

STATE OF MICHIGAN

Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner/Appellee,

v

Case Nos. 23-39-JC; 23-40-GA

DANIEL J. LEHMAN P 66126

Respondent/Appellant.

ORDER AFFIRMING HEARING PANEL ORDER OF SUSPENSION WITH CONDITIONS

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

Tri-County Hearing Panel #62 issued an Order of Suspension With Conditions on July 17, 2024, suspending respondent's license to practice law for a period of 30 days, effective August 8, 2024. The Order included conditions that require, within 30 days of the effective date of the suspension, respondent submit to an assessment by the Lawyers and Judges Assistance Program (LJAP) and comply with their recommendations, including entering into an LJAP Monitoring Agreement, if recommended. On July 29, 2024, respondent filed a petition for review with the Board arguing that the discipline imposed by the panel was excessive. Respondent also requested a stay of the order of discipline, which was granted automatically pursuant to MCR 9.115(K).

The Attorney Discipline Board has conducted proceedings in accordance with MCR 9.118, which included a review of the record before the hearing panel and consideration of the arguments and briefs submitted by the parties. For the reasons discussed herein, we affirm the 30-day suspension and conditions imposed by the panel.

On May 8, 2023, the Grievance Administrator filed a combined Notice of Filing of Judgment of Conviction and a one count formal complaint against respondent. The Judgment of Conviction was based on respondent's March 29, 2022 conviction for misdemeanor domestic violence. Initially, respondent pled guilty to the charge on September 1, 2021, in exchange for a deferred sentence under MCL 769.4a. Had respondent remained compliant with the terms of his probation, his conviction would have been vacated at the conclusion of his sentence. However, on December 23, 2021, respondent violated his probation by drinking alcohol. Respondent's violation was discovered when police were called to his home based on additional allegations of domestic violence, allegedly more serious than the initial charges. The police discovered substantial injuries to respondent's wife, including scratches, facial swelling, a head contusion with bleeding, and apparent bite marks. This second incident resulted in the revocation of respondent's MCL 769.4a status, and, on March 29, 2022, respondent pled guilty to the original charge of domestic violence. Respondent was sentenced to 45 days in jail, which he served. No separate criminal charges were brought against respondent regarding the allegations of domestic violence in the second incident.

In addition to the Notice of Filing of Judgment of Conviction filed against respondent for his conviction, the Grievance Administrator also filed a formal complaint against respondent, alleging that respondent engaged in conduct prejudicial to the administration of justice, in violation of MCR 9.104(1) and MRPC 8.4(c), for knowingly violating the terms of his order or probation. The formal complaint also alleged that respondent: engaged in conduct violating a criminal law, in violation of MRPC 8.4(b) and MCR 9.104(5); engaged in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2); engaged in conduct that is contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3); engaged in conduct that violates the standards and rules of professional conduct adopted by the Supreme Court, in violation of MCR 9.104(4); and, failed to notify the Grievance Administrator and the Board of his conviction within 14 days after the conviction, in violation of MCR 9.120(A)(1).

The virtual misconduct hearing in this matter was held via Zoom on November 20, 2023. Counsel for the Grievance Administrator called two witnesses; respondent, and Officer Robert Stephens from the West Bloomfield Police Department. One exhibit was introduced which comprised several pictures of respondent's wife and injuries she sustained during the second domestic violence incident. Respondent also testified on his own behalf. On March 14, 2024, the panel issued its report on misconduct. The panel found that respondent's conviction was conclusive evidence of misconduct under MCR 9.120(B). Further, as to the allegation in the formal complaint regarding the second incident, the panel found that the Grievance Administrator had established all of the misconduct alleged, with the exception of failing to notify the Grievance Administrator of the conviction, in violation of MCR 9.120(A)(1), which was dismissed.

On April 30, 2024, a separate hearing on sanction was held. On July 17, 2024, the panel issued their report on sanction. The panel ordered that respondent's license be suspended for a period of 30 days. The panel also ordered, as a condition, that respondent submit to an assessment by LJAP within 30 days of the effective date of the order, and comply with all of their recommendations. On July 29, 2024, Respondent filed a petition for review. Both parties submitted briefs. Oral argument was held on December 11, 2024, and both parties appeared. On review, respondent argues that the sanction ordered by the panel, a 30-day suspension with participation with the Lawyers and Judges Assistance Program, is excessive. We disagree.

In reviewing the sanction imposed by a hearing panel, the responsibility of the Board "is to ensure consistency and continuity in discipline imposed by panels." *Grievance Administrator v Karen K. Plants*, 11-27-AI; 11-55-JC (ADB 2012). However, the Board does afford a certain level of deference to a hearing panel's subjective judgment on the level of discipline. *Grievance Administrator v Martin G. Deutch*, 455 Mich 149, 166; 565 NW2d 369 (1997). Traditionally, the Board will not disturb a panel's determination as to the appropriate level of discipline unless it is clearly contrary to fairly uniform precedent for very similar conduct or is clearly outside the range of sanctions imposed for the type of violation at issue. *Grievance Administrator v Gregory J. Reed*, 10-140-GA (ADB 2014); *Grievance Administrator v Jeffrey R. Sharp*, 19-80-GA (ADB 2020); *Grievance Administrator v Christopher S. Easthope*, 17-136-GA (ADB 2021).

First, it is necessary to address the underlying conduct. Respondent's conduct is highly concerning. The record establishes that the police were called to respondent's home on two occasions within four months to investigate allegations of domestic violence. In both cases, the police found that respondent was intoxicated and had physically assaulted his wife. The first incident resulted in respondent's conviction for domestic violence. While the second incident did not result in a conviction, the evidence and testimony introduced into the record indicate that it was not a minor occurrence, as urged by respondent. Petitioner's Exhibit 2, introduced at the misconduct hearing and authenticated by West Bloomfield Police Officer Robert Stephens, are a series of pictures taken by the police after that incident. The pictures show extensive scrapes, scratches, and swelling to respondent's wife's face and limbs, as well as a bleeding contusion on her head. Further, respondent's consumption of alcohol that night, leading, at least in part, to him assaulting his wife, was a knowing violation of his probation.

In *Grievance Administrator v Albert Lopatin*, 462 Mich 235; 612 NW2d 120 (2000), the Supreme Court directed the Board and hearing panels to employ the American Bar Association (ABA) Standards for Imposing Lawyer Sanctions in determining the appropriate level of discipline. On page 4 of their sanction report, the panel set forth that they evaluated respondent's conduct under two ABA Standards, 5.12 and 6.22, involving failure to maintain personal integrity, and abuse of the legal process.¹

¹ These two standards hold, as follows:

- 5.2 Failure to Maintain Personal Integrity - 5.12 Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.
- 6.2 Abuse of the Legal Process - 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.

Respondent first argues that the panel erred in applying ABA Standard 5.12, which calls for a suspension, because his conduct did not reflect adversely on his fitness to practice law. Respondent cites *Grievance Administrator v David A. Reams*, 06-180-JC (ADB 2007), and *Grievance Administrator v Martin G. Deutch*, 455 Mich 149; 565 NW2d 369 (1997), in support for his argument that an order imposing no discipline is appropriate in this matter. In *Reams*, the Board vacated an order of probation with conditions where respondent was convicted of the misdemeanor offense of Operating While Intoxicated because the requirements of MCR 9.121(C) had not been met. The Board then entered an order imposing no discipline, and stated that “the Standards do not contemplate the imposition of discipline for criminal conduct not reflecting adversely on the lawyer’s fitness to practice law.” *Reams, supra*, citing (*Grievance Administrator v Arnold M. Fink*, 96-181-JC (ADB 2001.)

In *Deutch*, where the respondent was convicted of operating while intoxicated, the Michigan Supreme Court reversed and remanded to the hearing panel, after the Board determined that a hearing panel may dismiss a proceeding under MCR 9.115(J)(3), despite a conviction, if the panel finds that the conviction did not reflect adversely on the lawyer’s fitness to practice law. The Court found that the conviction itself is conclusive proof of misconduct, regardless of whether the conviction impugned the respondent’s fitness to practice, and thus dismissal was improper. On remand, the panel found misconduct pursuant to MCR 9.115(J)(3), but entered an order imposing no discipline. On appeal by the Grievance Administrator, the Board affirmed the imposition of no discipline by the panel, and held that “neither the nature of the offense nor the facts and circumstances in this case reflects adversely on respondent’s fitness to practice as a lawyer.” *Deutch, supra*.

This case is easily distinguishable from *Deutch* and *Reams*. Respondent is correct that those cases stand for the proposition that there are some circumstances involving criminal convictions that bear so little on a respondent’s fitness to practice law that it renders discipline either redundant or unnecessary. However, in both of those cases, the respondents had been convicted of drunk driving offenses, with no significant aggravation. Further, both respondents in those matters had fulfilled their sentencing requirements without incident. Additionally, the evidence in the record in *Reams* shows that the respondent had established a meaningful period of abstention from alcohol use, and in *Deutch*, that the respondent never had a notable problem with alcohol abuse.

Conversely, in this matter, within a period of six months, respondent was arrested in two separate incidents involving domestic violence, both involving alcohol. Further, after receiving a deferred sentence for the first incident, respondent promptly did the exact same thing again. The second incident was significant not only for its severity, but because it occurred in violation of his court ordered probation for the first domestic violence incident.² This is significant in that respondent's conduct in violating a court order correctly invokes the application of ABA Standard 6.22, for abuse of the legal process. As such, respondent's primary protest, that his conduct did not call into question his fitness to practice law as required for the imposition of discipline under ABA Standard 5.2, fails both substantively and rhetorically.

Additionally, Board precedent supports a suspension given the facts and circumstances in this case. In *Grievance Administrator v Kevin Floyd*, 05-25-JC (ADB 2006), the case primarily cited by the Grievance Administrator, the Board increased discipline from an order imposing no discipline to a 30-day suspension where the respondent had been convicted of misdemeanor domestic violence involving an incident occurring during a contentious divorce. Rejecting the precise argument advanced here by respondent, that a conviction for domestic violence did not involve the practice of law, the Board said "we cannot conclude the respondent's misconduct was technical or that there exists some other compelling reason to withhold discipline." *Id* at 6. Further, we note that respondent's conduct in this case was actually significantly more severe than the conduct in *Floyd*, as respondent herein engaged in two separate instances of domestic violence, and also violated a court order. Respondent's misconduct in this case was simply not

² Respondent proffered cursory arguments in his brief in support of his petition for review, that the panel erred in finding misconduct under MCR 9.104(5) and MRPC 8.4(c) because respondent was not convicted of the criminal offense. The evidence submitted in the record including the pictures of respondent's wife and the testimony of Officer Stephens is sufficient proof of the conduct for the panel to both find misconduct under MCR 9.104(5) and MRPC 8.4(c) and consider the nature of the conduct as to sanction. There is no Board precedent for the proposition that a conviction is *required* for a panel to conclude that a respondent engaged in criminal conduct. See *Grievance Administrator v Peter E. O'Rourke*, 93-191-GA (ADB 2020); *Grievance Administrator v Carl Weideman*, 05-79-GA (ADB 2007).

of the variety in which an order imposing no discipline is remotely appropriate and we find that the panel appropriately considered respondent's conduct as warranting a suspension.

We are also troubled by respondent's characterization of his conduct. In his brief on review, respondent was almost completely devoid of insight or remorse. Respondent blames his wife for his conduct. Respondent states, in different excerpts from his brief, that both of the incidents for which he was charged were due to his wife's conduct, and that he is essentially the victim in the marriage. Respondent states that "he plead guilty because he loved his wife, even though she hates him." (Respondent's brief, p 4.) Further, respondent argues that "respondent sought to protect himself by hitting her to defend himself." (Respondent's brief, p 5.) This argument is nonsensical and borders on distasteful.

Lastly, we strongly agree with the panel that LJAP is necessary. Respondent's conduct in this case is directly related to alcohol abuse. Further, respondent has a prior conviction for drunk driving for which he was placed on contractual probation. Additionally, respondent has asserted that he is regularly going to Alcoholics Anonymous (AA) meetings, and is meeting with a psychiatrist regarding mental health concerns. However, there is no evidence of these measures in the record. Respondent did not offer any evidence relating to his attendance at AA or the substance of any treatment he is receiving to support his testimony in that regard. Strangely, at oral argument, respondent indicated that he has not kept or compiled such records because it had not been necessary. Respondent has been aware for some time that his conduct in this case was going to be the subject of disciplinary proceedings. If, as respondent asserts, he has been continually going to AA meetings and meeting with a psychiatrist during the entire pendency of these proceedings, it would seem that he would have been vigorously documenting this treatment for this very occasion.

The 30-day suspension imposed by the panel is *only* appropriate in concert with respondent's full compliance with LJAP, and we strongly encourage the Grievance Administrator to take any and all action to enforce the panel's order if respondent fails to comply with this condition.

Upon careful consideration of the whole record, the Board is not persuaded that the hearing panel decision to order a 30-day suspension with conditions was inappropriate.

NOW THEREFORE,

IT IS ORDERED that the hearing panel's Order of Suspension with Conditions, issued July 17, 2024, is **AFFIRMED**.

IT IS FURTHER ORDERED that respondent's license to practice law in Michigan is **SUSPENDED FOR 30 DAYS, EFFECTIVE MAY 8, 2025**, and until respondent's 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 the hearing panel's July 17, 2024 order of suspension with conditions, respondent is subject to the following conditions:

1. Within 30 days of the effective date of this order, Respondent shall contact and schedule an assessment by the State Bar of Michigan's Lawyer's and Judges Assistance Program (LJAP), and if recommended by LJAP, shall enter into a Monitoring Agreement with LJAP for their recommended period of time;
2. Within 30 days of his LJAP assessment and/or entering into a LJAP monitoring agreement, Respondent shall sign any and all waivers necessary to allow LJAP to communicate with the Attorney Grievance Commission regarding Respondent's matter before them, to provide reports as to Respondent's progress in the LJAP program and, if known to LJAP and its agents, any violations by respondent of the Michigan Rules of Professional Conduct. The waivers shall be irrevocable for one full year after the term of the LJAP Monitoring Agreement has elapsed;

3. Respondent shall provide or cause to be provided quarterly reports from LJAP to the Grievance Administrator's Probation Supervisor. The report should generally include a diagnosis, prognosis, and recommendation. All reports shall report whether positive progress is being made;
4. Respondent shall provide waivers allowing the Attorney Grievance Commission to communicate with his other medical, psychological and counseling providers, if any, concerning his treatment. The waivers shall be irrevocable for one full year after the term of the LJAP Monitoring Agreement has elapsed;
5. Respondent shall promptly notify, in writing, the Grievance Administrator or his designee of any changes to respondent's address and/or telephone number during the period of time that he is being monitored by LJAP.

IT IS FURTHER ORDERED that from the effective date of this order and until reinstatement

in accordance with the applicable provisions of MCR 9.123, respondent is forbidden from practicing law in any form; appearing as an attorney before any court, judge, justice, board, commission or other public authority; or holding himself out as an attorney by any means.

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 **May 8, 2025**, pay costs in the amount of \$2,883.88 consisting of costs assessed by the hearing panel in the amount of \$2,705.83 and court reporting costs incurred by the Attorney Discipline Board in the amount of \$178.05 for the review proceedings conducted on December 11, 2024. Please refer to the attached cost payment instruction sheet for method and forms of payment accepted.

ATTORNEY DISCIPLINE BOARD

By: /s/ Alan M. Gershel, Chairperson

Dated: April 9, 2025

Board Members Alan Gershel, Peter A. Smit, Rev. Dr. Louis J. Prues, Linda M. Orlans, Jason M. Turkish, Katie M. Stanley, Tish Vincent, and Kamilia Landrum concur in this decision.

Board Member Andreas Sidiropoulos, MD was absent and did not participate in this decision.