

STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,

Petitioner/Appellant,

v

Donald J. Neville, P 60213,

Respondent/Appellee,

Case Nos. 23-22-JC; 23-23-GA

Decided: February 20, 2024

Appearances

Kenneth E. Frazee, for Grievance Administrator, Petitioner/Appellant
Donald J. Neville, In Pro Per, Respondent/Appellee

BOARD OPINION

On July 10, 2023, Tri-County Hearing Panel #12 issued an order of suspension with conditions and restitution, suspending respondent's license to practice law for 181 days, effective July 7, 2023. The Grievance Administrator timely filed a petition for review. On October 18, 2023, the Attorney Discipline Board conducted a virtual/in-person hybrid proceeding in accordance with MCR 9.118, which included a review of the whole record before the panel, consideration of the Administrator's brief and the argument presented by counsel for the Administrator. Respondent did not file a response and did not appear. For the reasons discussed below, we increase the discipline imposed from a 181-day suspension with restitution and conditions to disbarment with restitution and

conditions.

The sole issue for our consideration on review is whether the discipline imposed by the hearing panel – a 181-day suspension with restitution and conditions – is sufficient, in light of the misconduct found. The formal complaint in this matter is extensive. Specifically, Count One involved a female client who retained respondent to file a post-judgment custody motion. Respondent indicated to the client that he would be able to influence the judge handling her case because he knew the judge well. The client paid respondent \$2,500 and a retainer agreement was signed. The following day, respondent told the client that she needed to come to his office to sign some paperwork for the custody motion. While the client was reviewing a document respondent had prepared, respondent unzipped his pants and began to masturbate. He then approached the client with his penis exposed, and despite her telling him no, respondent proceeded to sexually assault her. In the days and weeks that followed, respondent sent her sexually explicit texts and photos. With regard to the client's case, respondent misrepresented that he had filed a motion prior to actually filing it, then indicated that the motion was pending, even though it had already been denied by the court. Ultimately, the client retained new counsel and asked respondent for a refund. (Formal Complaint, ¶¶ 7-35.)

Count Two involved a client who retained respondent to represent him in a matter in which he was seeking reunification with his minor children. Respondent failed to appear at a Zoom hearing scheduled in the matter. After he was contacted at the request of the presiding referee, respondent untimely appeared via Zoom, put his appearance on the record for the wrong client, and had to be reminded which case was actually being heard. Both the referee and the client observed respondent to be intoxicated, and ultimately the referee adjourned the hearing. Later that day, respondent appeared in person at the courthouse and was observed to still be intoxicated, so he was remanded to the custody of the Sheriff's Office

at the Livingston County Jail for contempt of court. The Court had to appoint the client a new attorney. (Formal Complaint, ¶¶ 37-59.)

Count Three involved a client who paid respondent \$2,500 plus an additional \$235 to file a complaint for divorce and represent her in a divorce action. Three months later, however, the client accessed the court records on her own, and discovered that her complaint for divorce had not been filed. She attempted to contact respondent by phone, text, and in person numerous times, but she never received a response. As a result, she asked respondent for a refund, but again did not receive a response. Respondent later admitted he never filed the complaint for divorce, and misrepresented that he had discussed a resolution with the client regarding a refund of his fee. (Formal Complaint, ¶¶ 61-83.)

Count Four involved a client who paid respondent \$2,600 to pursue sole custody of her 13-year-old daughter after her ex-husband was arrested for operating while intoxicated while their daughter was a passenger in the vehicle. Over the course of the next two months, respondent failed to respond to nearly all of the client's inquiries about her case. Respondent represented to the client that he had appeared for a hearing and it went well; however, a hearing had never been held. Respondent later told the client that there was another hearing scheduled and he promised to meet with her to prepare, but then he failed to respond to the client. A review of the file revealed respondent never filed an appearance, motion, or any other pleading on the client's behalf in the custody action. (Formal Complaint, ¶¶ 85-118.)

In Count Five, respondent met with a husband and wife who were seeking help with documenting their handwritten agreement on a property settlement and filing their divorce complaint and settlement agreement with the court. Respondent failed to reply to numerous text messages and telephone calls, and misrepresented that he would file the complaint. Ultimately the husband asked for a refund,

but when respondent failed to respond again, he disputed the charge and was given a full refund by his credit card company. Thereafter, respondent admitted he never filed any documents for the couple. (Formal Complaint, ¶¶ 120-150.)

In Count Six, respondent was paid \$500 and retained by a client for representation in a traffic ticket dispute. Although respondent advised the client that he had requested a formal hearing, a default judgment was entered against the client. The client attempted to contact respondent numerous times, but respondent either never responded or responded that he would call soon, and then never called. Ultimately, the client went to court on his own and paid a fine to resolve his traffic ticket. He asked respondent for a refund and respondent agreed, but the client never received a refund. Instead, respondent claimed he applied the payment to an outstanding balance from a prior unrelated representation.

Count Seven involves respondent's behavior when he appeared in court at the sentencing hearing of a client. An assistant prosecuting attorney encountered respondent inside the 53rd District Court and observed that respondent appeared disheveled, was slurring his words, and smelled of alcohol. She informed Judge Shauna Murphy of her belief that respondent was intoxicated. When the case was called for which respondent was appearing, Judge Murphy addressed respondent's possible intoxication, but respondent denied being intoxicated. Judge Murphy observed respondent and believed that he was under the influence of intoxicating liquor based upon his disheveled appearance, disoriented and slurred speech, general demeanor, and his unbalanced posture. When it was discovered that respondent had an outstanding bench warrant from 2022 for his prior failure to appear at a creditor's examination wherein respondent was the defendant, Judge Murphy ordered respondent into custody at the Livingston County Jail, and further ordered that respondent be tested for alcohol and controlled substance use. A

preliminary breath test (PBT) was administered to respondent, resulting in a finding of .137 for his bodily alcohol content. The next day, Judge Murphy found respondent to be in criminal contempt of court pursuant to MCL 600.1701 for appearing on the record in her courtroom while he was intoxicated, noting respondent was disrespectful, disorderly, contemptuous, and insolent. Respondent later apologized to Judge Murphy and admitted she was right about his behavior. Judge Murphy then sentenced respondent for criminal contempt to 30 days in the county jail with two days of jail credit, and respondent was ordered to pay a fine. Respondent later admitted that he had consumed alcohol prior to appearing in court before Judge Murphy.

Count Eight involves respondent's failure to respond to a subpoena. Respondent was originally served with a subpoena to appear at the Attorney Grievance Commission for an examination under oath and to provide documents. Respondent failed to appear and did not produce any of the requested documents. Respondent was served with a second subpoena to appear for an examination under oath and to produce the previously requested documents. Although this time respondent appeared, he only produced documents from three of the eight files requested.

Respondent failed to file an answer to the complaint, and a default was filed by the Grievance Administrator. Respondent appeared at the hearing and later filed a motion to set aside the default, which was denied by the panel.

The hearing panel unanimously found that the default was properly entered, and thus all of the allegations contained in the formal complaint were deemed admitted. Specifically, respondent was found to have committed the following rule violations: failed to represent a client competently, in violation of MRPC 1.1(a) [Count Two]; handled a matter without preparation adequate in the circumstances, in violation of MRPC 1.1(b) [Count Seven]; neglected a legal matter entrusted to him, in violation of MRPC 1.1(c) [Counts One, Three, Four, Five,

Six, Seven]; failed to seek the lawful objectives of a client, in violation of MRPC 1.2(a) [Counts One, Three, Four, Five, Six, Seven]; failed to act with reasonable diligence and promptness in representing a client, in violation of MRPC 1.3 [Counts One through Six]; failed to keep his client reasonably informed about the status of a matter and comply promptly with reasonable requests for information, in violation of MRPC 1.4(a) [Counts Three, Four, Five, Six]; failed to explain a matter to the extent reasonably necessary to permit the client to make an informed decisions regarding the representation, in violation of MRPC 1.4(b) [Counts Three, Four, Six, Seven]; charged an excessive fee that was not properly explained, in violation of MRPC 1.5(a) and (b) [Count Six]; engaged in a conflict of interest by allowing his personal interests to affect the representation of his client, in violation of MRPC 1.7(b)(2) [Count One]; failed to promptly pay or deliver funds that the client or third person is entitled to receive, in violation of MRPC 1.15(B)(3) [Count Six]; failed to withdraw from the case prior to appearing due to his physical condition, in violation of MRPC 1.16(a)(2) [Counts Two, Seven]; upon termination of representation, failed to promptly refund an unearned fee, in violation of MRPC 1.16(d) [Counts Three, Four, Five, Six]; failed to expedite litigation, in violation of MRPC 3.2 [Counts Two, Three, Four, Five, Seven]; knowingly made a false statement of material fact to the tribunal, in violation of MRPC 3.3(a)(1) [Count Seven]; engaged in inappropriate conduct towards the tribunal, in violation of MRPC 3.5(d) [Counts Two, Seven]; knowingly made a false statement of material fact in connection with a disciplinary matter, in violation of MRPC 8.1(a)(1) [Count Three]; failed to respond to a lawful demand for information from a disciplinary authority, in violation of MRPC 8.1(a)(2) [Count Eight]; engaged in conduct that violates the Rules of Professional Conduct, in violation of MRPC 8.4(a) [Counts One through Seven]; engaged in conduct involving dishonesty, fraud, deceit, misrepresentation,

or violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, in violation of MRPC 8.4(b) [Counts One, Three, Four, Five, Six]; engaged in conduct that is prejudicial to the administration of justice, in violation of MRPC 8.4(c) and MCR 9.104(1) [Counts One through Five, Seven, Eight]; stated or implied that he possessed an ability to improperly influence the judge in his client's matter, in violation of MRPC 8.4(d) [Count One]; engaged in conduct that exposes the legal profession or the courts to obloquy, contempt, censure or reproach, in violation of MCR 9.104(2) [Counts One through Seven]; and engaged in conduct that is contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3) [Counts One through Seven].

In deciding the appropriate discipline to be imposed, hearing panels and this Board employ the American Bar Association (ABA) Standards for Imposing Lawyer Sanctions. *Grievance Administrator v Lopatin*, 462 Mich 235; 612 NW2d 120 (2000).

Pursuant to the ABA Standards, we must examine the duty respondent violated, respondent's mental state, and the actual or potential injury caused by the respondent's conduct. Next, the Standards' recommended sanctions are considered based upon the answers to these questions. *Lopatin*, 462 Mich at 240; ABA Standards, pp 3, 4-5. Then aggravating and mitigating factors are to be considered. *Id.* Finally, "the Board or a hearing panel may consider whether there are any other factors which may make the results of the foregoing analytical process inappropriate for some articulated reason." *Grievance Administrator v Frederick A. Petz*, No. 99-102-GA (ADB 2001) (citing *Lopatin*, 462 Mich at 248 n 13).

With regard to the appropriate sanction, counsel for the Grievance Administrator argued that disbarment was appropriate under several of the ABA Standards.¹ Respondent simply asked that the hearing panel be "as lenient as

¹ The Grievance Administrator relied on Standards 4.1 (Failure to Preserve Client's

possible with regard to the term of suspension.” (Tr 7/6/23, p 55.) The hearing panel’s report was issued on July 10, 2023. Without explanation, the panel determined that a suspension was appropriate under ABA Standards 4.12 (Failure to Preserve Client’s Property), 4.42 (Lack of Diligence); 4.62 (Lack of Candor) and 7.2 (Duties as a Professional), and that 181 days was the appropriate length of suspension.

The standard of review for a panel’s determination as to the appropriate level of discipline was discussed in *Grievance Administrator v David A. Reams*, 06-180-JC (ADB 2008), at p 2, which said:

Although we afford a certain degree of deference to panel determinations as to the level of discipline imposed, this deference is less than that given to a finding of fact because this Board has an “overriding duty to provide consistency and continuity in the exercise of its overview function” with regard to sanctions. *Grievance Administrator v Rodney Watts*, No. 05-151-GA (ADB 2007). See also *Matter of Daggs*, 411 Mich 304, 319-320 (1981).

Of course, the ABA Standards “do not provide rigid guidelines for a level of discipline to be imposed in every conceivable factual situation.” *Grievance Administrator v Harvey J Zamek*, 98-114-GA; 93-133-FA (ADB 1999). Furthermore, “[t]his Board’s responsibility to ensure consistency and continuity in discipline imposed under the ABA Standards and caselaw necessarily means that we may not always afford deference to a hearing panel’s sanction decision, and that we may be required to independently determine the appropriate weight to be assigned to various aggravating and mitigating factors depending on the nature of the violation and other circumstances considered in similar cases.” *Grievance Administrator v Karen K. Plants*, 11-27-AI; 11-55-JC (2012) (citing *Grievance*

Property), 4.3 (Failure to Avoid Conflict of Interest), 4.4 (Lack of Diligence), 4.6 (Lack of Candor), 5.1 (Failure to Maintain Personal Integrity), and 7.1 (Duties as a Professional).

Administrator v Saunders V Dorsey, 02-118-AI; 02-121-JC (ADB 2005)).

We agree with the Grievance Administrator that disbarment is appropriate under several of the ABA Standards. As to Count One, ABA Standard 4.3, Failure to Avoid Conflicts of Interest, is the most applicable and provides in relevant part:

4.31 Disbarment is generally appropriate when a lawyer, without the informed consent of client(s):

- (a) engages in representation of a client knowing that the lawyer's interests are adverse to the client's with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client; or
- (b) simultaneously represents clients that the lawyer knows have adverse interests with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client; or
- (c) represents a client in a matter substantially related to a matter in which the interests of a present or former client are materially adverse, and knowingly uses information relating to the representation of a client with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client.

4.32 Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

Inappropriate relationships with clients are conflicts of interest that

can justify suspension or disbarment. In *Grievance Administrator v James Childress*, 97-169-GA; 97-183-FA (HP Report, May 18, 1998), the panel found that respondent Childress engaged in a conflict of interest where he had touched a female client in a sexual manner, attempted to kiss her, forced her to engage in sexual intercourse with him, threatened to withdraw from representing her in a divorce matter if she did not succumb to his sexual demands, and then threatened her if she did not agree to keep his advances secret. The panel entered a suspension for a period of five years, noting respondent's prior 180-day suspension for making inappropriate sexual advances and remarks to a client. See also *Grievance Administrator v Eugene F. Williams*, 98-203-GA (ADB 2000) (180-day suspension for attorney who solicited and received sexual favors from client during visitation in jail); *In re Purdy*, 661 SW3d 796, 800 (Mo 2023) (indefinite suspension for violation of conflict of interest where respondent engaged in unwanted, improper sexual touching of six vulnerable clients); *Bd of Prof'l Responsibility v Knudsen*, 444 P3d 72 (Wy 2019) (disbarment for respondent who fostered and engaged in a sexual relationship with a divorce client, knowing that his personal interests were adverse to the client's interests); *Iowa Supreme Court Atty Disciplinary Bd v Moothart*, 860 NW2d 598, 601 (Iowa 2015) (an attorney's sexual harassment of and sexual relations with vulnerable clients, the victim of a client, and an employee violated conflict of interest rules; based on the victims' vulnerability and the pattern of repeated incidents, a 30-month suspension was warranted).

In Count One, it is clear that respondent's personal and sexual interests interfered with his client's legal needs. A sexual assault can cause severe mental and emotional injuries. Also, this client was very vulnerable. Prior to the sexual conduct, he indicated to his client that he had the ability to influence the judge assigned to her case, thereby using her vulnerability to pursue a sexual relationship after the assault. The client repeatedly contacted respondent about

her case, and instead of providing her with an update, respondent sent sexual and explicit texts, including graphic photos. Also, he forced himself on his client, putting his gratification over her interests. Respondent's conduct in this regard is egregious. This client's case involved a custody matter, so respondent should have known that his interests of pursuing a sexual relationship with the client were adverse to the client's interests, and that there was potential for serious injury. As such, we find that disbarment is appropriate under ABA Standard 4.31(a) for this conduct alone.

The Administrator argued disbarment was also appropriate under Standard 4.41, because of respondent's blatant neglect of his clients' matters, and Standard 4.62, because of the misrepresentations and false statements he made to his clients about the status of their cases. The hearing panel, however, found that a suspension was warranted under Standards 4.42 and 4.62. These Standards provide, in relevant part:

4.41 Disbarment is generally appropriate when:

- (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
- (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
- (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

4.42 Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a

client.

* * *

- 4.61 Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potential serious injury to a client.
- 4.62 Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.

The formal complaint here is replete with instances where respondent abandoned the representation of his clients [Standard 4.41(a)], knowingly failed to prepare and file documents for which he was retained to file [Standard 4.41(b)], and repeatedly neglected not only several cases, but also the clients' requests for updates and demands for information, thereby constituting a severe pattern of neglect [Standard 4.41(c)]. To qualify for disbarment under 4.41, only one of these types of misconduct needs to be present; here, we have all three.

Also present is serious or potential serious injury to his clients. Here, neglect was charged and established by the default in six counts, involving six different clients. Furthermore, respondent knowingly deceived his clients in five counts, again involving five separate clients. All but one of the clients involved in these counts were forced to seek alternate counsel to handle their matter.²

Respondent not only risked delaying custody matters for two clients (one in which the client feared for her daughter's safety), but he also delayed the reunification of a client with his minor children because the court was forced

² The client involved in Count Six did not hire alternate counsel because he decided to go to court without representation. (Complaint, ¶ 169.)

to appoint new counsel after respondent appeared at a hearing intoxicated. We agree with the Administrator that ABA Standards 4.41 and 4.61 are the Standards most applicable to respondent's conduct and thus disbarment is warranted.

Also cited by the Grievance Administrator and relied upon by the hearing panel is ABA Standard 7.0, which provides, in relevant part:

7.0 Violations of Duties Owed As A Professional

7.1 Disbarment is generally appropriate 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.

7.2 Suspension is generally 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.

Although the Grievance Administrator argued that Standard 7.1 was applicable, the panel concluded that a suspension was appropriate under Standard 7.2, again without explanation. Cases that fall under Standard 7.1 calling for disbarment can include a lawyer's mishandling of fees, or the failure to perform promised work or return unearned fees. See, e.g., *In re Hamer*, 808 SE2d 647 (Ga 2017) (disbarment under Standard 7.1 for lawyer who knowingly deceived and failed to provide services to clients and engaged in a pattern of neglect). The failure to cooperate with disciplinary authorities can subject a lawyer to a suspension under Standard 7.2.

Relevant here are respondent's violations of MRPC 1.16(d) involving four

separate clients for failing to promptly refund an unearned fee upon termination of representation. Sanctions imposed in Michigan for failure to return an unearned fee have included reprimands and suspensions of varying lengths up to disbarment, often depending on factors such as the length of time during which the lawyer withheld the unearned fee and whether the misconduct is accompanied by other violations. See e.g., *Grievance Administrator v Richard G. Parchoc*, 94-39-GA; 94-68-FA (ADB 1994) (three-year suspension increased to revocation for neglect and failure to return unearned fees aggravated by misrepresentation to client, failure to notify her of his suspension in a prior disciplinary action, failure to answer request for investigation and formal complaint, and prior discipline); *Grievance Administrator v Seymour Floyd*, 90-129-GA (ADB 1991) (30-day suspension for failure to return unearned fee was aggravated by failure to answer request for investigation and mitigated by undocumented depression; increased in subsequent show cause proceedings to eight-month suspension after failure to make ordered restitution); *Grievance Administrator v Michael Doroshewitz*, ADB 138-89; 154-89; 156-89; 163-89 (ADB 1990) (180-day suspension coupled with various conditions for “persistent pattern of neglect and inattention including ... failure to provide legal services [and return unearned fees] to six separate clients” mitigated by ongoing recovery from alcoholism); and *Schaefer, supra* (30-month suspension of license increased to revocation for instances of neglect, failure to return unearned fee, and failure to notify client of suspension).

Here, respondent failed to return unearned fees to four separate clients. In all of those cases, respondent never filed an appearance or any legal documents on behalf of these clients, and never provided refunds. This misconduct is further aggravated by respondent’s neglect of these files and misrepresentations he made to the clients, as well as his failure to cooperate with the Grievance Administrator. Based on this misconduct, we find disbarment is also appropriate

under Standard 7.1.

Additional Standards that are applicable here are ABA Standards 5.1, Failure to Maintain Personal Integrity, and 6.2, Abuse of the Legal Process. Along with the eight-count formal complaint, the Grievance Administrator filed a Notice of Filing a Judgment of Conviction based upon respondent's 2021 conviction for impaired driving. It is unclear what weight the hearing panel gave to the judgment of conviction because the panel did not rely on Standard 5.1, which is typically the appropriate Standard to apply when a criminal conviction is involved.³

Also applicable is Standard 6.2, Abuse of the Legal Process, which provides:

6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the

³ Standard 5.1 provides, in pertinent part:

5.11 Disbarment is generally appropriate when:

(a) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another, or an attempt or conspiracy or solicitation of another to commit any of these offenses; or

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

5.12 Suspension is generally appropriate 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 law.

Although the facts of this case do not fall within the literal scope of ABA Standard 5.1 because respondent's conviction does not involve fraud or dishonesty, this Standard is typically applied to criminal convictions because Standard 5.1 satisfies the otherwise unmet need for a benchmark that applies to this level of criminality by an attorney. See generally *In re Tenenbaum*, 918 A2d 1109, 1134 (Del 2007) (lawyer's sexual assault of former client who reported the conduct 22 years later warranted disbarment under Standard 5.11(b); although not convicted, the lawyer's conduct "meets the general language and intent of Standard 5.0" and is conduct that reflects adversely on the lawyer's fitness even if it arguably does not involve dishonesty).

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.

- 6.22 Suspension is generally appropriate 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.

Under Standard 6.2, discipline for appearing in court while under the influence of drugs or alcohol can range from suspension to disbarment. See *Grievance Administrator v James E. McCormick*, 95-96-GA (respondent suspended for 30 days for appearing in court while in an intoxicated state); *In re Mitchell*, 946 P2d 999 (Kan 1997) (attorney's addiction to alcohol and drugs, harassment of woman, numerous absences at scheduled hearings for his clients and himself, failure to follow conditions of his probation, and his arrest and incarceration for disorderly conduct warranted indefinite suspension from the practice of law); *In re Lovell*, 357 SE2d 92 (Ga 1987) (disbarment warranted based on numerous arrests and convictions for public drunkenness and driving under the influence, appearing in court in a state of intoxication, and failing to appear in court).

Here, respondent's appearances in court while intoxicated not only disrupted two different court proceedings, but also affected his clients. In the case involving his client's reunification with his minor children, the court was forced to appoint new counsel. In the second instance, Judge Murphy found respondent to be "disrespectful, disorderly, contemptuous, and insolent" and that respondent's behavior directly interrupted the court's proceedings for that afternoon, and was likewise a disruption to the docket. We find that this misconduct warrants, at a minimum, a suspension under ABA Standard 6.22.

In summary, the ABA Standards point to disbarment as the appropriate sanction for respondent's egregious conflict of interest involving the sexual assault of a client; the numerous instances of neglect, lack of diligence, and lack of communication; and his failure to perform promised work and return unearned fees.

The ABA Standards point to a sanction short of disbarment for respondent's 2021 conviction for impaired driving and for appearing in court under the influence of alcohol.

Because each disciplinary case involves unique facts and circumstances, consideration must also be given to any aggravating or mitigating factors. The Grievance Administrator asserted that the following aggravating factors applied under ABA Standard 9.22: prior disciplinary offenses [9.22(a)]; dishonest or selfish motive [9.22(b)]; a pattern of misconduct [9.22(c)]; multiple offenses [9.22(d)]; bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency [9.22(e)]; submission of false evidence, false statements, or other deceptive practices during the disciplinary process [9.22(f)]; refusal to acknowledge wrongful nature of conduct [9.22(g)]; vulnerability of victim [9.22(h)]; and substantial experience in the practice of law [9.22(i)]. Counsel acknowledged respondent's personal problems as a mitigating factor under ABA Standard 9.32(c), and respondent testified that his remorse should also be considered as mitigation under 9.32(l).

Although the hearing panel stated that it considered the aggravating and mitigating factors cited by both parties, it did not indicate how much weight it gave to each factor, if any. We find that the record demonstrates a number of factors to be considered in aggravation, with the greatest weight to be given to respondent's prior disciplinary offenses [9.32(a)]; dishonest or selfish motive [9.22(b)]; a pattern of misconduct [9.22(c)]; the presence of multiple offenses [9.22(d)]; and the vulnerability of his clients [9.22(h)]. In addition to the

present conviction at issue here for driving while impaired, respondent has two prior criminal convictions for which he was disciplined, both for domestic violence.⁴ In addition, respondent was admonished in three separate files between 2011 and 2023, for conduct similar to that which has been alleged here.⁵ The current formal complaint also evidences a pattern of misconduct. Coupled with his prior misconduct, respondent's actions are indicative of a cumulative pattern of neglect, abuse, and dishonesty.

The "multiple offenses" aggravating factor applies where a lawyer faces multiple counts of violating the Michigan Rules of Professional Conduct. The present case involves eight separate counts of conduct ranging from serious neglect or abandonment of clients and misrepresentation, to abuse of his fiduciary relationship and sexual assault of a client. This type of cumulative misconduct warrants an increase in discipline. See e.g., *Matter of O. Lee Molette*, 35391-A (ADB 1981) (ruling that "repeated misconduct may evidence the need for more severe discipline."); *Matter of Ross John Fazio*, DP 36/82 (ADB 1983) (finding that misconduct may be aggravated by a respondent's recidivism and conscious disregard for the discipline system).

There is also sufficient evidence in the record to support a finding of a dishonest or selfish motive, and to establish the vulnerability of the clients involved. Respondent's selfish motive is evident by his own sexual gratification,

⁴ Respondent was admonished in 2014 for a domestic violence conviction, and then was suspended for 30 days (by consent) in 2018, after he was convicted of domestic violence for a second time. See *Grievance Administrator v Donald J. Neville*, 18-129-JC (Order of Suspension with Conditions (By Consent), issued December 12, 2018.)

⁵ In 2011, respondent was admonished for pursuing a romantic relationship with his client's girlfriend, while still attorney of record for the client in a proceeding brought to terminate the client's parental rights. In March of 2023, respondent was admonished for a lack of candor in response to the Attorney Grievance Commission, and in April of 2023, respondent was admonished for failing to communicate and keep his client informed in a parental rights termination matter.

which led to a sexual assault and continued sexual harassment of his client. In addition, respondent was dishonest with his clients on several occasions, both by omission and outright deception. In some instances, this dishonesty carried on for months. Respondent was also dishonest with the court – not in a misguided attempt to help a client, but for the sole purpose of trying to keep himself out of trouble. Furthermore, many of the clients that were harmed were single mothers and were seeking help with issues involving their minor children, or were seeking help filing for divorce – all of which are emotionally charged proceedings. See *In re Tenenbaum, supra* (victims of a lawyer’s sexual harassment and offensive touching were vulnerable due to their status as clients in domestic relations matters).

Also applicable here is the aggravating factor of bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency [9.22(e)]. As established in Count Eight, despite being served a subpoena to appear for an examination under oath and to provide requested documents, respondent failed to appear and did not provide any of the requested documents. Only after a second subpoena was served did respondent appear for an examination, but then only produced documents relating to three of the eight files involved in the formal complaint.

Finally, substantial experience in the practice of law [9.22(i)] is also applicable. Respondent has been licensed and practicing law since 1999. He should have recognized the conflict of interest in pursuing a sexual “relationship” with a client, should have known that his conduct in court would be unacceptable, and should have recognized the effect his misconduct would have on his clients.

We have also considered mitigating circumstances, which are “any considerations or factors that may justify a reduction in the degree of discipline to be imposed.” ABA Standard 9.31. Counsel for the Grievance Administrator

acknowledged respondent's personal problems as a mitigating factor under ABA Standard 9.32(c), and respondent testified that his remorse should be considered as mitigation under 9.32(1). Although respondent blames his conduct on his problems with alcohol, his personal issues do not rise to a level that outweighs the seriousness of the underlying conduct. See generally *People v Robbins*, 869 P2d 517 (Colo 1994) (even though court found personal and emotional problems resulting from lawyer's alcoholism impaired the lawyer's mental capabilities, dependency did not outweigh the severity of misconduct).

CONCLUSION

Based upon the misconduct established, Board precedent, and the ABA Standards, we find that respondent's conduct is sufficiently severe to warrant an increase in discipline to disbarment. Collectively, respondent's actions are indicative of a cumulative pattern of neglect, a lack of honesty and candor, sexual harassment and abuse, all of which are contrary to the fundamental characteristics of an attorney.

Moreover, the immense aggravation applicable here supports disbarment, and the minimal mitigation is insufficient to overcome this conclusion. Respondent's substance abuse problem and claimed remorse cannot excuse his egregious conduct, especially in light of the nature and pattern of misconduct in this case. Therefore, we vacate the 181-day suspension imposed by the hearing panel, and increase discipline to disbarment with the conditions and restitution as set forth in the hearing panel order.

Board members Alan Gershel, Rev. Dr. Louis J. Prues, Linda M. Orlans, Jason M. Turkish, Andreas Sidiropoulos, MD, Katie Stanley, Tish Vincent, and Kamilia Landrum concur in this decision.

Board member Peter A. Smit was absent and did not participate in this decision.

