

STATE OF MICHIGAN

Attorney Discipline Board

FILED
ATTORNEY DISCIPLINE BOARD
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GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner/Appellant,

v

Case No. 11-121-JC

SUSAN G. GRAHAM, P 55509,

Respondent/Appellee.

ORDER AFFIRMING HEARING PANEL ORDER OF SUSPENSION WITH CONDITIONS

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

The Grievance Administrator petitioned for review of the Order of Suspension With Conditions entered in this matter by Emmet County Hearing Panel #1 of the Attorney Discipline Board on February 7, 2012 (panel order and report attached). The Administrator seeks review on the grounds that the panel erred as a matter of fact and law in its application of the American Bar Association Standards for Imposing Lawyer Sanctions by imposing insufficient and inappropriate discipline.¹

The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118, including a review of the record before the hearing panel and consideration of the briefs and arguments presented by the parties at a public review hearing conducted on May 9, 2012.

In this review proceeding, the Administrator does not object to the panel's conclusion that a suspension is appropriate under ABA Standard 5.12, nor does the Administrator seek modification of the post-suspension conditions ordered by the hearing panel. At the hearing before the panel on December 12, 2011, the panel members actively questioned respondent to determine the extent of her recovery. It has not been shown that an additional period of suspension followed by reinstatement proceedings is necessary to promote further protection of the public, the courts or the legal profession. Rather, the hearing panel's serious approach in crafting a sanction that achieves those goals is reflected in the panel's inclusion of conditions for treatment and reporting for a period of three years. Upon careful consideration of the whole record and the authorities and precedent cited by the parties, the Board is not persuaded that the hearing panel's decision to order a suspension of 45 days was inappropriate.

NOW THEREFORE,

IT IS ORDERED that the hearing panel Order of Suspension With Conditions entered February 7, 2012, is **AFFIRMED**.

ATTORNEY DISCIPLINE BOARD

By:


Thomas G. Kienbaum, Chairperson

DATED: June 4, 2012

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

¹ The hearing panel ordered that respondent's license to practice law in Michigan should be suspended for 45 days, with additional conditions including completion of an 18 month probationary period imposed by the 90th District Court, as well as additional monitoring by the State Bar of Michigan's Lawyers and Judges Assistance Program for a period of three years. The Grievance Administrator seeks an order increasing respondent's suspension to a period of 180 days.

STATE OF MICHIGAN

Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner,

v

Case No. 11-121-JC

SUSAN G. GRAHAM, P 55509,

Respondent.

ORDER OF SUSPENSION WITH CONDITIONS

Issued by the Attorney Discipline Board
Emmet County Hearing Panel #1

Ralph H. Houghton, Jr., Chairperson
Joel D. Wurster, Member
Kevin G. Klevorn, Member

The hearing panel conducted show cause proceedings in this matter on December 12, 2011, in accordance with MCR 9.120(B). These proceedings were based upon the respondent's conviction in the 90th District Court, Case No. 2011-0402-FY, of the following misdemeanors: attempted resistance of a police officer (MCL 750.81D1[A]); possession of marijuana (MCL 333.74032D); operating while intoxicated (MCL 257.6251-A); controlled substance use (narcotic) (MCL 333.4042A); and controlled substance use (MCL 333.4042A). The hearing panel has filed its report which includes application of the American Bar Association's Standards for Imposing Lawyer Sanctions, and being otherwise fully advised;

NOW THEREFORE,

IT IS ORDERED that respondent's license to practice law in Michigan is **SUSPENDED FOR 45 DAYS, EFFECTIVE FEBRUARY 29, 2012**, and until the respondent's filing of an affidavit of compliance with the Supreme Court, the Attorney Discipline Board and the Attorney Grievance Commission in accordance with MCR 9.123(A).

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

1. Respondent must comply with all the terms and conditions of the 18 month probationary period imposed by the 90th District Court and continue participation and compliance with the previously entered monitoring agreement with the Lawyer's and Judges Assistance Program (LJAP) of the State Bar of Michigan, including all testing and monitoring programs currently in effect.

2. Respondent is to be monitored for an additional period of three years by the Lawyers and Judges Assistance Program; appropriate releases are to be signed so that the Attorney Grievance Commission can review her progress; and LJAP is requested to send quarterly reports to the Attorney Grievance Commission as to her progress.
3. In the event that respondent has any other therapists or treatment for her addiction outside the LJAP, she is to provide appropriate releases to the Attorney Grievance Commission so that the Commission will have complete access to any such records, treatment, reports and any other pertinent data. When commencing any such treatment she is also to provide the Attorney Grievance Commission with the names, addresses and telephone numbers of any such treating professionals and/or institutions.
4. Respondent shall execute the appropriate release to allow the Attorney Grievance Commission to communicate with her probation officer for the court system and access to the appropriate records so that her progress can be monitored.
5. Within the week prior to the expiration of the 45 day suspension, respondent shall obtain and provide the Attorney Grievance Commission with a substance abuse assessment.

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 herself out as an attorney by any means.

IT IS FURTHER ORDERED that respondent shall, within seven days after the effective date of this order, notify all of her 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 is 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.

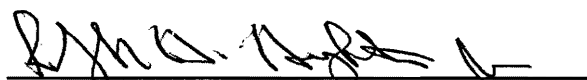
IT IS FURTHER ORDERED that in accordance with MCR 9.119(B), respondent must, on or before the effective date of this order, in every matter in which respondent is representing a client in litigation, file with the tribunal and all parties a notice of respondent's disqualification from the practice of 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 February 29, 2012, pay costs in the amount of **\$2,976.25**. 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
Emmet County Hearing Panel #1

By: 
Ralph H. Houghton, Jr., Chairperson

DATED: February 7, 2012

STATE OF MICHIGAN
Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner,

v

Case No. 11-121-JC

SUSAN G. GRAHAM, P 55509,

Respondent.
_____ /

REPORT OF EMMET COUNTY HEARING PANEL #1

PRESENT: Ralph H. Houghton, Jr., Chairperson
Joel D. Wurster, Member
Kevin G. Klevorn, Member

APPEARANCES: Cynthia C. Bullington, Assistant Deputy Administrator
for the Attorney Grievance Commission

Daniel J. Hartman,
for the Respondent

I. EXHIBITS

Please see Index of Exhibits on page 5 of the December 12, 2011 hearing transcript.

II. WITNESSES

Cathy Bond
Philip Copeland
Abe Cruz
Susan Graham, Respondent
John Janicki
Lynette Lee O'Connor

III. PANEL PROCEEDINGS

On October 17, 2011, the Grievance Administrator filed a notice of filing of judgment of conviction showing that respondent, Susan G. Graham, P 55509, who had been licensed to practice law in Michigan on November 8, 1996, had been convicted in an action titled *People v Susan G. Graham*, 90th District Court Case No. 2011-0402-FY, of the following misdemeanors: attempted resistance of a police officer (MCL750.81D1[A]); possession of marijuana (MCL 333.74032D); operating while intoxicated (MCL 257.6251-A); controlled substance use (narcotic) (MCL 333.4042A); and controlled substance use (MCL 333.4042A).

Pursuant to MCR 9.120(B)(3), the Attorney Discipline Board issued an order to show cause why a final order of discipline should not be entered and referred the proceeding to this hearing panel. The hearing in this matter took place on December 12, 2011. The panel heard the testimony of the above-referenced witnesses; received the foregoing exhibits; heard arguments from counsel and received an acknowledgment that all proceedings to date were in order and that there were no procedural errors.

The hearing was conducted in accordance with MCR 9.115(J)(3) and the panel inquired into the specific facts of the case and considered all aggravating and mitigating circumstances. Commission of the misdemeanor offenses was conclusively established by respondent's acknowledgment, and by the judgment of conviction filed by the Administrator. Discipline was determined in accordance with the ABA standards for imposing Lawyer Sanctions.

IV. REPORT ON DISCIPLINE

Petitioner acknowledges a disbarment is not appropriate but seeks a long-term suspension with conditions. Respondent seeks a reprimand with conditions. Ms. Graham acknowledges that she has a drug problem and that she knew what she did was wrong. The first step involves addressing the following: (1) What ethical duty did Susan Graham violate? (2) What was her mental state? and (3) What was the extent of the actual or potential injury caused by her conduct?

- (1) In looking at the duty violated, ABA Standards 5.0; 5.12; 5.13; 5.22; 5.23 and 7.2; 7.3 and 8.2 were considered. Ms. Graham's conduct involving the five misdemeanors falls under Standard 5.12 in that she knowingly engaged in criminal conduct involving attempted resistance of a police officer; possession of marijuana; operating a vehicle while intoxicated; controlled substance abuse; and using a controlled substance (narcotic). These actions clearly violated her duty to the profession and the public. Such conduct reflects adversely on her ability to practice law.
- (2) Respondent's mental state was such that she knew what she was doing was wrong but could not control herself. Her addiction took control. For example, she went to the home of a friend with whom she had used drugs in the past and while there obtained drugs for herself. She didn't go for just a "one time hit" but rather ended up with a relatively large quantity/supply of marijuana. She deliberately planned a course of action with long term consequences that she knew was wrong.

- (3) Respondent's actions caused potential or actual injury to the legal system and impacted negatively on the public's perception of what behavior is expected of a lawyer. Further, there were people on the road that could have been injured by respondent's driving while intoxicated.

We have carefully considered all the Standards referenced above and conclude that Standard 5.12 best fits this situation. It is clear, given the totality of the facts and circumstances presented in this case, that respondent's conduct "seriously adversely reflects on her fitness to practice" and that she "knowingly engaged in criminal conduct." Standard 8.2, dealing with previous discipline that involves the same or similar circumstances, is also applicable. Both suggest the imposition of a suspension.

We find the following aggravating factors set forth in ABA Standard 9.22 to be present in this case: 9.22(a) prior disciplinary offenses (including being on probation for a similar offense at the time of this misconduct); (c) a pattern of misconduct; (d) multiple offenses; and, (k) illegal conduct including that involving the use of controlled substances.

We find the following mitigating factors set forth in ABA Standard 9.32 to be present: (c) personal or emotional problems; (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; (i)(2) medical disability or chemical dependency including alcoholism or drug abuse when the chemical dependency or mental disability caused the misconduct; (k) imposition of other penalties or sanctions; and (l) remorse.

Other factors, including some that respondent argued were mitigating, are addressed in our discussion below.

We have concluded that a suspension is the generally appropriate sanction to be imposed for the misconduct under Standards 5.12 and 8.2. We must now determine the appropriate length of the suspension in light of aggravating and mitigating factors, the specific facts of this case and other recognized considerations.

Ms. Graham was convicted by plea of three controlled substance offenses, operating while intoxicated, and attempted resisting and obstructing a police officer. She did this while she was less than 11 months into a two year probation from the last substance abuse matter that did involve the active practice of law while representing two separate clients in two separate courts. The terms of conditions of the resulting order of reprimand, dated June 2, 2010, specifically required that:

Respondent shall remain abstinent from alcohol and non-prescription controlled substances while being monitored by LJAP, and shall consume prescription medication only at the direction of a physician.

Ms. Graham clearly and knowingly violated the terms of the above order of reprimand. On Friday, April 21, 2011, after arguing with her boyfriend the evening before, she went to Boyne City to visit a friend she had used with in the past where she obtained a variety of drugs and/or controlled substances including morphine, Xanax - her drug of choice, and a large amount of marijuana that would last her for "months." All that led to her arrest later that afternoon and the five criminal charges that are the basis for this proceeding. She has had a drug problem since at least

2004 and by her own admission she was using cocaine as far back as high school. While she is apparently now making a sincere effort to overcome her dependency addiction, she has a long way to go. She was cooperative at the hearing and showed remorse for what has happened.

Taking all of the above into account and weighing the aggravating and mitigating circumstances, it is the panel's conclusion that a 45 day suspension should be imposed with the following conditions:

1. Respondent must comply with all the terms and conditions of the 18 month probationary period imposed by the 90th District Court and continue participation and compliance with the previously entered monitoring agreement with the Lawyer's and Judges Assistance Program (LJAP) of the State Bar of Michigan, including all testing and monitoring programs currently in effect.
2. Respondent is to be monitored for an additional period of three years by the Lawyers and Judges Assistance Program; appropriate releases are to be signed so that the Attorney Grievance Commission can review her progress; and LJAP is requested to send quarterly reports to the Attorney Grievance Commission as to her progress.
3. In the event that respondent has any other therapists or treatment for her addiction outside the LJAP, she is to provide appropriate releases to the Attorney Grievance Commission so that the Commission will have complete access to any such records, treatment, reports and any other pertinent data. When commencing any such treatment she is also to provide the Attorney Grievance Commission with the names, addresses and telephone numbers of any such treating professionals and/or institutions.
4. Respondent shall execute the appropriate release to allow the Attorney Grievance Commission to communicate with her probation officer for the court system and access to the appropriate records so that her progress can be monitored.
5. Within the week prior to the expiration of the 45 day suspension, respondent shall obtain and provide the Attorney Grievance Commission with a substance abuse assessment.

V. SUMMARY OF PRIOR MISCONDUCT

<u>AGC File No.</u>	<u>Discipline</u>	<u>Effective Date</u>
3088/02	Contractual Probation	03/22/04

<u>ADB Case No.</u>	<u>Discipline</u>	<u>Effective Date</u>
10-16-GA	Reprimand w/Conditions (By Consent)	06/02/10

VI. ITEMIZATION OF COSTS

Attorney Grievance Commission: (See Itemized Statement filed 01/03/12)	\$ 548.69
Attorney Discipline Board: Hearing held 12/12/11	\$ 927.56
Administrative Fee [MCR 9.128(B)(1)]	<u>\$1,500.00</u>
TOTAL:	\$2,976.25

ATTORNEY DISCIPLINE BOARD
Emmet County Hearing Panel #1

By:



Ralph H. Houghton, Jr., Chairperson

DATED: February 7, 2012