STATE OF MICHIGAN

Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner/Appellee,

v Case No. 23-84-GA

ERNEST FRIEDMAN, P 26642,

Respondent/Appellant.
_____/

ORDER AFFIRMING, IN PART, AND VACATING, IN PART, FINDINGS OF MISCONDUCT AND AFFIRMING ORDER OF 180-DAY SUSPENSION

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

Tri-County Hearing Panel #57 issued an Order of Suspension on September 26, 2024, suspending respondent's license to practice law for a period of 180 days, effective October 18, 2024. On October 10, 2024, respondent filed a petition for review with the Board arguing that the panel had erred as to several of their findings, and that the discipline imposed was excessive. Respondent also filed a petition for a stay of discipline. The Attorney Discipline Board issued an order denying respondent's request for a stay on October 17, 2024. The Attorney Discipline Board has now conducted review 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 in part, and vacate, in part, the panel's findings of misconduct, and affirm the panel's imposition of a 180-day suspension.

On September 18, 2023, the Grievance Administrator filed a two count formal complaint against respondent. Count One relates to alleged mishandling of funds in respondent's IOLTA account and improper transactions related to those funds. Count Two is unrelated to Count One, and involves respondent's actions relating to a prior order of suspension entered against him in *Grievance Administrator v Ernest Friedman*, Case No. 18-37-GA. The allegations in Count Two stem primarily from respondent's representation of Jacob Craig in *Craig v Allstate Insurance Company*, Case No. 19-005771-NF, Wayne County Circuit Court. Respondent was charged principally with failing to notify his client, Mr. Craig, or the tribunal of his suspension, failing to communicate with his client, and filing a false affidavit with the Attorney Grievance Commission attesting incorrectly, that he had provided proper notice of his suspension to all clients and tribunals.

On April 25, 2024, the panel issued its report on misconduct. As to Count One, the panel found that respondent violated MRPC 1.15(b)(3), (d), and (f), MCR 9.104(4) and MRPC 8.4(a), and MCR 9.104(2). As to Count Two, the panel found that respondent violated MCR 9.119(A) and (B), MCR 9.123(A) MCR 9.104(1)-(4), and MRPC 8.4(b) and (c). In Count Two, the panel declined to find violations of MRPC 1.4(a) and (b), MRPC 1.5(a) and MRPC 1.7 as alleged in the formal complaint, and those charges were dismissed. In his brief on review, respondent argues the panel improperly ordered or limited discovery by prohibiting Attorney Randall Mattson from testifying at the hearing in this matter, resulting in undue prejudice to his case. Respondent further argues that he did not commit misconduct, and that the panel's findings of misconduct are unsupported by the record, and that the panel's order of a 180-day suspension was excessive because the misconduct found is largely "technical" in nature. We disagree.

As to Count One of the formal complaint, the allegations involve respondent's repeated misuse of his client trust account, and the factual allegations are not contested. As earlier indicated, the panel found violations of MRPC 1.15(b)(3), (d), and (f). As to MRPC 1.15(d) and (f),

the record establishes that respondent made multiple payments made from his IOLTA account for personal or business expenses including to his wife, his daughter, and Attorney Randall Mattson, unrelated to any legal matters for which funds were rightfully being held in his trust account. The total amount of the checks written for personal and business expenses from respondent's IOLTA totaled over $90,000.

Respondent argues that the violations were "technical" and "issues of trivial matter." (Respondent's Brief p 14.) Respondent bases his argument on the fact that there is no evidence that he misappropriated client funds. While respondent is correct that there is no evidence of misappropriation in this case, the absence of one violation is not a defense to the commission of another. Further, respondent's chronic and regular misuse of his client trust account is not merely "technical," as he argues. Commingling of this variety is significant misconduct, and can be a precursor to misappropriation. There is adequate evidentiary support in the record for these findings.

However, as to the panel's finding that respondent violated MRPC 1.15(b)(3), we do not find that there was evidentiary support in the record for this finding. The panel's finding as to this charge is based solely on two checks written from respondent to clients Michael Mango and Lucretia Ali that were returned for insufficient funds because respondent's bank placed a "hold" on a settlement check deposited into respondent's IOLTA account. No evidence was presented that either party did not receive their portion of the funds, nor that there was any substantial delay in their receipt of the funds. The receipt by the Grievance Administrator of an overdraft notice pursuant to MRPC 1.15(A) is not, by itself, sufficient to establish a violation of MRPC 1.15(b)(3) without other facts supporting such a violation. The finding that respondent violated MRPC 1.15(b)(3) is vacated.

As to Count Two, respondent first argues that the panel erred in "compelling discovery" in excess of what is allowable or required under MCR 9.115(F)(4). Respondent's argument is directed at the panel's "order compelling discovery" issued on December 14, 2023, in which the panel identified, without limitation, exhibits that had been identified for hearing, required the parties to exchange exhibit lists, and required the parties to file witness lists of all witnesses that

would testify at hearing.[1] While the panel's order is, perhaps, poorly titled, the content of the order simply does not require the parties to take any actions outside of the purview of the panel's responsibility to manage and mediate pre-trial procedure in a disciplinary matter. The order did little more than what is already required or allowable under MCR 9.115(F)(4)(a), which provides for the exchange of documentary evidence prior to hearing and allows either party to demand the names and addresses of any witnesses to be called at hearing. The panel's order was a routine pre-trial order setting forth deadlines and narrowing issues for hearing, and the panel was well within their discretion to do so.

Respondent further argues that the panel erred in declining to allow the testimony of Attorney Mattson, who showed up at the hearing to testify on respondent's behalf, despite not having been listed as a witness in respondent's response to the panel's December 14, 2023 order. When questioned by the panel as to why Attorney Mattson had not been listed as a witness, respondent's counsel indicated that Attorney Mattson was believed to have had a medical condition that would prohibit him from testifying, but that it had subsided. After consideration, the panel determined that respondent had not indicated that Attorney Mattson would testify in response to their order, and had not provided notice to the Grievance Administrator prior to the hearing that he intended on calling Attorney Mattson in this regard. Thus, the panel declined to allow Mr. Mattson to testify. We find that the panel's decision was a proper exercise of the panel's authority.

MCR 9.111(C)(2) sets forth that, among a panel's duties is the duty to "Receive evidence and make written findings of fact." Inherent in the duty to "receive evidence" is the duty to exercise some form of control over the proceedings. In nearly every contested case, hearing

[1] The specific provision respondent objects to states, in its entirety, that "Each party shall provide a list of witnesses who will be called to testify and the subject of their testimony. The list shall include: (i) the name of each witness, (ii) and, the subject of their testimony. If the identity of a witness is unknown to a party seven days prior to the hearing, the identity, phone number and e-mail of the witness shall be filed and provided to the Case Manager as soon as it is determined the witness may testify. Only listed witnesses will be permitted to testify at the hearing, except for rebuttal witnesses whose testimony could not be reasonably anticipated, or except for good cause shown."

panels make evidentiary determinations, rule on the permissibility of motion practice, require documentary evidence to be provided, and limit its admissibility. The panel's decision not to allow Attorney Mattson to testify is not meaningfully different from these other decisions that panels routinely make as the trier of fact. And while the decision not to allow a particular witness to testify could be found to be unduly prejudicial to a respondent in certain circumstances, those circumstances are not present here because Attorney Mattson's expected testimony, as summarized by respondent's counsel and discussed below, simply did not establish a viable defense to the charges against respondent. (Tr 2/9/24, pp 4-17.)

The record establishes that on April 18, 2019, respondent, as counsel for plaintiff Jacob Craig ("Mr. Craig"), filed a first-party auto insurance case captioned *Jacob Delbert Craig v Allstate Insurance Company*, Wayne County Circuit Court, Case No. 19-005771-NF. On March 25, 2020, while the matter was pending, respondent was suspended from the practice of law for 60 days in *Grievance Administrator v Ernest Friedman*, 18-37-GA. Respondent did not notify Mr. Craig, counsel for Allstate, or the Court, in writing, of his suspension, as required by MCR 9.119(A). On June 24, 2020, respondent filed an affidavit with the Board, the Commission, and the Michigan Supreme Court, pursuant to MCR 9.123(A) stating that he had complied with all the terms of his suspension.[2] The affidavit filed by respondent stated that he had complied with all requirements of the Order of Suspension, despite the fact that he did not provide Mr. Craig, Allstate, or the Wayne County Circuit Court with written notice of his suspension. On June 26, 2020, Respondent was reinstated to the practice of law, based on the affidavit he filed.

The panel found that respondent violated MCR 9.119(A) in that he failed to notify all active clients, in writing, by registered or certified mail, return receipt requested, of his suspension, and MCR 9.119(B) in that he failed to file with the tribunal and all parties a notice of his disqualification from the practice of law. The panel further found that respondent violated MCR 9.123(A) and MRPC 8.4(b) in that he filed a false reinstatement affidavit asserting that he

[2] Respondent filed his affidavit after the 2020 Amendment to MCR 9.123(A). Thus, the Grievance Administrator had seven days to object to respondent's reinstatement based on his submission of the affidavit. However, in that the Grievance Administrator was not, at the time, in possession of information that would contradict respondent's statements in his affidavit, no objection was filed at the time.

had complied with MCR 9.119(A)-(B). The panel found that respondent's conduct also constituted violations of MRPC 8.4(a) and (c) and MCR 9.104(1)-(4). The record supports all of the panel's findings as to Count Two.

Respondent's sole defense to the charges is that he enlisted Attorney Mattson, another attorney at his firm, to substitute into the case. Attorney Mattson never actually filed a substitution of counsel in the case, however, even if he had, respondent's argument fails for several reasons. First, even if Attorney Mattson had substituted in the case, that would not have obviated the requirement for respondent to comply with MCR 9.119(A). Further, the sub-paragraphs to MCR 9.119(A) set forth exactly what must be included in the notice given to a client by a suspended attorney. MCR 9.119(A)(5) requires that the suspended attorney provide notice that "the clients may wish to seek legal advice and counsel elsewhere; provided that, if the disbarred, suspended, inactive, or resigned attorney was a member of a law firm, the firm may continue to represent each client with the client's express written consent." As such, for respondent to have complied with the rule, not only did he need to provide notice to Mr. Craig, but Mr. Craig would have needed to consent in writing for any other attorney from respondent's firm to handle his matter in respondent's stead.

Lastly, as to Count Two, the panel found that respondent filed a false affidavit indicating that he had complied with the requirements of MCR 9.119(A) and (B) despite knowing that he had not, in violation of MCR 9.123(A). That rule requires that a respondent must serve on the Board and the Grievance Administrator an affidavit attesting to their compliance with MCR 9.119(A) and (B). MCR 9.123(A) specifies that "a materially false statement contained in the affidavit is a basis for an action by the administrator and additional discipline." Respondent's declaration in his reinstatement affidavit that he had complied with all of the terms of his suspension, which would include the requirements of MCR 9.119(A) and (B), were false, because respondent had not complied with those rules. Thus, the panel's findings of violations of MCR 9.123(A), MRPC 8.4(a)-(c) and MCR 9.104(1)-(4) have adequate evidentiary support in the record and are affirmed.

Next, Respondent argues that the 180-day suspension imposed by the panel was excessive. 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 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).

We are not persuaded that the 180-day suspension imposed by the panel is outside the range of appropriate sanctions to be imposed in consideration of the misconduct found in this case, nor contrary to uniform precedent. Respondent's handling of his IOLTA account is highly troubling, and indicates that he either simply does not know how to, or will not endeavor to, manage his IOLTA account correctly. Further, his description of these issues as merely "technical" does nothing to assuage these concerns. Additionally, the obligations of MCR 9.119(A) and (B) are very clear. Respondent was aware at the time he filed his affidavit as required by MCR 9.123 that he had not satisfied those requirements, but he nonetheless indicated that he had. Instead of admitting the error and offering remorse, respondent again attempts to minimize it by arguing that the "acceptance" by the Grievance Administrator of the affidavit at the time it was filed somehow absolves respondent for the falsehood contained in it.

Lastly, respondent's prior disciplinary history is a significant aggravating factor in this case. Respondent has been admonished five times, and has a prior 60-day suspension. The Board has previously endorsed the concept of progressive discipline under the appropriate circumstances. *Grievance Administrator v Carolyn J. Jackson,* 18-58-GA (ADB 2019) citing *Matter of Leonard R. Eston*, DP 24/87 (ADB 1988). Furthermore, we have found that "repeated misconduct may evidence the need for more severe discipline." *Matter of O. Lee Molette*, 35391-A (ADB 1981). Likewise, misconduct may be aggravated by a respondent's recidivism and conscious disregard for the discipline system. *Matter of Ross John Fazio*, DP 36/82 (ADB 1983). We find the principles articulated in these cases to be applicable in this case.

We believe that the misconduct in this case, coupled with respondent's apparent lack of understanding or remorse, and his prior disciplinary history, warrants the 180-day suspension ordered by the panel.

NOW THEREFORE,

IT IS ORDERED that the hearing panel's finding that respondent violated MRPC 1.15(b)(3) in Count One of the Formal Complaint is **VACATED.**

IT IS FURTHER ORDERED that the hearing panel's findings of misconduct in all other respects are **AFFIRMED**.

IT IS FURTHER ORDERED that the hearing panel's Order of 180-day Suspension, issued September 26, 2024, and effective October 18, 2024, is **AFFIRMED.**

IT IS FURTHER ORDERED that the respondent shall comply with all applicable provisions of MCR 9.119.

IT IS FURTHER ORDERED that respondent shall, on or before **May 16, 2025**, pay costs in the amount of $189.00 for court reporting costs incurred by the Attorney Discipline Board for the review proceedings conducted on February 12, 2025. 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 17, 2025

Board Members Alan Gershel, Peter A. Smit, Rev. Dr. Louis J. Prues, Linda M. Orlans, Katie M.

Stanley, Tish Vincent, and Andreas Sidiropoulos, MD, concur in this decision.

Board Members Jason Turkish and Kamilia Landrum were absent and did not participate in this decision.