

STATE OF MICHIGAN

Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner/Appellee,

v

Case No. 23-72-RD

WAYNE F. CROWE, P 77374,

Respondent/Appellant.

ORDER AFFIRMING HEARING PANEL ORDER OF SUSPENSION

Issued by the Attorney Discipline Board
333 W. Fort St., Ste. 1700, Detroit, MI 48226

On May 1, 2024, Tri-County Hearing Panel #6 issued an order suspending respondent's license to practice law in Michigan for 90 days, based on a 90-day suspension issued against respondent in New York in a matter titled *In Re The Matter of Wayne F. Crowe, 2020-04347*, New York Appellate Division-First Judicial Department. Respondent filed a petition for review arguing that the hearing panel abused its discretion under MCR 9.120(C)(3) by not holding a hearing before imposing reciprocal discipline, that he was not afforded due process in the New York proceeding, and that the imposition of comparable discipline in Michigan is clearly inappropriate.

The Attorney Discipline Board conducted review proceedings in accordance with MCR 9.118, which included a review of the whole record before the hearing panel and consideration of the parties' briefs and arguments presented to the Board. For the reasons discussed below, we affirm the hearing panel order of a 90-day suspension.

This matter arises out of a disciplinary proceeding in New York. In that matter, respondent was suspended for a period of 90 days by the New York Appellate Division - First Judicial Department. The underlying allegations, findings, and circumstances in that matter in the context of the instant appeal, bear explanation.

The New York Grievance Committee alleged that respondent engaged in 16 violations of the Rules of Professional Conduct based on seven complaints filed against him. The complaint alleged that respondent engaged in a pattern of neglect and lack of communication in numerous client matters, and that respondent then exacerbated the conduct by failing to comply

with court scheduling and discovery orders, and by offering clients monies in exchange for withdrawal of their disciplinary complaints. After referral to a referee, a two-day hearing was held after which the referee found that respondent committed seven of the 16 charged violations. A sanction hearing was then held. Despite the finding of multiple instances of misconduct, the referee recommended that the Court issue a private admonition to respondent.

The New York Attorney Grievance Committee then appealed¹ the referee's recommendation to the Appellate Division of the New York Supreme Court, and requested that the Court review the referee's dismissal of certain alleged violations, and increase the recommended sanction to a suspension of respondent's license. On appeal, the appellate division of the New York Supreme Court found that the referee had erred in dismissing two counts of the complaint; Count 7, wherein respondent engaged in a "quid pro quo" with a client for them to withdraw their complaint, and Count 10, wherein respondent did not adequately communicate with his client. The Court also increased the recommended discipline from an admonition to a 90-day suspension. In increasing the sanction, the Court noted that respondent's conduct caused prejudice to five different clients, and further that respondent was found to have knowingly failed to comply with court orders regarding scheduling, neglected legal matters, failed to act with reasonable diligence and promptness in a legal matter and failed to promptly refund an unearned legal fee.

On August 4, 2023, the Grievance Administrator filed a Notice of Filing of Reciprocal Discipline against respondent pursuant to MCR 9.120(C). On August 18, 2023, an order regarding imposition of reciprocal discipline was issued providing the parties 21 days to inform the Board in writing (i) of any objections to the imposition of comparable discipline in Michigan based on the grounds set forth in MCR 9.120(C)(1); and (ii) whether a hearing was requested.

Respondent filed an objection to the imposition of reciprocal discipline on September 7, 2023, and requested a hearing pursuant to MCR 9.120(C)(3). The matter was then assigned to Kent County Hearing Panel #6. The panel ordered respondent to file a brief explaining the basis for his objection. Counsel for the Grievance Administrator was then given the opportunity to file a reply brief. The order for briefing indicated that once the briefs were submitted, the panel would determine whether a hearing was necessary. Both parties filed their respective briefs as ordered by the panel.

¹The New York Attorney Grievance Committee filed a motion pursuant to the Rules of the Appellate Division, First Dept. (22 NYCRR) § 603-8(t)(4) and the Rules for Attorney Disciplinary Matters (22 NYCRR) §1240.8(b)(2) seeking review of the referee's decision with the Appellate Division of the New York Supreme Court.

On May 1, 2024, the panel issued its report and order suspending respondent's license for 90 days, effective May 23, 2024. The panel denied respondent's request for a hearing, finding that "respondent's brief gave him more than adequate occasion to argue his objections to the discipline imposed by the New York discipline system." (Report 5/1/24 p 7.) The panel further found that respondent was afforded due process in New York, and that a 90-day suspension was comparable discipline in Michigan. Respondent then filed the instant petition for review, and a petition for a stay which was automatically granted, pursuant to MCR 9.115(K).

Respondent first argues on review that the hearing panel erred in denying his request to have a hearing, pursuant to MCR 9.120(C)(3). Respondent argues that a hearing was necessary in this matter so that he could demonstrate why a 90-day suspension of his law license is clearly inappropriate, and so that "the sincerity of his remorse [can be] properly evaluated." In respondent's view, the panel "took an unreasonably narrow view of its discretion" in not holding a hearing in this matter.

Despite respondent's claims, there is no "presumption" toward a hearing in the text of MCR 9.120(C)(3) and the Board will not read one into it. The decision to hold a hearing, or decline to, is in the panel's sole discretion. Of course, the panel cannot abuse that discretion, and there no doubt may be a reciprocal matter in which a hearing may be appropriate or even necessary. However, we find nothing unique involved in this matter that favors a hearing sufficient to curtail the panel's proper exercise of discretion.

MCR 9.120(C)(3) states that, "If a hearing is requested, *and the hearing panel grants the request*, the hearing shall be held in accordance with the procedures set forth in MCR 9.115." (Emphasis added.) In this matter, the panel ordered respondent to submit a brief, both on the issue of the imposition of reciprocal discipline, and on the issue of whether a hearing was necessary for the panel to more fully consider the arguments regarding sanction. The panel concluded, after reading the parties' briefs, that it was not necessary to hold a hearing for the panel to determine that the imposition of comparable discipline in Michigan was appropriate. The panel reasoned, adopting the Grievance Administrator's position, that respondent's request to have this Panel determine the "sincerity of his remorse" asks it to substitute its judgment for that of the New York Supreme Court and the New York Court of Appeals." (Report 5/1/24, pp. 7-8.) We agree with the panel's analysis in this regard.

Respondent's primary argument on appeal, that a hearing is necessary so that his remorse can be properly evaluated, fails due to the fact that respondent has not taken advantage of any of the many opportunities afforded to him to articulate his remorse. Instead, respondent's argument at every stage of these proceedings has been directed at attempting to re-litigate the New York case under the guise of expressing his remorse. In fact, at oral argument on his petition for review, when given the opportunity to express his remorse, respondent instead pointed to others as the responsible parties for his misconduct and framed himself as the victim of an unruly disciplinary system in New York. We find that the panel properly exercised its discretion in declining to grant respondent's request for a hearing.

Nor does respondent's disagreement with the New York appellate court's decision to increase discipline articulate a basis for a finding that respondent was denied due process in New York. There are two types of due process: procedural and substantive. Procedural due

process requires notice and a meaningful opportunity to be heard before an impartial decision-maker. *Grievance Administrator v Josephine S. Miller*, 19-28-RD (ADB 2020) citing *In re Rood*, 483 Mich 73, 92 (2009). The essence of a substantive due process claim is the arbitrary deprivation of liberty or property interests. *AFT Michigan v State*, 297 Mich App 597, 622 (2012). Ultimately, due process requires fundamental fairness. *In re Rood*, supra, at 92.

Respondent was afforded procedural due process in the New York disciplinary proceedings. Respondent's matter was first heard by a referee after the complaint was filed against him by the New York disciplinary committee. Witnesses were questioned and exhibits were introduced. Thus, respondent was provided a full opportunity to set forth a defense to the charges. Contrary to respondent's position that the review of the referee's decision by the New York Appellate Division was extraordinary, appellate review is part of the procedural process in most, if not all disciplinary proceedings nationwide, and certainly in both New York and Michigan. This Board regularly hears matters on appeal from Michigan hearing panel decisions as to misconduct and sanction. While this Board certainly affords a degree of deference to a hearing panel's findings, we do often find that certain charges do or do not have proper evidentiary support in the record, or that the sanction imposed should be modified because it is too severe or lenient. That is the very purpose of appellate review.

As to substantive due process, respondent argues that the New York Appellate Division did not sufficiently defer to the referee's observation of respondent and his determination of the proper sanction to impose. Had the New York Appellate Division increased the sanction against respondent without explanation, respondent's argument may carry more weight, but the appellate division did explain its decision, finding that:

A review of the sustained charges shows five separate clients over a period of approximately two years to have been affected by respondent's misconduct. Respondent's expressions of remorse were often tempered by his pointing to clients or other employees as being the responsible parties. It is notable that although respondent was advised against quid pro quo behavior in or about January 2018, he went on to present a similar refund offer to another client after she filed her complaint in August 2018. [Appellate Order 2/3/22, pp. 3-4.]

The hearing panel in Michigan further articulated that the New York Courts, while not affirming the referee's sanction, offered specific reasoning for the sanction they imposed, as follows:

Thus, regardless of his allegations that the New York Supreme Court failed to give proper deference to the Referee's findings of credibility, the uncontested fact remains that Respondent was found to have committed nine acts of misconduct involving work he had performed for five different clients.

Respondent's claim that the appellate panel failed to adequately support its decision to exceed the admonition recommended by the Referee is unpersuasive. Here, the New York Supreme Court was faced with an individual who does not dispute that he

committed nine acts of misconduct – and that he had previously been warned that he should not offer any clients anything of value in exchange for dismissal of ethics charges.

The New York Supreme Court cited Respondent's repeated violations, his prior admonition, and then cited a number of cases in which it had previously deviated from a Referee's decision and imposed similar punishment for similar violations. [Report 5/1/24, pp. 8-9.]

We are cognizant of respondent's argument that, without utilization of the ABA Standards to guide the sanction analysis, the New York decision is somewhat disjointed and does not reflect the layered analysis typically found in panel and Board decisions in Michigan and some other jurisdictions. We also agree that rarely, if ever, would we undertake to modify discipline without conducting some degree of analysis under the ABA Standards. However, due process does not require that attorneys receive *Michigan process* in out-of-state disciplinary proceedings in order for a respondent to receive *due process*. Further, even in Michigan, the ABA Standards are not absolute, but are, as set forth in the preface to the Standards, intended to "identify recommended sanctions that are generally appropriate." *Grievance Administrator v James R. Phillips*, 11-62-JC (ADB 2012). The Standards were not intended to, nor have they been used to, prevent a panel or the Board from engaging in a unique factual analysis of the facts present in a case, as the New York Appellate Division did in this case.

Nor are we persuaded that the imposition of comparable discipline, a 90-day suspension, is clearly inappropriate in this case. Rather, we find the sanction appropriate and within the acceptable range of discipline an attorney could expect had the misconduct in this case been committed in Michigan. See *Grievance Administrator v Scott Norton*, 18-6-GA (ADB 2020) (60-day suspension with restitution affirmed for conduct involving neglect and lack of diligence); *Grievance Administrator v Ernest Friedman*, 18-37-GA (ADB 2019) (60-day suspension affirmed by the Board); and, *Grievance Administrator v Robert A. Canner*, 17-138-GA (ADB 2020) (90-day suspension with condition affirmed by the Board).

NOW THEREFORE,

IT IS ORDERED that the hearing panel's order suspending respondent's license to practice law in Michigan for 90 days issued May 1, 2024 is **AFFIRMED**.

IT IS ORDERED that respondent's license to practice law in Michigan is **SUSPENDED FOR 90 DAYS, EFFECTIVE FEBRUARY 12, 2025**, and until filing of an affidavit of compliance with the Attorney Discipline Board and the Attorney Grievance Commission, in accordance with MCR 9.123(A).

IT IS FURTHER ORDERED that, in accordance with MCR 9.119(A), respondent shall, within seven days after the effective date of this order, notify all of his active clients, in writing, by registered or certified mail, return receipt requested, of the following:

1. the nature and duration of the discipline imposed;
2. the effective date of such discipline;
3. respondent's inability to act as an attorney after the effective date of such discipline;
4. the location and identity of the custodian of the clients' files and records which will be made available to them or to substitute counsel;
5. that the clients may wish to seek legal advice and counsel elsewhere; provided that, if respondent was a member of a law firm, the firm may continue to represent each client with the client's express written consent;
6. the address to which all correspondence to respondent may be addressed.

IT IS FURTHER ORDERED that in accordance with MCR 9.119(B), respondent must, on or before the effective date of this order, in every matter in which respondent is representing a client in litigation, file with the tribunal and all parties a notice of respondent's disqualification from the practice of law.

IT IS FURTHER ORDERED that, respondent shall, within 14 days after the effective date of this order, file with the Grievance Administrator and the Attorney Discipline Board an affidavit of compliance as required by MCR 9.119(C).

IT IS FURTHER ORDERED that respondent's conduct after the entry of this order but prior to its effective date, shall be subject to the restrictions set forth in MCR 9.119(D); and respondent's compensation for legal services shall be subject to the restrictions described in MCR 9.119(F).

IT IS FURTHER ORDERED that respondent shall, on or before **February 12, 2025**, pay costs in the total amount of \$1,720.23 consisting of costs assessed by the hearing panel in the amount of \$1,509.73 and court reporting costs incurred by the Attorney Discipline Board in the amount of \$210 for the review proceedings conducted on October 9, 2024. Please refer to the attached cost payment instruction sheet for method and forms of payment accepted.

ATTORNEY DISCIPLINE BOARD

By: /s/ Alan Gershel, Chairperson

Dated: January 14, 2025

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

Board members Peter Smit and Jason Turkish were absent and did not participate in the decision.