

## **NOTICE OF SUSPENSION AND RESTITUTION**

Case No. 92-184-GA

William D. Frey, P-33806, Erie, Michigan, by Attorney Discipline Board Tri-County Hearing Panel #23.

- 1) Suspension - 18 Months;
- 2) Effective December 9, 1999.

As the elected prosecutor for Monroe County, respondent was responsible for the prosecution of criminal charges against the driver of an automobile involved in an accident resulting in the death of the occupants of the other vehicle. While that criminal investigation was pending, respondent met with the family of the decedents to discuss a possible wrongful death action against the driver then under investigation by his office. The hearing panel found, by a preponderance of the evidence, that respondent agreed to represent the family with respect to their potential civil claims against the criminal defendant arising from that accident and arranged for another attorney to also be involved in that representation. As Monroe County Prosecutor, and while involved in the representation of the family in their civil claims arising from the accident, respondent charged the defendant with two counts of negligent homicide and personally prosecuted those criminal charges. While the criminal prosecution was pending, respondent and co-counsel recommended to the family that they accept \$100,000.00 in settlement of their civil claims and respondent accepted a fee of \$16,667.00 for his services on behalf of the family. The panel found that neither respondent nor the other attorney disclosed to the probate court the fact that respondent had received those attorney fees from the proceeds of the wrongful death action.

Respondent's conduct was found to be in violation of MCR 9.104(1)-(4) and Canons 1, 5 and 9 of the then applicable Code of Professional Responsibility, DR 1-102(A)1, 2, 4, 5 and 6; DR 5-101(A) DR 5-105; and DR 9-101(B).

In arriving at its decision to impose a suspension of 18 months, the hearing panel considered all of the aggravating and mitigating factors, including the private gain to respondent while serving as an elected public official. The panel further ordered that respondent shall account for the fees which he received in connection with the wrongful death matter and that he return those fees to the decedents' family. Costs were assessed in the amount of \$2,896.57.