

Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner/Appellee,

v

Case No. 19-95-GA

JELANI AZIKIWE-KONATA KARAMOKO, P 78035,

Respondent/Appellant.

ORDER AFFIRMING HEARING PANEL ORDER OF SUSPENSION AND RESTITUTION WITH CONDITION

Issued by the Attorney Discipline Board
333 W. Fort St., Ste. 1700, Detroit, MI

Tri-County Hearing Panel #10 of the Attorney Discipline Board issued an order on January 13, 2020, suspending respondent's license to practice law in Michigan for a period of 30 days, requiring respondent to pay \$750.00 in restitution, and requiring respondent to attend the State Bar of Michigan's seminar entitled "Tips and Tools for a Successful Practice." Respondent filed a petition for review, arguing that the discipline imposed by the hearing panel is excessive in light of the applicable mitigating factors. The discipline ordered by the hearing panel was automatically stayed pursuant to MCR 9.115(K) upon the filing of respondent's petition for review and petition for stay.

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 virtual review hearing conducted on June 17, 2020. For the reasons discussed below, we affirm the decision of the hearing panel.

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, it possesses "a greater degree of discretion with regard to the ultimate result." *Grievance Administrator v Alexander H. Benson*, 08-52-GA (ADB 2010), citing *Grievance Administrator v Eric S. Handy*, 95-51-GA, 95-89-GA (ADB 1996). However, the Board traditionally does not disturb a panel's assessment unless it is clearly contrary to fairly uniform precedent for very similar conduct or is clearly outside the range of sanctions imposed for the type of violation at issue. *Grievance Administrator v Jeffrey R. Sharp*, 19-80-GA (ADB 2020); *Grievance Administrator v Lopatin*, 462 Mich 235, 247 n 12; 612 NW2d 120 (2000).

The underlying facts are clear and undisputed. Tashia Miller hired respondent to file a lawsuit against her landlord and property management company. Ms. Miller paid respondent \$750. The lawsuit involved unsafe conditions in a home she was renting. Specifically, black mold and high levels of gas chemicals were found in the home, leading to health problems for Ms. Miller and her three children.

Respondent filed a lawsuit on behalf of Ms. Miller on September 27, 2017, and later amended the complaint to include Ms. Miller's three children as plaintiffs. On March 19, 2018, the court issued a pre-trial order, requiring the parties to submit witness lists, exhibit lists, expert witnesses, proposed jury instructions and other pre-trial documents. Respondent failed to submit any of the requested documents. In June of 2018, respondent advised Ms. Miller that the insurance company for the property management company had made an offer of settlement for \$15,226. Ms. Miller accepted the offer, and respondent advised her that he would finalize the settlement and distribution. Despite numerous phone calls, text messages and emails from Ms. Miller, respondent never contacted her again.

On October 28, 2018, Ms. Miller contacted the court and discovered that her case had been dismissed because she and respondent failed to appear at a hearing on October 22, 2018. Ms. Miller contacted the attorney for the insurance company, who informed Ms. Miller that a settlement check had been issued despite the fact that the settlement had not been finalized, but that Ms. Miller had to first obtain a limited conservatorship over her children before the funds could be distributed. Ultimately, Ms. Miller was appointed conservator over her children and she received the \$15,226 settlement.

The Grievance Administrator filed a two-count formal complaint against respondent on September 16, 2019, regarding respondent's neglect of Ms. Miller's matter and his failure to adequately communicate with her, and his failure to respond to a request for investigation subsequently filed by Ms. Miller.

Although respondent was served with the formal complaint by regular and certified mail at his State Bar address, he failed to file an answer. Therefore, on October 23, 2019, the Grievance Administrator entered respondent's default. Respondent did not move to set aside the default, and he appeared at the hearing, admitted the default, and requested that the panel move on to the sanction portion of the proceedings.

In concluding that a 30-day suspension was warranted, the hearing panel properly relied on well-established case law urging a short suspension for failure to answer a request for investigation except where "exceptional circumstances" exist. See *Grievance Administrator v Susan M. Eifler*, 14-54-GA (ADB 2015); *Grievance Administrator v David A. Glenn*, DP 91/86 (ADB 1987). The hearing panel also properly relied on Standard 4.42(a) [Lack of Diligence] of the American Bar Association Standards for Imposing Lawyer Sanctions. Standard 4.42 states:

Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

On review, respondent cites to numerous mitigating factors to argue exceptional circumstances exist here, including: the absence of prior discipline [9.32(a)], the absence of dishonest or selfish motive [9.32(b)], personal or emotional problems [9.32(c)], timely and good faith effort to make restitution [9.32(d)], inexperience in the practice of law [9.32(f)], character or reputation [9.32(g)], and remorse [9.32(l)]. However, at the hearing below, respondent failed to cite

to any mitigating factors other than his lack of experience and prior discipline. As such, respondent has waived this argument because he failed to raise this issue at the hearing panel level. See *Napier v Jacobs*, 429 Mich 222, 227-228; 414 NW2d 862 (1987) (a general rule of practice is that the failure to timely raise an issue waives review of that issue on appeal); *Spencer v Black*, 232 Mich 675; 206 NW 493 (1925) (issue raised for the first time on appeal not properly before the court on review).

Nevertheless, the present case does not present “exceptional circumstances.” Although it is true respondent does not have any prior discipline during his approximately six years of practice, this factor is not sufficient to alter the presumptive discipline in these circumstances. Respondent also cited to emotional or physical problems and character and reputation as mitigating factors, but there was no evidence introduced at the hearing to support either of these claims. Respondent asserted a timely and good faith effort to make restitution, however restitution was only agreed to after the Formal Complaint was filed. Therefore, the only two applicable mitigating factors are respondent's inexperience and lack of prior discipline, which the panel took into consideration. As we have indicated, such mitigation does not rise to the level of “exceptional circumstances” warranting the imposition of a reprimand.

Moreover, ABA Standard 4.42(a) calls for a suspension for knowingly failing to perform services for a client and causing injury or potential injury to a client. Respondent's misconduct in this case included neglect, multiple instances of a failure to communicate, the failure to act with reasonable diligence, and the failure to respond to a request for investigation.

Respondent asserts that he was merely “negligent” in the handling of Ms. Miller's case, however the record establishes the opposite. Respondent admitted there was a breakdown in communication, claiming it happened because Ms. Miller failed to pay his attorney fees. However, there is no evidence in the record to support such a claim. To the contrary, on May 29, 2018 - prior to receipt of the settlement offer - Ms. Miller provided respondent with a suggested payment plan for the remaining balance of \$500 that she owed. However, even if Ms. Miller had an outstanding balance, nonpayment of fees does not justify respondent's abandonment of his representation of Ms. Miller and the fact that he left her settlement unresolved, which ultimately resulted in the dismissal of her case. Respondent's explanation actually shows that his conduct was knowing and calculated, and thus ABA Standard 4.2 was properly applied here.

Respondent has also asserted that because there was no injury to Ms. Miller, a suspension under Standard 4.42 is not warranted. This argument is not persuasive. Luckily, Ms. Miller took it upon herself to contact opposing counsel and they were willing to help her with the settlement. If she had not done so, she could have easily lost the \$15,226 settlement as a result of respondent's misconduct.

Here, respondent's misconduct includes neglect, multiple instances of a failure to communicate, the failure to act with reasonable diligence, and the failure to respond to a request for investigation. In light of the panel's careful consideration of this matter at the misconduct and discipline phases, we see no reason to disturb the panel's determination as to the discipline imposed.

On review, respondent expressed concern that he would be unable to comply with the condition requiring him to attend the State Bar of Michigan's seminar entitled “Tips and Tools for a Successful Practice” prior to the expiration of his suspension. However, respondent's

reinstatement is not conditioned upon him completing the seminar; the condition simply requires respondent to attend the seminar within one year of the effective date of the hearing panel's order. Nevertheless, counsel for the Grievance Administrator has indicated his willingness to accommodate respondent so that his reinstatement is not hindered by his inability to attend the seminar.

NOW THEREFORE,

IT IS ORDERED that the hearing panel's Order of Suspension and Restitution With Condition issued on January 13, 2020, is **AFFIRMED**.

IT IS FURTHER ORDERED that respondent's license to practice law in Michigan is **SUSPENDED FOR 30 DAYS, EFFECTIVE OCTOBER 16, 2020**, and until respondent's filing of an affidavit of compliance with the Supreme Court, the Attorney Discipline Board and the Attorney Grievance Commission in accordance with MCR 9.123(A).

IT IS FURTHER ORDERED that respondent shall, on or before October 16, 2020, pay restitution in the amount of **\$750.00** to Tashia M. Miller. Respondent shall file written proof of payment with the Attorney Grievance Commission and the Attorney Discipline Board within 10 days of the payment of restitution.

IT IS FURTHER ORDERED that respondent shall not be eligible for reinstatement in accordance with MCR 9.123(A) unless respondent has fully complied with the restitution provisions of this order.

IT IS FURTHER ORDERED that respondent shall, within one year from the date of this order (on or before September 17, 2021), attend the State Bar of Michigan's seminar entitled "Tips and Tools for a Successful Practice." Respondent shall provide written verification of attendance to both the Grievance Administrator and the Attorney Discipline Board.

IT IS FURTHER ORDERED that from the effective date of this order and until reinstatement in accordance with the applicable provisions of MCR 9.123, respondent is forbidden from practicing law in any form; appearing as an attorney before any court, judge, justice, board, commission or other public authority; or holding himself out as an attorney by any means.

IT IS FURTHER ORDERED that, in accordance with MCR 9.119(A), respondent shall, within seven days after the effective date of this order, notify all of his active clients, in writing, by registered or certified mail, return receipt requested, of the following:

1. the nature and duration of the discipline imposed;
2. the effective date of such discipline;
3. respondent's inability to act as an attorney after the effective date of such discipline;
4. the location and identity of the custodian of the clients' files and records which will be made available to them or to substitute counsel;

5. that the clients may wish to seek legal advice and counsel elsewhere; provided that, if respondent was a member of a law firm, the firm may continue to represent each client with the client's express written consent;
6. the address to which all correspondence to respondent may be addressed.

IT IS FURTHER ORDERED that in accordance with MCR 9.119(B), respondent must, on or before the effective date of this order, in every matter in which respondent is representing a client in litigation, file with the tribunal and all parties a notice of respondent's disqualification from the practice of law.

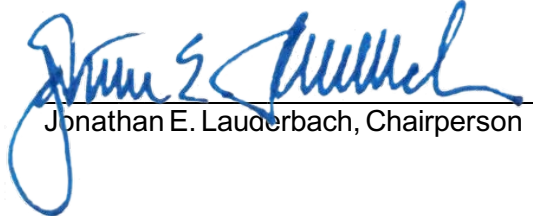
IT IS FURTHER ORDERED that, respondent shall, within 14 days after the effective date of this order, file with the Grievance Administrator and the Attorney Discipline Board an affidavit of compliance as required by MCR 9.119(C).

IT IS FURTHER ORDERED that respondent's conduct after the entry of this order but prior to its effective date, shall be subject to the restrictions set forth in MCR 9.119(D); and respondent's compensation for legal services shall be subject to the restrictions described in MCR 9.119(F).

IT IS FURTHER ORDERED that respondent shall, on or before October 16, 2020, pay costs in the amount of **\$1,962.15** consisting of costs assessed by the hearing panel in the amount of \$1,841.65 and court reporting costs incurred by the Attorney Discipline Board in the amount of \$120.50 for the review proceedings conducted on June 17, 2020. Check or money order shall be made payable to the Attorney Discipline System and submitted to the Attorney Discipline Board [333 West Fort St., Ste. 1700, Detroit, MI 48226] for proper crediting. (See attached instruction sheet.)

ATTORNEY DISCIPLINE BOARD

By:


Jonathan E. Lauderbach, Chairperson

Dated: September 17, 2020

Board members Jonathan E. Lauderbach, Michael B. Rizik, Jr., Barbara Williams Forney, James A. Fink, Karen O'Donoghue, Linda S. Hotchkiss, M.D., Michael S. Hohausen, and Peter A. Smit concur in this decision.

Board member John W. Inhulsen was absent and did not participate.