

STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,

Petitioner/Appellee,

v

Jennifer Michelle Paine, P 72037,

Respondent/Appellant,

Case Nos. 22-3-GA; 22-93-GA

Decided: March 29, 2024

Appearances

Emily A. Downey, for Grievance Administrator, Petitioner/Appellee
Jennifer Michelle Paine, In Pro Per, Respondent/Appellant

BOARD OPINION

On April 28, 2023, Tri-County Hearing Panel #59 issued an order disbaring respondent from the practice of law in Michigan, effective May 20, 2023.¹ On May 10, 2023, respondent filed a timely petition for review of the hearing panel's order. On May 19, 2023, the Board issued an order to show cause that established a briefing schedule for the parties; respondent's brief in support of her petition for review was due no later than June 9, 2023, and the Grievance Administrator's

¹ Respondent has been continuously suspended from the practice of law in Michigan since December 13, 2022 when an order of interim suspension was re-entered, suspending respondent's license, effective December 13, 2022. (See notice of interim suspension, issued December 14, 2022.)

response was due no later than June 23, 2023. A review hearing before the Board was scheduled for August 16, 2023.

On June 16, 2023, the Grievance Administrator filed a motion to dismiss respondent's petition for review for failure to file a brief in support, pursuant to MCR 9.118(B). Respondent did not respond to the Administrator's motion. On June 28, 2023, the Board issued an order dismissing respondent's petition for review, vacating the order to show cause, and canceling the August 16, 2023 review hearing.

On July 19, 2023, respondent filed a petition for reconsideration noting that a brief in support of her petition for review was attached to her petition for review when it was filed on May 10, 2023. On September 8, 2023, the Board issued an order that granted respondent's petition for reconsideration, accepted the brief attached to respondent's petition for review, provided the Grievance Administrator an opportunity to file a responsive brief, and scheduled a review hearing before the Board on October 18, 2023.

The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118. Although respondent was required to attend the October 18, 2023 review hearing pursuant to MCR 9.118(C)(1), respondent failed to appear and was not excused from attending by the Board. As a result, the Grievance Administrator relied on the arguments raised in his responsive brief. The Board reviewed the evidentiary record before the panel and considered the briefs filed by the parties.

For the reasons discussed below, we affirm the decision of the hearing panel in its entirety.

I. Panel Proceedings/Background

On January 11, 2022, the Grievance Administrator filed a six-count formal complaint (22-3-GA), against respondent which alleged, in counts one, two, three

and five that respondent committed professional misconduct during her representation of four different clients in their respective divorce and post-judgment divorce matters. Count four alleged that respondent committed professional misconduct while representing a client in adoption proceedings, and count six alleged that respondent committed professional misconduct in her own criminal matter after she was charged with driving while her license was suspended in a matter filed in the 53rd District Court.

The matter was assigned to Tri-County Hearing Panel #59. Respondent filed an answer to the complaint on February 22, 2022. Respondent did not appear for a pretrial conference scheduled on October 25, 2022. As a result, the Administrator's counsel moved to have an interim order of suspension entered immediately pursuant to MCR 9.115(H)(1). The panel granted the request and an order to that effect was entered on October 25, 2022, suspending respondent's license to practice law, effective November 1, 2022, until further order of the panel or the Board. An in-person hearing on misconduct was scheduled for January 10, 2023.

On November 3, 2022, respondent filed an emergency motion to set aside the interim suspension. The Administrator objected to the relief requested in the motion. The panel granted respondent's motion and entered an order setting aside the interim order of suspension and immediately reinstating respondent's license to practice law, on November 22, 2022. The order required respondent to provide her current and correct mailing, telephone, and email contact information to the Grievance Administrator and the Attorney Discipline Board no later than December 2, 2022, and noted that if respondent failed to do so, an interim order of suspension would be re-entered.

On December 2, 2022, the Grievance Administrator filed a separate two-count formal complaint (22-93-GA), against respondent alleging that she committed

professional misconduct during her representation of a client in a post-divorce judgment matter and by mishandling several appeals she filed in the Court of Appeals on behalf of various clients. The complaint was accompanied by a motion to consolidate the two formal complaints before Tri-County Hearing Panel #59. On December 6, 2022, a notice of consolidation was entered by the Board consolidating both matters for hearing before the panel.

Respondent subsequently failed to provide any of the requested contact information, so on December 6, 2022, the panel re-entered an order of interim suspension suspending respondent from the practice of law until further order of the panel or Board, effective December 13, 2022.²

The in-person hearing on misconduct was held on January 10, 2023. Respondent appeared for the hearing, and the parties advised the panel that respondent agreed to stipulate to the admission of all of the Grievance Administrator's exhibits (Petitioner's Exhibits 1-29), and to admit all of the misconduct set forth in both formal complaints. Based on respondent's stipulation, the panel admitted Petitioner's Exhibits 1-29 and confirmed that respondent was admitting the misconduct alleged in both formal complaints in their entirety. (Tr 1/10/23, pp 7-8.) After a brief recess, the panel read through the violations set forth in each count of both complaints on the record and made a finding of misconduct. (Tr 1/10/23, pp 10-12.) The hearing panel's misconduct report was issued on January 24, 2023, and memorialized respondent's admissions and the panel's findings, as set forth on the record at the January 10, 2023 hearing.

² Respondent filed a second emergency motion to set aside the interim suspension, which was denied by the panel on December 16, 2022. Although respondent filed a petition for interlocutory review of the December 16, 2022 order with the Board, the proceedings before the panel were not stayed. The Board denied respondent's petition for interlocutory review in February 2023.

An in-person sanction hearing was held on January 27, 2023. The Administrator's counsel argued that disbarment was warranted under several ABA Standards, and applicable aggravating factors, and requested that respondent be ordered to pay any outstanding fees and/or costs owed in the proceedings referenced in the formal complaint. Counsel further noted that no restitution was owed to any of the involved clients. (Tr 1/27/23, pp 119-120.) Respondent did not dispute that she should be required to pay any outstanding fees and/or costs, but argued that she merely needed "mentorship, classes, practice management." (Tr 1/27/23, p 123.) Both parties filed sanction briefs shortly after the sanction hearing reiterating their respective positions as to the appropriate discipline to impose. The Administrator's brief also noted a number of occasions on which respondent made misrepresentations to clients, courts, and opposing counsel about the status of her license and on which she continued to hold herself out as a licensed attorney despite the interim suspension of her license. (Petitioner's Sanction Brief 2/21/23, pp 5-10.)

The hearing panel's sanction report was issued on April 28, 2023. The panel found that respondent "violated duties [she] owed to clients, the public, the legal system, and the legal profession as a whole;" "that [she] acted intentionally, knowingly, and negligently during her handling of the matters referenced in the formal complaints;" and, "[t]he actual or potential injury caused by respondent's conduct, in general, spans clients, the courts, and the profession." (Sanction Report 4/28/23, pp 3-5.) As for aggravating factors set forth in ABA Standard 9.22, the panel found the following applicable: 9.22(a) prior disciplinary offenses; 9.22(b) dishonest or selfish motive; 9.22(c) pattern of misconduct; 9.22(d) multiple offenses; and 9.22(i) substantial experience in the practice of law. The panel also found respondent's false statements about the status of

her license after the interim suspension of her license was re-entered to be especially aggravating. (Sanction Report 4/28/23, pp 8, 9.)

The only mitigating factor, as set forth in ABA Standard 9.32, the panel mentioned that "could apply" was 9.32(c) personal or emotional problems, but they ultimately found that respondent's personal or emotional problems did not cause her conduct. (Sanction Report 4/28/23, p 9.) Finally, the panel found that several ABA Standards applied to respondent's conduct, all calling for disbarment: Standards 4.11 (failure to preserve the client's property); 4.31 (failure to avoid conflicts of interest); 4.41 (lack of diligence); and 8.1 (prior discipline order). An order of disbarment was entered the same day, disbarring respondent from the practice of law in Michigan, effective May 20, 2023.

II. Discussion

Respondent's brief on review argues that the hearing panel overlooked several mitigating circumstances/factors when determining discipline, that the discipline imposed is not in proportion to respondent's conduct, and that the hearing panel's findings are against the great weight of evidence. The Administrator's brief argues that the hearing panel properly considered the mitigation offered by respondent, and appropriately considered the applicable ABA Standards in determining that disbarment was the appropriate discipline to impose for respondent's admitted conduct.

First, we briefly address respondent's argument that "the hearing panel's findings are against the great weight of evidence." Respondent confirmed her desire to admit all of the allegations of misconduct in both complaints at the January 10, 2023 misconduct hearing and further explained why she did so at the

sanction hearing. (Tr 1/10/23, pp 6-7; Tr 1/27/23, p 82.) Respondent cannot now argue that the record lacks proper evidentiary support.

Respondent next argues that the panel failed to consider several applicable mitigating factors when determining discipline and that the discipline imposed is excessive and not in proportion to respondent's conduct.

As correctly noted by the Administrator, in exercising its overview function to determine the appropriate sanction, the Board possesses "a greater degree of discretion with regard to the ultimate result." *Grievance Administrator v Alexander H. Benson*, 08-52-GA (ADB 2010), *citing Grievance Administrator v Eric S. Handy*, 95-51-GA; 95-89-GA (ADB 1996). See also *Grievance Administrator v Irving A. August*, 438 Mich 296; 475 NW2d 256 (1991). This greater discretion to review and, if necessary, modify a hearing panel's decision as to the level of discipline, is based upon a recognition of the Board's overview function and its responsibility to ensure a level of uniformity and continuity. *Grievance Administrator v Brent S. Hunt*, 12-10-GA (ADB 2012), *citing Matter of Daggs*, 411 Mich 304; 307 NW2d 66 (1981). However, if the discipline ordered is not inappropriate, the Board will frequently defer to the hearing panel's assessment of the proper level of discipline to be imposed. *Grievance Administrator v Lopatin*, 462 Mich 235, 238; 612 NW2d 120 (2000) at 247 n 12.

The sanction report indicates that the panel meticulously went through all of the required steps set forth in *Lopatin*, including reviewing the aggravating and mitigating factors set forth in ABA Standards 9.22 and 9.32. (Sanction Report 4/28/23, pp 3-10.) Furthermore, and as noted by the Grievance Administrator, respondent offers no evidence in her brief to show that the panel failed to consider all of the mitigation she offered at the hearing. It is also unclear from respondent's brief what mitigating factors she thinks the panel did not consider. For example, she references "exhibits" in her brief, specifically her responses

to the requests for investigation filed against her and admitted as Petitioner's Exhibits 2, 4, 8, 12, 16, 19, 22, 25, and 28, and states that they contain evidence of mitigating circumstances without further explanation or elaboration beyond marking some of the listed mitigating factors in bold and underlining them. (Respondent's Brief in Support, p 10.)

The record indicates that respondent acknowledged that her conduct was wrong, and she was remorseful for her conduct, indicating a number of times that she never intended to cause her clients harm and how badly she felt about how her clients' matters were handled. (Tr 1/27/23, p 93, 98, 102-103, 111, 121, 123, 125-126.) She also testified about an abusive relationship she was in that overlapped some of the client matters she was handling at the time.³ (Tr 1/27/23, pp 97-98, 109-110, 123.) But, the panel considered all of that. (Sanction Report 4/28/23, pp 8-9.)

The panel specifically found that respondent had a dishonest and selfish motive and they considered her personal or emotional problems as referenced above. Also, the Administrator's counsel acknowledged that restitution was not owed to any of respondent's clients, but there was no evidence admitted to show that respondent made any effort to rectify the consequences of her misconduct. In fact, the opposite occurred. She either ignored the consequences that unfolded or lied about them to clients, opposing counsel, and courts. Respondent is not inexperienced - she has been licensed to practice law since 2008 and beginning in 2017, started her own law practice specializing in family law. (Tr 1/27/23, pp 70-71, 73, 76, 80, 105, 108-109.) Finally, there has been no evidence to indicate that there was any delay in the disciplinary process and respondent's

³ Respondent's brief also highlights "absence of dishonest or selfish motive;" "personal or emotional problems;" "good faith effort to make restitution or to rectify consequences;" "inexperience;" "delay in disciplinary proceedings;" and, "remoteness of prior offenses."

prior disciplinary offense, her admonishment, is not remote - the underlying requests for investigation were filed between 2019 and 2022, (Petitioner's Exhibits 1, 3, 7, 11, 15, 18, 21, 24, and 27), and the formal complaints were filed in January and December 2022. Likewise, respondent was admonished in September 2020. (Petitioner's Exhibit A.)

The panel's assessment of the weight to be given to the applicable aggravating and mitigating factors was based in part their first hand opportunity to observe and weigh respondent's testimony, demeanor and attitude at the hearings held before them. We find that the egregiousness of respondent's conduct coupled with the evidence offered in aggravation and respondent's admission that her desire to be liked interfered with her ability to be honest, (Tr 1/27/23, p 113), outweighs any applicable mitigation.

As for whether disbarment is "in proportion" to respondent's conduct, respondent argued at the sanction hearing that the "higher forms of discipline including suspension and disbarment" cannot, and should not, be imposed because she merely "made mistakes" and feels bad about her conduct. (Tr 1/27/23, p 121.)

She continues this argument in her brief on review noting that she "took responsibility for conduct that made. . . parties feel bad." However, as is clear from the record, respondent did not merely make mistakes.

To the contrary, respondent was found to have engaged in conduct involving dishonesty, fraud or deceit, in violation of MRPC 8.4(b), six times in six separate, unrelated counts of misconduct. She was also found to have commingled her client's tax refund check, to have engaged in a conflict of interest both by representing two adverse parties without consent and by providing financial assistance to a client, to have provided incompetent representation and to have neglected her client's matters five times in five separate, unrelated counts of misconduct. If that was not enough, once respondent's license was suspended on an interim

basis, effective December 13, 2022, she continued to make misrepresentations to clients, courts, and opposing counsel about the status of her license and continued to hold herself out as a licensed attorney despite the interim suspension of her license, and failed to file an affidavit of compliance, as required by MCR 9.119(C), within 7 days of the effective date of the panel's order of interim suspension.

III. Conclusion

Because this case involved multiple acts of misconduct the panel adhered to guidance provided in the standards to impose a sanction that was at least consistent with the sanction for the most serious instance of misconduct among a number of violations. ABA Standards, p 6. The panel found that respondent's conduct could be considered under several standards, 4.1 (failure to preserve the client's property); 4.3 (failure to avoid conflicts of interest); 4.4 (lack of diligence); and 8.0 (prior discipline order), and that the egregiousness of respondent's conduct warranted consideration of disbarment as the presumptive sanction. Additionally, an extensive pattern of misconduct is recognized as a significant aggravating factor to be considered in the imposition of discipline.

Grievance Administrator v Richard Parchoc, 94-39-GA; 94-68-FA (ADB 1994); citing ABA Standard 9.22(c); *Matter of Alvin McChester*, 93-132-GA; 93-168-FA (ADB 1994) (increasing suspension from thirty days to 180 days); and *Matter of Jeffrey F. Robbins*, 93-100-GA; 93-145-FA; 93-115-GA; 93-164-FA; 93-130-GA; 93-166-FA, (ADB 1994) (increasing one-year suspension to revocation).

The Board also does not traditionally disturb a panel's assessment of the proper level of discipline to impose unless it is clearly contrary to fairly uniform

precedent for very similar conduct or is clearly outside of the well established range of sanctions imposed for the type of violation at issue. *Grievance Administrator v Jeffrey R. Sharp*, 19-80-GA (ADB 2020). We find that disbarment is well within the range of acceptable discipline to impose for the multiple violations respondent has admitted to committing.

Upon careful consideration of the whole record, the Board is not persuaded that the hearing panel's decision to disbar respondent was inappropriate. We therefore affirm the hearing panel's order of disbarment issued April 28, 2023 in its entirety.

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.