STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,

Petitioner/Appellee,

v

William A Ortman, P 18540

Respondent/Appellant.

93-135-GA

BOARD OPINION

The respondent filed a petition seeking review of the order of revocation entered in this matter by Tri-County Hearing Panel #9 on May 26, 1995. The Board has conducted review proceedings in accordance with MCR 9.118, including a review of the record below, consideration of the authorities cited by the parties and a review hearing before the Board on September 14, 1995. For the reasons stated below, discipline in this case is reduced to a suspension of three years.

The formal complaint charged that the respondent made false, scandalous and spurious allegations against judges and attorneys in written pleadings and briefs in litigation brought on his own behalf or involving the Ortman Company, a Michigan co-partnership or OrtFam, Inc., a Michigan corporation. Public hearings were conducted in this matter on November 30, 1993, May 24, 25, 1994, June 2, 27, 1994, July 13, 15 and 18, 1994, August 22, 23, 24, 1994 and September 1, 1994. On February 20, 1995, the hearing panel ruled that the respondent had engaged in the acts of misconduct charged in Counts I-III of the complaint. A fourth count was dismissed. Neither respondent nor his counsel attended the sanction hearing held on May 3, 1995. On May 26, 1995, the panel issued the order of revocation which is the subject of this review.

The respondent's allegations that the proceedings in this matter, indeed that the Attorney Grievance Commission and Attorney

Discipline Board themselves, violate the constitutions of the State of Michigan and of the United States have been considered and are denied. See Grievance Administrator v William A House, ADB 219-87; 247-87 (Bd Op 6/28/89), lv den 434 Mich 1214 (1990); Grievance Administrator v James A Tucker 94-12-GA, (Bd Op 5/23/95), lv den 449 Mich 1206 (1995).

In reviewing a hearing panel's findings, the Board must determine whether those findings have proper evidentiary support in the whole record. In re Daggs, 411 Mich 304, 318-319 (1981); Grievance Administrator v August, 438 Mich 296, 304 (1991). Review of the voluminous record in this case discloses substantial evidentiary support for the panel's findings and for the panel's conclusions that the respondent's conduct violated the provisions of MCR 9.104(1)-(4) and the Michigan Rules of Professional Conduct, MRPC 3.1; 3.3(a)(1) and (2); 3.4(c); 3.5(c); 8.2(a); 8.4(a)-(c) and, where applicable, the Code of Professional Responsibility, DR 1-102(A)(1) and (4)-(6); DR 2-109(A)(1)(2); DR 7-102(A)(1),(2),(5) and (8) and DR 7-106(C). The Board has also reviewed the respondent's claims of procedural defects in the hearing panel proceedings and finds that they are without merit.

The respondent's wholly inappropriate and unwarranted accusations of criminal wrongdoing against the lawyers and judges with whom he came in contact while litigating his or his family's financial claims were outrageous and repugnant to the common standards of honesty and decency expected of members of the bar. The Grievance Administrator's characterization of respondent's conduct as "a scandalous abuse of the legal process" is supported by the record.

Although there are relatively few reported cases involving misconduct of this type, consideration of the cases relied upon by the Administrator in support of disbarment is appropriate.

In oral arguments at the sanction hearing conducted by the panel on May 3, 1995, the Grievance Administrator's counsel cited fifteen cases from other jurisdictions spanning a period of 164 years, from 1821 to 1985, in which an attorney was disbarred for

making false and malicious charges against judicial officers or opposing counsel.

It was further argued to the panel that:

> Michigan has viewed this type of conduct just as seriously, and has dealt with it in a consistent fashion. The Michigan Supreme Court has long acknowledged the impropriety of such conduct as that engaged in by Mr Ortman. [Hrg Tr 5/3/95, p 16].

Counsel cited four Michigan cases to the panel: In re Mains, 121 Mich 603 (1899); In re Estes 355 Mich 411 (1959); Grievance Administrator v Lepley, ADB 21-87, lv den 437 Mich 1250 (1991); and Grievance Administrator v E Frank Cornelius, 91-201-GA; 91-253-FA (Panel Report 12/29/92). While the panel was specifically advised that the Mains and Cornelius cases resulted in disbarment, the levels of discipline imposed in the Estes and Lepley matters were not referred to by counsel in the arguments to the panel. [1]

The Administrator also cited Cornelius, Lepley and Mains, at the review hearing. [2] When questioned as to whether any of those individuals had been the subject of discipline "prior to disbarment," counsel replied:

> I can't answer that question. I don't think that Frank Cornelius had prior discipline, but it wasn't my case and I don't know. They were disbarred, though, for those acts in those particular cases. [Review Tr 9/14/95, p 18.]

In actuality, only two of these Michigan cases cited resulted in disbarment.

In In re Estes, the Supreme Court affirmed the one-year suspension imposed by a panel of three circuit judges.

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[1] These four Michigan cases were cited in Petitioner's Brief in Opposition to Respondent's Motion for Summary Disposition, filed one and a half years earlier on October 15, 1993. In that pleading, reference was made to the 120-day suspension affirmed by the Board in Matter of James Lepley but the case was not cited in the context of a request for a specific level of discipline.

[2] The Grievance Administrator's brief in response to the Respondent's petition for review is confined to the constitutional and procedural issues raised by the Respondent. The appellate briefs filed with the Board by the parties do not cite authority bearing upon the appropriate level of discipline.

In Grievance Administrator v James Lepley, the Attorney Discipline Board affirmed a suspension of 120 days based upon a finding that the respondent made unfounded accusations against a judge. The Grievance Administrator's petition for leave to appeal was denied by the Court. Lepley, 437 Mich 1250 (1991).

We do not find, or imply, any intent to mislead. Nevertheless, by failing to disclose the level of discipline imposed in the Estes and Lepley matters, counsel may have given the hearing panel the mistaken impression that cases of this type in Michigan have uniformly resulted in disbarment. The better practice, when citing prior decisions of hearing panels, the Board or the Supreme Court in support of a specific level of discipline, would be to disclose the level of discipline imposed and discipline history in each case cited.

It is axiomatic that comparisons to other cases are of limited value and that the appropriate level of discipline in each case must depend on the unique factors presented in each case. Matter of Grimes 414 Mich 483 (1982). Nevertheless, to the extent that they provide some guidance, the Michigan cases cited by the Grievance Administrator are relevant and have been considered. In addition to the suspensions of one year or less imposed in Estes and Lepley, the Board has considered the disbarment ordered by the Supreme Court in In re Mains, supra, an 1899 case, and the revocation ordered by a hearing panel in Cornelius, supra, a case in which the respondent failed to file an answer to the amended complaint and failed to appear at the hearing.

While the respondent's conduct was inexcusable, the record is not entirely barren of mitigating factors. These include the respondent's prior unblemished record during a legal career of thirty-two years and the extent to which his emotional involvement in his own legal matter apparently impeded his ability to view that litigation as an advocate rather than as a party.

We conclude, therefore, that a suspension of the respondent's license to practice law in Michigan for three years, with the further requirements of reinstatement under MCR 9.123(B) and recertification under MCR 9.123(C), is consistent with the goals of these disciplinary proceedings.

Board Members Marie Farrell-Donaldson, Elaine Fieldman, Barbara B Gattorn, Albert L Holtz and Miles A Hurwitz concur.

Board Member George E Bushnell, Jr was recused and did not participate.

Board Members John F Burns, C Beth DunCombe and Paul D Newman were absent and did not participate.