

Attorney Discipline Board

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ATTORNEY DISCIPLINE BOARD

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Grievance Administrator,

Petitioner/Appellant/Cross-Appellee,

v

Michael P. Knapp, Jr., P 57871,

Respondent/Appellee/Cross-Appellant,

Case No. 09-21-MZ
(Ref. 06-12-JC; 07-71-MZ)

Decided: May 19, 2011

Appearances:

Cynthia C. Bullington, for the Grievance Administrator, Petitioner/Appellant/Cross-Appellee
Donald D. Campbell, for the Respondent/Appellee/Cross-Appellant

BOARD OPINION

The Grievance Administrator and the respondent petitioned for review of a hearing panel order issued in this matter on November 24, 2010, suspending respondent's license to practice in Michigan for four years. The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118, including a review of the record before the panel, as well as the briefs and arguments presented at a public hearing before the Board on March 9, 2011. The Board has considered the Grievance Administrator's argument that the hearing panel erred in its decision to impose discipline less than license revocation. The Board has also considered respondent's cross-petition for review which argues for a reduction to a suspension that is less than three years. For the reasons discussed below, the hearing panel order of suspension for a period of four years is affirmed.

Respondent Michael P. Knapp, Jr., was originally subject to an Order of Reprimand With Probationary Conditions, effective November 17, 2006.¹ That discipline order was based upon respondent's conviction for operating under the influence of intoxicating liquor in 2003; a second

¹ Case No. 06-12-JC

OUIL conviction in 2004; and his failure to comply with the terms of a contractual probation agreement with the Attorney Grievance Commission. Show cause proceedings were subsequently instituted by the Grievance Administrator in April 2007 based upon respondent's failure to provide proof of his attendance at Alcoholics Anonymous as ordered by the panel in its 2006 order. That show cause proceeding before the panel resulted in the panel's finding that respondent not only failed to provide proof of his AA attendance but gave false testimony to the panel and fabricated an AA sign-in sheet. The panel entered an order revoking respondent's license to practice law, effective April 9, 2008.²

Following a hearing on respondent's delayed petition for review, the Attorney Discipline Board concluded that respondent had not had a full opportunity to participate in a sanction hearing before the panel during the show cause proceedings and the matter was remanded to the panel for such a hearing. On November 24, 2010, the panel entered an order vacating its earlier Order of Revocation and ordering the suspension of respondent's license to practice law for four years commencing April 9, 2008.³

The Board has first considered respondent's argument that the hearing panel's 2006 order of reprimand with probationary conditions was fatally defective because it included a provision allowing the Grievance Administrator to seek a show cause proceeding before the panel in the event respondent failed to provide timely verification of his AA attendance. This argument was previously considered and rejected by the Board in its order of remand issued in this case on November 9, 2009. The hearing panel order of reprimand now challenged by respondent was issued October 26, 2006. Respondent had until November 17, 2006, to file a timely petition for review of that order under MCR 9.118(A)(1) and he had until October 26, 2007, to file a delayed petition for review under MCR 9.118(A)(3). The time within which to seek review of the panel's order of October 26, 2006, has long since expired.

Turning to the question of the appropriate level of discipline, the standard of review to be employed by the Board is not limited to the question of whether or not the hearing panel's findings

² Case No. 07-71-MZ

³ The procedural history of this case as well as the findings and conclusions of Kent County Hearing Panel #2 are set forth in greater detail in the panel's opinion, with attached exhibits, filed November 24, 2010. The panel's opinion is appended to this opinion as Appendix A.

have evidentiary support in the record. When the level of discipline is the focus of the review proceeding, the Board has held,

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).]

This greater degree of discretion when reviewing a hearing panel's sanction determination does not mean, however, that the Board should discard the panel's conclusions and substitute its own judgment. A degree of deference to the panel's carefully considered decision is especially appropriate in this case where, as the panel noted in its report filed November 24, 2010:

The panel looked carefully at all of the evidence produced by the parties. We saw Knapp present evidence on four occasions, listened to his testimony, paid careful attention to his demeanor, considered the documentary evidence he presented and then withdrew with apologies and considered his supporting witnesses and those who opposed him. [Hearing Panel Report 11/24/10, p 7.]

As the panel's report makes clear, its members carefully assessed respondent's testimony, properly applied the American Bar Association's Standards for Imposing Lawyer Sanctions, and identified and discussed the relevant aggravating and mitigating factors which it considered in reaching its decision.

In short, the experienced members of Kent County Hearing Panel #2 have sufficiently articulated their reasons for their unanimous decision to order a suspension of respondent's license for four years. Based upon our review of the whole record, we are not persuaded that the collective judgment of the hearing panelists in this case should be overturned.

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

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

Board member Craig H. Lubben dissents:

I respectfully dissent and would order revocation in this case.

In its report and order issued March 18, 2008, the hearing panel below revoked the respondent's license to practice law based upon its actual finding that respondent submitted false evidence and engaged in deceptive practices during the disciplinary process. In subsequent proceedings before the panel following the Board's remand order of November 9, 2009, respondent Knapp specifically acknowledged, for the first time, that he had both lied and created false documentation, e.g., forged AA attendance sheets.

The panel found that respondent's conduct would generally warrant disbarment and noted the presence of aggravating factors including, significantly, the "submission of false evidence, false statements, or other deceptive practices during the discipline process." Standard 9.22(f). The panel also noted in its report that:

In mitigation Knapp presented testimony and evidence touching on:

- a. his complete acknowledgment of his deception of this panel in the prior hearings;
- b. testimony relating to a previous accidental injury suffered when he was a teenager that left him with problems in focusing and controlling his behavior under stress;
- c. his renewed commitment to engaging with the spirit and practice of Alcohol [sic] Anonymous;
- d. a greater appreciation of his desire to serve others in the practice of law. [Hearing Panel Opinion 11/24/10, p 2.]

I join the other members of the Board in commending the hearing panel for its careful attention in this case. The panel correctly analyzed respondent's misconduct and reached the appropriate conclusion that consideration of discipline must start with a presumption of disbarment. Finally, I commend the panel for its thoughtful discussion of the aggravating and mitigating factors which it weighed in reaching its final decision. In the final analysis, however, the Board must not lose sight of its "overriding duty to provide consistency and continuity in the exercise of its overview function" with regard to sanctions. *Grievance Administrator v Rodney Watts*, Case No. 05-151-GA (ADB 2007).

In *Grievance Administrator v Richard E. Meden*, Case No. 92-106-GA (ADB 1993), the Board increased the discipline imposed by a hearing panel from a suspension of 18 months to revocation in a case involving the lawyer's intentional depletion of his trust account to discharge his own personal or professional obligations. In that case, the Board placed special weight on the aggravating effect of the respondent's false statements to the hearing panel, noting, "In fact, we can conceive of few factors deserving of greater weight in aggravation than a finding that an attorney has given false testimony during disciplinary proceedings." (*Meden* at p 4.) The Board ended its opinion in *Meden* with this statement:

As the adjudicative arm of the Michigan Supreme Court for discharge of its responsibility to supervise and discipline Michigan attorneys, the Attorney Discipline Board has been given the authority to review orders of discipline issued by a hearing panel. Keeping in mind the general principle enunciated in MCR 9.103(A) that the license to practice law in Michigan is a continuing proclamation that the holder is fit to be entrusted with professional matters and to aid in the administration of justice as an attorney and counselor, we cannot, in good faith, make such a proclamation with regard to this respondent.
[*Meden*, p 5.]

I believe that, as a general principle, a lawyer who intentionally fabricates evidence for presentation to a hearing panel in a discipline proceeding is generally not entitled to the continuing proclamation of fitness as an attorney. I do not find the mitigating factors offered by respondent sufficiently compelling to warrant a lesser degree of discipline in this case. I would therefore vacate the order of suspension in this case and order the revocation of respondent's license to practice law.

Appendix A

STATE OF MICHIGAN
ATTORNEY DISCIPLINE BOARD

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GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner,

Case No. 09-21-MZ
(Ref. 06-12-JC; 07-71-MZ)

v

MICHAEL P. KNAPP, JR., P57871,

Respondent.

OPINION

Kent County Hearing Panel No. 2 of the Attorney Discipline Board ("Panel") was assigned a complaint against Michael P. Knapp ("Knapp") which is denominated Case No. 07-71-MZ. Hearings were held in this matter on June 21, 2007, and August 6, 2007. On March 18, 2008, this panel issued a unanimous decision to revoke Knapp's license to practice law. The reasons for that decision were articulated in a written opinion of that date. That decision is attached to this opinion as Exhibit A. The procedural history and findings of facts in Exhibit A are incorporated by reference herein.

On November 9, 2009, the Attorney Discipline Board ("Board") issued an Order of Remand in this case (attached as Exhibit B). While affirming other parts of the proceedings in front of the Panel, the Attorney Discipline Board remanded the case to Kent County Hearing Panel No. 2 to allow Knapp to present evidence in mitigation. The Board decided:

Having weighed the considerably aggravating factor of this conduct during the proceeding, the panel should also hear any evidence from respondent that is relevant to the appropriate sanction and we therefore REMAND the matter to the hearing panel for that purpose. (Exhibit B, p. 3)

On February 10, 2010, the Panel reconvened in compliance with the Order of the Board. At that point, Knapp was, for the first time, represented by counsel, Donald Campbell, Southfield, Michigan. Both the Grievance Administrator (“GA”), represented by Cynthia Bullington, and counsel for Knapp presented pre-hearing briefs as well as evidence both in aggravation and in mitigation.

For the first time Knapp specifically acknowledged that he had at the prior hearings before this panel both lied and created and tendered false documentation, e.g., forged AA attendance sheets. In mitigation Knapp presented testimony and evidence touching on:

- a. his complete acknowledgement of his deception of this panel in the prior hearings;
- b. testimony relating to a previous accidental injury suffered when he was a teenager that left him with problems in focusing and controlling his behavior under stress;
- c. his renewed commitment to engaging with the spirit and practice of Alcohol Anonymous;
- d. a greater appreciation of his desire to serve others in the practice of law.

In closing arguments at the February 10, 2010, hearing counsel for petitioner and respondent put forth summaries of their respective positions as well as divergent views on which ABA standards should be applied.

The panel adjourned the hearing and requested the parties to provide authorities to support their respective positions on the question of which standard should be applied: 6.11 or 6.12.

On May 27, 2010, the panel directed the parties to submit briefs “addressing the level to be imposed, including a discussion of the applicable standard(s) stating the generally appropriate level of discipline under the ABA Standards for Imposing Lawyer Sanctions and any discipline decision which may offer guidance.” The panel again offered both parties the opportunity to

submit further evidence of aggravating and mitigating factors. Counsel complied with the panel's direction on all counts.

On September 14, 2010, a hearing was held before the panel to consider legal arguments and any additional evidence in aggravation and mitigation. Both parties offered evidence.

Summarizing the evidence in mitigation it appears that:

- a. Knapp has begun his association with Alcoholics Anonymous;
- b. He has a mentor (hereinafter "X"¹) who testified that Knapp was working with him and was at step 2 of the 12-step program;
- c. X said that he was reasonably satisfied that Knapp was coming to acceptance of his condition as an alcoholic but would need to take more actions to improve;
- d. X clarified that Knapp needed to take more affirmative actions to help others to begin to move higher, but he was generally satisfied with Knapp's progress to date;
- e. Knapp corroborated that he needed to come further out of himself and help others in need;
- f. Knapp and X both affirmed that they worked fairly well together.
- g. Dr. Daniel Cunningham, Knapp's doctor, offered brief testimony concerning various medications Knapp had used and their effects.

After both sides stated they had no further testimony to offer, counsel stated their arguments on the ABA Standard issue. Each side provided, and argued from, extensive case authority as to

¹ Confidentiality of the identities of those participating in Alcoholics Anonymous (AA) is recognized as crucial. As there had been some doubt as to Knapp's actual degree of participation in this program, he chose to call his "mentor" in AA as a witness. Though that witness did identify himself, and it appears in the record, in this opinion it will be left as "X".

the appropriate standard to be applied to the respondent's actions. Finally, both counsel and Knapp stated that the Panel had provided them a full opportunity to present aggravating and mitigating circumstances.

STANDARDS:

The applicable rules are ABA Standards 3.0 and 6.11 and 6.12.

3.0 Generally

In imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors:

- (a) the duty violated;
- (b) the lawyer's mental state;
- (c) the potential or actual injury caused by the lawyer's misconduct; and
- (d) the existence of aggravating or mitigating factors.

In applying the Standard 3.0, as to the **duties violated**, the panel finds that Knapp:

- 1) violated the law (two drunk driving convictions)
- 2) The Standards of Professional Conduct
- 3) The contract he entered into with the Sobriety Court
- 4) An agreement with the GA to encourage continued sobriety
- 5) Created false documents and testified falsely before the Panel repeatedly after successive cautions and opportunities to retract the same.

As to Knapp's **mental state**. Knapp has an admitted problem with the use of alcohol and claims with some supporting evidence, to have a problem directing his attention and conforming his behavior to required standards, due to a combination of a childhood injury and also a bad reaction to certain medications previously prescribed to ameliorate the results of his injury.

As to the **potential or actual injury** caused by Knapp's misconduct.

- 1) **Potential:** While there have been no instances of a client's interests being negatively impacted by Knapp's misconduct, certainly, given his now admitted difficulty with alcohol, the panel must recognize that such could have occurred in the past and, unless this difficulty is addressed forthrightly and continually in the future, has the potential to injure future clients' interests.
- 2) **Actual:** The actual injury here is clear:

- a. To the bar grievance process itself, wherein failure to live up to contracts, creating false documentation and presenting perjured testimony is completely unacceptable;
- b. To himself and his family, where the agony that his family and he have been put through was tangible to this Panel (see the testimony of both Knapp and his mother).

As to the existence of aggravating and mitigating factors, the Standards refer the Panel to 6.11 and 6.12. As shown by the evidence including but not limited to the demeanor of the witnesses, the Panel finds that 6.11 is the appropriate beginning point in our analysis. Here, the Panel incorporates also its opinion of March 18, 2008.

6.0 Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving conduct that is prejudicial to the administration of Justice or that involves dishonesty, fraud, deceit, or misrepresentation to a court:

6.11 Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.

6.12 Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

The Panel finds that Knapp's behavior is clearly covered by ABA Standard 6.11.

- First, his **presentation to the panel on two occasions of a false defense**, i.e. that he had participated in Alcoholics Anonymous in a specific room at a specific location in Grand Rapids was done. Even if he had not in later hearings acknowledged the falsity of that set of assertions, the evidence brought forward by the GA's attorney provided clear and convincing proof of its falsity. Its falsity was acknowledged in the two 2010 hearings in this matter (after he wisely secured the services of Attorney Campbell).
- Second, he **submitted false documentation**, and, when directly confronted by the panel on this issue, continued to assert the truth of the false documentation.
- Third, this was clearly done with the **intent to deceive the panel**. Knapp argued that he was, in fact, complying with the "spirit" of the agreement he had entered

into with the GA to get counseling for his substance abuse problem. To have failed to follow that agreement would have (and will) subject Knapp to more serious consequences, or to put it in the reverse, had his deception been successful, he would have escaped the consequences of his actions.

- Finally, he caused “**significant or potentially significant adverse effect on the legal proceeding [the proceedings before this panel]**”. His deception and attempted deception caused substantial delay in these proceedings, and caused the GA to expend substantial effort and expense in finding and calling witnesses, as well as briefing and attendance at hearings that would not have been necessary but for Knapp’s deception.

Thus the panel finds that Knapp is responsible for violations of Standard 6.11.

Determining the level of discipline that is in order calls for, under the Michigan and ABA Standards, a consideration of a series of factors, and evidence in **aggravation and mitigation of the presumptive disposition, in this case disbarment.**

Opportunities to Present Aggravating and Mitigating Circumstances

By its order of November 9, 2010, the ADB has remanded the matter for consideration of evidence Knapp might produce in mitigation of the offense. On two occasions the panel gave notice to both sides that it would conduct hearings wherein all evidence in aggravation and mitigation that the parties wanted the Panel to consider might be presented. At those hearings, Knapp presented several factors in mitigation.

Summarizing the evidence of those two days of hearings, including witnesses presented in his behalf on both days², Knapp presented a picture of a person who had an accident when he was young that resulted in damage of some sort to his brain and consequent behavior modification. His mother testified to the accident and to difficulties Knapp and his family had in coping with the results. This was supported by Knapp’s own testimony.

² See Transcripts of hearings of February 10, 2010, and September 14, 2010.

Further, Knapp testified as to difficulties he had with medication that he had been taking to alleviate his mental difficulties. At the final hearing, he proffered the testimony of Dr. Cunningham, to describe the course of treatment that he had directed for Knapp. Though his telephonic testimony was accidentally truncated during the final hearing, his point was made that Knapp was now on different medication that to that point had no apparent negative reaction.

X testified that, since the earlier part of 2010, he had worked with Knapp in Alcoholics Anonymous as his mentor. His testimony was that, though Knapp was at only the 2nd step of the 12-step process, he was making genuine progress. He identified areas where Knapp had done well, and those where he had yet to be truly effective. A crucial step yet to be fully taken, that of helping others, and going out of his way to do so, still was lacking. This was admitted by both X and Knapp. X said that he felt that Knapp and he had developed a bond.

The panel looked carefully at all the evidence produced by the parties. We saw Knapp present evidence on 4 occasions, listened to his testimony, paid careful attention to his demeanor, considered the documentary evidence he presented and then withdrew with apologies and considered his supporting witnesses and those who opposed him. We conclude that, while there was a radical change in his approach before us from the first two hearings to the last two hearings, there remained and remains a question of the credibility of this attorney. In the first two hearings, he presented the picture of a person who did not really believe he had a substance abuse problem, but was going the extra step to comply with the agreement for counseling that he had made with the GA, regret for miscommunications with it, and remorse for his alcohol related brushes with the law. The picture in the second two hearings was of a person who now had the beginning of an appreciation of his substance abuse problem and of the steps he needed to take to address it, also remorse for his prior deceit of the panel.

General Discipline

For a violation of 6.11, "Disbarment is generally appropriate...."

The words of the standard, and the direction to this panel by the Board in its November 9, 2009 opinion, is that disbarment is not the only discipline to be considered. Rather the parties can present (and have here) evidence of circumstances in aggravation and mitigation. Thus we turn our attention to the articulation of those considerations in the Standards.

Standards for Mitigation and Aggravation

The circumstances in aggravation are:

9.2 Aggravation

9.21 Definition. Aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed.

9.22 Factors which may be considered in aggravation. Aggravating factors include:

- (a) prior disciplinary offenses;
- (b) dishonest or selfish motive;
- (c) a pattern of misconduct;
- (d) multiple offenses;
- (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
- (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- (g) refusal to acknowledge wrongful nature of conduct;
- (h) vulnerability of victim;
- (i) substantial experience in the practice of law;
- (j) indifference to making restitution;
- (k) illegal conduct, including that involving the use of controlled substances.

The factors which the panel finds are aggravating in this case, in addition to the formulations in our opinion of March 18, 2009, and those reflected above in this opinion, are:

- a. bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency. His pattern of conscious and inexcusable lying to this panel and the AGC is unchallengeable.

In addition his refusal to comply with the initial agreement between himself and the GA stands alone as an aggravating factor.

- b. Submission of false evidence, false statements, or other deceptive practices during the disciplinary process. Again, this factor has been proven by evidence and Knapp's admission, and cannot be challenged.
- c. Refusal to acknowledge the wrongful nature of his conduct. Though Knapp has now affirmed that he recognizes both the substance abuse problem which gave rise to the initial action by the AGC and his failure to confront and deal with it, his delay of years in doing so stands as an aggravating factor.

9.31 Definition. Mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed.

9.32 Factors which may be considered in mitigation. Mitigating factors include:

- (a) absence of a prior disciplinary record;
- (b) absence of a dishonest or selfish motive;
- (c) personal or emotional problems;
- (d) timely good faith effort to make restitution or to rectify consequences of misconduct;
- (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
- (f) inexperience in the practice of law;
- (g) character or reputation;
- (h) physical disability;
- (i) mental disability or chemical dependency including alcoholism or drug abuse when:
 - (1) there is medical evidence that the respondent is affected by a chemical dependency or mental disability;
 - (2) the chemical dependency or mental disability caused the misconduct;
 - (3) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and
 - (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely;
- (j) delay in disciplinary proceedings.
- (k) imposition of other penalties or sanctions;
- (l) remorse;

(m) remoteness of prior offenses.

The factors which the panel finds are mitigating are:

- a. There is an absence of a disciplinary record, PRIOR to his alcohol-related driving convictions;
- b. Knapp demonstrated to the panel by his actions, his demeanor in testifying and the witnesses he called, that he has personal and emotional problems;
- c. At this point, Knapp has the beginnings of true remorse for his actions, though the depth and effectiveness of that remorse remains to be seen.

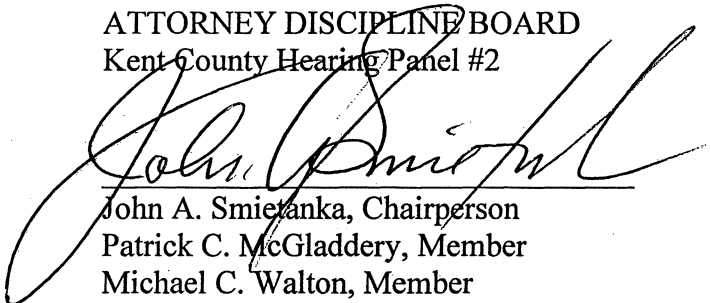
The panel, though not fully convinced that the proofs presented to this point establish the following additional mitigating factors, has considered them as having some weight.

- a. Knapp is a young lawyer, and in some respects inexperienced;
- b. While there is some evidence of chemical dependency or mental disability, it is not fully established to the panel's satisfaction that the other conditions under ABA Standard 9.32(i) have been met, especially that there has been "a meaningful and sustained period of successful rehabilitation" nor has it been established that "the recovery arrested the misconduct and recurrence of that misconduct is unlikely". The future course of Knapp's life may supply greater certainty in these regards.

Conclusion

Finally, considering all the factors in this case, the panel has determined that the appropriate discipline for Michael Knapp is SUSPENSION of his privilege to practice law in Michigan for a period of FOUR YEARS. Computation of the beginning of that suspension is from April 9, 2008.

ATTORNEY DISCIPLINE BOARD
Kent County Hearing Panel #2



John A. Smietanka, Chairperson
Patrick C. McGladdery, Member
Michael C. Walton, Member

Dated. November 24, 2010

EXHIBIT A

Attorney Discipline Board

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GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner,

v

Case No. 07-71-MZ
(Ref. 06-12-JC)

MICHAEL P. KNAPP, JR., P 57871,

Respondent.

ORDER OF REVOCATION

Issued by the Attorney Discipline Board
Kent County Hearing Panel #2

The Grievance Administrator has filed a petition for order to show cause why respondent has failed to comply with this panel's order of discipline issued October 26, 2006 and has requested additional discipline be imposed. A public hearing was held in accordance with MCR 9.115(J)(1) and the panel has filed its report containing its findings and conclusions as to misconduct and discipline, and being otherwise fully advised;

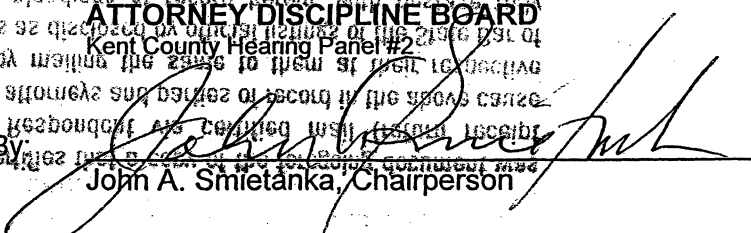
NOW THEREFORE,

IT IS ORDERED that respondent's license to practice law in Michigan is **REVOKED COMMENCING** April 9, 2008, 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 the effective date of this order is April 9, 2008.

IT IS FURTHER ORDERED that the respondent shall comply with all applicable provisions of MCR 9.119.

IT IS FURTHER ORDERED that respondent shall, on or before April 9, 2008, pay costs in the amount of \$2,527.89. 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).

BY: 
John A. Smietanka, Chairperson
ATTORNEY DISCIPLINE BOARD
Kent County Hearing Panel #2

DATED: March 18, 2008

Attorney Discipline Board

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GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner,

v

Case No. 07-71-MZ
(Ref. 06-12-JC)

MICHAEL P. KNAPP, JR., P 57871,

Respondent.

REPORT OF KENT COUNTY HEARING PANEL #2

PRESENT: John A. Smietanka, Chairperson
Patrick C. McGladdery, Member
Michael C. Walton, Member

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

Michael P. Knapp, Jr., Respondent
In Pro Per

I. EXHIBITS

Please see Exhibits Index on page 2 of the June 21, 2007 and August 6, 2007 hearing transcripts.

II. WITNESSES

Michael Knapp
Lisa Gort

III. PANEL PROCEEDINGS

On February 3, 2003, respondent was convicted for Operating a Motor Vehicle While Intoxicated. On October 11, 2004, respondent was convicted for Operating a Motor Vehicle While Intoxicated, 2nd Offense. Subsequently he twice violated his probationary sentence by consuming alcohol. On May 5, 2006, respondent was placed in sobriety court. As part of his probation, respondent was required to attend Alcohol Anonymous meetings 2 to 5 times per week and he was to undergo random testing.

The Attorney Grievance Commission became involved and, under threat of licensing sanctions, respondent entered into a contractual probation which was subsequently terminated for non-compliance. The contractual probation required that enter into a monitoring contract with the State Bar of Michigan's Lawyer and Judges Assistance Program (LJAP). Respondent, repeatedly over the next years, violated his contract by failing to provide verification of his attendance at AA meetings.

On October 26, 2006, this panel issued an order reprimanding respondent and placing him on a two-year probation requiring AA attendance twice a week, with written verification of attendance on a quarterly basis provided to the Board and the Commission. The order became effective November 17, 2006.

On several occasions, respondent was reminded of his obligation to report to the Attorney Discipline Board and Attorney Grievance Commission by his probation supervisor, Roger Schutter.

This matter was commenced on April 18, 2007 when the Grievance Administrator filed a petition for order to show cause upon respondent's alleged failure to provide proof of his AA attendance. Respondent was ordered to appear before this panel to show cause why further discipline should not be imposed.

On June 21, 2007, this panel conducted a hearing at which respondent appeared and responded to the order to show cause by bringing certain documents to the hearing which were entered as Exhibit 1. He represented that these were copies of attendance slips at AA meetings for a substantial period of time, including the period alleged in the petition for order to show cause. He further testified that he had continued to attend AA meetings.

Respondent's testimony and his offer of Exhibit 1 was challenged by counsel for the Grievance Administrator. Among other grounds, counsel noted that the author of the "records," putatively one "Sam R," was not offered to authenticate them. Furthermore, cross-examination of respondent disputed his testimony that he participated in specific AA meetings by challenging particulars, such as when and where they occurred, who was present and who presided.

Respondent acknowledged that he had not given verification of his attendance at AA meetings as ordered. He admitted that he "was lax. I wasn't keeping up with what I was supposed to be doing under the order." (June 21, 2007 Tr, p 18.)

The panel was troubled by the presentation that respondent made, especially the specific testimony under oath, coupled with the tendering of Exhibit 1, since, if the testimony was false and/or if the exhibit was not genuine, it indicated a level of misconduct which went beyond what he had already admitted to, i.e., not complying with reporting requirements.

The panel adjourned the hearing to give respondent and the Grievance Administrator an opportunity to address the issue of potential false testimony and/or proffering of a false document.

On August 6, 2007, the hearing was reconvened. Respondent's testimony was essentially consistent with his earlier testimony. He did not call or identify "Sam R." He did produce, out of his wallet, a piece of paper which he identified as his latest sign-in sheet.

Counsel for the Grievance Administrator called Lisa Gort, the Executive Director of the Alano Club of Kent County for nine years. She had been the person responsible for the day-to-day operations of the center, and particularly scheduling meetings, overseeing workers, financial responsibilities and oversight of the building at 1020 College, NE, Grand Rapids. Based upon her testimony, it was clearly determined that this was the location that respondent contended was the place of his AA "meetings."

Ms. Gort testified directly and clearly. Ms. Gort testified that she had no knowledge of the "meetings" that respondent claimed occurred, nor was there any evidence in the nature of scheduling or payment of rent or the like that would act as some corroboration of them taking place. In fact, at the end of the hearing, there was a chasm between the testimony of the two, and their respective circumstantial evidence (Exhibits 1 through 5 and A, B and C) which led to the almost ineluctable conclusion that one or the other was telling one or more falsehoods.

After the August 6, 2007 hearing, both the Grievance Administrator and respondent were given the opportunity to provide written responses to the issues and evidence, and/or argument for final disciplinary action. The Grievance Administrator filed their brief on October 4, 2007, while respondent has not, to this date, responded.

In the end, this panel is required to determine whether Michael Knapp:

1. failed to adhere to the conditions of his probation with the Attorney Discipline Board, i.e. to report in a timely manner his specific compliance with the term which required attendance at regular AA meetings;
2. had attended such AA meetings in fact though not reported; and
3. in the process of demonstrating that he had in fact attended such meetings, even though he did not properly report such attendance to his probation officer, presented false testimony and/or false documentation.

IV. FINDINGS AND CONCLUSIONS

The panel finds in the **AFFIRMATIVE** on issues 1 and 3, but in the **NEGATIVE** on issue 2. As to the specific issues, the panel finds as follows:

1. Did respondent fail to comply with the terms of his disciplinary probation by neglecting to report attendance at AA meetings to his probation officer?

The answer to this question is clear and essentially admitted by respondent. He was aware of his obligations to report to Mr. Schutter and did not do so. That he did so because he was "lax" and not "keeping up with" his obligations, rather than intentionally flaunting the requirements of his probation is immaterial to find that there was a violation of his probation. In either situation, he is responsible for probation violations on multiple occasions, to wit: every quarter of the year that he did not so report.

2. Did respondent in fact attend or not attend AA meetings, regardless of whether he neglected to report them?

The finding of this panel is that he did not attend those meetings. The panel comes to this conclusion reluctantly and for specific reasons.

First, in evaluating the live testimony of respondent and Ms. Gort, the panel concludes that Ms. Gort was decidedly more believable, both in her demeanor and the substance of her answers than respondent, who was evasive both in his demeanor and in the substance of his answers. Ms. Gort's responsibilities for oversight, patrolling the Alanon building, the record-keeping requirements for anyone who used the facility and lack of evidence of rent (required of actually participating AA groups) being paid, all point to precision in her testimony. In response, respondent's testimony was conclusory and, when specific, was not corroborated.

His proffer of Exhibit 1 not only did not substantiate his verbal testimony, but in fact pointed to its falsity. The documents appeared, contrary to the current "proof of attendance" he pulled from his wallet on August 6, 2007, to be not prepared on separate occasions over the course of months, but rather done with all the entries at the same time. The "signature" of "Sam R" and each of the data point entries were repeated in almost identical form on each of the lines, though in the "current" document, differences appeared which more clearly would be expected in real life.

Furthermore, though ample opportunity was given to respondent by this panel to bring "Sam R" in to support respondent's story, respondent did not do so, nor did he offer a satisfactory reason for not doing so. Respondent had expressed concern that "Sam R" had a privilege of some sort against having his identity disclosed. In addition to failing to support this theory with any authority, he made no attempt to substitute some other form of authentication, such as an affidavit, a private interview with the attorney or investigator for the Attorney Grievance Commission.

His testimony and the authenticity of Exhibit 1 are completely intertwined. If the document is false, then respondent's testimony is at least highly suspect. But looking at it the other way, if his testimony as to the existence of the "meetings" is false then the document is most assuredly false.

This panel is not bound by a reasonable doubt proof standard. Without making any judgment as to whether respondent has committed a crime, it is clear to this panel that the Grievance Administrator has presented it with overwhelming proof of his responsibility for violating American Bar Association Standard 9.22(f) ("Submission of false evidence, false statements or other deceptive practices during the disciplinary process").

Therefore, it is the finding of this panel that respondent has violated the Michigan Rules of Professional Conduct by failing to comply with valid reporting requirements of regular attendance at AA meetings and submitting false evidence, false statements or other deceptive practices during the disciplinary process. It is the determination of this panel that Michael Knapp's privilege to practice law in the State of Michigan should be **REVOKED**.

V. SUMMARY OF PRIOR MISCONDUCT

<u>ADB Case No.</u>	<u>Discipline</u>	<u>Effective Date</u>
06-12-JC	Reprimand w/Conditions	11/17/06

VI. ITEMIZATION OF COSTS [MCR 9.128 - As Amended July 29, 2002]

Attorney Grievance Commission:
(See Itemized Statement filed 3/11/08) \$ 472.99
Attorney Discipline Board:
Hearing held 6/21/07 \$ 173.40
Hearing held 8/6/07 \$ 381.50
Administrative Fee - \$1,500.00

TOTAL: \$2,527.89

ATTORNEY DISCIPLINE BOARD
Kent County Hearing Panel #2

By: 

John A. Smietanka, Chairperson

DATED: March 18, 2008

EXHIBIT B

STATE OF MICHIGAN

Attorney Discipline Board

FILED
ATTORNEY DISCIPLINE BOARD

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GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner/Appellee,

v

Case No. 09-21-MZ
(Ref. 06-12-JC; 07-71-MZ)

MICHAEL P. KNAPP, JR., P 57871,

Respondent/Appellant.

ORDER OF REMAND

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

Kent County Hearing Panel #2 of the Attorney Discipline Board entered an order in this matter on March 18, 2008 revoking the license to practice law of respondent, Michael P. Knapp, Jr., effective April 9, 2008. Respondent's delayed petition for review, filed February 27, 2009, was considered by the chairperson of the Attorney Discipline Board under the guidelines of MCR 9.118(A)(3) and MCR 7.205(F)(3). Respondent's delayed petition was granted and the Attorney Discipline Board has considered respondent's petition for review in proceedings conducted under MCR 9.118.

The matter before the Attorney Discipline Board is the result of two underlying proceedings. In *Grievance Administrator v Michael P. Knapp, Jr.*, Case No. 06-12-JC, the Grievance Administrator filed a judgment of conviction on February 6, 2006 showing that respondent had been convicted of operating a motor vehicle while intoxicated in February 2003 and then convicted of the misdemeanor offense of operating a motor vehicle while intoxicated, second offense, in October 2004. The matter was assigned to Kent County Hearing Panel #2 which conducted proceedings based upon the respondent's criminal convictions in accordance with MCR 9.120 resulting in the entry of an order of reprimand with conditions on October 26, 2006. Specifically, the panel ordered that for a two year period commencing November 17, 2006, respondent would be subject to the following conditions:

1. Respondent shall attend AA meetings, twice a week, at a location of respondent's choice;
2. Respondent shall provide written verification of attendance, on a quarterly basis, to the Attorney Discipline Board and Attorney Grievance Commission;
3. In the event respondent fails to timely satisfy the above conditions, and upon the filing of an affidavit by petitioner attesting to respondent's failure to meet the conditions as ordered, the hearing panel shall schedule a hearing to determine if increased discipline is warranted.

On April 18, 2007, the Grievance Administrator commenced a supplementary action, as provided in the panel's order, by filing a petition for entry of an order to show cause why respondent's discipline should not be increased for his failure to comply with those conditions. Respondent did not file a response, and the Attorney Discipline Board entered an order on May 22, 2007 directing respondent to appear before Kent County Hearing Panel #2 to show cause why the relief requested by the Grievance Administrator should not be granted. *Grievance Administrator v Michael P. Knapp, Jr.*, Case No. 07-71-MZ.

The respondent and the Grievance Administrator's counsel appeared before the hearing panel at the initial show cause proceeding conducted on June 21, 2007. Respondent represented to the panel that he had, in fact, attended AA meetings and offered attendance slips signed by "Sam R" in support of his claim. Counsel for the Grievance Administrator challenged respondent's testimony regarding his attendance. The panel reconvened on August 6, 2007 and respondent again testified regarding his attendance at AA meetings. While he did not call or identify "Sam R," respondent did produce a piece a paper which he identified as his latest sign-in sheet. At that hearing, counsel for the Grievance Administrator called the Executive Director of the Alano Club of Kent County, the location of the AA meetings respondent claimed to have attended. She testified that the Tuesday meetings of AA which respondent claimed to have attended in 2006-2007 did not occur and that there were no AA meetings on the dates shown on respondent's sign-in sheets.

At the conclusion of the hearing on August 6, 2007, the hearing panel did not render a decision on the question of whether or not respondent had complied with the conditions in its earlier order nor did it make a finding as to the authenticity of the purported AA sign-in sheets submitted by respondent. Instead, the panel directed both parties to submit written statement summarizing their positions. The panel chairperson framed the issues as:

Chairman Smietanka:

But I think the issue is this. Twofold issue here. Number one, has the board--has the Grievance Commissioner proven that you violated the terms of your probation or your disciplinary action? That is that you were supposed to attend Al-Anon and provide documentary proof or provide proof. That is the first question.

Second question, which you obviously know is a very serious question, even more serious perhaps than the consequences, that is your Exhibit 1, is it or is it not a genuine document, authentic document? And secondly, if it is not what is the -- what steps should be taken to frame the issue of the presentation of false document and/or false testimony for further disciplinary consideration? Do you both understand the question? [Tr 08/06/07, pp 90-91.]

The Grievance Administrator's counsel submitted her trial brief October 4, 2007. Respondent did not file a responsive brief. On March 18, 2008, the panel issued its report and order, finding that respondent did not comply with the reporting requirement of the panel's earlier

order and did not attend AA meetings as ordered. The panel ordered that respondent's license should be revoked, citing the "overwhelming proof," that respondent engaged in the submission of false evidence and/or false statements during the discipline process. The panel noted that this had been weighed as an aggravating factor under Standard 9.22(f) of the American Bar Association's Standards for Imposing Lawyer Sanctions.

On review, the Board is not persuaded that Kent County Hearing Panel #2 lacked jurisdiction to include a "show cause" provision in its original order of reprimand with conditions issued in 2006 or that the Attorney Discipline Board erred in granting the Grievance Administrator's petition for order to show cause filed in 2007. The possibility of a show cause proceeding in the event respondent failed to comply with certain probationary conditions was clearly spelled out in the hearing panel's 2006 order of probation with conditions. Respondent did not exercise his right to seek review of that provision; he did not object to the Grievance Administrator's petition for an order to show cause in 2007; nor did he object to the proceeding when he appeared before the panel on June 21, 2007 or August 6, 2007.

A show cause proceedings may not always be the appropriate vehicle for bringing new charges of misconduct to the attention of a hearing panel, especially when such a proceeding has not been specifically included to enforce specific conditions in a hearing panel's order of discipline. It does not necessarily follow, however, that show cause proceedings are never appropriate.

The Board is concerned, however, that while the hearing panel considered the aggravating factor of respondent's submission of false evidence regarding his attendance at AA meetings, the respondent was not given an opportunity during the hearings to present evidence in mitigation. As noted above, it was not until well after the panel closed the hearing on August 6, 2007 that it announced its conclusion that there was "overwhelming evidence" that respondent had submitted false testimony regarding his AA attendance. Having weighed the considerably aggravating factor of this conduct during the proceeding, the panel should also hear any evidence from respondent that is relevant to the appropriate sanction and we therefore **REMAND** this matter to the hearing panel for that purpose.

In remanding to the hearing panel to provide respondent an opportunity to present his mitigation, we do not hold, or imply, that the panel's decision to revoke respondent's license was necessarily contrary to the ABA Standards or Michigan case law. The aggravating effect of a lawyer's deceptive practices during a discipline proceeding is specifically identified in ABA Standard 9.22(e) and may provide a sufficient basis for increasing discipline to revocation. As this Board stated in an opinion increasing discipline from 18 months suspension to revocation,

Lack of candor during the disciplinary process has been recognized by the American Bar Association's Standards for Imposing Lawyer Sanctions as an appropriate factor to be considered in aggravation. In fact, we can conceive of few factors deserving of greater weight in aggravation than a finding that an attorney has given false testimony during disciplinary proceedings. [*Grievance Administrator v Richard E. Meden*, 92-106-GA (ADB 1993)]

The comments and questions of the hearing panel members during the proceedings clearly reflected their desire to employ an appropriate procedure as the case before them evolved from one based upon respondent's misdemeanor driving offense to one involving conduct bearing directly on his fundamental duty to be truthful. It must also be noted that respondent bears considerable responsibility by failing to respond to the Administrator's trial brief. He has been, in many ways, his own worst enemy during this proceeding.

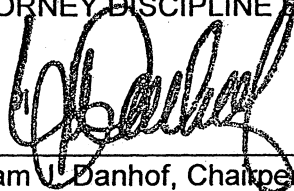
Nevertheless, taking into account the way in which the issues before the panel evolved and the nature of the sanction which may result from respondent's deceptive conduct during the proceeding, we are persuaded that respondent should be given an opportunity to address the hearing panel directly on the question of the appropriate sanction in this case and to present relevant evidence bearing upon that issue.

NOW THEREFORE,

IT IS ORDERED that this matter is **REMANDED** to Kent County Hearing Panel #2 for further proceedings consistent with this order. The panel shall determine the time and manner in which the parties may offer evidence bearing upon the appropriate sanction to be imposed as a result of the hearing panel's findings that respondent did not comply with the terms of its order of reprimand with conditions issued October 26, 2006 and its conclusion that respondent submitted false evidence to the panel during these proceedings. At the conclusion of the remand proceedings, the hearing panel shall issue a report and order affirming or modifying the panel's order of revocation issued March 18, 2008. Further review of that order shall be available under MCR 9.118. The Board does not retain jurisdiction.

ATTORNEY DISCIPLINE BOARD

By:



William J. Danhof, Chairperson

Dated: November 9, 2009

Board members William J. Danhof, Thomas G. Kienbaum, William L. Matthews, Carl E. Ver Beek, Craig H. Lubben and James M. Cameron, Jr. concur in this decision.

Board Members Billy Ben Baumann, M.D., Andrea L. Solak, and Rosaline E. Griffin, M.D., were not present and did not participate.