson" when he "represented to these attorneys, in conjunction with the administration of the probate estate, that these funds were in cash and were available for distribution." In reality, the panel found, and respondent admitted, that he had "loaned those funds to himself."

Count Three charged that respondent failed "to fully and fairly disclose all facts and circumstances pertaining to the alleged misconduct in answer to [the] request for investigation" filed

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[1] See Rule: 3.3 Candor Toward the Tribunal
(a) A lawyer shall not knowingly:
(1) make a false statement of material fact or law to a tribunal;
(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;
. . . or
(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

by California attorney James Morris by engaging in "false, misleading and deceptive behavior in attaching the April, 2004 account certification, and failure to disclose that $269,292.03 did not belong to [the] estate but were settlement proceeds from a separate lawsuit" (HP Report, p 8). The panel found misconduct here as well, specifically that the certification

> was submitted by respondent for the purpose of misleading and deceiving the Grievance Administrator into believing that the law firm's IOLTA account had sufficient funds to reimburse the probate estate for the funds deposited into the IOLTA. In this regard, respondent failed to respond to the specific question as to the balance in the IOLTA at an earlier time because to do so would have revealed that the IOLTA had insufficient funds to reimburse the probate estate for the funds deposited into the IOLTA. [HP Report, p 9.]

The funds from the settlement of the Kowal litigation (which had yet to be disbursed to clients and those to whom costs were owed) amounted to $269,292.03. Subtracting that from $423,324.74 (the amount shown on the certification), leaves $154,032.71. The estate funds, had they not been invaded by respondent, would have totaled $258,888.23. Thus, respondent's account was in deficit by at least $104,855.52 as of the date of his answer to the request for investigation in April, 2004. The panel found that the conduct established under Count Three was in violation of MCR 9.104(A)(1)-(4) and MRPC 8.1(a)(1) and (2) and 8.4(a)-(c) .

The hearing panel next found that respondent committed misconduct alleged in Count Four by:

> (a) placing estate funds in his law firm's IOLTA and not in a bank account payable in United States funds, (b) commingling estate funds with professional funds in his law firm's IOLTA, (c) using estate funds for personal and professional purposes, and (d) making a loan to himself with estate funds. [HP Report, p 9.]

The panel determined that this conduct violated various provisions of the California Probate Code constituted "self dealing," and that "respondent violated his fiduciary obligations to the estate," all in violation of MCR 9.104(A)(1)-(4) and MRPC 8.4(a)-(c) as alleged in the formal complaint.

In sum, the panel expressly declined to find that respondent commingled estate funds with his own as alleged in Count One. Nor did the panel find a violation of former MRPC 1.15(a)-(c), as alleged in Count Five, which asserted that a deficiency in respondent's trust account existed following the deposit of the estate funds and that commingling and misappropriation were the result.

However, the panel did find that respondent violated his fiduciary duties with respect to the handling of the estate funds as described more fully above. The Administrator does not seek review of the panel's factual findings. Respondent's arguments as to the panel's factfinding simply ask us to weigh the evidence anew and amend the panel's credibility determinations. These arguments are rejected and will not be discussed further. *Grievance Administrator v Carrie L. P. Gray*, 93- 250-GA (ADB 1996) ("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"), lv den 453 Mich 1216 (1996).

III. Panel Rulings Regarding Violation of California Probate and Criminal Law.

The hearing panel rejected respondent's arguments that the Michigan Rules of Professional Conduct do not apply to his conduct while acting as a California executor and that the panel had no authority to determine whether respondent violated California law. The panel concluded that respondent's acts violated the California Probate Code, but was "not persuaded that the Grievance Administrator has met its burden of proof that respondent violated either California or Michigan criminal law."

On review, respondent offers cursory attacks on the panel's jurisdiction. A conclusory recitation of alleged error is insufficient to trigger this Board's review. See *Grievance Administrator v Frederick A. Patmon*, 93-47-GA; 94-157-GA (ADB 1997), citing *Mitcham v City of Detroit*, 355 Mich 182, 203 (1959), and *Taunt v Moegle*, 344 Mich 683, 686-687 (1956). While we consider respondent's arguments abandoned, and without exception baseless, we will briefly discuss them.

First, respondent argues:

> There is no authority anywhere in the Michigan Court Rules, statutes or case law which gives the Michigan Grievance Administrator jurisdiction to complain of, and the Attorney Discipline Board to hear, violations of other states [sic] criminal or probate code in court proceedings taking place in that other state. In fact the only mention of violations which take place in other states in the jurisdiction granting sections of the Michigan Court Rules is to be found at MCR 9.104(B):
>
> > "Proof of an adjudication of misconduct in a disciplinary proceeding by another state or a United States court is conclusive proof of misconduct in a

> disciplinary proceeding in Michigan . . ."
> [Respondents' Brief on Appeal, pp 7-8.]

This argument completely ignores MCR 9.104(A)(5) in which the Michigan Supreme Court plainly defined misconduct to include "conduct that violates a criminal law of *a state* or of the United States" (emphasis added). The panel's ruling from the bench[2] and its written Report are firmly and correctly predicated on MCR 9.104(A)(5). Respondent's argument also disregards the plain language of MRPC 8.4(c) stating that it is misconduct to "engage in . . . violation of the criminal law . . . ." Notwithstanding respondent's argument, this Board and its panels have in fact found misconduct based on violation of the criminal law of other states,[3] as well as upon violation of the probate law of another state.[4] This is hardly remarkable; other jurisdictions follow a similar approach. See, e.g., *In re Slattery*, 767 A2d 203 (DC App, 2001) ("In construing the phrase 'criminal act' for purposes of Rule 8.4(b), this court may properly look to the law of any jurisdiction that could have prosecuted the respondent for the misconduct," and conviction is not necessary to pursue disciplinary charges.)

Also, respondent argues that either our Rules of Professional Conduct or the authority of the Board and panels cannot have "extraterritorial application." Given the utter lack of support advanced for such an argument, as well as the commentary of noted authorities in this area to the contrary, we find respondent's argument to be groundless:

> A state disciplinary authority has, in general, the power to discipline a person admitted to the bar in that jurisdiction even though the acts complained of occurred outside the jurisdiction. . . .
>
> The rationale for the extraterritorial application of ethics rules is easy to understand. The purpose of lawyer discipline is not to

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[2] Tr 8/9/2006, p 112.

[3] See *Grievance Administrator v Peter Barbara*, DP 62-86 (ADB 1988) (discipline based on Nevada convictions). See also *Grievance Administrator v Paul Van Assche*, 97-30-GA (ADB 1998) (asserting jurisdiction over Michigan lawyer alleged in formal complaint, i.e., neither a reciprocal or judgment-of-conviction proceeding, to have violated MRPC 8.4(b) [violation of criminal conduct reflecting adversely on fitness, etc.] arising out of Florida OUIL conviction; Maine conviction also considered).

[4] In *Grievance Adminstrator v Richard A. Neaton*, 00-78-GA (HP 2001), a hearing panel imposed discipline (revocation) upon a lawyer who misappropriated funds held in trust as a fiduciary based upon, among other things, the respondent's failure to account for or deliver funds as ordered by the Washington County Circuit Court in Maryland. The respondent did not appear and was in default, but the panel nonetheless took testimony and issued its report in which no jurisdictional impediment was judicially noticed by the panel.

> punish (although the lawyer may be deprived of her livelihood) but rather to "seek to determine the fitness of an officer of the court to continue in that capacity and to protect the courts and the public from the official ministrations of persons unfit to practice."
>
> Given this rationale, if the lawyer engages in improper conduct – even if she engages in the conduct while not acting as a lawyer (e.g., lying to secure a real estate license), and even if the improper conduct occurs outside of the jurisdiction of Stat A, that conduct still reflects on the ability of that lawyer to practice in State A. The lawyer's admission to practice in State A (even thought State A is not the site of her improper act) gives State A the jurisdiction to discipline the lawyer. [Ronald D. Rotunda & John S. Dzienkowski, *Legal Ethics: The Lawyer's Deskbook on Professional Responsibility 2007-2008*, §8.5-1, pp 1213-1214. Footnotes omitted.]

Moreover, to the extent it even makes sense to try to pin down the situs of respondent's acts and omissions, the misconduct clearly took place in Michigan. Michigan is where the Weideman and Weideman, P.C. IOLTA account was located. Some misrepresentations may have been repeated in California, but they originated here.[5] Finally, the misleading conduct during the AGC investigation clearly took place in Michigan. Respondent's arguments in this regard, and the argument that this Board and the panel cannot act where a California court has not acted, are specious.

The Administrator argues that the hearing panel's findings that respondent secretly loaned estate funds in violation of the California Probate Code should also have resulted in a finding that respondent violated Section 506 of the California Penal Code.[6] Citing the Code[7] and caselaw, the Administrator contends that the intent to restore funds is not a defense to a charge under this section. This proposition appears to be correct. Indeed, additional cases not cited provide support for the argument that a California criminal law violation might be established if fraudulent intent within the

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[5] Respondent has made no effort to identify from the record any that were made exclusively in California.

[6] "Every trustee . . . attorney, agent . . . executor . . . or person otherwise entrusted with . . . property for the use of another person, who fraudulently appropriates it to any use or purpose not in the due and lawful execution of his trust, or secretes it with a fraudulent intent to appropriate it to such purpose . . . is guilty of embezzlement." [California Penal Code, § 506.]

[7] See California Penal Code, §§512, 513 (voluntary restoration of funds prior to an information or indictment may be mitigating but is no defense to criminal charges).

meaning of that state's jurisprudence could be established. For example, in *People v Talbot*, 220 Cal 3; 28 P2d 1057 (1934), the California Supreme Court stated:

> The element of felonious intent in every contested criminal case must necessarily be determined from the facts and circumstances of the case . . . . "*An officer or agent of a corporation cannot take money of the corporation which is entrusted to him, or which comes into his possession by virtue of his office or agency, and use it even temporarily for his personal benefit and avoid criminal responsibility by calling it a loan.* The law calls such a transaction a wrongful conversion, from which a fraudulent intent can be inferred." [220 Cal at 15; citations and internal quotation marks omitted; emphasis added.]

And, in *Seavey v State Bar of California*, 4 Cal 73; 47 P2d 281 (1935), an attorney was convicted under Section 506 of the Penal Code for secretly loaning funds he managed under a power of attorney during liquidation of a partnership. Arguments that he was acting in the best interest of the principals and did not himself profit were unavailing.

However, we decline to disturb the panel's determination regarding the alleged violation of the California Penal Code given that the issue of "fraudulent intent" within the meaning of California law was not squarely addressed, and in light of the panel's unchallenged findings as to respondent's intent (discussed further in the following section).

IV. Appropriate Level of Discipline.

Our Supreme Court has directed the Board and hearing panels to use the American Bar Association (ABA) Standards for Imposing Lawyer Sanctions when determining the appropriate level of discipline for misconduct. *Grievance Administrator v Lopatin*, 462 Mich 235; 612 NW2d 120 (2000). The Court explained that

> The inquiry begins with three questions:
>
> > (1) What ethical duty did the lawyer violate? (A duty to a client, the public, the legal system or the profession?)
> > (2) What was the lawyer's mental state? (Did the lawyer act intentionally, knowingly, or negligently?)
> > (3) What was the extent of the actual or potential injury caused by the lawyer's conduct? (Was there a serious or potentially serious injury?)

[*Lopatin*, 462 Mich at 239-240 (quoting ABA Standards, p 5).]

We set forth the following steps of the analysis under the Standards in *Grievance Administrator v Ralph E. Musilli*, No. 98-216-GA (ADB 2000):

> Next, the hearing panel examines recommended sanctions based the answers to these questions. *Lopatin*, 462 Mich at 240; ABA Sanctions, pp 3, 4-5.
>
> Then, aggravating and mitigating factors are considered. *Id.*
>
> And, in Michigan, the final step of the process involves a consideration of other factors, if any, which may make the results of the foregoing analytical process inappropriate for some articulated reason. As the Court explained in directing this Board and the panel's to follow the Standards:
>
> > We caution the ADB and hearing panels that our directive to follow the ABA standards is not an instruction to abdicate their responsibility to exercise independent judgment. Where, for articulated reasons, the ADB or a hearing panel determines that the ABA standards do not adequately consider the effects of certain misconduct, do not accurately address the aggravating or mitigating circumstances of a particular case, or do not comport with the precedent of this Court or the ADB, it is incumbent on the ADB or the hearing panel to arrive at, and explain the basis for, a sanction or result that reflects this conclusion. [*Lopatin*, 462 Mich at 248 n 13.]

A. Mishandling of Estate Funds.

This case is somewhat similar to the matter of *Grievance Administrator v Frederick A. Petz,* 99-102-GA (ADB 2001) (disbarment is the presumptively appropriate discipline for intentional conversion of client funds and should be imposed absent compelling mitigation). Like respondent, Mr. Petz did not intend to permanently deprive the rightful owners of their funds which he "invested" in his partnership without authorization. However, distinctions between that case and this one include the fact that *Petz* involved *deliberate conversion* of client funds, and that a violation of MPRC 1.15 was found by the panel and not contested on review.

Also relevant is *Grievance Administrator v Ronald P. Derocher*, 99-98-GA (ADB 2000), appropriately cited for the proposition that the absence of an intent to permanently deprive the

rightful owner of his or her funds is no defense to misappropriation. Again, however, *Derocher* involved a violation of MRPC 1.15.

Because client funds are not involved, ABA Standard 4.1 is inapplicable to the misconduct here. *Grievance Administrator v Rodney Watts*, 05-151-GA (ADB 2007). However, the Administrator urged the panel to apply ABA Standard 4.11 and disbar respondent, arguing that the conduct here is analogous to that described in Standard 4.11, which provides: "Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client."

We do not disagree with the tenor of the Administrator's argument that the intentional misappropriation of funds belonging to a non-client third party should, as a general proposition, be considered to be as serious as the theft of client funds. See, e.g., *Watts, supra* (comparing ABA Standards with proposed Michigan Standards and concluding "it is untenable to give this respondent a 'break' simply because he stole money belonging to another lawyer rather than money belonging to a client"). However, as we have noted, the hearing panel did not find a violation of MRPC 1.15, misappropriation, embezzlement or theft, and these findings and conclusions are not challenged on review. Rather, the Grievance Administrator's brief on appeal characterizes this matter as follows, "Respondent loaned estate monies to himself without court approval and with no notice to interested parties in violation of the California Probate Code. Respondent told no one except his father (his law partner) about the loan."

The panel also did not find a violation of criminal law, as we have noted above, and so did not apply ABA Standard 5.11(a) which provides that disbarment is generally appropriate when

> a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of Justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses[.]

On review, the Administrator argues that disbarment would be appropriate under ABA Standard 5.11(a). However, in light of the panel's determination that the loan did not rise to the level of theft or misappropriation, it does not appear that this Standard is clearly applicable.

We emphasize, however, that lawyers are bound to act as fiduciaries whenever they handle funds of a client or another. Not infrequently lawyers serve – pursuant to agreement, court order or otherwise – as executors, personal representatives, trustees, agents or in other such fiduciary capacities. Prior to and after the *Lopatin* Court's adoption of the ABA Standards for Imposing Lawyer Sanctions in 2000, discipline for conversion of funds held in such roles has ranged from a suspension requiring reinstatement proceedings to disbarment. See, e.g., *Neaton, supra,* n 4 (revocation), *Grievance Administrator v Myles B. Hoffert*, 99-79-GA (HP Consent 2003) (Panel imposed three years by consent for respondent's use of trust funds for business entities and personal use while serving as trustee), *Grievance Administrator v William J. Conlin*, 93-215-GA (HP 1994) (One year suspension where respondent misappropriated $28,000 from an account held in his capacity as a trustee and repaid several months later), *Grievance Administrator v Peter B. Short* (HP 1988) (Revocation for mishandling of two estates, which included false accountings, commingling, misappropriation, i.e., "investing" funds in his own name allegedly on behalf of the beneficiaries).

While we defer to the panel's uncontested findings in this case, we wish to make it very plain that, in general, a secret loan arrangement by a lawyer in violation of fiduciary duties is serious misconduct. Indeed, because "the likelihood of actual embezzlement is so great, and the policy of professional responsibility in protecting the client from such risks is so strong,"[8] such conduct should, in the future, generally be regarded as tantamount to knowing conversion.

B. Misrepresentation.

Count One of the formal complaint alleged that respondent's "knowing and material misrepresentations to the probate court that he had cash on hand belonging to the estate of $258,888.23, were untrue, and were made in violation of MCR 9.104(A)(1)-(4), MRPC 3.3(a)(1), (2) and (4), and MRPC 8.4(a)-(c)." The hearing panel found that these charges of misconduct were established. Specifically, the panel found that respondent "knew at the time that he made the representation to the California probate court that he did not have cash on hand in this amount." In light of these allegations and findings regarding respondent's mental state, the panel correctly applied Standard 6.12 (suspension generally appropriate for submission of knowingly false documents or

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[8] *Grievance Administrator v John T. McCloskey*, 94-175-GA (ADB 1995) (quoting Louisiana State Bar Association v Krasnov, 488 So2d 1002, 1005 (La, 1986)

statements to a court). However, we agree with the Administrator that the discipline should be increased. The misrepresentations in this case were at least as serious as those in *Grievance Administrator v Russell G. Slade*, ADB 150-89 (ADB 1991) (three year suspension for respondent's failure to inform the court and opposing parties of the death of his client, the plaintiff, in pending litigation).

Our opinion in *Slade, supra,* is also apposite with respect to the misrepresentation to California counsel in the probate proceedings. We note the panel's finding that respondent made intentionally false, misleading and deceptive statements to two California attorneys and that Standard 5.11(b) provides that disbarment is the generally appropriate sanction for such conduct when it "seriously adversely reflects on the lawyer's fitness to practice." The panel did not make an express finding as to this point. However, the panel did find, in applying other standards, that suspension was appropriate, in part because potential injury was caused by respondent's conduct. We must also square the allegations in Count Two with those in Count One pertaining to misrepresentation which are essentially similar and were alleged and found to involve a "knowing" rather than intentional state of mind. Finally, as we are directed to do by *Lopatin*, we consider Michigan precedent, in particular *Slade*, and we conclude that a lengthy suspension is appropriate.

We have also considered the aggravating and mitigating factors identified by the panel and the parties. We note respondent's previous 30-day suspension for neglect and several admonitions for similar conduct. We also acknowledge that respondent made restitution with interest, or, rather, repaid the "loan." However, respondent's argument that injury or potential injury was nonexistent because the loan was secured by the "standing offer of settlement" in the Kowal litigation merits little credence for reasons too obvious to discuss.

IV. Conclusion.

Taking into account all of the factors set forth in the ABA Standards and in *Lopatin*, including the nature of the misconduct found by the panel, the proofs and findings as to respondent's mental state, the degree of harm resulting from respondent's conduct, aggravating and mitigating factors, and applicable precedent, we conclude that the circumstances of this particular case warrant an increase in discipline to a suspension of four years.

Board members William P. Hampton, George H. Lennon, Hon. Richard F. Suhrheinrich, William J. Danhof, and William L. Matthews, C.P.A. concur in this decision.

Board members Lori McAllister, Rev. Ira Combs, Jr., and Billy Ben Baumann, M.D. did not participate.

Board member Andrea L. Solak was voluntarily recused.