

Attorney Discipline Board

2020-Jun-15

Grievance Administrator,

Petitioner/Appellee,

v

Robert A. Canner, P 11572,

Respondent/Appellant.

Case No 17-138-GA.

Decided: June 15, 2020

Appearances

Nathan C. Piluk, for Grievance Administrator, Petitioner/Appellee
Michael Alan Schwartz, for Respondent/Appellant

BOARD OPINION

Tri-County Hearing Panel #74 of the Attorney Discipline Board issued an order on August 29, 2019, suspending respondent's license to practice law in Michigan for a period of 90 days. Respondent filed a petition for review and a petition for stay, arguing that the hearing panel imposed excessive discipline, and requesting that the Board impose a reprimand rather than a suspension. The panel also imposed the condition that respondent contact the State Bar of Michigan Practice Management Resource Center to schedule a consultation, participate in the consultation, and review and implement any recommendations that are not financially burdensome. Although the suspension of respondent's license to practice law would have been effective September 20, 2019, because respondent requested a stay, the suspension was automatically stayed pursuant to MCR 9.115(K).

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 on February 19, 2020. For the reasons discussed below, we affirm the decision of the hearing panel in its entirety.

The Grievance Administrator filed a three-count formal complaint against respondent, alleging he committed professional misconduct. Count One alleged respondent was retained by Ciji Ray to pursue a personal injury or premises liability case for injuries she sustained when she slipped on ice at her apartment complex, that he negotiated a settlement with the insurance adjuster that was agreed to by his client, crafted a breakdown of the amounts owed and to be distributed to third parties, and then did not complete the distribution of funds from the settlement, but rather kept those funds within his IOLTA for approximately two and half years. Count Two alleged respondent was retained by Kevin Craig to file a claim against the City of Detroit for injuries he and a companion sustained from a falling tree, and that respondent neglected finalizing and executing a settlement agreement, delaying payment of the settlement funds to his client for almost two years. Count Three alleged respondent was retained by Brandon Ford-Smith to pursue a no-fault insurance claim, which resulted in a denial and subsequent lawsuit, and then inappropriately made post-settlement disbursements to his client and other third-parties from funds belonging to other clients that were maintained in his IOLTA account. The formal complaint charged violations of MRPC 1.1(c); 1.2(a); 1.3; 1.4(a); 1.15(a), 1.15(b)(1), 1.15(b)(3), 1.15(d), 1.15(f); 5.1(a)-(b); and MCR 9.104(1)-(4).

In a misconduct report issued February 4, 2019, the hearing panel found that respondent had committed all of the alleged misconduct. A sanction hearing was subsequently held and on August 29, 2019, the hearing panel issued its report on discipline. Applying Standards 4.12 and 4.42 of the American Bar Association Standards for Imposing Lawyer Sanctions (ABA Standards), the panel determined that a suspension was appropriate for the misconduct established. After considering aggravating and mitigating factors, the panel determined that respondent's license to practice law should be suspended for 90 days.

On review, respondent argued in his brief that “[w]hile his failure to perform services promptly may be considered negligent, it does not constitute neglect.” Furthermore, he argued that the record does not support violations of MRPC 1.15(a) for a failure to safeguard client funds, MRPC 1.15(d) for a failure to hold property of clients or third persons in connection with a representation separate from the lawyer’s own property, or MRPC 1.15(f) for depositing his own funds into a client trust account in an amount more than reasonably necessary to pay financial institution service charges or fees. However, at the review hearing, respondent’s counsel narrowed the issue, stating:

What we have over here is a situation where the issues really go to the sanction as opposed to any kind of major issues concerning whether or not there was or was not misconduct. Now, there was some misconduct. We're not even challenging that (Tr 2/19/20, p 4.)

Nevertheless, there is plenty of evidentiary support in the record for the panel's findings regarding not only MRPC 1.15, but for all of the rule violations found.

The substance of respondent's argument is that he was merely "negligent" not neglectful in dealing with client property. As such, respondent asserts that ABA Standard 4.43 is more applicable, which provides that a reprimand is generally appropriate "when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client." However, as indicated by the hearing panel, respondent's position is contrary to the evidence presented:

In the Ciji Ray matter, the evidence established that Respondent knew he had to make disbursements to Ms. Ray's healthcare providers from her settlement; that he knew that there were still providers who had not been paid more than two years after he received the settlement proceeds, yet it took him another six months to finish making the disbursements. As a result of the delay, Ms. Ray's accounts went into collection, and her preferred medical provider refused to treat her. The panel finds that Respondent's misconduct caused actual injury to Ms. Ray.

In the Kevin Craig matter, the evidence established that Respondent was responsible for the handling of the file; that he knew or should have known that he needed to take action to finalize the settlement but failed to, resulting in a delay of approximately six months.

As for the Brandon Ford-Smith matter, the evidence established that Respondent knew that he was responsible for ensuring that all of the liens considered prior to finalizing the settlement as the attorney of record but failed to do so; that he knew he was responsible for supervising his associate, but failed to do so; that he knew that Mr. Ford-Smith had filed a request for investigation (RI) with the Grievance Administrator, and responded by offering to pay Mr. Ford-Smith additional money to induce him to withdraw the RI; and that Respondent mismanaged his IOLTA account when he used other clients' funds to pay Mr. Ford-Smith. (HP Report 8/29/19, p 5.)

The panel's reports on misconduct and sanction are detailed, thorough and well supported by the record, the ABA Standards and prior precedent of this Board. Had there been only one occurrence, respondent's argument regarding whether he was more negligent than neglectful and his reliance on *Grievance Administrator v Carrie L.P. Gray*, 93-250-GA (ADB 1996) may have more merit. However, respondent's conduct here includes a wider pattern of neglect, not "an act of simple negligence," as referenced in *Gray*. Contrary to respondent's argument, his inaction in these three separate client matters does, in fact, evidence an indifference on his part. Additionally, the duty of reasonable diligence and promptness imposed by MRPC 1.3 is distinct from the duty imposed by MRPC 1.1(c), even though the two rules may at times overlap. *Grievance Administrator v Bruce Sage*, 96-35-GA, n 4 (ADB 1997). While respondent would have us believe that he took quick ameliorative action "once he learned of the problem," the reality is that respondent knew all along there were problems with these matters. Respondent's delay can be characterized in no other way than neglect of a client matter.¹

We find the hearing panel's decision to impose a 90-day suspension to be one made after thoughtful consideration of the particular facts and circumstances of this matter and one that is supported by the record as a whole. The discipline imposed is also appropriate under the ABA Standards and this Board's precedent. Therefore, the Board is not persuaded that the hearing panel's decision to order a 90-day suspension was inappropriate. Accordingly, the hearing panel's order of suspension with condition issued August 29, 2019, is AFFIRMED.

Board members Jonathan E. Lauderbach, Barbara Williams Forney, James A. Fink, Karen O'Donoghue, and Michael S. Hohausser concur in this decision.

Board members Michael B. Rizik, Jr., Linda Hotchkiss, MD, John W. Inhulsen, and Peter A. Smit were absent and did not participate.

¹ Moreover, the purported dichotomy between "neglect" and "negligence" has been overblown. As we discussed in *Grievance Administrator v Bruce J. Sage*, 96-35-GA (ADB 1997), although neglect "generally involves more than a single instance of 'ordinary' or 'simple' negligence," such negligence may nonetheless "constitute a violation of other rules such as MRPC 1.1 (requiring competent representation) or MRPC 1.3 (diligence)." *Id* at 5, fn 2 (emphasis in original).