STATE OF MICHIGAN

Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner/Appellant,

v Case No. 24-32-JC

JERRY R. HAMLING, P 37922,

Respondent/Appellee.
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AMENDED[1] ORDER AFFIRMING HEARING PANEL ORDER OF REPRIMAND

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

In accordance with MCR 9.120(B)(3), the Grievance Administrator's filing of a Notice of Filing of Judgment of Conviction based on respondent's misdemeanor conviction in the State of New York of falsifying business records in violation of PL 175.05.00, resulted in an order by the Attorney Discipline Board directing respondent to appear before Tri-County Hearing Panel #54 to show cause why a final order of discipline should not be entered. A hearing was conducted by the panel on June 10, 2024. On September 25, 2024, the hearing panel issued an order of reprimand, effective October 17, 2024.

The Grievance Administrator has petitioned for review on the grounds that the hearing panel made an evidentiary error by excluding portions of the plea and sentencing transcript, applied the incorrect ABA Standard, and imposed insufficient discipline. The Grievance Administrator argues that the reprimand imposed by the hearing panel should be increased to disbarment.

[1] Amended to correct effective date of reprimand, which is October 17, 2024, pursuant to the hearing panel's September 25, 2024, order of reprimand.

The Attorney Discipline Board conducted review proceedings on February 12, 2025, in accordance with MCR 9.118. The Board has considered the record below, as well as the briefs and arguments submitted by the parties and at the review hearing. For the reasons discussed below, we affirm the hearing panel's imposition of a reprimand.

Evidentiary and procedural rulings by a hearing panel are reviewed under an "abuse of discretion" standard. See *Grievance Administrator v Phillip G. Bazzo*, 19-106-GA (ADB 2021) (citing *People v Aldrich*, 246 Mich App 101, 113 (2001)). "An abuse of discretion occurs when the [trial] court chooses an outcome that falls outside the range of reasonable and principled outcomes." *People v Unger*, 278 Mich App 210, 217 (2008).

Respondent has been a member of the Michigan State Bar since 1985, and was licensed to practice law in New York in 2015. Respondent testified that in 2014, he became partial owner of Affinity Human Resources, LLC, a Michigan-based company that provided outsourced payroll and human resource services for its customers. One of the other owners, Tommy Atamanoff, had significant contacts and relationships in the construction industry in New York, so much of Affinity's business occurred in New York. The conviction at issue involved one of Affinity's New York based construction companies, Parkside Construction. Respondent testified that he did not work much with Affinity until late 2014 because he was wrapping up another business, but then began working full time with Affinity in 2015 after he and Mr. Atamanoff bought out the third owner's portion of the company, and ultimately became sole owner in 2016 after Mr. Atamanoff's unexpected death.

In June of 2020,[2] respondent pled guilty to a single count of falsifying business records/knowingly causing an omission in business records in the second degree (NY Penal Law 175.05), a misdemeanor, in satisfaction of a multi-count indictment charging him with, among other things, causing an omission in Parkside's payroll records.[3] Respondent was sentenced to a one-year conditional discharge, and ordered to pay $250 in court costs.[4] Respondent immediately reported his conviction to the Michigan Attorney Grievance Commission as required by MCR 9.120(A).

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[2] The alleged crime occurred in 2014, respondent was arrested in 2018, and the plea was accepted in 2020.

[3] The indictment alleged that Parkside Construction avoided paying $7.8 million in insurance costs by hiding payroll from the New York State Insurance Fund. It was alleged that respondent directed Affinity Human Resources, LLC, the payroll processing company that he owned and that processed Parkside's payroll, to treat Parkside's three constituent companies as a separate entity rather than an alter-ego, thereby knowingly causing an omission in Parkside's payroll records. Parkside allegedly then submitted the underreported payroll with the intent of obtaining workers' compensation insurance premiums at a reduced rate. Respondent testified, however, that the payroll records were merely internal business records, and were never submitted to any outside entity. He also testified that the application for workers' compensation insurance was submitted by Parkside prior to his active involvement with the day-to-day operations of Affinity.

[4] Under New York Criminal Procedure Law Section 65.05, a conditional discharge is a sentence that is imposed by the court that does not involve imprisonment or probation supervision.

On December 28, 2023, the New York Supreme Court, Appellate Division suspended respondent's license to practice law in New York for two years, retroactively effective on June 9, 2022. This sanction was based, in part, on the referee's finding that "as the sole owner and chief operating officer of a Michigan-based payroll processing company, Affinity Human Resources, LLC, respondent failed to report an omission in an application for workers' compensation coverage submitted to the New York State Insurance Fund by one of Affinity's construction company clients." Respondent is currently appealing this order, however, because as he testified at the hearing in this matter, the application for workers' compensation at issue was submitted by staff without his knowledge and prior to his involvement with the company, and did not involve any of the payroll records that were the basis for respondent's conviction. (Tr 6/10/24, pp 20-21; 65-66.)

At the show cause hearing, the Grievance Administrator attempted to introduce the complete transcript of the plea and sentencing of both respondent and Affinity, a co-defendant.[5] Respondent objected in part, on the grounds that the portions of the transcript related to Affinity should be redacted because Affinity's plea and sentence involved a separate offense, a separate plea, and separate conduct from the conduct at issue here, and thus was irrelevant as to whether respondent committed the misconduct charged in this matter. The panel agreed with respondent and found that the transcript of the Affinity plea was irrelevant. (Tr 6/10/24, pp 22-24.) We agree with the panel's decision in this regard.

This disciplinary action at issue here is based only on respondent's single misdemeanor conviction, not on respondent's overall conduct. Neither respondent's conviction nor the allegations here are based on the same facts or same offense as that of Affinity's plea, and neither one is based on any purported conduct related to Affinity's plea. Even though the pleas were placed on the record at the same time as a matter of judicial economy, the two pleas were separate proceedings, involving separate parties, and separate counsel. Further, respondent testified that the records involved in his plea were in no way related to an application for workers' compensation insurance; the application at issue in the case against Affinity was filled out by staff before he was even working with the company; and he was not even aware of the application "until several years later when this all came up." (Tr 6/10/24, pp 19-21.) In contrast, respondent's plea related to internal payroll records, and these records were never submitted to any governmental agency or other outside entity. (Tr 6/10/24, pp 56-57, 65-66.)

Counsel for the Grievance Administrator asserts that Affinity's plea transcript is "clearly relevant and admissible," but fails to articulate *why* it is relevant, other than to say "the facts of Affinity's plea were at least partially related to Respondent's conviction." Even if that were true in the criminal case, here the only issue is what is the appropriate sanction for respondent's

[5] Respondent entered his guilty plea at the same time as counsel for Affinity entered the company's guilty plea to the class E felony for knowingly and intentionally submitting false statements which underreported the construction company's actual payroll, with the intent of obtaining workers' compensation insurance premiums at a rate less than would have been covered by the State Insurance Fund.

conviction. This is especially true where his conviction is the only alleged basis for discipline. As stated by respondent's counsel at the hearing:

> They could have charged Mr. Hamling with something different from merely being convicted of a misdemeanor. They could have charged him if they had chosen to with something involving Affinity that involved allegedly more serious conduct. Then they would have to prove that and I would have had an opportunity to defend against that charge. They chose not to do that. The way they framed the charges by not bringing a claim regarding Affinity makes the facts of the Affinity plea, the details of the Affinity plea irrelevant, and, frankly, inappropriately prejudicial to bring out. [Tr 6/10/24, pp 21-22.]

The Grievance Administrator further argues that respondent "opened the door" to the excluded portions of the transcript by discussing the Affinity plea. The hearing panel disagreed, finding that respondent was merely responding to a question from counsel for the Grievance Administrator and a question from the panel chairperson, who was merely seeking clarification regarding the criminal proceedings. (Tr 6/10/24, pp 21-24; 72.) Respondent did not open the door to the admissibility of otherwise inadmissible evidence; he was merely clarifying his involvement and the basis for his conviction.

However, even if the plea transcript was relevant, admitting the guilty plea of Affinity would likely unfairly prejudice respondent under Rule 403 of the Michigan Rules of Evidence, which provides that relevant evidence may be excluded "if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." See *United States v Sanders*, 95 F3d 449, 454 (CA 6, 1996). Counsel for the Grievance Administrator was essentially attempting to introduce Affinity's plea to expand respondent's conduct. The effect of such evidence is highly prejudicial, especially where it is respondent's conviction only that is at issue here. This disciplinary action is based on a single conviction, not on respondent's overall conduct. For these reasons, there is no support for the Grievance Administrator's claim that the hearing panel abused its discretion in excluding portions of the plea transcript related to Affinity's plea.

The Grievance Administrator also argues that the hearing panel improperly applied ABA Standard 5.13 instead of Standard 5.11, and that a reprimand is an insufficient sanction for the misconduct here. 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). 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 (1997) ("attorney misconduct cases are fact-sensitive inquiries that turn on the unique circumstances of each case").

In determining the appropriate sanction, we employ the American Bar Association (ABA) Standards for Imposing Lawyer Sanctions. *Grievance Administrator v Lopatin*, 462 Mich 235 (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 Standards' recommended sanctions are considered based upon the answers to these questions. *Id.* at 240. 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*, 99-102-GA (ADB 2001) (citing *Lopatin*, 462 Mich at 248 n 13).

The Grievance Administrator argued that ABA Standard 5.11 applied, calling for disbarment, whereas respondent argued that Standard 5.13 applied, calling for a reprimand.[6]

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[6] Standard 5.1 provides, in relevant part:

> 5.1 Failure to Maintain Personal Integrity
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> Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation:
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> 5.11 Disbarment is generally appropriate when:
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> (a) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
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> (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.
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> 5.12 Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed

The Grievance Administrator urges the Board to apply Standard 5.11 simply because the language of the statute to which respondent pleaded guilty contains the phrase "intent to defraud."[7] However, if this Board were to find respondent's state of mind was intentional simply because "intent to defraud" is in the language of the statute, we would essentially be implementing a variation of strict liability and there would be little, if any, need to hold a sanction hearing. Furthermore, in *Grievance Administrator v Lange*, 14-1-JC (ADB 2015), the Board discussed the importance of looking at all of the facts and circumstances surrounding a case, and not relying so heavily on labels:

> Certain types of misconduct may reflect adversely on a lawyer's fitness to practice such that significant discipline is warranted even if the conduct takes place outside of the practice of law. However, as we have previously indicated:
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> > Any rule which would simplistically characterize conduct by labels (e.g. "assault"), and then allow that characterization to dictate the level of discipline to be imposed irrespective of factual distinctions, will promote barren records and decisions on discipline without all of the relevant facts. This is ultimately harmful to the public, the courts, and the bar. For only when a panel, this Board, and/or the court have a full and true picture of the nature of the misconduct can the appropriate level of discipline be assigned. [*Lange, supra* at 2 (quoting *Grievance Administrator v Arnold M. Fink*, 96-181-JC (ADB 2001)).]

The hearing panel's finding that respondent's state of mind was knowing, rather than intentional, is supported by the record. The panel listened to respondent's testimony, and accepted respondent's statements that he did not intend to defraud anyone, and that the "intent to defraud" from the statute only applied to defrauding respondent himself, because the

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> in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.
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> 5.13 Reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

[7] New York Penal Law 175.05 states that "[a] person is guilty of falsifying business records in the second degree when, with intent to defraud, he . . . [p]revents the making of a true entry or causes the omission thereof in the business records of an enterprise."

business records were internal records and no one else was affected by the omission. (Tr 6/10/24, pp 19-21.) Disbarment under Standard 5.11 is simply disproportionate to the conduct in this case. Furthermore, by its terms, Standard 5.11 applies only in cases of "serious criminal conduct" that "seriously" adversely reflects on the lawyer's fitness to practice law. Here, there is no evidence that respondent's conviction reflects "seriously" on his fitness to practice law.

Both Standard 5.12, and the standard that the hearing panel invoked, Standard 5.13, address a lawyer's knowing conduct involving dishonesty, fraud, deceit, or misrepresentation. The principal difference between those two standards lies in the degree to which the conduct in question adversely reflects on the lawyer's fitness to practice law. Suspension is appropriate if the conduct "seriously" adversely reflects on fitness; otherwise, reprimand is appropriate.

The hearing panel's report on discipline reflects a thoughtful weighing of the facts, circumstances, and evidence presented by the parties. Without minimizing the wrongfulness of respondent's conduct, the hearing panel applied Standard 5.13, and concluded that while respondent's conviction may reflect adversely on his fitness to practice law, it does not do so "seriously." The panel explained:

> The Panel has considered both arguments and finds that the appropriate standard is ABA Standard 5.13. The panel comes to this determination because it finds that the record is insufficient to conclude that respondent's conduct that resulted in his conviction was "serious criminal conduct" or that it "seriously adversely reflects" on respondent's fitness to practice law. Respondent was convicted of a misdemeanor, and sentenced to a $250 fine, which he paid. While the panel is cognizant that the criminal offense involves the "intent to defraud," the requirement that the criminal offense be "serious" stands independent from the state of mind within ABA Standard 5.11 [footnote omitted]. Disbarment is a very severe remedy, and the panel is simply unconvinced that the conduct involved was sufficiently serious to compel such a sanction. Further, there is no evidence that respondent's conduct involved the practice of law in any way. As such, the panel is unmoved that the conviction seriously adversely reflects on respondent's fitness to practice. [Report 9/25/24, p 4.]

In sum, drawing together the duty violated, respondent's mental state, the injury caused (or lack thereof), and the degree to which respondent's misconduct reflects on his fitness to practice, there is sufficient evidence to support the hearing panel's determination that a reprimand is appropriate under Standard 5.13.

As required by *Lopatin, supra*, the hearing panel next considered whether any aggravating or mitigating factors mandated a different outcome:

> Finally, the panel has fully considered the aggravating and mitigating circumstances under ABA Standards 9.22 and 9.32. Based on this analysis, the panel concludes that the mitigating circumstances outweigh the aggravating circumstances.

> The panel has considered and accepts that aggravating factors include respondent's substantial experience practicing law, ABA Standard 9.22(i); and, that the conduct at issue was illegal, ABA Standard 9.22(k). The panel has also considered and accepts that mitigating factors include the absence of any prior discipline over 39 years of practice, ABA Standard 9.32(b)[sic]; full and free disclosure during this disciplinary proceeding, ABA Standard 9.32(e); respondent's good character and reputation, ABA Standard 9.32 (g); the delay in the disciplinary proceedings, ABA Standard 9.32(e) [sic]; the fact that respondent received other penalties and sanctions in New York, ABA Standard 9.32(k); and the genuine remorse reflected in respondent's testimony to the panel, ABA Standard 9.32(l). [Report 9/25/24, pp 4-5.]

The panel's report in this regard reflects an exercise of independent judgment and analysis based upon the facts, circumstances, and evidence presented by the parties.

The Grievance Administrator argues that it was an error for the hearing panel to apply character or reputation and remorse as evidence of mitigation. With regard to the consideration of testimony from respondent and his character witnesses, "[d]eference is given to the special opportunity of the trial court to judge the credibility of witnesses. MCR 2.613(C)." *Grievance Administrator v Carrie L. P. Gray*, 93-250-GA (ADB 1996), lv den 453 Mich 1216 (1996). The hearing panel here had the opportunity to observe the witnesses during their testimony, so we defer to the panel's assessment of their demeanor and credibility. *Grievance Administrator v Ernest Friedman*, 18-37-GA (ADB 2019), citing *Grievance Administrator v Neil C. Szabo*, 96-228-GA (ADB 1998); *Grievance Administrator v Deborah C. Lynch*, No 96-96-GA (ADB 1997). The hearing panel heard testimony from respondent regarding his remorse, as well as testimony from two witnesses regarding respondent's character and reputation. The panel was in the best position to ascertain respondent's credibility as well as that of the witnesses, and nothing in the record warrants a departure from the panel's subjective judgment.

The Grievance Administrator also asserts that the hearing panel should have given more weight to New York's attorney discipline proceedings. However, this case was not brought as a reciprocal discipline proceeding, where the New York sanction would be relevant as the basis for imposing reciprocal discipline. Instead, the Administrator brought this case based solely on respondent's judgment of conviction. Nevertheless, respondent's two-year suspension in New York is not a final order, and is also not necessarily in line with other sanctions in that state for similar conduct.[8]

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[8] See *In re Mozer*, 60 AD2d 202 (NY 1978) (attorney convicted of a misdemeanor, causing a false entry to be made in the minutes of a meeting of a union, and, taking into consideration his previously unblemished record, public censure was appropriate); *Matter of Micale*, 217 AD3d 8 (NY 2023) (attorney suspended from the practice of law for a period of three months based upon her conviction of the misdemeanor of falsifying business records in the second degree); *In re Corbo*, 76 AD2d 434 (NY 1980) (attorney who pleaded guilty to having offered a false instrument for filing in the second degree, a

misdemeanor, was censured, taking into consideration certain mitigating circumstances); *In re Karp*, 122 AD2d 964 (NY 1986) (attorney convicted of misdemeanor for willfully submitting a false document to the IRS was publically censured); *In re Katcher*, 259 AD2d 128 (NY 1999) (attorneys who pled guilty to reduced charge of class A misdemeanor of fourth degree computer tampering after having been indicted for felonies of unlawful duplication of computer-related material, possession of such material, and third degree grand larceny, were publically censured where they had no prior disciplinary history, they were candid in acknowledging their guilt and expressing remorse, and they submitted character letters); *Matter of Rudgayzer*, 80 AD3d 151 (NY 2010) (even though attorney's offering of a false instrument for filing constituted a "serious crime" under New York law, attorney suspended from the practice of law for two months because there was only one aggravating factor and several mitigating factors); *In re Wong*, 241 AD2d 297 (NY 1998) (one-year suspension imposed on attorney who was convicted of fifth degree insurance fraud for paying someone to dispose of his car, filing two false claims, and only acknowledging his misconduct after learning that police knew car had never been stolen).

Respondent's misconduct consisted of a single misdemeanor conviction for an act that occurred over a decade ago. Although the panel found that respondent's conduct "certainly impugns the reputation of the legal profession," after reviewing the evidence presented, the relevant aggravating and mitigating factors, and considering the applicable ABA Standards as argued by the parties, the panel exercised its independent judgment and determined that a reprimand was appropriate. We see no reason to disturb this finding.

Respondent's misconduct also did not involve client funds and was unrelated to the practice of law, respondent received no personal benefit, and his conduct appears to have been an isolated incident over the course of a nearly 40-year career as an attorney. Accordingly, we affirm the hearing panel's order of reprimand.

NOW THEREFORE,

IT IS ORDERED that the hearing panel's Order of Reprimand issued on September 25, 2024 and effective October 17, 2024, is **AFFIRMED**.

ATTORNEY DISCIPLINE BOARD

By: /s/ Alan Gershel, Chairperson

Dated: April 21, 2025

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

Board Members Jason M. Turkish and Andreas Sidiropoulos, MD were absent and did not participate in this decision.