STATE OF MICHIGAN

Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner,

v Case No. 18-62-GA

FULTON B. EAGLIN, P 24834

Respondent.
_____/

ORDER AFFIRMING HEARING PANEL ORDER OF SUSPENSION

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

Tri-County Hearing Panel #8 of the Attorney Discipline Board issued an order on August 22, 2019, suspending respondent's license to practice law in Michigan for a period of 179 days. The Grievance Administrator filed a petition for review arguing that the hearing panel incorrectly summarized the misconduct found, and imposed insufficient discipline. The Administrator requests that the Board increase the suspension of respondent's license to "at least 180 days and include a restitution condition." Respondent's 179-day suspension became effective September 13, 2019.

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 formal complaint filed by the Grievance Administrator alleged that respondent billed, and was paid or paid himself, excessive fees, particularly when acting as trustee for the Doris Hoffman Revocable Living Trust. The complaint specifically alleged that between November 2013 and July 2014, respondent paid himself $112,483.13 from the trust, making no distinction between fees paid to him as attorney and fees paid to him as trustee; billed $400 per hour for all tasks, including ministerial tasks; and did not give proper notice to the beneficiaries. The factual statements of the complaint set forth that in November 2014, the University of Michigan (a beneficiary under the trust) and the Michigan Attorney General filed a joint petition to reduce the trustee/attorney fees charged by respondent and to modify the trust. On November 30, 2015, Washtenaw County Probate Court Judge Julia Owdziej removed respondent as trustee and ordered that he repay $67,548.84 to the Doris Hoffman Trust in a matter titled *In the Matter of Doris E. Hoffman Revocable Living Trust*, Washtenaw County Probate Court Case No. 14-1199-TV. The formal complaint charged violations of MRPC 1.5(a); 1.15(b)(1) and (3); 1.16(d); 3.4(c); 8.4(a)-(c); MCL 700.7802, and MCR 9.104(1)-(4).

Respondent failed to answer the formal complaint and his default was subsequently entered by the Administrator. Shortly thereafter, respondent then retained counsel and filed a motion to set aside the default. That motion was accompanied by a "motion for order concerning facilitative mediation of case financial issues" in which respondent requested that the panel instruct the Administrator and the successor trustee to participate in a facilitation/mediation.

After hearing oral argument on the motions, the hearing panel denied both of them. A sanction hearing was subsequently held and on August 22, 2019, the hearing panel issued its report on both misconduct and discipline. The panel's report noted that having denied respondent's motion to set aside the default, the misconduct alleged in the formal complaint was established by virtue of respondent's default. As for sanction, the panel's report made the following findings:

> [T]he Panel believes that the most serious violations involve failure to preserve the client's property, *i.e.*, breaching the duty of loyalty expected of trustees by taking unfairly excessive trustee compensation contrary to beneficiary benefit, in violation of MCL 700.7802 ("A trustee shall administer the trust solely in the interests of the trust beneficiaries."); and collecting a clearly illegal or excessive fee, particularly billing at rates for legal services for activities that were ministerial or not legal services at all, in violation of MRPC 1.5(a).
>
> * * *
>
> [T]he Panel unanimously finds and concludes that the suspension of Respondent's license is appropriate . . . While it is clear to the Panel from the ABA Standards and from the Washtenaw County Probate Court's Opinion and Order of 11/30/2015 (Exhibit A) that Respondent should be suspended, the more difficult question to answer is the appropriate duration of the suspension . . . Here, the Panel has agreed that 179 days would be an appropriate suspension.
>
> * * *
>
> The offenses in this matter were serious; however, mitigating factors preclude a suspension 180 days or longer, which would require further order of a hearing panel, the board, or the Supreme Court before Respondent would be authorized to resume his practice of law. [Report 8/22/19, pp 5-7.]

On review, the Grievance Administrator argues, in part, that the panel incorrectly summarized the misconduct established by respondent's default. In particular, the Administrator argues that the panel disregarded "misappropriation" of funds belonging to the trust. However, regardless of the default, nothing in the formal complaint or in the record below supports a finding that respondent misappropriated funds belonging to the trust.

The charging paragraphs of the formal complaint, specifically paragraph 20(b), alleged that respondent "failed to safeguard client money by misappropriating client funds, in violation of MRPC 1.15." In actuality, while MRPC 1.15, is titled "SAFEKEEPING FUNDS," nowhere is the word

"misappropriation" in any form ever used in the rule. Furthermore, MRPC 1.15 contains eight separate provisions, ((a)-(j)), ranging from definitions of terms used in the rule itself, (1.15(a)), to describing when a lawyer's good faith decision to deposit funds in an IOLTA is reviewable by a disciplinary body, (1.15(j)). The Board has previously had occasion to address MRPC 1.15's key provisions and concepts noting that "nowhere in the text of MRPC 1.15 will one find the words "misappropriation" or "commingling," but parties, hearing panels, this Board, and others have traditionally used the terms to describe conduct prohibited by MRPC 1.15(d)." *Grievance Administrator v Robin H. Kyle*, 13-14-GA (ADB 2016). Paragraph 20(b) of the formal complaint fails to indicate which provision of MRPC 1.15 respondent is alleged to have violated. Moreover, the term "misappropriation" does not always connote conversion, knowing or otherwise. *Kyle, supra.* From the formal complaint and the proofs, it is clear that this case is about billing, not a lawyer helping himself to estate funds to which he has no claim whatsoever.

On review, it is argued that because the word "misappropriating" is used in paragraph 20(b) of the formal complaint, misappropriation was proven by virtue of respondent's default for failure to answer the formal complaint. We disagree. It has long been held that in disciplinary proceedings in Michigan, a default relieves the Grievance Administrator of an obligation to establish the factual allegations in the complaint. *Grievance Administrator v Michael G. Sewell*, 58-88; 113-88 (ADB 1989). However, it has also long been held that a default establishes only the *well-pleaded* allegations in the complaint. By defaulting, a respondent does not admit facts extrinsic or unnecessary to the allegations of misconduct nor does the defaulted respondent admit an averment which is a conclusion of law. *Sewell, supra*. In some instances, additional evidence may be required to prove a legal conclusion if it is not readily apparent from the facts deemed admitted. *Grievance Administrator v Geoffrey L. Craig*, 14-123-GA (ADB 2017).

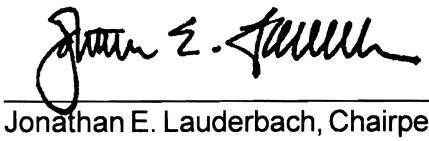
It is clear from the record below that neither the panel, nor counsel for the Administrator at the hearing, viewed this as a misappropriation (in the sense of conversion) case, despite the Administrator's briefing to the contrary now on review. In fact, at the hearing, the Administrator's counsel argued that respondent intended to charge a fee that he knew, or should have known, was excessive, (Tr 5/30/19, p 155), which presumably is why his focus was on the suspension standard found in ABA Standard 4.12, rather than the disbarment standard found in ABA Standard 4.11. Given the evidence submitted, we do not find that it was inappropriate for the panel to focus on the suspension standard to determine the appropriate discipline to impose in this matter. The Administrator's reliance on cases that discuss the intentional misappropriation of client funds and the requisite presumptive disbarment level discipline, *Grievance Administrator v Mason*, 13-4-GA (ADB 2013) (two-year suspension increased to disbarment for intentional misappropriation of trust funds while serving as conservator); *Grievance Administrator v Petz*, 99-102-GA; 99-130-FA (ADB 2001) (30-month suspension increased to disbarment for intentional misappropriation of client funds and misrepresentations to client), is misplaced.

We find the hearing panel's decision to impose a 179-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 Administrator's counsel made no request that the hearing panel order respondent to pay restitution and we find no reason to require him to do so now. Upon careful consideration of the whole record, the Board is not persuaded that the hearing panel's decision to order a 179-day suspension was inappropriate.

NOW THEREFORE,

IT IS ORDERED that the hearing panel's order of suspension issued August 22, 2019, is **AFFIRMED**.

ATTORNEY DISCIPLINE BOARD

By: 

Jonathan E. Lauderbach, Chairperson

Dated: February 27, 2020

Board members Jonathan E. Lauderbach, Barbara Williams Forney, James A. Fink, Karen O'Donoghue, and Michael S. Hohauser 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.