

STATE OF MICHIGAN

FILED
ATTORNEY DISCIPLINE BOARD

11 MAY 16 PM 2:30

Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner/Appellee,

v

Case No. 10-137-MZ
(Ref. 09-103-GA)

ROBERT E. HARRIS, P 46499,

Respondent/Appellant.

ORDER AFFIRMING HEARING PANEL ORDER OF REPRIMAND AND RESTITUTION

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

On August 16, 2010, Tri-County Hearing Panel #23 of the Attorney Discipline Board entered an order of reprimand and restitution in Case No. 09-103-GA. The Attorney Discipline Board has considered the delayed petition for review filed by the respondent, and has conducted review proceedings in accordance with MCR 9.118, including a public review hearing on March 9, 2011.

The Administrator filed a two-count formal complaint in this matter on October 29, 2009. Count One was dismissed without prejudice and is not the subject of this review proceeding. Count Two charged respondent with neglecting a criminal representation and failing to return an unearned fee. The hearing panel found that in April 2008, respondent was retained by, and accepted a \$10,000 flat fee from, the mother of Eric Duncan for two criminal matters. With respect to a matter pending before Judge Daniel Ryan, the report summarizes the testimony regarding respondent's failure to attend a hearing on May 19, 2008, and his tardy attendance at a hearing on June 2, 2008. Judge Ryan appointed another attorney to represent Mr. Duncan at both hearings. The panel also found that respondent's appearance was not on file with the court. The hearing panel concluded that respondent failed to return the unearned portion of an advance fee in violation of MRPC 1.16(d). The panel ordered that respondent should be reprimanded and that he pay restitution to Mary Duncan in the amount of \$5,000.00.

Respondent's primary argument is that "there can be no unused [or unearned] portion of a 'flat-fee.'" This is simply erroneous as a matter of law. It would be absurd for the law to provide, as respondent argues, that "[t]he total was due (earned) the moment the attorney began any work on the file." This would enable an attorney to begin an agreed upon representation, abandon it, and retain the entire fee as if the whole of the work had been completed. For obvious reasons, this has never been the law and it is misconduct to fail to return the unearned portion of a fee paid in

advance. See, e.g., *Grievance Administrator v Paul S. Schaefer*, 01-140-GA (ADB 2004); *Grievance Administrator v David L. Rosenthal*, 06-156-GA (ADB 2008); See also, *Plunkett & Cooney, PC v Capitol Bancorp*, 212 Mich App 325, 330 n 3; 536 NW2d 886 (1995) (Flat fee for securities work not fully earned when counsel handling it changed firms).

The Board has also considered respondent's arguments that he was prejudiced by the proceedings, that the hearing panel's findings are not supported by the evidence, and that the order for the payment of costs is not in accordance with MCR 9.128. Those arguments are without factual or legal support.

NOW THEREFORE,

IT IS ORDERED that the hearing panel order of reprimand and restitution, issued on August 16, 2010, in Case No. 09-103-GA, is **AFFIRMED**.

IT IS FURTHER ORDERED that the stay of costs and restitution granted by the Board in its order of February 15, 2011, shall remain in effect for a period of 28 days following the date of this order. Respondent shall, on or before **June 14, 2011**, pay restitution to Mary Duncan in the amount of **\$5,000.00**. Within 10 days after the payment of restitution to Ms. Duncan, respondent shall file written proof with the Attorney Discipline Board and the Grievance Administrator that payment has been made.

IT IS FURTHER ORDERED that respondent shall, on or before **June 14, 2011**, pay costs in the total amount of **\$2,990.57**, consisting of the costs assessed in the hearing panel order of August 16, 2010, in the amount of \$2,874.57, plus the costs incurred by the Attorney Discipline Board for the transcript of the review hearing conducted March 9, 2011, in the amount of \$116.00. 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:


William J. Danhof, Chairperson

DATED: May 16, 2011

Board members William J. Danhof, Thomas G. Kienbaum, Andrea L. Solak, Carl E. Ver Beek, Craig H. Lubben, James M. Cameron, Jr., and Sylvia P. Whitmer, Ph.D, concur in this decision.

Board member Rosalind E. Griffin, M.D., dissents and would dismiss Count Two of the formal complaint.

Board member William L. Matthews, C.P.A., was absent and did not participate.