STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,

Petitioner/Appellee,

and

Lawrence Garcia, David Fink, Floyd Allen,
Jeffrey Sangster, and Chris Trebilcock,

Complainants/Cross-Appellants,

v

Andrew A. Paterson, P 18690,

Respondent/Appellant/Cross-Appellee,

Case No. 20-13-GA

Decided: April 30, 2024

Appearances

John K. Burgess, for Grievance Administrator, Petitioner/Appellee
Dennis A. Dettmer, for Respondent/Appellant/Cross-Appellee
Frances A. Rosinski, for Complainants/Cross-Appellants

BOARD OPINION

On July 27, 2023, Washtenaw County Hearing Panel #2 issued an order of suspension with conditions, suspending respondent's license to practice law for 100 days, effective August 18, 2023. The panel also imposed conditions determining that respondent would be ineligible for reinstatement until he has paid all court-ordered sanctions presently owing to all applicable courts, and has taken

and passed the Multistate Professional Responsibility Examination (MPRE). Respondent timely filed a petition for review and a petition for stay, which automatically stayed the order of discipline pursuant to MCR 9.115(K). In addition, complainants filed a cross-petition for review.

On December 13, 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 briefs filed on behalf of respondent, the Grievance Administrator, and complainants, as well as arguments presented by their respective counsel. For the reasons discussed below, we affirm the imposition of a 100-day suspension and modify the conditions.

I. Factual Background

In 2020, the Grievance Administrator filed a nine-count formal complaint against respondent, alleging he committed professional misconduct during his representation of various clients in numerous cases against governmental entities, their employees, and elected government officials. To understand the breadth of the alleged misconduct requires some significant background for each count, as detailed below.

Count One - *Davis v Highland Park*

Count One involved a state court action filed in 2012 by respondent on behalf of Robert Davis against the Highland Park Board of Education and others, seeking declaratory relief and a writ of mandamus coupled with an emergency motion for temporary restraining order (TRO). See *Davis v Highland Park Bd of Ed*, Wayne County Circuit Court, Case No. 12-013301-AW. The trial court denied the motion for TRO, dismissed the complaint with prejudice,[1] and granted the defendants' motion

[1] The Complaint for Writ of Mandamus and Declaratory Judgment were dismissed because the plaintiff lacked standing to seek the relief requested. The court also found that plaintiff had no likelihood of success on the merits of the claim or that he would suffer immediate and irreparable injury. Furthermore, the court found that the plaintiff failed to post a $1,000.00 bond, as ordered by another judge, prior to filing any further lawsuits. The bond order was put in place because the plaintiff had already filed at least 22 lawsuits against the Highland Park

for attorney fees, finding that the plaintiff's claims were frivolous because they were devoid of arguable legal merit and filed only to harass the defendants. (Pet Ex 2.) The court ultimately awarded attorney fees and costs in the total amount of $40,356.60 against the plaintiff only. (Pet Ex 3.) The Court of Appeals affirmed the award of attorney fees on the basis that plaintiff's action was frivolous, but concluded that the award of attorney fees should have been assessed against the plaintiff and his attorney as required by MCL 600.2591(1). See *Davis v Highland Park Bd of Ed,* unpublished per curiam opinion of the Court of Appeals, issued July 24, 2014 (Docket Nos. 315002, 316235). The Court of Appeals also granted the defendants' motion for sanctions for vexatious proceedings and remanded the matter to the trial court to determine the amount of actual damages.[2]

Count Four - *Davis v Wayne Count Clerk*

School District. (Pet Ex 2.)

[2] The motion for Sanctions for Vexatious Proceedings was granted pursuant to MCR 7.216(C)(1), which states that the Court of Appeals may assess actual and punitive damages or take other disciplinary action when it determines that an appeal was vexatious because:

> (a) the appeal was taken for purposes of hindrance or delay or without any reasonable basis for belief that there was a meritorious issue to be determined on appeal; or
>
> (b) a pleading, motion, argument, brief, document, record filed in the case or any testimony presented in the case was grossly lacking in the requirements of propriety, violated court rules, or grossly disregarded the requirements of a fair presentation of the issues to the court. MCR 7.216(C)(1).

On remand, the trial court entered a judgment against respondent, awarding attorney fees and costs to defendants in the total amount of $40,356.60 plus interest, less the amount already recovered from respondent ($5,990.62).

Count Four[3] involved a state court action filed in 2016 by respondent on behalf of Robert Davis against the Wayne County Clerk, Wayne County Election Committee, Detroit City Clerk, and Penelope Bailer. See *Davis v Wayne County Clerk*, Wayne County Circuit Court, Case No. 16-012226-AW. The trial court dismissed the complaint with prejudice, finding that the claims were frivolous and thus in violation of MCR 2.114[4] and MCL 600.2591.[5] (Pet Ex 18.) Ultimately, an order was entered requiring plaintiffs and respondent, jointly and severally, to pay $6,300.00 to Wayne County, $3,993.75 to the City of Detroit, and $9,101.00 to Honigman Miller Schwartz and Cohn LLP (attorneys for Ms. Bailer). Respondent failed to make the payments as ordered, and eventually stipulated to a payment plan. The Court of Appeals affirmed the orders imposing sanctions, and plaintiffs' application for leave to appeal was denied by the Michigan Supreme Court.

Count Five - *Detroit DDA v Lotus Industries*

[3] The hearing panel dismissed Counts Two and Three, and the Grievance Administrator did not appeal the dismissal of those counts. As such, Counts Two and Three are not discussed in this opinion.

[4] At all relevant times, MCR 2.114 provided that the signature of an attorney or party on a document, constitutes a certification by the signer that: "(1) he or she has read the document; (2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and (3) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." MCR 2.114(D). This language is now part of MCR 1.109.

[5] MCL 600.2591 provides that if a court finds that a civil action was frivolous, the court shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party and their attorney, MCL 600.2591(1). "Frivolous" is defined to mean that at least one of the following is met: "(1) the primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party, (2) the party had no reasonable basis to believe that the facts underling the party's legal position were in fact true, or (3) the party's legal position was devoid of arguable legal merit." MCL 600.2591(3).

Count Five involved a state court action filed in 2017 by the City of Detroit and its Downtown Developmental Authority (DDA) against Lotus Industries, LLC (d/b/a Centre Park Bar), who was represented by respondent. See *Detroit DDA v Lotus Industries*, Wayne County Circuit Court, Case No. 17-011066-CH. The defendants filed a counterclaim against plaintiffs, and also sued the presiding judge, Chief Judge Robert J. Colombo, Jr, in a separate case, arguing that assignment to Judge Colombo violated their due process rights. Respondent then filed a motion to disqualify Judge Colombo, arguing that he had political ties to Detroit's mayor and was prejudiced against respondent. After the motion was denied, respondent sought referral of the denied motion to the State Court Administrative Office (SCAO) for assignment to another judge. Judge Freddie G. Burton, Jr., was thereafter assigned to review the motion. Respondent then filed an emergency motion to disqualify Judge Burton, arguing that he also lacked impartiality and held a bias against the defendants. Judge Burton denied both disqualification motions, and specifically found that respondent's motion to disqualify him was frivolous and warranted sanctions because it was devoid of arguable legal merit and lacked factual support. Judge Burton concluded that "Attorney Paterson is forum shopping for a judge who will never disagree or rule against his client."[6] (Pet Ex 23.)

On December 14, 2017, defendants filed a delayed emergency application for leave to appeal

[6] Respondent also filed a complaint in the Court of Claims seeking a writ of mandamus and declaratory judgment requiring SCAO to assign another judge to review Judge Burton's denial of defendants' motion to disqualify Judge Burton because SCAO had denied their request for such further assignment. SCAO moved for summary disposition of defendants' complaint and the Court of Claims granted the motion because MCR 2.003 did not authorize or require any further assignment to another judge and because mandamus and declaratory judgment were not relief available to defendants. See *Lotus Industries, et al v SCAO*, Court of Claims, 17-000234-MB.

in the Court of Appeals in which they sought review of the denial of both disqualification motions. The Court of Appeals denied defendants' emergency application for leave to appeal and ordered respondent to pay the Court $500 as an appropriate sanction for his signing and filing a motion for immediate consideration without first making a reasonable inquiry and for an improper purpose. See *Detroit DDA v Lotus Industries*, unpublished order of the Court of Appeals entered December 21, 2017 (Docket No. 341520).[7] Thereafter, the trial court entered an additional judgment of attorney fees and costs in favor of the DDA in the amount of $1,372.00 and the city in the amount of $3,442,65. (Pet Ex 27.) The court also granted the DDA's further request for sanctions against respondent and his client in the amount of $600, for failure to appear at a subsequent status conference. (Pet Ex 28.)

Count Six - *Lotus Industries v Detroit DDA*

Count Six involved a federal court action filed in 2016 by respondent against the Detroit DDA and others, on behalf of Lotus Industries, LLC, Gwendolyn Williams, Christopher Williams, and Kenneth Scott Bridgewater. See *Lotus Industries, et*

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[7] The Court of Appeals stated:

> This Court observes with disapproval that appellants' counsel Andrew Paterson sought immediate consideration upon his mere "belief" that a hearing was to be held within seven days of the filing of the delayed application (which itself was filed more than four months after the orders appealed). Attorney Paterson signed the motion, in which he indicated that a hearing would be held on December 21, 2017. After a request from the Clerk's Office to provide verification that the hearing was to occur, Attorney Paterson submitted a filing at 5:33 p.m. on December 14, 2017, again requesting appellate action from this Court by December 21, 2017. Not until December 15, 2017, at 3:56 p.m., more than 24 hours after the filing of his motion for immediate consideration, did Attorney Paterson inform this Court that he had on that date conducted a reasonable inquiry of the probate court clerk and determined that no hearing was to occur on December 21, 2017. We thus find that Attorney Paterson signed the motion for immediate consideration without first making a reasonable inquiry, and from that we must conclude that the document was filed for an improper purpose to harass or to cause needless increase in the cost of litigation. (Pet Ex 26.)

al v Detroit Downtown Dev Auth, et al, USDC ED Mich, 2:16-cv-14112. During the litigation, there were repeated discovery abuses by plaintiffs, which resulted in significant costs to the DDA. As a result, the DDA moved to dismiss the case as a discovery sanction. The court held that "[w]hile the conduct on both sides has been less than exemplary, the repeated misrepresentations by Plaintiffs' counsel and the Plaintiffs' failures to comply with discovery orders – despite warnings and the imposition of less severe sanctions – warrant the dismissal of Plaintiffs' claims against the DDA as a discovery sanction." (Pet Ex 30.) The district court specifically found that respondent: (a) offered shifting and unpersuasive explanations for his clients' failure to provide audit records, (b) falsely claimed that all the court's discovery orders had been complied with, (c) failed to explain the failure to produce certain documents, and (d) falsely asserted that a previously ordered sanctions judgment had been paid when it had not.

For example, in response to the DDA's motion to dismiss as a sanction, respondent asserted that the DDA's arguments claiming the sanctions had not been paid were "misleading and false" because the individual plaintiffs had paid the sanctions judgment. However, at the time the DDA's motion was filed, the sanctions had not been paid; thus, the court concluded that "the Plaintiffs are the ones making misleading and false statements."

Respondent also disregarded numerous opportunities to produce documents. First, respondent "offered shifting explanations for the bar owners' lack of disclosure and failure to abide by Rule 34," but claimed the delay in producing documents was because the digital records were unavailable and possibly destroyed. Respondent stated plaintiffs had an accountant and a forensic computer investigator trying to assemble the documents, but admitted weeks later that there was never any accountant retained.

Another example of misleading the court occurred in September of 2017,

when respondent told the court that the 12 documents that were sent to the DDA in September of 2017 made up the entirety of the documentary record the bar owners had in their possession.[8] However, during the final depositions occurring months later, the plaintiffs admitted they had undisclosed documents in their possession that had been previously requested by the DDA. It was also discovered that the plaintiffs failed to request their own bar records from the Michigan Liquor Control Commission, despite the court order directing them to do so over a year earlier. (Pet Ex 30, pp 7, 10.) At yet another deposition, a plaintiff arrived with documents he refused to disclose to the defendants, and stated that he had even more documents at home. The documents dealt with issues at the heart of the case, but were never produced.

In response to the motion to dismiss as a sanction, the plaintiffs failed to timely respond. When they finally did respond, respondent indicated that the plaintiffs had complied with all of the court's discovery orders, which was untrue.

Count Seven - *Davis v Detroit DDA*

In June of 2017, respondent filed a ten-count federal action against the Detroit DDA and others on behalf of Robert Davis and D. Etta Wilcoxon. See *Davis, et al v Detroit DDA*, USDC ED Mich, Case no. 2:17-cv-11742 ("*Davis I*").[9] Four days later, respondent filed an emergency motion for a temporary restraining order

[8] The court recognized that respondent admitted he again failed to follow Rule 34, and that respondent "was surprised to learn his clients kept so little in the way of business records and had so few documents to support a 10-count lawsuit alleging a conspiratorial plot to retaliate against the bar owners." (Pet Ex 30, p 5.) As a result, the court allowed him an additional seven days to consult with his clients and ensure that he had turned over all documents.

[9] The lawsuit arose out of the relocation of the Detroit Pistons from Auburn Hills to Little Caesars Arena in Detroit. The plaintiffs, residents of Wayne County, claimed the defendants planned to unlawfully use revenue generated from the Detroit Public Schools operating millage and the Wayne County Parks millage to fund certain aspects of the relocation. Plaintiff's alleged a violation of their right to vote, and later amended the complaint to add claims for violation of due process and of the Racketeering Influenced Corrupt Organization (RICO) Act.

or preliminary injunction. The day before the defendants' response was due, respondent filed a second emergency motion, this time for a declaratory judgment. Defendants filed a motion to sanction respondent for filing the second emergency motion. When respondent filed a motion to strike defendants' response to the first emergency motion, defendants sought sanctions a second time. On June 19, 2017, the court denied respondent's emergency motion for a TRO or preliminary injunction.

A week later, respondent filed a second complaint, raising different claims against different defendants, but again seeking to prevent the use of a school operating millage to fund the Pistons' relocation. See *Davis v Detroit Public School Community District*, Case no. 2:17-cv-12100 ("*Davis II*"). Three days later, defendants in *Davis I* served plaintiffs with a motion for sanctions under Rule 11 of the Federal Rules of Civil Procedure. As a result, respondent filed a notice of voluntary dismissal of *Davis I*.

Throughout the litigation, the defendants filed several different motions for sanctions. On January 26, 2018, the district court issued an opinion and order regarding these motions, and found that sanctions were appropriate. The court imposed Sanctions under 28 USC §1927 because plaintiffs had no legal basis for bringing the RICO and FOIA claims, they should have known they lacked standing to bring a RICO claim, the FOIA claim was frivolous, and two defendants were forced to respond to motions which contained meritless arguments and needlessly obstructed the litigation of non-frivolous claims. (Pet Ex 31.) The court also found that sanctions were not warranted for some claims, because either the claim was not frivolous or respondent's conduct was nothing more than zealous advocacy. As such, the court "stop[ped] short of finding any bad faith on the part of Plaintiffs . . . ." The court also declined to award sanctions under Rule 11 because *Davis I* was voluntarily dismissed.

Ultimately, the district court ordered respondent to pay $13,506 to the

DDA and Detroit Brownfield Redevelopment Authority.[10] Thereafter, the Sixth Circuit affirmed the imposition of sanctions, and recognized that respondent's appeal was full of unsupported conclusions, misrepresentations, victim blaming, and "legally meaningless attacks and diversions."[11] (Pet Ex 37.) Count Eight - *Davis v City of Detroit*

In December of 2018, respondent filed another complaint in state court against the City of Detroit on behalf of Robert Davis. See *Davis v City of Detroit*, Wayne County Circuit Court, docket no 18-015502-CZ. The City immediately filed a motion for summary disposition, which was granted. (Pet Ex 38.) The court also awarded $1,000 in sanctions to the defendant because the court found that the plaintiff's claims were frivolous and the primary purpose in initiating the

[10] Respondent was ordered to pay the sanction by November 27, 2018. Respondent did not make the payment as ordered, so the district court entered an order to show cause; the amount due was eventually paid on May 6, 2019.

[11] The Sixth Circuit stated:

> Paterson quickly runs out of conclusions, so he shifts to misrepresentations. He claims that one of the law firms representing defendants double billed them, which he argues led to a double recovery when the district court awarded sanctions to compensate them for the attorney's fees his frivolous tactics created. Indeed, he asserts that "[t]here is no plausible explanation" that justifies billing defendants separately for the same legal work. But such an explanation exists, and defendants provided it to the district court: they asked the firm "to split the billing of time spent on a task equally between" them. That meant that if counsel spent two hours on a court appearance, each defendant received a bill for one hour of that time. Paterson further asserts that one law firm representing defendants replaced the other, "presumably due to [] incompetence or lack of expertise or inexperience." This change, he suggests, should have prevented defendants from obtaining sanctions to compensate them for any time that the original firm billed. But no substitution occurred; both firms worked in tandem for much of the case-including every filing the sanctions award reimbursed defendants for. Paterson also asks us to limit any award to the equivalent of "no more than 3 hours!" of defense counsel's time rather than the 50.8 hours the district court credited. We should do so, he asserts, because only three pages of defendants' motion to dismiss-which he says spanned 39 pages-addressed the claims that the district court found to be frivolous. But the motion was 25 pages, and it was this very type of misrepresentation that the district court sanctioned Paterson for making. [*Davis, et al v Detroit Downtown Development, et al*, No. 18-2393 (CA 6, 2019).]

case was to harass the City. In support of this conclusion, the court found that, upon review of the facts and procedural history of this case, respondent's conduct resulted in "a waste of time and resources of the Court and [defendant]." The Court of Appeals affirmed both the dismissal and imposition of sanctions. See *Davis v City of Detroit*, unpublished per curiam opinion of the Court of Appeals, issued March 24, 2020 (Docket No. 347931).

Count Nine - *Blackwell v Simon*

This count arises out of litigation in federal court against various employees of Michigan State University and the Michigan State University Police Department. See *Blackwell v Simon, et al*, USDC WD Mich, Case no. 1:18-cv-1261. Ten months after the case was filed, respondent appeared as co-counsel for the plaintiff with attorney Thomas Warnicke. During the litigation, there were several instances of questionable conduct by respondent. First, respondent was sanctioned $10,000 for filing the complete deposition transcript of Detective Davis as an exhibit, after the parties had agreed it would not be put into the public record without first providing notice to counsel and an opportunity for the court to intervene. (Pet Exs 40-41.) Respondent paid the $10,000 sanction.

Thereafter, the magistrate judge entered an order that all documents, information, and testimony in any way relating to the MSU police investigation at issue shall not be filed with the court except under seal and shall not be put into the public realm. (Pet Ex 43.) Despite this court order, respondent filed a motion to unseal a portion of a defendant's deposition, and publicly characterized the contents of the sealed deposition testimony. In denying respondent's motion, the magistrate judge found that it was a "mechanism to attempt to embarrass the litigants well in advance of the trial in this case . . . ." Although the court denied defendants' request for sanctions at that time, the court warned respondent that "[c]haracterizing a sealed document in a public record

after the Court has ordered it sealed walks incredibly close also to the line of contempt . . . ." The court also indicated that it was aware of at least three recent cases that involve either sanctions or a finding of bad faith as to respondent specifically, and stressed that "if monetary sanctions don't get your attention, the next step will be an order to show cause why you shouldn't be removed as an attorney in this case or why the case shouldn't be dismissed." (Pet Ex 44.)

Shortly thereafter, respondent was ordered to pay costs in the amount of $1,000 to counsel for three of the defendants for objecting in bad faith to the form of an order that accurately reflected the court's ruling. Ultimately, the magistrate judge issued a 41-page Report and Recommendation which addressed several motions, including two motions for sanctions.[12] The court found that respondent "willfully misled the Court and did not . . . attempt to correct the record," "made misleading statements," "repeatedly misused court process to elicit information unrelated to his case," used discovery "to harass the defendants," and brought the case against the MSU defendants "for an improper purpose." As a result, the court awarded sanctions under Rule 11 of the Federal Rules of Civil Procedure, 28 USC § 1927, and the inherent authority of the court. Having determined that respondent violated Rule 11 and engaged in harassing conduct contrary to the court's order, and that sanctions under Rule 11 and the Court's inherent authority were appropriate, the court ordered that the case against the MSU Defendants be dismissed and respondent and his co-counsel be removed from the case as counsel. (Pet Ex 46.) It was also recommended that the court refer respondent to the chief judge for determination of whether he should be disciplined.

II. Panel Proceedings

This matter was assigned to Washtenaw County Hearing Panel #2. The

[12] On May 20, 2020, the court approved and adopted the Report and Recommendation as the opinion of the court.

proceedings prior to the commencement of the hearing before the panel included numerous motions by respondent for prehearing depositions, disqualification of hearing panelists, disqualification of a Board Member, three petitions for interlocutory review, and pretrial conferences.

Misconduct hearings were held over the course of three days. The Grievance Administrator presented his proofs, which included testimony from respondent and 45 exhibits that were admitted into evidence. Respondent was called by the Grievance Administrator; his testimony consisted of confirming the contents of the court records. After the Grievance Administrator rested, respondent's counsel offered 20 exhibits that were admitted and called two witnesses: Thomas Warnicke and respondent. Mr. Warnicke testified as to his involvement as co-counsel in the underlying case at issue in Count Nine. Respondent's testimony consisted of explaining why he filed each of the complaints involved in the underlying litigation and what he did to investigate before he filed the complaints. No other witnesses were called, and closing statements were given by each party.

On May 24, 2022, the hearing panel issued its misconduct report. Specifically, the panel found that respondent committed the following violations of the Michigan Rules of Professional Conduct: bringing a proceeding or asserting an issue therein that was frivolous, in violation of MRPC 3.1 (Counts One, Four, Five, Seven, and Eight); knowingly made a false statement of material fact or law to a tribunal or failed to correct a false statement of material fact or law previously made to the tribunal by the lawyer, in violation of MRPC 3.3(a) (Counts Six, Seven, and Nine); knowingly disobeyed an obligation under the rules of a tribunal, in violation of MRPC 3.4(c) (Counts Six and Seven); in the course of representing a client, knowingly made a false statement of material fact or law to a third person, in violation of MRPC 4.1 (Count Nine); engaged in conduct involving dishonestly, fraud, deceit, or misrepresentation, where such conduct

reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, in violation of MRPC 8.4(b) (Counts Six, Seven, and Nine); and, engaged in conduct that is prejudicial to the administration of justice, in violation of MRPC 8.4(c) (Counts One, Four, Five, Six, Seven, Eight, and Nine). The panel also concluded that respondent committed the following violations of the Michigan and Federal Court Rules: failed to abide by and violated the requirements of MCR 1.109(E) (Counts Four and Five);

filed a motion that was presented for an improper purpose, such as to embarrass or harass the litigants before trial, in violation of MCR 2.302(G)(3) (Count Nine); engaged in conduct that is prejudicial to the administration of justice, in violation of MCR 9.104(1) (Counts One and Four through Nine); 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 and Four through Nine); engaged in conduct that is contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3) (Counts One and Four through Nine); and, filed a motion that was presented for an improper purpose in violation of FRCP 11(b) (Count Nine).

The hearing panel also determined that the Grievance Administrator failed to establish respondent violated any rule of professional conduct or court rule as set forth in Counts Two and Three of the formal complaint, which included alleged violations for knowingly disobeying an obligation under the rules of a tribunal in violation of MRPC 3.4(c), and bringing a proceeding or asserting an issue therein that was frivolous, in violation of MRPC 3.1. As such, those counts were dismissed.

After two days of sanction hearings, the hearing panel issued its sanction report on July 27, 2023. The panel determined that the most applicable ABA Standards were 6.12 and 6.22, both calling for a suspension. After considering

the aggravating and mitigating factors cited by the parties, the panel concluded that a 100-day suspension was appropriate. The panel also determined that respondent would be subject to the following conditions: respondent will be ineligible for reinstatement under MCR 9.123(A) until (1) he has paid all court-ordered sanctions presently owing to all applicable courts; and (2) has taken and passed the Multistate Professional Responsibility Examination (MPRE) and provided written proof of same to the Grievance Administrator.

On August 16, 2023, respondent filed a petition for review challenging both the findings of misconduct and the level of discipline, as well as a petition for stay of proceedings pursuant to MCR 9.115(K), which provides for an automatic stay upon request when the discipline imposed is a suspension of 179 days or less. A notice of automatic stay was issued on August 23, 2023. On September 13, 2023, a cross-petition for review was filed by complainants, seeking an increase in discipline.

III. Discussion

The first determination we must make is whether there was sufficient evidence introduced to support the hearing panel's findings of misconduct. In reviewing a hearing panel's decision, the Board must determine whether the panel's findings of fact have proper evidentiary support in the whole record. *Grievance Administrator v August*, 438 Mich 296,304; 475 NW2d 256 (1991). "This standard is akin to the clearly erroneous standard [appellate courts] use in reviewing a trial court's findings of fact in civil proceedings." *Grievance Administrator v Lopatin*, 462 Mich 248 n 12 (2000) (citing MCR 2.613(C)). The question before the Board is whether the record as a whole is devoid of evidence upon which the panel could reasonably have based its decision. *Grievance Administrator v Robert D. Stein*, 09-3-GA (ADB 2011). It is not the Board's function to substitute its own judgment for that of the panel's or to offer a de novo analysis of the evidence.

Grievance Administrator v Carrie L P Gray, 93-250-GA (ADB 1996), lv den 453 Mich 1216 (1996).

The evidence introduced by the Grievance Administrator in this matter consisted entirely of certified court records, which included opinions, orders, judgments, and transcripts from court hearings. MCL 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) (citing *Grievance Administrator v Mark L. Silverman*, 11-3-GA (HP Order 4/13/2011), in which the panel applied the statute to a Sixth Circuit Court of Appeals' opinion and federal court order).

In accordance with *Fieger, supra*, the hearing panel in this case properly admitted and considered the court records offered into evidence by the Grievance Administrator in accordance with MCL 600.2106. This Board has held that such

consideration is proper in cases similar to the present case. See *Grievance Administrator v Mark A. Chaban*, 15-151-GA (ADB 2018) (finding a violation of MRPC 3.1 based on orders from two courts that had previously determined respondent filed vexatious appeals and respondent was sanctioned for such filings); *Grievance Administrator v Michael E. Tindall*, 14-36-GA (ADB 2018) (finding that it was not improper for the hearing panel to adopt and/or incorporate findings and conclusions made by the courts involved in the various underlying proceedings). The court records created a rebuttable presumption as to their factual findings and respondent was entitled to supplement the record with testimony and other relevant evidence; he was also entitled to argue to the panel that the facts recited in the court records did not amount to misconduct. Respondent availed himself of both of those opportunities. Our review of the record reveals that respondent simply failed to rebut the factual findings recited in the various orders.

On review, respondent argues generally that it was wrong for the hearing panel to find misconduct, but never explains *why* it was wrong. The panel did not indiscriminately adopt the reasoning of the sanctioning courts or merely accept the claims of the Grievance Administrator regarding the findings and conclusions of those courts. Rather, the panel considered all of the evidence, including the court documents and respondent's testimony, and ultimately found misconduct – but also dismissed some of the allegations against respondent. Despite respondent's argument to the contrary, the panel heard and considered respondent's testimony and explanation as to why each sanctioning court was incorrect. Nevertheless, the panel found that his testimony was not supported by the evidence, was not persuasive, and ultimately did not rebut the evidence submitted by the Administrator. As such, we find that the unrebutted factual findings made in the court records provide sufficient evidentiary support for the hearing panel's findings of misconduct.

Based upon their finding of misconduct, the hearing panel suspended respondent's license to practice law for 100 days, and ordered that he shall not be eligible for reinstatement until he has paid all court ordered sanctions presently owing to all applicable courts, and he has taken and passed the MPRE. On review, complainants argue that a one-year suspension is more appropriate here because respondent engaged in repeated misconduct that involved a knowing lack of candor to the courts, filed vexatious court filings, and made a false statement to a third party. In response, respondent states that a reprimand is appropriate because he was merely negligent.

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. *Grievance Administrator v August*, 438 Mich 296 (1991). The Board has much more leeway to correct a sanction that is at odds with prior precedent for the same or similar conduct. However, the Board also affords a certain level of deference to a hearing panel's subjective judgment on the level of discipline. *Grievance Administrator v Deutch*, 455 Mich 149, 166; 565 NW2d 369 (1997) ("attorney misconduct cases are fact-sensitive inquiries that turn on the unique circumstances of each case"). 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 Administrator v Saunders V Dorsey*, 02-118-AI; 02-121-JC (ADB 2005)).

In deciding the appropriate discipline to be imposed, we 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, hearing panels and this Board examine the duty respondent violated, respondent's mental state, and the actual or potential injury caused by the respondent's conduct. Next, the recommended sanctions under the ABA Standards 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).

The hearing panel determined that respondent violated a duty owed to the legal system. We agree that the ABA Standards under Section 6.0 for Violations of Duties Owed to the Legal System are appropriate here, given that respondent engaged in numerous instances of conduct that fall under this section.

With regard to respondent's mental state, the hearing panel's finding that respondent acted knowingly has adequate support in the record. Such a conclusion is supported by the rule violations found here, as well as respondent's own testimony and the conclusions of the courts in the underlying proceedings, who were most familiar with respondent's conduct. The panel found three separate violations of 3.3(a)(1), which provides that a lawyer shall not "knowingly" make a false statement of material fact or law to a tribunal. The panel also found two violations of MRPC 3.4(c), which provides that it is a violation to "knowingly" disobey an obligation under the rules of a tribunal. Even if respondent's mental state was negligent with regard to a portion of the misconduct, the hearing panel appropriately looked to the most serious misconduct. See *Grievance Administrator*

v Anthony T. Chambers, 12-80-GA (ADB 2013) (under the ABA Standards, the ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct). Furthermore, this Board does not agree with respondent's characterization of his conduct as negligent. In case after case, respondent demonstrated a willful refusal to respond appropriately to discovery requests, comply with court orders, and follow the rules of procedure. Respondent was also sanctioned at the trial and appellate levels for his objectively groundless claims; this should give a reasonable attorney conscious awareness that his continuing conduct based on the same claims might be considered culpable under the ethical rules. We agree that the evidence in this record is sufficient to support the hearing panel's finding that respondent acted knowingly.

There is also adequate evidence in the record to support a finding of actual or potential injury caused by respondent's misconduct. Lawrence Garcia, who was employed as corporate counsel and chief legal officer for the City of Detroit from 2018 to 2021, testified that he believes responding to respondent's "style of practice" has cost the City of Detroit "hundreds of thousands of dollars that should have been spent putting more police officers on the street, filling potholes, fixing sewer lines." (Tr 12/07/22, p 54.) As determined by the trial courts and Court of Appeals, there were several instances of filings that were done for an improper purpose and solely to harass the defendants. Those defendants, and likely respondent's own clients as well, have incurred unnecessary expense and been subjected to needless litigation because of respondent's misconduct. A glaring example of this is where respondent was removed as counsel because of repeated instances of misleading the court and misusing the court process.

Next, we must look at the applicable ABA Standards. Standard 6.1 sets forth the sanction guidelines for lawyers who demonstrate a lack of candor to the tribunal and is applicable to situations in which lawyers have committed a violation of

Rule 3.3.[13] Standard 6.2 sets forth the appropriate standards for lawyers who abuse the legal process.[14] At the sanction hearing, the Grievance Administrator argued that a suspension of not less than 180 days was appropriate under ABA Standards 6.12 and 6.22.[15] Respondent argued that a reprimand was more appropriate under ABA Standards 6.13 and 6.23, because respondent's conduct was negligent, not intentional. Complainants argue on review that ABA Standards 6.12 and 6.22 were properly applied, but also asserts that the Board could apply Standard 6.21[16] which calls for disbarment, and mitigate it down to a one-year suspension, if

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[13] Standard 6.1 provides, in relevant part:

> 6.12 Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.
>
> 6.13 Reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

[14] Standard 6.2 provides, in relevant part:

> 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.
>
> 6.23 Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.

[15] On review, the Grievance Administrator asserts that a 180-day suspension is necessary here, as he originally argued to the panel. However, because the Administrator did not seek review of the order of discipline, he ultimately asks that the 100-day suspension be affirmed.

[16] Standard 6.21 provides that "[d]isbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the 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."

sufficient mitigation exists.

We can dispose of this last argument in short order. Nothing in the record suggests that disbarment is an appropriate sanction here. Rather, applying ABA Standards 6.1 and 6.2 to respondent's case, we agree with the hearing panel that a term of suspension is appropriate.

The most serious misconduct found here falls into two categories: (1) misrepresentations and/or a lack of candor to the courts and to a third person; and (2) frivolous court filings. Typically, at least a one-year suspension under prior Board precedent is appropriate for making a false or misleading statement to a tribunal. See *Grievance Administrator v Kathy Lynn Henry*, 09-107-JC (ADB 2010) (three-year suspension reduced to one year for a finding of criminal contempt for making statements designed to mislead the court in a child support matter); *Grievance Administrator v Keith J. Mitan*, 06-74-GA (ADB 2008) (60-day suspension increased to one-year suspension for deliberate violation of court orders and testifying dishonestly in circuit court proceedings); *Grievance Administrator v Frederick B. Gold*, 99-35-GA (ADB 2002) (six-month suspension increased to a one-year suspension for making a false statement to a court during sentencing following a no contest plea to a charge of assault and battery). Prior Board precedent also shows that discipline imposed for "false statements" can vary depending on a variety of factors including the type of statement made and to whom, the respondent's mental state and/or motivation, whether other misconduct was found and the nature of that misconduct, and, more importantly, whether the respondent was found to have engaged in conduct involving dishonesty, fraud or deceit, in violation of MRPC 8.4(b). *Grievance Administrator v Otis M. Underwood*, 16-55-GA (ADB 2017).

The appropriate discipline for frivolous litigation can range from reprimand to disbarment. In *Grievance Administrator v Mark A. Chaban*, *supra*, this Board

affirmed a one-year suspension with restitution for filing frivolous litigation and making false statements to a tribunal, after respondent was sanctioned on two separate occasions by the underlying trial court. Similarly, in *Grievance Administrator v Michael E. Tindall*, *supra*, this Board affirmed the disbarment of respondent for repeatedly filing frivolous court filings and intentionally misleading the court. The Board held that the hearing panel's adoption and/or incorporation of the findings and conclusions made by the courts involved in the various underlying proceedings was proper. See also *Grievance Administrator v Raymond A. Macdonald*, 09-43-GA (ADB 2010) (Board affirmed a two-year suspension with a CLE condition and a requirement that respondent pass the Multistate Professional Responsibility Exam for frivolously asserting an issue within the proceeding, failing to make reasonable efforts to expedite litigation, and knowingly disobeying an obligation under the rules of a tribunal). Courts in other jurisdictions also routinely impose significant suspensions against lawyers who file frivolous lawsuits. See generally *In re Levine*, 847 P2d 1093 (Ariz 1993) (six-month suspension followed by two years of probation imposed on lawyer who pursued frivolous claims); *In re Obert*, 282 P3d 825 (Or 2012) (six-month suspension imposed for misconduct including knowingly filing frivolous appeal); *Barrett v Va State Bar*, 675 SE2d 827 (Va 2009) (revoking license of a suspended attorney who filed a frivolous claim in his pro se divorce).

Here, there are numerous instances of courts either sanctioning respondent monetarily and/or dismissing his cases entirely because of misrepresentations made and for willfully misleading the court. There is also evidence of repeated frivolous filings, and multiple violations of knowingly disobeying court rules and orders. Looking at each case individually, without considering the other six cases, respondent's conduct might be seen as more of an isolated event. Taken together, however, his conduct in the seven cases at issue here clearly shows

it was not an isolated event, but a pattern of behavior.

Because each disciplinary case involves unique facts and circumstances, consideration must also be given to any aggravating or mitigating factors. The panel found the following aggravating factors applied: prior disciplinary record [9.22(a)]; selfish motive [9.22(b)]; pattern of misconduct [9.22(c)]; multiple offenses [9.22(d)]; bad faith obstruction of the disciplinary proceeding [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)]; substantial experience in the practice of law [9.22(i)]; and indifference to making restitution [9.22(j)]. The panel further applied the following mitigating factors under ABA Standard 9.32: absence of dishonest or selfish motive [9.32(b)]; character or reputation [9.32(g)]; and imposition of other penalties or sanctions [9.32(k)]. After consideration of these factors, the panel determined that a 100-day suspension would be appropriate for the misconduct here. We agree.

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). 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 only one prior disciplinary offense – an admonishment in 2015 – over the past 54 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 perhaps been given more weight by the hearing panel. See *Fink, supra* at 10-11. Overall, the sanctions imposed against respondent have included dismissal of complaints, being removed from a case, and monetary sanctions in excess of $140,000. In cases such as this where a respondent has been significantly sanctioned by courts or disciplined in federal court, it is often argued that the court sanctions respondent has paid or will pay in the future should be treated as mitigating factors. See *In re Huffman*, 509 P3d 1253 (Kan 2022) (for mitigating factors, the panel considered, among other things, the fact that the attorney had already paid $5,000 in federal court sanctions for some of the misconduct at issue); *In the Matter of Kokol*, 689 SE2d 308 (Ga 2010) (noting in mitigation that the respondent "was subjected to penalties and sanctions by the Bankruptcy Court, whose requirements he has fulfilled"). However, to be clear, these civil sanction orders do not impose attorney discipline under the rules of professional conduct, and thus do not excuse respondent's misconduct. See *In re Crandall*, 699 NW2d 769, 774 (Minn 2005) (attorney asked that federal court suspension and sanctions of more than $30,000 be considered as mitigating factors; state court held: "We should not do so because our disciplinary sanctions and those of the federal court have different ends.").

We recognize that, on July 20, 2020, Chief Judge Robert J. Jonker of the

United States District Court for the Western District of Michigan issued an administrative order (No. 20-AD-053), finding that additional sanctions in federal court were not warranted against respondent at that time (Resp Ex R), and we have given careful consideration to this thoughtful and well-written order. Judge Jonker found that additional sanctions were not warranted because respondent was not then counsel of record on any matter in the Western District, and because it is Judge Jonker's preference "to address sanctions, when needed, in a case specific context rather than an ancillary administrative proceeding addressing possible suspension, disbarment, or other more generalized discipline." He also noted that respondent "practices in an area fraught with potential for political conflict," and cited *Carmack v City of Detroit*, No. 18-cv-11018, 2019 US Dist LEXIS 164066; 2019 WL 4670363 (Sept 25, 2019), in which Judge Leitman imposed monetary sanctions against respondent in the amount of $7,500, but only after observing that "filing civil actions against government officials that aim to ensure their compliance with the law . . . is laudable and often essential. And the Court is loath to chill the filing of legitimate claims against public officials." Nonetheless, Judge Leitman concluded: "The Court's ruling here should pose no threat to zealous civil rights and public service litigation. The Court has imposed sanctions here only because Paterson's conduct fell far outside the realm of what could be considered permissible zealous advocacy."

Similarly, Judge Jonker recognized that the common theme of respondent's conduct in the *Blackwell* case as well as other cases referenced in the *Blackwell* Report and Recommendation is "a pattern of activity involving vexatious and frivolous filings, outright misrepresentations of fact and other conduct far outside the normal bounds of zealous advocacy. No Court or litigant is obligated to tolerate the kind of inappropriate litigation conduct detailed in these cases." (Resp Ex R.) He also acknowledged that the monetary sanctions imposed by the

various courts "do not prevent Attorney Paterson from engaging in another unwarranted course of inappropriate behavior in some other case," but concluded that if respondent repeats his misconduct, "another referral for more general discipline, including suspension or disbarment" may be warranted, citing *In re Moncier*, 550 F Supp 2d 768 (ED Tenn 2008).[17] We do not believe that misconduct has to be so egregious and contemptuous as in *Moncier* to warrant disciplinary consequences. In many cases we have found a violation of MRPC 3.1 and other rules and have determined that the imposition of attorney discipline – in addition to court-ordered sanctions – was appropriate and necessary to address the conduct of the attorney. See *Reed, supra*; *Grievance Administrator v Andrew Shirvell*, 15-49-GA (ADB 2018).

The primary purpose of attorney discipline is to protect the public, the courts, and the legal profession from attorneys who have violated the Rules of Professional Conduct. MCR 9.105; American Bar Association Standards for Imposing Lawyer Sanctions, Standard 1.1. That purpose would not be served if state disciplinary agencies gave an attorney a pass because he had already been sanctioned in federal court. In effect, that could immunize (from a disciplinary perspective) an attorney who has been sanctioned in federal court and whose conduct is worse than that of an attorney who had not been sanctioned. See generally *In the Matter of Tucker*, 759 SE2d 854 (Ga 2014). The imposition of a sanction for misconduct by a federal court or other jurisdiction distinct from this Board's jurisdiction does not eliminate the need for state discipline proceedings and an evaluation

[17] *Moncier* involved an attorney who was suspended from the practice of law in the Eastern District of Tennessee for seven years with five of those years being active suspension, and the remaining years on probation, after he was taken into custody during a court proceeding and ultimately found guilty of criminal contempt because of his misconduct. Specifically, the attorney continuously interrupted and spoke over the presiding judge, accused his opposing counsel of involvement in a conspiracy against him, threatened to abandon his client in the middle of a court proceeding, willfully and intentionally disobeyed a direct order from the court, and displayed disrespectful and contemptuous behavior towards the institutional role of the judge.

of respondent's alleged misconduct under the Michigan Rules of Professional Conduct. The hearing panels of the Attorney Discipline Board have a duty to examine the evidence and determine for themselves whether the Michigan Rules of Professional Conduct were violated and impose sanctions appropriate to achieve the aims of the discipline system set forth by the Michigan Supreme Court in MCR 9.105(A).

All of the factors discussed above are interrelated and figure prominently in the critical decisions regarding how a respondent's conduct reflects on his fitness to practice and what level of discipline is necessary for the protection of the public, other members of the bar, and the legal system. Because the ABA Standards do not recommend specific suspension lengths, it is those considerations which almost always drive the decision as to the appropriate level of discipline. In this case, the record before the panel provides ample support for the imposition of a 100-day suspension. We seriously considered complainants' and the Grievance Administrator's request for a suspension equal to or greater than 180 days (thereby triggering reinstatement proceedings), but we have concluded that the panel's 100-day suspension is appropriate in light of our weighing of the aggravating and mitigating factors, which includes the imposition of other sanctions for his prolific misconduct. We recognize that a case could be made that respondent is incorrigible, but we will give him the benefit of the doubt by not imposing a sanction requiring reinstatement proceedings under MCR 9.123 and MCR 9.124.

In addition, although it is unclear precisely how much respondent still owes in court sanctions, a significant amount likely remains. Because we believe the individual courts are in the best position to enforce and collect the remaining sanctions, we vacate the condition imposed by the hearing panel that requires respondent to pay back all outstanding sanctions prior to reinstatement.

Respondent also raises other various issues of alleged error. First,

respondent asserts that the hearing panel erred when it quashed the subpoenas duces tecum of complainants, their attorney (Francis Rosinski), and the Chairperson of the Attorney Grievance Commission (Thomas Kienbaum). The decision on whether to quash a subpoena is reviewed for an abuse of discretion. *Fette v Peters Const Co*, 310 Mich App 535, 547; 871 NW2d 877 (2015). An abuse of discretion occurs when a court "chooses an outcome that falls outside the range of reasonable and principled outcomes." *Id.*

The hearing panel did not abuse its discretion in quashing respondent's subpoenas duces tecum. The information sought through a subpoena must be relevant. Here, respondent sought information relating to the motive of complainants for filing the requests for investigation, which is not relevant to these disciplinary proceedings.

Respondent also asserts that the Board Chairperson erred in denying respondent's motion to disqualify panel member Corey Silverstein. However, "the appropriate remedy for review of an order decided by the chairperson of the Board under MCR 9.115(F)(2)(b), is to file a complaint for superintending control with the Supreme Court, pursuant to MCR 7.306(A)(1)." As such, this issue is not properly before the Board.

Respondent also argues that the hearing panel abused its discretion in failing to compel the testimony of Mr. Kienbaum. In addition to being the Chairman of the Attorney Grievance Commission, Mr. Kienbaum is an attorney in private practice and represented the MSU defendants in the underlying litigation at issue in Count Nine. Respondent claims he wanted to question Mr. Kienbaum in order to establish that he committed misconduct because, subsequent to the filing of the request for investigation, Mr. Kienbaum engaged in discussions with staff attorneys from the Commission regarding the acts and conduct of respondent that resulted in the additional charges in Count Nine.

There is no evidence of any misconduct by Mr. Kienbaum. The evidence presented establishes that when the question whether a complaint should issue against respondent came before the Commission, Mr. Kienbaum recused himself, left the room, and did not participate to any degree in the Commission's decision to authorize issuance of a complaint. As such, the hearing panel did not abuse its discretion in failing to compel the testimony of Mr. Kienbaum.

IV. Conclusion

For the reasons discussed above, we conclude that hearing panel's findings of misconduct have proper evidentiary support in the record, and the suspension imposed is not inappropriate. Likewise, we find no error or abuse of discretion occurred in regard to the pre-hearing and evidentiary rulings made by the hearing panel. Accordingly, we affirm the imposition of a 100-day suspension. However, we conclude that the individual federal and state courts are in the best position to enforce and collect the remaining sanctions owed by respondent. Therefore, we vacate the condition imposed by the hearing panel requiring respondent to pay back all outstanding sanctions prior to reinstatement, and affirm the condition requiring respondent to take and pass the MPRE prior to reinstatement.

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

Board Chairperson Alan Gershel was recused and did not participate.

Board Member Kamilia Landrum was absent and did not participate in this decision.