

Disbarment and Restitution

Ralph M. Engle, P68919, Auburn Hills, by the Attorney Discipline Board, Tri-County Hearing Panel #80, effective April 21, 2017.¹

Based on the respondent's default for failure to file an answer to the formal complaint, the hearing panel found that the respondent committed professional misconduct by failing to comply with an order of discipline, abandoning the legal representation of two clients, and failing to answer three separate requests for investigation.

The panel found that the respondent neglected a legal matter entrusted to him, in violation of MRPC 1.1(c); violated an order of discipline, contrary to MCR 9.104(9); failed to answer three requests for investigation, in violation of MCR 9.104(7), MCR 9.113(A), and MCR 9.113(B)(2); failed to notify clients of his suspension from the practice of law, in violation of MCR 9.119(A); and failed to file proof of compliance with an order of discipline, in violation of MCR 9.119(C). The respondent was also found to have violated MCR 9.104(1)–(4) and MRPC 8.4(a) and (c).

The panel ordered that the respondent be disbarred from the practice of law in Michigan and that he pay restitution totaling \$2,850. Costs were assessed in the amount of \$1,918.75.

1. The respondent has been continuously suspended from the practice of law in Michigan since January 29, 2016. Please see Notice of Suspension and Restitution, ADB Case No. 15-118-GA, issued January 29, 2016.

Disbarment (By Consent)

Steven A. Kovacs, P31239, Leander, Texas, by the Attorney Discipline Board, Tri-County Hearing Panel #21, effective April 29, 2017.

The respondent and the grievance administrator filed a stipulation for a consent order of discipline in accordance with MCR 9.115(F)(5), which was approved by the Attorney Grievance Commission and accepted by the hearing panel. The stipulation contains the respondent's admissions that he provided an untimely notice of his conviction to the Attorney Grievance Commission and Attorney Discipline Board. The stipulation further contains the respondent's admission that he was convicted of misdemeanor embezzlement by an agent or trustee, in violation of MCL 750.1746.

Based on the respondent's admissions and the stipulation of the parties, the panel found that the respondent failed to provide timely notice of his conviction, in violation of MCR 9.120(A) and (B); engaged in conduct prejudicial to the administration of justice, in violation of MRPC 8.4(c) and MCR

9.104(1); and engaged in conduct that violated the criminal laws of the state of Michigan, contrary to MCR 9.104(5).

In accordance with the stipulation of the parties, the hearing panel ordered that the respondent be disbarred from the practice of law in Michigan. Costs were assessed in the amount of \$839.41.

Disbarment (Pending Review)

Andrew L. Shirvell, P70472, Palm Coast, Florida, by the Attorney Discipline Board, Tri-County Hearing Panel #11, effective April 21, 2017.

Based on the evidence presented by the parties at the hearings held in this matter, the hearing panel found that the respondent committed the professional misconduct alleged in counts 1 and 2 of the formal complaint. The panel found that the respondent failed to treat all persons involved in the legal process with courtesy and respect and did so because of a protected personal characteristic, in violation of MRPC 6.5; brought a claim in the United States District Court for alleged tortious interference with a business relationship and thereafter continued to assert the issue without a basis for doing that was not frivolous, in violation of MRPC 3.1; filed an appeal of the United States District Court's imposition of Rule 11 sanctions and thereafter continued to assert the issue without a basis for doing so that was not frivolous, in violation of MRPC 3.1; engaged in conduct that involved dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, contrary to MRPC 8.4(b); engaged in conduct that exposed the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2); and engaged in conduct that was contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3). The respondent was also found to have violated MCR 9.104(1) and (4); and MRPC 8.4(a) and (c).

The panel ordered that the respondent be disbarred from the practice of law. The respondent filed a timely petition for review, and this matter has been scheduled for hearing before the Attorney Discipline Board.

DUTY TO REPORT AN ATTORNEY'S CRIMINAL CONVICTION

All Michigan attorneys are reminded of the reporting requirements of **MCR 9.120(A)** when a lawyer is convicted of a crime:

What to Report:

A lawyer's conviction of any crime, including misdemeanors. A conviction occurs upon the return of a verdict of guilty or upon the acceptance of a plea of guilty or no contest.

Who Must Report:

Notice must be given by all of the following:

1. The lawyer who was convicted;
2. The defense attorney who represented the lawyer; and
3. The prosecutor or other authority who prosecuted the lawyer.

When to Report:

Notice must be given by the lawyer, defense attorney, and prosecutor within **14 days** after the conviction.

Where to Report:

Written notice of a lawyer's conviction must be given to:

Grievance Administrator
Attorney Grievance Commission
Buhl Building, Ste. 1700
535 Griswold, Detroit, MI 48226
and

Attorney Discipline Board
211 W. Fort Street, Ste. 1410
Detroit, MI 48226

Disbarment (With Condition)

Trevor M. Robinson, P69326, Lansing, by the Attorney Discipline Board, Ingham County Hearing Panel #3, effective March 29, 2017.¹

The respondent pleaded guilty to (1) the felonies of embezzlement of a public official, in violation of MCL 750.175; five counts of financial transaction device—steal/retain without consent, in violation of MCL 750.157(1); and four counts of uttering and publishing, in violation of MCL 750.249, in *People of the State of Michigan v Trevor Matthew Robinson*, 56th Circuit Court Case No. 16-020119-FH; and to (2) the misdemeanors of a violation of the occupation code—performing an occupation without a license, in violation of MCL 339.601(3) and (4); and false pretenses—\$200–\$1,000, in violation of MCL 750.218(3)(a)(4), in *People of the State of Michigan v Trevor Matthew Robinson*, 56-A District Court Case No. 15-1235-SM. In accordance with MCR 9.120(B)(1), the respondent's license to practice law in Michigan was automatically suspended effective June 20, 2016, the date of the respondent's felony conviction. Based on the respondent's conviction, the panel found that he committed professional misconduct that violated a criminal law of a state or of the United States, contrary to MCR 9.104(5).

The panel ordered that the respondent be disbarred from the practice of law in Michigan and that he not be eligible to file a petition for reinstatement until he provides proof that he has paid the restitution ordered in the underlying criminal matters and prior disciplinary matters and to the Client Protection Fund at the State Bar of Michigan for any funds which may have been paid to the respondent's former clients. Total costs were assessed in the amount of \$1,937.19.

1. The respondent has been continuously suspended from the practice of law in Michigan since April 29, 2015. Please see Notice of Suspension and Restitution (With Condition), issued April 29, 2015.

Reinstatement

William C. Roush, P23444, Fostoria, by the Attorney Discipline Board, effective March 28, 2017.

AGC Practice Pointers

Charging Interest on Outstanding Attorney's Fees

By Kory Steen, AGC Student Intern, 2018 JD Candidate

The Michigan Rules of Professional Conduct (MRPC) are silent on the issue of whether an attorney can charge interest on unpaid attorney's fees.¹ The Michigan Ethics Committee has opined that an attorney must have a prior agreement that demonstrates the client has agreed to the charging of interest.² Also, the interest rate agreed upon must comport with the Michigan civil usury statute, MCL 438.31. Under the usury statute, an attorney must not charge an interest rate in excess of 5 percent a year unless the prior agreement to charge interest is in writing, in which case 7 percent a year is the maximum rate.³ If an attorney charges an interest rate in violation of MCL 438.31, the interest charged will necessarily violate MRPC 1.5, which prohibits an attorney from charging "an illegal or clearly excessive fee."⁴

There are two key exceptions to MCL 438.31 that permit an attorney to charge a client a higher interest rate. First, if the attorney's client is a corporation, Michigan law permits a written agreement "to pay a rate of interest in excess of the legal rate..."⁵ Second, "time price differentials" are exempted under MCL 438.31.⁶ Generally, a time-price differential allows an attorney to charge a client more if the payment method takes place over a period of time, as long as the total fee remains reasonable under MRPC 1.5.⁷

Under the Michigan Retail Installment Sales Act (MRISA), MCL 445.851, an attorney may, as an alternative to charging interest, offer "a higher time-price differential arrangement for professional services."⁸ However, if the time-price differential is "merely a pretense to camouflage a usurious transaction, the usurious interest charge is unenforceable."⁹ An interest rate will not be considered a time-price differential if the written agreement does not provide the buyer with an option between paying a cash price or the increased credit price.¹⁰ Furthermore, the use of a time-price differential triggers strict disclosure requirements by both MRISA and the federal Truth in Lending Act.¹¹

Therefore, charging interest on attorney's fees violates MRPC 1.5 if (1) there is no prior written agreement and the rate of interest exceeds 5 percent, (2) there is a written agreement with a noncorporation client and the rate of interest exceeds 7 percent, or (3) the attorney alternatively charges a time-price differential and fails to make the required disclosures under MRISA and the federal Truth in Lending Act.¹²

ENDNOTES

1. See CI-77, CI-97, CI-191, CI-537, CI-1106, and RI-40.
2. CI-1106; see also CI-537.
3. MCL 438.31.
4. MRPC 1.5; Riem & Proctor, *Charging Interest on Unpaid Client Accounts*, 70 Mich B J 948 (1991).
5. MCL 450.1275.
6. MCL 438.31.
7. See *Charging Interest*, 70 Mich B J at 949–950; Byerley, *Counsel's Corner: Unpaid Client Accounts—A Matter of Interest*, 76 Mich B J 986, 987 (1997).
8. OAG 1980, No. 5809, p 1,061 (November 3, 1980).
9. *Id.*, quoting *Black v Contract Purchase Corp.*, 327 Mich 636, 643; 42 NW2d 768 (1950).
10. *Id.*, citing *Black*, 327 Mich at 643.
11. MCL 445.850 *et seq.*; USC 1601 *et seq.*
12. *Charging Interest*, 70 Mich B J at 950.

Practice Pointers is a continuing series of periodic reminders from the Attorney Grievance Commission for avoiding discipline. These constructive suggestions are intended to provide a useful counterpoint to the orders of discipline and disability.

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The petitioner has been suspended from the practice of law in Michigan since October 7, 2014. His petition for reinstatement, filed in accordance with MCR 9.123(B) and MCR 9.124, was denied by Tri-Valley Hearing Panel #1, which concluded that the petitioner had not satisfactorily established his eligibility for reinstatement in accordance with those court rules. The petitioner filed a petition for review before the Attorney Discipline Board. After hearing the matter, the Board concluded that the petitioner had satisfactorily met the requirements of the court rules and issued an order of eligibility for reinstatement to the practice of law in Michigan.

The Board received written proof that the petitioner had paid dues to the State Bar of Michigan, and an order of reinstatement was issued by the Board on March 28, 2017. Total costs were assessed in the amount of \$1,320.64.

Automatic Reinstatement

Eric Allan Buikema, P58379, Troy, by the Attorney Discipline Board, Tri-County Hearing Panel #60.

The respondent was suspended from the practice of law in Michigan for 179 days, effective October 6, 2016. In accordance with MCR 9.123(A), the suspension was terminated with the respondent's filing of an affidavit with the clerk of the Michigan Supreme Court on April 4, 2017.

Automatic Reinstatement for Payment of Costs

Kathryn A. McCarthy, P42003, Ypsilanti.

In accordance with MCR 9.128(D), the respondent's license to practice law in Michigan was automatically suspended on September 28, 2016, for failure to pay costs as ordered in *Grievance Administrator v Kathryn A. McCarthy*, Case No. 16-57-JC, and until payment of costs and the filing of affidavits of compliance in accordance with MCR 9.119 and 9.123(A).

The costs have been reimbursed to the State Bar of Michigan and, in accordance with MCR 9.123(A), the suspension was terminated with the respondent's filing of an affidavit of compliance with the clerk of the

Michigan Supreme Court on March 17, 2017, and with the Attorney Discipline Board on May 1, 2017.

Reprimands

Kathryn A. Steiner, P58550, Livonia, by the Attorney Discipline Board, Tri-County Hearing Panel #64, effective April 6, 2017.

The respondent failed to file an answer to the formal complaint, but appeared at the hearing. The hearing panel found that the respondent committed acts of professional misconduct as the result of her failure to respond to the grievance administrator's Request for Investigation (GARI), served February 3, 2015. Based on the respondent's admission at the hearing, the panel found that the respondent failed to respond to a lawful demand for information, in violation of MRPC 8.1(a)(2); failed to answer a request for investigation in conformity with MCR 9.113 and MCR 9.115(D), in violation of MCR 9.104(7); and failed or refused to appear or give evidence, to be sworn or affirmed, or to answer a proper question after being ordered to do so, in violation of MCR 9.112(D)(2). The respondent was also found to have violated MCR 9.104(1), (2) and (4); and MRPC 8.4(a) and (c).

The panel ordered that the respondent be reprimanded. Costs were assessed in the amount of \$1,896.54.

Deborah M. Weihermuller, P64851, Shelby Township, by the Attorney Discipline Board, Tri-County Hearing Panel #101, effective April 8, 2017.

The grievance administrator filed Formal Complaint 15-34-GA, alleging that the respondent committed acts of professional misconduct in the course of her practice by initiating communications on two occasions with two couples seeking to adopt a baby. By leave to the Attorney Discipline Board, the Board granted the respondent's motion for summary disposition as to certain allegations contained in count 2 of the formal complaint, specifically those allegations found in subparagraph 34(c)(iii) and (iv) of the formal complaint. The Board denied the respondent's motion as to the remainder of the allegations of the formal complaint, and they were heard by the

panel at a hearing held January 14, 2016. Regarding the remaining allegations, the hearing panel found that the respondent solicited professional employment from a prospective client with whom the lawyer had no family or prior professional relationship when a significant motive for the lawyer's doing so was the lawyer's pecuniary gain, in violation of MRPC 7.3; and engaged in conduct that violated a criminal law of the state, in particular MCL 710.55(1), contrary to MCR 9.104(5). The respondent was also found to have violated MRPC 8.4(a) and MCR 9.104(4).

The hearing panel ordered that the respondent be reprimanded. Total costs were assessed in the amount of \$3,789.79.

Reprimand (By Consent)

Gail M. O'Brien, P36952, Grosse Pointe Park, by the Attorney Discipline Board, Tri-County Hearing Panel #19, effective April 29, 2017.

The respondent and the grievance administrator filed a stipulation for a consent order of discipline in accordance with MCR 9.115(F)(5), which was approved by the Attorney Grievance Commission and accepted by the hearing panel. The stipulation contains the respondent's admissions to the allegations that she committed professional misconduct when she gave her son, who was in jail following an arrest, anxiety medication, which was made from

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Based on the respondent's admissions and the stipulation of the parties, the panel found that the respondent violated or attempted to violate the Michigan Rules of Professional Conduct, knowingly assisted or induced another to do so, or did so through the acts of another, in violation of MRPC 8.4(a); engaged in conduct prejudicial to the administration of justice, in violation of MCR 9.104(1); engaged in conduct that exposed the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2); and engaged in conduct that was contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3).

In accordance with the stipulation of the parties, the panel ordered that the respondent be reprimanded. Costs were assessed in the amount of \$800.17.

Suspension

Evan J. Feldman, P73437, Huntington Woods, by the Attorney Discipline Board, Tri-County Hearing Panel #72, for three years, effective April 6, 2017.¹

The respondent pled guilty to (1) the felonies of (a) delivery/manufacture 5–45 kilos of marijuana, in violation of MCL 333.7401(2)(d)(ii); (b) delivery/manufacture of marijuana, in violation of MCL 333.7401(2)(d)(iii); (c) possession of a controlled substance (Dilaudid and Vicodin), in violation of MCL 333.7403(2)(b)–(a); and (d) possession of a controlled substance under 25 grams, in violation of MCL 333.7403(2)(a)(v), in *People of the State of Michigan v Evan Justin Feldman*, Oakland County Circuit Court Case No. 15-255846-FH; and to (2) the felony of delivery/manufacture 5–45 kilos of marijuana, in violation of MCL 333.7401(2)(d)(ii), in *People of the State of Michigan v Evan Justin Feldman*, Oakland County Court Case No. 15-256302-FH. In accordance with MCR 9.120(B)(1), the respondent's license to practice law in Michigan was automatically suspended, effective July 21, 2016, the date of the respondent's felony convictions. Based on the respondent's convictions, the panel found that he committed professional misconduct that violated criminal laws of this state, contrary to MCR 9.104(5).

The panel ordered that the respondent's license to practice law in Michigan be suspended for three years. Costs were assessed in the amount of \$1,998.06.

1. The respondent has been continuously suspended from the practice of law in Michigan since July 21, 2016. Please see Notice of Automatic Interim Suspension, issued July 27, 2016.

Suspension and Restitution

Dennis H. Snyder, P29791, Grand Blanc, by the Attorney Discipline Board, Genesee County Hearing Panel #2, for 90 days, effective April 22, 2017.

As alleged in the formal complaint and established by the evidence and testimony submitted, the hearing panel found that the respondent committed professional misconduct while representing a client regarding a disputed mortgage foreclosure for a residential property the client owned in Saginaw County, Michigan.

The panel found that the respondent neglected a legal matter entrusted to him, in violation of MRPC 1.1(c); failed to act with reasonable diligence and promptness in representing his client, in violation of MRPC 1.3; failed to keep his client reasonably informed and failed to respond to inquiries regarding the status of the matter, in violation of MRPC 1.4(a); and failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation, in violation of MRPC 1.4(b).

The panel ordered that the respondent's license to practice law be suspended for 90 days and that he pay restitution in the amount of \$3,500. Costs were assessed in the amount of \$5,379.74.

Automatic Interim Suspension

Lisa Beazley Phillips, P48119, Tecumseh, effective December 5, 2016.

On December 5, 2016, the respondent pled guilty and was convicted of embezzlement—agent or trustee, \$1,000 to \$20,000, a felony, in violation of MCL 750.174(4)(A). Upon the respondent's guilty plea and subsequent conviction, in accordance with MCR 9.120(B)(1), the respondent's license

to practice law in Michigan was automatically suspended.

This matter has been assigned to a hearing panel for further proceedings. The interim suspension will remain in effect until the effective date of an order filed by a hearing panel.

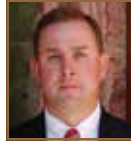
Suspension With Conditions (By Consent)

Stefani C. Godsey, P55940, Lansing, by the Attorney Discipline Board, Ingham County Hearing Panel #2, for 90 days, effective March 24, 2017.

The respondent and the grievance administrator filed a stipulation for a consent order of discipline in accordance with MCR 9.115(F)(5), which was approved by the Attorney Grievance Commission and accepted by the hearing panel. Based on the respondent's admissions and the stipulation of the parties, the panel found that the respondent engaged in conduct that violated or attempted to violate the Rules of Professional Conduct, contrary to MRPC 8.4(a) and MCR 9.104(1); knowingly disobeyed an obligation under the rules of a tribunal, in violation of MRPC 3.4(c); engaged in conduct that exposed the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2); engaged in conduct that was contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3); and engaged in conduct that violated the criminal laws of the state of Michigan, contrary to MCR 9.104(5).

In accordance with the stipulation of the parties, the hearing panel ordered that the respondent's license to practice law in Michigan be suspended for 90 days. Additionally, the panel ordered that the respondent be subject to conditions relevant to the established misconduct. Costs were assessed in the amount of \$756.96.

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