STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,

Petitioner/Appellee,

v

Raymond Guzall, III, P 60980,

Respondent/Appellant.

Case No. 20-54-GA

Decided: September 29, 2023

Appearances

Kimberly L. Uhuru, for Grievance Administrator, Petitioner/Appellee
William S. Dobreff, for Respondent/Appellant

BOARD OPINION

Tri-County Hearing Panel #62 of the Attorney Discipline Board issued an order on December 28, 2022, suspending respondent's license to practice law in Michigan for a period of 179 days and requiring respondent to meet with a mental health counselor on a weekly basis during his term of suspension. Respondent filed a petition for review, arguing that the hearing panel abused its discretion in admitting and relying on court records from the underlying litigation, that the panel's findings as to misconduct were not otherwise supported by the record, and that the discipline imposed was improper and not supported by the record. Although the suspension of respondent's license to practice law would have been

effective January 19, 2023, because respondent requested a stay, the suspension was automatically stayed pursuant to MCR 9.115(K).

The Attorney Discipline Board has conducted review proceedings in accordance with MCR
9.118, including review of the evidentiary record before the panel and consideration of the briefs and arguments presented by the parties at a review hearing conducted June 21, 2023. For the reasons discussed below, we reduce the discipline imposed from a 179-day suspension to a 90-day suspension, and modify the conditions requiring respondent to meet with a licensed mental health therapist during his term of suspension. Because this Board believes respondent will greatly benefit from mental health counseling rather than an extended suspension, we increase the duration of counseling to a period of a minimum of one year from the effective date of the order of discipline.

I. Background

Respondent joined the law firm of Seifman and Associates P.C. in 2002 as an associate attorney. In 2006, respondent entered into a Stockholder Agreement with Attorney Barry Seifman, which granted respondent a five-percent ownership interest in the firm. However, in late 2011, respondent decided to leave the firm. Although respondent spoke to each client he personally represented and told them he was leaving the firm, he never informed Attorney Seifman about his decision to leave. Instead, on Sunday, February 5, 2012 (Super Bowl Sunday), respondent entered the offices of Seifman and Guzall P.C. and removed several physical client files. In addition, respondent searched Attorney Seifman's desk without his knowledge or consent, and removed several of his personal papers such as dental bills and car payment invoices. Respondent left a resignation letter on Attorney Seifman's desk, as well as several signed termination statements from clients, which indicated the clients wanted respondent to represent them.

The underlying litigation from which this discipline matter arises includes

Seifman v Guzall, Oakland County Circuit Court, Case No. 12-125053-CZ (Count One); *Harris v Greektown Casino*, Wayne County Circuit Court, Case No. 12-003001-CD (Count Two); and *Guzall v Warren*, Wayne County Circuit Court, Case No. 18-000343-CB (Count Three). Each of these cases stem from or are connected to the dissolution of Seifman and Guzall P.C., and are discussed in more detail below.

II. Standards of Review

We review decisions on questions of law de novo. *Grievance Administrator v Lopatin*, 462 Mich 235; 612 NW2d 120 (2000); *Grievance Administrator v Jay A. Bielfield*, 87-88-GA (ADB 1996); *Grievance Administrator v Geoffrey N. Fieger*, 94-186-GA (ADB 2002). When a hearing panel's findings are challenged on review, the Board must determine whether the panel's findings of fact have "proper evidentiary support on the whole record." *Grievance Administrator v August*, 438 Mich 296, 304; 475 NW2d 256(1991). See also *Grievance Administrator v Ernest Friedman*, 18-37-GA (ADB 2019). "This standard is akin to the clearly erroneous standard [appellate courts] use in reviewing a trial court's findings of fact in civil proceedings." *Lopatin, supra* at 248 n 12 (citing MCR 2.613(C)). Under the clearly erroneous standard, a reviewing court cannot reverse if the trial court's view of the evidence is plausible. *Thames v Thames*, 191 Mich App 299, 301-302; 477 NW2d 496 (1991), lv den 439 Mich 897 (1991).

However, 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 Under*, 278 Mich App 210,217; 749 NW2d 272 (2008).

When it comes to reviewing questions involving the level of discipline imposed, the Board possesses a relatively high measure of discretion with regard

to the appropriate level of discipline. *August*, *supra*. "This 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 Saunders V. Dorsey*, 02-118-AI; 02-121-JC (ADB 2005).

III. Discussion

A. Count One - Seifman Litigation

On February 12, 2012, Attorney Seifman and his law firm filed suit against respondent in Oakland County Circuit Court, alleging respondent breached the Stockholder Agreement by improperly taking clients and client files from the firm when respondent decided to leave. *Seifman v Guzall*, Oakland County Circuit Court, Case No. 12-125053-CZ. Respondent also filed a counter-complaint. Attorney Seifman filed a motion for summary disposition with respect to his claims against respondent; the motion was denied in part; the court granted summary disposition in favor of Seifman "as to the allegations in [Seifman's] Complaint that Raymond Guzall III improperly removed the physical client files from the law offices of Barry A. Seifman P.C." Ultimately, both parties accepted case evaluation and the case was closed.

Count One of the formal complaint in this disciplinary matter alleged that respondent's conduct in the Seifman litigation constituted misconduct because he engaged in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2); engaged in conduct contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3); and engaged in conduct that violates the standards or rules of professional conduct

adopted by the Supreme Court in violation of MCR 9.104(4).

The hearing panel concluded that, because the Circuit Court already determined respondent improperly removed files from the former firm and that decision was affirmed by the Court of Appeals, "fundamental principles of stare decisis" and collateral estoppel prevented the hearing panel from reaching a different conclusion. Respondent argues that the panel erred in so ruling.

The rule of stare decisis requires courts to reach the same result when presented with the same or substantially similar issues in another case with different parties. The identity of the questions presented is determined by a review of the facts and issues. Unless the facts are essentially different, stare decisis will apply to provide the necessary uniformity, predictability, and stability of the legal process. *Breckon v Franklin Fuel Co*, 383 Mich 251; 174 NW2d 836 (1970). "Under the doctrine of stare decisis, principles of law deliberately examined and decided by a court of competent jurisdiction should not be lightly departed." *People v Jamieson*, 436 Mich 61, 79; 461 NW2d 884 (1990).

Thus, stare decisis is a "doctrine of precedent, under which a court must follow earlier judicial decisions." Black's Law Dictionary (11th ed. 2019). As noted, it exists to prevent the constant reexamination of precedent. *Hamed v Wayne County*, 490 Mich 1, 25; 803 NW2d 237 (2011) (Supreme Court should overrule its own precedents "only . . . after careful consideration of the effect of stare decisis"). At the Court of Appeals level, it has been said that principles of stare decisis require an appellate court to reach the same result in a case that presents the same or substantially similar issues as a case that another panel of the appellate court has decided. *Pew v Michigan State Univ*, 307 Mich App 328; 859 NW2d 246 (2014).

Stare decisis does not apply here. First, this case does not involve the panel failing to follow precedent. Second, as the Board pointed out in *Grievance*

Administrator v George R. Darrah, 92-201-GA (ADB 1994), the Court of Appeals is not a superior tribunal when it comes to the discipline system. In fact, the Court of Appeals has no role in discipline. See *Sternberg v State Bar of Michigan*, 384 Mich 588, 593; 185 NW2d 395 (1971) (Supreme Court held that the disciplinary procedures had been changed to "eliminate involvement by any court other than this one in disciplinary matters" and that "there is no role for the circuit courts or for the Court of Appeals").

In a footnote, the hearing panel concluded that the principles of collateral estoppel further support the conclusion that the hearing panel cannot come to a different decision than that of the trial court or the Court of Appeals. "Collateral estoppel precludes relitigation of an issue in a subsequent, different cause of action between the same parties when the prior proceeding culminated in a valid final judgment and the issue was actually and necessarily determined in the prior proceeding." *Porter v Royal Oak*, 214 Mich App 478, 485; 542 NW2d 905 (1995). Collateral estoppel also fails here because it requires that the same parties, or parties in privy, had a full and fair opportunity to litigate the issue. The civil action was between Attorney Seifman and respondent, but this disciplinary case involves respondent and the Grievance Administrator. Although respondent had a full and fair opportunity to litigate the issue of whether the files were wrongfully taken, the Grievance Administrator was not a party and would not have been bound by the ruling if the court had ruled in respondent's favor.

However, despite the fact that neither stare decisis nor collateral estoppel are applicable here, the hearing panel did not abuse its discretion in admitting the orders and opinions from the Circuit Court and Court of Appeals as evidence. Michigan Compiled Laws § 600.2106 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.

In *Grievance Administrator v Geoffrey N Fieger*, 97-83-GA (ADB 1999), this Board determined that MCL 600.2106 applies to disciplinary proceedings. The Board held that, 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 factual evidence they wish to present. Even if respondent cannot rebut the presumption, he may still argue that the facts recited by the court orders do not amount to misconduct. The Board concluded that the statute "plays no role in determining whether the facts establish a violation of the Rules of Professional Conduct." See also *Grievance Administrator v Gregory J. Reed*, 10-140-GA (ADB 2014).

In accordance with *Fieger, supra*, the panel properly admitted and considered the court records offered into evidence by the Grievance Administrator in accordance with MCL 600.2106. The orders and opinions from the Circuit Courts and Michigan Court of Appeals created a rebuttable presumption as to their factual findings; respondent was not only entitled to supplement the record with testimony and other relevant evidence, he was entitled to argue to the panel that the facts recited in those opinions and orders do not amount to misconduct. Respondent availed himself of the opportunity to present evidence and to argue that his actions did not constitute professional misconduct under the rules cited in the complaint. Accordingly, the hearing panel did not abuse its discretion in admitting the

court records into evidence.[1]

B. Count Two - Harris Litigation

In March of 2012, respondent filed a lawsuit against Greektown Casino on behalf of Diane Harris, a client who had consulted with Seifman & Guzall P.C. before respondent left the firm, but ultimately retained respondent to handle her case after he left the firm. *Harris v Greektown Casino*, Wayne County Circuit Court, Case No. 12-003001-CD. In November of 2013, a jury returned a verdict in favor of Harris for $600,066.00. After Attorney Seifman learned that respondent had obtained a jury award in the *Harris* case, Attorney Seifman filed a motion to intervene, asserting a right to any attorney fees awarded. The motion to intervene was granted by Judge Daphne Means Curtis.[2]

Attorney Seifman subsequently filed a Notice of Lein against Ms. Harris. The trial court then scheduled and began conducting an evidentiary hearing to determine the distribution of attorney fees. After two days of hearings, the hearing was adjourned, with a third day of proofs scheduled for February 2, 2016. Respondent then filed a motion to disqualify Judge Curtis, and a hearing on the disqualification motion was scheduled for February 19, 2016. Respondent refused to continue participating in the evidentiary hearing without first obtaining a ruling on the disqualification motion, and issued the following written notice to the trial court and all other parties on January 29, 2016:

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[1] We need not address whether respondent's conduct constituted misconduct in Count One, because the hearing panel did not rely on Count One in determining the appropriate sanction in this case, and neither does this Board. Furthermore, as fully discussed below, the hearing panel did not rely on stare decisis or collateral estoppel when finding misconduct in Counts Two and Three.

[2] Respondent appealed the decision allowing Attorney Seifman to intervene. Although the Court of Appeals found that Judge Curtis abused her discretion in granting the motion to intervene, the Court dismissed the appeal because Ms. Harris did not have standing to challenge the decision since she was not the aggrieved party. See *Harris v Greektown Casino (Harris I)*, unpublished per curiam of the Court of Appeals, issued August 20, 2015 (Docket No. 322088).

> . . . Third Party Defendant Diane Harris and her attorney, Raymond Guzall III, provided this notice to the court and all other parties, that Third Party Defendant Diane Harris and her attorney, Raymond Guzall III, will not appear at any hearing scheduled for the continuation of the evidentiary hearing, until after the final determination upon Third Party Defendant Diane Harris' [sic] motion to recuse Judge Daphne Means Curtis has been entered by the court, or upon an appeal to the chief judge of the court, if necessary.

When respondent failed to appear at the continued evidentiary hearing on February 2, 2016, the trial court determined that respondent was in contempt of court because he was aware of the scheduled hearing, and thus his failure to appear was willful and deliberate. As a result, the trial court struck all of respondent's pleadings, motions, and documents related to Attorney Seifman's claim, defaulted respondent, and ordered the release of the escrowed attorney fees ($215,000) to Attorney Seifman.

Respondent appealed both the order of contempt and the order denying Judge Curtis's disqualification. At oral argument on the appeal, the following exchange occurred between respondent and the Court:

> MR. GUZALL: What happened in this case was I inquired as to what was going on because of the motions that were filed and what had happened.
>
> JUDGE MURPHY: Counsel, wait a minute. You sent the court a letter saying you weren't going to appear.
>
> MR. GUZALL: Again, I have got to look at this specific letter, but I --
>
> JUDGE MURPHY: You should know, it's your case. You're an officer of the court.
>
> MR. GUZALL: Sure.

JUDGE MURPHY: You sent the court a letter saying you weren't going to appear.

MR. GUZALL: Well, I –

JUDGE MURPHY: Whether you as an officer of the court have a right to tell the court, what you will do, what the court should do. If you're dissatisfied with a ruling from the court, then you should take the appropriate process of appealing a decision.

* * *

JUDGE BORELLO: [W]hat I'm hearing is, and I'm trying to tread lightly here, is you don't know whether you wrote a letter, not whether your client wrote a letter, whether somebody else wrote a letter, you don't know whether you wrote a letter. I just -- that's not sitting well with me.

So, let's go to that stop. Did you, in fact, write the letter that said you will not be coming to any further court proceedings until such time as the judge makes a ruling on your motion to disqualify.

MR. GUZALL: I never said I didn't write a letter. I don't have the letter memorized. I'm trying to find it. What exhibit –

JUDGE MURPHY: Let me refresh your memory. Here is what the letter said that you sent: [Whereupon Judge Murphy read the notice into the record.] Does that refresh your memory?

MR. GUZALL: It doesn't. I mean, I don't -- I don't doubt that those are the words, but I'm looking for the actual letter. That's what I'm trying to say.

JUDGE BORELLO: You know, Counsel, this is very disingenuous and you're not helping yourself. If you want to continue, fine. I find that offensive that you don't recall.

> MR. GUZALL: I'll look you right dead in the eye right now and tell you I haven't seen that letter since this appeal was filed. The reason why is because the issue –
>
> JUDGE BORELLO: Counsel, the question -- you will be quiet.
> The question was: Did you write that letter? It's a simple yes or no. Did you write it, yes or no?
>
> MR. GUZALL: If my signature -- I haven't seen the letter in years or a year and a half, whenever I drafted. That's the letter. That's why I asked, what is the exhibit? If the court tells me -- I'm looking for the exhibit.
>
> JUDGE BORELLO: If you will not be candid with this court, you will face a similar sanction here.
> Let me ask you for the third and last time. Did you or did you not write that letter? It's a very simple question.
>
> MR. GUZALL: I can't answer it. [COA Tr 10/11/17, Petitioner's Exhibit 29, pp 5-11.]

The Court of Appeals ultimately affirmed the trial court, determining respondent was guilty of criminal contempt of court, and that the trial court's actions of striking his pleadings and defaulting him were proper.

The Court of Appeals opinion also affirmed the trial court's determination that the motion to recuse Judge Curtis was frivolous.[3] However, in accordance with MCL 600.2106 and *Fieger, supra*, the hearing panel independently found that respondent's motion to recuse Judge Curtis was <u>not</u> frivolous under the rules of professional conduct, based upon the arguments and evidence introduced in this

[3] See *Harris v Greektown Casino (Harris II)*, unpublished per curiam opinion of the Court of Appeals issued October 31, 2017 (Docket No. 331652).

disciplinary matter. As a result, the panel determined that respondent did not violate MRPC 3.1, as charged in Count Two.

With regard to the other allegations in Count Two, the hearing panel relied on the evidence presented at the misconduct hearing, which we find supports the panel's finding of misconduct. Specifically, Count Two alleged respondent knowingly disobeyed an obligation under the rules of a tribunal, in violation of MRPC 3.4(c), and engaged in undignified or discourteous conduct toward a tribunal, in violation of MRPC 3.5(d).[4]

The panel found respondent violated MRPC 3.4(c) based upon his refusal to appear at a hearing despite being ordered to do so. Furthermore, the panel succinctly concluded:

> It is undeniable that Guzall was ordered to appear at the February 2, 2016 evidentiary hearing and to obtain the assistance of counsel. It is also undeniable that Guzall claimed that no valid obligation to appear existed. This was a blatant violation of the rules and, as the Court of Appeals noted in its opinion "a contemptuous act of defiance." Remarkably, after being rebuked by Judge Curtis with an order to pay sanctions, and after being rebuked by Judge Borello of the Michigan Court of Appeals for his conduct, Guzall continued to argue that his conduct was justified. It was not. MRPC 3.4(c) appears to exist for precisely this situation. The Panel views Guzall's never ending defense of his otherwise indefensible behavior to be stunning. [Misconduct Report, p 7.]

The hearing panel also determined that MRPC 3.5(d) applied directly to

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[4] Count Two also alleged respondent engaged in conduct prejudicial to the administration of justice, in violation of MCR 9.104(1); engaged in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2); engaged in conduct contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3); and engaged in conduct that violates the standards or rules of professional conduct adopted by the Supreme Court in violation of MCR 9.104(4).

respondent's conduct in the Court of Appeals, relying on the exchange between respondent and the Court. The panel found that "[r]eading the transcript of Guzall's presentation before the Court of Appeals is both illuminating and astounding." *Id.* at 7. The panel also found that "Guzall's refusal to comply with Judge Curtis' order and his further refusal to acknowledge that he had done so is embarrassing (at best), and reprehensible (at worst), for an experienced lawyer. More importantly, it is clearly and directly violative of the Michigan Rules of Professional conduct." *Id.*

We find that the panel's analysis of the issue of whether respondent violated MRPC 3.4(c) and 3.5(d) reflects a thoughtful and thorough review of the evidence presented by both parties, including a recognition that under MCL 600.2106, a court order "shall be prima facie evidence . . . of all facts recited therein . . ." However, the panel did not simply rely on the court orders without further analysis. The panel closely examined hearing transcripts, pleadings filed in the underlying litigation, and an oral argument transcript from the Court of Appeals. Accordingly, we find that there is proper evidentiary support in the record for the panel's finding that respondent violated MRPC 3.4(c) and 3.5(d), as well as MCR 9.104(1)-(4). Therefore, we affirm the panel's finding in that regard.

C. Count Three - Warren Litigation

While respondent's application for leave to appeal in the *Harris* case was pending in the Supreme Court, respondent filed a civil complaint against Attorney Seifman and the Seifman firm, as well as David Warren, the attorney who represented Seifman in the prior actions, and Attorney Warren's firm. See *Guzall v Warren*, Wayne County Circuit Court, Case No. 18-000343-CB. Respondent's complaint was based entirely on the attorney fees involved in the *Harris* matter (Count Two here), and accused the defendants of tortious interference with a contract, tortious

interference with a business relationship or expectancy, statutory conversion, unjust enrichment, breach of contract, conspiracy, and intentional infliction of emotional distress.

Both Attorneys Seifman and Warren filed motions for summary disposition, and requested that the trial court sanction respondent for filing a frivolous pleading. The trial court agreed, granted summary disposition in favor of the defendants, held that respondent's complaint was clearly frivolous, and awarded sanctions under MCR 2.114 and MCL 600.2591. The trial court also directed the defendants to file new motions for sanctions along with documentation of their attorney fees and an analysis of the reasonableness of those fees. The court held a hearing on those motions, made findings concerning the reasonableness of the requested attorney fees, and ultimately awarded $16,380.73 to Attorney Warren and $4,446.80 to Attorney Seifman.

Respondent then filed two appeals regarding the *Warren* litigation: first, arguing that Judge Curtis did not have jurisdiction over Attorney Seifman's claims (in the case involved in Count One here), nor did she have personal jurisdiction over respondent (COA Case No. 344507); and second, seeking reversal of the sanctions awarded against him in the *Warren* litigation (COA Case No. 345190). The appeals were eventually consolidated.

On August 8, 2019, the Court of Appeals issued its opinion on the consolidated appeals, affirming both circuit court decisions. See *Guzall v Warren*, unpublished per curiam opinion of the Court of Appeals issued August 8, 2019 (Docket Nos. 344507, 345190). The Court agreed that respondent's claims were barred by collateral estoppel and constituted an impermissible collateral attack on a previous trial court's contempt order, and also rejected respondent's claim that the trial court erred by imposing sanctions for the filing of a frivolous pleading. The Court of Appeals also affirmed the award of reasonable attorney fees to

defendants as sanctions for respondent's frivolous filing, allowed defendants to tax costs, and invited them to file a motion for damages or other disciplinary action under MCR 7.216(C), the rule regarding vexatious proceedings. The Court of Appeals ultimately granted defendants' motions for sanctions for a vexatious appeal, finding that respondent's appeal "was brought without any reasonable basis to believe that there was a meritorious issue to be determined on appeal, and was frivolous and vexatious under MCR 7.216(C)(1)(a)." The Court awarded defendants their actual damages and expenses, including attorney fees, incurred as a result of respondent's appeal.[5]

Count Three of the formal complaint in this disciplinary matter alleged respondent brought a frivolous proceeding and/or asserted a frivolous issue, in violation of MRPC 3.1, and engaged in undignified or discourteous conduct toward a tribunal, in violation of MRPC 3.5(d).[6]

Similar to Count Two, the hearing panel relied, in part, on the pleadings filed in the *Warren* litigation that were offered by the Grievance Administrator and admitted into evidence. After examining the pleadings, the panel concluded that respondent violated MRPC 3.1 because he "made all the same arguments in that case that he made in the earlier cases, continuing to try to justify what several

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[5] Respondent filed an application for leave to appeal with the Michigan Supreme Court, which was denied on May 26, 2020. While that appeal was pending, respondent filed a third appeal in the Michigan Court of Appeals (Docket No. 352004), seeking review of the sanctions awarded after remand. The Court of Appeals affirmed the trial court's award of attorney fees and costs to defendants. See *Guzall v Warren*, unpublished per curiam opinion of the Court of Appeals issued July 8, 2021 (Docket No. 352004). Respondent filed an application for leave to appeal to the Michigan Supreme Court of this decision as well, which was denied on January 4, 2022.

[6] Count Three also alleged respondent engaged in conduct prejudicial to the administration of justice, in violation of MCR 9.104(1); engaged in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2); engaged in conduct contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3); and engaged in conduct that violates the standards or rules of professional conduct adopted by the Supreme Court in violation of MCR 9.104(4).

courts previously determined was unjustified" and by pursuing "never-ending filings and appeals concerning issues over which any reasonable person would view as having zero chance of success . . . ." (Misconduct Report, p 7.) The panel felt strongly enough about the frivolous nature of the filings to conclude that respondent's repeated filings "demonstrated a total disrespect of the court system" in violation of MRPC 3.5(d), and showed that respondent "used his knowledge and experience as a lawyer, not as a method of resolving disputes, but as a bludgeon to endlessly extend the controversy between himself and Seifman." (Misconduct Report, p 8.)

We agree that there is sufficient evidence in the record to affirm these findings. Again, the panel conducted a thorough review of the evidence presented by both parties, and determined that it was clear from the record that respondent's complaint sought to re-litigate issues that he had raised several times in prior litigation. In fact, at the time he filed the 2018 action, his application for leave to appeal the trial court's contempt order in *Harris* was still pending in the Michigan Supreme Court. Respondent knew, or should have known, that attempting to have a different trial court revisit and overrule many of the prior trial court's determinations, while attempting to pretend that the previous trial court's findings had never happened, was meritless. Accordingly, there was proper evidentiary support in the record regarding the hearing panel's findings of misconduct in Count Three.

D. Sanctions for Misconduct in this Discipline Case

In deciding the level of discipline to be imposed, the hearing panel is required to use the ABA Standards for Imposing Lawyer Sanctions (ABA Standards) following a finding of misconduct. *Lopatin*, *supra*. Once the panel has identified the duty violated, the lawyer's mental state and the potential or actual injury caused by the lawyer's misconduct under ABA Standard 3.0, the hearing panel then

examines recommended sanctions. *Lopatin, supra* at 240; ABA Sanctions, pp 3, 4-5. The hearing panel then considers the existence of aggravating or mitigating factors. Finally, as this Board noted in *Grievance Administrator v Ralph E. Musilli*, 98-216-GA (2000), the hearing panel and Board should consider whether there are any other factors which may make the results of the foregoing analytical process inappropriate for some articulated reason.

> As the Court explained in directing this Board and the panel's to follow the Standards:
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> > We caution the ADB and hearing panels that our directive to follow the ABA standards is not an instruction to abdicate their responsibility to exercise independent judgment. Where, for articulated reasons, the ADB or a hearing panel determines that the ABA standards do not adequately consider the effects of certain misconduct, do not accurately address the aggravating or mitigating circumstances of a particular case, or do not comport with the precedent of this Court or the ADB, it is incumbent on the ADB or the hearing panel to arrive at, and explain the basis for, a sanction or result that reflects this conclusion. [*Musilli, supra* at 2 (quoting *Lopatin*, 462 Mich at 248 n 13).]

The panel concluded that the applicable ABA Standards were 6.2 Abuse of Legal Process, and 7.0 Violations of Duties Owed as a Professional, and concluded that a suspension was warranted under both Standards.[7] As for aggravating and

[7] Standard 6.22 provides: "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." Standard 7.2 provides: "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."

mitigating factors under ABA Standards 9.22 and 9.32, the panel found the following aggravating factors applied: 9.22(b) 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. The panel further applied the following mitigating factors: 9.32(a) absence of a prior disciplinary record and 9.32(i) mental disability. Although the panel believed a 180-day suspension would be appropriate for the misconduct here, the panel gave great weight to respondent's lack of a prior disciplinary record and reduced the suspension to 179 days.

It has often been said that "attorney misconduct cases are fact-sensitive inquiries that turn on the unique circumstances of each case." *Grievance Administrator v Deutch*, 455 Mich 149, 166; 565 NW2d 369 (1997). The appropriate discipline for frivolous litigation can range from reprimand to disbarment. Similarly, discipline for disobeying a court order or exhibiting a lack of candor with a tribunal also range from reprimand to disbarment, depending on the facts of each case.

Furthermore, the ABA Standards do not dictate exactly what weight should be given to aggravating or mitigating factors. "Rather, consistent with their intent to permit 'creativity and flexibility in assigning sanctions in particular cases,' they call for 'consideration of the appropriate weight of [all relevant] factors in light of the stated goals of lawyer discipline.'" *Grievance Administrator v Arnold M. Fink*, 96-181-JC (ADB 2001) (After Remand), lv den 636 NW2d 141 (2001) (citing ABA Standard 1.3). The goal of lawyer discipline is "to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to properly discharge their professional duties to clients, the public, the legal system, and the legal profession." ABA Standard 1.1.

We find no basis to disturb the panel's ultimate conclusion that a suspension is appropriate. As for the proper length of that suspension, we consider a few factors. First, we take into account that respondent has had no other disciplinary offenses over the past 23 years of practicing law in Michigan. Second, we find that the imposition of other penalties or sanctions under ABA Standard 9.32(k) applies here and should have been considered by the hearing panel. See *Fink, supra* at 10-11. In *Harris v Greektown Casino* (Count Two), the sanctions imposed by the trial court included striking respondent's filings and entering a default, which led to Attorney Seifman obtaining $215,000 in attorney fees, a significant portion of which respondent may have otherwise been entitled.

We have also considered delay in disciplinary proceedings, but do not consider it as a mitigating factor. Although respondent's first alleged act of misconduct occurred on February 5, 2012, the Grievance Administrator did not learn of that conduct until 2017, while investigating a separate request for investigation. Any delay by the Grievance Administrator in prosecuting this case was due, in part, to the fact that respondent and the complainants were engaged in litigation and appeals that did not conclude until 2020.[8] The Grievance Administrator monitored the appeals and filed the formal complaint soon after it was determined that the decisions against respondent (upon which the formal complaint was based) would not be overturned. We do consider, however, that no subsequent misconduct has occurred, leading us to conclude the misconduct here appears to be an unusual departure for respondent, perhaps because of a unique

[8] Even after the Michigan Supreme Court denied respondent's application for leave to appeal on May 26, 2020 in the *Warren* litigation, respondent filed a third appeal in the Michigan Court of Appeals seeking review of the sanctions awarded after remand, which was affirmed on July 28, 2021 (Docket No. 352004). Respondent filed an application for leave to appeal to the Michigan Supreme Court of this decision as well, which was denied on January 4, 2022. Therefore, given that there were three separate civil actions and appeals raising similar issues, one of which did not conclude until 2022, we cannot say that the panel erred in declining to consider delay to be a mitigating factor.

conflict with a former partner.

Finally, we are mindful of the physical and mental hardships respondent has endured during the alleged underlying litigation and during these disciplinary proceedings, and have taken this into consideration.

We agree with the panel that, given the absence of other reported alleged client related misconduct, "a lesser impact on respondent's ability to practice while imposing solutions that may serve a longer and broader purpose of protecting the public and the legal profession" is appropriate. While vigorous advocacy is critical to the operation of an adversarial system, there are limits to that advocacy. Further, when lawyers refuse to obey court orders and file frivolous complaints, they jeopardize the fair and efficient administration of justice. Here, however, the conduct and complaints stem solely from the contentious dissolution of respondent's professional relationship with Attorney Seifman, and seem to be at odds with respondent's generally good record and demeanor. As such, it appears to us that the likelihood of future misconduct by respondent is minimal.[9] Accordingly, we find that a suspension of 90 days, rather than 179 days, in combination with an extended period of one year of mental health counseling, is sufficient to protect the public, the courts and the profession.

E. Due Process Issues Raised on Review

On review, respondent also asserts that his due process rights were violated in several ways. First, he argues he was denied the opportunity to develop a full and fair record, claiming that the transcription of oral argument at the Court of Appeals on October 11, 2017, is incomplete, the official audio recording from

[9] On the other hand, respondent continuously filed voluminous, meritless, and repetitive pleadings in this disciplinary matter, many of which were seeking to relitigate the underlying cases, which raises a concern that this conduct is still continuing. This concern further supports our belief that respondent will benefit greatly from mental health counseling.

the Court of Appeals oral argument held on January 10, 2017, in *Seifman v Guzall*, *supra* (COA 328643), was altered and is incomplete, and the transcripts of the hearings in this disciplinary matter are incomplete.

Certified transcripts of proceedings are presumed to be accurate, but that presumption may be rebutted. *People v Abdella*, 200 Mich App 473, 475-476; 505 NW2d 18 (1993). In order to be entitled to relief and to overcome the presumption that certified transcripts are accurate, the complaining party is required to "(1) seasonably seek relief; (2) assert with specificity the alleged inaccuracy; (3) provide some independent corroboration of the asserted inaccuracy; [and] (4) describe how the claimed inaccuracy in transcription has adversely affected the ability to secure postconviction relief." *Id.* at 476. The independent corroboration requirement may be satisfied, for example, by providing "affidavits of witnesses, trial spectators, police officers, court personnel, or attorneys" or by referring to "trial circumstances that demonstrate the position of the petitioner." *Id.* at 476, n 2.

Respondent has not satisfied these requirements. There is no evidence that the transcripts prepared and notarized by the certified court reporters are inaccurate. Likewise, the January 10, 2017 audio recording of Judge Talbot at oral argument does not show any inaccuracies. Similarly, with regard to the transcripts of the hearings involved in this disciplinary matter, again there is no evidence the transcripts – which were prepared and certified by certified court reporters – are somehow inaccurate. Finally, respondent has failed to show how any of the claimed inaccuracies have adversely affected him. While respondent broadly argues that his due process rights were violated, he fails to articulate how these alleged inaccuracies affected his due process rights.

Respondent also asserts that his due process rights were violated because several of his motions were never heard. We also find no merit to this argument.

Respondent has a history of filing voluminous and repetitive motions that the hearing panel and Board have nevertheless heard and ruled upon. Respondent has failed to establish any denial of due process in this regard.

Respondent also claims a due process violation based on an allegation that the hearing panel was improperly assigned because he was not assigned a panel "outside of the area where the attorney practices." No such requirement exists. Respondent relies on *In the Matter of Leroy Daggs*, 35447-A (ADB 1979), which mentions "it is common practice to assign hearings to panels outside the area where the accused attorney practices . . . ." However, subsequent to *Daggs*, the Michigan Supreme Court adopted MCR 9.115(G), which provides: "Unless the board or the chairperson of the hearing panel otherwise directs, the hearing must be in the county in which the respondent has or last had an office or residence." Here, respondent's address registered with the State Bar is in Oakland County, so the case was properly assigned to an Oakland County hearing panel.

Respondent further claims that the hearing panelists were not impartial decision makers as required for due process. In support, respondent cites to all the statements in the misconduct and sanction reports that he claims are false or wrongly decided. Disqualification is warranted where the judge is biased or prejudiced for or against a party or attorney. MCR 2.003(C)(1)(a). There is nothing in any of the hearing panel's orders or this Board's orders that evidences bias or prejudice against respondent. In fact, a review of the hearing transcripts shows that the hearing panelists conducted the proceedings in a very fair and professional manner. Although respondent may disagree with orders that were issued by the hearing panel and the Board, adverse rulings alone are not a basis for disqualification. *Liteky v United States*, 510 US 541 (1994).

Finally, respondent argues there is an appearance of impropriety with the Board and thus disqualification of the entire Board is warranted, because Board Members Gershel and Orlans have not been required to disclose the reasons for

their recusal from this matter. Respondent has presented no factual or legal basis to support his request for relief, and this issue is wholly irrelevant to the question of whether respondent committed misconduct. In sum, we find that no due process violations occurred during these proceedings.

IV. Conclusion

For the reasons stated above, and in accordance with MCR 9.118(D), we affirm the decision of the hearing panel with respect to the findings of misconduct in Counts Two and Three. The Board has determined, however, that a 179-day suspension of respondent's license to practice law is not the appropriate level of discipline to impose for the findings of misconduct. After considering the ABA Standards, all relevant aggravating and mitigating factors, and keeping in mind the ultimate goal of the attorney discipline system, we find that a suspension of 90 days is sufficient to protect the public, the courts and the profession. Furthermore, to emphasize our belief in the importance of mental health counseling for respondent, we modify the hearing panel's conditions requiring respondent to meet with a licensed mental health therapist for the term of his suspension, and increase the duration of counseling to a minimum period of one year from the effective date of the order of discipline. To further emphasize the importance of the conditions in this case, we hold that the Grievance Administrator may seek modification of the order of discipline to increase the suspension of respondent's license to one year if respondent fails to comply with the conditions.

Board members Linda S. Hotchkiss, MD, Rev. Dr. Louis J. Prues, Peter A. Smit, Jason M. Turkish, Andreas Sidiropoulos, MD, Katie Stanley, and Tish Vincent concur in this decision.

Board members Alan Gershel and Linda M. Orlans were recused and did not participate.