FILED
ATTORNEY DISCIPLINE BOARD
June 30, 2020

STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,

Petitioner/Appellant,

v

Jeffrey R. Sharp, P- 53838 ,

Respondent/Appellee,

Case No. 19-80-GA

Decided: June 29, 2020

Appearances

John K. Burgess, for Grievance Administrator, Petitioner/Appellant
Jeffrey R. Sharp, In Pro Per, Respondent/Appellee

BOARD OPINION

On February 25, 2020, Tri-County Hearing Panel #57 issued an order of suspension with condition, suspending respondent's license to practice law for 30 days, effective March 18, 2020. The Grievance Administrator filed a timely petition for review and the Attorney Discipline Board conducted a virtual proceeding via Zoom video-conferencing, in accordance with General Order ADB 2020-1, and MCR 9.118, on May 12, 2020, which included a review of the whole record before the panel, consideration of the Administrator's brief and the argument presented by counsel for the Administrator. Respondent did not appear. For the reasons discussed below, we increase the discipline imposed from a 30-day suspension with condition to a 180-day suspension of respondent's license to practice law and we vacate the condition imposed by the hearing panel.

I. Panel Proceedings/Background

On August 6, 2019, the Grievance Administrator filed a formal complaint against respondent that alleged, in part, that respondent practiced law during a time in which his license to practice law in Michigan was suspended by the State Bar of Michigan (State Bar) for failure to pay bar dues for

the 2018 calendar year. The complaint specifically alleged that the State Bar sent two letters to respondent advising him first, that his dues were delinquent and then that his license was suspended, as of February 15, 2018, for failure to make payment.

On August 15, 2018, respondent met with Regina Morawski regarding making amendments to a living trust respondent had prepared for her back in 2003. Respondent requested and received $800 from Ms. Morawski for the amendments. At that time, respondent's license to practice to law had not been reinstated. Thereafter, Ms. Morawski attempted to contact respondent numerous times by telephone to discuss the status of her trust amendments. The complaint alleged that respondent did not return Ms. Morawski's telephone calls. Eventually, Ms. Morawski contacted another attorney, Susan Doolittle, for advice on how to proceed.

On October 9, 2018, Attorney Doolittle filed a request for investigation against respondent alleging that he was practicing law without a license and was not communicating with Ms. Morawski. Shortly thereafter, respondent mailed the completed trust amendments to Ms. Morawski.

In his response to the request for investigation, respondent stated that he had mailed a check and his bar dues invoice to the State Bar in November 2017. Respondent was subsequently requested to provide documentary proof of the same by the Administrator's counsel. Respondent failed to do so and failed to appear pursuant to an investigative subpoena issued by the Administrator's counsel in a further attempt to obtain information and corroborating evidence from respondent.

The formal complaint charged that respondent accepted and collected a new retainer or attorney fee after the date of a suspension under Rule 4 of the State Bar of Michigan, in violation of MCR 9.119(D); practiced law while suspended, in violation of MCR 9.119(E); knowingly failed to respond to a lawful demand for information from a disciplinary authority, in violation of MCR 8.1(a)(2); knowingly made a false statement of material fact to a disciplinary authority in violation of MCR 8.1(a)(1); engaged in conduct that is contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3); and, engaged in conduct involving dishonesty, fraud, deceit and/or misrepresentation, or a violation of the criminal law, in violation of MRPC 8.4(b).

Respondent failed to file an answer to the formal complaint and his default was entered on September 6, 2019. The hearing on misconduct was held before the panel on October 1, 2019. Respondent appeared for the hearing and made an oral motion to set aside the default. The panel

denied the motion and made a finding of misconduct based on respondent's default. Instead of proceeding immediately with the sanction phase of the proceedings, the panel granted respondent's request to adjourn to a later date to allow him time to prepare and present testimony in mitigation and regarding the appropriate sanction to impose. A hearing on sanction was scheduled for December 17, 2019.

Respondent subsequently failed to appear for the December 17, 2019 hearing. Nevertheless, the hearing continued in respondent's absence and the Administrator's counsel, noting respondent's failure to appear or to otherwise communicate with him or the panel, requested that the panel impose a 180-day suspension of respondent's license to practice law pursuant to the dictates of this Board's prior decision in *Grievance Administrator v Deborah Carson*, 00-175-GA; 00-199-FA (ADB 2001). (An attorney's unexplained failure to participate in the discipline process warrants a suspension of 180 days, coupled with reinstatement proceedings under MCR 9.123(B) and MCR 9.124, as the minimum level of discipline which should be imposed by a hearing panel.)

The panel's report was issued on February 25, 2020 and made the following findings in regard to the sanction to impose:

> The panel, after reviewing the circumstances, the mitigating factor of respondent's past unblemished twenty-four years of practicing law, and taking into consideration counsel's statement at the December 17, 2019 hearing, that "[S]omebody who engages in this type of contact in terms of ignoring hearings like this and ignoring orders of this agency is certainly going through some type of mental or emotional problem," (Tr 12/17/19, p 13), suspends respondent's license to practice law for 30 days and imposes a condition that requires respondent to obtain a mental health evaluation through the State Bar of Michigan Lawyers and Judges Assistance Program (LJAP) and to fully comply with any recommendations made by LJAP, if necessary. The panel further finds that if respondent fails to obtain the evaluation and/or comply with LJAP's recommendations, respondent's license to practice law will be suspended for an additional 60 days, upon the filing of an appropriate motion and affidavit by the Grievance Administrator. [HP Report, 2/25/20, pp 3-4.]

An order of suspension with condition was entered suspending respondent's license to practice law for 30 days, effective March 18, 2020. The condition imposed by the panel required respondent to provide written verification to the Grievance Administrator and the Board that he contacted LJAP to schedule a mental health evaluation by April 18, 2020, and to provide the Grievance Administrator, or his designee, with a copy of his evaluation upon receipt.

The Grievance Administrator filed a timely petition for review and requested that the Board increase the discipline imposed to a 180-day suspension of respondent's license to practice law. Respondent did not file a responsive brief, nor did he appear for the virtual hearing before the Board, although required to do so pursuant to MCR 9.118(C)(1).

II. Discussion

The sole issue on review is whether the panel failed to rule in accordance with relevant precedent, which then resulted in the imposition of insufficient discipline. The standard of review for a panel's determination as to the appropriate level of discipline was discussed in *Grievance Administrator v David A. Reams*, 06-180-JC (ADB 2008), at p 2, which said:

> Although we afford a certain degree of deference to panel determinations as to the level of discipline imposed, this deference is less than that given to a finding of fact because this Board has an "overriding duty to provide consistency and continuity in the exercise of its overview function" with regard to sanctions. *Grievance Administrator v Rodney Watts*, No. 05-151-GA (ADB 2007). See also *Matter of Daggs*, 411 Mich 304, 319-320 (1981).

However, the Board traditionally does not disturb a panel's assessment unless it is clearly contrary to fairly uniform precedent for very similar conduct or is clearly outside the range of sanctions imposed for the type of violation at issue. The Court similarly defers. *Grievance Administrator v Lopatin*, 462 Mich 235, 247; 612 NW2d 120 (2000). *Grievance Administrator v Gregory J. Reed,* 10-140-GA (ADB 2014), at p 15.

The cases cited by the Administrator's counsel, *Carson*, and its predecessor, *Grievance Administrator v Peter Moray*, DP 143/86; 157/86 (ADB 1987) (reprimand increased to a 120-day[1] suspension for failing to answer two requests for investigation, failing to answer two formal complaints, and failing to appear before the panel), appear to us to support the argument for an increase in the length of the suspension imposed to at least 180 days. In *Carson*, we explained why a suspension requiring reinstatement was necessary:

---

[1] At the time the Moray decision was issued, suspensions of more than 119 days triggered the requirement that the respondent attorney petition for reinstatement under MCR 9.123(B) and 9.124. A March 1994 amendment to MCR 9.123 increased the reinstatement eligibility threshold to suspensions of more than 179 days.

> The rationale behind *Moray* and its progeny is not based upon a desire to punish the respondent attorney. Rather, the primary concern in such a case is the protection of the public. In *Moray*, we stated that we would be shirking our responsibility to the public if we simply assumed that an attorney who has failed to answer or appear is otherwise mentally, physically and ethically capable of engaging in the practice of law. By ordering that the attorney who fails to answer or appear will be suspended indefinitely until he or she comes forward, in person, to establish his or her eligibility to practice law to the satisfaction of a reinstatement hearing panel, we assure that protection. [*Carson*, *supra* at 3.]

At the December 17, 2019 hearing, the Administrator's counsel noted that: "My original request was going to be for a 90-day suspension. [Respondent's] failure to appear at this hearing is -- does change the matter significantly, though." (Tr 12/17/19, pp 10-11.) He then argued the applicability of *Carson* in support of his request for a 180-day suspension.

We cannot help but note that respondent's failure to participate in the majority of the underlying proceedings in this matter is troubling. First, respondent answered the request for investigation (RI) that was filed against him and that alleged he was practicing law while suspended. However, when the Administrator's counsel requested further information, based on statements made in respondent's answer, respondent disengaged and thereafter failed to respond to telephone calls, emails, and eventually to an investigative subpoena issued by the Administrator's counsel. As a result, the Administrator filed a formal complaint against respondent that not only alleged that respondent was practicing law while his license was suspended, but that he failed to cooperate in the Grievance Administrator's investigation of the RI and that he made false statements in his answer to the RI.

Once the formal complaint was filed, respondent remained disengaged from the proceedings and failed to file an answer, resulting in his default. Respondent then re-engaged and appeared at the October 1, 2019, hearing. He disputed that he received the mailings from the State Bar, maintained that he was unaware that his license had been suspended, and further stated that he had not received notice of his default for failure to answer the formal complaint, although he did not dispute the fact that he did not file an answer to the complaint. (Tr 10/1/19, pp 9, 13.) Respondent further denied that he misled the Commission about when he paid his dues, as referenced in his answer to the RI. (Tr 10/1/19, p 10-13.) However, respondent presented no good cause as to why

he failed to answer the formal complaint and entry of his default was appropriately upheld by the panel.

At respondent's request, the panel adjourned the sanction portion of the proceedings to allow respondent time to prepare and present evidence in mitigation:

> MR. BURGESS: . . . I am going to be requesting a suspension today, not a major significant suspension, but a suspension of his law license. I believe that Mr. Sharp, if prepared, could make an argument against that. So I mean I want to afford him the opportunity to prepare based on case law, precedent and ABA Standards to present that argument with regard to sanction if he so chooses. I don't believe, and I'm just being honest, I don't believe there's anything he's going to find that will be all that persuasive. But I certainly do want to offer him, at least give the panel to opportunity to offer him that chance. So that's all I have to say.
>
> MR. SHARP: Well, I would certain [sic] disagree and argue against a suspension, obviously. So in that regard, if it comes down to evidentiary submissions to persuade you in that regard, then I would ask for an adjournment, if that's okay.
>
> CHAIRPERSON BENHAM: I think that you would need to present arguments against a suspension with some sort of evidence to provide why a suspension isn't appropriate. So I believe that the sanction hearing should be scheduled for a later date to give you the opportunity to prepare.
>
> MR. SHARP: Okay. I appreciate that. [Tr 10/1/19, pp 26-27.]

Instead of taking advantage of the opportunity given to him to present his evidence to persuade the panel away from a suspension, respondent again disengaged from the proceedings and failed to appear for the December 17, 2019 hearing. He has remained disengaged from these proceedings before the Board as well.

It is apparent to us that the panel attempted to address respondent's failure to appear by requiring him to obtain a mental health evaluation with LJAP and ordering that his license would be suspended for an additional 60 days, if he failed to comply. It is further apparent that the panel felt some sympathy for respondent as well by noting his "past unblemished twenty-four years of practicing law" as a major mitigating factor. (HP Report, 2/25/20, p 3.) Although there appears to be no hard evidence in the record below that respondent actually suffers from a "mental or emotional

problem," as referenced in the report, we can understand why counsel for the AGC and the panel surmised that a mental health evaluation by LJAP might shed light on respondent's cavalier and disturbing disregard of these proceedings.

Unfortunately, those efforts to address respondent's unexplained failures to participate in the proceedings affecting his very ability to continue representing others were not sufficient. We wish to make it clear that the *Moray/Carson* line of cases is important not simply to address a contemptuous attitude toward these proceedings or the participants therein. Rather, this line of authorities, like the purpose of lawyer discipline, in general, "is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to properly discharge their professional duties to clients, the public, the legal system, and the legal profession." ABA Standards for Imposing Lawyer Sanctions, Standard 1.1.

As this Board explained in *Moray,* when a respondent fails to participate in these proceedings, it raises serious questions about the lawyer's fitness to represent the public because it clearly establishes that he or she is already "unwilling or unable to discharge certain obligations required of licensed attorneys." *Moray*, at p 2. As we have explained above:

> The burden was clearly upon Respondent to come forth and offer any explanation concerning his failure to respond to the discipline process. It would be error for the Hearing Panel to speculate as to the plausibility of the reasons for an attorney's failure to appear. [*Id.*]

To allow a respondent who fails to appear before a panel to gain reinstatement simply by filing an affidavit attesting to compliance with the requirements of MCR 9.119 and MCR 9.123(A) without ever having a hearing panel observe and evaluate his or her explanations for all of the misconduct, including, most important, the failure to participate in these proceedings exposes the public, the courts, and the profession to a great risk. On the other hand, suspending respondent's license for 180 days will require respondent to petition for reinstatement and to establish to a hearing panel, by clear and convincing evidence, that he has met all of the requirements of MCR 9.123(B)(1)-(9). Through that process, respondent will have the opportunity and obligation to explain his inability or unwillingness to participate in these critical proceedings, and that he can "safely be recommended to the public, the courts and the legal profession as a person fit" to practice law. MCR 9.123(B)(7).

III. Conclusion

As set forth in our opinion in *Carson,* an attorney who fails to answer or appear at the public proceedings commenced with the filing of a formal complaint under MCR 9.115(B) should, as a general rule, be suspended for a sufficient period to trigger reinstatement proceedings under MCR 9.123(B). This should be so regardless of whether the attorney may have answered a request for investigation or otherwise communicated with the Grievance Administrator prior to the filing of the formal complaint.

We conclude that a 180-day suspension of respondent's license is the appropriate sanction to impose in this matter, thus we will enter an order increasing discipline and vacating the condition imposed by the hearing panel.

Board members Jonathan E. Lauderbach, Barbara Williams Forney, James A. Fink, Karen O'Donoghue, John W. Inhulsen, Linda Hotchkiss, MD, Michael S. Hohauser, and Peter A. Smit concur in this decision.

Board member Michael B. Rizik, Jr. was absent and did not participate in this decision.