

NOTICE OF SUSPENSION

Case No. 94-60-GA

David R. Justian, P-30018, Muskegon, Michigan, by the Attorney Discipline Board affirming Muskegon County Hearing Panel #1's Order of Suspension.

- 1) Suspension - one (1) year;
- 2) Effective July 5, 1995.

Respondent was retained by an elderly client regarding a \$35,000 loan transaction between the client and the owner's of the nursing home in which the client resided. The client signed a trust and a durable power of attorney, both naming respondent as trustee and attorney-in-fact. A purported retainer for a one-third contingent fee was allegedly executed between respondent and his client. The debtors subsequently gave respondent a \$35,000 cashier's check, which he deposited into his client trust account. The next day, respondent opened a bank account entitled "[The Client's] Trust c/o David Justian". The opening deposit of \$27,241.63 was obtained from other accounts maintained by the client. Respondent issued a check drawn on his trust account in the amount of \$10,000, made payable to the client's trust account, and deposited in into the client's trust account. Acting under the power of attorney, respondent committed his client to the purchase of the nursing home under a land contract for \$55,000, \$35,000 of which was paid by a check drawn on the client's trust account. A demand was subsequently made upon respondent to return \$25,000 to the guardianship estate, which he refused to do.

The panel found that respondent failed to maintain the \$35,000 in trust; withdrew and misappropriated \$23,748.87 of the funds entrusted to him; failed to make prompt, full restitution to his client, despite repeated requests for same; induced his client to sign a contingent fee contract which was inappropriate under the circumstances; failed to advise his client of the effect of the contingent fee agreement; failed to advise his client that the contingent fee agreement would work to his detriment at a time when his condition did not permit him to have a full understanding of the terms and condition of the agreement; collected fees without the prior approval of the probate court; and attempted to charge a clearly excessive fees of \$29,500.

Respondent represented another client in a civil matter. The client paid \$2,500 to respondent as fees and \$225 for costs to appeal the dismissal of the case. The panel found that respondent failed to file a claim of appeal on his client's behalf despite repeated promises to do so, nor did he advise his client against the taking of an appeal; failed to return the file to his client;

and failed to keep in adequate communication with his client.

Respondent's conduct was found to be in violation of MCR 9.104(1)-(4); Michigan Rules of Professional Conduct 1.1(c); 1.2(a); 1.3; 1.4(a); 1.5(a); 1.7(b); 1.15(a)-(c); 3.2; and 8.4(a)-(c); and Canons 1, 2, 5, 6, 7 and 9 of the then-applicable Code of Professional Responsibility, DR 1-102(A)(1),(4)-(6); DR 2-106(A) and(B); DR 5-101(A); DR 6-101(A)(3); DR 7-101(A)(1)-(3); DR 7-102(A)(8); and DR 9-102(A)and(B)(4).

Petitions for review were filed by the Grievance Administrator, the respondent and one of the complainants. In an order entered June 7, 1995, the Attorney Discipline Board affirmed the hearing panel order of suspension. Costs were assessed in the amount of \$2,519.19.