

NOTICE OF SUSPENSION

Case Nos. 92-71-GA; 92-103-FA

Eleanor C. Smith, P-27938, Detroit, Michigan, by the Attorney Discipline Board increasing a hearing panel Order of Reprimand.

- 1) Suspension - thirty (30) days;
- 2) Effective January 10, 1995.

Respondent was retained to prepare and file a petition for appointment of a guardian and conservator for an incapacitated person. Respondent filed the necessary petitions and the estate was opened in Wayne County Probate Court. Respondent prepared and filed a first annual account which included a claim for attorney fees in the amount of \$4032.50, which had already been paid to the respondent from estate funds.

The Probate Court disallowed the first annual account and adjourned the matter with instructions to respondent that she prepare and file a statement of legal services rendered in support of her request for fees. Respondent did not appear at the subsequent hearing. At that hearing, the Court disallowed the attorney fees requested by the respondent. The Probate Court subsequently entered an order allowing an amended first annual account filed by the fiduciary and denying the attorney fees requested by respondent.

Successor counsel for the estate sent a written demand to the respondent for return of the attorney fees which had been disallowed by the Court. That demand was followed by a petition in requesting that the Court enter an order requiring respondent to return the fees to the estate. At the hearing on that motion, respondent filed a summary of services in support of her claim for attorney fees. The Probate Court subsequently issued an order directing respondent to pay the sum of \$2182.50 to the conservator with a further provision that in the event that amount was not paid by the date ordered by the court, respondent was to pay the full amount of \$4182.50 to the conservator of the estate "forthwith". As of the date of the filing of the formal complaint, respondent had not complied with the Court's order directing repayment of attorney fees to the estate.

The hearing panel concluded that the respondent's failure to comply with the order of the Court together with her failure to file a memorandum of legal services in support of her attorney fees and her failure to appear for a hearing constituted violations of MCR 9.104(1)-(4) and Michigan Rules of Professional Conduct 1.1(c), 1.3, 3.4(c) and 8.4(a)and(c).

Following a separate hearing to determine the appropriate discipline, the panel ordered that respondent should be reprimanded with conditions requiring that she read materials and probate court rules regarding attorney fees and that she file an affidavit affirming that she would comply with those rules in the future.

The Grievance Administrator filed a petition for review. In an order and opinion issued October 28, 1994, the Board held: "[W]e have considered the willful nature of the misconduct, as well as respondent's prior discipline, and conclude that the hearing panel Order of Reprimand with Conditions should be increased to a suspension of thirty days."

Respondent filed a motion for reconsideration and petition for stay of discipline. The Board denied the motion for reconsideration, but granted a temporary stay of discipline until January 10, 1995.

Costs were assessed in the amount of \$1,367.91.