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STATE OF MICHIGAN

Attorney Discipline Board



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NOTICE OF SUSPENSION AMENDED AS TO EFFECTIVE DATE ONLY

File Nos. DP 127/86; DP 165/86

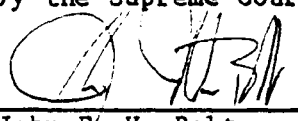
David A. Nelson, p 18227, 333 N. Main Street, Davison, MI 48423 by the Michigan Supreme Court denying Respondent's Application for Leave to Appeal an Order of Suspension entered by the Attorney Discipline Board increasing a ninety day suspension ordered by the Howell Hearing Panel to a suspension of 180 days.

- 1) Suspension - 180 days;
- 2) Effective May 27, 1987.

The Hearing Panel found, by a preponderance of the evidence, that the Respondent received a check in the amount of \$9433.00 naming himself and his client as joint payees but that Respondent did not make timely notification to his client that the settlement check had been received. The Panel found that before notification was made, Respondent endorsed the check and used those funds to discharge the unrelated obligation of another client. The Respondent acknowledged that the funds were not maintained in a client trust account but argued that the funds were removed from the trust account to protect them from seizure by the client's creditors. The Panel found that Respondent's conduct was in violation of MCR 9.104(1-4) and Canons 1 and 9 of the Code of Professional Responsibility, DR 1-102(A)(4-6) and DR 9-102(A),(B)(2,3,4). A suspension of ninety days was imposed by the Hearing Panel.

Following its review of the Petitions filed by both parties, the Attorney Discipline Board affirmed the Hearing Panel's factual findings but increased discipline to a suspension of 180 days. The Board noted the mitigating effect of Respondent's prior unblemished record, his restitution to the Complainant and his performance of substantial legal services to the client but emphasized Respondent's willful violation of the client trust account provisions of Canon 9. The Board specifically rejected the argument that an attorney may waive the trust account provisions of Canon 9 by the deposit of the lawyers own funds in a safe deposit box or personal account. Costs were assessed in the amount of \$986.42.

The discipline imposed by the Hearing Panel and the Board was stayed during the pendency of Respondent's appeal. Respondent's Application for Leave to Appeal and Motion for Further Stay of Proceedings were both denied by the Supreme Court on June 26, 1987.


John F. VanBolt

Dated: JUL 24 1987