

Attorney Discipline Board

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ATTORNEY DISCIPLINE BOARD

Grievance Administrator,

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Petitioner/Appellee,

v

Edgar J. Dietrich, P-12767,

Respondent/Appellant,

Case No. 99-145-GA

Decided: SEP 19 2001

BOARD OPINION

Tri-County Hearing Panel #19 issued an order of suspension, with conditions, in this matter on March 6, 2001. The panel ordered the suspension of the respondent's license to practice law in Michigan for a period of three years based upon its findings that respondent allowed a suspended attorney to act as respondent's attorney at his deposition and at a court hearing; allowed the suspended attorney to appear as attorney for a client in a criminal matter; and intentionally made false statements in answering a request for investigation. In light of those findings, the hearing panel included additional conditions in its order of suspension directing the respondent to provide satisfactory evidence to the Grievance Administrator during the suspension, on a quarterly basis, "that he has not engaged in any form of conduct wherein he is practicing law directly or indirectly through other persons or by other means." The Grievance Administrator petitioned for review of that order on the grounds that the established misconduct warrants revocation of the respondent's license to practice law. The respondent petitioned for review on the grounds that the hearing panel's findings of misconduct did not have proper evidentiary support; that the hearing panel erred in its application of the American Bar Association's Standards for Imposing Lawyer Sanctions; that the Board's Chairperson erred in denying respondent's motion for the disqualification of the hearing panel chairperson; and that costs were improperly assessed against the respondent.

The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118, including review of the record below and due consideration of the briefs and arguments presented by the parties. For the reasons discussed more fully below, we affirm the findings and conclusions of the hearing panel, including its assessment of costs in accordance with MCR 9.128. We are not persuaded that the Board's Chairperson erred in denying respondent's motion to disqualify the hearing panel's chairperson. Upon application of ABA Standards 5.11(b), 6.11 and 7.1, revocation is the presumptive level of discipline for the misconduct established in this case. In

the absence of compelling mitigating factors, we conclude that, revocation is appropriate in this case. We therefore modify the discipline imposed by the hearing panel by increasing the sanction to revocation.

I. Discussion

In light of the hearing panel's detailed findings and conclusions which the Board is called upon to review, the hearing panel's report issued August 15, 2000 is attached to this opinion as Appendix A. We will not summarize those findings and conclusions in detail.

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).

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).

Counts II and VI of the complaint in this case allege violations of MRPC 5.1(b) & (c) which provide that:

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Count IX of the complaint alleged that respondent made false statements in his answers to requests for investigation in violation of various provisions of the Michigan Court Rules and the Michigan Rules of Professional Conduct, including MRPC 8.1(a) which directs that, in connection

with a disciplinary matter, a lawyer shall not:

- (a) knowingly make a false statement of material fact; or

We discuss those counts in turn.

A. Count II

Paragraph 21 of the formal complaint alleges that respondent allowed Edmonds to represent him at a July 15, 1998 deposition and at a July 17, 1998 motion hearing even though Edmonds had been the subject of a June 15, 1998 Order of Suspension that became effective July 7, 1998. The panel's report and the Grievance Administrator's briefs cite to the record evidence establishing Edmonds' participation as counsel for respondent and respondent's presence at both the hearing and the deposition. Respondent's brief on review attacks the panel's finding that he had knowledge of the suspension, argues that he had no supervisory authority over Edmonds, and criticizes the panel for accepting the testimony of Bahige (Bill) Chaaban over that of respondent.

The hearing panel which heard all of the evidence concluded that the evidence "clearly reflects that respondent was aware that Mr. Edmonds was suspended effective July 7, 1998. (Appendix A, p 25, emphasis in original). The hearing panel could not have been more explicit in stating:

It is the finding of this panel that the testimony of Bahige (Bill) Chaaban, Gregory Dunnam and Holly Baker was very credible and that the testimony of respondent was contradictory and not believable. (Appendix A, p 25).

Based upon our review of the record below, we find that the testimony of Mr. Chaaban, Mr. Dunnam and Ms. Baker provides proper evidentiary support for the findings of misconduct as set forth in Count II. We defer to the hearing panel's explicit findings on credibility and we decline respondent's invitation to conduct a *de novo* review of the evidence on the issues presented in Count II.

B. Count VI

In Count VI, respondent is alleged to have permitted Edmonds to act as counsel for Jamal Ahmed Henry in a criminal case, to have knowledge of and have authorized Edmonds' impersonation of attorney Gregory Dunnam, and to have authorized Edmonds to impersonate respondent in court and sign documents as counsel for Henry. The panel found:

The Panel finds that Gregory Dunnam did not attend and represent Mr. Henry at the continued preliminary examination in the 36th District Court on October 20, 1998, but that James Edmonds following the assignment by Respondent Dietrich appeared and misrepresented himself as Mr. Dunnam. That Respondent Dietrich's comment to Holly Baker following her advising him that she was not available on October 20, 1998 to the effect:

“that’s okay Jim can handle it”

reflects that Respondent Dietrich did authorize and direct Edmonds to only appear on Mr. Henry’s behalf on October 20, 1998, but on November 3, 1998 and November 17, 1998. [Sic. Report on misconduct, p 30.]

Holly Baker, an attorney who started with the Dietrich firm on or about September 1, 1998, and resigned effective October 23 or 25, 1998, testified that she represented Mr. Henry at the preliminary exam in September (Tr, p 185). Respondent and Edmonds had been working on the *Henry* case before she started at the firm (*id.*). The exam was only partially completed and was continued until October 20, 1998. Ms. Baker explained that “Mr Dietrich supervised everything. He handed out all the work” – for all of the attorneys. (Tr, p 181.) There was a big “write on/wipe off” calendar which had all of the firm’s court dates listed and respondent would call all of the attorneys together and “tell each attorney where they were to go that week.” (Tr, pp 184, 204.) This happened about weekly (*id.*). Within the week before the continued preliminary exam on October 20, 1998, there was one such meeting in front of the calendar and Baker informed respondent that he had asked her to take a hearing in Port Huron or Sanilac that day. When she reminded him of the continued preliminary exam, respondent replied, “that’s okay; Jim can handle it.” (Tr, pp 185-186, 188.)

The issue presented with regard to this count is simply whether or not there was sufficient evidentiary support for the panel’s conclusion, based upon the statement “Jim can handle it,” among other evidence, that respondent knew that his suspended associate was going to engage in the practice of law by representing Mr. Henry at his preliminary exam.. Under the standard of review to be applied by the Board, we find sufficient evidentiary support for that finding in the record below.

C. Count IX.

The hearing panel found not only that respondent made misrepresentations in answering requests for investigation served on him by the Grievance Administrator but that:

Each of [those] responses were false and were intentionally made for the purpose of deceiving the Attorney Grievance Commission with respect to respondent’s permitting Edmonds to act as an attorney subsequent to the date of Edmonds’ suspension from the practice of law. [Report on misconduct, p 32.]

The various misrepresentations found by the panel are discussed on pages 30 - 32 of its report on misconduct. (Appendix A). Given the hearing panel’s forceful rejection of respondent’s claims that he was unaware of Edmonds’ suspension or Edmonds’ activities after the effective date of his suspension, it is hardly surprising that the panel concluded that respondent knew his statements to the contrary were false when he signed his answers to the requests for investigation. The evidentiary

support for that conclusion is discussed in the hearing panel's report. Our review of the record persuades us that the hearing panel's reliance on that evidence was appropriate.

II. Level of Discipline: Application of the ABA Standards

In its separate report on discipline entered March 6, 2001, attached as Appendix B, the panel reiterated its findings of misconduct and characterized respondent's violations as follows:

- "knowingly and intentionally allowing said suspended lawyer [Edmonds] to act as Respondent's attorney at Respondent's deposition and at a court hearing";
- "knowingly and intentionally allowing and inducing said suspended attorney [Edmonds] to appear in Court as attorney for a client in a criminal matter on three occasions"¹;
- "knowingly and intentionally [making] false statements of material fact in connection with this disciplinary hearing and fail[ing] to disclose or correct a misapprehension he attempted to create by said false statements."

The panel found that each of the foregoing actions violated, among other rules, MRPC 8.4(b) (dishonesty, fraud, deceit, misrepresentation . . . which adversely reflects on honesty and fitness to practice law).

The panel's report on discipline further reads, in part:

In answering the questions posed in ABA Standard 3.0, the Panel focused on Standard 3.0(b), specifically the question of whether it has been shown in this case that Respondent acted "intentionally" or "knowingly". (The Panel rejects the suggestion that Respondent acted negligently). Upon review of the whole record, it is the Panel's conclusion that Respondent's conduct could better be described under Standard 6.12 and that suspension is therefore appropriate. Similarly, the Panel concludes that Respondent's conduct falls under the description of ABA Standard 7.2 which does not contain the element of "intent to obtain a benefit for the lawyer or another" found in Standard 7.1.

In determining the appropriate discipline within the broad range of "suspension," the panel has considered the presence of the following aggravating factors: a dishonest or selfish motive [Standard 9.22(b)]; a pattern of misconduct [Standard 9.22(c)]; submission of false evidence, false statements or other deceptive practices during the disciplinary process [Standard 9.22(f)]; and a refusal to acknowledge the wrongful nature of conduct [Standard 9.22(g)]. Weighing all of these factors in light of the serious nature of the misconduct which has been established, we conclude that Respondent

¹ As noted above, GA concedes that the panel found only that respondent knew of the October 20, 1998 preliminary exam in the Henry matter. The GA points to no evidentiary support for the finding that respondent knew of or orchestrated the other two instances of Edmonds' practice in that case. One could also ask whether the sanction would or should differ much if Edmonds attended three hearings instead of one.

should be suspended from the practice of law in Michigan for a period of three years.

The Panel further concludes that, in light of the subterfuge that Respondent engaged in when inducing and authorizing a suspended lawyer in his office to continue to act and hold himself out as an attorney, that it is reasonable to assume that Respondent will be inclined to engage in similar subterfuge in order that he might continue to act or hold himself out as an attorney following the effective date of his suspension. Therefore, Respondent shall, during the period of his suspension, provide satisfactory evidence on a quarterly basis to the Grievance Administrator that he is not engaged in any form of conduct involving the practice of law, directly or indirectly, through other persons or by other means. We also direct that Respondent shall remove his name from any place of business if the use of his name is likely to create the impression to a member of the general public that he is engaged in the practice of law. [Report on Discipline, p 2.]

On review, the Administrator argues that the established misconduct in this case, when properly analyzed under the American Bar Association's Standards for Imposing Lawyer Sanctions, should have resulted in the revocation of respondent's license to practice law. The Administrator's argument has two prongs: (1) the panel should have found (and did find on some points) that respondent's conduct was "intentional," not merely "knowing," and, therefore, that ABA Standards 5.11(b), 6.11, and 7.1 all suggest revocation; and (2) that even if suspension were the recommended sanction, the weight of the aggravating factors present in this case should result in revocation.

Respondent, on the other hand, argues to the Board that he was not aware of Edmonds' actions and that there was no harm to the public. He asserts that he was merely negligent "in not following up on how Edmonds 'handled' the October 20, 1998 preliminary exam in the Henry case," and "in not discerning all of the facts" before answer the requests for investigation. Respondent also takes issue with the panel's reliance on aggravating factors. For example, he argues: "contrary to the [panel's] determination, respondent did acknowledge his conduct in his failure to pay attention to the dates or the fact that Edmonds had appeared while suspended in the GT Investment matter . . . however, at most, this was negligent, not intentionally wrongful conduct." (Respondent's brief p 17.)

The Grievance Administrator's argument that respondent's conduct is properly characterized as "intentional" for purposes of applying the ABA Standards is persuasive. The Standards contain the following definitions:

"Intent" is the conscious objective or purpose to accomplish a particular result.

“Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.

“Negligence” is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation.

Like the panel, we reject the argument that respondent’s conduct as established by the evidence could reasonably be described as negligent. The Board has previously noted that, in some situations, neither ABA Standard 3.0(b) nor the commentary to Standard 3.0 provide altogether satisfactory guidance in identifying a demarcation between conduct which may be said to be “intentional” and that which is “knowing.” See Grievance Administrator v Petz, 99-102-GA; 99-130-FA (ADB 2001). In this case, however, it is clear from the panel’s findings that the panel members not only believed that respondent was aware of Edmonds’ suspension but actually intended that Edmonds appear as a lawyer in violation of his suspension order. Having determined the nature of the respondent’s mental state, i.e., that respondent acted with intent, analysis under the ABA Standards leads inexorably to the three Standards identified as applicable by the Administrator:

- 5.1(b):** Disbarment is generally appropriate when . . . a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer’s fitness to practice.
- 6.11:** Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.
- 7.1:** Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

Finally, we have considered the aggravating and mitigating factors present in this case. The panel identified four aggravating factors in its report on discipline: a dishonest or selfish motive [Standard 9.22(b)]; a pattern of misconduct [Standard 9.22(c)]; submission of false evidence, false statements or other deceptive practices during the disciplinary process [Standard 9.22(f)]; and a refusal to acknowledge the wrongful nature of conduct [Standard 9.22(g)]. The hearing panel did not identify mitigating factors. Each of the factors identified by the panel have evidentiary support in the record. To the list of aggravating factors listed by the panel could be added substantial experience in the practice of law [Standard 9.22(i)]. The record does contain some testimony favorable to the respondent in terms of his character or reputation, a mitigating factor under Standard

9.32(g). On balance, however, the aggravating factors in this case clearly outweigh any mitigating factors and, in any event, merely cement the conclusion that revocation is the appropriate discipline.

III. Motion to Disqualify Hearing Panel Chairperson

Respondent argues that he was denied due process because the hearing panel chairperson, Richard A. Kitch, did not recuse himself and because respondent's motion for Mr. Kitch's disqualification was subsequently denied by the Chairperson of the Attorney Discipline Board under MCR 9.115(F)(2). The respondent argues that throughout this disciplinary proceeding, respondent's law firm and the law firm in which the panel chairperson is a senior partner have represented adverse parties in two personal injury and/or wrongful death matters pending in Wayne County Circuit Court. Although Chairperson Kitch's involvement in this case commenced November 16, 1999 when the charges applicable to respondent were assigned to Tri-County Hearing Panel #19, the respondent raised no objection to Mr. Kitch's participation until his motion for recusal/disqualification on October 26, 2000. Prior to the filing of the motion, public hearings were conducted by the hearing panel on May 16, 2000, May 17, 2000 and July 16, 2000. The panel issued its report on misconduct on August 15, 2000 and a separate hearing on discipline was held on October 26, 2000 in accordance with MCR 9.115(J)(2). It was not until the morning of the hearing on discipline that respondent filed his motion for recusal and disqualification.

The Board Chairperson's order of December 7, 2000 denying respondent's motion for disqualification of Chairperson Kitch concluded that the respondent had not established grounds for disqualification under MCR 2.003 nor had respondent established denial of his right to a fair and impartial adjudicator as guaranteed under the Fourteenth Amendment. See Cain v Department of Corrections, 451 Mich 470 (1996). We are not persuaded that the order denying respondent's motion to disqualify the hearing panel chairperson was entered erroneously.

IV. Costs

The respondent's final argument is that no costs should have been imposed because the Grievance Administrator's statement of costs was untimely under the procedure outlined in MCR 9.128(A). That rule directs that "within fourteen days of the conclusion of a hearing before a panel, the Grievance Administrator shall file with the Board an itemized statement of the Commission's expenses allocable to the hearing." The hearing panel's hearing on discipline was concluded on October 26, 2000. The Grievance Administrator's itemization of costs was filed December 11, 2000. The Grievance Administrator properly points out that although the public hearing before the panel on the issue of discipline ended on October 26, 2000, the discipline proceeding itself remained open. Indeed, the respondent's motion, filed that day, to disqualify the panel's chairperson raised issues which could not be resolved until the Administrator had an opportunity to file a response and the motion was decided by the Board's Chairperson. In its order denying the respondent's objections to

the Grievance Administrator's itemized statement of expenses, the hearing panel reasoned that the hearing(s) in this case were essentially open until the issue of the hearing panel chairperson's potential disqualification was resolved on December 7, 2000. The Grievance Administrator's itemization of costs was filed four days later on December 11, 2000. We affirm the hearing panel's ruling on that point. MCR 9.102(A) directs that "subchapter 9.100 is to be liberally construed for the protection of the public, the courts and the legal profession." MCR 9.107(A) further directs that a "proceeding may not be held invalid because of a non-prejudicial irregularity or an error not resulting in a miscarriage of justice." The respondent has not shown how an overly literal interpretation of the word "hearing" is necessary to prevent a miscarriage of justice in this case. In his objections to the panel, the respondent objected to one cost specifically as well as all costs incurred by the Grievance Administrator generally. The Grievance Administrator voluntarily withdrew the one item specifically objected to (a \$25 charge for witness/milage fees to a witness who failed to honor the Administrator's subpoena). As in this case, it is not always easy to mark the "conclusion of a hearing." Some hearings before panels are concluded with some ambiguity as to whether or not further hearing days will be required. For example, the parties may be given time to think about whether they want to submit closing arguments in writing or whether it will be necessary to call additional witnesses. It is also common for a hearing panel to take the matter under advisement when both parties have rested at the misconduct stage of the proceeding. In such cases, there may be a further hearing on discipline if the panel finds that misconduct has been established [MCR 9.115(J)(2)] or the case may be ended with no further hearing and the entry of an order of dismissal if the panel concludes that misconduct was not established by a preponderance of the evidence [MCR 9.115(J)(4)]. The respondent has shown no prejudice resulting from the timing of the Grievance Administrator's itemization of costs. We affirm the hearing panel's order denying respondent's objections to those costs.

V. Conclusion

Under the applicable standard of review, we find adequate evidentiary support in the record for the hearing panel's findings that respondent knew of and directed another attorney to practice while suspended and that respondent made false statements in answering the requests for investigation. Upon application of the American Bar Association's Standards for Imposing Lawyer Sanctions, we determine that the revocation of the respondent's license to practice law in Michigan is appropriate in this case.

Board members Wallace D. Riley, Theodore J. St. Antoine, Ronald L. Steffens, Grant J. Gruel, Marsha M. Madigan, M.D., and Marie E. Martell concur in this decision.

Board Members Diether H. Haenicke, Michael R. Kramer and Nancy A. Wonch were absent and did not participate.

STATE OF MICHIGAN

ATTORNEY DISCIPLINE BOARD

GRIEVANCE ADMINISTRATOR, STATE OF
MICHIGAN, ATTORNEY GRIEVANCE COMMISSION,

Petitioner,

Case No. 99-145-GA

vs

EDGAR J. DIETRICH

Respondent.

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REPORT OF ATTORNEY DISCIPLINE BOARD
TRI-COUNTY HEARING PANEL #19

AT A SESSIONS OF SAID Hearing Panel held on
May 16, 2000, May 17, 2000 and July 6, 2000.

PRESENT: Richard A. Kitch, Chairperson, Richard Wygonik,
Member and Graham L. Teall, Member

RECORD

Reviewed by the Panel were the following documents that were contained in the
file of the Attorney Discipline Board:

1. Formal Complaint and Discovery Demand Dated September 9, 1999.
2. Respondent's Answer to Formal Complaint dated October 4, 1999.
3. Respondent's Discovery Demand dated October 4, 1999.
4. Respondent's Motion for Separate Trial dated October 4, 1999.
5. Petitioner's Response to Respondent's Discovery Demand and Proof of Service dated October 11, 1999.
6. Order Granting Respondent's Motion for Separate Trial Dated November 9, 1999.

APPENDIX A

7. Petitioner's Response to Respondent's Motion for Separate Trials dated October 11, 1999.
8. Petitioner's Amended Witness List Dated January 27, 2000.
9. Notice of Withdrawal of Respondent's Counsel dated January 28, 2000.
10. Petitioner's Response to Respondent's Motion for Adjournment dated February 2, 2000.
11. Appearance of Counsel for Respondent dated February 10, 2000.
12. Notice of Adjournment of Hearing scheduled for February 8, 2000 dated February 2, 2000.
13. Notice of Hearing for May 16 and May 17, 2000 dated February 15, 2000.
14. Notice of Hearing for July 6, 2000 dated May 31, 2000.

EXHIBITS

The following exhibits introduced by the Petitioner were admitted and received into the record of said proceedings. (The exhibits have been listed chronologically by date for better clarity).

Exhibit 1 – Order of Suspension of James L. Edmonds for 180 days commencing on July 7, 1998 in Case No: 98-24-GA and 98-42-FA, report of Genesee County, Hearing Panel #5 and date of mailing form dated June 15, 1998 reflecting Respondent's office was one of the recipients.

Exhibit 2 – Motion for Review by Attorney Discipline Board and Request For Stay of Discipline by James Edmonds in Cases 98-24-GA and 98-42-FA with Proof of Service and enclosure letter dated July 6, 1998.

Exhibit 5 – Attorney Discipline Board letter dated July 8, 1998 directed to James Edmonds at Respondent's office reflecting that Petition for Stay of Discipline was

untimely and “the suspension ordered by the hearing panel is deemed effective July 7, 1998”.

Exhibit 12 – Transcript of Respondent’s deposition in GT Investment v Dietrich, et al dated July 15, 1998.

Exhibit 13 – Transcript of continued deposition of Respondent in GT Investment v Dietrich, et al dated July 15, 1998.

Exhibit 14 – Transcript of proceedings held before Honorable Robert J. Colombo, Jr., Circuit Court Judge for the County of Wayne held on July 17, 1998 in the matter of GT Investments v Dietrich, et al.

Exhibit 16 – James L. Edmonds’ Affidavit of Compliance in Attorney Discipline Board No.: 98-24-GA and 98-42-FA and cover letter from Respondent’s office bearing alleged signature of Respondent dated 7/20/98.

Exhibit 3 – Attorney Discipline Board letter to Edmonds at Respondent’s office containing Board’s Order Denying Respondent’s Request For Stay of Discipline dated July 21, 1998.

Exhibit 4 – Respondent, James L. Edmonds’ Motion For Immediate Consideration in the matter of 98-24-GA and 98-42-FA, along with cover letter from Respondent’s office dated July 30, 1998 and bearing alleged signature of Respondent, which Respondent denies.

Exhibit 17 – Attorney Grievance Commission letter to Respondent, time-stamped July 31, 1998 regarding the insufficiency of Edmonds’ Affidavit of Compliance and that Edmonds remained as counsel of record in Attorney Discipline Board Case No: 97-306-GA.

Exhibit 18 – Attorney Grievance Commission letter to Attorney Discipline Board with copy to Respondent dated July 31, 1998 enclosing Petitioner’s Response in Opposition to Respondent’s Request for Immediate Consideration and Brief in Support

Exhibit 19 – Respondent Edmonds’ Rebuttal Response to Petitioner’s Brief in Opposition to Respondent’s Request for Immediate Consideration with cover letter from Respondent’s office bearing his alleged signature, dated August 3, 1998.

Exhibit 20 – Attorney Grievance Commission letter to Respondent as attorney c record for Edmonds in Cases No. 98-24-GA and 98-42-FA dated August 21, 1998 and relating to the insufficiency of Edmonds’ Affidavit of Compliance.

Exhibit 30 – Attorney Grievance Commission letter to Respondent regarding Grievance Administrator v Edward J. Dietrich, Case No: 97-306-GA dated August 21, 1998 and the fact that James Edmonds still appears as attorney of record for Respondent.

Exhibit 31 – Substitution of Attorney reflecting Respondent replacing James Edmonds as attorney in Case No: 97-306-GA with cover letter from Respondent’s office dated August 24, 1998 allegedly bearing Respondent’s signature.

Exhibit 21 – Attorney Grievance Commission letter to Attorney Discipline Board with Respondent Dietrich being copied in as attorney for Edmonds dated September 3, 1998 and enclosing Motion to Dismiss Edmonds’ Appeal.

Exhibit 22 – Order Dismissing Respondent Edmonds’ Petition For Review in Case Nos. 98-24-GA and 98-42-FA, with cover letter from Attorney Discipline Board dated September 15, 1998 with copy sent to Respondent Dietrich.

Exhibit 23 – Letter from Attorney Grievance Commission to Respondent Dietrich

dated October 5, 1998 relating to James Edmonds' Case Nos. 98-24-GA and 98-42-FA and reflecting Affidavit of Compliance Insufficient.

Exhibit 25 – Notice of Suspension in Case Nos. 98-24-GA and 98-42-FA dated October 7, 1998 directed to various judges and a copy sent to Respondent Dietrich.

Exhibit 24 – Attorney Grievance Commission letter to Attorney Discipline Board with a copy to Respondent Dietrich dated October 19, 1998 relating to the insufficiency of Edmonds' Affidavit of Compliance.

Exhibit 8 – Transcript of Preliminary Examination of Jamal Ahmed Henry in the 36th District Court for the City of Detroit dated October 20, 1998 and reflecting Gregory Dunnam as attorney for the defendant.

Exhibit 9 – Transcript of arraignment and deposition conference of Jamal Ahmed Henry in Third Judicial Circuit Court on November 3rd and November 17, 1998 reflecting a Gregory Dunn, of Dietrich & Associates, representing the defendant.

Exhibit 6 – Pretrial Settlement Offer in the Jamal Ahmed Henry matter dated November 17, 1998 and allegedly bearing the signature of defense attorney.

Exhibit 26 – Attorney Grievance Commission Request For Investigation directed to Respondent Dietrich in Case No. 3612/98 dated December 2, 1998.

Exhibit 7 – Respondent Dietrich's Response To Request For Investigation in File No. 3521/98 dated December 7, 1998.

Exhibit 10 – Respondent Dietrich's Response to Request For Investigation in File No: 3612/98 dated December 16, 1998, to which was attached the unsigned Affidavit of Gregory Dunnam.

Exhibit 15 – Respondent Dietrich's Affidavit dated December 18, 1998.

Exhibit 11 – Appearance and Plea in the matter of Township of Washington v Jimmie L. Edmonds, by Respondent Dietrich's office, by attorney Gregory Dunnam dated May 11, 1999.

Exhibit 27 – Attorney Discipline Board letter to Respondent Dietrich regarding Case No: 97-306-GA dated September 9, 1999 and enclosing report of Tri-County Hearing Panel #10.

Exhibit 29 – Attorney Grievance Commission's letter to Respondent Dietrich dated March 1, 2000 regarding Dietrich Grievance File No: 3072/99 containing an admonishment of Respondent Dietrich in File No: 3072/99.

Exhibit 28 – Order of Suspension of Respondent Dietrich bearing date of April 18, 2000, along with Report of Tri-County Hearing Panel in the matter of Grievance Administrator, Petitioner v Edgar J. Dietrich, Respondent in Case No. ADB 97-306-GA

STATEMENT OF FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Key Dates In This Matter Are:

7/7/98-effective date of the suspension of James Edmonds;

7/15/98-Respondent's deposition taken in GT Investment v Dietrich, et al;

7/17/98-hearing before Judge Colombo in GT Investment v Dietrich, et al;

8/4/98-trial of Westbrook v Woodward;

10/20/98-preliminary hearing regarding Jamal Ahmed Henry;

11/3/98-arraignment regarding Jamal Ahmed Henry.

11/17/98-pretrial statement offer regarding Jamal Ahmed Henry; and

Originally the formal Complaint filed in this matter named Edgar J. Dietrich and James L. Edmonds as Respondents. Respondent Dietrich moved for and was granted

a separate hearing. The formal Complaint contains 10 Counts. Counts One, Three, Five, Seven and Ten relate to James L. Edmonds and as a result, have been dismissed. Petitioner dismissed Count Eight and the response thereto has been stricken.

In the General Allegation, it is alleged that Respondent Dietrich had supervisory authority over James L. Edmonds, whose license to practice law was suspended as of July 7, 1998.

In Count Two, it is alleged that Respondent Dietrich permitted Edmonds to appear on July 15, 1998 as Respondent's attorney in Respondent's deposition taken that day in GT Investment v Dietrich, et al and at a Court hearing in the same matter on July 17, 1998.

In Count Four, it is alleged that some time between July 7, 1998 and August 4, 1998, Respondent permitted Edmonds to participate in a matter known as Westbrook [Westbrook v Woodworth, et al] and to engage in substantial settlement negotiations.

In Count Six, it is alleged that Respondent Dietrich permitted Edmonds to act as attorney for a Mr. Henry [Jamalahmed Henry], at a time when Edmonds' license to practice law was suspended and authorized Edmonds in the course thereof to impersonate attorney Gregory Dunnam.

In Count Nine, it is alleged that Respondent Dietrich's Answers to a Request For Investigation served on him in files 3521/98 and 3612/98 were false in that:

- a. Edmonds did act as Respondent Dietrich's attorney at Respondent's deposition on July 15, 1998 and at a Court hearing on July 17, 1998 at a time when Edmonds' license to practice law had been suspended, which allegation was denied.
- b. Edmonds did appear as counsel for Mr. Henry, with the knowledge and/or

counsel of Respondent Dietrich at a time when Edmonds' license to practice law had been suspended, which allegation was denied.

- c. Respondent Dietrich was aware that attorney Gregory Dunnam would not sign the Affidavit attached in support to the Response to a Request for Investigation in File No. 3612/98.
- d. Respondent Dietrich was aware that the Affidavit of Mr. Henry attached to the Response to a Request for Investigation in File No. 3521/98 was false.

Hearings:

Hearings were held in this matter on May 16 and May 17, 2000, at which time evidence relating to the allegations contained in the formal Complaint were received. (Page reference to testimony presented at these hearings are indicated as (I -) and (II -)).

Witnesses appearing before the Panel who were former employees of Dietrich & Associates included Bahige (Bill) Chaaban, Gregory Dunnam and Holly Baker. Their testimony reflected that Respondent Dietrich was the supervising attorney for all associate attorneys at the law firm of Dietrich & Associates, PLC. That all mail delivered to the firm came to Respondent Dietrich's desk and that he made a determination as to which of the associates same should be directed and to whom task assignments on the firm's legal matters would be assigned. (I 13-14, I 104-108, II 179-184, II 204).

Bahige (Bill) Chaaban:

With respect to Edmonds' suspension, it was the testimony of Bill Chaaban that James Edmonds showed him the Order of Suspension (Exhibit 1) before July 7 and he met with Edmonds and Respondent regarding the matter two days before the effective date of the suspension (July 7, 1998) and he was assigned to aid Edmonds in drafting a

Response. (I 20-23).

That Exhibit 2, a Motion for Review and Request for Stay, dated July 6, 1998, which he assisted in working on, (I 24) was reviewed by Respondent, Edmonds and himself. (I 25). That Exhibit 3, an Order of the Attorney Discipline Board denying the Request for Stay of Discipline was discussed with Respondent (I 26). That Exhibit No. 4, Edmonds' Motion for Immediate Consideration was likewise discussed with Respondent before it was filed. (I 27).

That Exhibit No. 5, Attorney Discipline Board letter dated July 8 indicating that the Petition for Stay of Discipline was untimely and that:

“the suspension ordered by the hearing panel is deemed effective July 7, 1998”

was discussed with Respondent and Edmonds. (I 28)

That he had experience in working on Attorney Discipline matters involving Respondent's previous cases. (I 42).

On cross-examination he stated that any confusion regarding the effective date of Edmonds' suspension was clarified by the Attorney Discipline Board letter dated July 8, 1998 (Exhibit 5) (I 45-46) which reflected:

“the suspension ordered by the hearing Panel is deemed effective July 7, 1998”.

That he was familiar with Edmonds' signature and believes that the signature on Exhibit 6, a Pre-trial Settlement Offer in the Jamal Henry matter dated November 17, 1998 was that of James Edmonds (I 31-33).

Gregory Dunnam:

Gregory Dunnam testified that he received his license to practice law in

November of 1997 and was employed at Respondent's office beginning June of 1998 as an associate under the direction of Respondent. (I 104).

Westbrook:

That he found out that Edmonds was suspended right before the Westbrook trial in August of 1998 (I 112). Respondent directed him to try the case and he protested because he had only worked at the firm for two months or less but he didn't feel he had any choice if he wanted to continue his employment inasmuch as Respondent controlled all the files (I 115). That at the Westbrook trial, Edmonds "took over" the discussions of settlement with defense counsel (I 116). That he reported to Respondent daily on the progress of the trial and stated

"Q. Did you inform Mr. Dietrich of the settlement negotiations going on?

A. Yes, he knew they were going on.

Q. Okay. Did you inform him that Mr. Edmonds was involved in them?

A. I can't say that he knew what the particulars of the conversation were at the settlement negotiations, but I can say he knew that he was up there and Edgar Dietrich knew that Jim Edmonds was talking to the attorneys about the case because I obviously did not have the knowledge about the case." (I-117)

On cross-examination he stated that when he was assigned to try Westbrook he was a new attorney who had only done a month's worth of bankruptcy and virtually nothing else. That Respondent was supervising his work (I 132-133). He recognized that it was probably true that it was his responsibility not to let Edmonds take over the negotiations in the Westbrook case (I 138-139).

Q. . . . we were just talking for a while about the events surrounding the settlement discussions and trial in the Westbrook case and that

was August of 1998; right?

A. Um hum.

Q. And, if I understand your direct examination testimony, it's correct, is it not, that the next time you had any discussion with Mr. Dietrich about these events from August of 1998 in terms of who did what, was in late December of '98 and early January of '99 around the drafting of this Affidavit that you declined to sign?

Q. That's correct; is it not? (I-143)

A. That's not correct.

Q. . . . were there discussions in between?

A. There were discussions in between not regarding an Affidavit because the Affidavit wasn't prepared – [Dunnam Affidavit attached to Exhibit 10].

A. But there were discussions in between regarding Jim Edmonds' appearance because I believe there was a grievance filed, or something to that effect. (I-144)

Q. . . ., and then obviously the Affidavit was part of the Response to the grievance?

A. Yes.

Q. . . . So it was around the time the grievance was filed [Exhibit 26 dated December 2, 1998] that this subject next came up; right?

A. Where they actually had, you know, some meaningful discussion about it. I mean obviously when we were conducting the trial we always reported back to Mr. Dietrich about what happened on a daily basis or even during the whole trial. (I 145)

...

Henry:

Insofar as the Jamal Henry matter is concerned, Greg Dunnam testified that the only appearance he made in the Henry case was at his arraignment in the 36th district

court in September of 1998. (I 117-188). That even though Exhibit No. 8 (transcript of Preliminary Examination in the Henry matter in 36th District Court dated October 20, 1998 reflects a Gregory Dunnam as attorney for the defendant) that he did not appear at that hearing. That insofar as Exhibit 9, a transcript of arraignment and disposition conference in the Henry matter in the 3rd Judicial Court dated November 3, and November 17, 1998 reflecting a Gregory Dunn of Dietrich & Associates representing the defendant, he did not appear at those hearings. (I 121)

Holly Baker testified that prior to October 20, 1998 she appeared at a hearing for Mr. Henry, which was continued to October 20, 1998.

That a few days before October 20, 1998, Respondent directed her to handle a matter in Port Huron or Sanilac on October 20, 1998 and she reminded Respondent of the continued preliminary examination on that date in the Henry matter. That Respondent advised her:

“that’s okay, Jim can handle it”.

[The continued Jamal Ahmed Henry hearing on October 20, 1998] (II-185).

Jamal Ahmed Henry testified that Mr. Edmonds attended three Court hearings with him (I-184). That at a hearing in the District Court, Edmonds appeared and got “u in front of the Judge making statements”. (I-89). That in the Circuit Court, Edmonds appeared on his behalf and “did get up and speak to the Judge” (I-90).

Unsigned Affidavit in Westbrook:

That with respect to his unsigned Affidavit attached in support of Respondent’s Response to Request for Investigation in File No. 3612/98 dated December 16, 1998 (Exhibit 10), Dunnam indicated that he advised Respondent that he would not sign it

because he believed the Affidavit was false and he would be making a false Affidavit (I 123-124). (The Affidavit contained:

“5. Mr. Edmonds did not involve himself in the settlement negotiations with defense counsel nor did he render advice to the clients . . . [in Westbrook].”

There were several meetings in Respondent’s office where Respondent attempted to explain why it was best that Dunnam signed the Affidavit. Respondent was very adamant over a two week period that Dunnam sign the Affidavit but he refused to do so. That he advised Respondent that the Affidavit was false and that Jim Edmonds did involve himself in settlement negotiations [in the Westbrook matter] (I 124) Further, that Respondent did not express any surprise being apprised of this fact (I 125).

That the initial discussions regarding his signing the Affidavit began around the end of December, 1998 when the Affidavit had already been filed [in connection with Respondent’s Response to Request for Investigation in File No. 3612/98 dated December 16, 1998 (Exhibit No. 10), (I 126-127).

David Hearsch:

Also appearing as witnesses was attorney David Hearsch, who was defense counsel in the Westbrook v Woodworth, et al matter and who testified that he received a telephone call from Respondent on July 27, 1998, at a time when he was not available and a request was made that he return the call. That he later returned the call and spoke to an individual who identified himself as Respondent. That Respondent, when advised that attorney Hearsch was calling in regard to the Westbrook matter, stated:

“Oh, Jim Edmonds is handling that case, call him”.

Mr. Hearsch followed these instructions. He further stated that prior to trial on August 4,

1998 (I 62) Edmonds advised the Court that he was a legal assistant (I 66) but that in the settlement conference prior to trial Edmonds "took over the show" regarding settlement demands (I 63) that most of the negotiations that took place were done by Edmonds (I 64).

George Sumnik:

A further witness was attorney George Sumnik, who was plaintiff's attorney in C Investment v Dietrich, et al. He testified that Edmonds appeared as Respondent's attorney in Respondent's deposition taken on July 15, 1998 and at a Motion held in the matter before Judge Colombo on July 17, 1998.

Respondent:

The concluding witness was Edgar J. Dietrich called by the Petitioner. Respondent testified he hired James Edmonds as an associate in the fall of 1997 (II-205).

That he was the attorney of record for Mr. Edmonds in Mr. Edmonds' disciplinary matter (II-237 & 278). That when he is the attorney of record on a matter and letters come in to the office on that matter, he probably sees (II-243). That in no case would he read [letters] relating to Grievance matters, inasmuch as it was an area in which he felt incompetent (II-244). That he has no knowledge of Grievance matters (II-245). That such matters are referred to law clerk, Bill Chaaban (II-244).

That he does not think that a meeting took place prior to [July 7, 1998] the effective date of Edmonds' suspension between Bill Chaaban, James Edmonds and himself regarding Edmonds' suspension (II-247-248).

That he does not know if he received Exhibit 17, a letter from the Attorney

Grievance Commission time-stamped July 31, 1998 regarding the insufficiency of Edmonds' Affidavit of Compliance and that Edmonds remained as counsel of record in Attorney Discipline Board Case No: 97-306-GA (II-226-228).

Knowledge of Suspension:

The Order of Suspension contained in Exhibit 1 filed June 15, 1998 and delivered by mail to Respondent's office clearly provided that:

"James L. Edmonds, is suspended from the practice of law in Michigan for a period of one hundred eighty (180) days commencing July 7, 1998".

A letter from the Attorney Discipline Board (Exhibit 5) dated July 8, 1998 sent to Respondent's office stated that Mr. Edmonds' petition for a stay of discipline failed to meet the pre-requisite conditions and that:

". . . the suspension ordered by the hearing panel is deemed effective on July 7, 1998".

In Exhibit 7 Respondent's Response to a request for investigation in File No: 3521/98 dated December 7, 1998, Respondent stated in paragraph 1:

". . . upon receiving a sixth month suspension, effective July 7, 1998, Mr. Edmonds ceased to act as a contract attorney in any capacity whatsoever . . . "

and in paragraph 2:

"To the best of my knowledge, subsequent to July 7, 1998, Mr. Edmonds has not appeared in Court as an attorney, . . .

and

"To the best of my knowledge, no pleadings were ever filed under Mr. Edmonds' name after July 7, 1998".

In Exhibit 10, Respondent's Response to a request for investigation in File No: 3612/98 dated December 18, 1998, Respondent stated in paragraph D:

“ . . . attorney Edmonds ceased to act as Respondent’s counsel prior to July 7, 1998”.

In Respondent’s Affidavit, Exhibit 15 dated December 18, 1998, Respondent stated in paragraph 2:

“ . . . James L. Edmonds has worked under my direct supervision in the capacity of a law clerk since July 7, 1998”.

Count Two – GT Investment v Dietrich, et al:

As to allegations in Count II that Edmonds appeared as Respondent’s attorney Respondent’s deposition in GT Investment on July 15, 1998 and at a hearing in the same matter before Judge Colombo on July 17, 1998, the record reflects the following Exhibit 12 a transcript of the deposition taken from Respondent on July 15, 1998 in GT Investment reflects on page 2:

“James Edmonds
Dietrich & Associates . . . appearing on behalf of the defendants.”

And on page 3:

“Mr. Edmonds: Mr. Sumnik for the record, James Edmonds, appearing on behalf of Mr. Dietrich this morning. . .”

In addition, the transcript reflects Mr. Edmonds throughout the deposition making numerous objections, interjections and instructions to his “client” not to answer certain questions.

Exhibit 14 A transcript of a hearing held in GT Investment two days later (July 1 1998) before the Honorable Robert J. Colombo, Judge in the Circuit Court for the County of Wayne reflects on the cover page:

“James L. Edmonds, Esq. appearing on behalf of defendants”.

Further on page 21 of the transcript:

"Mr. Edmonds: Your honor, if I can respond. James Edmonds on behalf of Dietrich & Cassavaugh – Associates really . . .".

And on page 24:

"Mr. Edmonds: . . . my client, Mr. Dietrich, . . ."

Respondent in his response to a request for investigation in File No: 3612/98 dated December 16, 1998 (Exhibit 10) stated:

G. ". . . the deposition in question [GT Investments] was conducted by attorney Edgar J. Dietrich who was present with the assistance of law clerk, Edmonds, (who acted in that capacity only)".

and

H. ". . . to the best of my knowledge I was the attorney of record at the Court hearing [in GT Investments]. Mr. Edmonds accompanied me in the sole capacity of a legal assistant/law clerk".

Respondent's testimony regarding Mr. Edmonds' involvement in Respondent's deposition of July 15, 1998 and the hearing of July 17, 1998 in GT Investment was as follows:

"Q. So you're saying in paragraph six (Respondent's Affidavit-Exhibit 15 dated December 18, 1998) that Mr. Edmonds attended GT Investment deposition in the capacity as a law clerk?

"A. That's what it says; that's right.

"Q. That's your Affidavit, is that correct?

"A. Yes I was attorney of record on that case and had been throughout; and I had-" (II-217).

"Q. . . . do you recall Mr. Edmonds saying-entering an Appearance on behalf of yourself that day?

. . .

...

"Q. . . . what did Mr. Edmonds do at that hearing [hearing before Judge Colombo on July 17, 1998 in GT Investment]?"

"A. He was-apparently he appeared on behalf of Mrs. Dietrich . . ." (II-220).

"Q. . . . did Mr. Edmonds appear on your behalf that day?"

"A. No (II-220).

...

"Q. . . . did he appear on behalf of any client that day?"

"A. No . . . (II-221).

...

"Q. Do you believe you knew he was suspended when you were appearing at your deposition at the hearing before Judge Colombo?"

"A. No.

"Q. . . . in paragraph two of Petitioner's Exhibit 7 [Respondent's Response to Request for Investigation in File 3521/98 dated December 7, 1998] you say:

"to the best of my knowledge, subsequent to July 7, 1998 Mr. Edmonds has not appeared in Court as an attorney", now you're admitting that you knew he was suspended effective July 7th; correct?"

"A. That's right (II 242).

...

"Q. At that time, did you notify Mr. Sumnik [plaintiff's attorney in GT Investments] that Mr. Edmonds had appeared on your behalf [while] he was suspended?"

"A. No.

"Q. Did you notify Judge Colombo that Mr. Edmonds appeared in his Courtroom while suspended?

"A. No (II 249).

...

"Q. When you learned as you say he became suspended, were you concerned that you had used him as a suspended attorney, as your attorney, in GT Investment's case?

"A. I don't know that I really recollected it at that time. And actually I had not used him as an attorney. I was the attorney of record in GT. I appeared on the Motion. He came up voluntarily and stated he represented Terry Dietrich because the Judge was saying I couldn't speak for her at the hearing (II 252-253).

...

"Q. Do you recall when I drew to your attention that Mr. Edmonds referred to himself in your presence at the Motion hearing as attorney for Edgar Dietrich.

"A. The transcript so states.

"Q. . . . do you recall it happening?

"A. Well I don't recall it, no (II 253) . . . he had no reason to appear he was not told to appear, . . . he came forward from the Court room, okay, as I say I was engaged in it and proceeded to speak okay.

"Q. As you sit here today do you believe that Jim Edmonds acted as an attorney at your deposition?

"A. Yes.

"Q. . . . as you sit here today do you believe that Jim Edmonds acted as an attorney at the Court hearing?

"A. Not mine and not at my instruction.

"Q. Do you believe that he acted as an attorney in your presence at the Court hearing?

"A. Yes." (II 254).

As to Exhibit 26 (Request for Investigation in File No: 3612/98 dated December 2, 1998) in which it is alleged in paragraph G that on July 15, 1998, Edmonds appeared as Respondent's attorney in the GT Investments deposition and in paragraph H that on July 17, 1998, Edmonds appeared on Respondent's behalf at a Court hearing [in GT Investments]. Respondent's testimony was:

"Q. . . . when you received that document, what actions did you undertake to determine the truth or falsity of the allegations?

"A. I don't know.

"Q. Did you speak to Mr. Edmonds?

"A. I think I probably spoke to Bill Chaaban. Edmonds was gone a great deal. I don't know if I did or not speak to him (II 256).

...

"Q. Did you review the file enough to determine whether or not these allegations were accurate?

"A. Yes.

...

"Q. What did you do to determine whether or not Mr. Edmonds appeared in Court on those days?

"A. I presumed it was accurate based on our diary knowing that these had happened. As to whether he appeared in Court or not, first of all, I don't think anybody knew (II 257) he was suspended at that time. (II 258)

...

"A. I was saying I may have asked Jim about it. This is December. I would check the record and proceed to answer it as such.

"Q. I'm going to show you what has been marked as Petitioner's Exhibit 10 which is your answer to the Grievance. I want you to review your (G) and (H) Responses. (II 258)

...

"Q. Okay. In your answer you say that Mr. Edmonds only attended as a law clerk

...

"Q. What did you do to determine that?

"A. I guess I relied on my memory and that I was the attorney of record it was my deposition and I simply presumed. I don't recollect it. Mr. Edmonds tends to do whatever he wants to do rather than-" (II 259).

...

"Q. What did you do to determine that Mr. Edmonds acted only as a law clerk as you answer?

"A. I presume I had someone check the record and the record would show that it was my deposition wherein I appeared as the attorney of record and have throughout those proceedings." (II 260).

On examination by his attorney, Respondent stated:

"Q. And if you had known on July 15th or July 17th that Mr. Edmonds had been suspended would you have permitted him to speak on their behalf at a deposition in GT Investments (II 277) or to speak in Court before Judge Colombo at a Motion hearing in that case?

"A. No, I would not have allowed it had I known (II 278)

That when he was answering the Request for Investigation he didn't realize that the deposition or hearing in GT Investment had occurred after the effective date of the suspension (II 278-279). That he did not knowingly misrepresent matters to the Commission but should have checked the record more carefully and phrased his answers differently." (II 280).

Count Four-Westbrook:

As to Count Four, wherein it is alleged that Respondent permitted Edmonds to participate in substantial settlement negotiations in the Westbrook matter at a time

"Q. Did you assign that case [Westbrook] to Mr. Dunnam for trial approximately or less than one week before trial?

"A. I would think that would be accurate . . ."

"Q. At that time, [when the Westbrook case was assigned to Mr. Dunnam], how long was Mr. Dunnam employed in your office? (II 263)

. . .

"A. I can't say for sure; three months possibly.

"Q. But you were aware that he was a pretty young attorney; right?

"A. Yes (II 264).

. . .

Q. Did you send Mr. Edmonds and Mr. Dunnam to the trial on the Westbrook case?

"A. We were associates, we agreed this is how we would handle it.

. . .

"A. I did not send anyone anywhere . . . So as a group I mean, we decided with Mr. Edmonds' representation as far as what he thought he could do help Mr. Dunnam as an associate whether he thought he could handle it, and that's what was done. (II 265)

On examination by his attorney it was stated:

"Q. And its correct, is it not, that Mr. Edmonds and Mr. Dunnam came back o checked in with you by phone, at no time did either one of them tell you that Mr. Edmonds had participated in substantive discussions regarding possible settlement of that case; is that correct?

"A. It never was discussed, no." (II 274).

On further examination by the attorney for Attorney Grievance Commission it was stated:

"Q. . . . do you recall receiving a phone call from Greg Dunnam and Jim Edmonds on the Westbrook case during the trial, them calling you from Court or the car near the Court.

"A. I received probably one or two calls, depending on the day, I think that they were in trial generally from Mr. Dunnam.

"Q. . . . did you speak to Mr. Edmonds at all?

"A. I think I did on one occasion.

"Q. What did he advise you?

"A. I don't know. I don't know what it was it was my general recollection. He didn't advise me of anything. Maybe he told me how the trial was going . . ." (ll 283).

Count Six-Henry:

As to Count Six in which it was alleged that Respondent permitted Edmonds to act as an attorney for Mr. Henry [Jamalahmed Henry] at a time when Edmonds' license to practice law was suspended and authorized Edmonds in the course thereof to impersonate attorney Gregory Dunnam, Respondent's testimony was as follows.

On questioning by his counsel:

"Q. Now you've heard Ms. Baker testify this morning that at a point in time during the handling of the Henry case that you asked her if she could handle a Court appearance and she couldn't because she had to be in another Court, and you said according to her, "Jim can handle it". Do you recall her having made that statement this morning?

"A. I recall.

"Q. . . . Do you recall whether you made such a statement or not?

"A. I don't really recall . . .

. . .

"Q. The fact of the matter is that regardless of whether you recall having made a specific statement to Ms. Baker, if you had expressed to her that "Jim can handle it" or words to that effect it was your intention, was it not, that

Jim would either see to having the case adjourned or see to having someone else cover it correct?

“A. The witness: That’s correct.” (II 275-276).

Hearing of July 6, 2000:

A further hearing was held on July 6, 2000, at which time closing arguments were presented. At the conclusion of the arguments, the Panel conferred and it was determined that misconduct had been established as to some of the counts in the formal Complaint.

Under the circumstances, the Panel proceeded to a separate hearing to determine the appropriate discipline. Evidence was taken for the purpose of showing mitigating or aggravating factors.

The AGC presented Exhibits 27-29 relating to Respondent’s 45-day suspension in Case No: 97-306-GA and a letter of admonishment dated March 1, 2000. The AGC then called Respondent and examined him regarding alleged aggravating factors demonstrated by the evidence.

Following Respondent’s examination by Respondent’s attorney, Respondent’s attorney called character witnesses, Carl Mitseff (a Workers’ Compensation defense attorney), George Cassavaugh, Respondent’s legal colleague and Joseph McPherson, Respondent’s client and tennis partner.

At the closing of the testimony, both parties requested that the Panel issue its final conclusions as to the misconduct it believed was established before they were required to address the issue of the appropriate sanctions.

Final Hearing:

A final hearing will be scheduled following the issuance of this report, to allow the parties to address the sanction issues.

Findings:

It is the finding of this Panel that the testimony of Bahige (Bill) Chaaban, Gregory Dunnam and Holly Baker was very credible and that the testimony of Respondent was contradictory and not believable.

It is the finding of this Panel that Respondent was the supervising attorney for associate attorneys in Dietrich & Associates LLC including James Edmonds. That it was Respondent who assigned legal matters to associates for handling. That all mail was directed to Respondent and that after review he made a determination as to which associate the mail would be directed.

The Panel finds that the evidence clearly reflects that Respondent was aware that Mr. Edmonds was suspended effective July 7, 1998.

That the Order of Suspension (Exhibit 7 reflecting that Edmonds' suspension was effective July 7, 1998) was brought to Respondent's attention prior to that date during the course of a meeting between himself, Mr. Chaaban and Mr. Edmonds. That the letter from the Attorney Discipline Board (Exhibit 5) reiterating that the effective date of suspension of Mr. Edmonds was July 7, 1998 was also brought to his attention at a meeting with Mr. Chaaban and Mr. Edmonds. That this letter clarified any question as to the effective date of Mr. Edmonds' suspension.

That Respondent's own letter response to the Request for Investigation in file No. 3521/98 (Exhibit 7 dated 12/7/98) states:

"1. . . . upon receiving a six month suspension, effective July 7, 1998, Mr. Edmonds ceased to act as a contract attorney in any capacity whatsoever."

"2. To the best of my knowledge, subsequent to July 7, 1998, Mr. Edmonds has not appeared in court as an attorney, . . . to the best of my knowledge, no pleadings were ever filed under Mr. Edmonds' name after July 7, 1998".

That Respondent's Response to a Request for Investigation in File No. 3612/98

(Exhibit 10) it is stated:

"D. . . .Attorney Edmonds ceased to act as Respondent's counsel prior to July 7, 1998. That Respondent's Affidavit dated December 18, 1998 (Exhibit 15) states:

"2. . . . James L. Edmonds has worked under my direct supervision in the capacity of a law clerk since July 7, 1998."

That in Respondent's Affidavit of 12/18/98 (Exhibit 15) it is stated in GT Investments:

" . . . James L. Edmonds has worked under my supervision in the capacity or a law clerk since July 7, 1998:.

Count Two:

As to Count II relating to Edmonds' appearance as Respondent's attorney in a deposition taken in GT on July 15, 1998 and at a motion in the same matter on July 17, 1998, the Panel finds the allegations of misconduct contained in that Count have been established. That despite all assertions by Respondent to the contrary, the transcripts Exhibits 12, 13, and 14 Respondent's testimony clearly reflects that the allegations are true.

That Respondent's conduct constitutes professional misconduct in violation of MCR 9.104 (1) – (4) and the Michigan Rules of Professional Conduct to wit: 5.1(b) and

(c); and 8.4 (a) – (c).

Count Four-Westbrook:

As to the allegations in Count four that Respondent permitted Edmonds to participate in substantial settlement negotiations in the matter of Westbrook v Woodworth, et al subsequent to the date of Edmonds' suspension, the panel finds that Respondent assigned the trial of the Woodworth matter to attorney Dunnam and directed Mr. Edmonds to assist Mr. Dunnam because Mr. Edmonds was more familiar with the case. That though Edmonds advised the Court and defense counsel that he was not an attorney but a law clerk, he virtually "took over" the settlement negotiations occurring immediately prior to trial and advised the clients during the proceeding. The only testimony regarding Respondent's having knowledge of Edmonds' conduct during the Westbrook trial is that of Gregory Dunnam:

"Q. Okay did you inform him that Mr. Edmonds was involved in them [settlement negotiations]?"

"A. I can't say that he knew what the particulars of the conversation were at the settlement negotiations, but I can say he knew that [Edmonds] was up there and Edgar Dietrich knew that James Edmonds was talking to the attorneys about the case because I obviously did not have the knowledge about the case (I-117)".

The testimony of Respondent that when Edmonds and Dunnam checked in during the course of the Westbrook trial that Edmonds' participation in settlement discussions were never discussed (II 274).

Mr. Dunnam's further testimony was that after a grievance was filed against Respondent in December, 1998 (Exhibit 26 dated December 2, 1998) the subject of Edmonds' actions in the Westbrook trial came up in discussions between Dunnam and Respondent. The record reflects that Respondent attached Dunnam's unsigned

Affidavit to Respondent's Response to the request for investigation in the matter relating to him - File No: 3612/98 – (Exhibit 10 dated December 18, 1998). During the course of discussions with Respondent regarding the Affidavit and the allegation that Edmonds had engaged in settlement negotiations with defense counsel in Westbrook, Dunnam advised Respondent that the allegations were true and that he would not sign an Affidavit that stated otherwise. That Respondent expressed no surprise at this information. The Panel finds that though there is some evidence that Respondent may have been advised of Edmonds' conduct in settlement discussions in Westbrook, that the proofs are insufficient to establish this fact and that Petitioner failed to meet its burden of proof regarding the allegations of misconduct contained in Count four.

Count Six-Henry:

As to the Jamal Ahmed Henry matter, the record reflects that at least three hearings were held in his matters, they being on November 20, 1998 (Exhibit 8), November 3, 1998 and November 17, 1998 (Exhibits 9 and 6).

It was the testimony of Holly Baker that prior to October 20, 1998, she had appeared at a hearing for Mr. Henry, but that it was continued to October 20, 1998. (II 185). That a big write on/write off calendar was on Respondent Dietrich's wall where Court assignments were listed. That a few days prior to October 20, 1998:

“ . . . we were all at the calendar. Mr. Dietrich wanted me to go up and do a hearing on that date in Port-it was either Port Huron or Sanilac and I reminded him that Jamal Ahmed Henry's prelim was going to be finished that day and obviously, I couldn't be down here in Detroit and up there at the same time. Then he made the statement:

“that's okay; Jim can handle it”.

The transcript of the preliminary examination held in the Henry matter on Octob

20, 1998 (Exhibit 8) reflects:

"For the defendant: Gregory J. Dunnam".

"Mr. Dunnam: Good morning, your honor, Gregory Dunnam, on behalf of Mr. Jamal Ahmed Henry, who is present to my right, your honor".

The transcript of the hearings held in the Henry matter on November 3rd and November 17, 1998 (Exhibit 9) reflects:

"For the defendant: Gregory Dunn, Esq."

"Mr. Dunn: Dietrich & Associates, Gregory Dunn and Mr. Dunn: We would waive the formal reading and stand mute at this time, your honor and we would ask the Court to enter a plea on behalf of our client".

"Mr. Dunn: we would not, your honor. We would ask for a docketing conference maybe on the 16th or 17th".

It was the testimony of Gregory Dunnam that he did not appear at a preliminary examination relating to Mr. Henry on October 20, 1998 as reflected in Exhibit 8 (I- 120).

He further denied that he appeared on Henry matters on November 3rd. and November 17th as reflected in Exhibit 9 (I 120-121).

In the course of his testimony, Mr. Henry described Mr. Edmonds (I 83-84) and also described Mr. Dunnam as a young attorney, who he dealt with only when he first went to jail. (I 82). He indicated Mr. Edmonds attended three court hearings with him (I 84). A hearing in the District Court, Holly Baker and Edmonds appeared with him (I 88). That in the District Court hearing, Edmonds got:

"up in front of the Judge making statements" (I-89).

In the Circuit Court, he was represented by:

"Edmonds and another guy he had never seen before".

That Mr. Edmonds appeared on his behalf in the Court room. Edmonds did get

up and speak to the Judge (I 90).

Exhibit 6 is a Pretrial settlement offer in the Henry matter dated November 17, 1998 and the signature of the defense attorney thereon is illegible.

As to Exhibit 6, the Pretrial settlement offer as to the Henry matter, dated November 17, 1998, it was the testimony of Bahige (Bill) Chaaban that the signature on that document was that of Edmonds (I 31-33).

The Panel finds that Gregory Dunnam did not attend and represent Mr. Henry at the continued preliminary examination in the 36th District Court on October 20, 1998, but that James Edmonds following the assignment by Respondent Dietrich appeared and misrepresented himself as Mr. Dunnam. That Respondent Dietrich's comment to Hollie Baker following her advising him that she was not available on October 20, 1998 to that effect:

"that's okay Jim can handle it"

reflects that Respondent Dietrich did authorize and direct Edmonds to only appear on Mr. Henry's behalf on October 20, 1998, but on November 3, 1998 and November 17, 1998.

That such conduct constitutes professional misconduct in violation of MCR 9.104(1)-(4); and the Michigan Rules of Professional Conduct to wit: 5.1(b) and (c) and 8.4(a) – (c).

False Answers - Count Nine:

In Respondent's Response to the Request for Investigation in File No. 3521/98, (Exhibit 7) dated December 7, 1998, he stated:

Para. 1) "Upon receiving a six month suspension effective July 7, 1998 [Respondent Edmonds] ceased to act as a contract attorney in an

capacity whatsoever.

Para. 2) "To the best of my knowledge, subsequent to July 7, 1998 [Respondent Edmonds] has not appeared in Court as an attorney, his only presence in Court was as an aid to the attorney of record.

Para. 5) At no time did [Respondent Edmonds] appear as "Jamalahmed" Henry's attorney of record.

That in Respondent's Answers to the Grievance Administrator's Request for Investigation in File No 3612/98, (Exhibit 10) dated December 16, 1998, Respondent stated:

Para. G. ". . . Regarding (his July 15, 1998 deposition in the GT Investment matter "the deposition in question was conducted by [Respondent Dietrich] who was present with the assistance of [Respondent Edmonds] who acted in a law clerk capacity only)".

Para. H. "That regarding the July 17 court hearing in the GT Investment matter he stated "to the best of my knowledge, I was the attorney of record at the court hearing. [Respondent Edmonds] accompanied me in the sole capacity of a legal assistant/law clerk".

That with respect to said Response, Respondent incorporated the unsigned Affidavit of attorney Dunnam which stated in paragraph 5 that regarding the Westbrook matter:

"[Respondent Edmonds] did not involve himself in the settlement negotiations with defense counsel nor did he render advice to the clients regarding the settlement options."

That Respondent attested in his Affidavit (Exhibit 15) dated December 18, 1998, which was incorporated into the Answers to said Request for Investigation:

"I have ensured that [Respondent Edmonds] only worked as a law clerk/legal assistant since the Order of Discipline."

Though Respondent would have it believed that when he made the responses he was not aware of their falseness, there is little question but that subsequent to

Respondent filing Exhibits 7, 10 and 15 and the initial hearing in this matter on May 16, 2000, Respondent was made aware that these statements were false, and that statements made in Dunnam unsigned Affidavit attached in support of Exhibit 10 were likewise false. Despite this fact, Respondent took no action to amend the responses prior to the initial hearing.

The Panel finds that each of these responses were false and were intentionally made for the purpose of deceiving the Attorney Grievance Commission with respect to Respondent's permitting Edmonds to act as an attorney subsequent to the date of Edmonds' suspension from the practice of law.

That such constitutes professional misconduct, in violation of MCR 9.104(1)-(4), (6) and (7); MCR 9.113(A) and Michigan Rules of Professional Conduct, to wit: 1.2(C), 8.1(a) and 8.4(a)-(c).

ATTORNEY DISCIPLINE BOARD
Tri-County Hearing Panel #19


Richard A. Kitch, Chairperson

Dated: Aug 14, 2000

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Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner,

v

Case No. 99-145-GA

EDGAR J. DIETRICH, P 12767,

Respondent.

REPORT ON DISCIPLINE

PRESENT: Richard A. Kitch, Chairperson, Richard Wygonik,
Member and Graham L. Teall, Member

PANEL PROCEEDINGS

This Hearing Panel filed its Report on the charges of misconduct, in accordance with MCR 9.115(J)(1), on August 15, 2000. Contained in that Report were the Panel's findings that Respondent:

1. Violated MCR 9.104(1-4) and MRPC 5.1(b)(c) and 8.4(a-c). In that, as an attorney having direct supervisory authority over a suspended lawyer, he failed to make reasonable efforts to ensure that the suspended lawyer conformed to the Rules of Professional Conduct, by knowingly and intentionally allowing said suspended lawyer to act as Respondent's attorney at Respondent's deposition and at a Court hearing. That Respondent's actions constituted an inducement for said suspended lawyer to violate the Rules of Professional Conduct, engage in dishonesty, fraud, deceit and misrepresentation, which actions were prejudicial to the administration of justice and adversely reflected on Respondent's honesty, trustworthiness and fitness to practice law.
2. Violated MCR 9.104(1-4) and MRPC 5.1(b)(c) and 8.4(a-c) in that as an attorney having direct supervisory authority over a suspended lawyer, he failed to make reasonable efforts to ensure that the suspended lawyer conform to the Rules of Professional Conduct by knowingly and intentionally allowing and inducing said suspended attorney to appear in Court as attorney for a client in a criminal matter on three occasions. That Respondent's actions constituted an inducement for said suspended lawyer to violate the Rules of Professional Conduct, engage in dishonesty, fraud, deceit and misrepresentation, which actions were prejudicial to the administration of justice and adversely reflects on Respondent's honesty and trustworthiness and fitness to practice law.
3. Violated MCR 9.104(1-4), (6) and (7), MCR 9.113(A) and MRPC 8.1(a) and 8.4(a-c), in that he knowingly and intentionally made false statements of material fact in connection with this disciplinary hearing and failed to disclose or correct a misapprehension he attempted to create by said false

statements. That by said actions, Respondent engaged in conduct involving dishonesty, fraud, deceit and misrepresentation, which adversely reflects on Respondent's honesty, trustworthiness and fitness as a lawyer. Further, that the conduct was prejudicial to the administration of justice and exposed the legal profession to contempt, censure and reproach and was contrary to justice, ethics, honesty and good morals.

In accordance with MCR 9.115(J)(2), the Panel conducted a separate hearing on October 26, 2000 to determine the appropriate discipline. No witnesses were called and no exhibits were offered by either party. The Grievance Administrator was represented by Patrick K. McGlinn, Associate Counsel. Respondent, Edgar J. Dietrich, was represented by Robert A. Kuhr. Counsel for the Administrator presented his argument that revocation of the Respondent's license to practice law was appropriate upon application of the ABA Standards for Imposing Lawyer Sanctions as mandated by the Michigan Supreme Court in Grievance Administrator v. Lopatin, 426 Mich 235 (2000). Counsel for the Respondent argued that neither revocation nor suspension would be appropriate in this case upon proper application of the ABA Standards and in light of the mitigating factors. Both parties provided assistance to the Panel by presenting their arguments with specific reference to the analytical framework of the ABA Standards and to specific aggravating and mitigating factors identified in ABA Standard 9.0.

In answering the questions posed in ABA Standard 3.0, the Panel focused on Standard 3.0(b), specifically the question of whether it has been shown in this case that Respondent acted "intentionally" or "knowingly". (The Panel rejects the suggestion that Respondent acted negligently). Upon review of the whole record, it is the Panel's conclusion that Respondent's conduct could better be described under Standard 6.12 and that suspension is therefore appropriate. Similarly, the Panel concludes that Respondent's conduct falls under the description of ABA Standard 7.2 which does not contain the element of "intent to obtain a benefit for the lawyer or another" found in Standard 7.1.

In determining the appropriate discipline within the broad range of "suspension", the panel has considered the presence of the following aggravating factors: a dishonest and selfish motive [Standard 9.22(b)]; a pattern of misconduct [Standard 9.22(c)]; submission of false evidence, false statements or other deceptive practices during the disciplinary process [Standard 9.22(f)]; and a refusal to acknowledge the wrongful nature of conduct [Standard 9.22(g)]. Weighing all of these factors in light of the serious nature of the misconduct which has been established, we conclude that Respondent should be suspended from the practice of law in Michigan for a period of three years.

The Panel further concludes that, in light of the subterfuge that Respondent engaged in when inducing and authorizing a suspended lawyer in his office to continue to act and hold himself out as an attorney, that it is reasonable to assume that Respondent will be inclined to engage in similar subterfuge in order that he might continue to act or hold himself out as an attorney following the effective date of his suspension. Therefore Respondent shall, during the period of his suspension, provide satisfactory evidence on a quarterly basis to the Grievance Administrator that he is not engaged in any form of conduct involving the practice of law, directly or indirectly, through other persons or other means. We also direct that Respondent shall remove his name from any place of business if the use of his name is likely to create the impression to a member of the general public that he is engaged in the practice of law.

PRIOR MISCONDUCT

ADB Case No.

Discipline

Effective Date

97-306-GA

Suspended 45 Days

Stay Pending Appeal

SUMMARY OF COSTS

Attorney Discipline Board (Transcripts)	\$1,534.06
Attorney Grievance Commission (\$348.18) (Less \$25.00 witness/mileage fee for James L. Edmonds voluntarily withdrawn 12/15/00)	\$ 323.18
TOTAL COSTS	\$1,857.24

ATTORNEY DISCIPLINE BOARD
Tri-County Hearing Panel #19

By: 
Richard A. Kitch, Chairperson

Dated: March 6, 2001

DATED: