

NOTICE OF SUSPENSION
(By Consent)

Case No. 98-100-GA

Hon. Kenneth A. Radzibon, P-27713, Rogers City, Michigan, by
Attorney Discipline Board Otsego County Hearing Panel.

- 1) Suspension - Ninety (90) Days;
- 2) Effective June 9, 1998.

Respondent is a part-time judge of the Presque Isle County Probate Court. In April 1998, the Judicial Tenure Commission (JTC) filed a Formal Complaint charging respondent with attorney misconduct. Respondent consented to an order of suspension from his judicial duties for ninety (90) days and requiring him to make restitution of \$1,000 plus interest. The allegations are as follows:

Respondent was retained by a plaintiff to act as co-counsel in a civil action in Presque Isle Circuit Court. He was paid a \$3,000 retainer, and his services were to be billed against the retainer. One of respondent's principle duties was to secure the services of a builder to serve as an expert witness. Respondent pled no contest to allegations that he neglected to select and employ an expert builder; intentionally lied to his client and his co-counsel; following his termination, failed to promptly return the unearned attorney fees to his client or to promptly provide her with an accounting of the retainer; failed to promptly reply to an admonishment letter from the JTC instructing him to make an appropriate refund to his client; and failed to respond to two other letters from the JTC.

In a separate matter, respondent represented a long-time client in a criminal matter in the 89th District Court. Following the client's conviction, respondent filed an appeal. An \$1,000 bond pending appeal was set by the court. Respondent paid the bond on his client's behalf, but was later reimbursed by the client. The client expressly told respondent that upon conclusion of the appeal, the returned bond could be applied to any unpaid balance on respondent's fee for pursuing an appeal. The client died while the appeal was pending. Respondent was retained by his client's widow/personal representative to serve as co-counsel in the probate proceeding. Respondent pled no contest to allegations that, even though the bond money was an estate asset, he secured the funds from the District Court and applied them to his attorney fees; failed to list the refunded bond moneys on an inventory filed with the probate court; and failed to account to the Probate Court for the bond refund.

Respondent's conduct was alleged to be in violation of MCR 9.104(1)-(4); MCR 9.205; and Michigan Rules of Professional Conduct 1.3; 1.15(b); and 8.4(a)-(c).

The parties stipulated that respondent be suspended from the practice of law for 90 days commencing June 9, 1998, to run concurrent to the 90-day suspension imposed in the JTC proceedings. Costs were assessed in the amount of \$4.15.