

IN THE MATTER OF JOSEPH COVINGTON,
A Member of the State Bar of Michigan,
Respondent.
File No. DP-39/82

Decided: March 18, 1983

OPINION OF THE BOARD

Respondent was convicted in Detroit Recorder's Court of the felony of Attempting to Obtain money of a Value Over One Hundred Dollars (\$100.00) by False Pretenses. Thereafter, and pursuant to the Grievance Administrator's petition, the Board ordered an interim suspension and assigned the matter to a hearing panel. The hearing panel accepted proof of the conviction and entered an order of suspension of two years retroactive to the effective date (April 19, 1982), of the Board's interim order. The Grievance Administrator appealed contending greater discipline was required under the circumstances. We agree and increase the discipline to revocation of license. The revocation will be stayed, however, until Respondent's criminal appeal is decided by the Michigan Court of Appeals or until the Michigan Supreme Court should otherwise decide this matter.

Respondent was appointed to represent an indigent defendant in Recorder's Court in late 1976. Respondent and the prosecutor negotiated a plea bargain calling for a reduction in the potential penalty. Thereafter, Respondent represented to the client he could arrange for the original charges to be dropped in exchange for payment of a substantial sum to the assistant prosecuting attorney; the implicit understanding was that the money would be used to "fix" the case.

Respondent was convicted after bench trial. The trial judge, Honorable Clarice Jobes, stated in her Opinion:

"Covington then actually took money from Lake (criminal client) while telling him he would go downtown to pay off someone in order to get the safe charge dropped, when he knew that (prosecutor) Davis has already offered to dismiss the charge in exchange for guilty pleas to two lesser charges. Accordingly, the Court is persuaded beyond a reasonable doubt that the defendant, Joseph Covington, did commit the offense of attempting to obtain money of a value over one hundred (\$100.00) by false pretense and finds him guilty as charged." (GA's Exhibit 01, Opinion of the Court, State of Michigan v. Joseph Covington, File # 76-10422).

We agree with Grievance Administrator that this type of misconduct ranks among the most grave and offensive to come before this Board. If Respondent's conviction is affirmed the appropriate discipline clearly is revocation of his license.

Conviction of a federal tax felony and counseling a client to deceive the Federal authorities in regard there to, was considered by our Michigan Supreme Court as grounds for revocation of

license. In re Grimes, 414 Mich 483, 326 NW2d 380 (1982). We have before us misconduct which is at least as serious as that in Grimes. Respondent's representations to the client were not only a fraud undermining the integrity of the criminal process - they also cast very serious aspersions on the character of the individual prosecutor involved. The attempt to take advantage of a client under considerable pressure and facing a long period of incarceration, is particularly despicable. Such conduct not only violates the essence of the attorney/client relationship, it raises, among other things, the question of whether the Respondent ever had or will have the requisite character which is the basis of the Court's endorsement of every member of the Bar.

“The license to practice law in Michigan is, among other things a continuing proclamation by the Supreme Court that the holder is fit to be entrusted with professional and judicial matters and to aid in the administration of justices as attorney and counselor and an officer of the Court. It is every attorney's duty to conduct himself at all times in conformity with the standards imposed on members of the Bar as a condition of the privilege to practice law.” GCR 1963, 952.1

When this matter first came before the Board, Respondent, sought a stay of the two year suspension ordered by the panel and review of the criminal trial transcript pursuant to In re Sauer, 390 Mich 449, 231 NW2d, 102 (1973) and State Bar Grievance Administrator v. Lewis, 389 Mich 668, 209 NW2d 203 (1976). However, this request was not timely made, Respondent having filed this petition for review approximately one year after the end of the appeal period set forth in GCR 1963, 967.1. In any event, Respondent, on the record before the Board, modified his request asking only for a stay pending exhaustion of his criminal appeal.

We have used our discretion in allowing the stay of revocation ordered herein until completion of the criminal appeal, because we wish to avoid irreparable harm that would result in the event that Respondent's appeal is successful. Also, there is nothing in the record to indicate that there will be an inordinate delay, at this point in time, in deciding Respondent's criminal appeal. We withhold any analysis or conclusion regarding the merit of the criminal appeal, not having had the advantage of a complete review of the criminal trial transcript. However, we have considered the extensive appeal brief filed with the Michigan Court of Appeals by Respondent's attorney Carl Ziembra.

Respondent's license to practice law is revoked. The Order of Revocation will be stayed until completion of Respondent's appeal as indicated in the order of the Board issued herewith.

[Board Member Dr. McDevitt did not participate in the hearing or decision of this matter.]