

Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner,

v

Case No. 08-141-GA

JOEL S. GEHRKE, P 39871,

Respondent.

FILED
ATTORNEY DISCIPLINE BOARD
10 JUN -9 PM 2:37

ORDER AFFIRMING HEARING PANEL ORDER OF SUSPENSION AND RESTITUTION

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

Kent County Hearing Panel #4 of the Attorney Discipline Board issued an order of suspension and restitution on November 30, 2009, which ordered the suspension of respondent's license to practice law in Michigan for a period of 90 days and further ordered respondent to pay restitution in the amount of \$210.00 plus costs incurred by the Attorney Grievance Commission and the Attorney Discipline Board in the total amount of \$6,243.21.¹ Respondent filed a delayed petition for review which was accepted for filing. The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118, including review of the record before the hearing panel and consideration of the briefs and arguments presented by the parties at a review hearing conducted on May 12, 2010.

The Standard for this Board's review of a hearing panel's findings of fact is described in *Grievance Administrator v Edgar J. Dietrich*, 99-145-GA (ADB 2001), p 2:

In reviewing a hearing panel decision, the Board must determine whether the panel's findings of fact have "proper evidentiary support on the whole record." *Grievance Administrator v August*, 438 Mich 296, 304; 475 NW2d 256 (1991). See also, *Grievance Administrator v T. Patrick Freydl*, 96-193-GA (ADB 1998). "This standard is akin to the clearly erroneous standard [appellate courts] use in reviewing a trial court's findings of fact in civil proceedings." *Grievance Administrator v Lopatin*, 462 Mich 248 n12 (2000) (citing MCR 2.613(C)).

Because the hearing panel has the opportunity to observe the witnesses during their testimony, the Board defers to the panel's assessment of their demeanor and credibility. *Grievance Administrator v Neil C. Szabo*, 96-228-GA (ADB 1998); *Grievance Administrator v Deborah C. Lynch*, No. 96-96-GA (ADB 1997). See also *In re McWhorter*, 449 Mich 130, 136 n 7 (1995).

¹ Attorney Grievance Commission itemized statement of costs: \$1,142.96; Transcript costs incurred by the Attorney Discipline Board (5 hearings): \$3,600.25; Basic Administrative Costs [MCR 9.128(B)(1)(b)]: \$1,500.00.

In short, "it is not the Board's function to substitute its own judgment for that of the panels' or to offer a *de novo* analysis of the evidence." *Grievance Administrator v Carrie L. P. Gray*, 93-250-GA (ADB 1996), lv den 453 Mich 1216 (1996).

Under the applicable standard of review, we conclude that the hearing panel's findings and conclusions have ample evidentiary support in the record below and should therefore be affirmed.

On the issue of costs assessed under MCR 9.128(B), respondent asserted in his delayed petition for review that he should not be compelled to pay the entire amount of costs inasmuch as a majority of the separate charges of misconduct in the formal complaint were not established. However, in his supporting brief filed March 18, 2010, and in response to questions at the oral arguments before the Board on May 12, 2010,² respondent essentially abandoned this argument, relying instead on a claim that the formal complaint filed by the Grievance Administrator is "repugnant to MCR 2.114(D) pleading standards," and that he should therefore be relieved of the obligation to pay any costs. Respondent's argument under MCR 2.114(D) is not supported by either applicable law or the facts in this case nor has respondent articulated grounds for relief under the provisions of MCR 9.118.

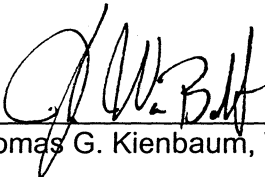
NOW THEREFORE,

IT IS ORDERED that the hearing panel order of suspension and restitution issued by Kent County Hearing Panel #4 on November 30, 2009 is **AFFIRMED** in all respects.

IT IS FURTHER ORDERED that respondent shall, on or before December 1, 2010, pay costs in the amount of **\$6,325.06**, consisting of costs assessed by the hearing panel in the amount of \$6,243.21 and court reporting costs incurred by the Attorney Discipline Board in the amount of \$82.85 for the review proceedings conducted on May 12, 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:

 *for*
Thomas G. Kienbaum, Vice-Chairperson
(w/permission)

DATED: June 9, 2010

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

Board member William J. Danhof was absent and did not participate.

Board members Andrea L. Solak and Carl E. Ver Beek voluntarily recused themselves from this matter.

² During this review proceeding, respondent was asked how, in his opinion, the costs could be apportioned in light of the hearing panel's finding that some, but not all, of the charges of misconduct had been established. Respondent relied solely on his position that because the Grievance Administrator's prosecution of the case was flawed, all costs incurred by the Attorney Grievance Commission and the Attorney Discipline Board should be vacated. (See May 12, 2010 transcript, pp 12 - 13.)