STATE OF MICHIGAN

# Attorney Discipline Board

Grievance Administrator,

Petitioner/Appellee,

v

Frederick A. Petz, P-28327,

Respondent/Appellant,

Case Nos. 99-102-GA; 99-130-FA

Decided: July 23, 2001

## BOARD OPINION

The Attorney Discipline Board is called upon in this case to review the appropriate level of discipline for an attorney's misappropriation of client funds of more than $120,000 from an escrow account, his failure to obtain his clients' permission to invest their funds in a partnership he controlled and for misleading the client as to the location and accessibility of her money. The hearing panel ordered a 30 month suspension of the respondent's license to practice law, citing the applicability of Standard 4.12 of the American Bar Association's Standards for Imposing Lawyer Sanctions and emphasizing certain factors which, in the panel's opinion, weighed heavily in mitigation. The respondent, Frederick A. Petz, has petitioned for review on the grounds that the discipline imposed by the hearing panel is unduly punitive. The respondent suggests that protection of the public and the legal profession may be achieved through the imposition of a suspension of 179 days or less, thus allowing his automatic reinstatement upon the filing of an affidavit in accordance with MCR 9.123(A). The Grievance Administrator petitioned for review on the grounds that the Standards for Imposing Lawyer Sanctions, if properly applied, suggests that revocation of respondent's license is appropriate.

Under ABA Standard 4.11, disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client. Respondent's conduct in this case falls squarely under that Standard. In the absence of compelling mitigating circumstances which would justify a lesser sanction, we conclude that disbarment is appropriate in this case.

## I. Panel Proceedings

The Grievance Administrator filed a three count formal complaint in this matter on July 21, 1999. Briefly summarized, it recited that respondent agreed to act as escrow agent for his clients, Thomas L.

Janssen and [Mrs.] Melvin H. Janssen in June 1993.[1] In accordance with the escrow agreement, the Janssens provided respondent which a check for $160,000 which was to be held in escrow and distributed in accordance with his clients' instructions.[2] The complaint charged in count I that respondent wrote and cashed a check payable to himself for $20,000 from the escrow account on September 13, 1993. The complaint further charged that in April and May of 1994, respondent recommended to Thomas Janssen that the funds he was holding in escrow should be invested for the reason that the escrow account was not drawing interest. He reported that the account had a balance in May 1994 of $128,917.86. In fact, the complaint charged, the escrow funds had earned approximately $4,000 in interest although this interest was not disclosed on the purported "accounting" prepared by respondent. Nor did the respondent disclose to Thomas Janssen that he had withdrawn $20,000 for his own use and that the actual balance in the account in May 1994 was $112,260.34. Count I of the formal complaint recounts respondent's subsequent misrepresentations to Mr. & Mrs. Janssen.

Count I charged specifically that respondent misappropriated $20,000 from the escrow account on September 13, 1993 without the knowledge or approval of his clients; that he withdrew an additional $36,350 from the escrow account for his own use between September 13, 1993 and December 20, 1996; and that he converted an additional $67,000 by transferring funds from the escrow account to the use of Palindromic Associates, a partnership in which he held the controlling interest.

Count II charged that respondent misrepresented the status of the escrow account and his use of the funds to his clients at various times between April 1994 and July 1998. Count III charged that, to the extent that respondent was "investing" his clients' funds in his own partnerships, he failed to obtain his clients' permission after full disclosure and informed consent.

The respondent failed to file a timely answer to the complaint and his default was filed August 18, 1999. Respondent subsequently obtained counsel, filed a proposed answer to the complaint in October 1999 and filed a motion to set aside the default in November 1999. In his answer, the respondent admitted or pled no contest to the allegations in counts I and III of the complaint. The hearing panel granted the respondent's motion to set aside his default as to count II only.

At the commencement of the hearing on misconduct on March 22, 2000, it was agreed by the parties and the panel that respondent would admit the charges of misappropriation and conflict of interest in counts I and III and that the panel would receive evidence only on the charges of misrepresentation to his clients set forth in count II. The parties further stipulated to the entry of the Grievance Administrator's exhibits 1-12 which included the June 29, 1993 escrow agreement between respondent, Thomas L.

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[1]Mr. & Mrs. Janssen had divorced and respondent had assisted them in the sale of jointly held property. The net proceeds of that sale amounted to $160,000.

[2]The agreement stated, in paragraph 4, that the funds in respondent's possession were to be used in a manner directed by mutual agreement of Mr. & Mrs. Janssen. The agreements could be either written or oral "but must be mutually confirmed by each client."

Janssen and Melvin H. Janssen; correspondence from respondent to his clients and another attorney; and the bank records for respondent's trust account at the National Bank of Detroit and his "escrow account" at Standard Federal Savings and Loan. The panel received the testimony of respondent and complainant Melvin H. Janssen.

The hearing panel issued its report on misconduct on May 8, 2000. Notwithstanding the respondent's admissions to the allegations in counts I and III, the hearing panel's report on misconduct contains a detailed summary of its factual findings as to all three counts based upon the testimony and documentary evidence presented.

Based upon respondent's answer and admissions, the panel found that it was undisputed that respondent misappropriated funds from the escrow account without the knowledge or approval of his clients; specifically, that he cashed a check drawn on the escrow account on September 13, 1993, without his clients' knowledge or consent; that he withdrew an additional $36,350 from the account between September 1993 and December 1996 and used those funds for his own personal use without his clients' knowledge or consent; and that he converted $67,000 to the use of Palindromic Associates without his clients' knowledge or consent. The panel concluded that the respondent's conduct as described in count I was in violation of MCR 9.104(1)-(4) and the Michigan Rules of Professional Conduct 1.4; 1.15(a)-(c) and 8.4(a)-(c).

With regard to the charges in count III, the panel found that the respondent admitted failing to disclose in writing to his clients the terms of his plan to use funds from the escrow account for investment in Palindromic Associates; failed to afford his clients a reasonable opportunity to seek the advice of independent counsel and failed to obtain the written consent of his clients to use or invest their funds in Palindromic Associates. These omissions, the panel concluded, constituted professional misconduct in violation of MCR 9.104(1)-(4) and Michigan Rules of Professional Conduct 1.8 and 8.4(a)-(c).

Finally, with regard to the disputed allegations in count II, the panel found:

> Respondent did mislead Mrs. Janssen as to the accessibility of her money. The 'Account Ledger' for the Janssen Escrow, which Respondent prepared, listed a 'Balance' column of figures [Hearing Ex. 2, 9]. A reasonable inference from the documents which Respondent prepared is that Mrs. Janssen had a fund 'balance' in the escrow account of $56,888.95 as of December 1, 1996, and that these funds in fact existed and were readily available to her [Hearing Ex. 2]. In reality all but a few hundred dollars of this account had been depleted a year earlier.
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> * * *
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> On the record as a whole, the Panel concludes that Respondent misrepresented that the escrow monies were kept in a non-interest bearing account from July 30, 1993 to May 14, 1994. In fact during this period, the account earned more than $4,000 in interest. Respondent's December 20, 1996 letter to Thomas L. Janssen with the attached

> 'Account Ledger' overstated the funds that were actually in the Standard Federal account and failed to disclose the interest that had been earned on the account to May 1, 1994. In addition, Respondent's December 19, 1997 To whom It May Concern letter stated that Mrs. Janssen had on deposit in the "Client's Trust escrow" the sum of $57,019.38. Neither the Standard Federal escrow account nor Respondent's client trust account, combined or separately, had funds to cover that sum [Hearing Ex. 4, 11]. Mrs. Janssen could reasonably conclude from this letter that Respondent in fact had the funds in his possession. [Hearing panel report on misconduct pp 8-10.]

Based upon the evidence presented, the panel concluded that these misrepresentations constituted violations of MCR 9.104(1)-(4) and Michigan Rules of Professional Conduct 1.4, 4.1 and 8.4(a)-(c).

The hearing panel conducted a separate hearing on June 7, 2000 to address the appropriate level of discipline. At that hearing, respondent was called by the Grievance Administrator to elicit further information on how he spent the money which he had taken from the escrow account and to explain what the Grievance Administrator characterized as discrepancies between his various representations to his clients and the Grievance Administrator. The respondent had testified in March 2000, for example, that he could not recall how he had spent the September 13, 1993 withdrawal of $20,000 from the escrow account. He implied that the $20,000 could have been used to make disbursements or to pay legal fees in connection with the sale of the Janssens' former property. At the discipline hearing in June 2000, however, respondent testified that he had examined his records during the intervening months:

> MR PETZ: Specifically, the $20,000 that was discussed of the earlier withdrawal, those funds were used for the payment of a nursing home bill for my aunt, who was my dad's oldest sister, who was 90 years of age, and in Bon Secours Nursing Center to the best of what I can tell of the funds in the checks that were written at that time, and they were debts that I was responsible for by signing her in to the nursing home. The other funds were utilized at various points in time for expenses, both personal and for the law office or Palindromic, to defray costs and expenses that we had in the various businesses and that I had personally. [Tr 06/07/00 p, 27.]

At the commencement of his testimony in mitigation, respondent tendered to Mrs. Janssen certified checks in the total amount of $40,000.00 representing, he said, payment of his remaining obligation to Mrs. Janssen. He testified that payment in full had been made to Mr. Janssen by April 1999, prior to the filing of the formal complaint. Respondent described a set of "unique and disastrous" circumstances, including the loss of income from several corporate clients, which prevented his prompt repayment of funds to the Janssens. He testified that he was extremely sorry that the situation developed as it had and stated that he had not intended to injure his clients or deprive them of their money.

The hearing panel issued a report on discipline on August 10, 2000. The report cited an historic

range of discipline in Michigan for deliberate misappropriation of client funds of three year suspension to disbarment. The panel explained that in this case it had found a "unique relationship" between the complainant and respondent in that respondent had implied authority to use his clients' money. The panel noted the mitigating effect of respondent's prior unblemished record and his full restitution (albeit not until after the discipline proceedings were commenced) and concluded that a suspension of 30 months was appropriate. The Grievance Administrator filed a motion for relief from judgment (in the nature of a motion for reconsideration) on the grounds that the hearing panel did not appropriately apply Standard 4.11 of the American Bar Association's Standards for Imposing Lawyer Sanctions. That motion was denied by the panel on October 23, 2000 with an accompanying opinion containing its conclusion that the respondent's conduct in this case was more properly considered under ABA Standard 4.12. That Standard states that "suspension in generally appropriate when a lawyer know s or should know that he is dealing improperly with client property and causes injury or potential injury to a client." The panel also discussed the presence of mitigating factors identified in Section 9.32 of the ABA Standards including absence of a prior disciplinary record, character or reputation and remorse.

## II. Discussion

In Grievance Administrator v Lopatin, 462 Mich 235; 612 NW2d 120 (2000), the Supreme Court directed the Board and hearing panels to employ the American Bar Association's Standards for Imposing Lawyer Sanctions in determining the appropriate level of discipline. In Lopatin, the Court summarized the Standards' theoretical framework for deciding the level of discipline to be imposed after a finding of misconduct.

The inquiry begins with three questions which appear in ABA Standard 3.0:

1. What ethical duty did the lawyer violate? (A duty to a client, the public, the legal system or the profession?)

2. What was the lawyer's mental state? (Did the lawyer act intentionally, knowingly or negligently?)

3. What was the extent of the actual or potential injury caused by the lawyer's misconduct? (Was there a serious or potentially serious injury?)

Lopatin, 462 Mich at 239-240 (quoting ABA Standards, p 5).

Next, the hearing panel must consider recommended sanctions based upon the answers to these questions. Lopatin, 462 Mich at 240; ABA Standards, pp 3, 4-5. Then, aggravating and mitigating factors are to be considered. *Id.*

Finally, as this Board noted in Grievance Administrator v Ralph E. Musilli, No. 98-216-GA (ADB 2000), the Board or a hearing panel may consider whether there are any other factors which may make

the results of the foregoing analytical process inappropriate for some articulated reason. As the Court explained in directing the Board and the panels to follow the Standards:

> We caution the ADB and hearing panels that our directive to follow the ABA Standards is not an instruction to abdicate their responsibility to exercise independent judgment. Where, for articulated reasons, the ADB or a hearing panel determines that the ABA Standards do not adequately consider the effects of certain misconduct, do not accurately address the aggravating or mitigating circumstances of a particular case, or do not comport with the precedent of this Court or the ADB, it is incumbent on the ADB or the hearing panel to arrive at, and explain the basis for, a sanction or result that reflects this conclusion. [Lopatin, 462 Mich at 248 n 13.]

In the discipline phase of the proceedings below, the hearing panel and the parties appear to have focused primarily upon the applicability of ABA Standard 4.1 in determining whether disbarment or suspension should be the presumptive discipline. The panel and the parties then identified and applied factors in the record to be considered in aggravation or mitigation. While we agree that this case is analyzed under Standard 4.1 of the ABA Standards, we first review the three questions which form the first step of the analysis mandated by the Court in Lopatin.

## A. Application of ABA Standard 3.0

**What ethical duty did the lawyer violate?** (A duty to a client, the public, the legal system or the profession?)

First and foremost, respondent violated his duty to his clients, Thomas Janssen and Melvin Janssen, when he used the funds which they had entrusted to his care to discharge his personal obligations. He further violated his duty to those clients when he provided them with an "account ledger" which disclosed neither the accrual of $4,000 in interest or his unauthorized withdrawal of $20,000. He violated his duty to be forthright and honest with Mrs. Janssen and her counsel when he assured them that Mrs. Janssen's money had been invested and was available to her when, in fact, he had spent the money to discharge his own debts.

We cannot overlook, however, respondent's equally egregious violation of his duty to the legal profession to maintain the highest standards of integrity when acting as a fiduciary.

> There are few business relations involving a higher trust and confidence than that of an attorney acting as a trustee in the handling of money for a client or by order of the court. The basis of their relationship is one of confidence and trust. Any action by the attorney which destroys that basic confidence clearly subjects the legal profession and the courts to obloquy, contempt, censure and reproach. Foremost among the acts destroying the confidence between the public and the bar is the conversion and misuse of client funds. [State Bar Grievance Administrator v Baun, 396 Mich 421

(1976).]

**What was the lawyer's mental state?** (Did the lawyer act intentionally, knowingly or negligently?)

The "definitions" which are included as a preface to the Standards include the following:

> '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.

It must be stated plainly that neither ABA Standard 3.0(b) nor the commentary to Standard 3.0 provide much guidance in identifying a demarcation between conduct which is said to be "intentional" and that which is "knowing." Ironically, Standard 4.1, which is the focus of our examination in this case, includes no reference to "intentional" conduct. Instead, Standard 4.11 suggests that disbarment is generally appropriate when a lawyer "knowingly converts client property and causes injury or potential injury to a client," while Standard 4.12 suggests that suspension is generally appropriate when a lawyer "knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client."

Nevertheless, we agree with the Grievance Administrator that respondent deliberately withdrew $20,000 from the subject escrow account in September 1993 in order to pay a personal obligation for his aunt's nursing home care. His conversion of $20,000 belonging to his clients was an intentional act. His conduct with regard to that transaction can be described in no other way.

In its October 23, 2000 order denying the Grievance Administrator's motion for relief from judgment, the hearing panel stated:

> It is undisputed that on September 13, 1993, respondent wrote and cashed for payment from a client escrow account a check payable to 'CASH' in the amount of $20,000, and respondent does not know the reason for this disbursement. [Hearing panel order 10/23/00 p, 5.]

As the Grievance Administrator correctly points out, respondent did testify at the hearing on March 22, 2000 that he could not recall the purpose of that withdrawal. However, at the hearing on June 7, 2000, respondent had examined his records and he testified unequivocally that the $20,000 withdrawn from the Janssen's escrow account on September 13, 1993 was used to discharge his personal obligation to Bon Secours Nursing Center for the care of his aunt. (Tr 06/07/00 p, 27).

In its order denying the Administrator's motion for relief from judgment, the panel observed that "there was no testimony from Mrs. Janssen, however, that respondent was not authorized to use the $20,000 reflected in the September 13, 1993 check for investment purposes." We wish to correct any

misperception which might be drawn from that statement as to the Grievance Administrator's evidentiary burden. The respondent admitted, both in his answer to the formal complaint and at the commencement of the hearing, the allegations in Count I that he misappropriated $20,000 on September 13, 1993 by withdrawing that sum from the escrow account without his clients' knowledge or approval. Furthermore, the record is clear, and respondent admits, that he did not recommend that the funds which he held in the escrow account be "invested" until he spoke with Thomas Janssen in April or May of 1994. At that time, he did not reveal that he had already converted $20,000 for his own use. Instead he presented his clients with an "accounting" which did not mention the missing $20,000 and did not reveal that approximately $4,000 in interest had been earned on the account. Regardless of what respondent or his clients may or may not have understood after May 1994 with regard to his authority to "invest" their funds, the Grievance Administrator was not required to disprove any suggestion that such authority existed in September 1993. Both respondent's admissions and the evidence clearly establish that respondent had no authority from his clients, either express or implied, to write a check to himself for $20,000 to pay his aunt's nursing home expenses.

**What was the extent of the actual or potential injury caused by the lawyer's misconduct?** (Was there a serious or potentially serious injury?)

In this case, the actual serious injury to complainant Melvin Janssen is obvious from the record. Funds which she entrusted to her lawyer in 1993 were used without her knowledge and consent and her funds were not fully restored to her until the morning of the public hearing conducted on June 7, 2000.

Of at least equal importance was the harm suffered by the legal profession as the result of respondent's abuse of his clients' trust. Indeed this Board has often held that maintenance of public confidence in the legal profession as a repository of client funds is a sufficient reason to impose the strictest forms of discipline in cases involving conversion of client funds,

> Regardless of any sympathy we might have for an individual attorney facing financial difficulty, we must impose a level of discipline in this case which conveys the message to both the public and the legal profession that it is never acceptable for an attorney to place his or her financial need above the obligation to safeguard client funds. [Grievance Administrator v David A. Woelkers, 97-214-GA (ADB 1998) (increasing 30 day suspension to three years).]

## B. Applicable ABA Standard

Having determined the answers to those three questions, we now examine the recommended sanction under the ABA Standards. Under those Standards, an attorney's failure to preserve client property is to be considered under ABA Standard 4.1. We perceive no basis for a finding that respondent's conduct was merely negligent. We therefore examine the two Standards considered by the hearing panel and the parties.

ABA Standard 4.11 states:

> Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

ABA Standard 4.12, which the hearing panel found to be applicable, states:

> Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

In considering which of these two standards most accurately describes the respondent's conduct in this case, the commentaries are instructive. The commentary to Standard 4.11 turns to a case frequently cited by this Board and courts in other jurisdictions when discussing the rationale for imposing disbarment as a sanction for the misappropriation of client funds:

> Whether it be a real estate closing, the establishment of a trust, the purchase of a business, the investment of funds, the receipt of proceeds of litigation, or any one of a multitude of other situations, it is common-place that the work of lawyers involves possession of the client's funds . . . whatever the need may be for the lawyer's handling of client's money, the client permits it because he trusts the lawyer . . . [T]here are few more egregious acts of professional misconduct of which an attorney can be guilty than the misappropriation of a client's funds held in trust. In Re Wilson 81 N.J. 451; 409 A.2d , 1153 (1979).

The commentary to Standard 4.11 continues:

> In Carter v Ross, 461 A.2d 675 (R.I. 1983), for example, the lawyer took money from an estate and used it to pay office and personal expenses. The Rhode Island Supreme Court cited the Wilson case and imposed disbarment: "We, like our New Jersey colleagues, are convinced that continuing public confidence in the judicial system and the Bar as a whole requires that the strictest discipline be imposed in misappropriation cases." 461 A.2d at 676.

By contrast, the commentary to Standard 4.12 begins,

> Suspension should be reserved for lawyers who engage in misconduct that does not amount to misappropriation or conversion. The most common cases involve lawyers who commingle client funds with their own, or fail to remit client funds promptly.

Stripped of any inferences of actual or implied consent which may be drawn after the respondent's less than forthright suggestion in early 1994 that he would be willing to "invest" his clients' funds, there should be no ambiguity or confusion attached to respondent's conduct on September 13, 1993. Faced with the need for cash to discharge a personal obligation and presented with the availability of funds entrusted to him by his clients, respondent did not seek his clients' permission to "borrow" the funds and

he did not present them with an "investment" opportunity. Instead, he wrote and cashed a check to himself for $20,000 and he did not reveal that withdrawal to his clients.. Such conduct can be described in many ways, including misappropriation, conversion, embezzlement or theft. Under any name, it was conduct which meets the criteria of ABA Standard 4.11 for which disbarment is the presumptive level of discipline.

### C. Aggravating and Mitigating Factors

We now turn to the penultimate step in the process delineated under Lopatin, the existence of aggravating or mitigating factors.

The hearing panel recognized the following factors worthy of consideration in mitigation: absence of a prior disciplinary record [Standard 9.32(a)]; character or reputation [Standard 9.32(g)]; and remorse [Standard 9.32(l)]. There is evidentiary support on the record for the panel's conclusion that those mitigating factors may be considered here.

We are inclined, however, to agree with the Administrator that those factors in mitigation must be weighed against certain aggravating factors which are also present in the record, especially respondent's dishonest and selfish motive [Standard 9.22(b)]; a pattern of misconduct [Standard 9.22(c)]; and substantial experience in the practice of law [Standard 9.22(i)].

In prior cases involving an attorney's knowing conversion of client funds, we have searched the record for "compelling" mitigation. See, for example, Grievance Administrator v Gary B. Perkins, ADB 238-87 (ADB 1989) [increasing reprimand to two year suspension]. Given the nature and seriousness of respondent's misconduct in this case, misconduct which occurred over a period of years, we are not persuaded that the mitigating factors in this case are sufficiently compelling to warrant a reduction in the level of discipline suggested under ABA Standard 4.11.

### D. Other Considerations Regarding the Level of Discipline

Finally, we reach the last step in our analysis - consideration of other factors, including the precedent of the Board or the Supreme Court, which might warrant a departure from the discipline suggested by the ABA Standards. During the more than 20 years of its existence, the Attorney Discipline Board has regularly declared that wilful misappropriation of client funds, absent compelling mitigation, will generally result in discipline ranging from a suspension of three years to disbarment. Grievance Administrator v David A. Woelkers, 97-214-GA (ADB 1998). In many of those cases, the Board was inclined to grant substantial deference to a hearing panel's imposition of discipline if the discipline fell within that presumptive range.

With our opinion today, we serve notice that hearing panels presented with facts similar to those in the instant case, that is, intentional conversion of client funds for the lawyer's personal or business use coupled with the absence of compelling mitigation, are, until further order of the Attorney Discipline Board

or the Supreme Court, to apply the American Bar Association's Standards for Imposing Lawyer Sanctions and, if appropriate, to explain why the presumptive sanction of disbarment under Standard 4.11 should not be applied.

The Supreme Court's recent direction to the Board and hearing panels in Lopatin to apply the ABA Standards does not necessarily alter the Court's prior instructions that we consider the unique facts and circumstances of a particular case. Indeed, as noted earlier, the Court has specifically cautioned that its directive to follow the ABA Standards is not an instruction to the Board and hearing panels "to abdicate their responsibility to exercise independent judgment." Lopatin, 462 Mich at 248 n 13. As we noted in GA v David Woelkers, supra (increasing discipline from a 30 day suspension to a three year suspension for an attorney's repeated depletion of his client trust account to pay the expenses of his law office),

> The Supreme Court of at least one state, New Jersey, has adopted a relatively inflexible policy which mandates disbarment in virtually all cases involving the deliberate misuse of client funds. See In Re Wilson [cite omitted]. This Board has not resorted to inflexible levels of discipline, following the dictates of our Supreme Court that "review of these proceedings is best handled on a case-by-case basis," Grievance Administrator v Nichols, 422 Mich 245 (1985), and that attorney misconduct cases generally stand on their own facts. In Re Grimes, 414 Mich 483, 490 (1982). [Grievance Administrator v Woelkers, supra, p 9.]

Nor does the result we reach in this case upon application of the ABA Standards represent a departure from the long held view in our state that conversion of client funds may be expected to result in the highest level of discipline. A review of the notices of discipline issued by the Board and published in the Michigan Bar Journal discloses that since January 1, 1996, hearing panels and the Board have issued 45 final orders of disbarment in cases involving an attorney's misappropriation of client funds. Our decision to increase discipline to disbarment is consistent with those cases. Neither the public nor the legal profession should be surprised that we re ach that result in this case.

## III. Conclusion

For the reasons discussed we conclude that the respondent's intentional conversion of client funds coupled with misrepresentations to his clients must, when properly analyzed under the American Bar Association's Standards for Imposing Lawyer Sanctions, result in the revocation of the respondent's license to practice law.

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

Board members Nancy A. Wonch and Diether H. Haenicke were absent and did not participate.