

NOTICE OF SUSPENSION

Case No. DP 112/86

Murdoch J. Hertzog, P-14913, Detroit, MI by an Order of the Attorney Discipline Board reducing a 60-day suspension imposed by the Hearing Panel.

- 1) Suspension - 30 days;
- 2) Effective December 29, 1988.

Based upon the evidence presented, the Rearing Panel concluded that the Respondent's simultaneous representation of a client in a divorce case while representing both the client and his wife in a claim against an insurance company constituted a conflict of interest and was in violation of MCR 9.104(1-4) and Canon 5 of the Code of Professional Responsibility DR 5-105(A)(B)(C). In a separate Count, the Panel concluded that the Respondent was not entirely candid with his client with regard to his failure to present oral arguments on the client's behalf in a matter pending in the Court of Appeals in violation of MCR ~9.104(1-4) and Canon 1 of the Code of Professional Responsibility DR 1-102(A)(1)(4-6).

Finally, the Panel found that the Respondent's demand for a release from all liability as a pre-condition to the return of his client's file was inconsistent with the requirements of Canon 6, DR 6-102(A) which directs that a lawyer shall not attempt to exonerate himself from or limit his liability to his client for his personal malpractice. Costs were assessed in the amount of \$1,127.55.

Following review of Petitions filed by the Respondent and the Complainant, the Attorney Discipline Board affirmed the Hearing Panel's factual finding. The Board declined to order restitution to the Complainant in light of the availability of more appropriate civil remedies. In reducing discipline from a 60-day suspension to a 30-day suspension, the Board cited the Respondent's prior unblemished record during 35 years of practice. A dissent was filed by one Board Member who would reduce discipline to a reprimand.