STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,

Petitioner/Appellee,

v

Edward M. Czuprynski, P 34114,

Respondent/Appellant,

Case Nos. 18-16-JC; 18-17-GA

Decided: July 13, 2020

Appearances:

Dina P. Dajani, for the Grievance Administrator, Petitioner/Appellee
Respondent in pro per (before the hearing panel)
Michael Alan Schwartz, for the Respondent/Appellant (on review)

BOARD OPINION

In addition to being a practicing attorney, respondent owns a corporation in the business of leasing residential property. Respondent had a disagreement with one of his tenants, the complainant in this matter. According to respondent, complainant parked in front of a garage against his wishes. To address this "annoying, vexing behavior," respondent used a tool to flatten the tires of her truck. He then changed the locks on her apartment and storage area without providing her with a new key. She had the lock replaced, and then respondent had it replaced, and this cycle repeated itself once more until respondent began putting glue in the keyhole of each replacement lock. He did this approximately six to eight times.

Tri-Valley Hearing Panel #2 suspended respondent's license to practice law in Michigan for a period of 90 days, and required him to participate in the State Bar of Michigan's Lawyers and Judges Assistance Program (LJAP) for one year. Respondent filed a petition for review, arguing (1) his actions do not constitute misconduct under the Michigan Rules of Professional Conduct (MRPC), and (2) that the discipline imposed by the hearing panel was not appropriate. For the reasons discussed below, we affirm the hearing panel's findings of misconduct, the order of suspension, and amend the order to clarify that the Monitoring Agreement in which respondent is required to participate is for monitoring his mental health, not his law practice.

I. Background and Proceedings Before the Hearing Panel

The Grievance Administrator filed a combined Notice of Filing of a Judgment of Conviction and Formal Complaint in this matter. The notice advised that respondent had been convicted by a jury of causing serious impairment of a body function, a misdemeanor, and Count One of the formal complaint alleged misconduct based upon respondent's actions during the aforementioned criminal prosecution. The Michigan Court of Appeals vacated respondent's conviction and remanded the criminal proceedings for a new trial, and the portions of this case relating to the conviction were dismissed without prejudice and are not at issue in this appeal.

Count Two alleged that respondent and his company, EMC Development, LLC, leased an apartment to Linda Houle. On June 15, 2015, respondent used a tool to flatten the tires on Ms. Houle's truck, which was parked in front of an adjacent garage. Later that day, respondent changed the locks on the garage and basement storage area where Ms. Houle had been storing her personal property, and failed to provide new keys to Ms. Houle. It is alleged that respondent also changed the deadbolt on Ms. Houle's apartment without notice and without providing her with new keys. In response, Ms. Houle changed the deadbolt so she could access her apartment. On September 10, 2015, respondent put glue in the key hole of the deadbolt lock so Ms. Houle could not unlock the door. Over the next eight days, Ms. Houle replaced the deadbolt lock at least six times, and every time respondent placed glue in the lock. (Formal Complaint, pp 5-6.) On September 18, 2015, Ms. Houle vacated the premises. Based upon this conduct, the Grievance Administrator alleged respondent 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 that is contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3).

At the hearing on misconduct, respondent admitted to flattening Ms. Houle's tires, changing the deadbolt lock, and putting glue in the keyhole, all because Ms. Houle had repeatedly blocked access to respondent's garage with her vehicle. Respondent argued he should not be disciplined for this conduct, however, because at all times he was acting as Ms. Houle's landlord and the owner of EMC Development, not as an attorney. (Tr 11/16/18, p 14.)

Ms. Houle also testified at the hearing. She described finding the tires on her vehicle flattened, and stated she learned from a friend that it was respondent who had flattened the tires. She also described the details of changing the locks, and testified that a video camera placed at the front door of her apartment shows respondent coming to the door of the apartment with a "small bottle in his hand, opening the door and fiddling around in there and then leaving." (Tr 11/16/18, p 49.)

Attorney Paul Stevenson, who is friends with both respondent and Ms. Houle, also testified at the hearing. Mr. Stevenson testified that he was astonished when he received a text message from respondent with a photo of the flattened tires, along with a message that said something to the effect of "I doubt she'll be parking in front of my garage anymore." (Tr 11/16/18, pp 99-100.) Mr. Stevenson testified that he was also present for a meeting between Ms. Houle and respondent, and stated that the meeting ended with respondent screaming at Ms. Houle and Ms. Houle leaving in tears. (Tr 11/16/18, p 95.)

Respondent testified at the hearing as well, and unequivocally admitted that he used a tool to flatten the tires on Ms. Houle's vehicle. (Tr 11/16/18, p 105.) He also admitted that he had an employee change the locks on Ms. Houle's apartment without her knowledge, and that he placed glue into Ms. Houle's door locks. (Tr 11/16/18, p 110.)

Based upon the arguments made by counsel for the Grievance Administrator and respondent's own admissions, the hearing panel found that misconduct was established in Count Two. Specifically, the panel found that respondent committed misconduct by engaging in conduct that exposed the legal profession to obloquy, contempt, censure or reproach in violation of MCR 9.104(2), and by engaging in conduct contrary to justice, ethics, honesty or good morals in violation of MCR 9.104(3). (2/28/19 Misconduct Report.)

At the hearing on discipline, counsel for the Grievance Administrator mentioned two of the American Bar Association Standards for Imposing Lawyer Sanctions (ABA Standards), Standard 5.1 and Standard 7.2, and argued that, in addition to the misconduct found by the panel, respondent had not been candid in his presentations before the panel and that a lack of candor during the disciplinary proceedings is an aggravating factor, warranting a suspension of 180 days. Respondent argued that: "When you go through these things [the ABA Standards] – . . . [t]he only one that fits the whole thing is 5.1. 5.1, I argue and submit is the only one that applies here." (Tr, 5/6/2019, pp 84-86; see also respondent's May 23, 2019 post-hearing brief, p 5.) He then proceeded to argue that Standard 5.12 did not apply because "there's nothing that I did that would seriously adversely reflect on my fitness to practice law" and that he should receive no discipline. (Tr 5/6/2019, p 85; respondent's post-hearing brief at p 5.)

In its sanction report, the hearing panel concluded that the ABA Standard most germane to this case is Standard 5.1, Failure to Maintain Personal Integrity. The panel also found the following aggravating factors were applicable: prior disciplinary offenses 9.22(a); refusal to acknowledge wrongful nature of conduct 9.22(g); vulnerability of the victim 9.22(h) and substantial experience in the practice of law 9.22(i). The panel found mitigating factors to include personal or emotional problems 9.32(c) and character or reputation 9.32(g). The panel did not consider respondent's conduct during the disciplinary proceedings because "[r]egardless of [r]espondent's intent, the actions of [r]espondent did not actually deceive the panel," and respondent ultimately admitted the operative facts that provided the basis for the misconduct.

The panel agreed with respondent and concluded that Standard 5.1 was the most applicable Standard based on the nature of respondent's conduct:

> As previously stated, ABA Standard 5.12 provides that a suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements stated in Standard 5.11 yet seriously adversely reflects on the lawyer's fitness to practice. The Panel finds Respondent's actions resulted in the destruction of Ms. Houle's property and constituted criminal acts which adversely reflect upon Respondent's fitness as a lawyer. The Panel finds that Respondent's actions were vindictive, ill conceived, immature, troubling and motivated by an improper and completely unwarranted sense of revenge or retribution. As such, Respondent's actions "adversely" reflect on his fitness to practice law as they seriously call into question Respondent's judgment and character. [7/30/19 Sanction Report.]

After weighing the testimony along with the applicable aggravating and mitigating factors, the panel determined that a 90-day suspension was appropriate.

The panel also ordered respondent to participate in the State Bar of Michigan's Lawyers and Judges Assistance Program (LJAP) for one year, concluding that respondent's emotional state contributed to the misconduct. The panel acknowledged no medical or psychological testimony was presented, but recognized that "common sense and observation lead inexorably to the conclusion that [r]espondent's emotional state was not healthy." (7/30/19 sanction report.)

Respondent filed a timely petition for review and for stay pending review. Pursuant to MCR 9.115(K), the filing of respondent's petition for review and stay resulted in an automatic stay of the hearing panel Order of Suspension With Conditions issued on July 30, 2019.

II. Discussion

The first issue raised on review is whether the hearing panel properly concluded that the facts alleged in the formal complaint constitute professional misconduct. The formal complaint alleges, and the hearing panel found, violations of subsections (2) and (3) of MCR 9.104, which provides in pertinent part:

> The following acts or omissions by an attorney, individually or in concert with another person, are misconduct and grounds for discipline, whether or not occurring in the course of an attorney-client relationship:
>
> * * *
>
> (2) conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach;
>
> (3) conduct that is contrary to justice, ethics, honesty, or good morals . . . . [MCR 9.104 (emphasis added).]

Respondent asserts that this case is “unusual” because Count Two “does not cite even one of the Rules of Professional Conduct in alleging professional misconduct by [r]espondent.” (Respondent's Brief, p 10.) However, the Michigan Supreme Court has noted that a violation of MCR 9.104 alone can constitute the primary basis of misconduct. See *Grievance Administrator v Fried*, 456 Mich 234 (1997). This Board has also observed: “At times, a ‘general’ or ‘catchall’ rule may not be redundant but may serve as a principal basis for a charge or finding of misconduct,” citing *Fried, supra,* and *Grievance Administrator v Keith J. Mitan, 06-74-GA* (ADB 2008) (applying MRPC 8.4(b) and MCR 9.104(3) where a violation of MRPC 3.3(a)(1) was not found although respondent intentionally withheld material information from the court). *Grievance Administrator v Timothy A. Stoepker*, 13-32-GA (ADB 2014).

Other cases, too, support this proposition. For example, in *Grievance Administrator v Peter E. O’Rourke*, 93-191-GA (ADB 1995), the respondent was charged in a formal complaint with violating various rules, including MCR 9.104(5) (violation of criminal law) and MCR 9.104(3) (conduct contrary to justice, ethics, honesty, or good morals – also found in this case). The charges were premised upon a formal complaint alleging violation of provisions of the penal code proscribing criminal sexual conduct in the fourth degree "or some other lesser included or cognate offense." The panel found that various elements of the relevant statutory sections were not established, but found that the respondent violated MCR 9.104(3). The Board upheld the panel's conclusion and further found that the allegation regarding MCR 9.104(2) (conduct exposing the profession to obloquy, contempt, censure or reproach) had also been proven.

More recently, we found that an attorney's conduct which included defamation, intentional infliction of emotional distress, false light, and stalking was grounds for discipline. See *Grievance Administrator v Andrew L. Shirvell*, 15-49-GA (ADB 2018) (Count I, captioned "stalking and harassment," alleged primarily violations of MCR 9.104(2) and (3), along with MRPC 6.5).

At the misconduct hearing, respondent argued that his conduct regarding Ms. Houle is irrelevant because the allegations refer solely to his conduct as a landlord, not an attorney. (Tr 11/16/18, p 14.) Discipline under the Michigan Court Rules and Michigan Rules of Professional Conduct, however, do not limit discipline only to those offenses that occur within the course of the attorney-client relationship. The Michigan Supreme Court has held that misconduct may include activities that are unrelated to the practice of law, if they otherwise fall within conduct proscribed by the rules. See, e.g., *Grievance Administrator v Nickels*, 422 Mich 254, 260 (1985) (an attorney's promises to reimburse an employee and the subsequent failure to do so is professional misconduct). Thus, activities do not have to be directly related to the practice of law per se to be grounds for discipline:

> The rules of professional conduct adopted by this Court evidence a commitment to high standards and behavior beyond reproach. We cannot stress too strongly the responsibility of members of the bar to carry out their activities, both public and private, with circumspection.
>
> "[The] concept of unprofessional conduct now embraces a broader scope and includes conduct outside the narrow confines of a strictly professional relationship that an attorney has with the court, with another attorney or a client." *State v Postorino*, 53 Wis 2d 412, 419; 193 NW2d 1 (1972).

> A lawyer is a professional "twenty-four hours a day, not eight hours, five days a week." *Id.* [*In re Grimes*, 414 Mich 483, 494-495 (1982).]

Respondent suggests his conduct is "minor" and "trifling" and thus does not rise to the level of violating MCR 9.104(2) and (3). Such a conclusion is contradicted by the fact that his conduct was sufficient to warrant a finding in a civil action in favor of Ms. Houle on seven violations of Michigan's Anti-Lockout Statute (MCL 600.2918(2)), seven violations of Michigan's Consumer Protection Act (MCL 445.911), one count of trespass to personal property and damage or waste to land, and one count of trespass to personal property, with an award of $4,640 in damages plus approximately $28,000 in attorney fees. Respondent's conduct was anything but minor or insignificant.

The second issue raised on review is whether the hearing panel's 90-day suspension was appropriate under the ABA Standards. In reviewing the sanctions imposed by a hearing panel, this Board has the responsibility to apply the Standards and case law so as to "ensure a level of uniformity and continuity" in disciplinary matters. *Grievance Administrator v Robin H. Kyle*, 13-14-GA (ADB 2016); *Grievance Administrator v Brent S. Hunt*, 12-10-GA (ADB 2012), p 7, citing *Grievance Administrator v August*, 438 Mich296, 304; 475 NW2d 256 (1991). However, the Board traditionally does not disturb a panel's assessment unless it is clearly contrary to fairly uniform precedent for similar conduct or is clearly outside the range of sanctions imposed for the type of violation at issue. *Grievance Administrator v Gregory J. Reed*, 10-140-GA (ADB 2014), at p 15.

We frequently refer to a four-step process when applying the ABA Standards:

> First, the following questions must be addressed: (l) 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?); and, (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?).
>
> The second step of the process involves identification of the applicable standard(s) and examination of the recommended sanctions. Third, aggravating and mitigating factors are considered. Finally, "panels and the Board must consider whether the ABA Standards have, in their judgment, led to an appropriate

> recommended level of discipline in light of factors such as Michigan precedent, and whether the Standards adequately address the effects of the misconduct or the aggravating and/or mitigating circumstances." [*Grievance Administrator v Arnold M Fink (After Remand)*, 96-181-JC (ADB 2001), pp 1-2, lv den 465 Mich 1209 (2001), citing *Lopatin, supra*.]

The levels of discipline set out in the ABA Standards are not absolute but are described in the preface to the Standards as recommended sanctions which are generally appropriate, absent aggravating or mitigating circumstances. Moreover, the Supreme Court has cautioned the Board and hearing panels that the directive to follow the ABA Standards should not be viewed as an instruction to abdicate the responsibility to exercise independent judgment. *Lopatin*, 462 Mich at 248 n 13. Finally, "where, as here, it is acknowledged that no other Standard comes closer to the facts than one under consideration, it is not improper to consider an analogous or nearly-applicable standard as one authority, adjusted as necessary, for a possibly proper range of sanctions." *Kyle, supra*, p 8 (footnote omitted).

As has been noted above, the hearing panel found that a suspension is appropriate under Standard 5.12 [Failure to Maintain Personal Integrity]. Standard 5.12 provides that "[s]uspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice."

Standard 5.12 has been applied to a wide variety of misconduct, including in one case involving a case of what can only be described as an assault during a deposition. See, *Grievance Administrator v Robert H. Golden*, Case No. 96-269-GA (ADB 2001). The formal complaint in that case alleged that the respondent grabbed opposing counsel by placing his hands around his neck and head, and when counsel said that his glasses were being broken, respondent replied, "I'll break your head." Among the allegations and findings of misconduct were MCR 9.104(2) and (3). No criminal laws were cited in the formal complaint, but Standard 5.12 was considered to be applicable and guided the Board in its decision to impose a suspension of 60 days with conditions requiring respondent to obtain mental health treatment.

Here, the evidence amply supports the panel's decision to look to Standard 5.12 in gauging the appropriate level of discipline. Respondent admitted to flattening Ms. Houle's vehicle tires and has admitted to destroying her property by putting glue in her locks. The evidence shows that this was not done negligently, but rather intentionally and in retaliation. Therefore, it was proper for the hearing panel to rely on Standard 5.12 in determining discipline in this case.

Respondent takes issue with the fact that he was never charged with a violation of MCL 750.377a, and thus cannot be found to have violated it here. However, as stated above, an attorney does not need to be charged or convicted of a violation of a criminal law to be found to have committed professional misconduct. The burden of proof is a preponderance of the evidence with regard to the decision on the issue of misconduct. MCR 9.115(J)(3); *Grievance Administrator v Michael L. Stefani*, 09-47-GA (ADB 2011). In addition, a suspension under Standard 5.12 can be imposed even when no criminal charges have been filed against the lawyer. See, e.g., *In re Depew*, 2327 P3d 24 (Kan 2010) (lawyer engaged in illegal conduct when he exposed himself to a court administrative assistant, warranting a one-year suspension); *State ex rel Oklahoma Bar Association v Dobbs*, 94 P3d 31 (Okla 2004) (notwithstanding lack of criminal conviction, one-year-and-one-day suspension imposed for multiple acts of misconduct, including lawyer's false civil deposition testimony amounting to perjury).

Respondent also asserts that the panel improperly found he engaged in criminal activity, because the formal complaint did not allege a criminal act and thus he was not put on notice of the charges against him. Respondent's argument is misplaced. This is not a case where the panel found a rule violation that was not charged in the formal complaint. Here, the panel determined respondent violated only 9.104(2) and (3). Subsequently, in assessing the appropriate discipline for a violation of these rules, the panel concluded respondent's conduct amounted to "conduct that exposes the legal profession . . . to obloquy, contempt, censure, or reproach," and "conduct that is contrary to justice, ethics, honesty, or good morals." In noting that the conduct also violated the criminal law, the hearing panel did not discipline respondent for uncharged conduct. Rather, the hearing panel simply provided an analysis as to why Standard 5.12 is applicable in this case.

The hearing panel's imposition of a 90-day suspension is also supported by the applicable aggravating and mitigating factors. The most significant aggravating factor in this case is respondent's refusal to acknowledge the wrongfulness of his conduct. Standard 9.22(g). In discussing whether respondent's conduct seriously adversely reflects on respondent's fitness to practice, the panel concluded:

> The Panel finds Respondent's actions resulted in the destruction of Ms. Houle's property and constituted criminal acts which adversely reflect upon Respondent's fitness as a lawyer. The Panel finds that Respondent's actions were vindictive, ill conceived, immature, troubling and motivated by an improper and completely unwarranted sense of revenge or retribution. As such, Respondent's actions "adversely" reflect on his fitness to practice law as they seriously call into question Respondent's judgment and character. [Sanction Report, p 5.]

The hearing panel also considered respondent's prior disciplinary offenses, vulnerability of the victim, and substantial experience in the practice of law. The panel aptly concluded:

> Simply put, Respondent should have known better than to carry out a campaign of malicious destruction of Ms. Houle's property which in essence constituted acts of extra-judicial self-help. Respondent was, or certainly should have been aware of, the impropriety of his conduct yet he proceeded nonetheless. Lastly, throughout the proceedings Respondent, while admitting to the underlying misconduct, consistently sought to justify his actions or escape the ramifications thereof. Rather than contrition, the Panel witnessed a rejection of responsibility and obfuscation. A prime example was Respondent's insistence that he was acting in his capacity as a "landlord" when he committed the misconduct. Not only was this position legally incorrect it was indicative of Respondent's continuing unwillingness to acknowledge the wrongful nature of his conduct, at least in relation to his standing as a member of the State Bar of Michigan.

In addition, the hearing panel could have considered respondent's illegal conduct as an aggravating factor under Standard 9.22(k) (illegal conduct), even if the formal complaint did not allege the violation of a crime. See *In re Depew*, 237 P3d 24, 35 (Kan 2010) (approving application of ABA Standard 9.22(k), even though the respondent was not charged with or convicted of criminal conduct); *In re Kamb*, 305 P3d 1091, 1099 (Wash. 2013) (same).

All of these factors are interrelated and figure prominently in the critical decisions regarding how respondent's conduct reflects on his fitness to practice and what level of discipline is necessary for the protection of the public, other members of the bar and the legal system. Because the Standards do not recommend specific suspension lengths, it is those considerations which almost always drive the decision as to the appropriate level of discipline. In this case, the record before the panel provided sufficient support for the imposition of a 90-day suspension and a finding that the conduct seriously adversely reflects on respondent's fitness to practice.

Respondent also complains that he should not be subject to the condition requiring him to undergo LJAP monitoring for one year. Respondent interprets the condition as a "practice monitor," however it appears from the language of the order, when read in conjunction with the sanction report and the panel's concerns expressed on the record, that the hearing panel intended the Monitoring Agreement to cover mental health monitoring. Accordingly, we amend the order to clarify that the Monitoring Agreement in which respondent is required to participate is for monitoring his mental health, not his law practice.

Finally, respondent's argument that MCR 9.104(2) and (3) are vague and overbroad, and thus unconstitutional, is really a derivation of his notice argument. These rules, while general, have been upheld and applied repeatedly by the Michigan Supreme Court, this Board, and hearing panels. And, as we have stated above, respondent was afforded more than sufficient notice of the allegations against him in this matter.

III. Conclusion

We find no error in the hearing panel's conclusion that violations of MCR 9.104(2) and (3), as charged in Count Two of the formal complaint, were established by the uncontested facts in the record below. Furthermore, the Board is not persuaded that the hearing panel's decision to order a 90-day suspension with a condition regarding counseling monitored by LJAP was inappropriate. We therefore affirm the hearing panel's order in its entirety. We only amend the order to the extent necessary to clarify that the Monitoring Agreement in which respondent is required to participate is for monitoring his mental health.

Board members Jonathan E. Lauderbach, Michael B. Rizik, Jr., Barbara Williams Forney, James A. Fink, Karen O'Donoghue, Linda Hotchkiss, MD, and Michael S. Hohauser concur in this decision.

Board Member Anna Frushour did not participate in the issuance of this opinion.

Board Member John W. Inhulsen was absent and did not participate.