GRIEVANCE ADMINISTRATOR,
Petitioner/Appellee,

v

GERARD DELGIUDICE, P-39015,
Respondent/Appellant.

ADB 65-89

Decided: April 30, 1990

BOARD OPINION

The respondent pleaded guilty on March 1, 1989 in the Ingham County Circuit Court to two counts of embezzlement by an agent. As the result of his felony conviction, show cause proceedings were held before a hearing panel in accordance with MCR 9.120(A). On December 18, 1989, Wayne County Hearing Panel #22 filed its report along with an order revoking the respondent's license to practice law in Michigan. Respondent has filed a petition with the Attorney Discipline Board seeking review of that decision on the grounds that license revocation is unnecessarily harsh in this case. Based upon review of the record and consideration of the arguments presented by the parties, the Board concludes that the discipline imposed is appropriate. The Order of Revocation is affirmed.

The respondent, while still in law school, became acquainted with a businessman in the Lansing area with whom he participated in setting up four leasing companies for handling telephone and other equipment. Respondent was named president of one of the companies and was a partner in the others. Within approximately one year of his admission to the Bard, the respondent found himself in a condition described by the hearing panel as a "financial shortfall" related to the construction of a second house as an investment. While serving as the operating officer of one of the leasing companies, the respondent was able to meet this shortfall by embezzling approximately $77,000 from the company's credit line and he was found to have falsified financial statements to cover the embezzlement.

The hearing panel found that the embezzlement in this case was a deliberate, knowing and calculated breach of his fiduciary duties which broke the trust placed in him as a company officer and partner. In its carefully crafted discussion, the panel reviewed the respondent's otherwise impressive accomplishments but concluded:

> Apart from the law, respondent was not a naive youth on the rim of adolescence but rather an accomplished young man who had successfully undertaken more responsibility than most persons his age. Respondent knowingly diverted funds from a company credit line under his control so that he would appear a competent businessman to his associates. This theft was not caused by imma-

> turity, but by business ambition brewing in a man more mature than his years suggest . . . an officer or partner who embezzles from five percent to twenty percent of his company's assets, defrauding trusting fellow owners, all in calculated violation of other fiduciary duties, ought not to be a lawyer.

The respondent's appeal is based, in large part, upon a claim that there is a wide disparity in orders of discipline in general and, in particular, that discipline is not meted out uniformly in cases involving embezzlement of funds. In support of this argument, respondent lists fifteen discipline cases reported during the year 1989 involving some form of "embezzlement". In seven cases, the respondent/attorney was disbarred. Discipline in the other cases ranged from a suspension of 180 days to a suspension of five years.

We note that seven of the fifteen cited by the respondent resulted in revocation, the discipline imposed in this case. We are also aware of the statement of the Supreme Court in Matter of Grimes, 414 Mich 483; 326 NW2d 380 (1982):

> In reviewing the discipline imposed in a given case, we are mindful of the sanctions meted out in similar cases, but recognize that analogies are not of great value.
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> "As a hypothetical proposition, we find dubious the notice that judicial or attorney misconduct cases are comparable beyond a limited and superficial extent. Cases of this type must stand on their own facts." State Bar Grievance Administrator v Del Rio, 407 Mich 336, 350; 285 NW2d 277 (1979).

Having issued that disclaimer, however, the Court did provide some guidance to this Board and the legal profession with regard to the appropriate discipline in a specific class of cases.

This guidance was recognized by the panel which relies heavily on the Court's opinion in Grimes that, regardless of a prior unblemished record or other mitigating factors, disbarment is an appropriate discipline for an attorney convicted of crimes of moral turpitude.

In Grimes, the Court considered discipline in the case of an experienced lawyer with no disciplinary record convicted of two counts of federal income tax evasion and the Court noted the element of moral turpitude inherent in the respondent's behavior: "moral turpitude is the ground for the discipline of an attorney involves fraud, deceit and intentional dishonesty for purposes of personal gain." 326 NW2d at 383. Like the panel below, we emphasize that the respondent embezzlement in this case was obviously and admittedly fraudulent, deceitful and intentionally dishonest and was committed for personal gain.

The panel referred to the Grimes case as a tired precedent, which nevertheless establishes a framework within which to consider cases of this type. We do not believe that the passage of

eight years has dimmed the vitality of that opinion. The goal of these disciplinary proceedings now, as then, remains "the protection of the public, the courts and the legal profession." MCR 9.105. As in Grimes, neither the respondent's background or his accomplishments obliterate our responsibility to impose the discipline his violations warrant.

Finally, we must address respondent's assignment of error to the hearing panel's consideration of the American Bar Association's Standards for Imposing Lawyer Sanctions approved by the American Bar Association House of Delegates February 1986. Respondent alleges that these Standards have been "withdrawn" by the American Bar Association and that consideration of those standards unfairly prejudiced the respondent. The alleged "withdrawal" of those standards has not been supported and the Board's own inquiries to the American Bar Association reveal no such withdrawal. These Standards, while not officially adopted by the Board or the Michigan Supreme Court, do continue, in our view to provide a useful theoretical framework for use in imposing disciplinary sanctions in many cases.

All concur.