STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,

Petitioner/Appellee/Cross-Appellant,

v

Ronald Thomas Bruce, Jr., P 62579,

Respondent/Appellant/Cross-Appellee,

Case No. 15-122-GA

Decided: June 1, 2017

Appearances:

Stephen P. Vella (on review) and Todd A. McConaghy (at the hearing), for the Grievance Administrator, Petitioner/Appellee/Cross-Appellant

Ronald Thomas Bruce, Jr., In Pro Per, Respondent/Appellant/Cross-Appellee

BOARD OPINION

On May 31, 2016, Tri-County Hearing Panel #23 issued an order suspending respondent's license to practice law for 179 days.[1] Respondent filed a petition for review and the Grievance Administrator filed a cross-petition. On October 19, 2016, the Attorney Discipline Board conducted review proceedings in accordance with MCR 9.118, which included a review of the whole record before the hearing panel and consideration of the briefs and arguments presented to the Board at a review hearing. For the reasons discussed below, we reduce the discipline imposed from a 179-day suspension to a 60-day suspension.

I. Hearing Panel Proceedings

The Grievance Administrator filed a formal complaint against respondent on October 6, 2015, stemming from respondent's failure to answer seven requests for investigation over the course of two years. It also alleged respondent failed to respond to follow-up letters and subpoenas in a

[1] The 179-day suspension was a majority decision; one panel member would have imposed a 60-day suspension.

timely fashion. Respondent failed to file an answer to the complaint, so the Administrator filed a notice of default on November 4, 2015.[2]

Respondent did not move to set aside the default; as a result, the misconduct alleged in the formal complaint was established. The hearing panel then conducted a sanction hearing on February 23, 2016. The Grievance Administrator argued for a suspension of 180 days pursuant to the American Bar Association Standards for Imposing Lawyer Sanctions (ABA Standards) - specifically, Standards 6.22 and 7.2. Counsel for the Administrator also argued that a number of aggravating factors under ABA Standard 9.22 applied including: prior disciplinary offenses; dishonest or selfish motive; pattern of misconduct; multiple offenses; bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; deceptive practices during the disciplinary process; and substantial experience in the practice of law. (Tr 2/23/16, p 14.)

Respondent argued that, although he expects to receive a suspension of greater than 30 days, he believes 180 days is excessive. (Tr 2/23/16, p. 43.) Employing the ABA Standards pursuant to the Court's directive in *Grievance Administrator v Lopatin*, 462 Mich 235 (2000), the hearing panel imposed a 179-day suspension.

Respondent filed a timely petition for review of the hearing panel's order of suspension, arguing that the discipline imposed by the panel was excessive and not supported by the record. The Grievance Administrator subsequently filed a cross-petition for review, contending that the panel erred in not imposing a greater sanction.

II. Discussion

Respondent argues that: (1) the hearing panel provided insufficient weight to the mitigating factors offered at the hearing, and (2) the sanction imposed is inconsistent with prior decisions of the Attorney Discipline Board. Petitioner argues the opposite.

The Board's review in this case is limited to the appropriate level of discipline.[3] "While the Board affords a certain level of deference to a hearing panel's subjective judgment on the level of

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[2] The notice of default was filed on November 4, 2015. Respondent's answer was also filed on November 4, 2015, but was received after the default had been entered. Based on the timing of the filing, the Board notified the parties that the answer would not be considered by the panel.

[3] Misconduct was established by entry of the default, which is not being challenged by either party on review.

discipline, the Board possesses, of necessity, a relatively high measure of discretion with regard to the appropriate level of discipline." *Grievance Administrator v David A. Woelkers*, 97-214-GA (ADB 1998), pp 6-7, lv den 602 NW2d579 (1999). Such discretion allows the Board to carry out what the Court has described as the Board's "overview function of continuity and consistency in discipline imposed." *Matter of Daggs*, 411 Mich 304; 307 NW2d 66 (1981).

At the panel hearing and on review, counsel for the Grievance Administrator argued that a suspension of at least 180 days is the appropriate sanction under ABA Standards 6.22 (abuse of the legal process) and 7.2 (violation of duties owed to the profession), as well as this Board's decisions in *Grievance Administrator v Mark L. Brown*, 00-74-GA (ADB 2002) (increasing a panel's reprimand for failure to answer three requests for investigation to 30-day suspension under Board case law) and *Grievance Administrator v John D. Baker*, 06-66-GA (ADB 2007) (following *Brown* and prior precedent, and increasing reprimand to 30 days where respondent failed to answer a request for investigation). Standard 6.22 provides that suspension is warranted "when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding." Standard 7.2 states that suspension is appropriate "when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system."

In Michigan, the failure to answer a request for investigation has been the subject of a body of Board precedent dating back more than 20 years. In a 1987 opinion, the Board issued a warning:

> The lawyer who ignores the duty imposed by court rule to answer requests for investigation and formal complaints does so at his or her own peril and, absent exceptional circumstances, an attorney may expect a discipline greater than a reprimand. [*Grievance Administrator v David A. Glenn*, DP 91/86 (ADB 1987) (increasing discipline from a reprimand to suspension of 30 days)].

In subsequent cases, the Board explained that the decision in *Glenn* "should not be read so narrowly as to deprive the hearing panel of any discretion to consider the imposition of discipline which takes into account all of the factors which are unique to the case before it." *Grievance Administrator v Lawrence A. Baumgartner*, 91-91-GA; 91-108-FA (ADB 1992).

However, in light of the Court's direction in *Lopatin* to employ the ABA Standards, the Board began to discuss the continuing vitality of *Glenn*. For example, in *Grievance Administrator*

v Mark L. Brown, supra, the Board addressed a case where a respondent failed to answer three requests for investigation and failed to appear to give a sworn statement pursuant to a subpoena issued by the Attorney Grievance Commission. The Board noted that respondent Brown had expressed remorse, was candid with the panel and, unlike respondents in other cases cited in that opinion, had filed an answer to the formal complaint. Nevertheless, the Board concluded:

> Although the mitigating factors presented by Mr. Brown might seem to outweigh the aggravating factors presented by the Grievance Administrator, the Board is not simply charged with balancing the aggravating factors against the mitigating factors. Instead, under *Glenn* and its progeny, the question to be addressed is whether there is sufficient evidence to support the panel's finding that this case presents "exceptional circumstances." We conclude that Mr. Brown has not offered sufficient evidence to support such a finding in this case. [*Brown, supra*, at 16.]

There are, of course, some differences between the present case and the *Brown* matter. Unlike Mr. Brown, respondent failed to answer seven requests for investigation, not three. In addition, Mr. Brown filed an answer to the formal complaint, whereas respondent here did not. In both cases, it is troubling that a respondent would simply disregard a subpoena issued by the Attorney Grievance Commission. In the end, respondent's lack of cooperation with the Grievance Administrator during the time this matter was under investigation cannot be ignored.

Nevertheless, there is simply no authority to impose either a 179-day or a 180-day suspension under the circumstances of this case. On appeal, the Grievance Administrator cites to two cases involving more than three failures to answer a request for investigation – *In the Matter of John D. Hagy*, DP-153/82, DP-66/82, DP-99/82, DP-122/82 & DP-128/82 (ADB 1983) and *Grievance Administrator v David A. Monroe*, 12-20-GA (ADB 2012). The Administrator's reliance on these cases is misplaced, however, because both cases involve discipline imposed for severe misconduct in addition to the failure to answer a request for investigation. See *Hagy, supra* (two-year suspension imposed for failure to answer six requests for investigation, plus serious neglect and misrepresentation); *Monroe, supra* (disbarment imposed for neglecting legal matters and failure to act with reasonable diligence on behalf of seven clients, failure to safeguard client property, making misrepresentations to clients, charging excessive fees, failing to return unearned fees, failure to deposit funds into a trust account, and failing to answer eleven requests for investigation). In the present case, there are no findings or even allegations of misconduct. More importantly, there are no misrepresentations involved here.

The Grievance Administrator also cites to *Grievance Administrator v Deborah Carson*, 00-175-GA; 00-199-FA (ADB 2001), for the proposition that the presumptive level of discipline is 180 days for a respondent who fails to answer a request for investigation and formal complaint, and also fails to appear at the hearing. The Administrator argues that, since Mr. Bruce failed to answer seven requests for investigation and the formal complaint, he should likewise be suspended a minimum of 180 days, even though he appeared for the hearing.

Again, the Grievance Administrator's reliance is misplaced because *Carson* is readily distinguishable. Unlike the respondent in *Carson*, Mr. Bruce had contact with the Attorney Grievance Commission, resolved his clients' concerns and /or returned their money, attempted to answer before being defaulted, appeared at the hearing and argued a reasonable position, and even received a character reference from counsel for the Grievance Administrator.[4] For these reasons, *Carson* simply has no application here.

Brown gives us the most analogous guidance for determining the level of discipline where, as here, the only allegations of misconduct involve the failure to answer requests for investigation. Under *Brown*, the presumptive level of discipline for a failure to answer a request for investigation is thirty days. Here, the Board finds that respondent's repeated failure to answer requests for investigation, his failure to respond to follow-up letters and subpoenas, and his failure to answer the formal complaint supports the imposition of a suspension greater than 30 days.

In reaching its decision, the panel here also considered aggravating and mitigating factors under ABA Standards 9.22 and 9.32, which could alter the presumptive level of discipline. The panel considered respondent's prior disciplinary offense and pattern of misconduct as aggravating factors. As to mitigation, the panel considered personal or emotional problems and respondent's timely good faith effort to make restitution or to rectify the consequences of his misconduct. There

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[4] Respondent agreed that he should have answered timely, but explained that from 2012 to 2014 he was embroiled in a divorce and a child custody issue, and also had to file personal bankruptcy. (Tr 2/23/16, p 35.) Counsel for the Grievance Administrator, Todd A. McConaghy, acknowledged that during the course of the investigation, respondent talked about these personal problems. (Tr 2/23/16, p 23.) Mr. McConaghy admitted he has never had a case where seven requests for investigation went unanswered, but stated: "And I'm not beating up on Mr. Bruce. I think he's a decent person. I've spoken with him throughout the course of these cases. We have had contact. We have spoken. He's been to my office to talk about it." (Tr 2/23/16, p 22.) Mr. McConaghy then explained that the Grievance Administrator was "not asking for findings of neglect, findings of failure to act with diligence, things like that," because respondent "did either refund money or finish the work or try to satisfy the complainants to the best of his ability." (Tr 2/23/16, p 25.)

is no evidence that consideration of any of these factors was in error, or that the panel insufficiently weighed the aggravating and/or mitigating factors.

Based upon the misconduct established, prior Board precedent, and consideration of the aggravating and mitigating factors, the Board finds that a 60-day suspension is warranted. Respondent failed to answer seven requests for investigation, failed to respond to follow-up letters and subpoenas in a timely fashion, and failed to file an answer to the formal complaint. Here, the greater misconduct supports the imposition of a 60-day suspension. We will, therefore, modify the hearing panel's order suspending respondent for 179 days and order a suspension of respondent's license to practice law in Michigan for 60 days.

Board members Louann Van Der Wiele, Rev. Michael Murray, Dulce M. Fuller, John W. Inhulsen, Jonathan E. Lauderbach, Barbara Williams Forney, Karen D. O'Donoghue, and Michael B. Rizik, Jr., concur in this decision.

Board member James A. Fink participated in the hearing and deliberations on October 19, 2016, but has not participated in this matter thereafter.