FILED
ATTORNEY DISCIPLINE BOARD
March 9, 2022

STATE OF MICHIGAN

Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner-Appellee,

v Case No. 15-154-GA

SCOTT E. COMBS, P 37554,

Respondent-Appellant.
_____/

ORDER DENYING RESPONDENT'S MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO MCR 2.612(C)(1)(f)

Issued by the Attorney Discipline Board
333 W. Fort St., Ste. 1700, Detroit, MI

This case has been fully litigated and is closed. On August 3, 2021, the Michigan Supreme Court denied respondent's application for leave to appeal from this Board's April 1, 2021 opinion and order increasing discipline from three years to disbarment. Respondent then moved the Court for reconsideration of its order denying leave; this motion was denied on December 1, 2021. On December 14, 2021, respondent filed the instant "Motion to Apply New Michigan Supreme Court Standard and Consistency of State Bar Ruling" with this Board, relying upon MCR 2.612(C)(1)(f). For the reasons discussed below, respondent's motion is denied.

On April 1, 2021, the Attorney Discipline Board entered an opinion and order increasing respondent's three-year suspension to disbarment for, in part, misappropriation of client funds, and ordering restitution in the amount of $19,752.10 to Carl Novick. Respondent filed an Application for Leave to Appeal in the Michigan Supreme Court on April 29, 2021, seeking review of the Board's findings of misconduct, level of discipline, and order of restitution. While respondent's application was pending, on June 18, 2021, the Michigan Supreme Court issued an order in a separate, unrelated matter, *Grievance Administrator v Lawrence*, 507 Mich 991 (2021). On June 24, 2021, respondent filed supplemental authority with the Michigan Supreme Court, citing the *Lawrence* order, claiming that it required the Court to vacate the Board's April 1, 2021 opinion and order and remand for application of *Lawrence*, or, in the alternative, the Court should vacate the Board's opinion and reinstate the three-year suspension ordered by the hearing panel.

On August 3, 2021, the Michigan Supreme Court denied respondent's application for leave to appeal. Respondent filed a motion for reconsideration on August 24, 2021, again arguing that the holding in *Lawrence* required the Court to remand his case. On December 1, 2021, the Court denied respondent's motion for reconsideration.

Respondent is now asking this Board to essentially reconsider its April 1, 2021 opinion and order and apply *Lawrence* to his case pursuant to MCR 2.612(C)(1)(f), which provides for relief from judgment for "[a]ny other reason justifying relief from the operation of the judgment." Respondent also asks the Board to reconsider the order of restitution payable to complainant, Carl Novick, claiming that the Client Protection Fund Standing Committee's denial of Mr. Novick's claim for reimbursement further supports respondent's claim that res judicata and collateral estoppel apply here and preclude any award of restitution.

The Grievance Administrator filed a response to respondent's motion on December 17, 2021, asserting that there is no procedural mechanism for the relief sought by respondent, and respondent has not otherwise set forth a proper basis for relief. Respondent filed a reply on December 23, 2021, reiterating the arguments in his motion.

Respondent cites *Heugel v Heugel*, 237 Mich App 471; 603 NW2d 121 (1999), in support of his motion. That case sets forth the standard applicable to relief sought in a motion such as this one:

> In order for relief to be granted under MCR 2.612(C)(1)(f), the following three requirements must be fulfilled: (1) the reason for setting aside the judgment must not fall under subsections a through e, (2) the substantial rights of the opposing party must not be detrimentally affected if the judgment is set aside, and (3) extraordinary circumstances must exist that mandate setting aside the judgment in order to achieve justice. *Altman v Nelson*, 197 Mich. App. 467, 478; 495 N.W.2d 826 (1992); *McNeil v Caro Community Hosp*, 167 Mich. App. 492, 497; 423 N.W.2d 241 (1988). Generally, relief is granted under subsection f only when the judgment was obtained by the improper conduct of the party in whose favor it was rendered. *Altman*, *supra*; *McNeil*, *supra*. [*Heugel*, *supra* at 478-79.]

Although respondent claims that the order in *Lawrence* constitutes a major change in the law, it does not, in fact, change the law applicable to this case, which is reflected in ABA Standard 4.1:

> Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, the following sanctions are generally appropriate in cases involving the failure to preserve client property:
>
> * * *
>
> 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

Decisions of the hearing panels, the Board, and the Supreme Court have, for many decades, been consistent with this approach to assessing the appropriate level of discipline in a particular case. The Court in *Lawrence* did not alter this case law which developed well before,

and has been consistently applied after, the adoption of the Standards in 2000. Rather, the Court reaffirmed that "disbarment is generally the appropriate sanction for [conduct set forth in] Standard 4.11," and concluded that "the Board did not adequately consider the presence of mitigating factors under Standard 9.3 or the absence of aggravating factors under Standard 9.2" in that case.

The Court, in adopting the Standards, sought to advance consistency, i.e., promote the "principle that equivalent misconduct should be treated equivalently," while continuing to recognize that "no two misconduct cases are identical." *Grievance Administrator v Lopatin*, 462 Mich 235, 244 (2000). Rather, "attorney misconduct cases are fact-sensitive inquiries that turn on the unique circumstances of each case. *Id* at n 9. Here, the panel and the Board followed the Standards and the methodology set forth in *Lopatin*, identified various Standards applicable to respondent's acts of misconduct, and considered asserted mitigating and aggravating factors. The Board reviewed the panel's decision, and the Court, faced with respondent's strenuous arguments that *Lawrence* compelled a different result, denied leave and reconsideration.

Nothing in *Lawrence* compels a result different than that ordered by the Board in its April 21, 2021 opinion and order. In *Lawrence*, the panel found that the mishandling of funds occurred as a result of mismanagement. Here, the panel found that respondent's misconduct was intentional. The panel and the Board did what respondent is now requesting, and considered all of the mitigating factors cited by respondent's counsel at the sanction hearing, including absence of a prior disciplinary record [9.32(a)], absence of a selfish motive [9.32(b)], personal or emotional problems [9.32(c)], cooperative attitude towards the proceedings [9.32(e)], character or reputation [9.32(g)], physical disability [9.32(h)], delay in disciplinary proceedings [9.32(j)], and remorse [9.32(l)]. The Board weighed these against the multiple aggravating factors present, including dishonest or selfish motive [9.22(b)]; multiple offenses [9.22(d)]; submission of false evidence, false statements, or other deceptive practices during the discipline process [9.22(f)]; refusal to acknowledge the wrongful nature of the conduct [9.22(g)]; and substantial experience in the practice of law [9.22(i)].

Furthermore, misappropriation was not the only misconduct found by the hearing panel. Nor was Standard 4.1 the only applicable one. The hearing panel found, and the Board agreed, that disbarment would have likewise been appropriate under either 4.61 (Lack of Candor), which provides that "disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potential serious injury to a client;" and/or 6.11 (False Statements, Fraud, and Misrepresentation), which provides that "disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding."

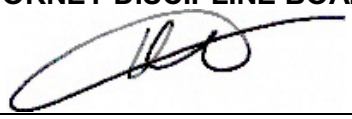
In addition, this Board has already determined that respondent's arguments regarding res judicata and collateral estoppel as applied to the order of restitution are inapplicable here. This issue was appealed to the Michigan Supreme Court, and leave to appeal was denied on August 3, 2021.

Respondent is unable to meet the requirements of MCR 2.612(C)(1)(f). There are no "extraordinary circumstances" which mandate setting aside the Board's April 1, 2021 opinion and order in order to achieve justice.

NOW THEREFORE,

IT IS ORDERED that respondent's motion for relief from judgment pursuant to MCR 2.612(C)(1)(f) is **DENIED**, in its entirety, for the reasons stated above.

ATTORNEY DISCIPLINE BOARD

By: 

Michael B. Rizik, Jr., Chairperson

DATED: March 9, 2022

Board members Michael B. Rizik, Jr., Linda Hotchkiss, M.D., Rev. Dr. Louis J. Prues, Karen D. O'Donoghue, Michael S. Hohauser, Peter A. Smit, Linda M. Orlans, and Jason M. Turkish concur in this decision.

Board Member Alan Gershel recused himself and did not participate.