

STATE OF MICHIGAN
Attorney Discipline Board

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ATTORNEY DISCIPLINE BOARD
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GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner,

v

TIMOTHY P. MURPHY, P 25941

Case Nos. 12-57-JC; 12-58-GA

Respondent.

**ORDER INCREASING DISCIPLINE FROM A
SUSPENSION OF 60 DAYS WITH CONDITIONS
TO A SUSPENSION OF 180 DAYS WITH CONDITIONS**

Issued by the Attorney Discipline Board
211 W. Fort St., Ste. 1410, Detroit, MI

On February 25, 2013, Tri-County Hearing Panel #107 of the Attorney Discipline Board issued an order suspending Timothy P. Murphy's license to practice law in Michigan for a period of 60 days, with conditions relevant to the established misconduct. The Grievance Administrator filed a petition for review and the respondent has filed a cross-petition for review. The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118 which included a review of the whole record before the panel and consideration of the briefs and arguments presented at a review hearing conducted July 10, 2013.

At the outset, the Board notes that respondent's request for a correction of the hearing panel's finding that respondent knowingly disobeyed an obligation under the rules of a tribunal in violation of MRPC 3.4(c) is granted. At the hearing before the panel on September 25, 2012, counsel for the Grievance Administrator withdrew that charge of misconduct. (Tr 9/25/12, pp 21-22.) The reference to that rule in the panel's report appears to have been included inadvertently and the panel's report will be modified to reflect that correction.

As to the remaining issues presented on review by the parties, there is little, if any, dispute as to the nature of respondent's misconduct. Respondent has admitted a history of addictive behavior leading to the misdemeanor drunk driving conviction which is a subject of this proceeding. From all of the evidence in the record, it appears that respondent is a regular and successful participant in several recovery programs. Respondent is to be commended for those efforts and we note his candor to the hearing panel and the Board during this proceeding. However, respondent also acknowledged candidly that he did not "forget" to report his convictions for alcohol-related driving offenses to the Grievance Administrator or to disclose them on his annual registration statements with the State Bar of Michigan as clearly required under the applicable rules. In short, it is undisputed that respondent knowingly and intentionally failed to disclose certain misdemeanor convictions as he was required to do under two separate procedural rules.¹

¹ Under MCR 9.120(A)(1), a lawyer must make a written report of his or her conviction of any crime to the Grievance Administrator and the Board within 14 days. The State Bar's mandatory annual registration form requires an affirmative statement that the member has or has not been convicted of any crime that has not already been reported. See Supreme Court Administrative Rule 2003-5.

In reviewing the hearing panel's decision to impose a suspension of 60 days, coupled with conditions related to respondent's continued work with the Lawyers and Judges Assistance Program (LJAP), the Board has applied the standard of review to be followed when the level of discipline is the focus of the proceeding:

In exercising its overview function to determine the appropriate sanction, this Board's review is not limited to the question of whether there is proper evidentiary support for the panel's findings, rather, it possesses "a greater degree of discretion with regard to the ultimate result." [*Grievance Administrator v Benson*, Case No. 06-52-GA (ADB 2009), citing *Grievance Administrator v Handy*, Case No. 95-51-GA (ADB 1996). See also *Grievance Administrator v August*, 438 Mich 296, 304; 304 NW2d 256 (1991).]

As the Board has more recently observed:

This Board's responsibility to ensure consistency and continuity in discipline imposed under the ABA Standards and caselaw necessarily means that we may not always afford deference to a hearing panel's sanction decision, and that we may be required to independently determine the appropriate weight to be assigned to various aggravating and mitigating factors depending on the nature of the violation and other circumstances considered in similar cases. *Grievance Administrator v Saunders V. Dorsey*, 02-118-AI; 02-121-JC (ADB 2005).

In this case, the Board is inclined to agree with respondent that respondent's failure to report his convictions on his annual bar dues statement or in a written disclosure to the Grievance Administrator is more aptly considered under Standard 7.0 [Violations of Duties Owed to the Profession] of the American Bar Association (ABA) Standards for Imposing Lawyer Sanctions, rather than under ABA Standard 6.12, which is broadly titled, "False Statements, Fraud and Misrepresentation." The commentary to Standard 7.0 discusses the appropriate sanctions for an individual who makes false statements and deliberately fails to disclose information on an application for admission to the bar. Admittedly, that commentary does not apply Standard 7.0 to information provided to a licensing agency after the individual has been admitted. On the other hand, neither does respondent's conduct fit squarely under ABA Standard 6.12, which deals with false statements or documents submitted *to a court* with a resulting injury or potential injury to a party or an adverse or potentially adverse effect on a legal proceeding. However, a detailed discussion of the applicability of Standard 6.0 versus Standard 7.0 is not necessary in this case inasmuch as a suspension, rather than disbarment or a reprimand, would be the appropriate sanction under either Standard 6.2 or Standard 7.2.

The thrust of the Grievance Administrator's argument is that under longstanding precedent of this Board, respondent's willful misstatements should properly result in a suspension of at least 180 days in order to trigger the reinstatement requirements of MCR 9.123(B) and MCR 9.124, if not a suspension of at least one year. This argument is persuasive. The Board has carefully considered the mitigating factors cited by the hearing panel and argued by respondent. Nevertheless, the willful misconduct in this case warrants the imposition of a suspension of 180 days, to be accompanied by the additional conditions imposed by the hearing panel.

NOW THEREFORE,

IT IS ORDERED that discipline in this case is increased from a suspension of 60 days to a **SUSPENSION OF RESPONDENT'S LICENSE TO PRACTICE LAW FOR 180 DAYS EFFECTIVE SEPTEMBER 6, 2013**, and until further order of the Supreme Court, the Attorney Discipline Board or a hearing panel, and until respondent complies with the requirements of MCR 9.123(B) and (C); and MCR 9.124.

IT IS FURTHER ORDERED that respondent shall be subject to the following conditions:

1. Respondent shall fully cooperate, participate in, and successfully complete the Lawyers and Judges Assistance Program (LJAP) program in which he is currently enrolled;
2. Respondent shall provide, or cause to be provided, quarterly reports from LJAP to the Grievance Administrator or his designee. The report should generally include a diagnosis, prognosis, and recommendation. All reports shall report whether positive progress is being made; and
3. Respondent shall sign any and all waivers necessary to allow LJAP to provide reports as to respondent's progress in the LJAP program and, if known to LJAP and its agents, any violations of the program's terms and conditions.

IT IS FURTHER ORDERED that from the effective date of this order and until reinstatement in accordance with the applicable provisions of MCR 9.123, respondent is forbidden from practicing law in any form; appearing as an attorney before any court, judge, justice, board, commission or other public authority; or holding himself out as an attorney by any means.

IT IS FURTHER ORDERED that, in accordance with MCR 9.119(A), respondent shall, within seven days after the effective date of this order, notify all of his active clients, in writing, by registered or certified mail, return receipt requested, of the following:

1. the nature and duration of the discipline imposed;
2. the effective date of such discipline;
3. respondent's inability to act as an attorney after the effective date of such discipline;
4. the location and identity of the custodian of the clients' files and records which will be made available to them or to substitute counsel;
5. that the clients may wish to seek legal advice and counsel elsewhere; provided that, if respondent was a member of a law firm, the firm may continue to represent each client with the client's express written consent;

6. the address to which all correspondence to respondent may be addressed.

IT IS FURTHER ORDERED that in accordance with MCR 9.119(B), respondent must, on or before the effective date of this order, in every matter in which respondent is representing a client in litigation, file with the tribunal and all parties a notice of respondent's disqualification from the practice of law.

IT IS FURTHER ORDERED that, respondent shall, within 14 days after the effective date of this order, file with the Grievance Administrator and the Attorney Discipline Board an affidavit of compliance as required by MCR 9.119(C).

IT IS FURTHER ORDERED that respondent's conduct after the entry of this order but prior to its effective date, shall be subject to the restrictions set forth in MCR 9.119(D); and respondent's compensation for legal services shall be subject to the restrictions described in MCR 9.119(F).

IT IS FURTHER ORDERED that respondent shall, on or before September 6, 2013, pay costs in the amount of **\$2,443.07**, consisting of costs assessed by the hearing panel in the amount of \$2,342.94 and court reporting costs incurred by the Attorney Discipline Board in the amount of \$100.13, for the review proceedings conducted on July 10, 2013. Check or money order shall be made payable to the State Bar of Michigan, but submitted to the Attorney Discipline Board [211 West Fort St., Ste. 1410, Detroit, MI 48226] for proper crediting. (See attached instruction sheet).

ATTORNEY DISCIPLINE BOARD

By:


Thomas G. Kienbaum, Chairperson

DATED: August 8, 2013

Board members Thomas G. Kienbaum, James M. Cameron, Jr., Sylvia P. Whitmer, Ph.D., Rosalind E. Griffin, M.D., Carl E. Ver Beek, Craig H. Lubben, Lawrence G. Campbell, Dulce M. Fuller and Louann Van Der Wiele concur in this decision.