

STATE OF MICHIGAN

Attorney Discipline Board

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GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner/Appellee/Cross-Appellant,

Case No. 15-23-GA

v

LYLE DICKSON, P 55424,

Respondent/Appellant/Cross-Appellee.

**ORDER INCREASING DISCIPLINE FROM A REPRIMAND WITH CONDITION
TO A 180-DAY SUSPENSION AND VACATING CONDITION**

Issued by the Attorney Discipline Board
211 W. Fort St., Suite 1410, Detroit, MI

Tri-County Hearing Panel #57 issued an order of reprimand against respondent, with the included condition that he undergo an evaluation by the State Bar of Michigan Lawyers and Judges Assistance Program (LJAP). Respondent filed a petition for review and the Grievance Administrator filed a cross-petition for review. The Attorney Discipline Board conducted review proceedings in accordance with MCR 9.118, which included a review of the whole record before the hearing panel and consideration of the parties' briefs and arguments presented to the Board. For the reasons discussed below, we find that the hearing panel imposed insufficient discipline. Accordingly, we increase discipline to a 180-day suspension of respondent's license to practice law.

This matter arises out of respondent's application for a JAG commission, which was ultimately denied by the Michigan National Guard in a December 15, 2008 letter from Brigadier General James Anderson. The denial was based upon an investigation conducted by a Guard officer, which resulted in the finding that respondent made inappropriate comments and "sexually harassed" staff at the Wixom Health Center when he had his physical examination. Respondent denied those allegations.¹ What followed was a litany of correspondence, lawsuits and perceived threats from respondent against members of the Guard and the medical staff at the clinic.

On March 11, 2015, the Grievance Administrator filed a formal complaint alleging that respondent committed professional misconduct warranting discipline, based upon respondent's conduct after his JAG application was denied. Specifically, the Grievance Administrator alleged that respondent's conduct was done for no other purpose than to harass and that respondent had no legal basis to file a lawsuit against any of the persons involved in the denial of his JAG application. It was alleged that respondent engaged in conduct that was in violation of the Michigan Rules of Professional Conduct, in violation of MRPC 8.4(a) and MCR 9.104(4); engaged in conduct that was prejudicial to the administration of justice, in violation of MRPC 8.4(c) and MCR 9.104(1);

¹ Just as the hearing panel made no finding on the truth or falsity of those allegations, neither will this Board.

engaged in conduct that exposed the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2); and engaged on conduct that was contrary to justice, in violation of MCR 9.104(3).

Hearings on misconduct were conducted on June 24, 2015 and September 29, 2015. After hearing testimony from four witnesses and reviewing sixty exhibits, the panel concluded that the Grievance Administrator established that respondent committed professional misconduct by a preponderance of the evidence.

Following a hearing on the appropriate level of discipline, the panel issued an order reprimanding respondent and requiring him to be evaluated by LJAP. However, the panel declined to allow the Grievance Administrator access to the results of the LJAP evaluation. Respondent petitioned for review, arguing that the hearing panel erred by finding misconduct and ordering an LJAP evaluation. The Grievance Administrator filed a cross-petition for review, arguing that a reprimand was insufficient discipline and that the results of respondent's LJAP evaluation should be provided to the Grievance Administrator.

In reviewing a hearing panel decision, the Board must determine whether the panel's findings of fact have "proper evidentiary support on the whole record." *Grievance Administrator v August*, 438 Mich 296, 304 (1991). See also *Grievance Administrator v T Patrick Freydl*, 96-193-GA (ADB 1998). "This standard is akin to the clearly erroneous standard [appellate courts] use in reviewing a trial court's findings of fact in civil proceedings." *Grievance Administrator v Lopatin*, 462 Mich 248 n 12 (2000)(citing MCR 2.613(C)). Under the clearly erroneous standard, a reviewing court cannot reverse if the trial court's view of the evidence is plausible. *Thames v Thames*, 191 Mich App 299, 301-302 (1991), lv den 439 Mich 897 (1991). Additionally, although the Board reviews the record very closely and carefully, it does not "re-sift the evidence and weigh it anew." *Grievance Administrator v Wilson A. Copeland, II*, 09-48-GA (ADB 2011).

The issue here is not whether respondent reasonably or genuinely believed that he had been mistreated in the JAG application process as he suggests. The issue is respondent's reaction to that belief and his subsequent conduct. Here, the evidence supports a finding that respondent's conduct was prejudicial to the administration of justice, a disgrace to the legal profession, and was contrary to justice. Respondent personally harassed, for a period of more than five years, any and all individuals involved in the decision to deny his JAG application. This harassment consisted of not only repeated correspondence to these officers, but also included complaints filed with the National Guard Bureau, the Army Inspector General's Office, the Michigan Attorney Grievance Commission, the Judicial Tenure Commission, and the Michigan and Illinois Boards of Medicine. From the tone and content of his correspondence to the baseless allegations in the complaints, respondent's conduct is indicative of revenge and retaliation, not merely trying to "right a wrong." Accordingly, the hearing panel properly concluded that the alleged misconduct had been established.

While the Attorney Discipline Board reviews a hearing panel's findings for proper evidentiary support, it possesses a greater measure of discretion with regard to the appropriate level of discipline. *Grievance Administrator v August*, 438 Mich 296 (1991); *Matter of Daggs*, 411 Mich 304 (1981). Here, applying Standard 7.3 of the American Bar Association Standards for Imposing Lawyer Sanctions (ABA Standards), the panel found that respondent acted negligently, rather than "knowingly" or "intentionally" as the Grievance Administrator suggested. We find that the hearing panel's application of ABA Standard 7.3 was in error because the panel's finding as to respondent's mental state is not supported by the record. Repeated, unwanted and harassing conduct spanning over a five-year period is not merely "negligence."

In our independent judgment and after an assessment of the underlying record, we find that ABA Standard 7.2 is more appropriate here. ABA Standard 7.2 provides, in pertinent part:

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.

There is ample evidence to conclude respondent intended to harass and intimidate the individuals he felt were responsible for keeping him from obtaining a JAG commission. ABA Standard 6.22, dealing with abuse of the legal process, is also applicable. Both Standards suggest the imposition of a suspension.

Furthermore, we do not find respondent's First Amendment argument persuasive. Discipline is not being imposed for the content of respondent's communication. Rather, he is being disciplined for an extended period of harassment in which the tools of a lawyer's trade, including written words, were intentionally employed to make miserable the lives of persons who, in the course of their own assigned duties, had reached conclusions with which respondent disagreed.

We find that a reprimand is insufficient discipline to impose in light of the misconduct committed and the aggravating factors that are present. Respondent has demonstrated a history and pattern of being discourteous and a general lack of civility to others in the legal system.² Respondent repeatedly conducts himself in a manner unbecoming to the legal profession, and does not appear to be learning from his mistakes; therefore, a more serious consequence is necessary. Respondent's refusal to acknowledge the wrongful nature of his conduct, as well as the pattern and progressive escalation of misconduct, warrants a suspension that will require the filing of a petition for reinstatement pursuant to MCR 9.124; this is necessary to ensure the protection of the public and the legal system as a whole. As such, we increase discipline to a 180-day suspension of respondent's license to practice law. In light of the fact that respondent will be required to satisfy the more stringent requirements for reinstatement under MCR 9.123(B), we vacate the condition that respondent undergo an LJAP evaluation.

NOW THEREFORE,

IT IS ORDERED that the discipline in this case is **INCREASED FROM A REPRIMAND TO A SUSPENSION** of respondent's license to practice law in Michigan for **180 DAYS EFFECTIVE OCTOBER 18, 2017**, and until further order of the Supreme Court, the Attorney Discipline Board or a hearing panel, and until respondent complies with the requirements of MCR 9.123(B) and MCR 9.124.

² Prior to the instant matter, respondent received two admonishments and one reprimand. The first admonition was for making profane statements to his client and the client's mother during the course of a trial. Respondent's second admonition was for attempting to assert an invalid lien on the proceeds of a client's litigation and refusing to provide the client's new counsel with a copy of his client file needed for pending litigation. The factual basis for respondent's reprimand was that respondent, while representing a client in civil litigation, appeared at the opposing party's work location, created a disturbance while trying to serve the party with a complaint at work, and was asked to leave the premises. Respondent then sent emails directly to the opposing party, even though respondent knew she was represented by counsel, about an alleged forged check wherein he accused her of fraud, and telephoned and faxed the opposing party's employer regarding the pending litigation and alleged forged check.

IT IS FURTHER ORDERED that respondent shall, on or before October 18, 2017, pay costs in the amount of **\$3,553.31**, consisting of costs assessed by the hearing panel in the amount of \$3,439.81 and court reporting costs incurred by the Attorney Discipline Board in the amount of \$113.50 for the review proceedings conducted on August 16, 2017. Check or money order shall be made payable to the Attorney Discipline System and submitted to the Attorney Discipline Board, 211 West Fort St., Ste. 1410, Detroit, MI 48226, for proper crediting. (See attached instruction sheet.)

ATTORNEY DISCIPLINE BOARD

By: 

Louann Van Der Wiele, Chairperson

Dated: September 19, 2017

Board members Louann Van Der Wiele, Rev. Michael Murray, Dulce M. Fuller, James A. Fink, John W. Inhulsen, Jonathan E. Lauderbach, Barbara Williams Forney, Karen D. O'Donoghue, and Michael B. Rizik, Jr., concur in this decision.