

# Attorney Discipline Board

Grievance Administrator,

Petitioner/Appellee,

v

Kathy Lynn Henry, P 41314,

Respondent/Appellant,

Case No. 09-107-JC

Decided: December 10, 2010

FILED  
ATTORNEY DISCIPLINE BOARD  
10 DEC 10 PM 2:27

*Appearances:*

Dina P. Dajani, for the Grievance Administrator, Petitioner/Appellee  
Carole M. Stanyar and Frederick J. Smith, for the Respondent/Appellant

## **BOARD OPINION**

Respondent was convicted of criminal contempt by the Oakland Circuit Court for “willful acts, omissions, and statements designed to mislead the court in efforts to delay and impede the collection of child support and for the purpose of disbursing money to herself and her brother in violation of court order.”<sup>1</sup> Petitioner filed the judgment of conviction pursuant to MCR 9.120 and a hearing was held before Tri-County Hearing Panel #29, which imposed a three-year suspension. Respondent has petitioned for review, arguing that the discipline imposed is not commensurate with the sanctions in other cases and did not take into account certain factors in this case. For the reasons discussed below, discipline in this case is reduced to a suspension of one year.

On review, the Attorney Discipline Board affords some deference to panel determinations as to the level of discipline imposed, but this deference is less than that given to a finding of fact because this Board has an “overriding duty to provide consistency and continuity in the exercise of its overview function” with regard to sanctions. *Grievance Administrator v Rodney Watts*, No. 05-151-GA (ADB 2007).

---

<sup>1</sup> Petitioner’s Ex. J - August 24, 2007 Opinion and Order of Hon. Cheryl A. Matthews, at page 14.

At the hearing below, respondent (who represented her brother in the underlying circuit court matter giving rise to these proceedings) was represented by her husband (who, she now admits, was unfamiliar with discipline matters). To the panel, she seemed unaware of the wrongfulness of her conduct. Nonetheless, the panel noted respondent's 22 years of practice unblemished by discipline and the "isolated nature of this conduct" (HP Report, p 3), and weighed the following aggravating and mitigating factors:

This panel further finds that the factors listed in ABA Standard 9.22 (b) dishonest or selfish motive; (c) pattern of misconduct; (g) refusal to acknowledge the wrongful nature of conduct; and (i) substantial experience of law, all weigh in favor of a substantial sanction.

This panel finds that the factors in mitigation, under ABA Standard 9.32 are (a) no prior disciplinary actions; (g) character and reputation; and (k) imposition of other penalties or sanctions, must be considered in the imposition of discipline. More specifically, respondent has never had a formal complaint filed against her by the Attorney Grievance Commission; she enjoys a good reputation among her peers and is a Public Administrator for the Wayne County Probate Court; and she suffered severe sanctions, including jail time, at the trial court level. [HP Report, p 2.]

On review, respondent argues that the absence of significant injury or potential injury, among other things, renders the Administrator's starting point for presumptive discipline (disbarment under ABA Standards 6.11 and 6.12), as well as the three-year suspension imposed by the panel, excessive and disproportionate. Specifically, respondent contends that injury was in fact prevented by her taking possession of her brother's \$85,000 severance proceeds which could have been dissipated, leaving nothing with which to pay his \$30,000 child support arrearage. Respondent also argues that the panel discounted her attempt to pay the arrearage directly to the Friend of the Court (which she did, notwithstanding the circuit court's order to pay the funds over to the receiver in order to avoid receiver fees and expenses). Finally, respondent at last "acknowledges that she disobeyed a valid court order to turn over the [entire proceeds of Mr. Henry's buyout check to the receiver] while she was actively litigating that order."<sup>2</sup> She further states that she understands that neither her experience as a public administrator or her opinion as to the wastefulness of the receivership process excuses her disobedience.

---

<sup>2</sup> Respondent's Brief in Support of Petition for Review, p 6.

While we do not minimize the conduct at issue here, or find fault with the panel's decision in this case as it was presented to the panel, our responsibility on review is to examine the factors affecting the assessment of the appropriate level of discipline in light of the ABA Standards and applicable Michigan precedents and attempt to ensure continuity and proportionality in discipline. See, e.g. *Grievance Administrator v Saunders V. Dorsey*, 02-118-AI (ADB 2005).

We have carefully reviewed the record in this case and the precedents for similar misconduct. Among such precedents we note the recent case of *Grievance Administrator v Musilli & Baumgardner*, 07-88-JC, 07-89-JC (ADB 2010), which also arose out of a circuit court judgment of conviction for criminal contempt and involved, as this case does in part, disobedience of a court order. A suspension of 180 days was deemed appropriate for that misconduct under the circumstances of *Musilli & Baumgardner*. Perhaps more pertinent, given the misrepresentations involved in this matter, are cases such as *Grievance Administrator v Keith J. Mitan*, 06-74-GA (ADB 2008), which involved both deliberate violation of a court order and lack of candor to a tribunal, and resulted in a suspension of one year. See also *Grievance Administrator v Noel L. Lippman*, 04-120-GA (ADB 2007) (one year suspension for false statement to a tribunal and other misconduct); *Grievance Administrator v Andrew J. Kozyra*, 93-136-JC (HP Report 2/8/1993) (one-year suspension for conviction of perjury in violation of MCL 750.423), *lv den* 448 Mich 1203 (1995); and, *Grievance Administrator v Larry J. Fox*, 06-63-GA (HP Reports dated 2/4/2008 [misconduct], 6/20/2008 [discipline]) (150-day suspension for false, ex parte statements to a judge to induce the issuance of a bench warrant for the arrest of an individual in violation of MRPC 3.3(a)(4) and 3.3(a)(1)(d)).

Under all of the circumstances of this case, including the two days of incarceration served and over \$20,000 in fines, fees and costs paid by respondent in the underlying matter,<sup>3</sup> we conclude that the appropriate discipline to be imposed upon this respondent is a suspension of one year.

Board members William J. Danhof, 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 members Thomas G. Kienbaum and Rosalind E. Griffin, M.D., did not participate.

Board member William L. Matthews, C.P.A., was recused.

---

<sup>3</sup> See ABA Standard 9.32(l) (imposition of other penalties or sanctions).