STATE OF MICHIGAN

Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner/Appellee,

v

Case No. 23-83-GA

ROBERT A. CANNER, P 11572

Respondent/Appellant.
_____/

ORDER AFFIRMING HEARING PANEL ORDER OF DISBARMENT AND RESTITUTION

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

On March 25, 2025, Tri-County Hearing Panel # 59 issued an order of disbarment and restitution in this matter. The panel's order disbarred respondent, effective April 16, 2025, and ordered respondent to pay restitution to three clients in a total amount of $59,836. On April 14, 2025, respondent filed a petition for review of the panel's order, arguing that the panel erred in imposing disbarment against respondent instead of a lesser sanction. Respondent did not petition for a stay of the hearing panel's order, thus his disbarment went into effect on April 16, 2025.

The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118, including review of the evidentiary record before the panel and in consideration of

the briefs and arguments presented by the parties at a review hearing held on July 9, 2025. For the reasons set forth herein, we affirm the decision of the panel in its entirety.

The Grievance Administrator filed a five-count formal complaint against respondent, primarily focused on respondent's handling of client funds in multiple legal matters including allegations that he misappropriated client funds from his IOLTA account. Counts One through Four involved respondent's alleged misappropriation of client funds and flagrant mismanagement of his IOLTA account and client funds. Evidence and testimony presented revealed that respondent received settlement checks for several clients but either delayed depositing them or failed to deliver payments to the clients altogether. In many cases, he deposited funds months after he had already issued payments from his IOLTA account, presumably payments that included funds being held for other clients.

In several matters, the panel concluded that respondent misappropriated funds and collected excessive fees beyond any fee agreement or reasonable attorney fee The most significant instances of misconduct involved clients Elduamutef Rahotep-Bey and Patricia Duncan. In Mr. Rahotep-Bay's matter, the panel found that Mr. Rahotep-Bay was entitled to $82,500 from settlement funds but received payments totaling only $28,000, and that respondent misappropriated the remainder of the funds for his own personal use, in violation of MRPC 1.15(b)(3) and (d); and 8.4(b). (Misconduct Report 11/25/24, p 6.) In the case of Patricia Duncan, the panel found that respondent forged an endorsement on a settlement check, made false statements regarding bank issues being the reason for his failure to remit funds, delayed payment of her settlement proceeds for months, and ultimately paid Ms. Duncan only a small portion of what was owed, again, in violation of MRPC 1.15(b)(3) and (d), and 8.4(b). (Misconduct Report 11/25/24, pp 8-9.)[1]

[1] The panel made numerous findings of misconduct against respondent and found that many other rules were violated in Counts One through Three. However, in that respondent is only challenging the sanction imposed, we find it unnecessary to recite an exhaustive list of all of the panel's findings in that regard. Further, the panel did dismiss Counts Four and Five of the formal complaint, finding that the allegations in Count Four were redundant of the other charges and that the Grievance Administrator did not establish misconduct in Count Five. The Grievance Administrator has not sought review of the dismissal of those counts.

The sanction hearing in this matter was held on February 4, 2025. In determining the appropriate sanction to impose, the panel applied the ABA Standards for Imposing Lawyer Sanctions (ABA Standards) and analyzed the duties violated, respondent's mental state, the injury or potential injury caused, and aggravating or mitigating factors. While the panel considered several ABA Standards in determining the appropriate sanction, they relied most heavily on ABA Standard 4.11, which states that "disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a party," and ABA Standard 4.61, which states that "disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potentially serious injury to a client." (Sanction Report 3/25/25, pp 4-5.)

The panel also found the following aggravating factors applicable: 9.22(a) - prior disciplinary offenses; 9.22(b) - dishonest or selfish motive; 9.22(c) - a pattern of misconduct; 9.22(d) - multiple offenses; 9.22(l) - substantial experience in the practice of law; 9.22(j) - indifference to making restitution; and, 9.22(k) - illegal conduct. The panel found that no meaningful mitigating factors applied, aside from the remoteness of respondent's one prior admonishment. (Sanction Report 3/25/25, pp 5-6.)

The Grievance Administrator argued that, in determining the proper sanction to impose, the panel should be guided by *Grievance Administrator v Frederick Petz*, 99-102-GA (ADB 2001) and its progeny, which hold, generally, that absent extraordinary mitigation, disbarment is presumed to be the appropriate sanction for the intentional misappropriation of client funds.

Respondent argued that Michigan Supreme Court's Order in *Grievance Administrator v James Lawrence*, 507 Mich 991, 960 NW 2d 123 (2021) rendered *Petz* inapplicable to the matter at hand.[2] However, the panel found *Lawrence* distinguishable in that the hearing panel in

[2] In *Lawrence*, the Court reversed the Board's order increasing discipline from a 100-day suspension to disbarment, affirming the restitution provision and vacating the conditions imposed by the hearing panel and reinstated the hearing panel's order of a 100-day suspension and restitution with condition, for conduct that violated MRPC 1.15(b)(3), (d) and (g); MRPC 8.4(b) and MCR 9.104(1)-(3).

Lawrence found that Respondent Lawrence did not act with fraudulent or larcenous intent and that his misconduct was the result of gross mismanagement and ignorance. Based on the severity and extent of the misconduct here, including intentional theft of client funds and misrepresentation, the panel ordered that respondent be disbarred, and ordered restitution totaling $59,836.

On review, respondent argues that disbarment was too harsh, and that the "ABA Standards and guiding case law compel a lesser sanction." (Respondent's Brief, p 4.) Respondent contends that the panel erred in applying ABA Standard 4.11, which compels disbarment, and that respondent's conduct is better aligned with ABA Standard 4.21, which calls for suspension. Respondent further argues that any weight that the panel gave to *Petz,* and its progeny, was misplaced because *Lawrence* "criticized the application of the rule of presumptive disbarment" as it pertained to that case. (*Id*. at 4.) Respondent urges that, in consideration of *Lawrence,* a three-year suspension is appropriate in this case as opposed to disbarment. We disagree.

In reviewing the sanctions imposed by a hearing panel we "review and, if necessary, modify a hearing panel's decision as to the level of discipline" in light of our "responsibility to ensure a level of uniformity and continuity" in disciplinary matters. *Grievance Administrator v Brent S. Hunt*, 12-10-GA (ADB 2012), citing *Grievance Administrator v August*, 438 Mich 296, 304; 475 NW2d 256 (1991). However, we do not usually disturb a panel's assessment as to the appropriate sanction "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).

Simply put, this case is not like *Lawrence* at all, and respondent's reliance on it is misguided. *Lawrence* involved the mishandling of one advanced retainer, over a course of years, where the attorney-client relationship was marred by questions of whether the representation would proceed and difficulties in securing the services of a private investigator necessary for it to go forward. In *Lawrence*, the Court agreed with the hearing panel when they found that Respondent Lawrence "did not act with a fraudulent or larcenous intent and it concluded that his misconduct occurred as a result of gross mismanagement and ignorance."

(Supra, at 991, 124.) The same cannot be said for respondent herein. Instead, the evidence in the record in this matter indicates that respondent engaged in serial, intentional misappropriation of thousands of dollars of client funds, made misrepresentations regarding the status of funds and reasons for non-payment, and completely abdicated his duties as a fiduciary.

Further, the Court in *Lawrence* relied heavily on the presence of mitigating factors, stating that "our review reflects that the mitigating factors—Standard 9.32(a), (d), (e), and (g)—in this matter clearly preponderate over aggravating factors, none of which were identified by the Hearing Panel or the Board as being applicable or material to their decisions." *Id* at 2.[3] To contrast, in this case, the panel found extensive aggravation, most significantly ABA Standard 9.22(b) - that respondent acted with a dishonest and selfish motive, and 9.22(k) - that he engaged in illegal conduct. With the exception of the superficial commonality that both *Lawrence* and this matter involve the mishandling of client funds, this matter has almost nothing in common with *Lawrence.*

[3] ABA Standards 9.32(a) - absence of a prior disciplinary history; 9.32(d) - good faith timely efforts to make restitution; 9.32(e) - full and free disclosure to a disciplinary agency; and 9.32(g) - evidence of good character or reputation.

Nor do we accept respondent's argument that *Lawrence* essentially changed the entire calculus involved in determining the appropriate sanction for misappropriation of client funds. Respondent argues that "The Hearing Panel's reliance solely on pre-*Lawrence* case law, such as *Petz*, *Matheny*, and *Parchoc*, is therefore misplaced and error." (Respondent's Brief, p 6.) Again, we disagree. The panel did not rely "solely on *Petz, Matheny*, and *Parchoc*" in determining that disbarment was appropriate. Rather, the panel applied the ABA Standards, as directed by *Lopatin.* ABA Standard 4.11, states that "disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a party." This standard is directly applicable to the facts and circumstances and respondent's conduct in this case. Additionally, as the panel noted in their report, respondent's conduct also warrants disbarment under ABA Standards 4.61, 5.11, and 7.1.[4]

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[4] ABA Standard 4.61 states that:

> disbarment 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.

ABA Standard 5.11 states that:

> (a) disbarment is generally appropriate when a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or, (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer*s fitness to practice.

ABA Standard 7.1 states that:

> disbarment is generally appropriate when a lawyer knowingly engages in

There can be no question that the Court's order in *Lawrence* marked a notable departure from *Petz,* and its progeny, which required an extraordinary showing of mitigation to overcome a presumption that disbarment was warranted for any intentional misappropriation of client funds. Further, there will undoubtably be cases in the future where the Court's decision in *Lawrence* compels or requires a sanction of less than disbarment for knowing misappropriation. However, no reasonable reading of *Lawrence* compels any such analysis or deliberation in light of the facts and circumstances in this case.

Nor are we persuaded by the other precedent cited by respondent in support of a lesser sanction than disbarment. Respondent cites both *Grievance Administrator v Friedman*, 23-84-GA (ADB 2025), and *Grievance Administrator v Figot*, 17-67-GA (HP 2017). Neither are compelling. In *Friedman*, the respondent was suspended for 60 days for commingling client funds with personal funds in his IOLTA account, and making direct payments out of earned fees in his IOLTA to family members. Respondent Friedman was found to have violated MRPC 1.15(d) and (f), but critically, not MRPC 1.15(b), in that it was not shown that he misappropriated any client funds. *Friedman* is easily distinguishable from the instant matter and is not relevant precedent. In *Figot*, the parties entered into a stipulation for consent order of discipline for a three-year-and-one-day suspension when, as staff director for the Federal Bar Association, Respondent Figot took unearned salary advances and inflated or reported non-existent expenses from funds belonging to the Association. We are similarly unpersuaded by *Figot* as the funds in question in that case were not client funds, and to a greater extent, because the Board has consistently held that consent orders of discipline entered pursuant to MCR 9.115(F)(5) do not have precedential value because they are often based upon considerations which do not appear in the record. *Grievance Administrator v Harold D. Fee, Jr.*, 07-159-JC (ADB 2009.)

Lastly, respondent argues that the Grievance Administrator has failed to establish a precise narrative of how respondent used the funds that were misappropriated, and why, in

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> 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.

some cases, the clients were paid portions of the funds they were owed before respondent had even deposited the settlement checks he received. Respondent argues that in other cases of misappropriation, "the wrongful disbursements were clearly for personal uses and not connected to any legal work," but that here, "the proofs fall far short of that." (Respondent's Brief, p 8.) However, in several instances in this case, particularly in regard to the allegations contained in Count One of the formal complaint, the Grievance Administrator *did show* that the funds were transferred from respondent's IOLTA account to his checking account, and were then used by respondent for personal purposes. Funds that respondent's clients were rightfully owed. The precise *purpose* of those payments is simply not relevant. Further, we cannot help but note that respondent, as the owner and operator of those accounts, is in the best position to account for his expenditures, but he invoked his Fifth Amendment right against self-incrimination in response to the formal complaint. Respondent is well within his rights to do so, but cannot now impugn the Grievance Administrator's inability to account for the exact purpose of those expenditures when that is information he has, but fails to provide.

Taking into consideration all of the facts and circumstances of this case, together with the applicable ABA Standards, and aggravating factors, disbarment is the only appropriate sanction to impose. Respondent's reliance on *Lawrence* is misplaced and unpersuasive. Further, the panel's imposition of disbarment is not clearly contrary to fairly uniform precedent for very similar conduct or clearly outside the range of sanctions imposed for the type of violation at issue, but instead, is clearly supported by the record.

Upon careful consideration of the whole record, the Board is not persuaded that the hearing panel's decision to disbar respondent and order him to pay restitution, as set forth in the panel's order, was inappropriate.

NOW THEREFORE,

IT IS ORDERED that the hearing panel order of disbarment and restitution entered in this matter on March 25, 2025, is **AFFIRMED**, in its entirety.

IT IS FURTHER ORDERED that respondent shall pay court reporting costs incurred by the Board for the review hearing conducted on July 9, 2025, in the amount of $192.50 on or before **October 17, 2025**. This amount is in addition to the costs previously assessed in the hearing panel order of March 25, 2025, together with interest pursuant to MCR 9.128. Total costs assessed and owed are **$4,096.84**. Please refer to the attached cost payment instruction sheet for method and forms of payment accepted.

ATTORNEY DISCIPLINE BOARD

By: /s/ Alan M. Gershel, Chairperson

DATED: September 18, 2025

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

Board Members Peter A. Smit, Andreas Sidiropoulos, MD, and Kamilia Landrum were absent and did not participate in this decision.