

Attorney Discipline Board

Grievance Administrator,

Petitioner/Appellee,

v

Sue E. Radulovich, P 33346,

Respondent/Appellant,

Case No. 06-50-GA

Decided: September 18, 2007

FILED
ATTORNEY DISCIPLINE BOARD
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Appearances:

Dina P. Dajani, for the Grievance Administrator, Petitioner/Appellee
Philip J. Thomas, for the Respondent/Appellant

BOARD OPINION

The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118 and has considered the arguments of the parties presented in their respective briefs and in their arguments at review hearings conducted on July 19, 2007. The Board is not persuaded that the hearing panel erred in its legal and factual conclusions regarding the misconduct charged in the complaint or in its assessment of discipline. The hearing panel's order of March 21, 2007 suspending respondent's license to practice law for 120 days is therefore affirmed.

In a report on misconduct filed November 17, 2006, Tri-County Hearing Panel #2 concluded that the Grievance Administrator had established the charges of misconduct in the formal complaint by a preponderance of the evidence, to wit: That during her representation of a client, respondent was held in contempt by the Wayne County Circuit Court for accepting a mortgage in violation of the court's previous injunctive order; that she subsequently brought a proceeding deemed by the court to be frivolous against the attorney/receiver who brought the contempt action which was the subject of Count One; that in her capacity as a plaintiff in real estate litigation involving a neighbor, respondent disobeyed a court order to discharge a *lis pendens* and was found to have filed a complaint that was without merit; that respondent filed a lawsuit alleging defamation against one of

the individuals who had testified against her in the real estate litigation described in Count Three and that defamation suit was dismissed because it was without merit. The hearing panel conducted a separate hearing on discipline and entered its final report and order on March 21, 2007 which directed that respondent's license to practice law in Michigan should be suspended for 120 days. Respondent petitioned for review on the grounds that the panel's findings of misconduct are not supported by the record for the reason that the panel improperly adopted the findings of civil tribunals; that respondent was prejudiced by the delay between the alleged conduct and the filing of the Grievance Administrator's formal complaint and that the discipline imposed is excessive.

In reviewing a hearing panel's decision, the Board must determine whether the panel's findings of fact have proper evidentiary support in the whole record. *Grievance Administrator v August*, 438 Mich 296, 304; 475 NW2d 256 (1991). 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. *Grievance Administrator v Carrie L P Gray*, 93-250-GA (ADB 1996), lv den 453 Mich 1216 (1996).

In accordance with *Grievance Administrator v Geoffrey N. Fieger*, 97-83-GA (ADB 1999), the panel below properly admitted and considered the court records offered into evidence by the Grievance Administrator in accordance with MCL 600.2106. The panel correctly noted that those orders and court documents created a rebuttable presumption as to the court's factual findings and that respondent was not only entitled to supplement the record with testimony and other relevant evidence, but was entitled to argue to the panel that the facts recited in those court orders do not amount to misconduct within the scope of MCR 9.104. Respondent availed herself of that opportunity to present evidence and to argue that her actions did not constitute professional misconduct under the rules cited in the complaint. Upon our review of the whole record, we conclude that there was sufficient evidentiary support for the panel's factual findings and we are not persuaded that the panel erred in its application of MCR 9.104 and the Michigan Rules of Professional Conduct to those facts.

With regard to respondent's claims of laches, there is support in the record for the panel's findings that respondent did not establish that any delay in the filing of the formal complaint was accompanied by a clear demonstration of substantial prejudice. See *Grievance Administrator v Eric Clark*, 95-59-GA (ADB 1997). Nor did respondent establish "actual and substantial prejudice," *People v Bisard*, 114 Mich App 784 (1982). While the Attorney Discipline Board has upheld a

panel's dismissal of a formal complaint based upon conduct for which a respondent had previously been admonished, the Board emphasized in that case, "Nor do we imply that the Attorney Grievance Commission may not reopen an investigation when it receives new evidence or evidence of continuing misconduct, even when a letter of admonition has been issued. *Grievance Administrator v Andree Dufresne*, 82-87 (ADB 1988) (emphasis added).

Finally, the Board is not persuaded that the hearing panel erred in its decision to impose a suspension of 120 days. The panel's report on discipline, filed March 21, 2007, states, in a conclusory fashion, that it considered the following in arriving at its decision: 1) the evidence of record; 2) the testimony presented; 3) the duties violated; 4) respondent's mental state at the time of the misconduct and at the time of the discipline hearing; 5) the extent of actual or potential injury caused by the misconduct; 6) the sanctions recommended in Standards 4.0 - 8.0 of the American Bar Association's Standards for Imposing Lawyer Sanctions; 7) relevant aggravating and mitigating factors; 8) the lack of previous discipline; 9) precedent of the Michigan Supreme Court and 10) the Attorney Discipline Board and the recommendations of the parties.

While the Board's standard of review for its review of a panel's factual findings is somewhat deferential (provided, of course, that there is evidentiary support for those findings), the Board has a greater degree of discretion with regard to its review of the ultimate result. *Grievance Administrator v August, supra; In Re Daggs*, 411 Mich 304, 318-319; 307 NW2d 66 (1981).

Respondent argues on review that the panel's decision on the level of discipline is faulty because the panel failed to articulate the specific ABA Sanction Standard to be applied to the misconduct in this case. However, at no stage of these proceedings, including arguments to the Board on review, has respondent herself offered an analysis under the ABA Standards or identified a specific Standard to be applied in this case. The Grievance Administrator, by contrast, presented a cogent argument to the panel at the hearing on discipline for application of ABA Standard 6.22 which suggests that a suspension is generally appropriate when a lawyer knowingly violates a court order or rule and there is injury or potential injury to a client or a party or interference or potential interference with a legal proceeding.

A fair reading of the panel's report on discipline leads to the conclusion that the panel imposed discipline in this case under ABA Standard 6.22 - the only Standard identified and argued by either party. For the reasons argued by the Grievance Administrator to the panel and the Board,

we believe that ABA Standard 6.22 is the appropriate Standard and that, absent aggravating or mitigating factors, suspension is generally appropriate for the misconduct established in this case.

The Board has weighed the aggravating and mitigating factors identified by the parties and has considered the prior Board opinions, which have varying degrees of relevance to the facts in this case. The cases cited by the parties are each distinguishable, with few, if any, involving the pattern of misconduct presented here. Taking into consideration respondent's lack of a prior disciplinary history as a mitigating factor, we conclude that the 120 day suspension ordered by the panel was appropriate and that it should not be modified.

Accordingly, the hearing panel order of suspension entered March 21, 2007 is **AFFIRMED**.

Board members William P. Hampton, Lori McAllister, George H. Lennon, Billy Ben Baumann, M.D., William J. Danhof and William L. Matthews, C.P.A. concur in this decision.

Board members Rev. Ira Combs, Jr. and Hon. Richard F. Suhrheinrich did not participate.

Board member Andrea L. Solak was voluntarily recused.
