In re Ryan S. Kosztya
Respondent-Appellee

Commission No. 2018PR00113

Synopsis of Review Board Report and Recommendation
(November 2021)

The Administrator brought a four-count amended complaint against Respondent, charging him with dishonestly misappropriating over $58,000 in client funds, making false statements to a court, and other misconduct. The Hearing Board found that he committed most of the charged misconduct and recommended that he be suspended for one year, with the suspension stayed after six months by a one-year period of probation with conditions. The Administrator appealed, asking this Board to recommend no less than a two-year suspension, with no part of the suspension stayed by a period of probation.

A majority of the review panel recommended that Respondent be suspended for two years and until he completes the ARDC Professionalism seminar. A dissenting member recommended that Respondent be suspended for one year and until he completes the ARDC Professionalism seminar. All three panel members recommended that the period of suspension be followed by a one-year period of probation, with the conditions recommended by the Hearing Board, finding that a period of probation that included monitoring would benefit both the public and Respondent.

BEFORE THE REVIEW BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

RYAN S. KOSZTYA,

Respondent-Appellee,

No. 6276598.

Commission No. 2018PR00113

REPORT AND RECOMMENDATION OF THE REVIEW BOARD

SUMMARY

The Administrator brought a four-count amended complaint against Respondent, charging him with dishonestly misappropriating over $58,000 in client funds, making false statements to a court, and other misconduct. Following a hearing at which Respondent was represented by counsel, the Hearing Board found that he committed most of the charged misconduct, and recommended that he be suspended for one year, with the suspension stayed after six months by a one-year period of probation with conditions.

The Administrator appealed, challenging the Hearing Board's sanction recommendation and asking this Board to recommend, instead, no less than a two-year suspension.

For the reasons that follow, a majority of the review panel recommends that Respondent be suspended for two years and until he completes the ARDC Professionalism seminar. A dissenting member recommends that Respondent be suspended for one year and until he completes the ARDC Professionalism seminar. All panel members recommend that the period of suspension be followed by a one-year period of probation, with the conditions recommended by the Hearing Board.

BACKGROUND[1]

Respondent was admitted to practice in Illinois in 2002. He worked for a commercial litigation firm, the Will County State's Attorney's Office, and a small general practice firm before opening his own firm in 2009. He practices in the areas of criminal law, family law, and some civil litigation. He has no prior discipline.

Respondent's Misconduct

Banyai Matter (Counts I through III)

Count I

In 2014, Respondent began representing Lisa Romano (formerly known as Lisa Banyai) in a dissolution matter. Pursuant to a court order, Respondent agreed to hold in escrow a $10,400 income tax refund paid to Lisa and her former husband. On March 20, 2014, Lisa gave Respondent a cashier's check in the amount of $10,400, which he deposited into his business account on March 25. As of June 2, his business account was overdrawn. Respondent admitted he used the entire $10,400 to cover personal and business expenses and "'intended to put it back in as soon as humanly possible so purportedly no one would be wiser.'" (Hearing Bd. Report at 4 (quoting Report of Proceedings at 163-64).)

Count II

In May 2014, the Banyais sold their home and received net proceeds of $51,487.52. On June 3, Respondent deposited the proceeds into his business account. As of July 15, he had used at least $10,502.05 of the proceeds for his personal bills and expenses such as child care and school tuition. He testified that he intended to replace the funds.

Count III

In June 2014, Respondent filed a motion on Lisa's behalf seeking the court's permission to pay her credit card bills from the "escrowed funds" he was supposed to be holding.

Respondent admitted that his references in the motion to "escrowed funds" were false because he was not holding the funds in escrow and had already used all of the tax refund.

In August, the court ordered Lisa to produce credit card statements. Respondent did not produce them. In September, he again requested permission to pay credit card bills from "escrowed funds." In October, the court entered an order holding Lisa in indirect civil contempt for failing to produce the credit card statements and requiring Respondent to produce a full accounting of the escrowed funds. Respondent did not do so.

In March 2015, Respondent filed another motion seeking permission to use "held funds" to pay some of Lisa's credit card debt. As of this time, Respondent had used almost $21,000 of the Banyais' funds and was not holding the remaining funds in his client trust account, but did not so advise the court. In September, the court entered an order again holding Lisa in indirect civil contempt and directing Respondent to produce his bank records related to the Banyai funds and file an affidavit of compliance. Respondent did not produce his bank records but filed an affidavit of compliance stating that he had produced all documents within his control. He admitted he knew the affidavit of compliance was false at the time he filed it.

In October, Respondent appeared before the court and represented that he had made payments on Lisa's credit cards from funds that were held in escrow. The court ordered Respondent to produce his bank records the following day. Respondent provided the court with a one-page document showing a $15,000 balance in his client trust account and represented to the court that the Banyai funds were in the client trust account, when, in fact, they were in his business account. He admitted he knew his statements to the court were false.

On November 2, 2015, the court entered an order continuing the trial in the Banyai matter to determine whether Respondent could continue as Lisa's counsel, appointing a receiver, and ordering Respondent to turn over $15,300 to the receiver within one business day. Respondent

then acknowledged to the court that he had misused the funds and withdrew as Lisa's counsel. He turned over $15,300 to the receiver, but, as described below, used another client's funds to make the payment.

Lisa testified that she provided Respondent with the documents she was ordered to produce and did not understand at the time why she was being accused of failing to turn over documents. She further testified that Respondent did not always inform her of court dates and did not tell her about the orders holding her in indirect civil contempt. She asked Respondent for an accounting multiple times, but he did not provide one. When Respondent withdrew as Lisa's counsel, the court offered to give her time to find a new attorney, but, because she had waited so long to get to trial, she decided to proceed *pro se*.

Rock Matter (Count IV)

In August 2015, Respondent began representing Julie Rock in a parentage and child support matter. In September, the father of Rock's child was ordered to turn over to Respondent $40,000 from a worker's compensation settlement he had received. Respondent agreed to hold the funds in escrow, and deposited them in his client trust account. After making some payments to Rock for child support and subtracting his fees, he should have been holding $37,200. But, as of November 2, 2015, his client trust account had a zero balance. Respondent admitted that he used the Rock funds without authorization to repay the funds he had taken in the Banyai matter.

Hearing Board's Findings and Sanction Recommendation

Regarding the Banyai matter, the Hearing Board found that the Administrator proved that Respondent deposited the income tax refund and house sale proceeds into his business account, and then knowingly and without authorization withdrew almost $21,000 of the funds and used them for his own purposes. It also found that his conduct was dishonest, given that he acted

knowingly and did not simply mishandle client funds by mistake. It therefore found that he violated Rules 1.15(a) and 8.4(c).

The Hearing Board further found that Respondent knowingly made false statements to the court on multiple occasions about the funds he was supposed to be holding in escrow; knowingly filed a false affidavit of compliance; failed to expedite litigation and obstructed a party's access to evidence by failing to comply with court orders requiring him to produce credit card statements and bank and accounting records; acted dishonestly by making false statements and withholding documents in an effort to conceal his misuse of the Banyai funds; and engaged in conduct prejudicial to the administrator of justice. It thus found that he violated Rules 3.2, 3.3(a), 3.4(a), 8.4(c), and 8.4(d).

In the Rock matter, the Hearing Board found that Respondent violated Rules 1.15(a) and 8.4(c) by knowingly withdrawing funds he should have been holding in his client trust account and using them to replace funds he misappropriated in the Banyai matter.[2]

In aggravation, the Hearing Board found that Respondent engaged in a pattern of misappropriating client and third-party funds and caused harm to Lisa Romano, who was twice held in indirect civil contempt and was left without counsel because of Respondent's misconduct. In mitigation, it found that Respondent reported himself to the ARDC, cooperated in the proceedings, and admitted most of the charged misconduct. It found him to be sincerely remorseful and to understand why his conduct was wrongful. It noted that he presented credible testimony from three witnesses as to his good character. It also found it mitigating that Respondent had completed courses to better understand his bookkeeping obligations.

Based on its findings regarding misconduct, mitigation, and aggravation, the Hearing Board recommended that Respondent be suspended for one year, with the suspension stayed after six months by a one-year period of probation, with conditions. It stated that, given

Respondent's testimony that he was not keeping the required records and journals at the time of his misconduct, it believed that a period of monitoring to ensure that he was complying with his obligations under Rule 1.15 would benefit him and protect the public.

ANALYSIS AND SANCTION RECOMMENDATION

On appeal, the Administrator asks us to reject the Hearing Board's recommendation of a one-year suspension partially stayed by probation, and to recommend, instead, a suspension of at least two years, with no part stayed by probation. Respondent, in turn, contends that the Hearing Board appropriately considered the nature of his misconduct and all of the aggravating and mitigating factors in making its sanction recommendation, and that this Board should make the same recommendation.

In making our own sanction recommendation, we consider the nature of the proved misconduct, and any aggravating and mitigating circumstances shown by the evidence, *In re Gorecki*, 208 Ill. 2d 350, 360-61, 802 N.E.2d 1194, 1200 (2003), while keeping in mind that the purpose of discipline is not to punish but rather to protect the public, maintain the integrity of the legal profession, and protect the administration of justice from reproach. *In re Timpone*, 157 Ill. 2d 178, 197, 623 N.E.2d 300 (1993). We also consider the deterrent value of attorney discipline and whether the sanction will help preserve public confidence in the legal profession. *Gorecki*, 208 Ill. 2d at 361 (citing *In re Discipio*, 163Ill. 2d 515, 528, 645 N.E.2d 906 (1994)). Finally, we seek to recommend a sanction that is consistent with sanctions imposed in similar cases, *Timpone*, 157 Ill. 2d at 197, while considering the case's unique facts. *In re Witt*, 145 Ill. 2d 380, 398, 583 N.E.2d 526 (1991).

In support of its recommendation, the Hearing Board cited several conversion cases in which the Court imposed suspensions stayed in significant part by probation. *See In re Ladewig*, 00 CH 33, *petition for leave to file exceptions denied*, M.R. 19512 (Sept. 24, 2004) (imposing

three-year suspension, stayed after five months by 31 months of probation, where attorney converted over $94,000 from two estates, neglected two client matters, made false statements to clients, and engaged in dishonesty); *In re Caithamer*, 2012PR00079, *petition to impose discipline on consent allowed*, M.R. 26179 (Sept. 25, 2013) (imposing on consent one-year suspension, stayed after five months by one year of probation, where attorney converted $15,000 in settlement proceeds, misrepresented status of lien to client's subsequent attorney, and was found guilty of attempting to obstruct justice by misrepresenting his identity in an effort to avoid service of a rule to show cause); *In re Parikh*, 2019PR00005, *petition to impose discipline on consent allowed*, M.R. 30572 (Jan. 21, 2021) (imposing on consent one-year suspension, stayed after five months by two years of probation, where attorney mishandled $70,000 in 16 client matters by withdrawing funds from his client trust account and using them to pay business and personal expenses, at a time when his law firm was growing rapidly and he was not paying attention to his firm's books).

We find these cases to be distinguishable from this matter, where Respondent intentionally converted $58,102 in three separate episodes over the course of 20 months and, when ordered to turn over the escrow funds to the receiver in the Banyai matter, did so by using funds belonging to Julie Rock. Then, Respondent repeatedly lied to the court and his clients about his actions.

In *Caithamer*, in contrast, the attorney converted a significantly lesser amount of funds ($15,000) than Respondent did, and did so in only one client matter. In addition, it appears that the conversions were inadvertent rather than purposeful and dishonest; the petition noted that, "[a]t the time of the misconduct, there were times when Respondent took funds from his client trust account for general office expenses from what he believed were his fees, without keeping track of the funds that belonged to his clients, including the Gash estate." *Caithamer*, 2012PR00079, at 4.

In *Parikh*, the attorney's misconduct occurred at a time when he was not regularly checking the balances in his firm's client trust, reconciling activity in the account, or keeping track of which client funds and what, if any, legal fees were being held in the account. *Parikh*, 2019PR00005, at 2, 8. "As a result, he used funds belonging to clients or others who may have had an interest in the funds, without any authority." *Id*. at 3. Thus, unlike here, the conversions were a result of poor recordkeeping and practice management, rather than a purposeful taking of client and third-party funds for personal benefit. Moreover, the respondent's conduct caused no harm to his client.

Finally, *Ladewig* involved an attorney suffering from mental illness, which was a significant reason that the Review Board recommended a suspension stayed in part by probation. That simply is not the case here. Moreover, we note that, in *Ladewig*, this Board recommended, and the Court imposed, a three-year suspension, albeit partly stayed by probation. Thus, that case actually provides support for a lengthy suspension in this matter.

In this matter, the Hearing Board found, based upon Respondent's own admissions, that his conversion of funds was knowing, purposeful, and done for his own benefit. Most important, unlike in the foregoing cases, Respondent lied repeatedly to his clients and the court in order to conceal his wrongdoing. The Hearing Board only cursorily mentions this significant fact in its discussion of sanction, and cites no cases involving a similar level of dishonesty.

Given the egregious nature of Respondent's conduct, we believe that a one-year suspension is insufficient to meet the goals of attorney discipline. We are concerned that the Hearing Board's recommendation sends the wrong message to the legal community and consumers of legal services about what is expected of lawyers, and what the consequences are if an attorney engages in serious intentional misconduct that occurs over a long period of time. We believe that the relatively lenient sanction recommended by the Hearing Board would not serve the goals of

maintaining the integrity of the legal profession and protecting the administration of justice from reproach, *see Timpone*, 157 Ill. 2d at 197, but rather would serve to erode the public's faith in our profession.

Moreover, we seek to recommend a sanction that is consistent with sanctions imposed in similar cases. *Timpone*, 157 Ill. 2d at 197. To this end, we find that the circumstances in this matter are similar to those in cases in which the Court imposed a two-year suspension. *See, e.g, In re Tillman*, 2010PR00137 (Review Bd., Oct. 17, 2013), *petition for leave to file exceptions allowed*, M.R. 26429 (Jan. 17, 2014) (imposing two-year suspension where attorney dishonestly converted $37,000 from funds that he was supposed to be holding for an estate; in order to hide his conversion, filed a final accounting that omitted $194,550 in estate funds that he was supposed to be holding for medical expenses; and on two occasions, induced his employees to sign statements attesting that a client had signed a will in their presence when they had not been present for the will's execution); *In re Cole*, 93 CH 419 (Review Bd., Dec. 30, 1994), *petition for leave to file exceptions allowed*, M.R. 11012 (May 26, 1995) (imposing two-year suspension where attorney dishonestly misappropriated $1,500 in client funds; he also signed his partner's name on a $120 check for legal fees, used those funds for his own purposes, and lied to his partner about the check); *In re Altman*, 128 Ill. 2d 206, 538 N.E.2d 1105 (1989) (imposing two-year suspension where attorney signed client's name to settlement draft without her authority and then spent over $10,000 of her funds over the next three months); *In re Miller*, 92 CH 519, *petition to impose discipline on consent allowed*, M.R. 8764 (Jan. 27, 1993) (imposing two-year suspension on consent where attorney misappropriated about $19,000 in several cases, commingled client funds with his own, and advanced monies to a number of clients); *In re Titlebaum*, 02 CH 94, *petition to impose discipline on consent allowed*, M.R. 18862 (Sept. 22, 2003) (imposing two-year suspension on consent where previously-censured attorney commingled client funds with his own,

misappropriated approximately $13,000 in connection with several debt-collection matters, and tendered insufficient-funds check to client and bank).

The foregoing cases are on par with this matter in that they involve purposeful and dishonest conversions of client and/or third-party funds for the attorneys' own benefit, as well as additional dishonest acts or other serious misconduct. We thus conclude that a suspension of two years would be an appropriate sanction for Respondent's misconduct in this matter.

We also conclude that no part of Respondent's suspension should be stayed by probation. We agree with the Administrator's counsel's statement during oral argument that, in order to justify shortening a suspension by a period of probation, there needs to be a causal connection between a respondent's practice-management deficiencies and his misconduct, because that causal connection goes to culpability, which in turn impacts our sanction recommendation. *Cf., e.g., In re Odom*, 01 CH 69 (Review Bd., Sept. 10, 2004) at 17-18, *petition for leave to file exceptions denied*, M.R. 19772 (May 19, 2005); *In re Holzman*, 2016PR00099 (Review Bd., Nov. 19, 2018), at 22, *petitions for leave to file exceptions allowed*, M.R. 29677 (March 19, 2019) (both declining to stay any portion of attorneys' suspensions by probation, where attorneys engaged in purposefully dishonest conduct).

In this matter, there was no causal connection between Respondent's knowing, intentional, and dishonest conversion of funds and his inadequate bookkeeping procedures. Consequently, we see no basis for staying any portion of the recommended suspension by a period of probation. Respondent is fully responsible for his actions, and any sanction should reflect that culpability.

We note, however, that the Hearing Board found that Respondent was not keeping the required records and journals at the time of his misconduct, and therefore concluded that a period of monitoring, to ensure that he complies with his obligations under Rule 1.15, would

benefit him and protect the public. In addition, at oral argument, the Administrator's counsel acknowledged that probation could be appropriate in this matter if it were tacked on to the end of Respondent's suspension and not used to shorten Respondent's actual suspension.

We agree with the Hearing Board that a period of probation, with conditions that include monitoring, would protect the public, which is one of our paramount goals in recommending discipline. *See Gorecki*, 208 Ill. 2d at 360. We therefore recommend that, upon resuming law practice, Respondent be placed on a one-year period of probation, subject to the conditions recommended by the Hearing Board. We also believe that Respondent would benefit from a review of his ethical obligations to his clients prior to practicing law again, and therefore recommend that he be required to complete the ARDC Professionalism seminar before he is allowed to resume his law practice.

Accordingly, we recommend that Respondent be suspended for two years and until he completes the ARDC Professionalism seminar, followed by a one-year period of probation subject to the conditions recommended by the Hearing Board. We find this sanction to be commensurate with Respondent's misconduct, consistent with discipline that has been imposed for comparable misconduct, and necessary to serve the goals of attorney discipline, act as a deterrent, and preserve the public's trust in the legal profession.

CONCLUSION

For the foregoing reasons, we recommend that, for his misconduct, Respondent be suspended for two years and until he completes the ARDC Professionalism seminar, followed by a one-year period of probation subject to the conditions recommended by the Hearing Board.

Respectfully submitted,

Benedict Schwarz, II
Esther J. Seitz

Leslie D. Davis, dissenting:

On the issue of an appropriate sanction for Respondent's misconduct, I respectfully disagree with my colleagues' recommendation of a two-year suspension. Rather, I believe that a one-year suspension is appropriate for the circumstances involved in this matter.

Particularly compelling to me are the Hearing Board's findings, based on its observations of Respondent at the hearing, that he was sincerely remorseful for his actions and understood why his conduct was wrongful, and that he took "full responsibility for the shortcomings that led to his misconduct and [was] willing to do the work necessary to prevent future misconduct." (Hearing Bd. Report at 14.) These are findings of fact that only the hearing panel members could determine, based on their ability to observe and listen to Respondent's testimony, and I give great deference to them. *See In re Adams*, 05 CH 30 (Review Bd., Dec. 5, 2007), *petition for leave to file exceptions denied and recommendation adopted*, M.R. 22150 (March 17, 2008) (noting that Hearing Board was uniquely able to assess demeanor of the witnesses, particularly respondent's demeanor and sincerity, and finding that Hearing Board based its sanction recommendation at least in part on its assessment of respondent's credibility and remorse, which deserved deference by the Review Board).

I fully agree with my colleagues that what Respondent did was wrong and inexcusable. However, I also believe that Respondent's life circumstances – including the loss of his home, car, and many personal belongings in a flood in 2008, subsequent mortgage foreclosure, and lawsuits that resulted in judgments against him – took a heavy financial and personal toll on him and had a trickle-down effect for years, which culminated in the misconduct at issue in this matter. I have considered these circumstances, as well as the fact that Respondent has accepted responsibility for his conduct and is trying to get his life back on track, in determining what I believe would be an appropriate sanction for his misconduct.

I also find it worth noting that Respondent did not use the misappropriated funds to support an extravagant lifestyle, but instead used the funds to try to keep up with basic personal and business expenses. (*See* Report of Proceedings at 165-66.) *Cf., e.g., In re Gunzburg,* 09 CH 57 (Review Bd., Feb. 27, 2013), *petition for leave to file exceptions denied*, M.R. 26039 (May 22, 2013) (one-year suspension where, over an 18-month period, attorney converted $67,000 in funds that he was holding for clients in three personal injury matters and used them for personal expenses – some of them extravagant; engaged in dishonesty in two of the matters; failed to promptly deliver funds in one of the matters; and engaged in the unauthorized practice of law for failing to timely register); *In re Saciuk*, 2014PR00075, M.R. 27979 (May 18, 2016) (one-year suspension for dishonest conversion of about $23,000 in two matters, where respondent used the misappropriated funds for extravagant personal expenses and made restitution after ARDC commenced investigation). Moreover, the misconduct in the foregoing cases, in which one-year suspensions were imposed, is at least as egregious as Respondent's. Thus, these cases support a one-year suspension in this matter.

I do not agree with my colleagues that a one-year suspension of a sole practitioner should be regarded as relatively lenient. Our goal is not to punish Respondent but rather to ensure that he makes amends for what he has done and gets on a path where he can practice law again without harming the public. I believe this is accomplished through a one-year suspension in combination with requiring him to complete the Professionalism seminar and monitoring his behavior during a period of probation.

Accordingly, I believe that a one-year suspension is a sufficient sanction, particularly in light of the significant mitigation in this matter. I agree with my colleagues that Respondent should be required to complete the ARDC Professionalism seminar before resuming

the practice of law, and that, following his suspension, a one-year period of probation with the conditions recommended by the Hearing Board would benefit him and protect the public.

CERTIFICATION

I, Michelle M. Thome, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Review Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on November 9, 2021.

/s/ Michelle M. Thome
Michelle M. Thome, Clerk of the
Attorney Registration and Disciplinary
Commission of the Supreme Court of Illinois

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[1] Neither party challenges the Hearing Board's findings of fact or of misconduct. Thus, the facts set forth in this section are uncontested on appeal.

[2] It also found that the Administrator failed to prove that Respondent engaged in additional charged misconduct in the Rock matter. That finding is not at issue on appeal.

BEFORE THE REVIEW BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of: **RYAN S. KOSZTYA,** Respondent-Appellee, No. 6276598.	Commission No. 2018PR00113

PROOF OF SERVICE
OF THE REPORT AND RECOMMENDATION
OF THE REVIEW BOARD

I, Michelle M. Thome, hereby certify that I served a copy of the Report and Recommendation of the Review Board on the parties listed at the addresses shown below by email and regular mail, by depositing it with proper postage prepaid, by causing the same to be deposited in the U.S. Mailbox at One Prudential Plaza, 130 East Randolph Drive, Chicago, Illinois 60601 on November 9, 2021, at or before 5:00 p.m. At the same time, a copy was sent to Counsel for the Administrator-Appellant by e-mail service.

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

Michelle M. Thome,
Clerk

/s/ Michelle M. Thome
By: Michelle M. Thome
Clerk

FILED

November 09, 2021

ARDC CLERK