

NOTICE OF SUSPENSION AND RESTITUTION

Case Nos. 94-10-GA; 94-26-FA

Joseph M. Bernert, P-28639, Southfield, Michigan, by Attorney Discipline Board Tri-County Hearing Panel #101.

- 1) Suspension - 120 days;
- 2) Effective November 1, 1994.

Respondent failed to answer the Formal Complaints but appeared at the hearings held in Mount Clemens on March 9 and May 3, 1994. Respondent's defaults were entered, and the panel determined that the default established the allegations of the Formal Complaints.

The complainant, an attorney, filed a petition for workers' compensation benefits on a client's behalf. The attorney was subsequently discharged, and she filed a notice of lien which contained a claim for costs and attorney fees. The notice of lien was served on respondent. Respondent forwarded a substitution to the attorney. The attorney executed the substitution, subject to the lien previously filed. On the basis of the substitution respondent was substituted as counsel. A settlement took place and the case was redeemed for \$24,000. The insurance company issued a check in the amount of \$4,476 to respondent for attorney fees.

The panel found, by default, that respondent failed to notify the attorney of his receipt of the check; negotiated the check; failed to maintain the funds in dispute separate from his own; and misappropriated the funds in dispute, approximately \$2,751.16.

Respondent's conduct was found to be in violation of MCR 9.104(1)-(4)and(7); and Michigan Rules of Professional Conduct 1.15(a)-(c); 8.1(b); and 8.4(a)-(c).

On July 8, 1994, the panel entered an order of suspension for 120 days which also directed respondent to make restitution to the complainant in the amount of \$2,751.16. Respondent filed a timely petition for review and stay of discipline. In an order entered January 13, 1995, the Attorney Discipline Board dismissed respondent's petition for review for his failure to file a brief in support of that petition. That order directed that the 120-day suspension was deemed to have commenced on November 1, 1994, the effective date of the Board's previous order of interim suspension.

Costs were assessed in the amount of \$556.98.