STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,

Petitioner/Appellee,

v

Ronald Thomas Bruce, Jr., P 62579,

Respondent/Appellant,

Case No. 16-101-GA

Decided: January 25, 2018

Appearances:

Stephen P. Vella, for the Grievance Administrator, Petitioner/Appellee
Ronald Thomas Bruce, Jr., In Pro Per, Respondent/Appellant

BOARD OPINION

Respondent filed a petition for review of an order of suspension with restitution and a condition issued by Tri-County Hearing Panel #3 on August 14, 2017 that suspended his license to practice law for 18-months. 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, although the hearing panel properly found that misconduct had been established, the discipline imposed by the hearing panel is excessive. Accordingly, we reduce discipline to a 270-day suspension of respondent's license to practice law and affirm the restitution and condition imposed by the hearing panel.

I. Hearing Panel Proceedings

On September 27, 2016, the Grievance Administrator filed a formal complaint alleging that respondent committed professional misconduct warranting discipline. Counts One through Ten

alleged respondent failed to timely respond to ten requests for investigation, failed to respond to several requests for additional information, and failed to appear in accordance with at least five separate subpoenas. In addition (and pertinent to this case on review), Count One alleged respondent abandoned his representation of Jacqueline Clagg and failed to refund the $500 attorney fee paid for the representation, and Count Two alleged respondent violated an order of the United States Bankruptcy Court requiring respondent to disgorge $600 to a former client.

A misconduct hearing was held on November 22, 2016. The panel heard testimony from witnesses who claimed they are still owed a refund from respondent, as well as an attorney who took over the representation of a bankruptcy matter previously handled by respondent. Respondent also testified at the hearing, admitting he did not timely answer the requests for investigation, but failing to explain why he did not appear in response to the subpoenas. Respondent only took issue with the amount of refunds requested, arguing that he earned the fees paid by the claimants.

On February 23, 2017, Tri-County Hearing Panel #3 issued its misconduct report, determining that petitioner had established all of the misconduct charged. The panel then conducted a hearing on discipline on May 18, 2017. At the hearing, counsel for the Grievance Administrator asked for discipline ranging from 180 days up to one year, plus restitution. Respondent argued that, although he expects some type of suspension, he believes 90 days is more appropriate.

On August 14, 2017, the hearing panel's report on discipline was issued, along with an order suspending respondent's license to practice law for a period of 18 months, retroactively effective June 30, 2017, the date of the Attorney Discipline Board's order imposing a 60-day suspension of respondent's license to practice law in *Grievance Administrator v Ronald Thomas Bruce, Jr.*, 15-122-GA (ADB 2017). The panel's order also imposed the condition that, prior to filing a petition for reinstatement, respondent must attend the seminar entitled "Tips and Tools For a Successful Practice" conducted by the State Bar of Michigan. In addition, respondent was ordered to pay restitution to Jacqueline Clagg in the amount of $500 (at issue in this appeal), as well as a total of $2,100 to other complainants. Finally, it was recommended that, following expiration of the term of suspension and upon respondent's reinstatement to the practice of law in Michigan, respondent be subjected to a supervisory period, where he would be under the supervision of an attorney/mentor.

Respondent filed a timely petition for review of the hearing panel's order of suspension and restitution with condition, arguing that the discipline imposed by the panel is excessive and not supported by the record. In addition, respondent argues that the panel erred in finding misconduct in two of the ten counts.

II. Discussion

Respondent raises the following issues: (1) the hearing panel erred in finding there was sufficient evidence to support its conclusion that respondent failed to refund an advanced fee that had not been earned; (2) the hearing panel erred in finding there was sufficient evidence to support its conclusion that respondent knowingly disobeyed an obligation under the rules of a tribunal; and (3) the 18-month suspension of respondent's license to practice law imposed by the hearing panel is excessive.

On review, the Attorney Discipline Board must determine whether the hearing panel's findings on the issues of misconduct have evidentiary support in the whole record. *In re Daggs*, 411 Mich 304, 318-319 (1981); *Grievance Administrator v August*, 438 Mich 296, 304; 475 NW2d 256 (1991). "This standard is akin to the clearly erroneous standard [appellate courts] use in reviewing a trial court's findings of fact and civil proceedings." *Grievance Administrator v Lopatin*, 462 Mich 248, n12 (2000). 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).

Respondent first argues he should not have been ordered to repay a $500 retainer paid to him by his client, Jacqueline Clagg. Respondent claims he reviewed a trust, contacted the trust attorney and had two office visits with Ms. Clagg, thereby justifying the $500 fee. Even if respondent is correct, he fails to account for the fact that he ultimately abandoned his representation of Ms. Clagg, resulting in her being forced to hire additional counsel to pursue her claim. "Our Supreme Court has given hearing panels, this Board, and the Court itself the discretion to require restitution as a condition of an order of discipline." *Grievance Administrator v Joel S. Gehrke*, 05-29-GA (ADB 2008) (citing MCR 9.106(5)). Restitution in the attorney discipline system serves the dual purpose of making a complainant or third party whole and protecting the public and the legal system through deterrence and sanctions. Even where the lawyer may have done some work, full or partial

restitution has been ordered where, due to the lawyer's neglect, little or no benefit accrues to the client. See, e.g., *Grievance Administrator v Richard A. Meier*, 12-29-GA (ADB 2015); *Grievance Administrator v Paul S. Schaefer*, 01-140-GA (ADB 2004); and, *Grievance Administrator v Dennis Mitchenor*, 08-62-GA (ADB 2010). Here, there was evidence presented that, although respondent may have done some work, he clearly neglected the matter to the detriment of his client. Therefore, the hearing panel was well within its authority to order repayment of the $500 retainer fee.

Next, respondent argues there was insufficient evidence introduced to establish he knowingly disobeyed a court order. The order at issue was issued by the United States Bankruptcy Court and provides that respondent "shall disgorge the sum of $600.00 to Christopher McAvoy for the benefit of the Debtor within fifteen (15) days of the service of this Order[.]" It is undisputed the order was entered on October 27, 2015, by the bankruptcy court, and provided respondent fifteen days to disgorge $600 in attorney fees. Although respondent argues he was not properly served with the order, there has been no evidence presented to support his claim. Respondent argues he complied with the order because it was not served until June of 2016, the same month he repaid the $600. However, to the contrary, respondent admitted at the review hearing that he was registered with the court's electronic filing system (ECF) at the time the order was entered. Therefore, respondent would have received a copy of the order when it was issued by the court. See FRBP 9022. Since respondent admits he did not pay the $600 until June of 2016, there is sufficient support for the hearing panel's finding that respondent knowingly disobeyed an obligation under the rules of a tribunal.

Finally, respondent argues that the imposition of an 18-month suspension of his license to practice law, for the failure to timely respond to ten requests for investigation, is excessive. 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, the panel properly applied Standards 7.2 and 8.2 of the American Bar Association Standards for Imposing Lawyer Sanctions (ABA Standards), which provide:

> 7.2 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.

* * *

> 8.2 Suspension is generally appropriate when a lawyer has been reprimanded for the same or similar conduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

The Board has no doubt that a suspension is warranted, but finds that 18 months is excessive. Suspensions in other jurisdictions under Standard 7.2 for failing to cooperate with disciplinary authorities range from stayed or deferred suspensions to disbarment, but such discipline is often imposed in conjunction with severe underlying infractions involving other ethics rules. See, e.g., *In re Montez*, 812 NW2d 462, 468 (Minn 2005) (two-year suspension for lawyer's misconduct that included making false statements and failing to cooperate in disciplinary investigation); *In re Edinger*, 700 NW2d 462, 468 (Minn 2005) (indefinite suspension for lawyer whose misconduct included misuse of client trust account and failing to cooperate with disciplinary process); *People v Hassan*, 45 P3d 1283, 1293 (Colo 2002) (18-month suspension under Standard 7.2 for submission of false documents to regulation counsel, in addition to technical conversion of funds); *In re Whitehead*, 816 So2d 284, 288 (La 2002) (one-year suspension with six months deferred for lawyer's failure to cooperate in two disciplinary investigations as well as failure to pursue three client matters, communicate with clients, and refund unearned fees).

In the present case, respondent's misconduct includes the failure to cooperate with disciplinary authorities, as well as two underlying infractions – failing to return a $500 unearned fee and failing to comply with a court order. Sanctions imposed in Michigan for failure to return an unearned fee have included reprimands and suspensions of varying lengths up to disbarment, depending upon numerous factors such as the length of time during which the lawyer withheld the unearned fee, whether that misconduct is accompanied by other violations, and whether the case has been characterized mainly as a neglect case or a more serious misappropriation case. See, e.g., *Grievance Administrator v Richard G. Parchoc*, 94-39-GA; 94-68-FA (ADB 1994) (3-year suspension increased to revocation for neglect and failure to return unearned fees aggravated by misrepresentation to client, failure to notify her of his suspension in a prior disciplinary action, failure to answer request for investigation and formal complaint, and prior discipline); *Grievance Administrator v Seymour Floyd*, 90-129-GA (ADB 1991) (30-day suspension for failure to return

$2,500 out of a $2,700 retainer after discharge by the client, aggravated by failure to answer request for investigation and mitigated by undocumented depression over breakup with fiancé; increased in subsequent show cause proceedings to eight month suspension after failure to make ordered restitution); *Grievance Administrator v G. Michael Doroshewitz*, ADB 138-89; 154-89; 156-89; 163-89 (ADB 1990) (180-day suspension coupled with various conditions for "persistent pattern of neglect and inattention including . . . failure to provide legal services [and return unearned fees] to six separate clients" mitigated by ongoing recovery from alcoholism); and *Grievance Administrator v Albert Chappel*, DP 21/81; DP 200/80; DP 71/81 (ADB 1982) (180-day suspension reduced to "30 days and until the unearned fee is returned" in light of purported mitigating factors).

There are relatively few cases which have come before the Board under the classification of "failure to comply with a court order," but one Board opinion provides general guidance. In *Grievance Administrator v Eleanor C. Smith*, 92-71-GA; 92-103-FA (ADB 1994), the Board increased a reprimand with conditions to a 30-day suspension for respondent's willful failure to comply with a court order requiring her to repay fees to an estate. Discipline was increased because of several aggravating factors – respondent's prior discipline record, her failure to acknowledge the wrongful nature of her conduct, and an exhibited indifference to her duty to repay the money to the estate.

Finally, an attorney who fails to answer a request for investigation should ordinarily expect that a 30-day suspension, as a minimum level of discipline, will be imposed. *Grievance Administrator v Mark L. Brown*, 00-74-GA (ADB 2002). However, aggravating and mitigating factors under ABA Standards 9.22 and 9.32 could alter the presumptive level of discipline.

Here, respondent first had an admonishment in 2010 for failing to timely respond to one request for investigation. Then just recently, this Board determined that a 179-day suspension was too harsh for a failure to answer seven requests for investigation, and reduced the discipline to a 60-day suspension. *Grievance Administrator v Ronald Thomas Bruce*, Jr., 15-122-GA (ADB 2017). However, we are now faced with the failure to timely answer *ten* more requests for investigation, plus the additional misconduct of failing to return an unearned fee and failing to comply with a court order.

In reaching its decision, the panel considered respondent's prior disciplinary offenses and pattern of misconduct as aggravating factors. As to mitigation, the panel considered personal or

emotional problems and respondent's timely good faith effort to make restitution or to rectify the consequences of his misconduct. It should be noted, however, that although respondent paid back several of the clients that filed complaints with the Attorney Grievance Commission, respondent did not refund any money until after the requests for investigation were filed.

Troubling to the Board is the fact that respondent's prior discipline also involved his failure to timely answer requests for investigation. When asked at the review hearing why he failed to respond to the requests for investigation in a timely manner, respondent stated: "I think I was going through things at the time. I think it was an oversight. I had gotten – I don't want to say I got used to not replying timely, but in the hierarchy of things, I didn't obviously prioritize the investigations like I should have." (Tr, p 9.) Clearly, respondent does not appreciate the severity of his misconduct. It is also problematic that respondent simply ignored five different subpoenas issued by the Attorney Grievance Commission. Respondent's conduct is indicative of a complete lack of respect for the disciplinary process. This, coupled with the additional violations of failing to return unearned fees and failing to comply with a court order, warrants a suspension substantial enough to protect the public and deter this type of misconduct in the future.

Respondent failed to timely answer ten requests for investigation, failed to respond to follow-up letters in a timely fashion, and ignored five different subpoenas. In addition, respondent failed to return unearned fees and failed to comply with a court order. Based upon the misconduct established, prior Board precedent, and consideration of the aggravating and mitigating factors, we find respondent's misconduct is sufficiently serious to warrant a suspension of 270 days. In reaching this decision to modify the panel's 18-month suspension, the Board considered the nature of the misconduct, as well as the closeness in time of the misconduct which led to respondent's previous suspension. This is not to say that the consequences in the future will be the same if respondent insists on repeating his misconduct. In such case, respondent should expect that the severity of the discipline will increase. Upon reinstatement, he would be wise to represent clients only if he is certain that he can discharge his responsibilities promptly, thoroughly, and with the competence and diligence required under the Rules of Professional Conduct.

For all of the foregoing reasons, we modify the hearing panel's order suspending respondent's license to practice law for 18 months, and instead order a suspension of respondent's license to practice law in Michigan for 270 days. We further affirm the restitution and condition imposed by the hearing panel.

Board members Louann Van Der Wiele, James A. Fink, Jonathan E. Lauderbach, Barbara Williams Forney, Karen O'Donoghue, and Michael B. Rizik, Jr., concur in this decision.

Board members Rev. Michael Murray, John W. Inhulsen, and Linda M. Hotchkiss, M.D. were absent and did not participate.