STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,

Petitioner/Appellant,

v

Thomas J. Shannon, P 35152,

Respondent/Appellee,

Case No. 15-73-GA

Decided: February 8, 2017

Appearances:

Kimberly L. Uhuru, for the Grievance Administrator, Petitioner/Appellant
Thomas J. Shannon, In Pro Per, Respondent/Appellee

BOARD OPINION

On August 5, 2016, Tri-County Hearing Panel #14 issued an order suspending respondent, Thomas J. Shannon's, license to practice law for 2 ½ years, ordering him to pay $1,500 in restitution and imposing a condition that requires him to submit an evaluation, dated no more than 30 days prior to the filing of a petition for reinstatement, stating that he is mentally and physically fit to return to the practice of law.

Both respondent and the Grievance Administrator filed petitions for review. Respondent also filed a request for a stay of discipline, costs and expenses to which the Grievance Administrator objected. In an order dated September 27, 2016, respondent's petition for review was dismissed for his failure to file a brief in support of his petition for review and his request for a stay was denied. The Attorney Discipline Board conducted review proceedings, in accordance with MCR 9.118, on December 14, 2016, which included a review of the whole record before the panel and consideration of the Grievance Administrator's brief and the arguments presented. For the reasons discussed below, we increase the discipline imposed from a 2 ½ year suspension to disbarment and affirm the award of restitution and condition imposed by the hearing panel.

I. Hearing Panel Proceedings

On July 8, 2015, the Grievance Administrator filed a two-count formal complaint against respondent. Count One alleged that after an order of suspension was entered in *Grievance Administrator v Thomas J. Shannon,* 12-108-GA, suspending respondent's license for 90 days, but prior to the effective date, respondent met with Donna Jones regarding the possible representation of her son, Shawn Siler, in a criminal matter. It was alleged that respondent failed to advise Ms. Jones that his license to practice law would soon be suspended and that he was prohibited from accepting new clients. Respondent requested and received a $1,500 retainer from Ms. Jones and met with Mr. Siler at the Wayne County Jail.

Three days before the effective date of his 90-day suspension, respondent represented Mr. Siler at his preliminary examination. After Mr. Siler was bound over to circuit court, respondent arranged for attorney James Anderson to appear at Mr. Siler's circuit court arraignment. Respondent did not advise the court, the prosecutor, Ms. Jones, or Mr. Siler that his license was suspended. Mr. Siler subsequently retained new counsel after he and Ms. Jones learned from other sources that respondent's license was suspended and requested a full refund from respondent. Count One specifically charged that respondent accepted a retainer after an order of discipline was entered, in violation of MCR 9.119(D); failed to notify his client of his suspension, in violation of MCR 9.119(A); failed to file with the tribunal and all parties in contested litigation a notice of disqualification from the practice of law, in violation of MCR 9.119(B); held himself out as an attorney, in violation of MCR 9.119(E)(4); violated an order of discipline, in violation of MCR 9.104(9); and engaged in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on his honesty, trustworthiness, or fitness as a lawyer, in violation of MRPC 8.4(b).

Count Two charged that respondent filed two affidavits with the Attorney Discipline Board seeking reinstatement from his 90-day suspension that contained false statements and that based upon those false statements, respondent's license to practice law was reinstated, effective June 16, 2016. Count Two specifically charged that respondent made a materially false statement in an affidavit of compliance, in violation of MCR 9.123(A); violated an order of discipline, in violation of MCR 9.104(9); and engaged in conduct involving dishonesty, fraud, deceit, misrepresentation,

or violation of the criminal law, where such conduct reflects adversely on his honesty, trustworthiness, or fitness as a lawyer, in violation of MRPC 8.4(b).[1]

Respondent filed an answer to the formal complaint in which he neither admitted nor denied the allegations of misconduct. A hearing was scheduled for September 4, 2015. However, the day before the hearing, respondent sought an adjournment because he was hospitalized. Respondent provided a copy of a letter from his doctor attesting to his current medical condition. On September 3, 2015, the panel issued an order granting respondent's request to adjourn the hearing, subject to conditions that required respondent to provide written documentation of his continuing medical condition(s) which may or may not affect his ability to appear before the panel commencing September 10, 2015, and continuing on a weekly basis.

No medical documentation was received on September 10, 2015, thus the Grievance Administrator filed an affidavit attesting to respondent's failure to provide the requested information. On September 18, 2015, the panel entered an order of suspension pursuant to MCR 9.115(H)(2) (Failure to Appear Due to Physical or Mental Incapacity) that suspended respondent's license to practice law until further order of the panel or Board, effective September 21, 2015. Respondent filed a motion for reconsideration, which was denied by the panel in an order dated November 24, 2015. On the same date, a hearing on misconduct was held before the panel. Respondent appeared for the hearing and was called as a witness by the Administrator's counsel.

Respondent acknowledged that an order was entered on February 20, 2014 that suspended his license to practice law for 90 days, and testified that he "probably" read the cover letter and order, but did not read MCR 9.119 and 9.123, although both rules were cited in the cover letter and order. (Tr 11/24/15, pp. 49-52; Petitioner's Exhibit 1.) In addition, respondent admitted that the affidavit of compliance he subsequently filed was incorrect, but maintained that he simply made a mistake by not reviewing MCR 9.119 and using an old version of an affidavit he filed in a previous disciplinary matter. (Tr 11/24/15, pp. 75-76, 78.)

On February 8, 2016, the hearing panel's report on misconduct was issued in which the panel found, by a preponderance of the evidence, that respondent committed misconduct as charged in the formal complaint. The report noted that:

> The record in this matter is replete with respondent's admissions that

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[1] Both Counts One and Two also charged violations of MCR 9.104(1)-(4) and MRPC 8.4(a) and (c).

> he did not read MCR 9.119 or MCR 9.123 with respect to his responsibilities after the order of suspension was entered. Respondent also candidly admitted that he did not properly review the Corrected Affidavit prior to filing it with the Attorney Discipline Board. [Report 2/8/16, p. 3.]

A sanction hearing was held on April 25, 2016. The Grievance Administrator's counsel argued for disbarment pursuant to ABA Standards 7.1 and 8.1(a), MCR 9.123(A), and prior precedent of this Board.[2] The Administrator's counsel also argued that a number of aggravating factors under ABA Standard 9.22 applied including prior disciplinary offenses (9.22(a)); dishonest or selfish motive (9.22(b)); pattern of misconduct (9.22(c)); multiple offenses (9.22(d)); submission of false evidence, statements or other deceptive practices during the disciplinary process (9.22(f)); refusal to acknowledge wrongful nature of conduct (9.22(g)); vulnerability of victim (9.22(h)); substantial experience in the practice of law (9.22(i)); and, indifference to making restitution (9.22(j)). (Tr 4/25/16, pp. 15-20.)

Respondent stated that he was "extremely remorseful" and requested that "no additional form of discipline be imposed" in light of the interim suspension imposed by the panel that went into effect on September 21, 2015. In fact, respondent requested that the hearing panel reinstate his license because he "has not been able to practice since September." (Tr 4/25/16, p. 23.)

On August 5, 2016, the hearing panel's report on sanction was issued in which the panel made the following ruling:

> [W]hen considering all applicable circumstances, including the fact that the first of respondent's three prior suspensions is remote in time, occurring 25 years ago (Standard 9.32(m)), it is therefore the conclusion of the panel that respondent be suspended from the practice of law for 2 ½ years. The panel further finds that respondent shall, prior to petitioning for reinstatement, be required to pay restitution in the amount of $1,500 to complainant Donna Jones and to submit an evaluation, dated no more than 30 days prior to the filing of a petition for reinstatement, stating that respondent is mentally and physically fit to return to the practice of law. [Report 8/5/16, p. 3.]

The Grievance Administrator and respondent both filed timely petitions for review.

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[2] *Grievance Administrator v Perry T. Christy,* 96-75-GA; 96-149-GA (ADB 1997) (18 month suspension increased to disbarment for, among other violations, accepting six additional client referrals under a legal services plan after the effective date of a hearing panel order of suspension, in violation of MCR 9.119(D)).

However, as earlier referenced, respondent's petition for review was dismissed for his failure to file a brief in support of his petition for review and his request for a stay was denied.[3]

II. Discussion

The facts are straightforward and largely uncontested. Respondent was involved in a prior, unrelated disciplinary matter in which the hearing panel imposed a 90-day suspension of his license to practice law. An order of suspension was issued on February 20, 2014. The cover letter that accompanied respondent's order of suspension specifically stated, in bold and underlined, "**Notification to Clients, Conduct in Litigated Matters, Filing of Proof of Compliance, Conduct After Entry of Order Prior to Effective Date and Compensation.** See MCR 9.119(A)-(F)." Additionally, the order itself directed the reader to the requirements of the relevant sections of MCR 9.119, namely subsections A, B, C, D, and F. (Petitioner's Exhibit 1.) Respondent admitted to the hearing panel that he was aware of the order and that he knew that his license would be suspended as of March 14, 2014. (Tr 11/24/15, pp. 49-51, 63, 66, 69-70.)

MCR 9.119(D) provides that:

> A . . .suspended attorney, after entry of the order of . . .suspension and **prior to its effective date, shall not** accept any new retainer or engagement as an attorney for another in any new case or legal matter of any nature, **unless specifically authorized by the board chairperson** upon a showing of good cause and a finding that it is not contrary to the interests of the public and profession. [Emphasis added.]

At no time after entry of the February 20, 2014 order did respondent seek the authorization of the Board chairperson to accept the new representation. Respondent characterized his conduct as "a matter. . .where it appears I made a mistake. . .by not reviewing MCR 9.119." (Tr 11/24/15, p. 78.) Regardless of how it is characterized, respondent's representation of this new client was completely contrary to MCR 9.119(D).

In addition to his failure to comply with the provisions of MCR 9.119, the panel also found that respondent made a materially false statement in an affidavit of compliance filed pursuant to

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[3] Respondent's license to practice law has been continuously suspended since September 21, 2015.

MCR 9.123(A).

The evidence offered by the Grievance Administrator showed that on June 13, 2014, respondent filed an "Affidavit Pursuant to MCR 9.123" in which he averred that he had "fully complied with the Suspension Order of 90 days that was effective 3-14-14 and have paid all monies that were assessed." (Petitioner's Exhibit 4.) Three days later, and after a discussion with ADB staff, respondent filed a "Corrected Affidavit Pursuant to MCR 9.119" in which he averred that as of the date of his suspension, March 14, 2014, he "had no active clients;" "was not involved in the representation of anyone in contested litigation;" and, "that [he] did not accept any new retainer or engagement as attorney for another in any new case or legal matter of any nature." (Petitioner's Exhibit 5.) Again, the panel's misconduct report specifically found that respondent violated MCR 9.123(A) because he made a materially false statement in his affidavit of compliance. As noted by the Administrator, MCR 9.123(A) specifically provides that "a materially false statement contained in the affidavit is ground for disbarment."

In addition to MCR 9.123(A), the Administrator's counsel cited ABA Standards 7.1 and 8.1(a)[4] in support of her request for disbarment and the hearing panel's August 5, 2016 sanction report reflects that the panel agreed that these were the appropriate standards to consider. In addition, the panel appears to have accepted six of the nine aggravating factors the Administrator's counsel argued were applicable:

> Two American Bar Association (ABA) Standards, 7.1 and 8.1(a), as well as MCR 9.123(A), give this panel the discretionary authority to impose the sanction of disbarment. There are several considerations that militate in favor of the imposition of such a sanction, including the fact that respondent has been disciplined on several occasions throughout his legal career (Standard 9.22(a)); that respondent has not

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[4] ABA Standard 7.1 states:

> Disbarment 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 8.1(a) states:

> Disbarment is generally appropriate when a lawyer intentionally or knowingly violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession.

> acknowledged wrongdoing in the instant multi-offense matter (Standards 9.22(d) and (g)); that respondent repeatedly made false and self-serving statements in sworn affidavits submitted to the Attorney Discipline Board (Standard 9.22(f)); that the victim of respondent's misconduct, the complainant, is economically and otherwise vulnerable (Standard 9.22(h)); and that respondent has not paid back the $1,500 he accepted from the complainant as a retainer (Standard 9.22(j)). [Report 8/5/16, p. 3.]

In exercising its overview function to determine the appropriate sanction, the Board must review and, if necessary, modify a hearing panel's decision as to the level of discipline in order to ensure a level of uniformity and continuity in discipline imposed for similar offenses under similar circumstances. *Grievance Administrator v Brent S. Hunt,* 12-10-GA (ADB 2012); *Grievance Administrator v Lopatin*, 462 Mich 235; 612 NW2d 120 (2000).

The hearing panel's report reached the clear conclusion that ABA Standards 7.1 and 8.1(a), both calling for disbarment, were the applicable standards to apply, and that the aggravating *factors* far outweighed the mitigating *factor* of the remoteness of respondent's first suspension. After careful consideration, the Board finds that the suspension imposed by the hearing panel should be increased to a disbarment. The panel's determination that respondent be required to pay $1,500 in restitution and that he submit to an evaluation, dated no more than 30 days prior to the filing of a petition for reinstatement, stating that he is mentally and physically fit to return to the practice of law is affirmed.

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.