STATE OF MICHIGAN

Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner,

v

Case Nos. 07-159-JC

HAROLD D. FEE, JR., P 31128,

Respondent.
_____/

ORDER AFFIRMING HEARING PANEL ORDER OF REPRIMAND WITH CONDITIONS

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

Respondent pled no contest and was convicted on July 10, 2007 in the 48th District Court of two counts of the misdemeanor offense of domestic violence in violation of MCL 750.812. In accordance with MCR 9.120(B)(3), the Grievance Administrator's filing of a judgment of conviction resulted in an order by the Attorney Discipline Board directing respondent to appear before Tri-County Hearing Panel #63 to show cause why a final order of discipline should be entered. Hearings were conducted by the panel on May 2, 2008 and May 14, 2008. On August 13, 2008, Tri-County Hearing Panel #63 entered an order of reprimand with conditions including the condition that he provide the Attorney Discipline Board and the Attorney Grievance Commission with written certification of his successful completion of the terms of probation entered in the criminal matter.

The Grievance Administrator has petitioned for review on the grounds that the hearing panel committed reversible error by failing to admit evidence as to the underlying facts of the conviction and on the further grounds that hearing panel imposed insufficient discipline. The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118 including a review of the record below and consideration of the briefs and arguments submitted by the parties.

The Grievance Administrator's argument that the panel improperly excluded admissible evidence is not supported by the record. The respondent's motion in limine, considered by the hearing panel at a pre-trial hearing conducted on May 2, 2008, was limited to respondent's request to exclude the live testimony of the police officers who were summoned to respondent's home following the events which led to criminal charges. The hearing panel ruled that as long as the officers were not needed to authenticate the photographs [subsequently received into evidence without objection as Exhibits 1(b)-(i)], the need for the officers to testify was alleviated. However, the panel did not foreclose the possibility that the officers might be allowed to testify to rebut testimony regarding the marital dispute. More importantly, the panel did not rule that the Grievance Administrator was precluded from offering the testimony of the two best, and only, witnesses to the dispute, respondent and his wife, Hui Fee. For reasons not disclosed in the record, the Grievance

Administrator did not list Hui Fee on his pre-trial witness list and took no action to present her testimony. The potential testimony of Hui Fee was not the subject of a motion in limine. If, as suggested, she was not anxious or willing to testify, the Administrator could have issued a subpoena for her testimony pursuant to MCR 9.115(I)(1). Nor does it appear that the Administrator was precluded from seeking the testimony of respondent himself. Respondent was listed as a witness on the Administrator's list and respondent's motion in limine did not seek to have his testimony excluded. The Administrator had the right under MCR 9.115(H) to call and cross-examine respondent as an opposing party under MCL 600.2161. There is no suggestion in the record that the Administrator attempted to exercise that right.

In reaching its decision to impose a reprimand, the hearing panel concluded:

> In light of these facts, it is the opinion of the panel that, while respondents actions were serious and do reflect poorly on his ability to practice by drawing into question his integrity and compassion, reprimand would most fully achieve the objectives of the discipline system in this instance. See *Grievance Administrator v Fink*, 612 NW2d at 400.
>
> Respondent is the main source of financial support for his wife and stepson, neither of whom is a U.S. citizen. Respondent had, at the time of the hearing, fully complied with the terms of his criminal sentence of probation, including participating in court-ordered therapy. He has also voluntarily participated in therapy for himself and for his family prior to his conviction and is willing to continue to support his family members therapy as well as continuing his own.
>
> While it might serve to punish respondent and perhaps help him to better appreciate the seriousness of his conduct, we do not see how suspension of any length will serve to assist respondent and his family in resolving their problems. There was no evidence that respondent is a threat to the public, including any clients that he may have, or to the court in general. The interests of the profession would be best served by reprimanding respondent and imposing the following conditions upon him: [Conditions omitted]

Bearing in mind the admonition of MCR 9.104 that "discipline for misconduct is not intended as punishment for wrongdoing, but for the protection of the public the courts and the legal profession," the Board is unable to conclude that the panel's decision warrants reversal and the imposition of a suspension.

A prior Board opinion, *Grievance Administrator v Kevin R. Floyd*, Case No. 05-25-JC (ADB 2006), is cited by the Administrator as the most analogous case and precedent for the imposition of a suspension. In *Floyd*, respondent was the recipient of an order imposing "no discipline" by the hearing panel. On review, the Board concluded that Standard 5.12 of the American Bar Association's Standards for Imposing Lawyer Sanctions and prior Board opinions suggest that a suspension is generally appropriate for crimes involving elements of violence. The cases cited by the Board in that opinion, from both Michigan and other jurisdictions, were split between cases resulting in reprimand and a few cases resulting in suspensions of 30 days.

Some differences between the facts presented in *Floyd* and in the instant case are readily apparent. Respondent Floyd was originally charged with aggravated stalking and assault and battery but was convicted of simple assault and battery. He was at the time an assistant county prosecutor and was the subject of a personal protection order obtained by his wife in the course of an acrimonious custody battle. As recounted in the Board's opinion, Floyd and his then ex-wife confronted each other in the driveway at her home while their minor son was in the car. She took the keys from his car and threw them over his head. At his sentencing, the judge read from the police report:

> Apparently, as they met face-to-face on [May 23, 2003] and as witnessed by at least one other person, an argument ensued. The defendant pulled the complainant toward him and knocked her to the ground by hitting her in the chest. [*Grievance Administrator v Floyd*, *supra*, p 2.]

Factors comparable to Floyd's violation of a personal protection order or his heightened obligations as an assistant prosecutor are not present here.

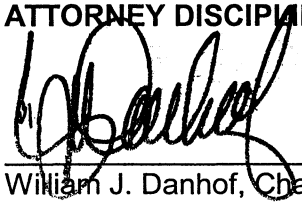
In any event, while both *GA v Floyd* and ABA Standard 5.12 may be cited for the proposition that criminal conduct involving violence will "generally" result in suspension, neither prior Board opinions nor the Standards preclude the imposition of a reprimand in appropriate circumstances. See for example, *Grievance Administrator v Fink*, Case No. 96-181-JC (ADB 2001). Indeed, the Attorney Grievance Commission has recognized that unique facts and circumstances may warrant the entry of an order of reprimand in cases involving convictions for domestic violence. Since the Supreme Court's directive in *Grievance Administrator v Lopatin*, 462 Mich 235 (2000), to apply the ABA Standards, respondent Fee is at least the sixth lawyer disciplined in Michigan for a conviction of domestic violence. Those cases include:

> *Grievance Administrator v Michael E. Larkin* [Case No. 00-184-JC] - respondent convicted of impaired driving and domestic violence - Reprimand (By Consent).
>
> *GA v Marvin B. Bartlett* [Case No. 03-133-JC] - conviction of domestic violence - 30 Day Suspension (By Consent)
>
> *GA v John Beeding, Jr.*[Case No. 06-82-JC] - respondent convicted of two counts of domestic violence; malicious destruction of a building; entry without owners permission; and driving while impaired - Probation With Conditions (By Consent)
>
> *GA v Carolyn Pringle* [Case No. 07-17-JC] - respondent convicted of two charges of domestic violence and convictions for impaired driving; resisting and obstructing; and assaulting and obstructing a police officer - Probation With Conditions
>
> *GA v Michael C. Packard* [Case No. 08-21-JC] - respondent convicted of domestic violence and attempted inference with electronic communications - Probation With Conditions (By Consent)

As consistently recognized by the Board, consent orders of discipline entered as the result of a stipulation between the Grievance Administrator and a respondent pursuant to MCR 9.115(F)(5) do not have precedential value and are often based upon considerations which do not appear on the record. Nevertheless, it is clear that in prior cases involving convictions for domestic violence (sometimes accompanied by convictions for other offenses), the Grievance Administrator, the Attorney Grievance Commission and a hearing panel carefully considered all of the facts and circumstances and concluded that the interests of the public and the legal profession would be best served by the entry of an order imposing discipline less than a suspension. We cannot say that the discipline imposed in those prior cases was inappropriate nor can we say that the hearing panel's decision in this case was erroneous.

For all of these reasons, the hearing panel order of reprimand with conditions entered August 13, 2008 is **AFFIRMED**.

ATTORNEY DISCIPLINE BOARD

By: 

William J. Danhof, Chairperson

DATED: February 11, 2009

Board members Thomas G. Kienbaum, William L. Matthews, C.P.A., Billy Ben Baumann, M.D., Andrea L. Solak, Rosalind E. Griffin, M.D., and Craig H. Lubben concur in this decision.

Board Members Carl E. Ver Beek and James M. Cameron, Jr. were not present and did not participate.