STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,

Petitioner/Appellee,

v

Cheryl M. Warren, P-37448,

Respondent/Appellant,

Case Nos. 01-16-GA

Decided: October 2, 2003

Appearances:
Stephen P. Vella, for Grievance Administrator, Petitioner/Appellee
Michael Alan Schwartz, for the Respondent/Appellant

BOARD OPINION

On November 6, 2002, Tri-County Hearing Panel #13 issued a report and order setting forth its conclusions that the respondent had violated the provisions of Michigan Rules of Professional Conduct 1.4(a) and (b), 1.5(a), 1.8(a), 1.14(a) and 6.5(a), based upon its findings that the charges of professional misconduct set forth in Counts One, Two and Three of the Grievance Administrator's second amended formal complaint had been established. (The hearing panel's report on misconduct filed November 6, 2002 is attached as Appendix A.) Following a separate hearing on discipline in accordance with MCR 9.115(J)(2), the panel issued its report and order on April 8, 2003. (The hearing panel's report on discipline filed April 8, 2003 is attached as Appendix B.) Based upon its application of the American Bar Association's Standards for Imposing Lawyer Sanctions and its consideration of the appropriate factors in aggravation and mitigation under ABA Standards 9.22 and 9.32, the hearing panel concluded that the respondent should be suspended from the practice of law for a period of 18 months and that, as conditions precedent to reinstatement under MCR 9.123(B) and MCR 9.124, the respondent should be required to accomplish the following:

1. Prepare and execute a promissory note and mortgage securing a $70,000 loan from complainant, Michael Levine to respondent;
2. Duly record that mortgage with the Wayne County Register of Deeds against the respondent's office condominium property;
3. Ensure that respondent is current with respect to all monthly payments under the note and mortgage;
4. Pay additional restitution to the complainant in the amount of $9,800, representing fees deemed to be excessive and the additional amount of $4,650 for losses sustained in a transaction involving a condominium in the City of Ann Arbor; and
5. Take and successfully pass the Multi-State Professional Responsibility Examination.

The respondent petitioned for review in accordance with MCR 9.118(A). The Grievance Administrator did not seek review of the hearing panel's findings or the level of discipline imposed. The respondent's petition for a stay of discipline pending review was denied by the Attorney Discipline Board in an order entered April 24, 2003. The respondent's suspension from the practice of law became effective April 30, 2003.

The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118, including review of the record below and consideration of the briefs and arguments submitted by the parties at a public review hearing conducted June 18, 2003. For the reasons discussed below, we conclude that the hearing panel's order of suspension and restitution should be modified with regard to the amount of restitution to the complainant but that in all other respects the hearing panel's decision should be affirmed.

I. Notice of Misconduct Charges

The respondent argues that the panel made findings of misconduct which were not charged in the complaint. It is well settled in Michigan that "an attorney may only be found guilty of misconduct as charged in the complaint." State Bar Grievance Administrator v Jackson, 390 Mich 147, 155 (1973). See also, In Re Ruffalo, 390 US 544, 551-552; 88 S Ct 1222, 1226; 20 L Ed 2d 117, 122-123 (1968). Review of the hearing panel's rulings on admissibility during the course of these proceedings reveals that the hearing panel properly recognized that while the Grievance Administrator's complaint must give a respondent notice of the charges of professional misconduct, the complaint need not provide a day-by-day, detailed description of every single act or omission which contributed to the charged misconduct. Moreover, the hearing panel's report on misconduct reveals that its findings of misconduct were explicitly based on the conduct and rule violations charged in the Grievance Administrator's second amended complaint. We conclude that the hearing

panel's findings of misconduct did not stray beyond the parameters of the second amended formal complaint.

II. Evidentiary Support for the Panel's Findings

The respondent also argues that the hearing panel's findings lacked proper evidentiary support. With the exception of the hearing panel's determination as to the amount of respondent's attorney fees deemed to be excessive, we conclude that the hearing panel's findings do, in fact, have appropriate evidentiary support in the record and must therefore be affirmed under the standard of review applicable in these proceedings. See, Grievance Administrator v August, 438 Mich 296, 304; 304 NW2d 256 (1991); In Re Grimes, 414 Mich 483; 326 NW2d 380 (1982). For example, the respondent's brief in this case attacks the credibility of witness Caren Burdi by suggesting that because Ms. Burdi did not retain a tape recording of the alleged statement from respondent regarding Ms. Burdi's children, the conversation must not have occurred. As the Grievance Administrator has pointed out, there was no claim in the record that Ms. Burdi taped that particular conversation. More importantly, however, Ms. Burdi testified unequivocally that she had a direct telephone communication with the respondent during which respondent stated, "I know you have children and I can find them." (Tr 02/13/02, pp 241-242, 323.) The respondent testified that she did not make such a statement. (Tr 07/16/02, pp 146-147.) The hearing panel resolved that issue of credibility in favor of Ms. Burdi and against respondent. When a hearing panel's findings involve issues of credibility, the Board has traditionally deferred to the hearing panel, which had a first-hand opportunity to observe and assess the demeanor of the witnesses. Grievance Administrator v Eugene F. Williams, 98-203-GA (ADB 2000); Grievance Administrator v Neal C. Szabo, 96-228-GA (ADB 1998).

We conclude, however, that there was insufficient evidentiary support for one aspect of the hearing panel's findings, that is, the amount collected by respondent from Michael Levine which could properly be described as an "excessive fee." In ordering that respondent make restitution to the complainant in the amount of $9,800 for excessive fees, the panel itself noted in footnote 1, page 4:

> The Panel acknowledges that it is not able to ascertain the precise amount by which Respondent overcharged Mr. Levine for legal services. Admittedly, some legal work of value was performed by Respondent. Nevertheless, the Panel is firmly convinced that the total of $19,600.00 paid by Michael Levine was grossly excessive

> given the nature of Respondent's services. Consequently, the Panel has ordered reimbursement of fifty (50%) percent of the fees paid, believing that to be the minimum of the overcharge.

In its report on misconduct entered November 6, 2002, the hearing panel reported that the underlying factual allegations in Count One of the second amended formal complaint could be summarized as (1) failure of respondent to adequately inform Michael Levine of the nature and extent of legal services being provided; and (2) billing and collecting fees in the amount of $7,620 for services during the three week period of April 5, 1997 to April 22, 1997.

The record discloses that the complainant, Michael Levine, suffered a heart attack and was hospitalized on or about April 1, 1997. On the same date, the complainant signed a durable power of attorney granting the respondent authority over his personal affairs as well as to perform his duties as the personal representative of the estate of his father, Abraham Levine (Ex. 102). Mr. Levine was released from the hospital on April 17, 1997 and returned home that day (Tr 07/16/02, p 170). On April 20, 1997, respondent Warren wrote a check to herself from Mr. Levine's bank account in the amount of $3,000 (Ex. 105). On April 22, 1997, respondent wrote a second check to herself, from the complainant's bank account in the amount of $4,620. During the period April 5, 1997 to April 22, 1997, respondent billed the complainant legal fees of $2,520 (18 hours at the rate of $140 per hour) for services described as "legal estate and tax planning" and the sum of $5,100 for personal services performed under the power of attorney. Those fees were billed at the rate of $75 per hour for 68 hours.

With regard to the legal fees charged and collected by the respondent for the period April 5, 1997 to April 22, 1997, the panel found:

> Applying the factors enumerated in MRPC 1.5(a)(1) through (8), the Panel concludes that the amounts charged and collected by Respondent Warren were clearly excessive, and violative of the prohibitions of MRPC 1.5(a). In particular, it is noted that during the 18-day period in question (April 5 to April 22), "taking care" of Mr. Levine's bills entailed writing a total of ten (10) checks. Between April 23 and May 10, Respondent wrote an additional five (5) checks. See, Petitioner's Ex. #105. Of the fifteen checks written, three were payable to Respondent, herself.
>
> Moreover, Respondent's work on the probate estate consisted of the preparation and filing of routine form pleadings to commence an independent estate. No other work of significance was accomplished.

> It is also the opinion of the Panel that the provisions of MRPC 1.4(a) and (b) and 1.14 were violated, in that Respondent Warren failed to adequately apprise Mr. Levine of the nature of the services for which charges would be incurred. By accepting and promoting a purported "friendship" with Mr. Levine, and stating that "much of" the services would be provided without charge and "as a friend", Respondent Warren failed to adequately explain both her intentions and the basis for her fees. This left Mr. Levine, a client under apparent disability, with inadequate information to make informed decisions regarding the scope and anticipated costs of Ms. Warren's legal representation.

In short, the panel found that the fees charged and collected by the respondent during this period were excessive within the meaning of MRPC 1.5. The panel also found that the respondent failed to provide adequate information to a client under an apparent disability to allow him to make informed decisions regarding the scope and anticipated costs of her legal and personal representation. These findings form the basis for our conclusion that the fees of $7,620 charged during that period should be returned to the complainant. We affirm the panel's decision to order additional restitution to Mr. Levine in the amount of $4,650 for his losses sustained in the Ann Arbor condominium transaction. The total restitution to be awarded to Mr. Levine should therefore be reduced from $14,450 to $12,270.

III. Validity of MRPC 6.5(a)

The Board has also considered the respondent's argument that Michigan Rule of Professional Conduct 6.5(a) is unconstitutional for the reason that it suffers the fatal defects of vagueness and overbreadth. It is not charged in this case that the respondent treated any person discourteously or disrespectfully because of that person's race, gender or other protected personal characteristics. The challenge before the Board is therefore with respect only to the first sentence of MRPC 6.5(a) which states: "A lawyer shall treat with courtesy and respect all persons involved in the legal process." While the respondent raises many interesting and thought-provoking hypothetical situations which explore the gray areas between "courtesy" and "discourtesy," and "respect" and "disrespect," it is not necessary for the Board to venture into those areas in this case. This is not a case about failing to salute an officer, or failing to tip one's hat, or failing to say "God bless you" after someone sneezes. This is a case about a lawyer's yelling, screaming, belittling, harassing and threatening conduct. This is a case in which the hearing panel unanimously concluded that the respondent engaged in communications toward Mr. Levine and Ms. Burdi which were "insistent and

badgering," that she called Ms. Levine and Ms. Burdi repeatedly, at various times of the day and night, and that she spoke to them in an "aggressive or hostile tone." The panel concluded:

> Perhaps most compelling is the tape recording of a series of telephone messages left by Respondent Warren on Mr. Levine's answering machine. Petitioner's Ex. #159; Tr., 10-22-01, pp. 154-167. These messages are replete with personal attacks and threats of legal retribution, all delivered in an angry, overbearing and browbeating fashion. These diatribes, alone, constitute disrespectful and discourteous treatment of a client. Moreover, the tape recordings evidence a hostile and vindictive personality capable of the implied threats communicated to Ms. Burdi regarding her children. [Hearing Panel Report, 11/06/02 p 21.]

The Board declines, therefore, to consider whether or not MRPC 6.5 as written is overly broad or vague when applied to hypotheticals of the type offered by respondent. The respondent's conduct, as found by the hearing panel, would clearly be covered under even the most narrow interpretation of that rule. See In re Chmura, 461 Mich 517, 544 (2000).

While the Attorney Discipline Board has previously entertained arguments concerning constitutional challenges to the disciplinary rules, it has yet to find that a rule promulgated by the Michigan Supreme Court in the realm of attorney discipline is unconstitutional. Grievance Administrator v William Ortman, 93-135-GA (1995); Grievance Administrator v James Tucker, 94-12-GA (1995). This is not to say that the Board could never make such a finding. As a general rule, however, the Board's deference to the Court will include a presumption that the rules and procedures promulgated by the Court, as they concern the Board and lawyer regulation, are constitutional.

IV. Level of Discipline

Following the separate hearing on discipline conducted by the hearing panel in accordance with MCR 9.115(J)(2), the panel invited both parties to file written memoranda addressing the appropriate level of discipline to be imposed in light of the American Bar Association's Standards for Imposing Lawyer Sanctions. After weighing the competing arguments of the parties, the panel concluded that the misconduct established in this case was most appropriately considered under ABA Standards 4.12, 4.32, 4.62 and 6.32, standards which suggest that suspension, rather than disbarment or reprimand, is generally appropriate.

In the section of the ABA Standards for Imposing Lawyer Sanctions entitled "Theoretical Framework," the ABA's Joint Committee on Professional Sanctions observed:

> While there may be particular cases of lawyer misconduct that are not easily categorized, the standards are not designed to propose a specific sanction for each of the myriad of fact patterns in cases of lawyer misconduct. Rather, the standards provide a theoretical framework to guide the courts in imposing sanctions . . . the standards thus are not analogous to criminal determinate sentences, but are guidelines which give courts the flexibility to select the appropriate sanction in each particular case of lawyer misconduct.

Respondent takes issue with the panel's reliance on Standard 4.32 which states:

> Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

Respondent asserts that she "was not charged with such misconduct. Therefore, it is improper to utilize this Standard." (Respondent's Brief in Support of Petition for Review, p 34.) The Second Amended Complaint, in Count Two, charged respondent with violating MRPC 1.7(b) and 1.8(a). The panel expressly found a violation of MRPC 1.8(a), and, we think, found respondent to have violated MRPC 1.7(b) as well. (See Report and Order [on misconduct], a pp 19-20: "These circumstances placed Respondent Warren and Mr. Levine in an adversarial relationship, fraught with readily apparent conflicts of interest.") We need not conclude that the panel found a violation of MRPC 1.7(b), however. Appendix 1 to the ABA Standards cross references MRPC 1.8 with Standard 4.3.

Respondent also argues that her conduct as described by the panel in this case does not always fit neatly into pigeon holes based on particular ABA Standards. This is particularly true, for example, with regard to the panel's findings that the respondent's threatening or harassing statements to her client and to another attorney violated MRPC 6.5(a). Michigan's Rule 6.5(a), which requires that Michigan attorneys be courteous and respectful to all persons involved in the legal process, has no precise counterpart in the ABA's Model Rules of Professional Conduct and such conduct is not specifically addressed in the ABA Standards. Case law under this rule is yet in the early stages of development. To date, MRPC 6.5 cases calling for suspension requiring reinstatement proceedings under MCR 9.123 and 9.124 have involved an attorney's serious abuse of power over a client. See, e.g., Grievance Administrator v Eugene F. Williams, No 98-203-GA (ADB 2000) (180 day suspension for attorney who solicited and received sexual favors from client during visitation in jail). Comparison of this case with Williams is, of course, quite difficult given

the different nature of the misconduct. However, we are not prepared to say that the MRPC 6.5 violations here, including the respondent's threats to others and her obvious loss of emotional control, should necessarily receive less than a suspension of 180 days were they standing on their own. The panel's report evinces a concern regarding respondent's fitness which we heed given their first hand observation of the evidence.

Finally, this case illustrates the fact that the Standards, while providing a useful benchmark, will not dictate the precise quantum of discipline to be imposed. They do, however, provide a helpful framework and general guidance. We perceive no error in the panel's analogies to certain standards recommending suspension as a rough way to approximate the proportionality of a given sanction.

In this case, the Standards recommended suspension. We are persuaded that the hearing panel conscientiously followed the analytical framework in ABA Standard 3.0 to determine that initial sanction by properly considering the appropriate factors: (a) the duty violated; (b) the lawyer's mental state; (c) the actual or potential injury caused by the lawyer's misconduct; and (d) the existence of aggravating or mitigating factors. Moreover, the panel determined that the multiple acts of misconduct here implicated respondent's fitness as a lawyer to the extent that, when aggregated, they required a period of suspension requiring reinstatement proceedings, and more than the minimum (180 days). We do not disagree. In fact, we consider the panel to have appropriately assessed the nature and gravity of the various offenses, the aggravating and mitigating factors, and the circumstances of the case generally to arrive at a just and proportionate sanction.

V. Conclusion

While we agree with the hearing panel's conclusion that the respondent charged and collected excessive fees from the complainant Michael Levine, we conclude that the total amount of restitution which should be paid by the respondent is $12,270 which represents the fees of $7,620 charged by the respondent to the complainant between April 5, 1997 and April 22, 1997 and the sum of $4,650 for the losses sustained by the complainant in the Ann Arbor condominium transaction. In all other respects, we conclude that the hearing panel's findings have evidentiary support in the record and that the panel acted appropriately in concluding that the respondent's misconduct requires the suspension of her license to practice law in Michigan for a period of 18 months, with additional conditions imposed in accordance with MCR 9.106(2).

Board members William P. Hampton, Marie E. Martell, Rev. Ira Combs, Jr., George H. Lennon, Lori M. Silsbury and Hon. Richard F. Suhrheinrich concur in this decision

Board members Theodore J. St. Antoine, Ronald L. Steffens and Billy Ben Baumann, M.D. did not participate.

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STATE OF MICHIGAN

ATTORNEY DISCIPLINE BOARD

GRIEVANCE ADMINISTRATOR,

Petitioner,

v

Case No. 01-16-GA

CHERYL M. WARREN, P-37448,

Respondent.

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REPORT AND ORDER

This matter is before the Panel by virtue of a Second Amended Complaint containing four counts, dated April 16, 2001. A misconduct-phase hearing was conducted over four days on June 12 and October 22, 2001, and February 13 and July 16, 2002. At the conclusion of Petitioner's case-in-chief the Respondent made an oral motion for dismissal which was taken under advisement. Tr., 7-16-02, pp. 85-99. Petitioner and Respondent have each filed briefs on the issues presented, which have been fully considered by this Panel.

For the reasons stated herein the Respondent's Motion to Dismiss is DENIED. It is further the finding of the Panel that misconduct by Respondent has been established by a preponderance of the evidence for the reasons and on the specific charges discussed in the body of this report.

The circumstances underlying the formal charges against Respondent span a period of over two years, and involve multiple legal transactions and two attorney-

APPENDIX A

client relationships. Due to this complexity, a more detailed development of the facts is warranted.

STATEMENT OF FACTS

Respondent, Cheryl Warren, met Michael Levine in 1994 at a Dale Carnegie course both were attending as students. Later, they had a chance encounter in a convenience store and struck up a conversation. This discussion led to Mr. Levine hiring Respondent to prepare a will for his father, Abraham Levine. Tr., 10-22-01, pp. 15-16.

Michael Levine suffered the loss of his wife on November 17, 1996. Less than four months later, on March 7, 1997, his father, Abraham Levine, also died. Michael Levine decided to retain Cheryl Warren to file a probate estate for Abraham Levine, and provide legal representation to Michael as personal representative of his father's estate. Ib., pp. 22-3, and 32-3. By letter dated March 28, 1997 (Petitioner's Ex. #101), Cheryl Warren confirmed her retention in the decedent's estate, but deferred on the specifics of the fee agreement until Ms. Warren had an opportunity to "review the assets".

The major asset in the Abraham Levine estate was a condominium in Bloomfield Hills, Michigan. Although Respondent's correspondence of March 28, 1997 (Ex. #101) failed to articulate a fee agreement for the probate matter, Ms. Warren's letter did propose that she "handle the sale of the West Bloomfield condominium on a contingency fee basis". The contingency fee suggested was four (4%) percent of the sales price, which Ms. Warren stated was less than the 6% or 7% customarily charged by realtors. The letter went on to remind Mr. Levine that this so-called "contingency

fee" for sale of the condo "is separate and apart to the agreement yet to be entered into" regarding legal services for the personal representative. Mr. Levine confirmed this contingency agreement by signing and dating a copy of the letter on March 30, 1997.

In the early morning hours of April 1, 1997, Michael Levine suffered a heart attack. He had been out to dinner at a Thai restaurant with Cheryl Warren the preceding evening and began to feel ill after returning home. He eventually called for an ambulance and then telephoned Cheryl Warren to ask for her assistance. Respondent remembers receiving Mr. Levine's call at approximately 2:00 or 3:00 a.m. Mr. Levine asked that she help by 'paying his bills' and arranging for the care of his pet dog. Tr., 10-22-01, pp. 26-8, 33; and Tr., 7-16-02, pp. 44-5 and 124-9.

Mr. Levine was hospitalized from April 1, 1997 to April 17, 1997. He was initially taken to Botsford Hospital, but within a day or two was transferred to the University of Michigan Hospital. Mr. Levine underwent open heart surgery sometime between April 5 and 7, 1997. Tr., 10-22-01, pp. 81-2; Tr. 7-16-02, pp. 79-80 and 126-8.

Respondent Warren both telephoned and visited with Mr. Levine during his hospitalization. Both parties acknowledge that Mr. Levine was concerned---even frightened---about his medical situation. He was without family or close friends to assist him and was asking for Cheryl Warren's help. Ms. Warren stated that Levine called her repeatedly "for emotional support". Ms. Warren told Mr. Levine: "Don't worry, I'll be there for you". According to Respondent, Mr. Levine also expressed a fear of doctors and asked Ms. Warren to "handle his personal business as well as communications with the doctors and medical care". Tr., 7-16-02; pp. 126-9.

Ms. Warren also recommended that Mr. Levine execute a will and Power of Attorney. To that end, Ms. Warren prepared a General Durable Power of Attorney (Petitioner's Ex. #102), which appointed Cheryl Warren, herself, as Mr. Levine's attorney-in-fact. Ms. Warren brought the power to the hospital, where it was executed by Mr. Levine on April 5, 1997.

Ms. Warren also prepared and presented two retainer agreements in the form of letters dated April 5, 1997. The first (Petitioner's Ex. #103), outlines an agreement for Ms. Warren to "act as power of attorney (sic)" to handle "personal affairs" and assume Mr. Levine's duties as personal representative of his father's estate. The document provides for hourly fees at the rate of $140.00 for Cheryl Warren, $110.00 for "associate attorneys" and $75.00 for "law clerks and legal assistants". It is undisputed that Respondent did not employ any associates or legal assistants. In the letter Ms. Warren also states ".....I do not plan to bill you for all of my time as I am doing much of it as your friend".

The second agreement (Petitioner's Ex. #104) is a fee agreement for legal services being rendered to Mr. Levine in his capacity as personal representative of his father's estate. It contained the same hourly rates as Petitioner's Ex. #103, and further provided that Ms. Warren "may adjust the fee to reflect the value of my services if I am able sell the West Bloomfield condominium for you". Both fee agreements (Ex. Nos. 103 and 104) were signed by Mr. Levine in the hospital on April 5, 1997.

Subsequently, using the power of attorney, Ms. Warren signed several checks payable to herself from Michael Levine's Comerica checking account. The first check

(#1015) was in the amount of $3,000.00, dated April 20, 1997 and contained a memo notation "for legal fees". The second check (#1017), dated April 22, 1997, was for the sum of $4,620.00 and also noted to be "for legal fees". Two smaller checks for expense reimbursements were also made payable to Cheryl Warren: check #1019 (4-23-97, $156.17); and check #1020 (5-1-97; $13.20). Copies of all checks appear in Petitioner's Ex. #105.

In early June of 1997, Ms. Warren requested of Mr. Levine a retainer of $5,000.00 for services concerning the estate of his father. Mr. Levine paid the retainer by check #206, dated June 11, 1997. Tr., 10-22-01, pp. 56-7; and Petitioner's Ex. #110.

On September 18, 1997, Mr. Levine wrote a check to Cheryl Warren in the amount of $7,000.00 (check #228). Mr. Levine understood this amount to be a retainer for work related to the sale of his father's condominium. The check contained the memo "for Retainer Real Estate". See, Tr., 10-22-01, pp. 61-3. Ms. Warren testified that the $7,000.00 "had nothing to do with the condominium". Tr., 7-16-02; pp. 174-6. This check for $7,000.00 brought the total amount paid to Respondent to $19,620.00 (plus separate cost reimbursements of $169.37).

During the course of her representation of Michael Levine, the Respondent sent several statements for services. The first, dated July 28, 1997, was for the sum of $568.75 (Petitioner's Ex. #112). A second statement dated August 4, 1997, was for the gross amount of $491.98 (Petitioner's Ex. #113). A third statement, referenced "Personal", was not sent until April 21, 1998 (Petitioner's Ex. #115). This statement reflected a gross billing of $4,375.00. After application of client funds presumably held

in escrow, the statement indicated the "new balance of client funds" as a negative $1,348.75.

The statement of April 21, 1998 for "personal" services was duplicated and resubmitted to the client on June 28, 1998 (Petitioner's Ex. #116). Also on June 28, 1998, another statement referenced "Estate of Abraham Levine" was prepared (Petitioner's Ex. #117). This statement covered the period 5/27/97 through 2/28/98, and requested payment of the sum of $7,809.17. Between April 20, 1997 and September 18, 1997, Michael Levine had actually paid to Respondent fees and costs totaling $19,789.37 for probate and "personal" services. The Statement dated 6-28-98 requested that he tender an additional $7,809.17.

Respondent Warren did prepare the necessary form pleadings to commence the Estate of Abraham Levine. These pleadings consisted of a Petition for Commencement of Proceedings (Independent Probate), Letters of Authority, Testimony of Interested Parties, Acceptance of Trust and Register's Order. All of these documents were filed in the Oakland County Probate Court on July 30, 1997. See: Probate File (Petitioner's Ex. #152). Thereafter, the probate estate was inactive until a Notice of Complaint and Omission was filed by the Court Clerk on October 1, 1998. The authority of the Personal Representative (Michael Levine) to act was to expire on October 30 and documentation had not been filed to close the estate. Apparently, Ms. Warren failed to respond to the Notice of Complaint and, on November 6, 1998, an Order was entered by the Court threatening to convert the estate from an unsupervised to supervised proceeding.

Personal Loan

In early to mid-1998, Respondent Warren became interested in purchasing an office condominium in Canton, Michigan from which to operate her law practice. Respondent asked Mr. Levine for a loan of $70,000.00 to purchase the office condominium. Mr. Levine agreed to make the loan on terms outlined in a letter dated July 1, 1998, from Cheryl Warren to Michael Levine. Petitioner's Ex. #120; Tr. 10-22-01, pp. 84-86, and Tr. 7-16-02; pp. 139-140, pp. 139-142. The loan was to carry interest at the rate of 7% per annum, require monthly payments based upon a 30-year amortization and be subject to a 10-year balloon payment in full. The funds were advanced to Ms. Warren by a First of America Official Check dated July 1, 1998 in the amount of $70,000.00. Petitioner's Ex. #120A. Mr. Levine recalls giving her the check on July 2,1998. Tr., 10-22-01; pp. 85 and 100.

The check was deposited by Respondent on July 6, 1998 into a Comerica account in the name of Cheryl Warren. On September 16, 1998, the funds were transferred from Cheryl Warren's personal account to a second Comerica account in the name of "CMW Enterprises, LLC", which Ms. Warren referred to as "an operating account for the building". Petitioner's Ex. #125.

Closing on the Canton office condominium, which Ms. Warren expected "before July 15, 1998", never occurred. According to Respondent the "Seller breached and refused to close". Ms. Warren subsequently put a deposit on a second office condominium in the vicinity of the first. The second purchase did close on or about October 13, 1998, the date on which Ms. Warren transferred the loan proceeds by

check to the title company responsible for the closing. Tr., 7-16-02, pp. 181; Petitioner's Ex. #125.

Michael Levine asserts he was unaware that the first office condominium transaction failed to close, and that a second unit had been purchased, until Cheryl Warren first informed him in December of 1998. During this period no documentation memorializing the loan agreement had been prepared, other than the July 1, 1998 letter from Ms. Warren. Tr., 10-22-01, pp. 102-104; Petitioner's Ex. #120.

According to Mr. Levine, in approximately December of 1998 he received a telephone call from Respondent who informed him that she was in possession of a mortgage securing his loan of $70,000.00. Respondent further stated that "there's something wrong with it" (i.e., the mortgage) but that Mr. Levine shouldn't worry because Respondent would "take care of it". In February of 1999, Mr. Levine recalls receiving copies of a Mortgage Note and Mortgage signed by Respondent Warren on February 6, 1999. It was then that Mr. Levine discovered that "the terms were changed without [his] knowledge or understanding". Specifically, the term of the note was extended to 15 years, and provided for a 90-day grace period for default in payment. Tr., 10-22-01, pp. 90-1; Petitioner's Exhibit Nos. 122 and 123.

A copy of a letter dated January 10, 1999 from Cheryl Warren to Michael Levine was admitted into evidence as Petitioner's Ex. #121. The letter purports to confirm telephone conversations between Respondent and Mr. Levine during which Levine agreed to extend the note term to 15 years and the default period to 90 days. Mr. Levine testified he did not see this exhibit until "after the fact" and that "it was a

lie". He maintains he never agreed to such changes. Tr., 10-22-01, pp. 93-5. There has been no recording of Mr. Levine's mortgage interest. Tr., 2-13-02, p. 234.

Ann Arbor Condominium

In early 1999, Respondent Warren and Mr. Levine shared many telephone conversations. Ms. Warren recalls that Michael Levine:

> "....called me on a regular basis, three or four times a week in the evening, usually 11 o'clock at night, to tell me what exciting things happened in his life, what happened at work...."

During one of these calls Ms. Warren told Mr. Levine that she recently visited an Ann Arbor condominium project and thought the purchase of a unit would be a "good deal". According to Ms. Warren, Michael Levine immediately responded that he was interested and agreed to visit the property with her. Tr., 7-16-02, pp. 142-3.

Mr. Levine has a different recollection of events surrounding his introduction to the Ann Arbor condominium:

> "I started receiving phone calls from Cheryl Warren. She proposed a business deal; she was very adamant about it. I received a series of four phone calls, each lasting an hour-and-a-half or more each. I don't know how else to describe this. She was desperately trying to get me to invest. She talked about all the reasons why I should, why I should not leave my money in the bank, I should be bold, I should be a man, I should invest, I should do it the way she said and I should invest in the property, and, by the way, she had this wonderful deal she's going to buy the property herself. She said, I can probably do it by myself, but it would be so much easier with a partner. And by the way, there's another person - - some mysterious man somewhere - - heard about the deal and he wants in on it, but she didn't want him to invest, she wanted me to invest, that I had to make up my mind very fast, the price was going up by $10,0000 at the end of the week on Sunday, and I had to see the property and make up my mind and invest quickly. She pushed very hard for this; she

> pushed very long. The first day I told her no. I told her no several times, I'm not interested. I know little or nothing about investing in real estate. Cheryl told me she had a lot of experience in investing in real estate.
>
> " . . . Yes, four conversations. All during the same week, all leading up to that Sunday when the price was going up. They were pep talks, they were sales pitches, and I wasn't having any of it for a long time, but when she wanted something, she keeps at you. She doesn't stop. You tell her no twelve times, and she keeps asking. Finally she said something that - - she said two things, one that disturbed me and one that impressed me. She said that her father had all this money in the bank, had medical problems not unlike my medical problems, I assume, and that he died penniless because he spent all his money on medical bills, and I don't dare let anything like that happen to me, and believe me, that did scare me. Here is somebody telling me what an expert she is about it and she's an expert at manipulation, that's for sure. I didn't know any better."
> Tr., 10-22-01, pp. 110-112.

In any event, Mr. Levine agreed to travel to Ann Arbor with Ms. Warren to inspect the condominiums. Ibid., p.113-14. On Sunday, February 21, 1999, Ms. Warren and Mr. Levine traveled to Ann Arbor, where they inspected the property. Warren and Levine signed a purchase agreement that very day, with each paying one-half of the $2,500.00 deposit. It was their intention to be equal partners in the ownership of the condominium. Ms. Warren would "manage" the property and locate a suitable tenant. Tr. 10-22-01, pp. 113-114, 212; Tr. 7-16-02, pp. 143; Petitioner's Ex. #126.

Prior to entering into the condominium purchase agreement, Mr. Levine claims he was not advised by Ms. Warren to seek independent legal advice. On March 8, 1990, approximately two weeks after signing the agreement, Ms. Warren sent a letter

to Michael Levine acknowledging the possibility of a conflict of interest and so informing Mr. Levine. Petitioner's Ex. #128.

Consistent with the requirements of the purchase agreement, a new mortgage had to be obtained for the Ann Arbor condominium purchase. Ms. Warren completed a new mortgage application at Standard Federal Bank. The application was completed in the name of Michael Levine, only (i.e., Mr. Levine being the only Borrower), but reflected that title to the property would be held in the names of both Mr. Levine and Cheryl Warren. Ms. Warren executed the loan application in the name of Michael Levine using the Power of Attorney executed by Mr. Levine, during his hospitalization for cardiac surgery in April of 1997. It also developed that Ms. Warren had decided to reside in the Ann Arbor condominium, rather than find another tenant. Tr., 2-13-02, pp. 196-7, and 204; Petitioner's Ex. #130 and #131.

As a result of the information contained in the loan application and commitment, as well as the alleged "changes" made by Ms. Warren in the earlier personal loan application, Mr. Levine became suspicious of Cheryl Warren. Mr. Levine was also concerned that Ms. Warren was unable to contribute one-half of the cost of condominium upgrades. Tr. 10-22-01, pp. 121-9; Petitioner's Ex. 132. Mr. Levine was further surprised to see the mortgage commitment refer to a 7-year balloon obligation rather than a 30-year mortgage. Tr., 10-22-01, pp. 133-6; Petitioner's Ex. #131. Consequently, at this point Mr. Levine decided to seek outside legal assistance.

In April of 1999, Mr. Levine contacted attorney Caren Burdi to seek her advice with respect to both the "personal loan" documentation and the Ann Arbor

condominium purchase. Tr., 10-22-01, pp. 97, 127-9; Tr. 2-13-02, pp. 194. On April 5, 1999, Ms. Warren sent a letter to Mr. Levine, which, in part, acknowledged that "Attorney Karen Byrd" (sic) had become involved. The letter also confirms that the Ann Arbor condominium mortgage application was based solely upon Mr. Levine's financial information, because Cheryl Warren was "not in a position to produce up to date income tax returns". Petitioner's Ex. #132.

Caren Burdi telephoned Ms. Warren and introduced herself as an attorney representing Michael Levine. After that introduction, Ms. Burdi testified that "...the phone was silent for several moments, and she [Warren] said, 'Don't blow this for me'...." Attorney Burdi then expressed her legal concerns regarding Warren's use of a 2-year-old power of attorney to complete the loan application, and the anomaly that Cheryl Warren would not be liable on the mortgage but would be a legal title holder. Tr., 2-13-02, pp. 202-4. Ms. Burdi also communicated to Ms. Warren her dissatisfaction with the personal loan documents (note and mortgage). Tr., 2-13-02, pp. 226-7, 233-5; Petitioner's Ex. #124.

Ultimately, the heated negotiations between Respondent Warren and Caren Burdi, on behalf of Mr. Levine, did not achieve resolution of the issues related to either the personal loan or the Ann Arbor condominium purchase. No modified documents have ever been executed by Respondent with respect to the "personal loan", nor has any mortgage or other lien been recorded securing Mr. Levine's interest as lender on the Canton office condominium. Tr., 2-13-02, pp. 233-4 and 280-2; Petitioner's Ex. #139.

Mr. Levine became so upset with Ms. Warren that he decided that he "didn't want anything to do with that [Ann Arbor] condo". Tr., 10-22-02, p. 138; Tr. 2-13-02. p. 282. Caren Burdi so informed Respondent Warren and suggested that Respondent pursue the closing in Ms. Warren's name, alone, or find another co-purchaser. This was, apparently, unacceptable to Ms. Warren, resulting in Caren Burdi negotiating a release from the builder in exchange for a forfeiture of the deposit and upgrade payments (i.e., approximately $17,000.00, of which Respondent Warren had contributed $2,500.00). Tr. 2-13-02, pp. 283-4; Tr. 10-22-01, pp. 121 and 132-8.

Allegations of Harassment and Threats

After informing Respondent that he was withdrawing from participation in the Ann Arbor condominium purchase, Michael Levine asserts that Ms. Warren did not react well. He testified that "things got vicious". On approximately May 10, 1999, Ms. Warren began to call him "almost every day, sometimes twice a day". Mr. Levine claims Respondent was threatening legal action and subjecting him to verbal abuse. Allegedly Ms. Warren was "calling him names". He described this as relentless and felt he was being "brow beaten". In an effort to persuade Mr. Levine to continue with the condominium purchase, Ms. Warren told him to "be a man" and called him a "baby" and a "brat". Tr., 10-22-01, pp. 137-9. During one of these calls Respondent Warren allegedly asserted that she really didn't need him to participate because "I don't need your signature; I have power of attorney". Ib., p. 153. Respondent Warren denies making such a statement. Tr., 7-16-02, p. 143. The calls from Ms. Warren purportedly continued over the next five days and included much "screaming and yelling". Consequently, on May 15, 1999, during one of Ms. Warren's calls Mr. Levine

"fired" Respondent stating: "I don't want you to represent me on anything". Tr., 10-22-01, pp. 138-9.

The calls from Ms. Warren were made to Mr. Levine at both home and work, and both day and night. She spoke to Mr. Levine personally, but would also leave lengthy messages on his answering machine. Mr. Levine recalls receiving "angry phone calls and messages" for more than a month. Over one 14-day period he received 9 telephone calls. Ultimately, Mr. Levine found it necessary to file a Petition for Personal Protection Order (P.P.O.) against Ms. Warren. The Petition was filed in Oakland County Circuit Court and the P.P.O. issued on June 24, 1999. Ms. Warren filed a Motion to Dismiss the P.P.O., contesting the allegations, but the request was denied and the P.P.O. allowed to stand. Tr., 10-22-02, pp. 142-3; Petitioner's Ex. #142 and 153.

An answering machine tape recording of a series of telephone messages left by Respondent for Michael Levine was admitted in evidence and played for the panel. Petitioner's Ex. #159; Tr., 10-22-01, pp. 154-166. This call was made on a Saturday, and begins with Ms. Warren stating "I feel totally betrayed by you...". Other interesting excerpts include: "be a man", that he is "trying to screw" her; "I have a remedy against you"; that Levine has a "lack of ethics"; "I don't want any reminders of our relationship"; "you're getting sued by me"; and "I can get sanctions against you".

During this same period of time, attorney Caren Burdi testified that she was receiving "four or five phone calls" per day from Respondent Warren. Tr., 2-13-02, p. 212. During these calls Ms. Warren accused Burdi of "ruining her friendship with Mr. Levine", and costing everyone money. Ib., p. 220. Some of the telephone calls from

Ms. Warren were recorded on Caren Burdi's answering service at "one in the morning, two in the morning". If the voice mail recording cut her off in mid-message, Ms. Warren simply called back and continued. At times Ms. Burdi's clients could not leave messages because her "voice mail was full" of Respondent's calls. Ib., pp. 239-40.

Sometimes Ms. Warren would "literally be screaming on the phone". During one call Ms. Warren allegedly stated to Caren Burdi:

> "You're ruining this for me. You're costing me money.
> I'll get you for this. If you wreck this Ann Arbor deal,
> I'll get you for this".

Allegedly, during one telephone call at approximately 8:00 p.m., Respondent Warren said to Burdi that "she knew I had children and she could find them". Ib. 240-2. Respondent, Cheryl Warren, denied making such threats, and only recalls speaking by telephone with Caren Burdi "twice". Tr. 7-16-02, pp. 145-7.

The Kathleen Hassan Complaint

In April of 1999, Kathleen Hassan retained Respondent, Cheryl Warren, to assist in collecting life insurance death benefits payable as the result of the death of Ms. Hassan's brother. Ms. Hassan also sought advice on how best to retain eligibility for Supplemental Security Income (Social Security SSI). Tr., 6-12-01, p. 121. Ms. Warren assisted in preparing and filing the life insurance claim, and securing payment of the death benefit. Upon receipt of the life insurance proceeds, Ms. Warren advised Kathleen Hassan to permit the funds to be deposited in Respondent's trust account. Ms. Warren advised her to do so because "if I didn't I would lose all my [SSI] benefits". Ib., p. 121.

Later, Ms. Hassan formed the opinion that Ms. Warren had been engaging in "what appeared like" legal work, but which activity Ms. Hassan believed she could have performed herself. Additionally, Ms. Warren had taken it upon herself to contact a realtor regarding a possible home purchase by Ms. Hassan - - something the client asserts she never requested of the attorney. Ib., p. 122. Consequently, on August 10, 1999, the client sent a letter by facsimile to Respondent terminating the attorney-client relationship, and requesting that any funds held in trust be sent to her newly retained attorney, David Brauer. Ms. Hassan also requested a final bill for legal services and that her file be sent to her. Tr., 6-12-01, pp. 124-5; Petitioner's Ex. #5.

Several times during the month of June, Ms. Hassan asked Respondent what amount Hassan owed for legal fees. When Ms. Warren indicated current fees were between $4,000.00 and $5,000.00, Ms. Hassan requested that Respondent "stop working for me right now". Ib., p. 125.

Attorney David Brauer testified that Kathleen Hassan retained him for representation with respect to a condominium purchase. By letter dated August 10, 1999, Mr. Brauer informed Respondent of his retention by Ms. Hassan, and requested an itemized billing statement from Respondent, as well as an accounting for the funds held in Respondent's trust account. Tr., 6-12-01, pp. 22-3; Petitioner's Ex. #1. Mr. Brauer stated that he also made "more than" five telephone requests of Ms. Warren for an itemized billing. Ib., p.25. He also sent additional written requests. Petitioner's Ex. #2 and #3. Mr. Brauer also recalls a telephone conversation with Ms. Warren during which Respondent estimated that her attorney fees would total about $5,000.00 to $6,000.00. Ib., p.27.

The amount of the life insurance proceeds was $70,000.00 or $71,000.00. After direct payment of the decedent's funeral expenses, Ms. Warren took possession of $68,538.00. Respondent's Ex. B (6-12-01) and Ex. Q (7-16-02); Tr., 6-12-01, pp. 67-70 and 85; and Petitioner's Ex. #4. Ms. Warren tendered the sum of $58,000.00 to Kathleen Hassan, paid Brauer's retainer of $750.00 and a fee to Century 21 of $900.00, leaving a balance in Respondent's client trust account of $8,888.00. This accounting is reflected in the "Statement" dated September 9, 1999, which Respondent Warren sent to Ms. Hassan in care of attorney Brauer. This same statement - - referred to by Ms. Warren as a "summary" billing statement - - reflected 70 hours of attorney work at $175.00 per hour for a total of $12,250.00 in attorney fees. After applying the balance of $8,888.00 held in trust, Ms. Warren requested payment of the additional amount of $3,537.00. Petitioner's Ex. #4.

Mr. Brauer expressed his belief that this "summary" form of billing did not enable the client to evaluate the propriety of the billing. Consequently, he reiterated a request for a more detailed, itemized statement. No additional billing information was ever submitted by Respondent. Petitioner's Ex. #3; Tr., 6-12-01, pp. 25-8; Tr., 7-16-02, pp. 150, 152 and 154.

Mr. Brauer also testified that he never received Ms. Hassan's client file from Respondent Warren. Ib., pp. 28-30. At first Mr. Bauer was at a loss as to why Ms. Warren had failed to provide the file; however, Ms. Warren subsequently asserted an attorney's lien for unpaid fees. Ib., p. 79.

FINDINGS

Count One

Count One of the Second Amended Formal Complaint alleges violations of MRPC 1.4(a) and (b) (failure to keep a client reasonably informed); 1.5(a) (charging or collecting a clearly excessive fee); 1.14(a) (relationship with client under disability); and 8.4(a)-(c) (general violation of MRPC; conduct invoking dishonesty, fraud, direct misrepresentation; and conduct prejudicial to the administration of justice). The underlying factual allegations may be summarized as: (1) failure of Respondent to adequately inform Michael Levine of the nature and extent of legal services being provided; and (2) billing and collecting fees in the amount of $7,620.00 for services during the three (3) week period of April 5, 1997 to April 22, 1997.

Applying the factors enumerated in MRPC 1.5(a)(1) through (8), the Panel concludes that the amounts charged and collected by Respondent Warren were clearly excessive, and violative of the prohibitions of MRPC 1.5(a). In particular, it is noted that during the 18-day period in question (April 5 to April 22), "taking care" of Mr. Levine's bills entailed writing a total of ten (10) checks. Between April 23 and May 10, Respondent wrote an additional five (5) checks. See, Petitioner's Ex. #105. Of the fifteen checks written, three were payable to Respondent, herself.

Moreover, Respondent's work on the probate estate consisted of the preparation and filing of routine form pleadings to commence an independent estate. No other work of significance was accomplished.

It is also the opinion of the Panel that the provisions of MRPC 1.4(a) and (b) and 1.14 were violated, in that Respondent Warren failed to adequately apprise Mr. Levine

of the nature of the services for which charges would be incurred. By accepting and promoting a purported "friendship" with Mr. Levine, and stating that "much of" the services would be provided without charge and "as a friend", Respondent Warren failed to adequately explain both her intentions and the basis for her fees. This left Mr. Levine, a client under apparent disability, with inadequate information to make informed decisions regarding the scope and anticipated costs of Ms. Warren's legal representation.

Count Two

Count Two of the Complaint asserts violations of MRPC 1.4(a) and (b) (failure to keep a client reasonably informed); 1.7(b) (conflict of interest); 1.8(a) (business transaction with client; conflict); 8.4(a) and (c) (general violation of MRPC and conduct prejudicial to the administration of justice). The factual underpinnings of these charges are that Respondent Warren borrowed $70,000.00 from her client, failed to advise Mr. Levine that he could revoke the power of attorney given to Respondent, and pursued her personal desire to purchase an Ann Arbor condominium in a manner adverse to the interests of her client (Mr. Levine).

The Panel concludes that the preponderance of the evidence establishes violations of MRPC 1.4(a) and (b), and 1.8(a). Respondent Warren solicited a personal loan from Mr. Levine, and accepted the loan proceeds, without first ensuring that the terms of the loan and security agreement were both settled and fully understood by the client. This lead to significant confusion and permitted Ms. Warren to attempt to control - - or even modify after the fact - - the particulars of the loan and mortgage security. These circumstances placed Respondent Warren and Mr. Levine in an

adversarial relationship, fraught with readily apparent conflicts of interest. Ms. Warren failed to fully disclose in advance the proposed terms of the loan and security agreement, and entered into a transaction which was not fair and reasonable to the client.

Moreover, Respondent Warren failed to obtain Mr. Levine's written consent to this transaction as required by MRPC 1.8(a)(3).

Count Three

Count Three of the Complaint alleges violations of MRPC 6.5(a) (discourteous and disrespectful treatment of others); and 8.4(a)-(c) (general violations of MRPC and conduct prejudicial to the administration of justice). The basic allegations are that Respondent harassed her client, Michael Levine, with repeated telephone calls and threatened attorney Caren Burdi and her children.

Of all the allegations contained in the Second Amended Formal Complaint, the particulars of Count Three stand out as the most disturbing. Respondent, Cheryl Warren, emphatically denies the alleged harassment and threats, thus creating a question of witness credibility which must be resolved.

The Panel concludes that the preponderance of evidence supports the testimony of Mr. Levine and Ms. Burdi on these charges. Both witnesses testified that Respondent Warren called repeatedly, at various times of the day and night, and spoke in an aggressive or hostile tone. The insistent and badgering nature of Respondent's communications is evident from her correspondence to Mr. Levine and Ms. Burdi. See, Petitioner's Ex. #138, #139, #140 and #144. The offensive nature of Respondent's communications with Mr. Levine caused the client to seek and obtain a

Personal Protection Order (P.P.O.) against Ms. Warren. Respondent's request to set aside the P.P.O. was denied. Petitioner's Ex. #153.

Perhaps most compelling is the tape recording of a series of telephone messages left by Respondent Warren on Mr. Levine's answering machine. Petitioner's Ex. #159; Tr., 10-22-01, pp. 154-167. These messages are replete with personal attacks and threats of legal retribution, all delivered in an angry, overbearing and browbeating fashion. These diatribes, alone, constitute disrespectful and discourteous treatment of a client. Moreover, the tape recordings evidence a hostile and vindictive personality capable of the implied threats communicated to Ms. Burdi regarding her children.

For the reasons stated above, the Panel finds that Respondent has violated the requirements of MRPC 6.5(a).

Count Four

Count Four of the Complaint asserts violations of MRPC 1.4(a) (failure to keep a client reasonably informed); 1.15(b) (failure to render full accounting and failure to turn over property); 1.16(d) (failing to protect a client's interests and to surrender papers upon termination); and 8.4(a) and (c) (general violation of MRPC and conduct prejudicial to the administration of justice). These allegations arise from an attorney-client relationship between Respondent and her client, Kathleen Hassan.

The Panel concludes that the preponderance of evidence does not support the allegations of misconduct alleged in Court Four. It appears that, during the 4-month period of representation, Respondent adequately performed services including processing an application for and receiving life insurance benefits, and making inquiries regarding the client's continuing eligibility for SSI benefits. It further

appears that Ms. Hassan was fully aware of the nature of this work. Although there is mention of certain activity by Respondent which the client felt was not truely "legal work", the record fails to establish either the nature of such services or the reasons why they were not properly chargeable.

It also appears that a full accounting of trust account funds was rendered by the client. See, Petitioner's Ex. #4. Insurance proceeds were disbursed in a manner fully disclosed to the client, with the balance being applied to attorney fees.

The real question in this case is the propriety of billing 70 hours of legal time - - a total fee of $12,250.00 - - for the work authorized by Ms. Hassan. There is also an unresolved question of whether Respondent Warren has billed Ms. Hassan for services not authorized by the client. It must be noted, however, that Count Four of the Second Amended Formal Complaint does not include an alleged violation of MRPC 1.5 for excessive or unearned fees. Consequently, Count Four is dismissed.

In light of the foregoing, it is ordered that this case be scheduled for a disciplinary-phase hearing pursuant to MCR 9.115(J)(2).

Tri-County Hearing Panel #13

By: DAVID J. ESPER

By: JOHN E. THOMAS

By: SHIRLEY A. SALZMAN

Dated: November 1, 2002

FILED
ATTORNEY DISCIPLINE BOARD
03 APR -9 PM 2:08

STATE OF MICHIGAN

ATTORNEY DISCIPLINE BOARD

GRIEVANCE ADMINISTRATOR,

Petitioner,

v

Case No. 01-16-GA

CHERYL M. WARREN, P-37448,

Respondent.
_______________________________/

HEARING PANEL REPORT ON DISCIPLINE

A misconduct-phase hearing was conducted in this matter over four days on June 12 and October 22, 2001, and February 13 and July 16, 2002. On November 1, 2002, this Panel issued a Report and Order holding that Respondent had violated the provisions of MRPC 1.4(a) and (b), 1.5(a), 1.8(a), 1.14(a) and 6.5(a), based upon findings made on Counts One, Two and Three of the Second Amended Formal Complaint. The Panel adopts and incorporates herein by reference the November 1, 2002 Report and Order.

A discipline-phase hearing was conducted on February 25, 2003, during which testimony was taken. Additionally, both the Grievance Administrator and Respondent have filed memoranda discussing the question of sanctions. These pleadings have been fully considered by the Panel.

(a) Applicable ABA Standards Justify Suspension

The Michigan Supreme Court has directed that hearing panels follow the ABA Standards for Imposing Lawyer Sanctions when determining the appropriate sanction

APPENDIX B

for attorney misconduct. *Grievance Administrator v. Albert Lopatin,* Case No. 113250 (June 27, 2000). Under Section 3.0 of the ABA Standards, a hearing panel should consider the following factors:

(a) the duty violated;
(b) the lawyer's mental state;
(c) the actual or potential injury caused by lawyer's misconduct; and
(d) the existence of aggravating or mitigating factors.

Given the nature of the conduct for which Ms. Warren has been found responsible, the Panel is of the opinion the following ABA Standards are applicable: Standard 4.1 (Failure to Preserve Client's Property); Standard 4.3 (Failure to Avoid Conflicts of Interest); Standard 4.6 (Lack of Candor); and Standard 6.3 (Improper Communications). The Grievance Administrator, citing the provisions of ABA Standards 4.11, 4.61 and 5.11(b), strongly urges that lengthy suspension or disbarment be ordered. The Panel, however, concludes that Respondent's conduct is more appropriately encompassed by ABA Standards 4.12, 4.32, 4.62 and 6.32, all suggesting that a moderate period of suspension from the practice is the appropriate sanction.

The major distinction between subsections of the ABA Standards recommending disbarment and those imposing suspension is the degree of harm caused by the attorney conduct. Disbarment is deemed appropriate in cases of "serious injury" or "significant interference" with proceedings, while suspension is warranted in cases involving lesser degrees of injury or interference. Commentary to the applicable ABA Standards expressly notes that suspension has been found appropriate for misconduct similar to that of Respondent Warren: investment of client

funds for the benefit of the lawyer (Commentary, Standard 4.12); arranging for a loan by a client without fully disclosing the terms of the loan or potential impediments to collection and enforceability (Commentary, Standard 4.32); misrepresentations regarding the nature and extent of legal services provided (Commentary, Standard 4.62); and threats made by an attorney to opposing counsel (Commentary, Standard 6.32).

(b) Factors in Aggravation and Mitigation

In this case, Respondent Warren continues to profess that she did not engage in conduct subject to discipline. Respondent's refusal to acknowledge the wrongful nature of her conduct is an aggravating factor under ABA Standard 9.22(g).

By way of mitigation, however, several factors should be noted. Respondent has an unblemished disciplinary record, reflecting an absence of complaints or adjudications. ABA Standard, 9.32(a). During the period in question, Respondent was dealing with the illness of her mother, and the emotional and familial stress associated therewith. ABA Standard 9.32(c). Although the documents were never executed or recorded, Respondent did cause to be created a note and mortgage in an effort to protect the interest of Mr. Levine as a lendor. ABA Standard 9.32 (d). Respondent, while licensed as an attorney for several years prior to her relationship with Mr. Levine, had limited experience in the actual practice of law and the intricacies of attorney-client relationships. ABA Standard 9.32(f). Lastly, Cheryl Warren presented testimony from two attorney-witnesses whose past interactions with Respondent gave them favorable impressions regarding her honesty and sincere concern for clients. ABA Standard 9.32(g).

(c) Order of Discipline

In view of the foregoing the Panel orders that Respondent, Cheryl Warren, be suspended from the practice of law for a period of eighteen (18) months, effective April 30, 2003. Respondent shall fully comply with the requirements of MCR 9.119. As conditions precedent to reinstatement, Respondent shall accomplish all of the following:

1. prepare or have prepared, and execute, a promissory note and mortgage securing the $70,000.00 loan from Michael Levine to Respondent, in accordance with the terms of Respondent's letter dated July 1, 1998 (7% interest, payments based upon a 30-year amortization, a 10-year term with balloon payment, and an effective date of July 2, 1998, such that balloon payment of the entire balance must be made on or before July 1, 2008);

2. duly record the above-described mortgage with the Wayne County Register of Deeds against the Respondent's office condominium property;

3. ensure that Respondent is current with respect to all monthly payments under the above-described note and mortgage, based upon a first payment due date of August 1, 1998;

4. pay additional restitution to Michael Levine in the amount of $9,800.00 for excessive fees[1] and in the amount of $4,650.00 for losses sustained in the Ann Arbor condominium transaction, for total restitution of $14,450.00;

5. Respondent shall take and successfully pass the Multi-State Professional Responsibility Examination; and

---

[1] The Panel acknowledges that it is not able to ascertain the precise amount by which Respondent overcharged Mr. Levine for legal services. Admittedly, some legal work of value was performed by Respondent. Nevertheless, the Panel is firmly convinced that the total of $19,600.00 paid by Michael Levine was grossly excessive given the nature of Respondent's services. Consequently, the Panel has ordered reimbursement of fifty (50%) percent of the fees paid, believing that to be the *minimum* of the overcharge.

6. Respondent shall pay the following costs on or before April 30, 2003:

Attorney Grievance Commission: $94.67
Attorney Discipline Board: $3,194.50
$3,289.17
TOTAL COSTS:

See also Attachment A

ATTORNEY DISCIPLINE BOARD
Tri-County Hearing Panel #13

By: DAVID J. ESPER
Chairperson

Dated: April 8, 2003

ATTACHMENT A

Grievance Administrator v Cheryl M. Warren
Case No. 01-16-GA

PRIOR DISCIPLINE

AGC File No.	Discipline	Effective Date
2126/00	Admonishment	N/A

ITEMIZATION OF COSTS [MCR 9.128 - As Amended July 29, 2002]

Attorney Grievance Commission:	$ 94.67	
Attorney Discipline Board:	$ 3,194.50	
Administrative Fee:	$ -0-	(Case filed prior to 7/29/02)
TOTAL:	**$3,289.17**	