

NOTICE OF SUSPENSION

Case No. 98-29-GA

Brian D. Albritton, P-46197, Bloomfield Hills, Michigan, by the Attorney Discipline Board vacating the order of Tri-County Hearing Panel #61.

1. Notice of Suspension - 30 Days
2. Effective October 6, 1999.

The hearing panel ordered that respondent should be reprimanded for his failure to answer a request for investigation. (See Attorney Discipline Board Notice of Reprimand issued November 3, 1998). On November 12, 1998, the Grievance Administrator filed a delayed petition for review which sought reversal of the hearing panel's dismissal of Count One of the complaint and an increase in the level of discipline. The Board granted the delayed petition and conducted review proceedings under MCR 9.118.

Respondent did not dispute the allegations in Count One of the formal complaint that while representing a criminal defendant in a case scheduled for trial in Oakland County Circuit Court, he refused to participate in the jury selection process on the grounds that the late endorsement of a prosecution witness left him with inadequate time to prepare for trial. On the following day, respondent appeared before Oakland County Circuit Judge Alice Gilbert where he apologized to the court, the prosecuting attorney, and the police officers. Respondent was found guilty of indirect civil contempt and was ordered to pay a fine of \$250.00 plus stipulated costs of \$2,500.00. By a majority, the hearing panel found the respondent's actions did not constitute professional misconduct as charged in the complaint. On review, the Attorney Discipline Board adopted the position of the dissenting panelist that respondent knowingly disobeyed an obligation under the rules of a tribunal in violation of MRPC 3.4(c) where the refusal was not based on an assertion that no valid obligation existed. Respondent's failure to answer the request for investigation was found to be in violation of MCR 9.103(C); MCR 9.104(1) through (4) and (7); MCR 9.113(A) and (B)(2); and MRPC 8.1(b) and 8.4(a) and (c).

The Board concluded that discipline should be increased to a suspension of 30 days. Two Board members would have affirmed the dismissal of Count One but would have increased discipline to a 30 day suspension solely on the basis of the failure to answer our request for investigation. One Board member would have increased discipline to a 60 day suspension. Costs were assessed in the total amount of \$674.08.