FILED
ATTORNEY DISCIPLINE BOARD
October 13, 2017

STATE OF MICHIGAN

Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner,

v

Case No. 15-29-GA

RICHARD A. MEIER, P 38204,

Respondent.
_____/

ORDER AFFIRMING HEARING PANEL ORDER OF SUSPENSION

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

Tri-County Hearing Panel #80 of the Attorney Discipline Board issued an order on September 15, 2016, suspending respondent's license to practice law in Michigan for a period of two years. Respondent filed a petition for review, arguing that the panel's findings as to misconduct were not supported by the record, and that the discipline imposed was excessive. The discipline ordered by the hearing panel was temporarily stayed by the Board during its consideration of respondent's petition for stay pending review pursuant to MCR 9.115(K). However, after such consideration, the Board denied respondent's request for a stay and the order of suspension became effective October 20, 2016.[1]

The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118, including review of the evidentiary record before the panel and consideration of the briefs and arguments presented by the parties at a review hearing conducted December 14, 2016. Following its review, the Attorney Discipline Board has concluded that the order of discipline entered by the panel should be affirmed.

In reviewing a hearing panel's findings and conclusions, the Board must determine whether the panel's findings have proper evidentiary support in the whole record. *Grievance Administrator v August*, 438 Mich 296; 304 NW2d 256 (1991); See also *Grievance Administrator v T. Patrick Freydl*, 96-193-GA (ADB 1998). "This standard is akin to the clearly erroneous standard [appellate

[1] Respondent filed a complaint for superintending control with the Michigan Supreme Court shortly after the order denying petition for stay was issued requesting that the Court order a stay of the discipline imposed, pending review by this Board. In an order dated November 3, 2016, the Court denied the relief requested. Shortly after the review hearing was conducted on December 14, 2016, respondent filed a second petition for stay and the Administrator again objected. In light of our decision to affirm the hearing panel's order of suspension, respondent's request in this regard is moot. Respondent has been continuously suspended from the practice of law in Michigan since October 20, 2016.

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). Our review of the record results in the conclusion that the panel's findings as to misconduct in their entirety, have proper evidentiary support in the record, as more specifically set forth below.

The formal complaint filed against respondent contained three separate counts of alleged misconduct. Count One involved respondent's representation of complainant Lorien Williams in a discrimination action against her former employer, the City of Lansing (the City). Count Two involved respondent's representation of complainant Anne Rowley-Stahl in a wrongful discharge action against her former employer, Michigan State University (MSU). Count Three involved respondent's representation of complainant Carol Siira-Stevens in an action for gender discrimination and violations of the Americans with Disabilities Act against her former employer, PAT Engineering (now PAT USA).

As to Count One of the formal complaint, the hearing panel found that respondent failed to adequately prepare for his representation of Ms. Williams; failed to adequately explain her legal matter; neglected the matter; failed to respond to a legally proper discovery demand directed toward him, as Ms. Williams' counsel; and, engaged in conduct that exposed the legal profession to obloquy, contempt, censure, and/or reproach. This conduct was found to be in violation of MRPC 1.1(b) and (c); 1.3; 1.4(a) and (b); 3.4(d); and MCR 9.104(2).[2]

First, the record does establish what the hearing panel found: although respondent filed a complaint on Ms. Williams' behalf, he did not give it to her to review or tell her that he had filed it. Instead, Ms. Williams learned of the filing of the lawsuit when her criminal attorney found it, downloaded it and discovered several errors. Furthermore, the evidence shows that respondent received interrogatories from the City that he forwarded to Ms. Williams, but never provided Ms. Williams' responses to the City - despite the fact that Ms. Williams testified she both faxed and mailed her responses to respondent. The panel found Ms. Williams' testimony credible, and rejected respondent's claim that Ms. Williams did not want the interrogatories filed because she was facing employee disciplinary hearings at the time. The panel noted that:

> [Respondent] presented no evidence that he made any attempt to obtain [Ms.] Williams' interrogatory responses, or to conduct any kind of investigation into the facts of her case, or to provide any evidence to rebut the city's dismissal motion. Indeed, for the most part, [respondent's] testimony and his cross-examination of [Ms.] Williams sought to either shift the blame to her for [respondent's] failure to properly handle her case and keep her informed, or to call into question her character by inquiring about unrelated employee-disciplinary matters. [Report 10/29/15, p 9.]

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[2] The hearing panel also concluded that the Grievance Administrator did not sufficiently prove that respondent charged an excessive fee or engaged in dishonest conduct, in violation of MRPC 1.5(a) and MCR 9.104(3), and as charged in Count One of the formal complaint.

We also agree with the hearing panel's findings that respondent made almost no effort to contact Ms. Williams regarding her lawsuit. The record also shows that, when the City filed a motion to dismiss Ms. Williams' lawsuit based upon the failure to provide discovery as well as a motion for summary judgment on the pleadings, respondent failed to consult Ms. Williams or even inform her that the motion had been filed. Respondent did not notify Ms. Williams of the pending dispositive motion until after it was argued and granted, and did not explain to Ms. Williams what the dismissal meant for her case.

As to Count Two of the formal complaint, the hearing panel found that respondent neglected Ms. Rowley-Stahl's suit against MSU; failed to act with reasonable diligence and promptness in his representation, failed to keep Ms. Rowley-Stahl reasonably informed regarding the status of her matter; failed to reasonably respond to requests for information; failed to adequately explain the matter; engaged in conduct that exposed the legal profession to obloquy, contempt, censure, and/or reproach; and, engaged in conduct involving fraud, deceit and/or misrepresentation. This conduct was found to be in violation of MRPC 1.1(c); 1.3; 1.4(a) and (b); 8.4(b); and MCR 9.104(2) and (3).[3]

The record establishes that in February of 2012, Ms. Rowley-Stahl discovered through a Google search of her name that her appeal had been dismissed because the check submitted by respondent to pay the filing fee had been returned for insufficient funds. The record further establishes that respondent never paid the fee, despite two notices from the Court of Appeals as well as a show-cause order. In addition, respondent never contacted Ms. Rowley-Stahl to tell her the appeal had been dismissed. When Ms. Rowley-Stahl eventually contacted respondent, he stated he would "look into it and if we need to re-file, I will do so." Respondent continued accepting checks from Ms. Rowley-Stahl (the record establishes he accepted four payments after the appeal was dismissed), despite the fact that he did nothing to attempt to reinstate the appeal or file a delayed application for leave to appeal.

The hearing panel rejected respondent's claims that he drafted two checks to pay the filing fee and fee for the bounced check, because he provided no evidentiary support for these claims. Instead, respondent claimed that the documentation had been lost in a flood. The panel also rejected respondent's excuse that the dismissal of the appeal was a court error and that he was told by the court clerk there was no way to reinstate an appeal. Again, the panel did not find respondent's explanations credible.

After several more months of not hearing from respondent, Ms. Rowley-Stahl contacted respondent in June of 2012. Respondent admitted that he still had not yet re-filed the appeal, but he would do so "tomorrow." Respondent eventually filed a delayed application for leave to appeal on August 31, 2012,[4] which was ultimately denied by the Michigan Court of Appeals "for lack of

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[3] The hearing panel also concluded that the Grievance Administrator did not sufficiently prove that respondent was unprepared, charged an excessive fee, engaged in commingling, failed to deposit client fees and/or expenses paid in advance into a client trust account, or failed to refund unearned fees, in violation of MRPC 1.1(b); 1.5(a); 1.15(d); 1.15(g); and 1.16(d), as charged in Count Two of the formal complaint.

[4] The Administrator argued that respondent was prompted to file the delayed application for leave to appeal because Ms. Rowley-Stahl sent respondent a certified letter on August 27, 2012, terminating respondent's representation and demanding a refund; respondent denied ever receiving the letter. Again, the panel found that Ms. Stahl's testimony on this issue was more credible.

merit in the grounds presented." Ms. Rowley-Stahl testified that she was not aware of the filing of the application for leave until the formal complaint was filed by the Grievance Administrator, because respondent never again contacted her regarding the appeal.

As to Count Three of the formal complaint, the hearing panel found that respondent failed to adequately prepare for his representation of Ms. Siira-Stevens; neglected her matter; failed to act with diligence and promptness; failed to adequately communicate and explain the matter; engaged in conduct involving fraud, deceit, and/or dishonesty; engaged in conduct that exposed the legal profession to obloquy, contempt, censure, and/or reproach; and, engaged in conduct contrary to justice, ethics, honesty, or good morals, in violation of MRPC 1.1(b); 1.1(c); 1.3; 1.4(a) and (b); 8.4(b); and, MCR 9.104(2) and (3).[5]

The record establishes that, at their initial meeting, Ms. Siira-Stevens provided respondent with extensive documentation and information regarding the alleged discrimination - including evidence that she was employed by two entitles, PAT Engineering Enterprises and PAT USA - and they discussed possible remedies in both state and federal court. Respondent filed suit in federal court, naming PAT Engineering as the only defendant.

The defense filed a motion to dismiss, arguing that PAT Engineering did not exist, it was the wrong party, and it did not have enough employees to be considered an employer subject to the statutes under which respondent sued. The record establishes that respondent never told Ms. Siira-Stevens about the motion until the day of the hearing. Furthermore, in response to the motion, respondent only submitted barely legible "google printouts," but failed to submit copies of the actual W2's and tax documents that Ms. Siira-Stevens had provided to him showing that the companies were one in the same and that she had been employed by both.

Ultimately, the motion for summary disposition was granted. The evidence shows that respondent made no effort to amend the complaint to reflect PAT USA as a defendant, or to provide the court with evidence that Ms. Siira-Stevens had been employed by both companies. Furthermore, respondent never informed Ms. Siira-Stevens that the motion had been granted; she only learned of the dismissal after she performed her own search of the court docket. When Ms. Siira-Stevens asked respondent if they could pursue a claim in state court, he simply told her they could not. The panel determined this response was misleading, since respondent should have known that the dismissal on jurisdictional grounds left open the opportunity to re-file in state court. Instead of pursuing the matter in state court, respondent tried to collect an additional $3,500 from Ms. Siira-Stevens to file an appeal.

Because Ms. Siira-Stevens did not have the money to pay respondent for an appeal, she pursued the appeal *in pro per*. The Sixth Circuit Court of Appeals dismissed the case, citing the fact that, at the hearing on the motion for summary judgment, respondent conceded the only correct defendant was PAT USA, despite having evidence that Ms. Siira-Stevens was employed by both companies.

Under the clearly erroneous standard earlier referenced, a reviewing court cannot reverse if the trial court's view of the evidence is plausible. *Thames* at 301-302. Additionally, "[d]eference

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[5] The allegation that respondent violated MRPC 3.4(d), as charged in Count Three of the formal complaint, was voluntarily dismissed by the Grievance Administrator.

is given to the special opportunity of the trial court to judge the credibility of witnesses. MCR 2.613(C)." *Id.* In disciplinary proceedings, because the hearing panel has the opportunity to observe the witnesses during their testimony, the Board defers to the panel's assessment of their demeanor and credibility. *Grievance Administrator v Neil C. Szabo*, 96-228-GA (ADB 1998); *Grievance Administrator v Deborah C. Lynch*, 96-96-GA (ADB 1997). See also *In re McWhorter*, 449 Mich 130, 136 n 7 (1995). We see no reason not to accord such deference here. Thus, applying the "clearly erroneous" standard to the hearing panel's extensive report on misconduct, we conclude that there is ample support for the hearing panel's findings and conclusions as to the charges of misconduct found in this matter.

We have also considered the rationale expressed by the hearing panel in its report on discipline filed September 15, 2016. In exercising its overview function to determine the appropriate sanction, this Board's review is not limited to the question of whether there is proper evidentiary support for the panel's findings; rather, we possess "a greater degree of discretion with regard to the ultimate result." *Grievance Administrator v Benson*, 06-52-GA (ADB 2009), citing *Grievance Administrator v Handy*, 95-51-GA (ADB 1996). See also *August*, 438 Mich at 304. The Board is persuaded that the panel's decision to impose a two-year suspension of respondent's license to practice law in Michigan is within the guidelines of the American Bar Association's Standards for Imposing Lawyer Sanctions and is otherwise appropriate under the facts and circumstances presented.

NOW THEREFORE,

IT IS ORDERED that the hearing panel's order of suspension issued September 15, 2016, is **AFFIRMED**.

ATTORNEY DISCIPLINE BOARD

By: 

Louann Van Der Wiele, Chairperson

Dated: October 13, 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 O'Donoghue, and Michael B. Rizik, Jr., concur in this decision