

STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,

Petitioner/Appellee,

v

Jason Kolkema, P 55936,

Respondent/Appellant,

Case No. 23-74-GA

Decided: July 2, 2025

Appearances

Cora L. Morgan, for the Grievance Administrator, Petitioner/Appellee
Kenneth M. Mogill for Respondent/Appellant

BOARD OPINION

Muskegon County Hearing Panel #2 issued an order of suspension with conditions on August 28, 2024, suspending respondent's license to practice law in Michigan for 180 days with conditions, effective September 19, 2024. Respondent filed a timely petition for review seeking review of the hearing panel's denial of his motion for summary disposition, arguing that the panel erred in considering publicity as an aggravating factor, and that the discipline imposed by the hearing panel is excessive. Respondent also filed a petition for stay, which the Grievance Administrator did not oppose and which was granted by the Board on October 15, 2024.

On February 12, 2025, the Attorney Discipline Board conducted review proceedings in accordance with MCR 9.118, which included a review of the evidentiary record before the panel and consideration of the briefs and arguments presented by the parties. For the reasons discussed below, we reduce the discipline imposed from a 180-day suspension to a 90-day suspension and affirm the conditions imposed by the hearing panel, and as modified in the hearing panel's October 15, 2024 order.

I. Panel Proceedings/Background

On August 14, 2023, the Grievance Administrator filed a formal complaint against respondent which alleged that in August 2022, while respondent was a candidate for judicial office for the 14th Circuit Court in Muskegon County, he assaulted and battered his then-girlfriend, Jessica, using a belt. Witnesses saw the incident, recorded it on video while it happened, and called the police.

Muskegon Police officers responded to the scene of the incident and while searching the apartment where the assault and battery took place, they discovered a black belt on the floor of the bedroom. Thereafter, respondent was charged with domestic violence, a misdemeanor, in a matter titled *People v Kolkema*, 60th District Court Case No. 2022-225269-SM. Respondent's arrest for domestic violence was widely reported in the news.

The formal complaint further alleged that in respondent's answer to the Grievance Administrator's Request for Investigation (GARI) that was issued after the above-referenced incident, respondent disclosed that he voluntarily underwent a State Bar of Michigan Lawyer's and Judge's Assistance Program (LJAP) assessment on January 12, 2023. His answer further indicated it was his understanding that a copy of his LJAP assessment would be provided directly to the Attorney Grievance Commission upon completion of the assessment. LJAP did not provide a copy of the assessment to the AGC, as LJAP policy requires the attorney to sign a waiver permitting LJAP to forward the report to the AGC.

On June 7, 2023, the Administrator's counsel emailed respondent to request a copy of his LJAP assessment. On or about June 12, 2023, respondent spoke with the Administrator's counsel on the phone, at which time she again requested a copy of respondent's LJAP assessment. The complaint alleged that during the call, respondent repeatedly asked why the AGC wanted a copy of his LJAP assessment.

The Administrator's counsel explained that she wanted to review the assessment to determine whether LJAP concluded there were any addiction issues that could have caused the conduct at issue. Respondent also expressed his concern that a copy of his LJAP assessment would be provided to the complainant. Respondent was told that the complainant in his matter was the Grievance Administrator and regardless, was also assured that the AGC does not provide copies of LJAP assessments to complainants. Respondent then indicated he would speak to his brother-in-law, who is an attorney, about the matter. The Grievance Administrator's counsel followed up with respondent via email on June 20, 2023, and again requested a copy of respondent's LJAP assessment by June 26, 2023. Respondent did not respond to the June 20, 2023 email, and as of the filing of the formal complaint, had not provided the AGC with a copy of his LJAP assessment.

The formal complaint charged that respondent failed to participate in establishing, maintaining, and enforcing, and personally observing, high standards of conduct so that the integrity and independence of the judiciary may be preserved, in violation of MCJC Canon 1; engaged in irresponsible or improper conduct and failed to avoid all impropriety and appearance of impropriety, in violation of MCJC Canon 2, section (A); failed to respect and observe the law, in violation of MCJC Canon 2, section (B); engaged in conduct that violates a criminal law of a state or of the United States, an ordinance, or tribal law pursuant to MCR 2.615, in violation of MRPC 8.4(b) and MCR 9.104(5); knowingly failed to respond to a lawful demand for information from a disciplinary authority, in violation of MRPC 8.1(a)(2); 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); and

engaged in conduct that violates the standards or rules of professional conduct adopted by the Supreme Court, in violation of MCR 9.104(4).

On September 19, 2023, respondent filed an answer to the formal complaint. He denied as untrue the allegation that he assaulted and battered his then-girlfriend using a belt.¹ Respondent denied that a battery took place, or that witnesses saw a battery take place; noted that the video lasted for over an hour but the full video content has never been produced, which would have added “greater context to the entirety of the event;” and, noted that his criminal case was resolved with a plea under MCL 769.4a and dismissed upon his successful completion of his probation on August 22, 2023.²

¹ Although respondent's answer stated "respondent denies the same as untrue," to the allegation that "on or about August 18, 2022, during the time he was a candidate for judicial office, respondent assaulted and battered his then-girlfriend. . . using a belt," in later pleadings he clarified that he denied the events of August 18, 2022 constituted a battery.

² MCL 769.4a states, in relevant part:

(1) When an individual who has not been convicted previously of an assaultive crime pleads guilty to, or is found guilty of, a violation of section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, and the victim of the assault is the offender's spouse or former spouse, an individual who has had a child in common with the offender, an individual who has or has had a dating relationship with the offender, or an individual residing or having resided in the same household as the offender, the court, without entering a judgment of guilt and with the consent of the accused and of the prosecuting attorney in consultation with the victim, may defer further proceedings and place the accused on probation as provided in this section. However, before deferring proceedings under this subsection, the court shall contact the department of state police and determine whether, according to the records of the department of state police, the accused has previously been convicted of an assaultive crime or has previously had proceedings deferred under this section. If the search of the records reveals an arrest for an assaultive crime but no disposition, the court shall contact the arresting agency and the court that had jurisdiction over the violation to determine the disposition

of that arrest for purposes of this section.

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(5) Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against the person.

Discharge and dismissal under this section must be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, but it is a prior conviction in a prosecution under sections 81(4) and (5) and 81a(3) of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a. There must be only 1 discharge and dismissal under this section with respect to any individual.

With regard to his LJAP assessment, respondent denied that the assessment was voluntary; admitted that the Administrator's counsel requested a copy both via email and during their subsequent telephone conversation; noted that he was not under the influence of drugs or alcohol when the incident occurred; denied that he was left with any assurance that his assessment would remain confidential; and admitted that he did not respond to the Administrator's counsel's last email again requesting a copy of the assessment and that he had not provided a copy to the AGC as of the date the formal complaint was filed. Finally, respondent denied that he violated any of the canons and rules set forth in the formal complaint.

The matter was assigned to Muskegon County Hearing Panel #2. The panel issued a scheduling order on February 7, 2024 that, in addition to setting deadlines for pre-hearing motion(s) and other deadlines, scheduled the misconduct hearing to take place on April 15, 2024.

On February 15, 2024, respondent filed a motion in limine and a motion for partial summary disposition. Respondent's motion in limine asked the panel to find inadmissible any evidence of publicity as to the underlying incident and to not consider any such evidence in determining what, if any, sanction to impose. The Grievance Administrator filed a response opposing the motion, but noted that "due to respondent's admission in his answer to the formal complaint that the incident was widely reported in the news, Petitioner does not intend to offer any additional evidence of publicity regarding the incident at the hearing." The Administrator also countered that the evidence of respondent's conduct exposed the legal profession to "obloquy, contempt, censure, or reproach" in violation of MCR 9.104(2), and as charged in the formal complaint.

On March 26, 2024, the panel issued an order denying respondent's motion in limine.³ The panel held that the evidence of publicity already set forth was admissible and could be considered in determining what, if any, sanction to impose.

The order further noted that the panel accepted, and codified through their order, the Grievance Administrator's agreement to not offer any additional evidence of publicity regarding the incident.

Respondent's partial motion for summary disposition, filed under MCR 2.116(C)(8), argued that the Administrator failed to state a claim on which relief can be granted as to the allegation that respondent knowingly failed to respond to a lawful demand for information from a disciplinary authority, in violation of MRPC 8.1(a)(2), by failing to provide the Grievance Administrator with a copy of his LJAP assessment. Respondent further argued that the assessment issue should have been submitted to a hearing panel for adjudication, pursuant to MCR 9.113(B)(3), and because it was not, the Administrator did not make a lawful demand, as set forth in MRPC 8.1(a)(2), for production of respondent's LJAP assessment.

The Grievance Administrator filed a response to the motion and argued that respondent's answer to the GARI indicated that his LJAP assessment would be provided to the Administrator's counsel once it was completed. When it was not provided, counsel requested it from respondent, who thereafter refused to provide it, without asserting any constitutional or professional grounds for doing so. As a result, the Administrator alleged that respondent's refusal to provide the assessment violated MRPC 8.1(a)(2), which states, in relevant part, that "...a lawyer in connection with ... a disciplinary matter, shall not ... knowingly fail to respond

³ Although the order was titled "Order Granting, in part, Motion in Limine," the order denied all of the relief respondent sought in his motion.

to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information protected by MRPC 1.6.”

Also on March 26, 2024, the panel issued an order denying respondent's motion for partial summary disposition. The order specifically stated that:

There is no factual question that respondent knowingly refused to provide a copy of the LJAP assessment in question. Nor is there any valid claim that this refusal is attorney-client privileged information protected by MRPC 1.6. Thus, the factual allegations set forth in the formal complaint state a claim on which relief can be granted as to the alleged violation of MRPC 8.1(a)(2). [Order 3/26/24, p 2.]

The parties appeared before the hearing panel for the hearing in this matter on April 15, 2024. Respondent was cross-examined by the Grievance Administrator's counsel and testified on his own behalf. The parties stipulated to admitting the video of the incident into evidence and it was viewed by the panel. (Petitioner's Exhibit 1; Tr 4/15/24, pp 16-18.)

Respondent testified that in August 2022, he was a candidate for Muskegon County Circuit Judge. Respondent won the primary on August 8, 2022, and was campaigning to win the November election. (Tr 4/15/24, p 13.) On August 18, 2022, respondent was in his apartment with Jessica, with whom he had a dating relationship. The day before, respondent testified that he received an email from a man that he suspected had stolen some of his campaign signs. The email implied that Jessica had also been involved in stealing the signs. (Tr 4/15/24, pp 32-33.) Respondent testified that he questioned Jessica about the signs, became angry with her, and had what he described as a “temper tantrum.” During the

argument, Respondent took off his belt and swung the belt “behind” Jessica with the intent to “taunt” and “intimidate” her. Respondent admitted that he swung the belt five times and testified that the belt “grazed” her and hit the bracelet on her wrist, breaking the bracelet. (Tr 4/15/24, pp 13-16, 19-20, 33.)

Respondent admitted that he subsequently pled guilty to domestic violence under MCL 769.4a as a result of the August 18, 2022 incident. The statute allowed the sentence to be deferred, and upon his successful completion of probation, to be dismissed “without a conviction entering on your record.” (Tr 4/15/24, pp 18-19, 23-24.) Respondent was also required to take an anger management class as part of his probation. (Tr 4/15/24, p 35.) When questioned by his counsel, respondent testified that his behavior was “terrible,” “unacceptable,” “embarrassing,” and characterized it as “the worst mistake of his life.” (Tr 4/15/24, pp 34-35.) He further testified that after the incident and subsequent media attention, he lost the election, he lost some friendships, and his business suffered. (Tr 4/15/24, p 38.)

With regard to the request that he provide his LJAP assessment to the Administrator's counsel, respondent acknowledged that he did not provide a copy and did not respond to the Administrator's counsel's last email sent on June 20, 2023, again requesting a copy. (Tr 4/15/24, pp 24-25.) When asked by the panel why he did not want to provide a copy to the AGC, respondent testified that he had a concern for his privacy. (Tr 4/15/24, pp 40-42, 63.)

After the parties' respective closing arguments, the hearing panel took a short recess to deliberate and then advised the parties on the record that they found misconduct had been proven as set forth in the formal complaint in its entirety. They then immediately started the sanction phase of the proceedings. Respondent was again asked why he did not provide a copy of his LJAP assessment

and he again testified that he was concerned about his privacy. (Tr 4/15/24, p 63.) Respondent also called three character witnesses who generally testified as to respondent's honesty and that what they observed on the video of the incident was "out of character" for respondent. (Tr 4/15/24, pp 68, 75.) Prior to any argument about the level of discipline to impose, the panel advised the parties that they wanted to review respondent's LJAP assessment and there was discussion about having a new independent evaluation done. The record was then closed.

On April 18, 2024, the panel issued a post-hearing order that required respondent to provide a copy of his LJAP assessment to the Administrator's counsel no later than 4:00 pm the next day, allowed respondent to file a motion to seal under MCR 8.119(I), and provided respondent 21 days to undergo an additional assessment by an independent provider agreed to by the parties, if he elected to do so. Finally, the parties were ordered to file written closing arguments as to the appropriate sanction to impose.⁴

⁴ The parties subsequently filed a consent motion to seal respondent's LJAP assessment and "any and all mental health records and reports that may be filed and served on the Grievance Administrator in this matter." The panel granted the motion in an order issued on April 22, 2024.

Both parties filed their respective sanction briefs on June 20, 2024. The Grievance Administrator argued that ABA Standards 5.12 and 7.2, both calling for suspension, applied.⁵ As for the violations of the Judicial Canons found by the panel, counsel argued that the panel should consider "Factor 5" as referenced in *In re Brown*, 461 Mich 1291 (2000), which holds that misconduct that occurs spontaneously is less serious than misconduct that is premeditated or deliberated. Counsel argued that Factor 5 applied because respondent's assault of Jessica appeared to have been spontaneous.

As for aggravating factors set forth in ABA Standard 9.22, the Administrator argued that 9.22(d) multiple offenses; 9.22(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; 9.22(f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;⁶ 9.22(g) refusal to acknowledge wrongful nature of conduct; 9.22(i) substantial experience in the practice of law; and 9.22(k) illegal conduct, all applied.

⁵ ABA Standard 5.12 states:

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.

ABA Standard 7.2 states:

Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

⁶ The Administrator's counsel argued that the panel should consider 9.22(f) because "respondent appears to have withheld information from Sean A. Robinson, LPC during the Substance Use Evaluation respondent underwent during the disciplinary process." Specifically, counsel argued that "respondent was deceptive when he failed to disclose to Mr. Robinson that he previously attended inpatient treatment for an Adderall addiction." (Petitioner's Sanction Brief 6/20/24, p 5.)

As for mitigating factors set forth in ABA Standard 9.32, the Administrator argued that 9.32(a) absence of a prior disciplinary record; and 9.32(k) imposition of other penalties or sanctions, applied. Finally, the Administrator's counsel cited *Grievance Administrator v Kevin R. Floyd*, 05-25-JC (ADB 2006), citing *Grievance Administrator v Arnold Fink*, (after remand), 96-181-JC (ADB 2001), lv den 465 Mich 1209 (2001) for the proposition that "suspension is generally appropriate for crimes involving elements of violence," and *Grievance Administrator v Alexander Melnikov*, 15-144-JC; 15-145-GA (ADB 2017) (180-day suspension for guilty plea to two counts of disturbing the peace and assault and battery); *Grievance Administrator v Michael A. Capuzzi*, 17-65-JC (HP 2/21/18) (90-day suspension for conviction of two counts of simple assault and no contest plea to one count of malicious use of a telecommunications device); and *Grievance Administrator v Steven E. Ford*, 04-126-JC (HP 1/4/05) (60-day suspension for former judge convicted of aggravated assault), in support of her request that the panel suspend respondent's license for 180 days and order him to comply with the treatment recommendations set forth in his LJAP assessment.

Respondent acknowledged that he violated his duty to maintain personal integrity as set forth in ABA Standard 5.12, but argued that "because the conduct at issue here was aberrational, it does not seriously adversely reflect on [his] fitness to practice." Respondent further argued that because he was extremely upset when the conduct occurred, his judgment was unquestionably impacted. Respondent maintained that the contact his belt made with Jessica's wrist was unintentional.

Respondent argued that the only aggravating factors that applied were 9.22(i) substantial experience in the practice of law; and 9.22(k) illegal conduct. As for mitigating factors, respondent argued that 9.32(a) absence of a prior

disciplinary record; 9.32(b) absence of a dishonest or selfish motive; 9.32(c) personal or emotional problems; 9.32(d) timely good faith effort to make restitution or to rectify consequences of misconduct; 9.32(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; 9.32(g) character or reputation; 9.32(k) imposition of other penalties or sanctions; and 9.32(l) remorse, all applied.

Respondent cited *Grievance Administrator v Scott W. Powers*, 23-24-JC (HP 2024) (reprimand by consent for no contest plea to domestic violence - aggravated); *Grievance Administrator v Matthew Patrick Salgat*, 16-92-JC; 16-93-GA (HP 2017) (reprimand with conditions for conviction of malicious use of electronic services); *Grievance Administrator v Michael E. Larkin*, 00-184-JC (HP 2001) (reprimand by consent for guilty plea to impaired driving and domestic violence); *Grievance Administrator v James J. Viau*, 96-77-GA (ADB 1997) (Board affirmed reprimand for conviction by no contest plea to assault and battery); *Grievance Administrator v David P. Taylor*, 07-188-GA (2008) (reprimand by consent for no contest plea to allegations he assaulted and battered his spouse); *Grievance Administrator v Mark S. Devenow*, 99-160-JC (2001) (reprimand for convictions of assault and battery, malicious destruction of library books, and trespassing); and *Grievance Administrator v Harold D. Fee, Jr.*, 07-159-JC (ADB 2009) (Board affirmed order of reprimand with conditions for conviction of two counts of domestic violence), in support of his request that the panel issue a reprimand.

Respondent noted that “the underlying conduct was unrelated to [his] practice of law and that the conduct at issue does not in any way call into question [his] competence to practice.” Finally, he disputed that conditions were needed as he already completed anger management treatment in connection with his underlying

criminal case, the conduct was out of character, and he has had no ongoing anger management issues.

The hearing panel's report on both misconduct and sanction was issued on August 28, 2024. The report confirmed that the panel found misconduct as set forth in the formal complaint in its entirety. As for the appropriate sanction to impose, the panel noted that they had now had a chance to review respondent's LJAP assessment and stated:

It documents some history of previous substance abuse and difficulties arising out of his divorce and relationship with his three children from that marriage.

The panel has also reviewed the report of the most recent . . . assessment that respondent was ordered to undergo at the conclusion of the April 15, 2024 hearing, and pursuant to a post-hearing order issued on April 18, 2024.

(Tr 4/15/24, pp 76-86.) It provides no significant new information relevant to our decision. [Report 8/28/24, p 3.]

The panel agreed with the parties that respondent violated his duty to maintain personal integrity and that:

[H]is actions constitute a violation of his duty as a professional to comply with a lawful demand for information, and that his actions violated some of the additional duties he assumed at the beginning of his judicial campaign as prescribed by MCJC Canon 5.

* * *

The parties generally agree that respondent acted knowingly. The panel also agrees. Specifically, the panel finds that respondent acted knowingly when he continued to swing the belt at [Jessica]. Respondent also acted intentionally when he failed to respond to the last email regarding his LJAP assessment.

* * *

Given the widespread news of the conflict, there is little question that respondent's misconduct caused harm to judicial integrity and to the reputation of the legal profession as a whole. [Report 8/28/24, p 4.]

The panel agreed that ABA Standards 5.12 and 7.2 both applied to respondent's conduct. As for aggravating and mitigating factors, the panel found that:

. . . the following aggravating factors under ABA Standard 9.22 . . . [are] applicable: respondent's time as a practicing attorney in Michigan constitutes substantial experience in the practice of law [Standard 9.22(i)]; respondent's handling of the LJAP report constitutes a deceptive practice during the disciplinary process [Standard 9.22(f)]; and, respondent's conduct was illegal [Standard 9.22(k)].

The panel finds the following mitigating factors under ABA Standard 9.32 as applicable: respondent's record is devoid of any prior discipline [Standard 9.32(a)]; the panel weighed the statements of respondent's character witnesses carefully and thinks that respondent generally has a good reputation in the community [Standard 9.32(g)]; respondent did show remorse during the proceeding [Standard 9.32(l)]; and, respondent was indeed subject to the imposition of other penalties and sanctions by virtue of his probation [Standard 9.32(k)]. [Report 8/28/24, pp 4-5.]

Finally, the panel ordered that respondent's license be suspended for 180 days and that he “be supervised by LJAP for a period of one year, including participation in substance abuse and mental health counseling.” An order to that effect was also entered on August 28, 2024, suspending respondent's license to practice law in Michigan for 180 days, effective September 19, 2024.

On September 18, 2024, the Grievance Administrator filed a motion to amend the order of suspension with condition, requesting that the panel amend the condition to include standard conditions typically requested by the Administrator with regard to LJAP. The motion specifically indicated, and the Board's staff confirmed with respondent's counsel, that while respondent generally objects to the LJAP condition, if the condition is to be imposed, he did not object to the form of the Grievance Administrator's proposed modifications of the panel's order.

On October 15, 2024, an order was entered granting the Administrator's motion and the order of suspension with conditions was amended as requested.

II. Discussion

The first issue raised on review is whether the hearing panel erred in denying respondent's motion for partial summary disposition as to the allegation that respondent knowingly failed to respond to a lawful demand for information from a disciplinary authority, in violation of MRPC 8.1(a)(2).

A motion for summary disposition filed under MCR 2.116(C)(8) argues that the opposing party has failed to state a claim on which relief can be granted and that as a result, the claim must be dismissed.⁷ The allegation that respondent violated MRPC 8.1(a)(2) relates to his failure to provide the Administrator's counsel with a copy of his LJAP assessment despite repeated requests that he do

⁷ A motion for summary disposition under MCR 2.116(C)(8) may be granted if the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery *Grievance Administrator v Rostash, Fried & Golden*, 93-117-GA, 93-118-GA, 93-119-GA (ADB 1996), citing *Simko v Blake*, 448 Mich 648; 532 NW2d 842 (1995). All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant. A motion under (C)(8) may be granted only where the claims alleged are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Grievance Administrator v Lisa Jeanne Peterson*, 20-51-GA (ADB 2021), citing *Maiden v Rozwood*, 461 Mich 109, 119 (1999) (quoting *Wade v Dep't of Corrections*, 439 Mich 158, 163 (1992)). When deciding a motion brought under MCR 2.116(C)(8), only the pleadings are considered. *Rozwood, Supra* at 119-120.

so. Respondent maintains that “the assessment issue” should have been submitted to a hearing panel for adjudication, pursuant to MCR 9.113(B)(3), and because it was not, the Administrator did not make a lawful demand as set forth in MRPC 8.1(a)(2), for production of respondent's LJAP assessment.

The relevant portions of MCR 9.113(B) in issue here, state as follows:

(1) A respondent may refuse to answer *a request for investigation* on expressed constitutional or professional grounds.

(3) If a respondent refuses to answer under subrule (B)(1), the refusal may be submitted under seal to a hearing panel for adjudication. If a panel finds that the refusal was not proper, it shall direct the attorney to answer *the request for investigation* within 21 days after its order. [Emphasis added.]

Clearly, MCR 9.113(B) pertains to an attorney's duty to answer a request for investigation (RI), not a subsequent request for further information made by the Grievance Administrator during the investigation of an RI and/or GARI. In this matter, respondent was served with a GARI and timely filed an answer. He did not refuse to answer the GARI or assert constitutional or professional grounds for not doing so. In fact, it is undisputed that in his answer to the GARI, respondent disclosed that he had undergone an LJAP assessment and that he thought a copy would automatically be provided to the AGC by LJAP. That was what prompted the Administrator's counsel to request a copy of the assessment from respondent in the first place. Furthermore, respondent's only expressed reason for not providing a copy of the assessment was his concern that it would be shared with the complainant; a concern quickly dispelled by the Administrator's counsel.

In contrast, MRPC 8.1(a)(2), provides, in relevant part, that:

(a) . . . a lawyer in connection with. . . a disciplinary matter, shall not (2). . . knowingly fail to respond to a lawful demand for information from a . . . disciplinary authority, except that this rule does not require disclosure of information protected by Rule 1.6.⁸
[Footnote added.]

Importantly, MRPC 8.1(a)(2) does not provide that an attorney's knowing failure to respond to a request for information from the Grievance Administrator may be adjudicated by a hearing panel, like an attorney's refusal to answer a RI and/or a GARI, as set forth in MCR 9.113(B)(3). Respondent admitted, both in his answer to the formal complaint and at the hearing, that he did not respond to the Administrator's counsel's second email requesting a copy of his LJAP assessment. (Answer, ¶¶ 25, 26; Tr /15/24, pp 25, 42, 62-63.) He therefore knowingly failed to respond to a lawful demand for information from a disciplinary authority, which forms the basis of a claim that he violated MRPC 8.1(a)(2).

Respondent's insistence that his failure to respond to the Administrator's counsel's follow up email requesting a copy of his LJAP assessment had to first be submitted to a hearing panel for adjudication as “a step necessary to charge respondent with violating Rule 8.1(a)(2),” is simply incorrect. Because paragraphs 15-26 and 27(e) of the formal complaint state a claim on which relief can be granted, it was not error for the panel to deny respondent's motion for partial summary disposition. The hearing panel's ruling in this regard, and the subsequent finding that respondent violated MRPC 8.1(a)(2) as charged in the formal complaint, are affirmed.

⁸ MRPC 1.6 pertains to confidences and secrets of a client and indicates when disclosure of a client's confidential information or secrets is prohibited or allowed by an attorney.

Respondent next argues that the hearing panel erred in considering publicity as an aggravating factor when they were determining the appropriate sanction to impose for respondent's conduct. While acknowledging that the list of aggravating factors set forth in the standards is not exhaustive, respondent argues that the absence of publicity as an enumerated factor can only mean that “the drafters considered publicity not to be relevant to thee (sic) sanction decision.”

As indicated earlier, respondent filed a motion in limine asking the panel to find inadmissible any evidence of publicity as to the underlying incident and to not consider any such evidence in determining what, if any, sanction to impose. The hearing panel denied the motion, noting that respondent admitted in his answer to the formal complaint that his arrest for domestic violence was widely reported in the news, that the formal complaint specifically charged him with exposing the legal profession to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2), and that the Administrator had agreed not to offer any additional evidence of publicity at the hearing.

At the hearing, respondent's own counsel raised the issue when he asked respondent how the incident and attendant publicity of the event impacted his campaign, his practice, and his relationship with friends. (Tr 4/15/24, pp 37-38.) While publicity likely factored into the panel's finding that respondent violated MCJC Canons 1, 2(A) and 2(B), and MCR 9.104(2), there is nothing in the panel's report to show that it factored at all in their decision on sanction. The only reference to publicity contained in the panel's report is in the panel's discussion of “actual or potential injury caused,” as referenced in the theoretical framework of the standards and as set forth in ABA Standard 3.0:⁹

⁹ This framework sets forth questions that a hearing panel is required to answer when imposing sanctions:

- (1) What ethical duty did the lawyer violate? (A duty to the client, the public, the legal system or the profession?);
- (2) What was the lawyer's mental state? (Did the lawyer act intentionally, knowingly, or negligently?);
- (3) What was the extent of the actual or potential injury caused

Given the widespread news of the conflict, there is little question that respondent's misconduct caused harm to judicial integrity and to the reputation of the legal profession as a whole. The panel already ruled that evidence of publicity as to the arrest is admissible and can be used to determine what sanction to impose. [Report 8/28/24, p 4.]

Furthermore, the panel's report does not reference publicity at all in its discussion of the applicable aggravating or mitigating factors. Any inference respondent raises that the panel considered the fact that respondent's conduct was "widely reported in the news," as an aggravating factor is speculative. Regardless, we find that the panel certainly could have considered publicity as an aggravating or a mitigating factor as the lists for both factors set forth in the ABA Standards are not exhaustive. Additionally, and as noted by respondent, there has been at least one prior Board decision in which publicity was considered as a mitigating factor. See *Grievance Administrator v Kenneth Karasick*, DP 55/81 (ADB 1981). Here, respondent was given the opportunity to tell the panel how the media attention affected his campaign, his relationships with his friends and family, his reputation, and his law practice; testimony that was more mitigating than aggravating. The only reference to publicity made by the Grievance Administrator was this passage in the Administrator's sanction brief:

His assault of [Jessica] seriously adversely reflected on his fitness to practice when video of the assault was widely publicized in the news media during the time he

by the lawyer's misconduct? (Was there a serious or potentially serious injury?); and,
(4) Are there any aggravating or mitigating circumstances?

ABA Standard 3.0 then codifies this theoretical framework in its language:

In imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors: (a) the duty violated; (b) the lawyer's mental state; (c) the potential or actual injury caused by the lawyer's misconduct; and, (d) the existence of aggravating or mitigating factors.

was a candidate for judicial office. [Petitioner's Sanction Brief 6/20/24, p 3.]

And, a reference by counsel that “the incident was widely publicized,” in her closing argument as to misconduct at the April 15, 2024 hearing. (Tr 4/15/24, p 50.) No mention of publicity was made during the sanction phase of the hearing.

We find that publicity was not only relevant to establishing whether respondent violated MCJC Canons 1, 2(A) and 2(B), and MCR 9.104(2), but also as it pertained to the harm respondent's conduct caused to the legal profession. We find no error in the hearing panel considering it in either regard or as an aggravating and/or mitigating factor.

The last issue raised on review is whether the 180-day suspension with conditions imposed by the panel is excessive and outside of the range of acceptable discipline for the conduct that occurred. We note at the outset an absence of any real explanation by the Grievance Administrator and the panel why either believed that a suspension warranting reinstatement under MCR 9.123 and 9.124 was necessary here.

Respondent acknowledges that the panel correctly found that ABA Standard 5.12, calling for suspension, applied to respondent's assaultive conduct, but then argues that the panel incorrectly applied ABA Standard 7.2, as that standard simply does not apply to the conduct that occurred in this matter. The “preamble” to the standards set forth in ABA Standard 7.0 (Violations of Duties Owed As A Professional) states:

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 false or misleading communication about the lawyer or the lawyer's services, improper communication of fields of practice, improper solicitation of professional employment from a prospective client, unreasonable or improper fees, unauthorized practice of*

law, improper withdrawal from representation, or failure to report professional misconduct. [Emphasis added.]

The Administrator argued that Standard 7.2 applied “because respondent knowingly refused to respond to an email from petitioner's counsel, requesting a copy of his LJAP assessment, which caused potential injury to the profession and to the system of attorney discipline.” (Petitioner's Sanction Brief, 6/20/24, p 3.) Respondent's sanction brief only referenced Standard 5.12. (Respondent's Sanction Brief 6/20/24, p 5.) The panel ultimately found that both standards applied. (Report 8/28/24, p 4.)

The Administrator argues that it was appropriate for the panel to consider ABA Standard 7.2 because “failure to cooperate with disciplinary authorities” is included in Standard 7.2. (Petitioner's Brief, p 12, fn 4.) However, we note the statement that the “failure to cooperate with disciplinary authorities” can subject a lawyer to suspension under Standard 7.2 is referenced in the annotations, not the standard itself. Furthermore, and as noted by respondent, MCR 9.103(C) specifically excludes a respondent from the duty to assist and cooperate with the Grievance Administrator “in the investigation, prosecution, and disposition of a request for investigation or proceeding under this subchapter.”

Ultimately, we do not find that it was improper for the panel to consider ABA Standard 7.2 as “the standards are not designed to propose a specific sanction for each of the myriad of fact patterns in cases of lawyer misconduct.” Furthermore, the standards do not account for multiple charges of misconduct:

The ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations; it might well be and generally should be greater than the sanction for the most serious misconduct. [ABA Standards for Imposing Lawyer Sanctions, p 6.]

It is undisputed that the most serious instance of misconduct that occurred in this matter was respondent's assault on Jessica, and both parties agree that the panel correctly found that Standard 5.12 applied to that conduct. However, as prior precedent illustrates, the sanction imposed for assaultive behavior has historically resulted in a reprimand or short suspension.

The Board does not traditionally 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). Furthermore, the Board's responsibility to ensure consistency and continuity in discipline imposed under the ABA Standards and case law necessarily means that the Board may not always afford deference to a hearing panel's sanction decision, and that the Board 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 Saunders V. Dorsey*, 02-118-AI; 02-121-JC (ADB 2005).

In this matter, neither the Grievance Administrator's sanction brief nor the panel's report provide much insight as to why they both believed a 180-day suspension was appropriate here. In fact, the only case cited by the Administrator where a 180-day suspension was actually imposed by a hearing panel and affirmed by the Board for the respondent's conviction of disturbing the peace and assault and battery, *Grievance Administrator v Alexander Melnikov*, 15-144-JC; 15-145-GA (ADB 2017), can easily be distinguished from this matter. In *Melnikov*, the hearing panel specifically stated the reasons why they believed a 180-day was appropriate:

On at least two separate occasions, respondent behaved in a grossly vulgar and antisocial manner. He did this by his own admission, when he was both severely intoxicated and when, according to his testimony, he was completely sober. (Tr 4/14/16, pp 21-22, 24.) His conduct since being placed on probation for two separate crimes demonstrates clear evidence that he is unremorseful. His conduct the day of the hearing, both by his tardiness and remarkable lack of preparation, drew understandable comment from all of the panel members. Respondent himself has demonstrated highly questionable skills to allow for continuation in the practice of law without substantial discipline and oversight. (7/28/16 Report, p 4.)

* * *

The panel found that a suspension longer than 179 days is appropriate in light of the number of applicable aggravating factors [including] respondent's failure to disclose to the Grievance Administrator and the panel that he was the subject of probation violation hearings in both underlying criminal matters and that it was because of one of those hearings, not simply an "appointment" that ran late, that respondent was late for his disciplinary hearing on April 14, 2016. [*Id.*, at pp 2-3.]

The other cases cited by both parties demonstrate that reprimands and suspensions well under 180 days have been imposed for similar conduct and importantly, in cases in which the respondent attorney has prior discipline, has unsuccessfully completed criminal probation, and/or has exhibited a lack of remorse.

As recently as December 2024, the Board heard a case on review in which the Grievance Administrator requested that the hearing panel's order of a 30-day

suspension with conditions be affirmed for a respondent that was convicted of misdemeanor domestic violence. See *Grievance Administrator v Daniel J. Lehman*, 23-39-JC; 23-40-GA (ADB 2025).¹⁰ Like respondent here, Respondent Lehman pleaded guilty and was given a deferred sentence under MCL 769.4a. However, unlike this matter, Respondent Lehman's deferred sentence was subsequently revoked when he committed another more serious act of domestic violence against his spouse and consumed alcohol while on probation.¹¹

In this matter, respondent has no prior disciplinary offenses and was remorseful for his conduct at the hearing. While we do not believe that the words “temper tantrum” adequately describes the conduct that occurred here, respondent did characterize his own conduct as “horrible behavior” and his three witnesses all testified that what they observed on the video of the incident was “out of character” for respondent. (Tr 4/15/24, pp 34, 68, 75.) In addition, respondent successfully completed his criminal probation and an anger management class. More importantly, there is no evidence that respondent has engaged in similar conduct since the August 2022 incident occurred.

Taking all of that into consideration, and absent a specific explanation from the Administrator as to why a 180-day suspension is necessary in this matter, we find it appropriate to reduce the suspension imposed by the panel to a 90-day

¹⁰ Respondent Lehman petitioned for review of the hearing panel’s order of suspension with condition. The Grievance Administrator did not file a petition for review or a cross-petition for review.

¹¹ We affirmed the 30-day suspension and LJAP condition imposed by the hearing panel in an order issued April 9, 2025, but specifically noted that Respondent Lehman's conduct was highly concerning and we strongly encouraged the Grievance Administrator to take any and all action to enforce the panel's order if Respondent Lehman subsequently fails to comply with the LJAP condition.

suspension, which is a length of time consistent with prior precedent for similar conduct and within the appropriate range of sanctions imposed for this type of violation.

III. Conclusion

MRPC 8.1(a)(2) does not provide, or require, that an attorney's knowing failure to respond to a request for information from the Grievance Administrator be adjudicated by a hearing panel before a violation of the rule can be charged.

The formal complaint filed by the Grievance Administrator stated a claim upon which relief can be granted, thus the hearing panel did not err in denying respondent's motion for partial summary disposition. The hearing panel's ruling in this regard, and the subsequent finding that respondent violated MRPC 8.1(a)(2) as charged in the formal complaint, is affirmed.

The media attention and publicity that occurred as a result of the video of respondent's assaultive conduct was relevant to establishing a violation of MCJC Canons 1, 2(A) and 2(B), and MCR 9.104(2), and as it pertained to the harm respondent's conduct caused to the legal profession. We find that the hearing panel did not err in considering it in either regard or as an aggravating and/or mitigating factor.

Finally, in the absence of an explanation as to why a 180-day suspension is an appropriate sanction to impose for the conduct that occurred here, we reduce the suspension imposed by the hearing panel to a 90-day suspension and affirm the conditions imposed by the hearing panel, and as modified in the hearing panel's October 15, 2024 order, in their entirety.

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

Board member Jason M. Turkish was absent and did not participate.