

STATE OF MICHIGAN
Attorney Discipline Board

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ATTORNEY DISCIPLINE BOARD
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Grievance Administrator,
Petitioner/Appellant,

v

Michael D. Hoy, P 72961,
Respondent/Appellee,

Case Nos. 13-10-AI; 13-49-JC

Decided: August 5, 2014

Appearances:

Cynthia C. Bullington, for the Grievance Administrator, Petitioner/Appellant
Gordon Hoy, for the Respondent/Appellee

BOARD OPINION

The Grievance Administrator petitioned for review of the order of suspension entered in this matter by Genesee County Hearing Panel #1 of the Attorney Discipline Board on December 6, 2013, that suspended respondent's license for one year effective December 28, 2013.¹ The Administrator seeks review on the grounds that the panel erred as a matter of fact and law in its decision and application of the American Bar Association (ABA) Standards for Imposing Lawyer Sanctions by imposing insufficient and inappropriate discipline.² The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118, including a review of the record before the hearing panel and consideration of the briefs and arguments presented by the parties at a public review hearing conducted on March 19, 2014.

The underlying notice of filing of judgment of conviction filed by the Grievance Administrator advised of respondent's felony conviction for possession of unregistered machine guns, in violation of 26

¹ In accordance with MCR 9.120(B)(1), an automatic interim suspension of respondent's license was entered on January 25, 2013, effective January 18, 2013, the date his felony plea was accepted. Respondent's license has been suspended continuously since January 18, 2013.

² The Grievance Administrator seeks an order increasing discipline to disbarment.

USC § 5861(d) and § 5871. Although an order to show cause was entered that scheduled this matter for hearing, no hearings were held before the panel. Instead, the parties submitted sanction briefs in lieu of appearing in person or by telephone and the panel rendered its decision based solely on the briefs submitted by the parties, which included a copy of respondent's Rule 11 plea agreement filed with the U.S. District Court on December 17, 2012, and the transcript from the entry of respondent's plea.

The Grievance Administrator acknowledges that respondent's conviction does not fall squarely within the types of criminal offenses enumerated within the provisions of ABA Standard 5.11(a) and (b), both of which call for disbarment. Instead, the panel found that ABA Standard 5.12, which calls for a suspension when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11, and that seriously adversely reflects on the lawyer's fitness to practice, was the more appropriate standard to apply.

In this review proceeding, the Grievance Administrator argues that even if ABA Standard 5.12 applied, the weight of the aggravating factors must result in an increase in the level of discipline to disbarment. We disagree. While the aggravating factors cited by the Grievance Administrator are applicable, the weight the Grievance Administrator argues that they are to be accorded is simply not supported by the record. In fact, the record below is devoid of evidence to support the Grievance Administrator's conclusion that respondent had a "sinister intent" or that he engaged in activity that endangered the public. Had a hearing been held, respondent could have been questioned and the Grievance Administrator could have produced witnesses and/or other evidence to explain the unrelated crime being investigated (as referenced in the Rule 11 plea agreement), why a warrant was issued to search respondent's home, and whether something sinister was in fact occurring.

As it stands, respondent's license will have been suspended for more than the one year imposed by the panel and he will have to comply with the requirements of MCR 9.123(D)(3) when petitioning for reinstatement.³ It has not been shown that disbarment is necessary to promote further protection of the public, the courts or the legal profession. Upon careful consideration of the record and the authorities and precedent cited by the parties, the Board is not persuaded that the hearing panel's decision to order a one year suspension was inappropriate.

³ Pursuant to MCR 9.123(D)(3), "an attorney whose license to practice law has been suspended because of conviction of a felony for which a term of incarceration was imposed may not file a petition for reinstatement until six months after completion of the sentence, including any period of parole." Respondent was scheduled to be released from Federal prison on May 30, 2014, to begin one year of community confinement and two additional years of supervised release. Arguably, MCR 9.123(D)(3) will prevent respondent from filing a petition for reinstatement until his supervised release is concluded.

For the reasons discussed above, we conclude that the one-year suspension of respondent's license is the appropriate sanction to impose in this matter, and we will enter an order affirming the hearing panel's order of suspension.

Board members James M. Cameron, Jr., Craig H. Lubben, Sylvia P. Whitmer, Ph.D., Carl E. Ver Beek, Lawrence G. Campbell, Dulce M. Fuller, Louann Van Der Wiele, and Michael Murray concur in this decision.

Board member Rosalind E. Griffin, M.D. was absent and did not participate.