

STATE OF MICHIGAN
Attorney Discipline Board

FILED
ATTORNEY DISCIPLINE BOARD
10 JUN -1 PM 2:30

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner,

v

Case No. 08-62-GA

DENNIS MITCHENOR, P 30029,

Respondent.
_____ /

**ORDER INCREASING DISCIPLINE FROM A TWO YEAR AND SIX MONTH SUSPENSION
TO REVOCATION AND IMPOSING RESTITUTION**

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

The hearing panel found that respondent misappropriated one client's funds; failed to communicate with two other clients whose matters he neglected after accepting advance fees; and failed to answer the request for investigation. The hearing panel issued an order suspending respondent's license to practice law in Michigan for two years and six months.

The Grievance Administrator filed a petition for review, seeking an increase in discipline and requesting restitution. Respondent did not file a brief on review, nor did he attend the review hearing.

The Attorney Discipline Board conducted review proceedings in accordance with MCR 9.118, which included a review of the record before the hearing panel and consideration of the brief and oral argument presented by the Grievance Administrator. For the reasons stated below, discipline in this case is increased to a revocation of respondent's license to practice law in Michigan. Additionally, the Board modifies the panel's order to include payment of restitution to Michael Johnson and David and Landa Givens.

With respect to the allegations in Count One of the formal complaint, it was established that respondent took \$5,000 from his client in a criminal matter and, contrary to the court's order to place it in trust, respondent deposited the money into his business account and proceeded to spend the money. Eventually, after the conversion was discovered, respondent repaid the money. The hearing panel found that respondent "admitted knowing he was using the funds for his own purposes, and also admitted that his use of the money was done with intent, but said that he had not intended to commingle funds."

The panel erred in applying Standard 4.12 in determining the appropriate level of discipline for the misconduct alleged and proven under Count One. Having correctly found that respondent knowingly used his client's funds (entrusted to respondent for the payment of the client's restitution obligations in a criminal matter), the proper standard to apply was Standard 4.11, which provides that disbarment is the generally appropriate sanction for knowing conversion of client property or funds.

Further, none of the personal problems related by respondent, or the testimonials of two judges, constitute "compelling mitigation" which would justify a departure from Standard 4.11's recommended sanction. See *Grievance Administrator v Frederick A. Petz*, 99-102-GA; 99-130-FA (ADB 2001). Among the aggravating factors found by the panel were extensive experience in the practice of law, multiple offenses and a pattern of misconduct. Indeed, respondent has a distressing record of previous misconduct which includes the neglect of matters, failure to communicate with clients, failure to return unearned fees, abandonment of representation, and giving "his client a check in the amount of \$500 drawn upon his client's trust account at a time when no funds were on deposit in that account belonging to that client."

We also modify the hearing panel's order of discipline to include an award of restitution for the misconduct established in the proofs and findings relating to Counts Two and Three of the formal complaint. Although the panel concluded that respondent's fees "may have been earned," it is evident that no value whatsoever inured to his clients. We conclude that disgorgement of the fees deposited with him is appropriate in light of his neglect and mishandling of Mr. Johnson's and Mr. Givens' matters.

NOW THEREFORE,

IT IS ORDERED that the discipline imposed in this case is **INCREASED** from a suspension of two years and six months to a **REVOCATION OF RESPONDENT'S LICENSE TO PRACTICE LAW IN MICHIGAN, COMMENCING OCTOBER 31, 2009**, 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 respondent shall, on or before June 30, 2010, pay restitution as follows:

- | | | | |
|----|-------------------------------|---|-------------------|
| 1. | Michael Johnson | - | \$1,250.00 |
| 2. | David Givens and Landa Givens | - | <u>\$1,000.00</u> |

TOTAL: \$2,250.00

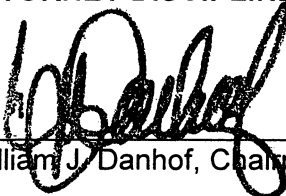
Respondent shall file written proof of payment with the Attorney Grievance Commission and the Attorney Discipline Board within 10 days of the payment of restitution to each person.

IT IS FURTHER ORDERED that respondent shall not be eligible for reinstatement in accordance with MCR 9.123(B) unless respondent has fully complied with the restitution provisions of this order.

IT IS FURTHER ORDERED that respondent shall, on or before June 30, 2010, pay costs previously assessed in the hearing panel's order of suspension issued November 9, 2009, in the amount of \$2,826.08, plus costs incurred for the transcript of review proceedings conducted on March 17, 2010, in the amount of \$75.75, for a total amount due of **\$2,901.83**. Costs may be paid by check or money order 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.

ATTORNEY DISCIPLINE BOARD

By:



William J. Danhof, Chairperson

DATED: June 1, 2010

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

Board members William L. Matthews, C.P.A. and Rosalind E. Griffin, M.D. did not participate.