

## Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,  
Attorney Grievance Commission,

Petitioner,

v

Case No. 07-83-GA

JOHN L. COTÉ, P 12249,

Respondent.

FILED  
ATTORNEY DISCIPLINE BOARD  
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### **ORDER AFFIRMING HEARING PANEL ORDER OF SUSPENSION OF 45 DAYS AND VACATING CONDITIONS**

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

Respondent has filed a petition for review of an order of suspension with conditions entered by Kent County Hearing Panel #1 on June 25, 2008, seeking dismissal or, in the alternative, discipline less severe than the 45-day suspension ordered by the hearing panel. The Grievance Administrator filed a cross-petition for review seeking greater discipline. The Board has conducted review proceedings in accordance with MCR 9.118 and has considered the briefs and arguments presented by the parties.

With respect to respondent's arguments that misconduct was not established, we disagree. There is proper evidentiary support on the whole record for the hearing panel's findings of misconduct under MRPC 1.9(c)(1) and (2). *Grievance Administrator v Lopatin*, 462 Mich 235, 248 n12 (2000); *Grievance Administrator v August*, 438 Mich 296, 304 (1991); *Grievance Administrator v Carrie L. P. Gray*, 93- 250-GA (ADB 1996), lv den 453 Mich 1216 (1996).

As to the appropriate sanction, respondent argues that a reprimand is the appropriate discipline in this case. The Grievance Administrator argues that the hearing panel erroneously applied Standard 4.22, and that it did so at least in part because it considered mitigating evidence before determining the applicable standard.

Standard 4.2 of the American Bar Association Standards for Imposing Lawyer Sanctions states, in part:

Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, the following sanctions are generally appropriate in cases involving improper revelation of information relating to representation of a client:

4.21 Disbarment is generally appropriate when a lawyer, with the intent to benefit the lawyer or another, knowingly reveals

information relating to representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.

4.22 Suspension is generally appropriate when a lawyer knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client,

4.23 Reprimand is generally appropriate when a lawyer negligently reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed and this disclosure causes injury or potential injury to a client.

We are not persuaded by respondent's argument that Standard 4.23 applies in this case. There is ample evidentiary support for the panel's conclusion that respondent knowingly, rather than negligently, revealed information relating to the representation of the Rutherfords.

In briefs to the panel, the Administrator argued that "there are two potential Standards to consider, ABA Standard 4.21 and 4.22."<sup>1</sup> At the hearing below, the Administrator argued for "a suspension of over 180 days and specifically for a period of 18 months."<sup>2</sup> On review, the Administrator argues that the panel should have applied Standard 4.21 because of the panel's findings that respondent's conduct was intended to benefit himself. A suspension of "no less than 18 months" is now sought.

The panel applied Standard 4.22 "[a]fter careful consideration of all of the facts . . . and the compelling arguments raised by counsel for Petitioner and Respondent."<sup>3</sup> We are not willing to infer from the sequence of the hearing panel's discussion of various factors, including mitigation and aggravation, that the panel erroneously applied the ABA Standards by considering mitigation before deciding whether Standard 4.21 or 4.22 applied. There is no indication from this record that the panel did not understand its duty in applying the Standards. Rather, the report reflects the work of an exceptionally conscientious panel that carefully considered all of the pertinent facets of the case before it. We are not persuaded that the panel, in fact, considered mitigation prior to selecting the applicable Standard.

Moreover, the dispositive question here is not necessarily whether Standard 4.21 or 4.22 applies, but, rather, whether adopting one starting point or the other will make a difference in this case. MCR 2.613(A) (harmless error rule). We conclude that it will not. The Administrator has consistently asked for a suspension, albeit one of greater length than that imposed by the panel. No analogous cases imposing a sanction similar to that sought by the Administrator have been cited. The panel's thoughtful handling of this unusual matter and its careful weighing

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<sup>1</sup> Petitioner's Pre-Sanction Brief, filed 5/16/2008.

<sup>2</sup> Tr, 5/22/2008, pp 177, 179.

<sup>3</sup> Opinion of Kent County Hearing Panel #1 Regarding Sanctions for Attorney Misconduct, p 19.

of all of the factors leads us to agree that the level of discipline imposed was appropriately calibrated to achieve the aims of the discipline system, i.e., protection of the public, the courts and the legal profession.

The hearing panel attached certain conditions to its order of suspension, including the requirement that respondent notify all media outlets with whom he discussed the Rutherfords' matter that his license has been suspended because he made comments improperly and without authority. Another condition would require that respondent request that portions of the telecasts with his appearance be redacted before further broadcast. While these conditions are well-intended efforts to redress some of the injury to complainants, we conclude that they could result in further harm to the Rutherford family by bring respondent's statements back before the public eye.

**NOW THEREFORE,**

**IT IS ORDERED** that the hearing panel order of suspension entered June 25, 2008 is **MODIFIED** by **VACATING** the conditions A-D. In all other respects the order is **AFFIRMED**.

**IT IS ORDERED** that respondent, John L. Coté, is **SUSPENDED FROM THE PRACTICE OF LAW IN MICHIGAN FOR A PERIOD OF 45 DAYS, COMMENCING FEBRUARY 26, 2009**, and until the respondent's filing of an affidavit of compliance with the Supreme Court, the Attorney Discipline Board and the Attorney Grievance Commission in accordance with MCR 9.123(A).

**IT IS FURTHER ORDERED** that from the effective date of this order and until reinstatement in accordance with the applicable provisions of MCR 9.123, respondent is forbidden from practicing law in any form; appearing as an attorney before any court, judge, justice, board, commission or other public authority; or holding himself out as an attorney by any means.

**IT IS FURTHER ORDERED** that respondent shall, in accordance with MCR 9.119(A), within seven days after the effective date of this order, notify all of his active clients, in writing, by registered or certified mail, return receipt requested, of the following:

1. the nature and duration of the discipline imposed;
2. the effective date of such discipline;
3. respondent's inability to act as an attorney after the effective date of such discipline;
4. the location and identity of the custodian of the clients' files and records which will be made available to them or to substitute counsel;
5. that the clients may wish to seek legal advice and counsel elsewhere; provided that if respondent is a member of a law firm, the firm may continue to represent each client with the client's express written consent;
6. the address to which all correspondence to respondent may be addressed.

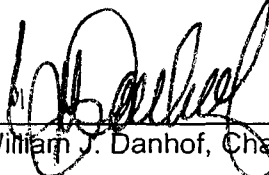
**IT IS FURTHER ORDERED** that in accordance with MCR 9.119(B), respondent must, on or before the effective date of the order, in every matter in which respondent is representing a client in litigation, file with the tribunal and all parties a notice of respondent's disqualification from the practice of law.

**IT IS FURTHER ORDERED** that respondent shall, within 14 days after the effective date of the order, file with the Grievance Administrator and the Attorney Discipline Board an affidavit of compliance as required by MCR 9.119(C).

**IT IS FURTHER ORDERED** that respondent's conduct after the entry of this order but prior to its effective date, shall be subject to the restrictions set forth in MCR 9.119(D); and respondent's compensation for legal services shall be subject to the restrictions described in MCR 9.119(F).

**IT IS FURTHER ORDERED** that respondent shall, on or before **February 26, 2009**, pay costs previously assessed in the amount of **\$5,290.32** plus costs incurred for the transcript of review proceedings conducted on October 15, 2008, in the amount of **\$133.00**, for a total amount due of **\$5,423.32**. 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: January 28, 2009

Board members William J. Danhof, Thomas G. Kienbaum, Andrea L. Solak, Rosalind E. Griffin, M.D., Carl E. Ver Beek and concur in this decision.

Board Members William L. Matthews, C.P.A. and Craig H. Lubben were recused; Board Member Billy Ben Baumann, M.D. did not participate