STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,

Petitioner/Appellant,

v

Paula D. Thornton, P 52492,

Respondent/Appellee,

Case No. 05-112-GA

Decided: June 21, 2007

Appearances:

Patrick K. McGlinn, for Grievance Administrator, Petitioner/Appellant
Paula D. Thornton, Respondent/Appellee, In Pro Per
David H. Frost, for Respondent/Appellee

BOARD OPINION

The Grievance Administrator petitioned for review of the hearing panel's order which found misconduct under MRPC 6.5 but dismissed the formal complaint's allegations that respondent violated MRPC 1.9(c)(1). For the reasons discussed below, the decision of the hearing panel is modified with regard to the charge of misconduct under Michigan Rule of Professional Conduct 1.9(c)(1). The remainder of the panel's decision, including the imposition of a reprimand, will be affirmed.

This matter was argued to a subboard of Members Hampton, McAllister, Danhof and Suhrheinrich on February 19, 2007. Respondent did not file a brief or appear in person, but did file an emergency motion for adjournment with a doctor's evaluation (bronchitis following dengue fever) and proof of admittance to the emergency room. She also arranged for counsel to appear before the Board to request an adjournment. Counsel for the Administrator did not oppose the request and agreed to submit the case on briefs. After deliberation by the subboard, the Board Chairperson announced that respondent's attendance was excused, that the request for adjournment was denied, and that the matter would be considered on the briefs and record.

The Administrator correctly argues that the dismissal of paragraph 10(b) of the formal complaint was erroneous. This matter arises out of a dispute between respondent and her client in an immigration matter. The complainant sought respondent's assistance in obtaining a green card. Respondent accepted a fee, met with the client and prepared papers, and then the client's green card arrived before any of respondent's work product had been filed. The client requested a refund and indicated she would get an attorney and/or file a grievance to obtain return of the fees.

It is undisputed that respondent left a message on her client's answering machine threatening to notify immigration authorities of the client's spouse's outstanding arrest warrant. Respondent further stated that the couple was "free to get a lawyer or do whatever you want," but that they were in for a battle they would wish they had never started, that the husband's green card could be taken away and that the client "will be kicked out of the country."

Although this matter was not extensively briefed before the panel or on review, we conclude that respondent's actions constitute a violation of MRPC 1.9(c)(1).[1] See, e.g., *In re Tew*, 703 NE2d 1049 (Ind, 1998) (threats to disclose confidential information to "gain an advantage over [former clients] and to keep them from making demands for the return of their money"); *In re Steven B. Geller*, 777 NE 2d 1099 (Ind, 2002) (lawyer's threats to reveal former client's conviction for child molesting to fellow inmates in prison in retaliation for client's threat to file a grievance violated Indiana's version of the rule prohibiting use of information relating to the representation to the disadvantage of a former client); and, *Grievance Administrator v Ross B. Meretsky*, DP 244/82 (ADB 1984) (written threat to "tell the true facts" regarding a client's criminal case in connection with a dispute over the client's payment of legal fees). Accordingly, the panel's order is hereby modified to include this violation as a basis for discipline.

The Administrator also asks that this matter be remanded for further proceedings on discipline. We decline to do so. The Administrator stipulated that reprimand was the appropriate

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[1] MRPC 1.9 provides in pertinent part:

> (c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:
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> (1) use information relating to the representation to the disadvantage of the former client except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client, or when the information has become generally known.

discipline for the violation of MRPC 6.5. The stipulation expressly provides that it is without prejudice to the Administrator's right to seek review of the dismissal of the MPRC 1.9(c)(1) charge. However, we must presume that the aggravating and mitigating factors applicable to this charge cannot vary from those applicable to the MRPC 6.5 violation. The Administrator asserts that "MRPC 1.9 is clearly covered by the ABA Standards and, moreover, the violation would be that of a knowing or intentional violation which would subject respondent to a presumptive level of discipline above that of a reprimand."[2] The Standards' Cross-Reference Table (Appendix 1) directs the reader to Standard 4.3 for MRPC 1.9 violations. Unfortunately, we find no helpful guidance in that standard. Nor do we find precise or useful guidance in other standards. We do, however, find Michigan precedent, to wit, *Meretsky, supra*, in which the respondent was reprimanded under similar circumstances.

We agree with the Administrator that the facts here establish a violation of MRPC 1.9(c)(1), and that respondent's conduct is troubling – even if, as respondent asserted, she honestly believed herself to have been threatened by her client's husband. We reiterate the Board's observation in *Meretsky* that such conduct "goes beyond mere poor judgment and lack of professional decorum and severely undermines the image of the legal profession as well as the integrity of the attorney/client privilege." Moreover, our decision here should not be seen as a ceiling as to the appropriate level of discipline for these cases.

Under the unique circumstances presented in this case, the Board concludes (1) that the record is sufficient to determine the appropriate discipline for the MRPC 1.9(c)(1) violation; (2) that the purposes of discipline (including protection of the public) and the interest of promoting expeditious proceedings[3] and adjudicative economy are not inconsistent; and (3) that a reprimand is the appropriate level of discipline for this particular case.

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

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

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[2] Petitioner's Brief in Support of Cross-Petition for Review, p 10.

[3] See, MRPC 9.102(A) (attorney discipline procedures must be as expeditious as possible).