

NOTICE OF REPRIMAND AND RESTITUTION

Case Nos. 92-291-GA; 92-321-FA

Thomas J. Plachta, P-23705, Mt. Pleasant, Michigan, by
Attorney Discipline Board Isabella County Hearing Panel.

- 1) Reprimand;
- 2) Effective May 7, 1993.

Respondent, as chief assistant prosecutor for Isabella County, appeared at the sentencing of a criminal defendant who pled guilty to two felonies. That defendant asked respondent to represent him on appeal of that conviction. Respondent advised the defendant that there would be no conflict and agreed to represent the defendant in a delayed appeal of the criminal conviction and sentencing. Respondent prepared and filed a motion to set aside sentence on behalf of the defendant and a brief in support of the motion.

The hearing panel found that respondent failed to advise the defendant that because he was the chief assistant prosecutor at the time that the defendant was sentenced, and appeared on behalf of the prosecutor's office for the defendant's sentencing, a conflict of interest existed which precluded his representation of him on appeal; failed to decline the representation despite the existence of the conflict of interest and the fact that, in representing the defendant, he would be required to take a position contrary to that taken by the prosecutor at the time the charges were pending and the sentence imposed; and, accepted a fee in the amount of \$500.00 from the defendant when respondent knew or should have known that he could not ethically represent the defendant due to the existence of the conflict of interest.

Respondent's conduct was found to be in violation of MCR 9.104 (1-4); and the Michigan Rules of Professional Conduct, 1.7(a); 1.9 (a,b); 1.11(a)(2)(c)(1); 8.4(a,c). Formal Complaint 92-321-FA was dismissed. The panel ordered respondent to make restitution to the defendant in the amount of \$500.00. Costs were assessed in the amount of \$672.41.