STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,

Petitioner/Appellee,

v

Michael E. Tindall, P 29090,

Respondent/Appellant,

Case No. 14-36-GA

Decided: June 13, 2018

Appearances:

Kimberly L. Uhuru, for the Grievance Administrator, Petitioner/Appellee
Michael E. Tindall, Respondent/Appellant, in pro per

BOARD OPINION

Tri-County Hearing Panel #104 of the Attorney Discipline Board issued an order of disbarment in this matter. Respondent filed a timely petition for review and argues that the hearing panel made procedural and substantive errors both prior to, and during, his disciplinary proceeding; that the hearing panel's findings of misconduct do not have proper evidentiary support in the record; and that the disbarment ultimately imposed by the panel is excessive. The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118, including review of the record before the hearing panel and consideration of the briefs and arguments presented to the Board at a review hearing conducted on December 13, 2017. For the reasons discussed below, we conclude that the hearing panel committed no error, that there is proper evidentiary support in the record for the findings of misconduct, and we affirm the order of disbarment entered below.

Background of Underlying Proceedings

On February 15, 2008, attorney Mark Chaban[1] filed an action in the 35th District Court against Mark Mangano, Brenda (a/k/a Randa Haddad) Mangano, and Related Auto Care to collect $6,757.85 in owed attorney fees; Case No. 08-C-0988 GC. On July 21, 2008, respondent filed an appearance as Mr. Chaban's attorney. Attorney Anthony Rosai represented the defendants. On October 1, 2008, the court entered a judgment for Mr. Chaban in the amount of $6,149.85 in actual damages and $18,549.55 in treble damages, and further awarded respondent $10,081 in attorney fees. The court also granted Mr. Chaban's motion for a receiver, appointing Gregory Saffady as receiver and respondent as counsel for the receiver. On October 27, 2008, the 35th District Court issued an order for sale of the Manganos' real property located in Canton Township, to satisfy the judgment.

On December 31, 2008, the Manganos filed a Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the Middle District of Tennessee. On January 16, 2009, respondent filed an appearance on behalf of the receiver in the bankruptcy matter. In February 2009, respondent successfully argued to the Court that the Manganos' attorney in the bankruptcy matter, John Lygizos, be held in contempt for paying his clients' $500 sanction from his IOLTA account.[2] A judgment of contempt was entered against Attorney Lygizos and an order awarding attorney fees and costs to respondent and Mr. Saffady, was entered on February 19, 2009. Attorney Lygizos was represented by John Royal who attempted to get the contempt finding reversed. On February 20, 2009, respondent filed a motion to have Attorney Royal found in contempt and fined $7,500 for appealing the Court's ruling on Mr. Lygizos' behalf.

On March 9, 2009, respondent filed a responsive pleading in the Tennessee bankruptcy matter seeking dismissal of the bankruptcy petition, alleging that the Manganos had filed the bankruptcy fraudulently for the purpose of evading the receivership and that the bankruptcy was a sham. Respondent also filed a motion for sanctions against the various parties involved in the bankruptcy matter.

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[1] Mr. Chaban's license to practice law was suspended for one year, effective October 31, 2017, in *Grievance Administrator v Mark A. Chaban*, 15-151-GA. Mr. Chaban filed a petition for review of the hearing panel's order, but his request for a stay of the discipline imposed was denied. The matter is currently pending before the Board.

[2] In September 2008, during pretrial proceedings, the 35th District Court imposed a $500 sanction against the Manganos and Attorney Rosati.

On March 19, 2009, 35th District Court Judge Lowe entered an order discharging Mr. Saffady and respondent, effective upon appointment of a successor receiver and successor judge, as Judge Lowe recused himself from any further proceedings in the matter.

On May 20, 2009, a hearing was held in the bankruptcy matter on respondent's motions. Bankruptcy Court Judge Keith Lundin found that the evidence was overwhelming that the Manganos' bankruptcy filing was legitimate, not fraudulent. The judge described respondent's conduct as a "scorched earth collection action by [respondent] on behalf of Mr. Chaban." The judge also described respondent's claim that the Manganos' were engaged in fraud as "disingenuous at best, and frivolous at worst." The judge further found that respondent's motion for sanctions, which he subsequently withdrew, was not based on any reasonable investigation and that it was inappropriate for respondent to sign the motion. Finally, the judge ordered respondent to personally pay the reasonable expenses and attorney fees of the opposing parties for filing his frivolous motion to dismiss the bankruptcy petition. (Petitioner's Exhibits 13, 14.) Respondent appealed the bankruptcy court's rulings to the Sixth Circuit Court of Appeals, but the appeal was dismissed for lack of jurisdiction.

The parties next appeared in the Wayne County Circuit Court on Attorney Lygizos' request for enforcement of Judge Lowe's order removing respondent and Mr. Saffady. On June 12, 2009, Wayne County Circuit Court Judge Michael Sapala ordered that Mr. Saffady be immediately removed as receiver in the District Court action and that respondent be removed as counsel for the receiver. (Petitioner's Exhibit 18.) Respondent unsuccessfully appealed Judge Sapala's order to both the Michigan Court of Appeals and the Michigan Supreme Court.

Following the appeals, and based on Judge Lowe's recusal, the matter in the 35th District Court was reassigned to Judge Kathleen McCann. On August 12, 2009, Judge McCann ordered that Mr. Saffady and respondent be immediately discharged from their positions as receiver and attorney for receiver, respectively. Judge McCann appointed attorney Walter Sakowski as successor receiver. (Petitioner's Exhibit 24.) The next day, respondent filed a request for a stay of Judge McCann's order with the Supreme Court. The request was denied.

On November 6, 2009, Judge McCann issued a further order quashing subpoenas which respondent had issued, and denied, with prejudice, any further fees to respondent and Mr. Saffady. Thereafter, Judge McCann issued a final order awarding payment of $4,104 to Mr. Sakowski and

ordering respondent to pay 20% of that amount. Judge McCann noted that the case had been "jettisoned through a legal quagmire," and again ordered that no additional fees be paid to respondent. (Petitioner's Exhibits 28 and 35, pp 8-9.)

On November 22, 2009, counsel for Chase Home Finance, Inc. (Chase) contacted respondent regarding the Canton property and sought to have Mr. Saffady stipulate to the sale of the home through foreclosure as the bankruptcy stay had been lifted. On December 29, 2009, respondent responded to counsel for Chase by asserting an $89,856.98 judgment lien on the property. Respondent stated that Mr. Saffady would only consent to foreclosure if the judgment lien were satisfied. On March 4, 2010, respondent filed a notice of lien with the Wayne County Register of Deeds against the Canton property in the amount of $264,384.35.

On May 14, 2010, respondent filed an action against Chase in the United States District Court for the Eastern District of Michigan seeking an equitable lien against the Canton property. Respondent filed numerous motions in the U.S. District Court matter, including a motion for an award of costs and fees, and a motion to sanction Chase for filing an answer and affirmative defenses, rather than consenting to the foreclosure.

Chase filed a motion for summary judgment and to impose sanctions against respondent. In support of its request for sanctions, Chase noted that respondent had filed multiple frivolous motions in the case, attempted to depose the General Counsel of Chase, and tried to sue counsel for Chase.

On October 7, 2010, the U.S. District Court issued an opinion and order resolving several of the motions pending in the case. The court noted that it was troubled by the manner in which respondent had proceeded in the litigation. The court specifically noted that the complaint respondent filed lacked candor as it did not advise the court that Mr. Saffady had been removed in the state court matter and because it asserted a claim to more than $200,000 in fees without reference to any court order awarding such fees. Respondent and Mr. Saffady were ordered to show cause why they should not be sanctioned. (Petitioner's Exhibit 33.)

Meanwhile, on June 22, 2011, Wayne County Circuit Court Judge Sapala entered an order reversing the contempt finding against Attorney Lygizos and vacating the award of attorney fees and costs to respondent and Mr. Saffady that was entered back on February 19, 2009.

On January 4, 2012, the U.S. District Court issued a second opinion and order that granted Chase's motion for summary judgment and imposed sanctions against respondent pursuant to 28

USC § 1927, noting that respondent's actions were "egregious and warrant the imposition of sanctions." The court further found that respondent "knowingly pursued meritless claims, intentionally abused the judicial process, and needlessly multiplied the proceedings in this action," and that respondent "engaged in overly aggressive tactics - aimed at harassing Chase into settling with Saffady - that unquestionably caused Chase to incur unnecessary legal fees." (Petitioner's Exhibit 35.) The court ultimately declined to impose sanctions on respondent because Chase withdrew its request that the court do so, citing confidentiality concerns and a reluctance to engage in further litigation with respondent.

Panel Proceedings

A formal complaint was filed against respondent on April 3, 2014. The factual paragraphs of the complaint reference respondent's involvement in the separate court proceedings referenced above. The complaint charged that in each of those proceedings, respondent engaged in misconduct by bringing frivolous proceedings and asserting frivolous issues, in violation of MRPC 3.1, and engaging in conduct involving dishonesty, fraud, or misrepresentation, where such conduct reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer, in violation of MRPC 8.4(b). The complaint also charged that respondent engaged in conduct that is prejudicial to the administration of justice, that exposes the legal profession or courts to obloquy, contempt, censure, or reproach, that is contrary to justice, ethics, honesty, or good morals, and that violates the standards or rules of professional conduct adopted by the Supreme Court, in violation of MCR 9.104(1)-(4) and MRPC 8.4(a).

Once he received the formal complaint, respondent next filed a series of motions with the panel, interlocutory appeals to this Board, and requests for leave to appeal to the Michigan Supreme Court beginning in May 2014 and continuing until the first hearing finally held on October 11, 2016. Respondent finally filed an answer to the formal complaint on September 30, 2016, accompanied by a counter-complaint against the former Grievance Administrator, Robert Agacinski, and the Administrator's counsel, Kimberly Uhuru, that named them as "counter-respondents." The day before the first hearing, the panel entered an order striking the counter-complaint.

Misconduct hearings were held before the panel on October 11, 2016 and January 10, 2017.[3] Once the Grievance Administrator rested, respondent moved for an involuntary dismissal of the formal complaint, which the panel denied. Respondent then attempted to call the Administrator's counsel, Ms. Uhuru, as a witness arguing that he was entitled to do so pursuant to the adverse party statute, MCL 600.2161. The hearing panel denied his request to do so, noting that the statute did not apply in disciplinary proceedings and, in light of the dismissal of respondent's counter-complaint, Ms. Uhuru's testimony was irrelevant to the charges contained in the formal complaint.

On June 6, 2017, the hearing panel's misconduct report was issued in which the panel adopted and incorporated the descriptions of the proceedings and events, as well as the findings and conclusions of the judges relative to respondent's conduct in the various court proceedings, and as reflected in the Administrator's exhibits. (Misconduct Report 6/6/17, pp 8, 14, 16, 21-23.) Ultimately, the hearing panel made a finding of misconduct as to all of the allegations contained in the formal complaint. A hearing on sanctions was held before the panel on July 19, 2017. The Administrator's counsel called no witnesses, but admitted copies of respondent's prior discipline, as reflected in Petitioner's Exhibits 42 and 43, as evidence in aggravation. She argued that respondent violated duties owed to the public, the legal system, and the legal profession; that respondent acted intentionally; and that actual serious harm occurred as a result of respondent's actions. (Tr 7/19/17, pp 7-10.)

Counsel further referenced the disbarment level sanctions referenced under Standards 6.1 (false statements, fraud and misrepresentation), 6.2 (abuse of the legal process), and 7.0 (violations of other duties owed as a professional) of the American Bar Association Standards for Imposing Lawyer Sanctions (ABA Standards); the aggravating factors referenced in Standards 9.22(b) (dishonest or selfish motive), 9.22(c) (pattern of misconduct), 9.22(d) (multiple offenses), 9.22(e) (bad faith obstruction of the disciplinary process), 9.22(g) (refusal to acknowledge the wrongful nature of conduct); and prior Board precedent *Grievance Administrator v Raymond Macdonald*, 09-43-GA (ADB 2010) and *Grievance Administrator v Shelly Stasson*, 07-165-GA (ADB 2008), in support of her request for disbarment. (Tr 7/19/17, pp 19-22, 26- 30, 36-39.) The Administrator's counsel asked the panel to specifically consider respondent's actions during the disciplinary

[3] Respondent also filed a motion to compel production of documents, an objection to the Administrator's response, and a supplemental discovery response in between the two hearing dates.

proceedings, arguing that his conduct mirrored what occurred in the underlying proceedings, as a particularly egregious aggravating factor. (Tr 7/19/17, p 37.)

Respondent argued that none of the ABA Standards cited by the Administrator's counsel applied, and noted that if any Standard applied, it would be ABA Standard 6.14, calling for an admonishment. (Tr 7/19/17, p 55.) Respondent also indicated that the "closest" case he could find to support his position, although not really on point, was *Grievance Administrator v Gregory Reed*, 10-104-GA (ADB 2014).

On August 29, 2017, the hearing panel's sanction report was issued. In it, the panel applied the theoretical framework set forth in the Standards, noting that they found respondent violated duties owed primarily to the legal system, but also to the public and the legal profession; that he acted intentionally; and that there was potentially serious injury.

The panel found that the disbarment level sanctions found in ABA Standards 5.11(b), 6.11, 6.21, and 7.1, applied. The panel further found that the aggravating factors found in ABA Standards 9.22(a) (prior discipline), 9.22(b) (dishonest or selfish motive), 9.22(c) (pattern of misconduct), 9.22(d) (multiple offenses), 9.22(g) (refusal to acknowledge wrongful nature of conduct), and 9.22(i) (substantial experience in the practice of law), applied. The panel specifically found that none of the mitigating factors listed in ABA Standard 9.32 applied. Finally, the hearing panel concluded that disbarment was the appropriate discipline to impose.

On September 18, 2017, respondent filed a timely petition for review and a request for a stay of the discipline imposed by the hearing panel. The Grievance Administrator objected to respondent's request for a stay. Having reviewed respondent's request and the Administrator's objection, the Board concluded that respondent's petition for stay be denied and an order to that effect was issued on September 21, 2017.

Shortly thereafter, respondent filed a complaint for superintending control with the Supreme Court arguing that pursuant to MCR 2.614(D), he was entitled to an automatic stay of the hearing panel's order of disbarment. An answer to the complaint was filed on behalf of this Board noting that respondent's reliance on MCR 2.614(D) was misplaced because Subchapter 9.100 of the Michigan Court Rules provides a specific, and exclusive, rule for a stay of a discipline order issued by a hearing panel, MCR 9.115(K). On October 6, 2017, the Supreme Court issued an order granting respondent's request for immediate consideration, but denying his request for superintending control. Respondent filed a motion for reconsideration with the Court which was subsequently denied.

Respondent's disbarment became effective September 20, 2017.

Discussion

Respondent has alleged that the hearing panel made procedural and substantive errors both prior to, and during, his disciplinary proceeding. With regard to pre-trial proceedings, respondent alleges that the panel erred as a matter of law, and/or abused its discretion, in its rulings on respondent's motions *in limine* and for summary disposition, which included his claim of governmental immunity.

On July 25, 2016, the hearing panel issued three orders, after remand.[4] The first was an order denying respondent's motion *in limine*; the second was an order denying respondent's motion for summary disposition; and the third was an order extending the time for respondent to file an answer to formal complaint. Respondent filed yet another petition for interlocutory review with this Board based on the panel's July 25, 2016 orders. The petition for interlocutory review, as well as the petition for review currently before us, argued that the panel intentionally refused to comply with the Board's order on remand and that, as a result, they erred as a matter of law in denying his motion for summary disposition and claim of governmental immunity.

The first order entered by the panel on July 25, 2016 was an order denying respondent's motion *in limine*. The order noted the evidence in issue (three hearing transcripts and two orders), respondent's arguments that this evidence was inadmissible hearsay because it had been either rescinded or dismissed, and the Administrator's objections and arguments that this evidence was not hearsay, admissible pursuant to statute and case law, and were neither rescinded nor dismissed. Finally, the order indicated that:

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[4] On August 17, 2015, respondent emailed copies of a motion and brief *in limine*; an objection to a portion of the hearing panel's July 24, 2015 order requiring him to file an answer by August 17, 2015; a combined motion and brief for summary disposition and a motion to dismiss the formal complaint with prejudice; and an affidavit. However, the email was sent to a Board employee who was on medical leave. Respondent also mailed hard copies of the documents, but because they were not received until August 18, 2015, the panel directed that the documents be returned to him. After confirming that no answer was received by the panel's due date, the Grievance Administrator filed a default against respondent on August 18, 2015. Respondent moved to set aside the default, but his motion was denied. Respondent then filed his second petition for interlocutory review with this Board. In an order entered June 10, 2016, we granted interlocutory review to the extent the panel denied respondent's motion to set aside the default. The order set aside the default, remanded the matter to the hearing panel to consider the documents received by mail on August 18, 2015, and denied interlocutory review of the panel's decision to deny respondent's request for sanctions. The order also denied respondent's request that the panel be disqualified and a new hearing panel be assigned to his matter.

> The panel . . . believes that it is neither necessary nor appropriate for it to rule on the admissibility of evidence on any grounds in advance of the hearing . . . This order is without prejudice to either party offering, or objecting to, any evidence, including but not limited to the documents which are the subject of the motion, at the time of the hearing.

Our June 10, 2016 order required the panel, on remand, to "*consider and rule on* the papers that were delivered to the Attorney Discipline Board via U.S. mail on August 18, 2015, and conduct such other and further proceedings as may be appropriate." (Emphasis added.) Review of the panel's order makes it clear that the panel did not refuse to consider and rule on respondent's motion *in limine*. To the contrary, the order is clear that the panel considered the motion, but determined that decisions as to the admissibility of evidence offered by either side would be made at the time such evidence was offered. The panel was not required to rule on the admissibility of these documents prior to the misconduct hearing. Furthermore, the panel's order specifically indicated that it was without prejudice to either party to object to any evidence offered, not just the transcripts and orders mentioned in respondent's motion. We find no error or unfairness in the hearing panel's denial of respondent's motion.

The second order entered by the panel on July 25, 2016, denied respondent's motion for summary disposition. Hearing panel decisions on the law are reviewed by the Board *de novo*. *Grievance Administrator v Jay A. Bielfield*, 87-88-GA (ADB 1996); *Grievance Administrator v Geoffrey N. Fieger,* 94-186-GA (ADB 2002). Thus, this is the standard we apply to review the hearing panel's denial of respondent's motion. Respondent argues that the panel's "refusal" to decide his motion *in limine* improperly allowed the use of "non-existent/inadmissible evidence" to "oppose/decide" his motion for summary disposition.

Respondent's motion was brought under MCR 2.116(C)(7), (8) and (10) and each subsection was thoroughly analyzed under the relevant law, as reflected in the panel's order:

> Pursuant to MCR 2.116(C)(7), respondent states that he was cloaked with absolute quasi-judicial immunity at all times stated in the formal complaint. More specifically, he asserts that (1) he was acting in the capacity of the attorney for a court-appointed receiver at all times set forth in the formal complaint; (2) as such, he was entitled to the same immunity from [civil] actions enjoyed by the receiver; and (3) that

immunity extends to attorney discipline proceedings.

Under MCR 2.116(C)(7), summary disposition is proper when a claim is barred by immunity granted by law. If the facts are not in dispute and reasonable minds could not differ concerning the legal effect of those facts, whether the claim is barred by immunity is a question for the court to decide as a matter of law. The formal complaint alleges that respondent engaged in various acts while engaged in the capacity of attorney for the court-appointed receiver, as well as other acts after being discharged from those duties. Respondent contends that he was, at all times stated in the formal complaint, acting as a lawyer for the receiver. For the reasons discussed below, there is no factual dispute which would preclude a decision by this panel.

MCL 691.1407 provides in relevant part:

> . . . [A] governmental agency is immune from **tort liability** if the governmental agency is engaged in the exercise or discharge of a governmental function. (Emphasis added.)

The statute expressly immunizes governmental agents from "tort liability for an injury to a person or damage to property." Petitioner responds that (1) while there is authority that court-appointed receivers have judicial immunity, there is no authority extending that immunity to their attorneys, (2) respondent, in any event, acted, at certain times stated in the formal complaint, outside the scope of his capacity as attorney for the court-appointed receiver, and (3) immunity from liability does not apply [to] attorney discipline proceedings.

Although respondent contends in his combined motion and brief that quasi-judicial immunity protects him from disciplinary proceedings, he provides no authority supporting the proposition that immunity extends beyond tort actions to disciplinary proceedings.

The Michigan Supreme Court created the Attorney Discipline Board by authority of Const. 1963, Art. VI Sec. 5 to supervise and discipline Michigan attorneys. The regulation of the practice of law, the maintenance of high standards in the legal profession, and the discharge of the profession's duty to protect and inform the public are purposes in which the State of Michigan has a compelling interest. *Falk v State Bar*, 418 Mich 270; 342 NW2d 504 (1983).

MCR 9.105 Purpose and Funding of Disciplinary Proceedings (A)

Purpose, states:

> Discipline for misconduct is not intended as punishment for wrongdoing, but for the protection of the public, the courts, and the legal profession. The fact that certain misconduct has remained unchallenged when done by others or when done at other times or has not been earlier made the subject of disciplinary proceedings is not an excuse.

Further, the introductory provision of the Michigan Rules of Professional Conduct, adopted by the Michigan Supreme Court, expressly distinguishes attorney disciplinary proceedings from civil or criminal actions:

> [MRPC] 1.0 Scope and Applicability of Rules . . . (a) These are the Michigan Rules of Professional Conduct . . . (b) Failure to comply with an obligation or prohibition imposed by a rule is a basis for invoking the disciplinary process. **The rules do not, however, give rise to a cause of action for enforcement of a rule or for damages caused by failure to comply with an obligation or prohibition imposed by a rule.** In a civil or criminal action, the admissibility of the Rules of Professional Conduct is governed by the Michigan Rules of Evidence and other provisions of law . . . (Emphasis added.)

An attorney disciplinary proceeding under MCR 9.100 is a process established by our Supreme Court based on its constitutional responsibility to protect the public by regulating the conduct of the legal profession. Because it is plainly not an action for injury to a person or damage to property, nor any other "civil action" as described in MCR 2.101(A)(B), we need not address the question of whether respondent, as a lawyer for the receiver, was acting in a quasi-judicial capacity during all or part of the time described in the formal complaint.

Respondent's motion pursuant to MCR 2.116(C)(7) is, therefore, **DENIED**.

Next, respondent seeks summary disposition under MCR 2.116(C)(8). A motion under MCR 2.116(C)(8) "tests the legal sufficiency of the claim on the pleadings alone to determine whether the plaintiff has stated a claim on which relief may be granted." The

motion must be granted "if no factual development could justify the plaintiffs' claim for relief." *Maple Grove Twp. v Misteguay Creek Intercounty Drain Bd.*, 298 Mich App 200, 206; 828 NW2d 459 (2012). "[A]ll well-pleaded allegations are accepted as true, and construed most favorably to the nonmoving party." *Wade v Dep't. of Corrections*, 439 Mich 158, 162-163; 483 NW2d 26 (1992). "A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are 'so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.'" *Maiden v Rozwood*, 461 Mich 109, 118-120; 597 NW2d 817 (1999).

Respondent seeks summary disposition under subrule (C)(7)/(8) on two grounds. First, respondent argues that allegations 33-37 of the formal complaint do not state a claim for bringing or defending a "proceeding" or asserting or controverting an "issue" therein under MRPC 3.1. Respondent cites paragraphs 33-37 of the formal complaint, which allege that respondent asserted a judgment lien and demanded that it be satisfied; that the lien should not have been asserted because he had not been granted attorney fees in that amount and it had no lawful basis; that he increased the amount of the fees in the lien although he had not been awarded same and had in fact been denied same; and that he recorded the lien on the subject property.

MRPC 3.1 states in relevant part: "A lawyer shall not bring or defend a proceeding, **or assert** or controvert **an issue therein**, unless there is a basis for doing so that is **not frivolous**." (Emphasis added.) In the relevant portions of the formal complaint, specifically paragraphs 33-37 described above, petitioner alleges facts which could support a finding that respondent asserted an issue, to-wit: a claim of lien, in a civil action that had no basis in law, lacked merit, and was frivolous. Under the standards imposed on this panel in ruling on a motion brought under subrule (C)(8), we cannot say that those claims are so clearly unenforceable as a matter of law that no factual development could ever be possible to justify a finding of misconduct.

Respondent's second argument under subrule (C)(8) is that he did not have as his "primary purpose" to harass and/or injure others and that he informed himself of the facts and the law. Respondent further contends the formal complaint must be dismissed because it fails to allege that harassment and/or injury were his primary purposes and that he failed to inform himself of the facts or the law. The panel finds, however, that paragraphs 8 through 42 allege facts which, if proven at the hearing, could support a finding of misconduct as requested in paragraph 44 of the formal complaint. Respondent's

arguments here do not address the facial validity of the formal complaint. Respondent may, of course, assert these and other arguments in his defense at the hearing.

Respondent's motion pursuant to MCR 2.116 (C)(8) is **DENIED**.

Finally, respondent has filed a motion for summary disposition under MCR 2.116(C)(10). This motion tests the factual support of a claim. In reviewing a motion under subrule (C)(10), "the pleadings, admissions, affidavits, and other relevant documentary evidence of record [are considered] in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). It is the appropriate basis for summary disposition when "[e]xcept as to any amount of damages there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." The description of a genuine issue of material fact adopted by the Michigan courts is "when reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party." *Allison v AEW Capital Mgt., LLP*, 481 Mich 419, 424; 751 NW2d 8 (2008).

Respondent argues in this motion that petitioner's case is based solely upon "oral statements" and written interlocutory opinions which have [been] dismissed and/or revoked. Petitioner's answer in opposition to the combined motion asserts that there are factual disputes, and in support thereof, submitted Attachment A, a Wayne County Circuit Court Order entered June 12, 2009, in *Chaban v Mangano*; Attachment B, respondent's Michigan Supreme Court appeal regarding that case commencing around June 23, 2009, consisting of a Complaint for Superintending Control, Supporting Brief, Emergency Application for Leave to Appeal from denial, exhibits, Reply Brief in Support of Emergency Application for Leave to Appeal, exhibits, Supplement to Motion for Immediate Consideration; Supplemental Authority, and Reply to Respondent's Second Supplemental Response; Attachment C, 35th District Court Register of Actions from 2/15/08 to 2/10/12; Attachment D, transcript of court proceedings and opinion from the United States Bankruptcy Court, Nashville, dated 5/20/09; Attachment E, order denying motions of receiver et al. in the United States Bankruptcy Court, Nashville; Attachment F, Notice of Joint Appeal by receiver et. al. to the bankruptcy appeal panel in Tennessee, and order denying motions of receiver et. al.; Attachment G, dismissal of appeal by the Bankruptcy Appellate Panel, 6th Circuit; Attachment H, Final Account of receiver; and Attachment I, order of the 35th District

> Court.
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> Having reviewed the arguments of counsel and relevant documents submitted in support thereof, and viewing same in the light most favorable to petitioner, as we are required to do at this stage, we cannot conclude that no genuine issue of material fact exists to warrant a hearing in this matter; that no reasonable minds could differ on that; and respondent is entitled to a dismissal as a matter of law.
>
> Therefore, respondent's motion for summary disposition under MCR 2.116(C)(10) is **DENIED**. [HP Order 7/25/16, pp 1-4.]

The hearing panel's analysis with regard to each of the cited subsections of MCR 2.116 was correct. Thus, we adopt the hearing panel's well-reasoned rationale for denying respondent's motion for summary disposition, in its entirety, and we conclude that the panel committed no error in denying the motion.

Next, respondent takes issue with the hearing panel's finding that he brought and/or filed frivolous actions and/or pleadings, in violation of MRPC 3.1. Specifically, respondent argues that the hearing panel failed to make independent findings of fact, in violation of the requirements of MCR 2.517.[5] MCR 9.107(A) specifically provides that "Subchapter 9.100 governs the procedure to discipline attorneys." MCR 9.115(A) provides, in relevant part, that "*except as otherwise provided in these rules*, the rules governing practice and procedure in a nonjury civil action apply to a proceeding before a hearing panel." (Emphasis added.) Subchapter 9.100 provides a specific procedural rule for the issuance and contents of a hearing panel's report on misconduct; MCR 9.115(J)(1). The hearing panel's report on misconduct was issued pursuant to the relevant provisions of this rule, which states:

> The hearing panel must file a report on its decisions regarding the misconduct charges and, if applicable, the resulting discipline. The report must include a certified transcript, a summary of the evidence, pleadings, exhibits and briefs, and findings of fact.

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[5] MCR 2.517 states:

> In an action tried on the facts without a jury or with an advisory jury, the court shall find the facts specifically, state separately its conclusions of law, and direct entry of the appropriate judgment.

The hearing panel's 24-page report on misconduct contained all of those referenced elements. The hearing panel adopted and/or incorporated findings and conclusions made by the courts involved in the various underlying proceedings, and it was not improper for the panel to do so. Pursuant to MCL 600.2106, the panel could admit, review, and rely upon the facts found in the orders and opinions entered by all of the courts involved. The hearing panel's report did not solely adopt or incorporate by reference findings made in the various orders. It also specifically indicated the hearing panel's independent findings based on the evidence presented to them, which included respondent's own testimony. (Misconduct Report 6/6/17, pp 20-23.) The report also specifically noted an instance in which statements attributed to Judge Sapala regarding the responsibilities of a receiver and referenced in a transcript, were not sufficiently supported by the record, thus not considered by the panel. (Misconduct Report 6/6/17, p 21.) Respondent claims that some of the orders relied upon by the panel were set aside and/or rescinded by the courts that issued them, but no specific evidence supporting that claim was ever submitted and the Administrator specifically denied respondent's claims in this regard. The panel's report on misconduct provides a summary of the evidence and the hearing panel's findings of fact, as required by MCR 9.115(J)(1). Accordingly, we find that there was no error or abuse of discretion committed.

As mentioned earlier, when respondent filed his answer to the formal complaint, he included a counter-complaint naming the former Grievance Administrator, Robert Agacinski, and the Administrator's Counsel, Ms. Uhuru, as "counter-respondents." Respondent argues that the hearing panel erred as a matter of law by dismissing his counter-complaint prior to the first misconduct hearing, and in denying his attempt to call the Administrator's counsel as an adverse witness at the January 10, 2017 misconduct hearing.

Again, respondent's reliance on the general civil procedure rules is misplaced. He acknowledges that MCR 9.115(B) provides that preparation and filing of a complaint alleging attorney misconduct can only be done by the Grievance Administrator, but then insists that once the formal complaint is filed, the "general civil rules govern." Respondent cites no authority for his conclusion in this regard or to support his reliance on MCL 600.2161, which he claims gives him a "statutory right" to call the Administrator's counsel as an adverse witness. We find that respondent's counter-complaint was not contemplated or allowed by the court rules and that the Administrator's counsel was not a fact witness who could have provided relevant testimony to the

misconduct alleged in the formal complaint. As a result, we further find that the panel rightfully dismissed the counter-complaint and denied respondent's request to call Ms. Uhuru as a witness.

Respondent next argues that the 40+ exhibits offered by the Administrator, which included transcripts, pleadings, motions, docket entries, opinions, orders, etc. entered by the various courts involved in the underlying proceedings, lacked foundation because the Administrator failed to present the testimony of the respective court clerks to verify that the exhibits being offered had been authenticated by comparing them to the original document. The Administrator maintains that all documents offered were trustworthy, self-authenticating and admissible under MRE 801(2) (statements of a party opponent), MRE 803(8) (public records and reports), and MRE 803(24) (other exceptions) and notes that a good faith effort was made to obtain certified copies of each court file, but given the size of the files, and some of the pleadings themselves, it was not "financially feasible" to do so.

The Michigan Rules of Evidence apply in attorney discipline proceedings. See MCR 9.115(A); MCR 9.115(I)(1). See also *Grievance Administrator v Frederick A. Patmon*, 93-47-GA; 94-157-GA (ADB 1997). A trial court's decision to admit evidence is discretionary and will not be disturbed "absent a clear abuse of discretion." *People v Aldrich*, 246 Mich App 101, 113; 631 NW 2d 67 (2001). "An abuse of discretion occurs when the [trial] court chooses an outcome that falls outside the range of reasonable and principled outcomes." *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008). Furthermore, MRE 103(a) states that "error may not be predicated upon a ruling which admits or excludes evidence, unless a substantial right of the party is affected."

The transcript from the October 11, 2016 misconduct hearing reflects the hearing panel's acceptance of respondent's standing objections to the court records offered by the Administrator, as being "incomplete" and/or "uncertified." However, the transcript further reflects the panel's rationale in admitting most of the documents offered by the Administrator. This rationale includes noting the general trustworthiness of court records, and the admissibility of duplicates under MRE 1003. In some instances when there was a question as to whether documents were complete and/or in fact a "true copy," exhibits were not admitted. (Tr 10/11/16, pp 87-94.) We find that there is no evidence that a "clear abuse of discretion" occurred in the panel's evidentiary rulings on the exhibits offered by the Grievance Administrator.

Respondent next argues that the hearing panel's findings of misconduct do not have proper evidentiary support in the record. We disagree. The bulk of evidence relied upon by the Administrator included the records, namely particular opinions and orders issued by the courts involved in the various underlying court proceedings, that made specific factual findings about respondent's actions, the pleadings he filed and the actions he initiated. The Administrator relied on MCL 600.2106, to offer these documents into evidence for the panel's consideration. The plain language of the statute, provides:

> A copy of any order, judgment or decree, of any court of record in this state, duly authenticated by the certificate of the judge, clerk or register of such court, under the seal thereof, shall be admissible in evidence in any court in this state, and shall be prima facie evidence of the jurisdiction of said court over the parties to such proceedings and of all facts recited therein, and of the regularity of all proceedings prior to, and including the making of such order, judgment or decree.

We have previously held that not only does the statute apply in disciplinary hearings, the admitted court order and opinion creates a rebuttable presumption as to the court's factual findings. *Grievance Administrator v Geoffrey N. Fieger*, 97-83-GA (ADB 1999). However, since the prior factual findings of the court are not conclusive, the parties to a disciplinary proceeding are entitled to supplement the record with any other relevant evidence they wish to present. If a respondent cannot rebut the presumption, he/she may still argue that the facts recited by the court orders do not amount to misconduct as the statute "plays no role in determining whether the facts establish a violation of the Rules of Professional Conduct." See *Grievance Administrator v Gregory J. Reed*, 10-140-GA (ADB 2014) (citing *Grievance Administrator v Mark L. Silverman*, 11-3-GA (HP Order 4/13/11), in which the panel applied the statute to a Sixth Circuit Court of Appeals' opinion and federal court order).

In accordance with *Fieger*, supra, the hearing panel properly admitted and considered the court records offered into evidence by the Grievance Administrator in accordance with MCL 600.2106. Those court records created a rebuttable presumption as to their factual findings and respondent was not only entitled to supplement the record with testimony and other relevant evidence, he was also entitled to argue to the panel that the facts recited in the court records did not amount to misconduct. Respondent availed himself of both of those opportunities in this matter. Our review of the record reveals that respondent simply failed to rebut the factual findings recited

in the various orders. Thus, we find that the unrebutted factual findings made in these court records provide sufficient evidentiary support for the hearing panel's findings of misconduct.

Finally, respondent argues that the discipline imposed by the panel is excessive because it is contrary to precedent, and outside of the range of discipline imposed for a violation of MRPC 3.1. Respondent's argument is based on his notion that "the sole substantive rule allegedly violated in this case is MRPC 3.1." While the panel did find that respondent's conduct violated MRPC 3.1, they also found that respondent engaged in dishonest conduct, on numerous occasions, as contemplated in MRPC 8.4(b). These rules of conduct requiring that members of the bar act with honesty are nothing if not "substantive."

As referenced earlier, at the sanction hearing, the Administrator's counsel argued, and the panel later agreed, that disbarment was appropriate under ABA Standards 6.11, 6.21, and 7.1. Although not cited by the Administrator, the panel also found that ABA Standard 5.11(b)[6] also applied. The panel's application of those Standards resulted, in part, from their specific findings that respondent intentionally misled and improperly withheld material facts from third parties and the

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[6] ABA Standard 5.11(b) provides for disbarment when:

> a lawyer engages in . . . intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

ABA Standard 6.11 provides for disbarment when:

> a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.

ABA Standard 6.21 provides for disbarment when:

> a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party, or causes serious or potentially serious interference with a legal proceeding.

ABA Standard 7.1 provides for disbarment when:

> a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

courts, namely that Mr. Saffady and respondent had been removed as receiver and counsel for the receiver, respectively; that neither was entitled to any further fees after their removal; and that there was absolutely no basis whatsoever for the lien respondent requested Chase to pay off, and that he later filed against the Manganos' former home.

The hearing panel's analysis of the theoretical framework, application of the relevant Standards and consideration of the applicable aggravating factors supports their finding that disbarment is appropriate. Respondent's bare bones argument that his conduct "met or exceeded the Michigan Supreme Court's standards," thus the order of disbarment should be vacated, is simply unsupported.

Conclusion:

For the reasons discussed above, we conclude that no error or abuse of discretion occurred in regard to the pre-hearing and evidentiary rulings made by the hearing panel. Likewise, the hearing panel's findings of misconduct have proper evidentiary support in the record, and the panel's application of the ABA Standards and rationale for the discipline imposed is similarly supported. Accordingly, the hearing panel's order of disbarment is affirmed.

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