STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,

Petitioner/Appellee,

v

Craig A. Tank, P 58360,

Respondent/Appellant,

Case No. 22-91-GA

Decided: July 16, 2025

Appearances

Michael K. Mazur, for the Grievance Administrator, Petitioner/Appellee
Robert A. Kuhr and James C. Bishai, for Respondent/Appellant

BOARD OPINION

On January 31, 2025, Tri-County Hearing Panel #101 issued an order of disbarment and restitution, disbarring respondent from the practice of law in Michigan effective March 1, 2025, and ordering respondent to pay a total of $21,400.00 in restitution. On February 21, 2025, respondent timely filed a petition for review of the hearing panel's January 31, 2025 order, seeking review of the hearing panel's imposition of disbarment and the order of restitution. Respondent also filed a petition for stay on February 28, 2025, which was denied by the Board on March 7, 2025.

On May 14, 2025, the Attorney Discipline Board conducted a review proceeding in accordance with MCR 9.118, which included a review of the whole record before the panel, consideration of briefs filed by the parties, and arguments presented

via videoconferencing by counsel. For the reasons discussed below, we decrease the discipline imposed from disbarment to a four-year suspension, affirm the order of restitution, and modify the order of discipline to add conditions.

I. Factual Background

The Grievance Administrator filed a 12-count formal complaint against respondent on December 2, 2022. On April 18, 2024, respondent tendered an unconditional plea of no contest to all of the allegations in the formal complaint; as such, misconduct is not at issue on review. However, to determine if the sanction imposed is appropriate for the misconduct found, the facts and circumstances underlying each count must be examined.

Count One

In May 2017, respondent was retained by Dawn Williams to represent her boyfriend, Michael Sienkiewicz, in a felonious assault case. Although no written fee agreement was signed, Ms. Williams paid respondent $2,500. Respondent entered an appearance but failed to attend both a preliminary exam conference and the preliminary exam set for July 17 and 24, 2017. Another attorney appeared in place of respondent on July 24, but solely to request an adjournment. Further, respondent told Mr. Sienkiewicz and Ms. Williams he would file personal protection orders on their behalf, but failed to do so. On August 9, 2017, in an unrelated disciplinary case,[1] respondent agreed to a 179-day suspension of his law license effective September 1, 2017, but did not inform Mr. Sienkiewicz or the court, nor did he withdraw from the case. Respondent continued communicating with the clients during his suspension and refused to refund legal fees when asked, falsely claiming to have attended four court dates. He also submitted a document allegedly acknowledging his suspension, which Mr. Sienkiewicz claimed was forged. Ms.

[1] See *Grievance Administrator v Craig A. Tank*, 16-19-JC; 16-20-GA.

Williams described her interactions with respondent as "weird," noting he often asked her to drive him to non-case-related locations and failed to discuss the case. (Tr 7/23/24, pp 52-53.) She ultimately terminated the representation due to inaction, but respondent never refunded any portion of the payment.

Count Two

In 2018, Annette Dykes hired respondent to file a 6.500 motion[2] on behalf of her daughter, Yolanda Dykes, who was serving a life sentence for first-degree murder. Although Annette paid respondent $2,500, a written fee agreement was not signed. Respondent failed to visit or communicate with Yolanda throughout 2018 and did not obtain her medical records as he claimed. Although respondent claimed he contacted Yolanda by telephone in 2018, prison records show he only contacted her between July 2019 and February 2020. During the two years he represented Yolanda, respondent never filed any motions or other legal documents on her behalf. Although the formal complaint asserted that respondent did not refund the $2,500 or provide an invoice for his work, Yolanda testified that $2,500 was returned to her family. (Tr 7/23/24, p 73.)

Count Three

In 2018, Stephanie Collins hired respondent to file a 6.500 motion for her son, Mark Blount, who was serving a sentence for involuntary manslaughter and driving while license suspended causing death. Ms. Collins paid respondent a total of $1,500 in installments, but did not receive a written fee agreement or receipts for the payments. Respondent did not indicate or explain that the money was a "nonrefundable fee" until later in an email. Further, despite receiving payment, respondent never visited Mr. Blount, had only one brief phone call with him, and made no progress on the case. Ms. Collins terminated respondent's

[2] A "6.500 motion" is based on Michigan Court Rule 6.500, and allows a defendant to challenge a criminal conviction or sentence after all direct appeals have been exhausted.

representation in November 2018 and repeatedly requested a refund, which respondent initially promised but never provided. Respondent ultimately ignored Ms. Collins and never returned any unearned fees, provided an invoice, or shared any documents related to Mr. Blount's case. (Tr 7/23/24, p 84.)

Count Four

In 2018, Mark Foster, dissatisfied with the outcome of his assault and battery case, hired respondent to appeal his sentence after respondent claimed he could secure a more favorable outcome with a particular judge. Mr. Foster paid respondent $3,500, but respondent failed to file the appeal as promised and gave misleading updates over several months. When he eventually filed the appeal, it was incomplete and procedurally flawed, leading to a notice of intent to dismiss. Although the case was ultimately remanded, the resentencing resulted in nearly the same outcome.

Respondent then persuaded Mr. Foster to pay an additional $1,500 for a second appeal, which he failed to file on time. The second appeal was dismissed as untimely, and respondent did not follow through on his promise to challenge the dismissal. Despite repeated requests, respondent never refunded any of the $5,000 paid nor provided an invoice. Mr. Foster described his experience as "absolutely horrible," detailing repeated lies, missed court dates, verbal abuse, and emotional and financial distress over the two-year ordeal. (Tr 7/23/24, pp 37-39.)

Count Five

On May 4, 2019, Sandra Utash was assaulted by her husband, Thomas Utash, leading to his arrest for domestic violence. On May 13, 2019, Mrs. Utash, along with her attorney, contacted respondent to ask if he would meet with Mr. Utash to determine if he was willing to enter inpatient alcohol rehabilitation instead of remaining in jail. Respondent agreed to meet with Mr. Utash for this limited purpose. Respondent later told Mrs. Utash that Mr. Utash had agreed to enter

treatment at Brighton Hospital, and presented a napkin allegedly written on by Mr. Utash requesting she give respondent $5,000 to facilitate his release and treatment. Mrs. Utash paid the retainer from a joint account, but received no confirmation that respondent had contacted the hospital. When she attempted to terminate respondent's services on May 22, 2019, he refused to communicate with her, claiming to represent Mr. Utash in the domestic violence case, despite the absence of an engagement agreement or any discussion of conflicts of interest. Mrs. Utash's daughter, Jill Stieber, also attempted to terminate the representation and requested an accounting and refund, but respondent remained uncooperative. In response to a request for investigation filed by Mr. and Mrs. Utash, respondent produced an engagement agreement purportedly signed by "T. Utash," though Mrs. Utash testified no such document was ever signed. Respondent falsely claimed Mrs. Utash wanted him to represent her husband and that the retainer was for legal services. He never refunded any of the $5,000 or provided an invoice. (Tr 7/23/24, p 163.)

Count Six

In June 2019, Earnest Robinson, who had a significant felony history, was charged with fleeing and eluding. While in jail, he sought legal representation from respondent, and his girlfriend (now wife), Rhonda Weston, paid respondent $1,000. Respondent sent Ms. Weston an email outlining a nonrefundable $2,500 fee, but failed to explain the terms or obtain signatures from either party. Although respondent filed a substitution of counsel, attorney James Bishai appeared in court on Mr. Robinson's behalf. Respondent then falsely told Ms. Weston that an offer of probation was possible, leading her to pay the full $2,500. On August 7, 2019, respondent claimed he would visit Mr. Robinson to discuss a new reduced sentence offer but failed to follow through, and missed multiple subsequently scheduled jail visits. Jail visitation records show respondent visited Mr.

Robinson only one time, on August 18, 2019. Mr. Robinson thereafter terminated respondent's services, and on September 18, 2019, filed a grievance against him. In response, respondent falsely stated he had met with Mr. Robinson multiple times and denied discussing sentence reductions. As of the filing of the formal complaint, respondent had not refunded any portion of the $2,500 or provided an invoice for his services. (Tr 7/23/24, pp 120-121.)

Count Seven

Delano Ross was charged with conspiracy to commit armed robbery and extradited to Michigan in July 2019. Dissatisfied with his initial attorney, Mr. Ross contacted respondent for legal representation. Respondent required payment before meeting with Mr. Ross, leading Mr. Ross's girlfriend, Patrice Miller, to pay respondent $2,000 in installments from September 15-29, 2019, without a signed engagement or retainer agreement. Although respondent visited Mr. Ross three times, he never filed an appearance, contacted the U.S. Attorney's Office for discovery, or communicated with prior counsel. He failed to appear for a hearing on October 15, 2019, resulting in the court appointing a new attorney for Mr. Ross. When asked for a refund of the $2,000 retainer paid by Ms. Miller, respondent demanded a written authorization from Mr. Ross before returning any funds to Ms. Miller.

Respondent later admitted that he was suspended from the practice of law in the U.S. District Court for the Eastern District of Michigan during the period he was engaged to represent Mr. Ross, and that he did not speak to prior counsel, file an appearance, or file any motions. Although respondent claimed to have earned $960 of the retainer and repaid $1,000 to Ms. Miller, she testified that he did not provide an invoice for his work or a refund. (Tr 7/23/24, pp 167-168, 170-172.) Mr. Ross testified that his experience with respondent was "horrible," citing lack of communication, unprofessional behavior, and the disappearance of

his case documents, including a discovery package he gave to respondent. (Tr 7/23/24, pp 182-185.) He also testified that he was unaware of respondent's suspension until after full payment had been made. (Tr 7/23/24, p 184.)

Count Eight

In 2019, Pedro Sotuyo was arrested for driving under the influence and later charged with operating a motor vehicle while intoxicated (OWI). On October 30, 2019, he signed an engagement agreement with respondent and paid a non-refundable $750 fee. In early November 2019, he paid respondent an additional $700. Although his case was scheduled for an arraignment and pretrial on November 20, 2019, respondent advised Mr. Sotuyo not to attend, claiming he would handle it. (Tr 7/23/24, pp 126-127.) However, respondent never entered an appearance or appeared at the arraignment and pretrial, leading to a bench warrant for Mr. Sotuyo's arrest. Respondent again promised to resolve the matter at a December 2, 2019 hearing, but failed to appear. As a result, Mr. Sotuyo was arraigned, required to post a $1,000 bond, and assigned a public defender. He then terminated respondent's services and requested a refund. In response to the request for investigation filed against him by Mr. Sotuyo, respondent admitted he intentionally avoided filing an appearance due to concerns about scheduling conflicts. Although the formal complaint stated no refund had been issued, Mr. Sotuyo testified that he eventually received a partial refund of either $700 or $750. (Tr 7/23/24, p 127.)

Count Nine

In 2019, Michael Robinson-Brown was charged with multiple serious offenses, including armed robbery and assault with intent to commit murder. His mother, Zinika Robinson, paid respondent $5,000 in November 2019 for legal representation and later an additional $250 for a Covid-related release motion. No engagement or fee agreement was signed by either Ms. Robinson or Mr. Robinson-Brown. Throughout 2020, Mr. Robinson-Brown requested that respondent file motions for

a speedy trial, bond, and an evidentiary hearing, but respondent failed to file anything and falsely claimed that motions had been filed and hearing dates were set. Respondent never appeared in court with Mr. Robinson-Brown during 2019 or 2020. In March 2021, Mr. Robinson-Brown filed a grievance against respondent. In response, respondent confirmed he was paid $250, but claimed it was to explore a bond modification. He also included an undated note allegedly written by Mr. Robinson-Brown that stated he only filed the grievance against respondent because he was told it would help his appeal, but Mr. Robinson-Brown denied writing the note. Respondent also did not visit him until May or June 2021, nearly 18 months after being retained, and did not file anything on his behalf until August 23, 2021.

Count Ten

In 2012, Lionel Turner was sentenced to 76 months to 30 years in prison after pleading no contest to assaulting a prison employee and being a fourth habitual offender. In June 2020, his mother, Anita Gilstrap, paid respondent $1,500 to prepare and file a 6.500 motion, with an additional $1,000 paid later, bringing the total paid to $2,500. (Tr 7/23/24, pp 195-196.) Respondent acknowledged the agreement by email. In November 2020, respondent falsely claimed that the motion had been filed and claimed to have attended multiple hearings in December 2020 and January 2021, though neither Mr. Turner nor the Court had any record of these hearings. In March 2021, respondent told Mr. Turner that he had spoken to a judge about reducing the habitual offender charge and again stated that the 6.500 motion had been filed. When Mr. Turner expressed doubt and requested a refund, respondent became verbally abusive and withdrew as counsel, claiming the fees were nonrefundable. Respondent later refunded $2,000 via cashier's check to Mr. Turner in March 2021, but did not explain why he kept $500 or provide an invoice for his services.

Count Eleven

In August 2020, Christopher McDaniel retained respondent to represent him in a larceny case, paying him $1,450, which respondent failed to deposit into his IOLTA as required. Although respondent made several promises to transport Mr. McDaniel to and from court for hearings, he failed to follow through on multiple occasions, including on September 2, 9, 11, and 14, 2020. He eventually took Mr. McDaniel to his arraignment on September 16, 2020. However, on November 13, 2020, respondent gave Mr. McDaniel the wrong Zoom information for a hearing, which resulted in him missing his court date and a bench warrant being issued. Respondent continued to fail to follow through on transportation promises, including for hearings on December 4 and 15, 2020. After catching respondent in a lie about his whereabouts on December 15, 2020, Mr. McDaniel confronted respondent via text, who responded by withdrawing from the case. As of the filing of the formal complaint, respondent had not refunded any unearned fees or provided an invoice for his work, and admitted he deposited Mr. McDaniel's funds into his personal account.

Count Twelve

Respondent was served with multiple requests for investigation between 2017 and 2021, related to seven different clients discussed above. He failed to respond within 21 days, as required by MCR 9.113(A), although he answered some after he was given a ten-day extension. On November 19, 2020, the Grievance Administrator served a subpoena requiring respondent to give a sworn statement and produce complete client files for several matters. During the statement, respondent failed to provide the requested files and, despite stating he would submit additional information later, he had not done so as of the filing of the formal complaint.

II. Panel Proceedings

On April 18, 2024, a misconduct hearing was held during which respondent pled no contest to all allegations in the formal complaint. The parties, through their respective counsel, placed a handwritten stipulation on the record. The stipulation confirmed respondent's no contest plea, asked the panel to consider a disciplinary sanction which is reasonable under the circumstances, including a reprimand or a suspension up to 179 days (although it was acknowledged that the panel was not bound by these suggestions), requested reasonable restitution, recommended requiring respondent to attend and complete any appropriate programs, and asked for a deferred effective date of any discipline. Respondent then testified under oath that he was pleading no contest to all of the allegations in the formal complaint, freely and voluntarily, and that he understood the panel was free to impose any sanction it deemed appropriate. The handwritten stipulation was admitted into evidence. (Tr 4/18/24, p 18; Respondent's Exhibit 1.)

Based on respondent's no-contest plea, the panel found that respondent engaged in the following misconduct: neglected a legal matter entrusted to the lawyer, in violation of MRPC 1.1(c) (Counts One through Eleven); failed to seek the lawful objectives of a client, in violation of MRPC 1.2(a) (Counts One through Eleven); failed to act with reasonable diligence and promptness, in violation of MRPC 1.3 (Counts One through Eleven); failed to keep a client reasonably informed about the status of a matter and comply promptly with a client's reasonable requests for information, in violation of MRPC 1.4(a) (Counts One through Eleven); created a conflict of interest, and failed to detail the conflict or seek consent after consultation, in violation of MRPC 1.7 (Count Five); misappropriated funds by failing to deposit them in an IOLTA and withdraw them as earned, in violation of MRPC 1.15(d) and (g) (Count Eleven); failed to take reasonable steps to protect a client's interests upon termination of representation, such as failing to refund any advance payment of fee that has not been earned, in violation of MRPC 1.16(d)

(Counts One through Eleven); engaged in the unauthorized practice of law by holding himself out as an attorney to practice in the Eastern District of Michigan, in violation of MRPC 5.5(b)(2) (Count Seven); knowingly failed to respond to a lawful demand for information, in violation of MRPC 8.1(a)(2) (Count Twelve); engaged in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, in violation of MRPC 8.4(b) (Counts One through Eleven); engaged in conduct prejudicial to the administration of justice, in violation of 8.4(c) and MCR 9.104(1) (Counts One through Twelve); engaged in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2) (Counts One through Twelve); engaged in conduct that is contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3) (Counts One through Twelve); made a knowing misrepresentation of facts or circumstances surrounding a request for investigation or complaint, in violation of MCR 9.104(6) (Counts One, Two, and Eleven); failed to timely answer a request for investigation in the time permitted, in violation of MCR 9.104(A)(7) and MCR 9.113(B)(2) (Count Twelve); and violated an order of discipline by holding himself out as a lawyer after a suspension, in violation of MCR 9.104(9) and
MCR 9.119(E) (Count One).

Sanction hearings were subsequently held on July 23, 2024, and October 22, 2024. Exhibits regarding respondent's prior disciplinary offenses over the past 20 years were introduced, which included contractual probation, several admonishments, a reprimand and restitution, and a 179-day suspension with conditions. The panel then heard testimony from several witnesses, and allowed each party to make a closing statement.

The hearing panel concluded:

To summarize, and after consideration of the allegations in the Formal Complaint and the testimony and evidence in the sanctions phase, the Panel finds that the duties Respondent owed and violated in Counts One through Eleven were to 11 separate clients. Respondent undertook a duty to each of those clients when, after discussing their legal problems with them, he accepted legal fees from them, and represented to each of them, expressly or impliedly, that he would undertake and complete their desired legal services. Respondent also owed a duty to the legal profession in Counts One through Eleven to conduct himself in a manner which would not expose the profession to dishonor ("obloquy"), contempt, censure, or reproach. Respondent undertook and violated duties to the justice system not to cause undue delay in the proceedings and to the adversarial system to zealously protect the interests of a party.

Further, Respondent's actions in Counts One through Three and Five through Eleven were intentional. In each of his exchanges with those clients, he consciously represented, either expressly or impliedly, that he would undertake and complete representation in specifically identified legal proceedings; and his failure to perform those services was not a product of poor memory; the failure to do so was knowing and willful. As to Count Four, Mark Foster, after accepting a retainer to file a second appeal, Respondent filed that appeal, but only after the jurisdictional deadline had passed, causing that appeal to be dismissed. In this respect, his conduct was negligent or carried out without a conscious effort to cause that result.

Finally, the Panel finds that, in addition to the loss of unearned fees, the clients in Counts One through Eleven were injured in their reasonable belief that they had retained Respondent to represent them, based on Respondent's acceptance of attorney fees from them, and from other express or implied representations as described in the Formal Complaint, in the inevitable time and effort in preparing for matters which never

> materialized, and, with the exception of Count Four, Mr. Foster, who had exhausted his legal remedies, in establishing new attorney-client relationships. Respondent's conduct also harmed the legal profession as a whole by exposing it to dishonor ("obloquy"), contempt, censure and reproach. [Sanction Report 01/31/25, pp 16-17.]

After considering the ABA Standards for Imposing Lawyer Sanctions, including aggravation and mitigation, the hearing panel concluded that disbarment was appropriate, and ordered restitution in the total amount of $21,400.00. An order of disbarment and restitution was issued on January 31, 2025, indicating respondent's disbarment would be effective March 1, 2025.

III. Discussion

Respondent first argues that he has been prejudiced because the formal complaint combined multiple grievances filed at different times and by different parties. Such an assertion, however, is based on an erroneous reading of MCR 9.114.

MCR 9.114(A)(1)-(3) provides the following actions that the Grievance Administrator can take after an answer is filed or the time to file an answer has expired: (1) dismiss, (2) refer the matter to the commission for review, or (3) close the file administratively. Respondent claims that because the court rule uses the singular term "matter," each allegation of misconduct must be charged and tried in separate actions. This is a gross misinterpretation of the rule. Although each grievance filed against an attorney is individually investigated, verified, and supported, there is simply no requirement that each grievance be charged and tried separately.

Further, the filing of a formal complaint with multiple counts and involving multiple unrelated complainants is commonplace for the sake of efficiency. See

Grievance Administrator v Chester Curtice, Case No. 260-88 (1988) (involved 45 counts and 26 separate and distinct clients, for misconduct occurring in four different years); *Grievance Administrator v Richard J. Collins*, 95-227-GA (1995) (involved 34 counts and 14 separate and distinct clients, for misconduct occurring in three different years); *Grievance Administrator v Andrew Morgan*, 96-13-GA (1996) (involved 36 counts and 15 separate and distinct clients, for misconduct occurring in three different years); *Grievance Administrator v Donald J. Neville*, 23-22-JC; 23-23-GA (2023) (involved eight counts and seven separate and distinct clients, for misconduct occurring in two different years); *Grievance Administrator v Brian T. Dailey*, 22-77-GA (ADB 2025) (involved 12 counts and 11 separate and distinct clients, for misconduct occurring in eight different years). In addition, many times matters are consolidated after formal charges are filed, for the same reason. In other words, it would not be conducive to expediency or efficiency if disciplinary matters were separated as respondent suggests.

Respondent also asserts that the hearing panel erred in failing to conduct an evidentiary hearing to determine whether counsel for the Grievance Administrator acted in bad faith during the disciplinary proceedings. This argument can be easily disposed of because there is a remedy available to respondent if he believes counsel for the Grievance Administrator acted inappropriately: he can file a grievance. The only issues before the panel here was whether respondent committed the misconduct charged, and if so, what was the appropriate sanction.

Further, respondent's argument that the Grievance Administrator acted in bad faith by requesting disbarment at the sanction phase of the proceedings, instead of following the alleged stipulation between the parties, is not supported by the record. Although it is true that counsel for the Grievance Administrator asked for disbarment, there was nothing inappropriate about such a request. The "stipulation" upon which respondent relies was a hand-written document, drafted

two hours after the misconduct hearing was supposed to start, and was signed only by respondent and his counsel. In fact, it was confirmed on the record that respondent understood that, although there had been discussions between counsel, counsel for the Grievance Administrator had not signed any documents or agreed to any specific sanction. (Tr 4/18/24, pp 9-10; Respondent's Exhibit 1.) Further, to make the record perfectly clear, respondent was voir dired by his own counsel. (Tr 4/18/24, pp 13-14.)

Counsel for the Grievance Administrator was under no obligation to request a maximum sanction of a 179-day suspension, nor was the hearing panel bound by either the stipulation or the sanction requested by the Grievance Administrator. As such, the hearing panel did not commit any error in this regard.

Respondent's primary argument on review is that the sanction imposed is not proportionate to the misconduct found. We disagree. In exercising its overview function to determine the appropriate sanction, the Board possesses "a greater degree of discretion with regard to the ultimate result." *Grievance Administrator v Alexander H. Benson*, 08-52-GA (ADB 2010), citing *Grievance Administrator v Eric S. Handy*, 95-51-GA (ADB 1996). See also *Grievance Administrator v Irving A. August*, 438 Mich 296 (1991). This greater discretion to review and, if necessary, modify a hearing panel's decision as to the level of discipline, is based upon a recognition of the Board's overview function and its responsibility to ensure a level of uniformity and continuity. *Grievance Administrator v Brent S. Hunt*, 12-10-GA (ADB 2012), citing *Matter of Daggs*, 411 Mich 304 (1981). However, if the discipline ordered is not inappropriate, the Board will frequently defer to the hearing panel's assessment of the proper level of discipline to be imposed. *Grievance Administrator v Lopatin*, 462 Mich 235, 238, 247 n 12 (2000).

As for whether disbarment is "in proportion" to respondent's conduct, respondent claims that all of the above matters were just clients disagreeing with respondent or individuals that simply wanted to take advantage of respondent's time and not pay him for his efforts. However, as is clear from the record, this is not merely a difference of opinion between a lawyer and a client. To the contrary, respondent engaged in conduct that involved multiple client matters over an extensive period of time, and consisted of a multitude of misconduct as summarized above, including taking money from clients with what seems to be a complete lack of intent to do any of the work. Although counsel claims that respondent did complete some work on the files, there is no evidence in the record of this, and respondent specifically pled no contest to all of the allegations in the formal complaint, and thus cannot now challenge the findings of misconduct.

In deciding the appropriate discipline to be imposed, the hearing panel properly utilized the American Bar Association (ABA) Standards for Imposing Lawyer Sanctions as instructed by the Court in *Lopatin, supra*. Pursuant to the ABA Standards, a hearing panel is required to examine the duty respondent violated, respondent's mental state, and the actual or potential injury caused by respondent's conduct. Next, the Standards' recommended sanctions are considered based upon the answers to these questions. *Id.* at 240; ABA Standards, pp 3, 4-5. 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*, Case No. 99-102-GA (ADB 2001) (citing *Lopatin, supra* at 248 n 13).

The sanction report indicates that the hearing panel meticulously went through all of the required steps set forth in *Lopatin*, including reviewing the

aggravating and mitigating factors set forth in ABA Standards 9.22 and 9.32. (Sanction Report, pp 13-24.) The hearing panel found that respondent's misconduct falls under ABA Standard 4.61 and 7.1.[3] The panel concluded:

> . . . With regard to duties owed to his clients, Standard 4.61 [Lack of Candor] is applicable to Counts One through Eleven. Respondent violated duties owed to his clients in all of these counts to avoid fraud, deceit, or misrepresentation. There was also potential serious injury because in seven of the eleven counts, criminal cases were pending when Respondent accepted legal fees with the express or implied understanding that he would undertake representation of those clients. In addition to the lost fees paid in reasonable reliance on Respondent's misrepresentations, the clients experienced undue delays in those proceedings and compromised the adversarial system's reliance on Respondent to zealously protect the interests of his clients. As to Count Six, Earnest Robinson, in addition to lost unearned fees, there was injury in Respondent's representations, which appeared to have been designed to encourage fee payments and which would reasonably have misled Mr. Robinson into a false impression as to what his sentence might be and when he could be released from prison.

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[3] Standard 4.61 provides that "[d]isbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potential serious injury to a client." Standard 7.1 states that "[d]isbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system."

* * *

ABA Standard 7.1 [Violations of Duties Owed as a Professional] is also applicable here. Respondent's professional conduct with the intent to obtain a benefit for himself in Counts One through Eleven, as described above and in the Formal Complaint, place this conduct in the disbarment category. *In re Donald J. Neville*, Case Nos. 23-22-JC; 23-23-GA (ADB 2024), the Attorney Discipline Board found disbarment as the appropriate level of discipline in a similar case, stating:

> The formal complaint here is replete with instances where respondent abandoned the representation of his clients [Standard 4.41(a)], knowingly failed to prepare and file documents for which he was retained to file [Standard 4.41(b)], and repeatedly neglected not only several cases, but also the clients' requests for updates and demands for information, thereby constituting a severe pattern of neglect [Standard 4.41(c)]. To qualify for disbarment under 4.41, only one of these types of misconduct needs to be present; here, we have all three.
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> Also present is serious or potential serious injury to his clients. Here, neglect was charged and established by the default in six counts, involving six different clients. Furthermore, respondent knowingly deceived his clients in five counts, again involving five separate clients. All but one of the clients involved in these counts were forced to seek alternate counsel to handle their matter.

* * *

> . . . . Cases that fall under Standard 7.1 calling for disbarment can include a lawyer's mishandling of fees, or the failure to perform promised work or return unearned fees. *See, e.g., In re Hamer*, 808 SE2d 647 (Ga 2017) (disbarment under Standard 7.1 for lawyer who knowingly deceived and failed to provide services to clients and engaged in a pattern of neglect). The failure to cooperate with disciplinary authorities can subject a lawyer to a suspension under Standard 7.2.
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> Here, respondent failed to return unearned fees to four separate clients. In all of those cases, respondent never filed an appearance or any legal documents on behalf of these clients, and never provided refunds. This misconduct is further aggravated by respondent's neglect of these files and misrepresentations he made to the clients, as well as his failure to cooperate with the Grievance Administrator. Based on this misconduct, we find disbarment is also appropriate under Standard 7.1. [Sanction Report, pp 19-20.]

Application of these Standards to respondent's conduct certainly warranted consideration of disbarment as the appropriate sanction. Additionally, an extensive pattern of misconduct is recognized as a significant aggravating factor to be considered in the imposition of discipline. See *Grievance Administrator v Richard Parchoc*, 94-39-GA; 94-68-FA (ADB 1994) (three-year suspension increased to revocation for neglect and failure to return unearned fees aggravated by misrepresentation to client, failure to notify her of his suspension in a prior disciplinary action, failure to answer request for investigation and formal

complaint, and prior discipline); *Matter of Alvin McChester*, 93-132-GA; 93-168-FA (ADB 1994) (increasing suspension from thirty days to 180 days, citing the aggravating effect of the respondent's pattern of misconduct); *Matter of Jeffrey F. Robbins*, 93-100-GA; 93-145-FA; 93-115-GA; 93-164-FA; 93-130-GA; 93-166-FA (ADB 1994) (increasing one-year suspension to revocation where case involved a wide ranging pattern of misconduct which included neglect of an attorney's duties to his clients, neglect of his duties to the legal profession and misappropriation of client funds). Under these circumstances, disbarment is well within the range of acceptable discipline to impose for the multiple violations respondent has been found to have committed.

The hearing panel also painstakingly reviewed each and every aggravating and mitigating factor, giving particular weight to respondent's prior discipline which includes a reprimand and prior suspension for the same types of misconduct committed in the present case. (Sanction Report, p 21.) This Board has found that "repeated misconduct may evidence the need for more severe discipline." *Grievance Administrator v Stephanie A. Carson*, 22-24-GA (ADB 2024) (citing *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).

The only mitigating factor considered by the hearing panel was the delay in disciplinary proceedings [Standard 9.32(j)], but the panel did not find that the delay warranted a reduction in sanction. We disagree. As acknowledged by the Grievance Administrator, the allegations involved in the formal complaint date as far back as 2017, and the formal complaint was not served on respondent until December 8, 2022. The legal representation giving rise to the misconduct in the majority of counts lasted only a few months and did not involve extensive court records or case files, and typically ended with a grievance filed shortly

thereafter – and although respondent did not timely answer all of the requests for investigation, most were answered years prior to the filing of the formal complaint.[4] None of these matters appear to involve extensive investigation that would take years to complete before being able to be submitted to the Commission for its review and determination.

While we agree a delay in the prosecution of attorney discipline cases does not automatically warrant a reduction in sanctions, we find the delay here unreasonable, under the facts of this case.[5]

Counsel for the Grievance Administrator claims that it conducted its investigation on these files through 2021, but provides no insight into why an investigation involving very short time periods of representation, limited court records and/or court files, and minimal witness statements, would take three to five years to

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[4] For example, in Count One, the representation at issue was from approximately May 2017 to September 2017. Respondent was served with the request for investigation (RI) on October 25, 2017, which he answered on November 30, 2017 – five years prior to the filing of the formal complaint. In Count Two, the representation began in June 2018, respondent was served the RI on December 11, 2019, and he filed his answer on January 30, 2020 – nearly three years prior to the formal complaint. In Count Three, the misconduct occurred between September 2018 to December 2018; respondent was served with the RI on June 19, 2019, and he filed his answer on August 7, 2019 – over three years prior to the formal complaint. In Count Five, the representation lasted for approximately two weeks in May of 2019, and respondent answered the RI on September 26, 2019; and in Count Six, the misconduct occurred between June 2019 and September 2019, and respondent answered the RI on December 18, 2019 – again, at least three years prior to formal discipline charges.

[5] In other jurisdictions, delays in disciplinary proceedings have been considered sufficient mitigation to warrant a decrease in the discipline imposed. See generally *Florida Bar v Marcus*, 616 So2d 975 (Fla 1993) (attorney suspended for three years rather than disbarred, in part because of a several-year interval involved in resolving charges against attorney); *Louisiana State Bar Ass'n v Guidry*, 571 So2d 161 (La 1990) (lawyer who committed misconduct by commingling and converting client funds suspended for six months due in part to three-year delay in bringing charges); *Florida Bar v Thomson*, 429 So2d 2 (Fla 1983) (unexplained delay mitigated suspension to reprimand); *LSBA v Edwards*, 387 So2d 1137 (La 1980) (inordinate delays are unfair and unjust to an accused attorney and serve as punishment themselves over and above that imposed by the court); *Vaughn v State Bar*, 511 P2d 1158 (Cal 1973) (four-year delay in prosecution mitigated suspension to reprimand); *Arden v State Bar of California*, 341 P2d 6 (Cal 1959) (suspension mitigated down to a public reprimand where the proceedings had been "hanging over the [attorney's] head" for more than 3 years).

complete in some instances. Justice and professional responsibility require the Commission to promptly and diligently pursue all disciplinary actions that merit prosecution. Prolonged delays can lead to the loss of evidence and obstruct the fair determination of appropriate sanctions. Disciplining or disbarring an attorney long after the misconduct occurred fails to deter other members of the bar and undermines the goal of maintaining the integrity of the courts – both of which are fundamental purposes of attorney discipline.

Therefore, despite the egregiousness of the misconduct found here, respondent had a right to have his case decided within a reasonable period of time. A three to five-year delay between answering the request for investigation and the issuance of formal charges, although not violative of due process, is unreasonable under the facts here and warrants significant mitigation. It is for this reason alone that we decrease the discipline imposed from disbarment to a four-year suspension.

We are mindful, however, that this is not a situation where respondent used the intervening years of delay wisely in rehabilitating himself, but instead continued to commit misconduct. Therefore, as an additional safeguard, we also modify the order of discipline to add the following conditions: (1) prior to reinstatement, respondent shall take and pass the Multistate Professional Responsibility Exam (MPRE); and (2) prior to reinstatement, respondent shall attend the State Bar of Michigan's seminar entitled "Tips and Tools for a Successful Practice." Furthermore, in the event that respondent petitions for reinstatement and a hearing panel grants eligibility, respondent shall take and pass the Michigan Bar Exam (MBE) as part of his recertification pursuant to MCR 9.123(C).

Finally, respondent argues on review that the hearing panel's order of restitution was improper because the panel failed to consider money voluntarily returned to clients, arguing that the award of restitution "created a windfall

and cannot be allowed to stand." There is no merit to respondent's contention. "Our Supreme Court has given hearing panels, this Board, and the Court itself discretion to require restitution as a condition of an order of discipline." *Grievance Administrator v Joel S. Gehrke*, 05-29-GA (ADB 2008) (citing MCR 9.106(5)). Restitution in the attorney discipline system serves the dual purpose of making a complainant or third party whole and protecting the public and the legal system through deterrence and sanctions.

Here, respondent failed to offer any evidence to support his claim that a portion of the restitution ordered had already been paid or refunded by respondent. The hearing panel carefully considered the formal complaint and the testimony of the witnesses before awarding restitution. Where it was vague or unclear from the testimony as to the exact amount each individual had paid respondent, the hearing panel erred on the side of caution and awarded only the amount established by the formal complaint. The panel also properly accounted for money that was previously refunded, ensuring that there was no "windfall." For these reasons, we affirm the hearing panel's order of restitution.

IV. Conclusion

For the reasons discussed above, we decrease the discipline imposed from disbarment to a four-year suspension, affirm the order of restitution, and modify the order of discipline to add conditions. The hearing panel did exactly what it is directed to do under *Lopatin* by first considering the duties respondent violated, respondent's mental state, and the actual or potential injury caused by respondent's conduct. The panel then properly determined that disbarment was appropriate under the ABA Standards. However, after considering the aggravating and mitigating factors, we disagree that the delay in the disciplinary proceedings here does not warrant a reduction in sanction. The delay in the prosecution of this case was unreasonable, unwarranted, and essentially unexplained. It is only

for this reason that we decrease the discipline imposed from disbarment to a four-year suspension with conditions as described above.

Board Members Peter A. Smit, Rev. Dr. Louis J. Prues, Linda M. Orlans, Jason M. Turkish, Andreas Sidiropoulos, MD, Katie M. Stanley, and Tish Vincent concur in this decision.

Board Member Alan Gershel is recused from this matter and did not participate in this decision.

Board Member Kamilia Landrum was absent and did not participate in this decision.