STATE OF MICHIGAN

Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner,

v Case No. 17-1-GA

LAWRENCE B. SHULMAN, P 45075

Respondent.
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ORDER AFFIRMING HEARING PANEL ORDER OF SUSPENSION AND RESTITUTION

Issued by the Attorney Discipline Board
211 W. Fort St., Ste. 1410, Detroit, MI

Tri-County Hearing Panel #69 of the Attorney Discipline Board issued an order on January 18, 2018, suspending respondent's license to practice law in Michigan for a period of 90 days, and ordering him to pay $6,750 in restitution. The Grievance Administrator filed a petition for review arguing that the hearing panel imposed insufficient discipline and requesting that the Board increase the suspension of respondent's license to one year, or at least to 180 days. Respondent's 90-day suspension became effective, by stipulation of the parties, on May 4, 2018.[1]

The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118, including review of the evidentiary record before the panel and consideration of petitioner's brief and arguments presented by the parties at a review hearing conducted on April 18, 2018. For the reasons discussed below, we affirm the decision of the hearing panel to impose a 90-day suspension of respondent's license to practice law.

The hearing panel found that respondent committed misconduct during his representation of Rajan Patel in an appeal of his criminal conviction for health care fraud by failing to prepare and file a brief on Mr. Patel's behalf, which ultimately resulted in the dismissal of his claim of appeal; requesting a number of extensions to file the brief which included misrepresentations to the court about his contacts with Mr. Patel and ability to prepare the brief; knowingly misrepresented to Mr.

[1] On February 5, 2018, respondent filed a timely cross-petition for review and request for an automatic stay of discipline pursuant to MCR 9.115(K). A notice of automatic stay was issued on February 7, 2018. On March 4, 2018, an order dismissing respondent's cross-petition for review and dissolving the automatic stay was entered after respondent failed to file a brief in support of his cross-petition for review by February 27, 2018. The 90-day suspension of respondent's license to practice law was to become effective April 12, 2018, but the parties subsequently stipulated to extend the effective date of respondent's suspension to May 4, 2018 and an order to that effect was issued by the Board.

Patel and his wife, Sejal Bamrolia, that a brief had been prepared and that a motion to reinstate the appeal had been filed after the dismissal was entered; failing to refund the unearned fee after Mr. Patel terminated the representation; and failing to file an answer to the request for investigation subsequently filed by Mr. Patel.

With regard to the discipline imposed by the hearing panel, the Administrator submits that it is insufficient given the findings of misconduct, in particular the misrepresentations made about the status of Mr. Patel's appeal, and because it is inconsistent with prior precedent of this Board. The Administrator declares that a one-year suspension of respondent's license to practice law is required.

In support of this argument, the Administrator cites to *Grievance Administrator v Donna L. Jaaskelainen*, 14-105-GA (ADB 2015), for the proposition that a suspension of at least 180 days is appropriate when a lawyer knowingly deceives a client about the status of the client's case, as well as the decisions rendered in *Grievance Administrator v Harvey J. Zamek*, 07-34-GA (ADB 2008) (120-day suspension increased to disbarment because of an extensive disciplinary history, but the Board reiterated that a suspension of at least 180 days is appropriate for knowing deception); *Grievance Administrator v Perry T. Christy*, 94-125-GA (ADB 1996) (160-day suspension increased to a one-year suspension for telling a client that his case was still pending when it had in fact been dismissed, asking for additional fees for discovery although the case was dismissed, and for making a false statement in an answer to a request for investigation); and *Grievance Administrator v Gary M. Wojnar*, 91-174-GA (ADB 1994), (90-day suspension increased to 180 days for making false statements to a client about the status of an appeal). (Tr 10/9/17, pp 18-19; Petitioner's Brief in Support, p 10.)

In *Jaaskelainen,* we specifically cautioned practitioners that it should not be cited as a case in which discipline was imposed for making dishonest statements to a client, given the absence of any reference to the specific rule violations for such conduct. *Id.* at p 3. In addition, we later refined this quoted general declaration found in a footnote in *Jaaskelainen* in *Grievance Administrator v Joseph Edward Ernst*, 14-116-GA (ADB 2016), noting that "misrepresentation has historically resulted in discipline ranging from reprimand to revocation," based on a particularized review of the facts and circumstances surrounding each case. See *Grievance Administrator v George Krupp*, 96-287-GA (ADB 2002). *Id.* at p 4. Given the discretion the Board has as to the ultimate result, we are not bound to modify a hearing panel's decision as to the level of discipline when there appears to be precedent for a particular level of discipline, if we find it is inappropriate for a particular case.

While we tend to agree with the Administrator that respondent appears to have had multiple opportunities to tell his client and his client's wife that he had concluded that there were no issues to raise on appeal and the truth about the status of his client's appeal, the record reflects that the hearing panel recognized that there were unique facts and circumstances to consider and they weighed the seriousness of the misconduct against the mitigating circumstances presented by respondent, specifically noting the following:

> Respondent testified as to mitigation the panel should consider . . . he was involved in a lengthy trial and was going through his own contentious divorce that included child custody issues involving his twin 12-year-old children, one of whom has substantial medical problems emanating from a premature birth.

> Respondent maintained that he provided competent advice to his client about pursuing habeas relief that was in his client's best interest. Respondent noted that one reason for the delay in his client's matter was because they were waiting for a decision to be rendered in a separate, unrelated Federal case on appeal in another circuit that had a chance of benefitting respondent's client. Ultimately, the decision, which was rendered between the misconduct and sanction hearings in this matter, was not favorable.
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> Further, respondent testified that communication with his client was difficult because he was incarcerated in a federally contracted private facility outside of Michigan. It was important to respondent that his client review the entire trial court record in order to give him information and context. In this matter, respondent's mission was to continue to buy his client more time and to perform those duties faithfully. (Sanction Report 1/18/18, p 4.)

In addition, Mr. Patel's appeal was subsequently reinstated and heard, albeit by Mr. Patel and his successor counsel, and the documents offered by respondent at the sanction hearing, which included a copy of the appellate brief filed on Mr. Patel's behalf by his successor counsel, a copy of the opinion issued by the Sixth Circuit Court of Appeals on October 6, 2017, in Mr. Patel's matter affirming his sentence (his conviction was apparently not challenged),[2] and the docket entries from Mr. Patel's appellate matter, (Respondent's Exhibits 14-16), tend to indicate that any injury or potential injury was, ultimately, minimal.

We have previously noted that:

> . . . *Lopatin* and the adoption of the Standards was intended to foster consistency in discipline so that seemingly identical cases would not receive vastly different levels of discipline. However, as we have noted, *Lopatin* and the Standards do require the Board and its panels to consider meaningful distinctions between instances of lawyer conduct and gauge and adjust discipline appropriately based on such distinctions. *Grievance Administrator v Otis M. Underwood*, 16-55-GA (ADB 2017).

The panel accepted the Administrator's argument that a suspension was the presumptive level of discipline given the facts of this case. We agree. Upon careful consideration of the whole record, the Board is not persuaded that the hearing panel's decision to order a 90-day suspension was inappropriate.

NOW THEREFORE,

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[2] Mr. Patel's successor counsel argued that the district court erred in imposing restitution without making factual findings and that his sentence was procedurally unreasonable because the district court failed to make the factual findings required by Rule 32 of the Federal Rules of Criminal Procedure.

IT IS ORDERED that the hearing panel's Order of Suspension and Restitution, issued January 18, 2018, is **AFFIRMED**.

ATTORNEY DISCIPLINE BOARD

By: Michael Murray
Rev. Michael Murray, Chairperson

Dated: October 22, 2018

Board members Rev. Michael Murray, Barbara Williams Forney, James A. Fink, John W. Inhulsen, Jonathan E. Lauderbach, Karen O'Donoghue, Michael B. Rizik, Jr., and Linda S. Hotchkiss, M.D. concur in this decision.

Board Chairperson Louann Van Der Wiele was absent and did not participate.