

STATE OF MICHIGAN

Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner,

v

Case No. 09-51-GA

ARNOLD D. DUNCHOCK, P 13013,

Respondent.

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ATTORNEY DISCIPLINE BOARD
10 DEC 16 PM 3:11

**ORDER AFFIRMING HEARING PANEL ORDER OF
SUSPENSION AND RESTITUTION WITH CONDITION**

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

Respondent, Arnold D. Dunchock, petitioned the Attorney Discipline Board for review of a hearing panel order entered July 20, 2010, suspending his license to practice law in Michigan for one year.¹ In addition to the requirements for reinstatement in MCR 9.124, the panel's order further conditioned respondent's eligibility for reinstatement upon his passage of the Multi-State Professional Responsibility Examination and his restitution to complainants Carl and Rebecca Shettler in the amount of \$12,416.04. Following its review and consideration of the briefs and arguments presented by the respondent and the Grievance Administrator at a review hearing conducted before the Board on November 10, 2010, the Attorney Discipline Board has concluded that the order of discipline entered by the panel should be affirmed.

In reviewing a panel's findings, the Board must determine whether those findings have proper evidentiary support in the whole record. *Grievance Administrator v August*, 438 Mich 296, 304; 304 NW2d 256 (1991); *In Re Grimes*, 414 Mich 483, 326 NW2d 380 (1982). When a hearing panel's findings involve issues of credibility, the Board has traditionally deferred to the hearing panel, which had a first-hand opportunity to observe and assess the demeanor of the witnesses. See *Grievance Administrator v Cheryl M. Warren*, Case No. 01-16-GA (ADB 2003), citing *Grievance Administrator v Eugene F. Williams*, 98-203-GA (ADB 2000); *Grievance Administrator v Neil C. Szabo*, 96-228-GA (ADB 1998).

In this case, the Board is aided by the thoroughness of Genesee County Hearing Panel #2's report on misconduct filed March 23, 2010 (attached as Appendix A), and an equally thorough report on discipline filed July 20, 2010 (attached as Appendix B). Based upon our review of the record before the panel, we are left with the firm conviction that the hearing panel's findings did have appropriate evidentiary support; that the panel's findings of professional misconduct were in

¹Respondent's petition for a stay of the panel's discipline order was denied by the Board in an order entered August 5, 2010. In that order, the commencement date of respondent's suspension was modified to August 31, 2010.

accord with the evidence and the cited Michigan Rules of Professional Conduct and Michigan Court Rules; and that the discipline imposed in this case is consistent with the applicable provisions of the American Bar Association's Standards for Imposing Lawyer Sanctions, as well as precedent of the Board.

As noted above, the hearing panel's reports in this case paint a clear picture of respondent's professional misconduct in his relationship with complainants Carl and Rebecca Shettler with regard to the events described in Counts One and Two of the complaint and Troy and Ella Goodwin, the complainants in the matters described in Count Three.²

Having concluded unanimously that Respondent Dunchock has failed to establish grounds warranting the reversal or modification of the hearing panel's order of discipline, the Board enters this order affirming the panel's decision. We are compelled, however, to briefly address the "Statement of questions involved" presented by respondent in his brief in support of petition for review filed September 15, 2010.

In sweeping statements that have no reasonable factual or legal support in the record, respondent has accused the Grievance Administrator and members of his staff of malicious prosecution while accusing Mr. & Mrs. Shettler and their subsequent counsel, as well as counsel for the Administrator, of engaging in conduct amounting to blackmail and extortion by seeking restitution for the monetary harm suffered by Mr. & Mrs. Shettler as the result of respondent's failure to repay the loan in accordance with the terms of the agreement that he himself drafted. In other portions of his brief, respondent has offered a conclusory accusation that the proceedings before Genesee County Hearing Panel #2 were "rigged" and that the panel's order of restitution to the Shettlers constitutes an unlawful taking of property. These accusations are without support in the record. Respondent has repeated these accusations in a barrage of filings since the presentation of oral arguments to the Board on November 10, 2010. The post-November 10, 2010 filings by respondent in this case should be, and are, **STRICKEN**.

NOW THEREFORE,

IT IS HEREBY ORDERED that the Order of Suspension and Restitution With Condition of Genesee County Hearing Panel #2 entered July 20, 2010 is **AFFIRMED**, as modified by subsequent orders of the Board. For the purposes of MCR 9.118(E) and MCR 9.122(A), the effective date of this order is **January 14, 2011**.

IT IS FURTHER ORDERED that respondent shall, on or before **January 14, 2011**, pay restitution in the amount of **\$12,416.04** to Carl Shettler and Rebecca Shettler. Respondent shall file written proof of payment with the Attorney Grievance Commission and the Attorney Discipline Board within 10 days of the payment of restitution.

IT IS FURTHER ORDERED that respondent shall, on or before **March 10, 2011**, pay costs in the amount of **\$5,088.03**, consisting of costs assessed by the hearing panel in the amount of \$4,988.78 and court reporting costs incurred by the Attorney Discipline Board in the amount of

²The problematic relationship between respondent and the Shettlers described in Count One is further illustrated in the loan agreement which was drafted by respondent and which is central to the findings of misconduct in Count One. That agreement (Petitioner's Exhibit 1) is attached as Appendix C.

\$99.25 for the review proceedings conducted on November 10, 2010. 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: December 16, 2010

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

STATE OF MICHIGAN

Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner,

v

Case No. 09-51-GA

ARNOLD D. DUNCHOCK, P 13013,

Respondent.

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REPORT OF GENESEE COUNTY HEARING PANEL #2

PRESENT: Brian M. Barkey, Chairperson
Kathleen Buckley-O'Neill, Member
Frank G. Turnage, Member

APPEARANCES: John K. Burgess, Associate Counsel,
for the Attorney Grievance Commission

Arnold D. Dunchock, Respondent,
in pro per

APPENDIX A

I. EXHIBITS

EXHIBITS ADMITTED AT HEARING CONDUCTED OCTOBER 30, 2009:

Exhibit 1	Agreement executed by Arnold D. Dunchock, Carl D. Shettler and Rebecca K. Shettler, dated November 29, 2003
Exhibit 2	Quit Claim Deed from Arnold D. Dunchock to Carl D. Shettler and Rebecca K. Shettler, dated November 29, 2003
Exhibit 3	Money order payable to the order of Carl D. Shettler in the amount of \$10,000, dated November 29, 2003
Exhibit 4	Schedule A and Schedule B of ALTA commitment from Chicago Title Insurance Company, dated November 3, 2004
Exhibit 5	Shiawassee County Treasurer receipt for property taxes due in 2003, dated September 13, 2004
Exhibit 6	Shiawassee County Treasurer receipt for property taxes due in 2004, dated February 27, 2007
Exhibit 7	Money orders and checks representing payments from Arnold D. Dunchock: dated October 5, 2005 in the amount of \$999, dated April 1, 2006 in the amount of \$500, dated June 20, 2006 in the amount of \$225, dated July 3, 2006 in the amount of \$200, dated July 26, 2006 in the amount of \$175 and dated August 5, 2006 in the amount of \$100
Exhibit 8	Michigan Court of Appeals docket sheet, Case No. 259178
Exhibit 9	Invoice from Lawyers Offices to Carl Shettler, dated January 10, 2007
Exhibit 10	Michigan State Treasurer Tax Deed to John Bendall, purchaser, dated August 26, 1998
Exhibit 11	Notice of Federal Tax Lien, dated April 28, 1995
Exhibit 12	Correspondence from Arnold Dunchock to Robert Parker, dated October 5, 2005
Exhibit 13	None
Exhibit 14	Civil Case History for Case #04-079-GC-5, 81 st District Court
Exhibit 15	Summons and Complaint Larry J. Rapson and Myong S. Rapson v. Troy Goodwin and Ella Goodwin, Case #04-079-GC-5, 81 st District Court

Exhibit 16	Proofs of service Case #04-079-GC-5, 81 st District Court
Exhibit 17	Answer filed by Mr. and Mrs. Goodwin in Case #04-079-GC-5, 81 st District Court, dated July 5, 2004
Exhibit 18	Application for Entry of Default, Affidavit and Default Entry as to Defendant Ella Goodwin in Case #04-079-GC-5, 81 st District Court, dated July 9, 2004
Exhibit 19	Appearance of Arnold Dunchock for Troy Goodwin and Ella Goodwin Case #04-079-GC-5, 81 st District Court, dated August 25, 2004
Exhibit 19a	Plaintiff's Offer to Stipulate to Entry of Judgment in Case #04-079-GC-5, 81 st District Court, dated September 29, 2004
Exhibit 20	Stipulation and Order to Adjourn Pretrial in Case #04-079-GC-5, 81 st District Court, dated October 26, 2004
Exhibit 21	Notice of Presentment of Order for entry of Default and Proof of Service, dated November 17, 2004, executed Order of Default, dated November 30, 2004 in Case #04-079-GC-5, 81 st District Court
Exhibit 22	Plaintiff's Verified Objection to Defendant's Objection to Entry of Order in Case #04-079-GC-5, 81 st District Court, dated November 24, 2004
Exhibit 23	Motion to Set Aside Order of Entry of Default in Case #04-079-GC-5, 81 st District Court, dated December 13, 2004
Exhibit 24	Verified Motion to Strike and for Entry of Default Judgment with Exhibits in Case #04-079-GC-5, 81 st District Court, dated January 17, 2005
Exhibit 25	Notice of Adjournment and Re-Notice of Hearing and Proof of Service in Case #04-079-GC-5, 81 st District Court, dated January 26, 2005
Exhibit 26	Notice of Presentment and Proposed Judgment and Order in Case #04-079-GC-5, 81 st District Court, dated February 23, 2005
Exhibit 27	Objection to Entry of Judgment in Case #04-079-GC-5, 81 st District Court, undated
Exhibit 28	Plaintiff's Verified Objection to Defendant's Objection to Entry of Order and Proof of Service and Affidavit of Barbara Siwek in Case #04-079-GC-5, 81 st District Court, dated March 4, 2005

Exhibit 29	Judgment and Order in Case #04-079-GC-5, 81 st District Court, dated March 23, 2005
Exhibit 30	Notice of Pretrial on November 24, 2004 in Case #04-079-GC-5, 81 st District Court, dated August 25, 2004

EXHIBITS ADMITTED AT HEARING CONDUCTED DECEMBER 18, 2009

Exhibit 31	Correspondence from Attorney Halm to Shiawassee County Zoning Board of Appeals, dated December 3, 2003
Exhibit 32	Proof of Service in 44 th Circuit Court Case #03-00480, Carl D. Shettler, et al, versus Shiawassee County, et al, dated December 3, 2003
Exhibit 33	Correspondence from Shiawassee County Community Development to Arnold Dunchock, dated October 6, 2004 with attached Violation Complaint Form, dated October 1, 2004
Exhibit 34	Appearance of Attorney Kolkema in Michigan Court of Appeals with attached Motion for Dismissal, Brief in Support and Proof of Service in the case of Shettler v. Shiawassee County, et al, dated November 22, 2004
Exhibit 35	Petition for Review and Request to Take Additional Evidence with Exhibits filed in the Circuit Court for Shiawassee County as case #03-00478, dated November 3, 2003
Exhibit 36	Recorded Quit Claim Deed from Arnold Dunchock to Carl Shettler and Rebecca Shettler, dated November 29, 2003, and recorded on March 1, 2004; copy of Money Order dated November 29, 2003 to Carl Shettler with notations
Exhibit 37	Shiawassee County Treasurer receipt for property taxes due in 1994, dated December 1, 2003
Exhibit 38	Shiawassee County Treasurer receipt for property taxes due in 1997, dated December 1, 2003
Exhibit 39	Time sheet for November 29, 2003 (after redaction)

II. WITNESSES

The following witnesses were called by the parties at the October 30, 2009 hearing:

Rebecca K. Shettler,
Attorney Robert E. Parker, Complainant,
Ella Goodwin, Complainant,
Troy Goodwin.

At the hearing conducted on December 18, 2009 the following additional witnesses were called:

Joseph S. Sawyer,
Merilee S. Lawson,
Linda G. Cordier,
Thomas W. Dwyer,
Thomas R. Kiefer, and
Vicki L. Hicks.

At the hearing conducted on February 16, 2010, the following additional witnesses were called:

Attorney Thomas Halm,
Attorney Jason Kolkema (by telephone conference call)
Attorney Arnold D. Dunchock, Respondent.

III. PANEL PROCEEDINGS

This matter came on to be heard by Genesee County Hearing Panel #2 upon the complaint of the Grievance Administrator filed on May 21, 2009, against Arnold D. Dunchock, P13013. Count One of the complaint alleged that on November 29, 2003, respondent entered into an agreement with Carl Shettler and Rebecca Shettler, his clients. The claim alleged that respondent defaulted on his obligations contained in this agreement and that when the Shettlers sought the benefit of the security provided by the respondent, the security was not as it was represented. The complaint alleged that the Shettlers spent money attempting to perfect and preserve this security without success. The complaint alleged that the respondent:

Entered into an impermissible business transaction with his client in violation of MRPC 1.8(a)(1);

Failed to give his clients a reasonable opportunity to seek the advice of independent counsel in the transaction, in violation of MRPC 1.8(a)(2);

Continued to represent the Shettlers when the representation was materially limited by his own interest in violation of MRPC 1.7(b);

Violated the Michigan Rules of Professional Conduct in violation of MRPC 8.4(1) and MCR 9.104(A)(4);

Engaged in conduct involving dishonesty, fraud, deceit, misappropriation or violation of the criminal law, where such conduct reflects adversely upon the lawyer's honesty, trustworthiness, or fitness as a lawyer, in violation of MRPC 8.4(b);

Engaged in conduct that exposed the legal profession or the court's to obloquy, contempt, censure, or reproach in violation of MCR 9.104(A)(2), and

Engaged in conduct that was contrary to justice, ethics, honesty or good morals in violation of MCR 9.104(A)(3).

It was alleged in Count Two of the complaint that on January 10, 2007, respondent submitted an invoice to Attorney Robert E. Parker to justify respondent's failure to satisfy his obligations to the Shettlers. Petitioner claimed that the invoice contained false and fraudulent charges and constituted misconduct in the following ways:

Respondent knowingly made false statements of material facts to a third party in violation of MRPC 4.1;

Respondent violated the Michigan Rules of Professional Contract in violation MRPC 8.4(A) and MCR 9.104(A)(4);

Respondent engaged in conduct involving dishonesty, fraud, deceit, misappropriation or violation of the criminal law, where such conduct reflected

adversely upon the lawyer's honesty, trustworthiness, or fitness as a lawyer, in violation of MRPC 8.4(b);

Respondent engaged in conduct that exposed the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(A)(2);

Respondent engaged in conduct that was contrary to justice, ethics, honesty or good morals in violation of MCR 9.104(A)(3); and

Respondent engaged in conduct that was prejudicial to the administration of justice, in violation of MRPC 8.4(c) and MCR 9.104(A)(1).

In Count Three of the complaint, petitioner claimed that respondent was retained by Troy Goodwin and Ella Goodwin to represent them in a case against them in the 81st District Court in Harrisville, Michigan. The complaint alleges that respondent filed pleadings without adequate legal support, did not notify his clients of hearings and failed to appear at hearings scheduled before the District Court on three occasions. The complaint alleges that this resulted in a judgment against Goodwins. It is alleged that the respondent was guilty of the following misconduct in this matter:

Respondent failed to provide his clients with competent representation in violation of MRPC 1.1;

Respondent neglected his representation of his clients in violation of MRPC 1.1(c);

Respondent failed to keep his clients reasonably informed about the status of the matter and failed to properly notify his clients of settlement offers in violation of MRPC 1.4(a);

Respondent asserted frivolous claims and defenses in the course of litigation in violation of MRPC 3.1;

Respondent engaged in conduct that was prejudicial to the administration of justice in violation of MRPC 8.4(c) and MCR 9.104(A)(1); and

Respondent violated the rules of professional conduct in violation of MRPC 8.4(a)(1).

On June 18, 2009, respondent filed an answer to the formal complaint.

Respondent stated that the agreement described in Count One of the complaint was entered into in the context of a retainer agreement for his legal work in a zoning matter.

Respondent stated that the security described in the agreement was given without the intent to mislead the Shettlers, that the nature of his ownership interest in the security was accurately described and that any defects in the security now claimed in the complaint were in fact disclosed to Shettlers. Respondent further stated that the Shettlers were guilty of misconduct in recording the deed to the security without first demanding payment pursuant to the agreement, and that any sums that they expended to realize on the security were paid as volunteers. Respondent pointed out that the security was in the form of a quit claim deed which potentially conveyed the grantor's interest in the land without warranty and that the interest of the respondent's spouse was not conveyed even though his marital status was clearly noted.

In response to Count Two of the complaint, respondent answered that the fact that he was charging attorney fees for the legal work that he was performing for the Shettlers was known to them, that the Shettlers were satisfied with the nature and quality of the legal work which he performed, and he denied that the invoice he submitted was false and fraudulent in any respect.

With respect to Count Three, respondent answered that Ella Goodwin was already in default when he was retained, that the Goodwins were not being reasonable in rejecting a settlement offer and that at some point during his representation, the legal work that he performed for the Goodwins had used all of the retainer paid to him. Respondent further stated that the entire lawsuit was resolved when the Goodwins filed bankruptcy. Respondent denied that his representation of the Goodwins was

incompetent or negligent and denied that he failed to keep the Goodwins reasonably informed concerning the status of this case.

Respondent affirmatively claimed in his answer that the complaint involved matters too old to be actionable. He charged that the Grievance Administrator's complaint was an attempt to take property described in the quit claim deed that the respondent tendered the Shettlers without due process. He stated that the complaint was tainted by attempted bribery by a member of the State Bar of Michigan and misconduct by a representative of the Grievance Commission.

Several motions were filed in this case. On October 14, 2009, respondent filed a Motion for Dismissal of Count One and Count Two under MCR 2.114 for lack of jurisdiction, MCR 2.116(C)(8) for failure to state a claim, and MCR 2.116(C)(10), asserting that there were no factual issues supporting the complaint and that Respondent was entitled to dismissal as a matter of law. Respondent asked the panel to rule that the action was too stale to be actionable and was in an improper forum. The Motion also sought dismissal of Count Three pursuant to the MCR 2.116(C)(8) to failure to state a claim upon which relief could be granted, and pursuant to MCR 2.116(C)(10) because there was no genuine issue as to any material fact and that respondent was entitled to judgment as a matter of law.

Petitioner answered this motion on October 16, 2009. This answer claimed that the motion by respondent was in improper form and inappropriate, that petitioner's complaint did state a cause of action and that the complaint described sufficient contested facts requiring a hearing.

Petitioner filed a Counter Motion for Summary Disposition as to Count One, alleging that the business transaction between respondent and the Shettlers had been admitted in respondent's answer and violated Michigan Rules of Professional Conduct 1.8(a) as a matter of law. Respondent answered this motion claiming that there were sufficient contested facts for hearing with respect to this count.

Respondent, on October 26, 2009, filed a Verified Motion to Dismiss based upon conduct by petitioner. In this motion, respondent alleged that certain statements made by a representative of the petitioner in the course of a sworn statement upon which he relied to his detriment were sufficient to require a dismissal of the complaint against him. Petitioner responded to this motion alleging that it was insufficiently supported legally or factually.

On October 28, 2009, respondent filed a Motion for Bifurcation, requesting that any consideration of sanctions, if necessary, be conducted at a date different than the hearing for the misconduct.

The matter came up for hearing on October 30, 2009. Following argument and after deliberation, the panel ruled that the panel had jurisdiction to hear the matter described in the complaint, that the complaint stated a cause for action and that there were sufficient contested facts to warrant a hearing on the allegations contained in the complaint. Respondent's Motions for Summary Disposition pursuant to MCR 2.116 (C)(6), (C)(8) and (C)(10) were denied. Petitioner's Motion for Summary Disposition as to Count One pursuant to MCR 2.116(C)(10) was taken under advisement as the panel wanted to consider testimony concerning the perception of the Shettlers and the respondent with respect to the agreement. The respondent's motion for dismissal based on his allegations of misconduct was denied as the panel believed that the motion did not cite sufficient authority to grant the relief and that it was not the proper forum to consider the motion. Following this, petitioner presented witnesses in support of its case to the completion of its case in chief. The matter was recessed until December 18, 2009.

Several additional motions were filed before the date of the second hearing. On November 2, 2009, respondent filed a motion to reschedule the hearing until a transcript was available, so that he could file a dispositive motion. On November 2, 2009, petitioner responded to the motion for adjournment. On November 24, 2009, after a transcript of the October 30, 2009 hearing was prepared and filed, the matter

was set for an additional hearing on December 18, 2009. In the Notice of Hearing it was ordered that any motions be filed before December 4, 2009 with responses filed no later than December 11, 2009. On December 4, 2009, respondent filed a Motion for Directed Verdict as to the allegations contained in Count One and Count Three. On December 7, 2009, respondent supplemented this motion by requesting that the panel direct a verdict as to Count Two. The basis for his motion as to Count One and Count Two was the testimony of Rebecca Shettler concerning the absence of an attorney/client relationship between respondent and Shettlers. The motion as to Count Three was premised on the failure by petitioner to submit expert witness testimony setting the legal standard for competence. On December 11, 2009, petitioner answered to these motions. Respondent responded to this answer on December 14, 2009, and on December 17, 2009, and filed a pleading citing specific references in the transcript and exhibits relating to his Motion for Directed Verdict. Petitioner filed motions to strike the latter pleadings.

The hearing was reconvened on December 18, 2009. The panel determined that the testimony of Rebecca Shettler, considered with the exhibits admitted during the first day of proceedings and the admissions of the respondent in his answer were sufficient to present factual issues concerning which reasonable minds could differ and denied the respondent's Motions for Directed Verdict. The panel denied the petitioner's Motion to Strike based on timeliness of the respondent's motions, because it felt that neither the panel nor the petitioner were prejudiced by the failure of the respondent to properly file and serve the motions and that the panel's discretion should be exercised in favor of considering them in spite of their untimeliness.

Respondent submitted testimony for the balance of November 18, 2009. The hearing was reconvened on February 16, 2010, to completion. Following submission of the case by both petitioner and respondent, the parties offered argument after which, the panel deliberated and reconvened to state their findings with respect to misconduct on the record.

Findings of Fact

During the year 2003, Carl Shettler and Rebecca Shettler became involved with a dispute concerning their ability to operate a gravel pit on property that they owned. They consulted and hired attorney Thomas Halm to represent them in their efforts to obtain permission from Shiawassee County to operate this gravel pit. Following this, and after some preliminary discussions with respondent, they entered into an agreement with him on November 29, 2003. The agreement, admitted into this record as Exhibit 1, provided for a loan of \$10,000 from Shettlers to respondent to be repaid without interest within 90 days. This loan was secured by a quit claim deed to property owned by respondent which deed could be recorded in the event the amount of the loan was not repaid before the date called for in the agreement. Respondent represented in this agreement that he owed only current real estate taxes and street and sidewalk assessments for this property. Respondent disclosed in this agreement that he owed income taxes, but it would not affect potential transfer of the property should transfer be necessary. Respondent represented that there were no mortgages on the property and that his interest in the property was worth many multiples of \$10,000.

The agreement also provided for legal representation of the Shettlers by respondent in connection with the zoning matter concerning the use of their property in Shiawassee County, Michigan.¹ Respondent agreed to represent the Shettlers without charge for 40 hours of legal/secretary time in addition to the anticipated repayment of the loan without interest. Shettlers were informed in the agreement that respondent had presently expended an estimated 22 hours on their legal representation as of the date of the agreement. The agreement provided that the lawyer would keep the clients

¹ In the agreement (drafted by respondent), the Shettlers acknowledged that respondent had been representing them relative to this matter.

advised as to using up any additional agreed time up to the 40 hours described in the agreement, and that work over 40 hours would be performed on a "time and costs bill basis" without the requirement of a supplementary retainer.

This agreement was executed on November 29, 2003. Carl Shettler secured a money order in the amount of \$10,000 and endorsed it to respondent. This money was used by respondent to pay real estate taxes due for the years 1997 and 1994. Exhibit 37 and Exhibit 38.

Respondent made no payments on the obligation described in this agreement by the due date, February 27, 2004. On March 1, 2004, the Shettlers recorded the quit claim deed. Exhibit 2.

A title search conducted on November 3, 2004, showed that the land described in the Quit Claim Deed was owned by Phyllis G. Cooper, f/k/a Phyllis G. Johncock, survivor of herself and Lonnie E. Johncock, her deceased husband, which interest was subject to a land contract interest of Arnold G. Dunchock. The title commitment also demonstrated that the property had been subject to forfeiture for nonpayment of real property taxes for 1999, and was subject to outstanding liens for workers' and unemployment compensation taxes, and a federal tax lien in the amount of \$144,147.27.

The respondent testified that the fact that he gave a quit claim deed that provided no warranty and that he signed as a married man without the signature of his wife were evidence that he did not intend that the deed would be used as a conveyance. He testified at length that in spite of the agreement's literal reading, that he believed that the Shettlers would contact him to demand payment before recording the deed and that they would negotiate a different arrangement rather than the agreed upon repayment.

Respondent and Thomas Halm continued to represent the Shettlers in their zoning matter after the date this deed was recorded. An appeal from the

Shiawassee County zoning Board of Appeals was heard by Shiawassee Circuit Court Judge Lostracco. It was not successful in providing the Shettlers with the relief they requested. An appeal was filed with the Michigan Court of Appeals which was likewise not successful.

During this time, Carl Shettler became increasingly upset and his emotional state deteriorated to the point of irrationality. The Shettlers have never been able to operate their land lawfully as a gravel pit and Carl Shettler has declined to follow other legally permissible avenues that would possibly allow him to do so. Carl and Rebecca Shettler have since separated and divorced. Rebecca Shettler has disavowed any interest she has in the property deeded by respondent.

Toward the end of 2004, the Shettlers consulted attorney Robert Parker in an attempt to collect the loan from respondent. He suggested a title search on the property subject to the quit claim deed to the Shettlers, which disclosed the defects and encumbrances outlined above. From October 5, 2005, to August 5, 2006, as a result of attorney Parker's efforts, respondent paid \$2,199.00 to Parker for the benefit of the Shettlers. Respondent testified that he made these payments in recognition of the fact that the Shettlers had paid real estate taxes after recording the deed. Exhibits 5 and 6 demonstrate that the Shettlers paid \$5,415.04 in taxes and interest charged against the property.

Attorney Parker testified that he had several contacts with respondent in an effort to collect this indebtedness to the Shettlers. In the course of these discussions, respondent sent a statement for his legal services to attorney Parker for consideration against this indebtedness. The invoice, which appears in the record as Exhibit 9, is dated January 10, 2007, and reflects that no payments toward the bill had been paid and that the balance due respondent from the Shettlers was \$9,538.30. It charged the Shettlers for the 40 hours for legal work described in the agreement as work that was to have been done without charge in exchange for the loan without interest. The testimony of Rebecca Shettler and respondent established that this was the first invoice

the respondent had submitted to the Shettlers in connection with his representation of them in the zoning matter. Attorney Parker filed a request for investigation with the State Bar of Michigan.

With respect to the matters described in Count Three of the complaint, the evidence before the panel demonstrated that respondent was retained to represent Troy Goodwin and Ella Goodwin in connection with a lawsuit filed against them in the 81st District Court located in Harrisville, Michigan and paid a retainer to respondent in the amount of \$1,500. Before respondent was retained, and unknown to either respondent or the Goodwins, the default of Ella Goodwin had been entered by the District Court. When a handwritten answer was filed by the Goodwins in pro per on the same day as the default was entered by the District Court Clerk,² the Court set this matter for a pretrial conference on August 25, 2004.³ Both the Goodwins and respondent attended this pretrial conference. After some discussion with counsel and the Court, the pretrial conference was adjourned in order to give respondent an opportunity to file a third party claim and a possible counter claim. These claims were never filed. On November 17, 2004, the date of the adjourned pretrial conference, neither of the Goodwins nor respondent appeared and the Court directed that an Order of Default enter against the Goodwins.⁴ Plaintiff filed a proposed Order for Default and sent a Notice of Presentment of the Order of Default to respondent and when the Court

² Exhibit 14, at Page 1

³ The Court docket appearing at Exhibit 14 suggests that the District Court Judge set aside the default during this conference. The balance of the pleadings, however, suggest that this was never confirmed by any court order.

⁴ This pretrial conference had originally been scheduled for November 24, 2004, and reset for October 27, 2004, at the request of plaintiff's counsel. On that date, a stipulation to adjourn was filed rescheduling the hearing for November 17, 2004.

received no objections from respondent, it entered the default on December 2, 2004.⁵ On December 15, 2004, respondent filed a motion requesting that this default be set aside. Plaintiff in the Goodwin matter filed a Motion to Enter Judgment based on the default on January 21, 2005. The hearing on these motions was adjourned to February 23, 2005 at the request of respondent. On the adjourned date, for the second time, neither respondent nor the Goodwins appeared at the hearing and the Court denied respondent's Motion to Set Aside the default against the Goodwins and directed plaintiff to submit the proposed Judgment. On the date of this hearing, plaintiff filed a Notice of Proposed Judgment and a Notice of Presentment of the Judgment as the Court had directed. Respondent objected to the entry of the Judgment and a hearing on the respondent's objections was scheduled for March 23, 2005. Again, for the third time, neither respondent nor the Goodwins appeared for this hearing. Judgment was entered against the Goodwins on that date in the amount of \$13,737.83, which amount included attorneys fees of \$2,696. The Goodwins subsequently hired respondent to file a Bankruptcy.

Soon after the respondent was retained by the Goodwins, he was sent an Offer to Stipulate to the Entry of Judgment by the plaintiff for the amount of \$3,600 inclusive of costs. Ella Goodwin and Troy Goodwin testified that the settlement offer was discussed with them, but declined.

⁵ Respondent and his secretary both testified that objections to the entry of this order were in fact prepared, but were sent to the wrong Court in error.

Both Goodwins testified that they attended the pretrial conference set in the matter on August 25, 2004. Ella Goodwin testified that she appeared for a Court hearing on November 24, 2004, only to learn that it had been adjourned. Other than this, the Goodwins testified that they were not advised that it would be necessary for them to appear at the hearings of November 17, 2004, February 23, 2005, or March 23, 2005. Respondent did not claim otherwise. Respondent admitted that he failed to appear for these hearings and testified that he had some health difficulties which may have interfered with his attendance. The pleadings in the District Court case suggest that this was not the reason.⁶ Respondent also stated that he had a breakdown of his automobile during this time that might account for his failure to appear at another hearing. Again, the District Court pleadings filed by the respondent suggest that this does not account for his failure to appear. Exhibit 23 is respondent's Motion to Set Aside Order of Entry of Default, dated December 13, 2004, which noted that an objection to the entry for order of default was mailed the wrong court and that such pleadings had been "prepared under the circumstances of the stress of the attorney for the Defendants having been stranded in Stanton, Michigan, due to car trouble." Respondent also testified that the time necessary to drive from his office to the place of the conference was substantial and the time necessary to do this used up the amount of the retainer. He testified that he believed he had an *unpaid invoice outstanding* to the Goodwins in the amount of \$3,000 and admitted that this factored into his

⁶ The pleadings in the District Court case contain a reference to health problems in connection with the need to adjourn an earlier hearing, not the respondent's failure to attend the November 17th hearing. Exhibit 20 states that the pretrial hearing set for October 26, 2004, was adjourned by agreement until November 17, 2004, due to "a recent medical condition of attorney for Defendant." The need for a heart catheterization was the only health condition mentioned by the respondent in his testimony. He testified that his health had been good other than this need for catheterization. Exhibit 20 states that the failure by the respondent to appear at the November 17th hearing was due to a "mix up, at least as it relates to the Defendants" rather than a health problem.

representation of them. Respondent testified that the Goodwins' refusal of the settlement demand by the defendants was not reasonable and should be taken into consideration when considering his representation of them. He further noted that the judgment was discharged in bankruptcy.

IV. FINDINGS AND CONCLUSIONS REGARDING MISCONDUCT

Following argument, and the consideration of the testimony and exhibits, the panel found as follows:

COUNT ONE

The panel found that respondent entered into a business transaction with his clients, Carl Shettler and Rebecca Shettler, memorialized in the agreement Exhibit 1 in violation of MRPC 1.8(A)(1). The terms of his legal representation of them, the repayment of the sum borrowed and the nature and value of his interest in the property he was giving to secure this indebtedness was vague, unclear and misleading.

The panel further found that respondent failed to give the Shettlers a reasonable opportunity to seek the advice of independent counsel in the transaction in violation of MRPC 1.8(A)(2). The panel did not find that the respondent continued to represent the clients when his representation was materially limited by his own interests as alleged in the complaint. Respondent testified that he believed that his representation of the Shettlers was not limited by his business dealings with them and that the Shettlers were shown to have consented to this continued representation even after respondent had defaulted on his obligations described in Exhibit 1.

The panel further found that respondent's conduct violated MRPC 8.4(a) and MCR 9.104(A)(4). The panel further found that the conduct as recited above involved dishonesty, deceit and misappropriation and was conduct that reflected adversely upon respondent's honesty, trustworthiness or fitness as a lawyer in violation of MRPC 8.4(b).

The panel further found that the conduct of respondent exposed the legal profession to obloquy, contempt, censure, or reproach in violation of MCR 9.104(A)(2), and the panel further found that the conduct of the respondent was contrary to justice, ethics, honesty or good morals in violation of MCR 9.104(A)(3).

COUNT TWO

The panel found that the submission to attorney Parker of Exhibit 9 in response to attorney Parker's efforts to collect the debt described in Exhibit 1 was an attempt to represent to Attorney Parker that the Shettlers were indebted to respondent in the amount contained in this invoice and constituted a false statement of a material fact in violation of MRPC 4.1 and also violated MRPC 8.4(a) and MCR 9.104(A)(4).

The panel further found that the submission of Exhibit 9 in these circumstances involved dishonesty, deceit and reflects adversely upon respondent's honesty, trustworthiness, or fitness as a lawyer, in violation of MRPC 8.4(b);

The panel further finds that this conduct exposed the legal profession to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(A)(2);

The panel further finds that this conduct was contrary to justice, ethics, honesty or good morals in violation of MCR 9.104(A)(3).

The panel does not find that this conduct was prejudicial to the administration of justice as alleged in paragraph 23(e) of the complaint.

COUNT THREE

With regard to the allegations with respect to the Goodwin matter contained in Count Three, the panel found respondent failed to provide the Goodwins with competent representation in violation of MRPC 1.1 and neglected to represent the Goodwins in violation of MRPC 1.1(c).

The panel found that respondent failed to keep Goodwins reasonably informed concerning the status of the matter in violation of MRPC 1.4(a), but the panel did not

find that respondent failed to promptly notify the Goodwins of the proposed settlement offer in violation of that rule.

The panel further found that respondent engaged in conduct that was prejudicial to the administration of justice in violation of MRPC 8.4(c) and MCR 9.104(A)(1).

The panel further found that respondent's representation of the Goodwins violated the rules of professional conduct, in violation of MRPC 8.4(a)(1).

The panel did not find that respondent asserted frivolous claims and defenses in the course of this litigation in violation of MRPC 3.1.

Pursuant to these findings, a hearing shall be scheduled for the consideration of sanctions.

ATTORNEY DISCIPLINE BOARD
Genesee County Hearing Panel #2

DATED: March 23, 2010

By: Brian M. Barkey (by *Man. of permission*)
Brian M. Barkey, Chairperson

Dunchock Report.rtf

STATE OF MICHIGAN

Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner,

v

Case No. 09-51-GA

ARNOLD D. DUNCHOCK, P 13013,

Respondent.

10 JUL 20 PM 2:28

AMERICAN BAR ASSOCIATION

REPORT ON DISCIPLINE OF GENESEE COUNTY HEARING PANEL #2

PRESENT: Brian M. Barkey, Chairperson
Kathleen Buckley-O'Neill, Member
Frank G. Turnage, Member

APPEARANCES: John K. Burgess,
Associate Counsel for the Attorney
Grievance Commission

Arnold D. Dunchock,
Respondent, in pro per

I. EXHIBITS

EXHIBITS ADMITTED AT HEARING CONDUCTED MAY 20, 2010

Exhibit 1	Notice of reprimand and restitution, case # 94-53-GA, effective 7/28/1995
Exhibit 2	Notice of 60 day suspension, case # 94-98-GA, effective 4/19/1996
Exhibit 3	Notice of reprimand (by consent) case # 95-242-GA, effective 9/6/1997
Exhibit 4	Notice of reprimand with conditions (by consent) case # 03-153-GA, effective 7/17/2004
Exhibit 5	Notice of 30 day suspension, case # 04-168-GA, effective 1/2/2008
Exhibit 6	Admonishment, case # 0990/02, dated 4/24/2003
Exhibit 7	Admonishment, case # 0577/04, dated 6/29/2005
Exhibit 8	Admonishment, case # 2473/05 dated 1/30/2006
Exhibit 9	Order denying application for reinstatement, United States District Court for the Eastern District of Michigan, Southern Division, case # 96-X-72962

II. WITNESSES

The following witnesses were called by the parties at the May 20, 2010 hearing:

Karen Fay Carroll
Vicki L. Hicks
Les Lee Schneider
Rita Kaye Cunningham
Arnold D. Dunchock

III. PANEL PROCEEDINGS

The formal complaint in this matter was filed on May 21, 2009. The panel filed its report on misconduct on March 23, 2010, and it is incorporated by reference. In accordance with MCR 9.115(J)(2), a separate hearing was conducted on May 20, 2010, to determine the appropriate level of discipline.

In the report on misconduct, the panel determined that respondent's business relationship with his clients, Carl Shettler and Rebecca Shettler, were in violation of MRPC 1.8(A)(1). The panel further found that the respondent failed to give the Shettlers a reasonable opportunity to seek the advice of independent counsel in the transaction in violation of MRPC 1.8(A)(2). But the panel did not find that the respondent continued to represent the Shettlers when his representation was materially limited by his own interests as alleged in the complaint. The panel further found that respondent's conduct violated MRPC 8.4(a) and MCR 9.104(A)(4), MCR 9.104(A)(2) and MCR 9.104(A)(3).

With regard to Count II, the panel found that respondent's submission to attorney Parker, which was admitted as Exhibit 9 in the misconduct hearing, in response to attorney Parker's attempt to collect indebtedness from Respondent on behalf of the Shettlers, violated MRPC 4.1, MRPC 8.4(a) and MCR 9.104(A)(4). The panel further found that submission of Exhibit 9 to attorney Parker constituted conduct which violated MCR 9.104(A)(2) and MCR 9.104(A)(3) and involved conduct which reflected adversely on respondent's honesty, trustworthiness or fitness as a lawyer in violation of MRPC 8.4(b).

With regard to Count III, the panel found that the respondent failed to provide his clients, Troy Goodwin and Ella Goodwin, with competent representation in violation of his obligations under MRPC 1.1 and MRPC 1.1(c). The panel found that respondent failed to keep the Goodwins informed concerning the status of his representation with respect to the matter in violation of MRPC 1.4(a), but did not find that respondent failed to promptly notify the Goodwins of a proposed settlement offer in violation of that rule as alleged in the complaint. The panel found that respondent engaged in conduct that was prejudicial to the administration of justice in violation of MRPC 8.4(c) and MCR 9.104(A)(1) and violated the Rules of Professional Conduct in violation of MRPC 8.4(a)(1). The panel did not find that respondent asserted frivolous claims and defenses with respect to the Goodwin matter alleged in the complaint.

IV. HEARING ON DISCIPLINE

At the hearing on May 20, 2010, counsel for the Grievance Administrator submitted Exhibits 1 - 9 outlined above.

Respondent offered testimony from the following witnesses.

Karen Fay Carroll was called and identified herself as a client of respondent's in a matter involving her child. She was not able to pay respondent's legal services and is working off her fee obligation by doing landscaping and lawn care services for respondent. She testified that there was no "lack of effort" exhibited by respondent in his legal work for her.

Vicki L. Hicks was called as a witness and identified herself as respondent's employee. She testified that respondent had done pro bono work for clients when other

attorneys had declined their cases or had abandoned those clients. She testified that her work as a bankruptcy practitioner would be substantially curtailed by any discipline of the respondent. She testified that she had reviewed the panel's findings and found them "off base" and inaccurate.

Les Lee Schneider identified himself as an official of the Shiawassee County Veterans Affairs Committee. He testified that he had encountered difficulties within this group involving their official business and sought out the services of respondent in connection with this difficulty. Before he did so, he consulted several other attorneys in the local area and could find no other attorney to help him. Respondent undertook representation of this group and has represented their interests in several areas. Respondent advised them that the group should pay him when they could.

Rita Kaye Cunningham was called and identified herself as an employee of Respondent and also a client. She testified as to the respondent's representation with respect to the adoption of a grandchild. She has fought this case for the last five and one-half years with respondent's help. She also performs work for respondent as an employee. She testified that respondent represents many clients at a reduced fee or on a pro bono basis.

Respondent, Arnold D. Dunchock, presented his own testimony for consideration of the panel in the sanction phase. In the Goodwin matter, respondent testified that his representation was hampered by transportation problems and medical problems. He stated that his motives in undertaking the Goodwin case were to help the Goodwin family. He stated he was wrong to undertake a case in a court located at such a geographical distance. He further stated that the Goodwins owed respondent money for his representation of them, that respondent knew they would be heading into bankruptcy and respondent therefore had a duty to keep his attorney fees to the Goodwins at a minimum.

In the Shettler matter, respondent stated that his decision about using a deed as security for his indebtedness to them was a mistake, but that he had no dishonest intentions. He stated that he has tried to work out his differences with Carl Shettler by visiting him the day before the mitigation hearing. Respondent acknowledged that the situation with respect to Carl Shettler was sad, but testified that he does not believe that his own behavior caused this condition. Respondent stated that Parker's attempt to collect the Shettler's indebtedness from him led him to believe that he was being "ripped off." He stated that the money owed to the Shettlers and the attorney fees the Shettlers owed to respondent should have been worked out and resolved by arbitration. Respondent testified that his prior offenses as reflected in Exhibits 1 - 9, were remote in time. He stated that he believed the only thing he had done wrong in the Shettler matter was giving them a quit claim deed. He pointed out to the panel that he continues to pay tax on the property although he has been "locked out" by the Shettlers. He testified that he felt the panel was wrong in their decision. He stated that his motives were not dishonest. He only meant to help both the Shettlers and the

Goodwins. He explained that he did not feel remorse for any other conduct other than the execution of the deed, but felt he was wrongfully accused of the other conduct the panel found as the basis for its findings. He said was never going to kiss up to the panel and he will fight this matter to end of his life.

The parties were then invited to summarize their positions with respect to the appropriate level of discipline, including aggravating and mitigating factors, using the theoretical framework and Standards for Imposing Lawyer Sanctions published by the American Bar Association.

Petitioner argued that respondent's entry into an impermissible business relationship with the Shettlers violated his obligation to his clients to avoid conflicts of interest as described in Standard 4.3, and argued that disbarment would be directed by Standard 4.31. He further argued that respondent's conduct with respect to the Shettlers violated his duties owed to the public described in Standard 5.0 and further argued that the conduct in 5.11(b) directed disbarment for violation of this obligation. Petitioner argued that the Shettlers were vulnerable and that respondent's conduct was undertaken intentionally.

With respect to the Goodwin matter, respondent's conduct violated his obligations owed to his client as described in Standard 4.0. The misconduct in the representation of the Goodwins falls between that described in Standards 4.51 (directing disbarment) and 4.52 (directing suspension).

With respect to aggravating circumstances, petitioner argued that respondent had a lengthy history of prior discipline involving a pattern of misconduct. He argued that respondent had selfish motives with respect to the Shettler matter. He argued that respondent had refused to acknowledge the wrongful nature of his conduct, the vulnerable nature of the Shettlers and the Goodwins, and his conduct evidenced indifference to making restitution to the Shettlers for amounts admittedly owed. Finally, petitioner felt that respondent had substantial experience in the practice of law.

Petitioner argued that under these circumstances, a one-year suspension of respondent's license to practice law was appropriate and he urged the panel to order restitution to the Shettlers in the amount of \$12,416.04. He also urged the panel to consider requiring that respondent take the Multistate Professional Responsibility Examination as a condition of his reinstatement. Petitioner argued that no less than 270 days of suspension would be directed by the ABA Standards after the consideration of mitigating and aggravating circumstances.

Respondent requested additional time to formulate an analysis using the ABA Standards. Following deliberation of respondent's request, the panel ordered that respondent provide the panel and petitioner with a written submission by June 3, 2010, using the method of analysis and the standards published by the American Bar Association, including his position with respect to aggravating and mitigating factors.

Petitioner was directed to file an optional response by June 10, 2010. The panel announced that, after these dates had passed, it would meet and deliberate and issue written findings with respect to the appropriate discipline.

On June 3, 2010, respondent filed "Respondent's Aggravation/Mitigation Submittal, Section 1." He described it as similar to an elocution in a criminal case before sentence was imposed. He announced the intention to provide a second section with an analysis using the American Bar Association Standards. He further stated an intention to file a third submission addressing the panel's findings on March 23, 2010. In this submission, respondent pointed out the following mitigating factors:

- (1) there has been a substantial period of time in Respondent's career without disciplinary action;
- (2) the acts giving rise to discipline were remote;
- (3) absence of a dishonest motive;
- (4) that he had made a good faith effort at restitution in the Shettler matter until he was "blackmailed;"
- (5) Respondent's character and reputation for handling pro bono matters;
- (6) Respondent has exhibited genuine remorse with respect to the circumstances giving rise to the disciplinary action.

Respondent reiterated his position that disciplinary action was motivated by improper conduct on the part of the petitioner.

Petitioner filed a response to this submission. Petitioner argued that the response by respondent demonstrated respondent's fundamental unwillingness to admit the wrongful nature of his conduct and its seriousness.

On June 22, 2010, the respondent filed "Respondent's Aggravation/Mitigation Submittal, Section One (Part Two)." In this submission, respondent argued, among other things, that his prior discipline did not involve the same conduct as he was accused of in the Shettler matter and that given that this was his first such offense, it was unlikely to happen again. He stated that the evidence established his prior reputation for helping people rather than exploiting people. He suggested that the Michigan Supreme Court had a conflict of interest in seeking discipline against him and asserted that the respondent's record should be considered in light of the resources spent by the petitioner to "get rid of" respondent.

After the expiration of the time set by the panel to receive submissions, respondent filed a document entitled "Respondent's Aggravation/Mitigation Submittal, Section Two" on June 28, 2010. In this submission, respondent argued that the appropriate ABA Standard applicable to the conduct alleged in Count I of the complaint was ABA Standard 4.34, rather than ABA Standard 4.31. In support of this contention, Respondent asserted that since no prior discipline involving the respondent was based

upon claims of conflicts of interest, the allegations in Count I could be considered isolated under these circumstances. He further argued that petitioner had failed to show harm to the Shettlers flowing from Respondent's conduct. With respect to Count II, respondent argued that ABA Standard 5.11(B) was not the appropriate standard. Respondent argued that the testimony bearing on the allegations contained in that count failed to show intentional fraud, dishonesty, deceit or misrepresentation. Respondent asserted that the invoice sent to the Shettlers (Exhibit 9) admitted during the misconduct hearing on October 30, 2009, was accurate and based on contemporaneous time records. With respect to Count III, Respondent argued that ABA Standard 4.51 was not the appropriate standard. Respondent argued that Standard 4.54 was the appropriate standard because the evidence demonstrated an isolated instance of negligence causing little or no actual harm to the Goodwins.

With respect to the aggravation/mitigation factors contained in Standards 9.2 and 9.3, respondent pointed out that Exhibits 5 and 9 admitted during the sanction phase of the hearing on May 20, 2010, were not "prior discipline" since they did not involve discipline which occurred prior to the acts which form the basis for the current complaint. Specifically, Exhibit 5 was an order of discipline entered on January 2, 2008 and Exhibit 9 was a denial of federal reinstatement entered on September 18, 2008. The current complaint arises was out of conduct with respect to the Shettlers between October 6, 2003 and December 6, 2005¹ and respondent's representation of the Goodwins occurred between July, 2004 and May, 2005.² Respondent further pointed out that both Exhibits 5 and 9 relate to a single complaint against respondent. Petitioner filed a prompt motion to strike this submission on June 29, 2010.

Respondent filed two more submissions. On July 2, 2010, respondent filed "Respondent's Submittal (Section III) Respondent's Objections to Panel's Findings of Fact/Respondent's Proposed Findings of Fact" and July 9, 2010, respondent filed "Respondent's Submittal (Section III-B) Respondent's Objection to Panel's Conclusions of Law/Misconduct." The petitioner has filed a request for instructions concerning an appropriate response to these filings. These latter two filings have been reviewed by the panel. They are not discussed herein because they were filed contrary to the panel's directive to respondent about post-sanction hearing filings and, in addition, they do not address or pertain to the issue now before the panel, the appropriate sanction.

V. REPORT ON DISCIPLINE

The panel understands its obligations under *Grievance Administrator v. Lopatin*, 462 Mich 235; 612 NW2d 120 (2000) to utilize the American Bar Association's Standards for Imposing Lawyer Sanctions. The method of analysis requires that the panel analyze the conduct of the respondent and to categorize this according to the duty breached.

Respondent's obligations with respect to the Shettlers violated his duties to them to avoid conflicts between his relationship to them as their counsel and as a debtor

¹ Exhibit 9 to the misconduct hearing admitted 10/30/2009.

² Exhibit 4 to the misconduct hearing admitted 10/30/2009.

(Standard 4.3) and his obligations of candor and truthfulness to them (Standard 4.6). In each instance, the panel believes that respondent acted with knowledge and created (at the time of the violation) potential injury to the client, and resulted, in the case of the allegations described in Count I of the Complaint, in actual harm. With respect to the allegation described in Count II of the Complaint, the panel believes that respondent acted knowingly and created potential injury to the client. Although petitioner has argued that Standard 4.31 directing disbarment is the proper standard to be applied, the panel feels that Standards 4.32, 4.62 and 4.63 are more appropriate.

With respect to the Goodwin matter (Count III), the panel has concluded that respondent's conduct breached his duty of diligence (Standard 4.4) and competence (Standard 4.5) to them as clients. The panel has concluded that the respondent acted negligently (rather than intentionally or knowingly) and created, at the time of respondent's actions, potential injury. Standards 4.43 would direct a suspension for this breach of duty and Standard 4.53 would direct a reprimand.

The panel has considered aggravating circumstances as directed by Standard 9.2 and notes the following:

1. Respondent's prior disciplinary record;
2. Respondent's motivation in obtaining a loan from the Shettlers;
3. Respondent's refusal to acknowledge the wrongful nature of his conduct toward the Shettlers;
4. The vulnerability of Carl Shettler;
5. Respondent's substantial experience in the practice of law; and
6. Respondent's demonstrated indifference to making restitution to the Shettlers.

The panel considered the following mitigating circumstances as directed by Standard 9.3:

The remoteness in time of the prior offenses described in Exhibits 1, 2 and 3.

The panel has concluded that, due to the nature and seriousness of the respondent's actions with respect to the matters described in the Complaint, his attitude displayed in the course of these proceedings toward the allegations against him and the relative weight accorded the aggravating and mitigating considerations described above, that the following discipline is appropriate:

Respondent shall be suspended from the practice of law for one year. Prior to the filing of a petition for reinstatement, respondent shall make restitution to Carl Shettler and Rebecca Shettler in the amount of \$12,416.04 and he must take and pass the Multistate Professional Responsibility Examination necessary for initial licensure.

VI. SUMMARY OF PRIOR MISCONDUCT

AGC File No.	Discipline	Effective Date
0990/02	Admonishment	04/24/03
0577/04	Admonishment	06/29/05
2473/05	Admonishment	01/30/06

ADB File No.	Discipline	Effective Date
94-53-GA	Reprimand & Restitution	07/28/95
94-98-GA	Suspension – 60 Days	04/19/96
95-242-GA	Reprimand (By Consent)	09/06/97
03-153-GA	Reprimand With Condition (By Consent)	07/17/04
04-168-GA	Suspension – 30 Days	01/02/08

VII. ITEMIZATION OF COSTS

Attorney Grievance Commission: (See Itemized Statement filed 06/29/10)	\$ 738.78
Attorney Discipline Board:	
Hearing held 10/30/09	\$ 844.00
Hearing held 12/18/09	\$ 750.50
Hearing held 02/16/10	\$ 639.50
Hearing held 05/20/10	\$ 516.00
Administrative Fee [MCR 9.128(B)(1)]	<u>\$ 1,500.00</u>
TOTAL:	\$ 4,988.78

ATTORNEY DISCIPLINE BOARD
Genesee County Hearing Panel #2

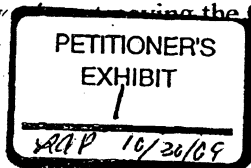
By: 
Brian M. Barkey, Chairperson

DATED: July 20, 2010

AGREEMENT

NOW COME Arnold D. Dunchock of LAWYERS' OFFICES, PC, hereafter referred to as Lawyer, and Carl D. & Rebecca K. Shettler, hereafter referred to as Clients, and Agree as follows:

1. Arnold D. Dunchock of LAWYERS' OFFICES, located at 223 North Shiawassee Street, P.O. Box 186, Corunna, Michigan 48817, is a lawyer.
2. Carl D. Shettler and Rebecca K. Shettler, husband and wife, whose address is 11195 Heritage Drive, Byron, Michigan 48418, are clients of Arnold D. Dunchock.
3. This Agreement involves and includes Lawyer's representation of Client as well as a sub agreement for payment that involves a loan from Clients to Lawyer. Clients acknowledge that the Lawyer is and has been representing them relative to a zoning matter in Shiawassee County.
4. Lawyer Agrees to represent Clients at the usual rate of \$150.00 per hour for said Lawyer's time, plus costs. The fee for non-lawyer's time is to be billed at \$75.00 per hour.
5. Clients, by this Agreement, are presenting Lawyer with a Money Order for \$10,000.00. Lawyer is not requiring any other additional initial retainer.
6. As a part of this Agreement, Lawyer agrees to repay Clients the \$10,000.00 no later than 90 days from the date of representation, being November 29, 2003.
7. Lawyer is providing Clients security in the form of a Quit Claim Deed from Lawyer to Client, with the stated consideration of \$10,000.00. The intention of the parties is that the Clients will hold such Deed as security, but will not record same, unless or until the expiration of the 90 days, provided full payment is not made by the Lawyer to the Clients.
8. Lawyer is representing that other then perhaps current real estate property taxes and an assessment for street and sidewalk improvements, there are no other property taxes, real or personal, owed on said property. There are no mortgages.
9. Lawyer discloses that he does owe income taxes, but it is anticipated that if there really was a need to permanently transfer title of the property to the Clients that this could be done without any bearing on the property. The position of the Lawyer is that he has a valued interest in valuable property which interest is worth many multiples of \$10,000.00.
10. In addition to the anticipated timely repayment of the loan without interest, per se, and even though the Lawyer is retaining the Clients interest, per se, the Clients

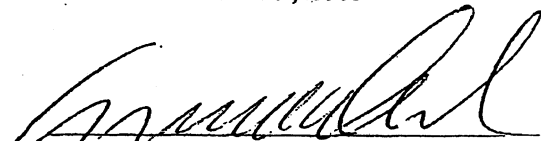


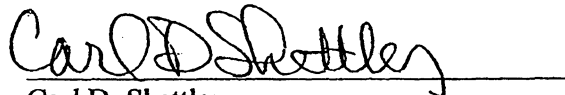
APPENDIX C

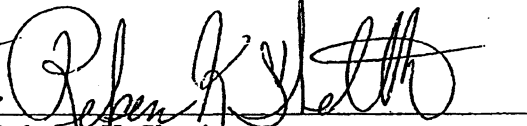
shall receive a total of 40 hours of legal /secretarial time from Lawyer and/or his office. (According to the estimate of LAWYERS' OFFICES, Lawyer presently has expended approximately 22 hours on such services.)

11. Lawyer further promises that there will be a spike in activity during the coming week designed to attempt to find some immediate solution to the Clients' zoning problems, relating to their gravel pit / tree farm. Although there will be this concentrated effort, Clients understand that the Lawyer is not guaranteeing that such a spurt of effort will provide a guaranteed immediate solution to the problem.
12. Lawyer shall keep the Clients advised as to using up any additional agreed time. Should there be a need for legal and/or legal secretarial work beyond the 40 hours, work will be performed by Lawyer and his office on a time and costs bill basis, but again without any requirement on the part of the Clients for the payment of a supplementary retainer.

Date: November 29, 2003


Arnold D. Dunchock


Carl D. Shettler

I acknowledge receipt of copy of check for the amount of \$2000.00

Rebecca K. Shettler

I received quick claim deed.