

Disbarment

Timothy D. Vandenberg, P55960, Cal- edonia, by the Attorney Discipline Board, Kent County Hearing Panel #5, effective November 13, 2019.

The respondent was convicted, by guilty plea, of operating while intoxicated/impaired—2nd offense, a misdemeanor, in violation of MCR 257.6256B, in *People v Timothy Vandenberg*, 58th Judicial District Court Case No. HU-16-069805-SD. Based on this conviction, the panel found that the respondent engaged in conduct that violated a criminal law of a state or of the United States, an

ordinance, or tribal law pursuant to MCR 2.615, contrary to MCR 9.104(5).

Additionally, based on the respondent's default for failing to answer the formal complaint, the hearing panel found that the respondent committed professional misconduct by creating a false court order wherein he forged the signature of the judge; lying to a client about the status of their matter when stating that he was drafting a lawsuit on their behalf, and did not do so; and failing to answer two requests for investigation.

Specifically, 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 a client, in violation of MRPC 1.3; failed to keep a client reasonably informed about the status of a matter and comply promptly with reasonable requests for information, in violation of MRPC 1.4(a); 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); failed to exercise independent professional judgment and render candid advice to his client, in violation of MRPC 2.1; failed to make reasonable efforts to expedite litigation consistent with the client's interest, in violation of MRPC 3.2; knowingly made a false statement of material fact or law to a tribunal or failed to correct a false statement of material fact or law previously made to the tribunal by the lawyer, in violation of MRPC 3.3(a)(1); engaged in undignified or discourteous conduct toward the tribunal, in violation of MRPC 3.5; in the course of representing a client, knowingly made a false statement of material fact or law to a third person, in violation of MRPC 4.1; in the course of representing a client, used means that had no substantial purpose other than to embarrass, delay, or burden a third person, in violation of MRPC 4.4; engaged in conduct involving 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 violated Michigan's forgery statute, MCR 750.248; and failed to answer the requests for investigation, in violation of MCR 9.104(7), MCR 9.113(A) and (B)(2). The respondent was also found to have violated MCR 9.104 (1)–(5); and MRPC 8.4(a) and (c).

The panel ordered that the respondent be disbarred from the practice of law in Michigan, effective November 13, 2019. Costs were assessed in the amount of \$2,676.04.

Disbarment (By Consent)

Joseph E. Baessler, P23968, Flint, by the Attorney Discipline Board, Genesee County Hearing Panel #3, effective October 19, 2019.

The respondent and the grievance administrator filed a Stipulation for Consent

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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

Order of Disbarment, in accordance with MCR 9.115(F)(5), which was approved by the Attorney Grievance Commission and accepted by the hearing panel. The stipulation contained the respondent's admissions that he committed professional misconduct

in his capacity as an appointed conservator for an incapacitated individual from 1984 through April 14, 2018, when it was discovered that the respondent had paid himself from the conservatorship without first seeking compensation from Farmers Insurance

within the permissible time periods; failed to file Annual Accounts of Fiduciary to hide his use of the conservatorship funds and to keep his use of the funds from the court's scrutiny; embezzled money from his client; and breached his fiduciary duty as a conservator.



UPL Corner

Durable Powers of Attorney and the Unauthorized Practice of Law

By the Unauthorized Practice of Law Committee

Peter Neu and Lisa M. Robinson Martin, Co-Chairs
Communications Subcommittee

A durable power of attorney is an essential part of an estate plan. However, a misconception exists among many in the public regarding their authority as an agent under a power of attorney. Many agents believe that a power of attorney permits them to appear in court on behalf of the principal or represent the principal's interest in litigation matters without the assistance of a licensed attorney. A power of attorney does not permit an individual to represent another in legal proceedings, and doing so could constitute the unauthorized practice of law.

Undoubtedly, the confusion stems from two points. First, many individuals conclude from the phrase "power of attorney" that they have the legal right to act as an attorney for another. Permitting an individual to act as an attorney solely by virtue of a power of attorney document would evade the rigorous education, licensing, and professional responsibility requirements established by the Michigan Supreme Court for the practice of law, which help to protect the public and ensure that individuals receive quality legal services. A power of attorney document cannot lawfully circumvent these licensing requirements.

Second, most powers of attorney include language permitting the agent to act to protect the principal's legal rights, including the right to pursue claims and litigation. Based on these powers, some individuals believe that a power of attorney provides them with authority to advocate in court on behalf of the principal. This belief is contrary to Michigan statute. MCL 600.916 prohibits the practice of law by any individual who is not licensed or otherwise authorized to practice law in this state. There is no exception in the statute for individuals acting under the authority of a power of attorney. Only a party in interest to the litigation—the principal—may appear in court pro se. Individuals

who seek to advocate on behalf of the principal in court proceedings based on a power of attorney will run afoul of the UPL statute.

It is important for attorneys to make clear to their clients that being named as someone's power of attorney does not confer the ability to represent another in legal proceedings or provide legal advice. Doing so could expose the agent to an allegation of the unauthorized practice of law.

An individual acting under a power of attorney may, however, hire an attorney to represent the principal in legal proceedings, and the agent may work with the attorney to make legal decisions on behalf of the principal. To avoid confusion and an unauthorized practice of law inquiry, it may be helpful for attorneys to explain this point to both the client and the named agent when discussing a power of attorney. See links below for handy postcards and flyers to provide to clients to start and support the discussion.

SBM/Unauthorized Practice of Law

<https://www.michbar.org/professional/upl>

Katherine S. Gardner, UPL Counsel

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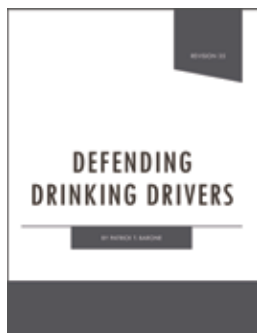
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Based on the respondent's admissions and the stipulation of the parties, the panel found that the respondent failed to act with reasonable diligence and promptness in representing a client, in violation of MRPC 1.3; collected a clearly illegal or excessive fee, in violation of MRPC 1.5(a); and engaged in conduct that violated a criminal law of a state or of the United States, contrary to MCR 9.104(5). The respondent was also found to have violated MCR 9.104(1)–(3); and MRPC 8.4(b)–(c).

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 \$757.14.

Reprimands (By Consent)

Katherine B. Albrecht, P39400, Troy, by the Attorney Discipline Board, Tri-County Hearing Panel #81, effective November 13, 2019.

The grievance administrator's formal complaint alleged that the respondent neglected a legal matter entrusted to her as the trustee for the Esther W. Craley Trust Agreement. 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, plea of no contest, and the stipulation of the parties, the panel found that the respondent neglected a legal matter entrusted to the lawyer, in violation of MRPC 1.1(c).

In accordance with the stipulation of the parties, the panel ordered that the respondent be reprimanded. Costs were assessed in the amount of \$1,137.88.

David E. Christensen, P45374, Southfield, by the Attorney Discipline Board, Tri-County Hearing Panel #4, effective April 26, 2019.

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 contained the respondent's admissions to the allegations that he committed acts of professional misconduct after entering into an independent contractor agreement with Michigan Auto Law when he handled cases through his own professional corporation where the clients had already entered into contingent fee agreements with Michigan Auto Law, and the respondent failed to enter into a new contingent fee agreement with the client. The respondent also failed to explain to the client the distinction that his own professional corporation was handling the case, as opposed to Michigan Auto Law.

In the stipulation, the parties agreed that the respondent believed he had the right to represent the clients through his own professional corporation, but he was negligent when he failed to recognize that he should notify his clients of the change and enter into a new contingent fee agreement which identified his professional corporation as the firm handling the case with his clients. No clients complained about this conduct or reported injury as a result of the conduct, but the potential for injury existed.

Based on the respondent's admissions and the stipulation of the parties, the panel found that the respondent 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); and failed to enter into a written contingent fee agreement with the proper parties, in violation of MRPC 1.5(c). The respondent was also found to have violated MCR 9.104(2); and MRPC 8.4(a).

In accordance with the stipulation of the parties, the panel ordered that the respondent be reprimanded. Complainant Steven Gursten filed a petition for review, requesting that the Board reject the stipulation and increase the discipline imposed from a reprimand to a suspension. Upon review, the Board affirmed the decision of the hearing panel. Costs were assessed in the amount of \$1,667.83.

David H. Jarvis, P44702, Novi, by the Attorney Discipline Board, Tri-County Hearing Panel #68, effective November 1, 2019.

The respondent and the grievance administrator filed an Amended Stipulation for

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 contained the respondent's plea of no contest to the allegations that he committed acts of professional misconduct during his representation of his client, Delaney Equity Group, LLC, during an inquiry by the U.S. Securities and Exchange Commission, from April to September 2015.

Based on the respondent's plea and the amended stipulation of the parties, the panel found that the respondent neglected a legal matter entrusted to the lawyer, in violation

of MRPC 1.1(c); failed to act with diligence and promptness in representing a client, in violation of MRPC 1.3; failed to keep a client reasonably informed about the status of a matter and comply promptly with reasonable requests for information, 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 respondent was also found to have violated MRPC 8.4(a) and (c) and MCR 9.104(1) and (4).

In accordance with the amended stipulation of the parties, the panel ordered that

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the respondent be reprimanded. Costs were assessed in the amount of \$1,109.47.

**Reprimand With Conditions
(By Consent)**

Joshua J. Kuiper, P66576, Grand Rapids, by the Attorney Discipline Board, Kent County Hearing Panel #4, effective October 25, 2019.

The respondent and the grievance administrator filed a Stipulation for Consent Order of Reprimand With Conditions, in accordance with MCR 9.115(F)(5), which was approved by the Attorney Grievance Commission and accepted by the hearing panel. The stipulation contained the respondent's admission that he was convicted in a matter titled *People of the State of Michigan v Joshua James Kuiper*, 17th Circuit Court Case No. 17-02059-FH of the misdemeanor offense of reckless driving, in violation of MCL 257.626.

Based on the respondent's conviction, admissions, and the parties' stipulation, the panel found that the respondent committed professional misconduct when he engaged in conduct that violated a criminal law of a state or of the United States, an ordinance, or tribal law pursuant to MCR 2.615, contrary to MCR 9.104(5).

In accordance with the stipulation of the parties, the hearing panel ordered that the respondent be reprimanded and that he be subject to conditions relevant to the established misconduct. Costs were assessed in the amount of \$791.13.

Suspension

Derrick N. Okonmah, P68221, Clarkston, by the Attorney Discipline Board, Tri-County Hearing Panel #1, for 60 days, effective June 23, 2019.¹

A show cause hearing was held in this matter on the grievance administrator's petition for an order to show cause why discipline should not be increased for the respondent's failure to comply with Tri-County Hearing Panel #1's November 15, 2018 Amended Order of Suspension With Conditions (By Consent). The hearing panel found that based on the respondent's admissions and the evidence presented, the respondent

violated an order of discipline, which constituted misconduct under MCR 9.104(9).

The hearing panel ordered that the respondent's license to practice law in Michigan be suspended for 60 days, effective retroactively to June 23, 2019, for the good cause listed in the panel's report. Costs were assessed in the amount of \$1,682.10.

1. The respondent has been continuously suspended from the practice of law in Michigan since December 19, 2017. Please see Notice of Automatic Interim Suspension, issued December 20, 2017.

Suspension and Restitution

Sean Paul O'Bryan, P45881, Davison, by the Attorney Discipline Board, Genesee County Hearing Panel #4, for 179 days, effective December 18, 2019.

After proceedings in accordance with MCR 9.115 and based on the evidence presented by the parties at the hearings held in this matter, the hearing panel found that the respondent committed professional misconduct while representing a client during their application for U.S. Department of Veterans Affairs Aid & Attendance Benefits, and in creating a Veterans Affairs compliant trust.

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 violation of MRPC 1.3; failed to keep a client reasonably informed about the status of a matter and comply promptly with reasonable requests for information, in violation of MRPC 1.4(a); knowingly made a false statement of material fact or law to a third person in the course of representing a client, in violation of MRPC 4.1; when having direct supervisory authority over other nonlawyers, failed to make reasonable efforts to ensure that the person's conduct was compatible with the professional obligations of the lawyer, in violation of MRPC 5.3(b); and engaged in conduct involving 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). The respondent was also found to have violated MRPC 8.4(a) and MCR 9.104(2) and (3).

The panel ordered that the respondent's license to practice law be suspended for

179 days and that he pay restitution totaling \$3,500. Total costs were assessed in the amount of \$3,552.50.

Automatic Interim Suspension

Anthony L. Vespa, P46207, Birmingham, effective August 6, 2019.

On August 6, 2019, the respondent pled guilty, and his plea was accepted, to one count of wire fraud, in violation of 18 USC 1343, a felony, in a matter titled *United States of America v Anthony Vespa*, United States District Court for the Eastern District of Michigan, Case No. 2:19-cr-20220. In accordance with MCR 9.120(B)(1), the respondent's license to practice law in Michigan was automatically suspended on the date of his felony conviction.

Upon the filing of a certified judgment of conviction, this matter will be 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.

Interim Suspension Pursuant to MCR 9.115(H)(1)

Peter R. Albertins, P48886, New Hudson, by the Attorney Discipline Board, Tri-County Hearing Panel #77, effective October 21, 2019.

The respondent failed to appear at the October 14, 2019 hearing. On October 14, 2019, the hearing panel, in accordance with MCR 9.115(H)(1), issued an order of suspension, effective October 21, 2019, and until further order of the panel or the Board.

Interim Suspension Pursuant to MCR 9.115(H)(2)

Kathryn A. McCarthy, P42003, Ann Arbor, by the Attorney Discipline Board, Washtenaw County Hearing Panel #3, effective October 24, 2019.

Before the scheduled hearing in this matter, the respondent advised both the Attorney Discipline Board and counsel for the grievance administrator that she would be unable to appear for the October 23, 2019 hearing for the reason that she was reporting to jail in Washtenaw County on October 21, 2019.

In accordance with MCR 9.115(H)(2), the hearing panel determined that the respondent's reason for her inability to appear warranted an interim suspension from the practice of law until further order of the panel. The panel issued an order of interim suspension of the respondent's license, effective October 24, 2019.

Suspensions (With Conditions)

William M. Hatchett, P23350, Pontiac, by the Attorney Discipline Board, Tri-County Hearing Panel #71, for 60 days, effective October 9, 2019.

After proceedings in accordance with MCR 9.115 and based on the evidence

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presented by the parties at the hearings held in this matter, the hearing panel found that the respondent committed professional misconduct when he commingled personal and clients funds in his IOLTA on multiple occasions between March 2015 and January 2017, and by failing to surrender a client's file to successor counsel after the end of the respondent's involvement in the matter.

Based on the respondent's admissions and the stipulation of the parties, the panel found that the respondent held funds other than client or third-person funds relating to a representation in an IOLTA, in violation of MRPC 1.15(a)(3); failed to hold property of clients separately from his own property, in violation of MRPC 1.15(d); deposited funds into his IOLTA in an amount in excess of the amount reasonably necessary to pay financial institution service charges or fees or to obtain a waiver of service charges or fees, in violation of MRPC 1.15(f); and failed to surrender papers and property to which the client was entitled, in violation of MRPC 1.16(d). The respondent was also found to have violated MRPC 8.4(a) and MCR 9.104(2) and (3).

The hearing panel ordered that the respondent's license to practice law in Michigan be suspended for 60 days and that he be subject to a condition relevant to the established misconduct. Costs were assessed in the amount of \$2,768.22.

Adam C. Reddick, P71543, Bay City, by the Attorney Discipline Board, Tri-Valley Hearing Panel #3, for 30 days, effective October 25, 2019.

The respondent appeared at the hearing, but was in default for his failure to file an answer to the formal complaint. Based on the respondent's default, the hearing panel found that he committed professional misconduct in his representation of a client in an appeal of a criminal conviction for domestic violence. The respondent filed a claim of appeal, but it was later discovered it should have been filed as an application for leave to appeal. The respondent failed to file an appeal brief by the due date, and the court subsequently scheduled a review hearing. Without his client's permission, the respondent signed a stipulated order of dismissal withdrawing the claim of appeal and

dismissing the case. The respondent failed to file a delayed application for leave to appeal before the time expired to do so, and he failed to advise his client that the application was not filed.

The panel found that the respondent handled a legal matter without adequate preparation, in violation of MRPC 1.1(b); neglected a legal matter entrusted to him, in violation of MRPC 1.1(c); failed to seek the lawful objectives of the client, in violation of MRPC 1.2(a); failed to act with reasonable diligence and promptness, in violation of MRPC 1.3; failed to keep a client reasonably informed about the status of a matter and comply promptly with reasonable requests for information, in violation of MRPC 1.4(a); 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); and knowingly failed to respond to a lawful demand for information from a disciplinary authority, in violation of MRPC 8.1(a)(2). The respondent was also found to have violated MCR 9.104(1)–(3).

The panel ordered that the respondent's license to practice law be suspended for 30 days and that he be subject to conditions relevant to the established misconduct. Total costs were assessed in the amount of \$2,159.52.

Suspension With Conditions (By Consent)

Matthew Brian Chaiken, P74538, Ann Arbor, by the Attorney Discipline Board, Washtenaw County Hearing Panel #1, for 60 days, effective November 13, 2019.

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 contained the respondent's admission that he was convicted by guilty plea of disorderly person, a misdemeanor, in violation of Pittsfield Township Code 307 §14-3, in *Pittsfield Township v Matthew Brian Chaiken*, 14A-1 District Court Case No. 181-1496-OM. The stipulation also contained the respondent's admission that he was convicted as set forth

in the Judgment of Conviction, to the factual statements set forth in the formal complaint, and his admission to the misconduct charged in two subparagraphs of the formal complaint as referenced below.

Based on the respondent's conviction, admissions, and the stipulation of the parties, it has been established that the respondent engaged in conduct that violated a criminal law of a state or of the United States, an ordinance, or tribal law pursuant to MCR 2.615, contrary to MCR 9.104(5); engaged in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2); and engaged in further conduct that violated a criminal law of a state, that being MCR 333.7402(2)(a)(v), also 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 60 days, effective November 13, 2019. Additionally, the panel ordered that the respondent be subject to conditions relevant to the established misconduct. Costs were assessed in the amount of \$845.59.

Transfer to Inactive Status Pursuant to MCR 9.121(B) (By Consent)

Daniel R. Victor, P64703, Bloomfield Hills, by the Attorney Discipline Board, Tri-County Hearing Panel #61, effective November 12, 2019.

The grievance administrator filed a Formal Complaint Seeking Transfer to Inactive Status pursuant to MCR 9.121(B), alleging that the respondent is incapacitated and cannot continue the practice of law pursuant to MCR 9.121(B). Contemporaneously, the grievance administrator and the respondent filed a stipulation agreeing that the respondent is currently incapacitated and unable to engage in the practice of law, and that he be transferred to inactive status and until such time as he may be reinstated in accordance with MCR 9.121(E).

On November 12, 2019, Tri-County Hearing Panel #61 issued an order transferring the respondent's license to inactive status pursuant to MCR 9.121(B) for an indefinite period and until further order of the Board.