

Disbarment and Restitution

Stephen J. Kale, P29203, Sterling Heights, by the Attorney Discipline Board, Tri-County Hearing Panel #55, effective March 5, 2016.

The respondent was found to be in default for his failure to file an answer to the formal complaint. The respondent appeared at the misconduct hearing, but his request to set aside the default was denied. The respondent did not appear at the subsequent sanction hearing.

Based on the respondent's default, the panel found that he committed professional misconduct by engaging in legal representation without adequate preparation, in violation of MRPC 1.1(a); neglecting a legal matter,

in violation of MRPC 1.1(c); failing to seek the lawful objectives of a client through reasonably available means permitted by law and the Michigan Rules of Professional Conduct, in violation of MRPC 1.2(a); failing to act with reasonable diligence when representing a client, in violation of MRPC 1.3; failing to keep a client reasonably informed regarding the status of a legal matter, in violation of MRPC 1.4(a); failing to respond to his client's reasonable requests for information, in violation of MRPC 1.4(b); entering into an agreement for, charging, and/or receiving a clearly excessive attorney fee, in violation of MRPC 1.5(a); upon the termination of the representation, failing to refund to the client an unearned attorney fee

and advanced costs that were not incurred, in violation of MRPC 1.16(d); assisting another to engage in the unauthorized practice of law in Michigan, in violation of MRPC 5.5(a); knowingly failing to respond to a lawful demand for information from a disciplinary authority, in violation of MRPC 8.1(a)(2); engaging in conduct involving dishonesty, fraud, deceit, and/or misrepresentation where such conduct reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer, in violation of MRPC 8.4(b); and failing to answer a Request for Investigation, in violation of MCR 9.104(7) and MCR 9.113(A) and 9.113(8)(2). The panel also found that the respondent violated MRPC 8.4(a) and (c) and MCR 9.104(1)–(4).

The panel ordered that the respondent be disbarred from the practice of law in Michigan and that he pay restitution in accordance with a judgment in an underlying matter. Costs were assessed in the amount of \$2,485.11.

Disbarment and Restitution (By Consent)

August W. Danowski, P66014, Lansing, by the Attorney Discipline Board, Ingham County Hearing Panel #6, effective March 1, 2016.

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 plea, the panel finds that the respondent failed to hold property of clients or third persons in connection with a representation separate from the lawyer's own property, in violation of MRPC 1.15(d); knowingly failed to respond to a lawful demand for information from a disciplinary authority, in violation of MRPC 8.1(a)(2); 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); made a knowing misrepresentation of facts or circumstances surrounding a request for investigation or

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complaint, in violation of MRPC 9.104(6); and failed to fully and fairly disclose all facts and circumstances pertaining to the alleged misconduct, in violation of MCR 9.113(A). The panel also found that the respondent violated MRPC 8.4(a) and (c) and MCR 9.104(2)–(4).

In accordance with the stipulation of the parties, the hearing panel ordered that the respondent be disbarred from the practice of law in Michigan, effective March 1, 2016, as stipulated by the parties. The panel further ordered that the respondent shall pay \$109,000 in restitution. Costs were assessed in the amount of \$1,157.49.

Automatic Reinstatements

Lennox Emanuel, P59251, Detroit, effective March 7, 2016.

The respondent was suspended from the practice of law in Michigan for 30 days, effective January 28, 2016. In accordance with MCR 9.123(A), the suspension was terminated with the respondent's filing of an affidavit and the required proofs of compliance with the discipline order.

Wayne P. Kristall, P24471, Southfield, effective February 22, 2016.

The respondent was suspended from the practice of law in Michigan for 30 days, effective January 21, 2016. In accordance with MCR 9.123(A), the suspension was terminated with the respondent's filing of an affidavit of compliance with the Michigan Supreme Court on February 22, 2016.

James R. Lancaster Jr., P38567, Lansing, effective February 5, 2016.

The respondent was suspended from the practice of law in Michigan for 179 days, effective June 10, 2015. In accordance with MCR 9.123(A), the suspension was terminated with the respondent's filing of an affidavit of compliance on February 5, 2016.

Kenneth M. Scott, P32833, Flint, effective February 29, 2016.

The respondent was suspended from the practice of law in Michigan for 179 days, effective September 1, 2015. In accordance with MCR 9.123(A), the suspension was terminated with the respondent's filing of an affidavit of compliance with the Michigan Supreme Court on February 29, 2016.

Antonio D. Tuddles, P64158, Detroit, effective March 2, 2016.

The respondent was suspended from the practice of law in Michigan for 30 days, effective February 1, 2016. In accordance with MCR 9.123(A), the suspension was terminated with the respondent's filing of an affidavit of compliance with the Michigan Supreme Court on March 2, 2016.

Automatic Reinstatement for Payment of Costs

Joseph Edward Ernst, P69274, Holt, effective March 14, 2016.

In accordance with MCR 9.128(D), the respondent's license to practice law in Michigan was automatically suspended on January 21, 2016, for failure to pay costs as

AGC Practice Pointers

Bartering for Legal Services: What's the Deal?

By Alan M. Gershel, Grievance Administrator;

Stephen P. Vella, Senior Associate Counsel; and Amanda H. Bates, Legal Intern

Imagine a lawyer who provides legal services for a client in exchange for a kitchen renovation or a luxury watch at a value equal to that of the services being rendered. It seems reasonable, right? The problem is that, like most everything in the practice of law, it's not always that simple.

When a lawyer decides to barter his or her legal services, the challenges which may arise are not always foreseeable, but often avoidable. There are practical considerations, like what to do if the representation is prematurely terminated and there is a dispute about fees. The most prudent measure would be to execute an unambiguous contract contemplating the performance of each party and a calculable means of compensating the attorney or refunding any unearned portion of the fee if the attorney-client relationship breaks down.

As a legal consideration, lawyers engaging in attorney-client relationships through bartered exchange arrangements must report the fair market value of any goods or services earned as taxable income. In addition, any bartered exchange must be consistent with the Michigan Rules of Professional Conduct. Although no money is exchanged, a lawyer should keep in mind Rule 1.5(a)–(d) addressing clearly excessive fees, communication, and contingent fees. Other relevant rules include Rule 7.3 referring to improper solicitation, Rule 1.8(a) discussing improper business transactions, and Rule 1.7(b) addressing conflicts with the lawyer's own interest. The State Bar of Michigan Ethics Hotline at (877) 558-4760 is available for inquiries involving bartered exchange arrangements.

When properly executed, bartering for legal services is an acceptable practice that can be an attractive option for many lawyers and clients. By contemplating the problems that may or may not arise and through careful consideration of the law and Rules of Professional Conduct, the end result of a successful bartered arrangement can be a mutually satisfying attorney-client relationship.

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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AUTHOR: PATRICK T. BARONE

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ordered in *Grievance Administrator v Joseph Edward Ernst*, Case No. 14-116-GA, 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 14, 2016.

Suspensions

Francois M. Nabwangu, P61388, Brooklyn, New York, by the Attorney Discipline Board, Tri-County Hearing Panel #10, for one year, effective February 18, 2016.

The respondent appeared at the public hearing but was found to be in default for his failure to file an answer to the formal complaint. Based on that default, the hearing panel found that the respondent neglected a client's legal matter, in violation of MRPC 1.1(e); failed to act with reasonable diligence and promptness on his client's behalf, in violation of MRPC 1.3; failed to keep his client reasonably informed about the status of her matter and to comply promptly with reasonable requests for information, in violation of MRPC 1.4(a); failed to return his client's file materials, in violation of MRPC 1.16(d); failed to respond to lawful demands for information from a disciplinary authority, in violation of MRPC 8.1(a)(2); failed to answer requests for investigation, in violation of MCR 9.104(7); attempted to obtain an agreement for withdrawal of a request for investigation from his client, in violation of MCR 9.104(10)(b); and, failed or refused to appear or give evidence, to be sworn or affirmed, or to answer proper questions after being ordered to so, in violation of MCR 9.112(D)(2).

The respondent was also found to have mismanaged a client trust account (IOLTA), in violation of MRPC 1.15(A); held funds other than client or third-party funds in an IOLTA, in violation of MRPC 1.15(a)(3); and failed to hold property of clients or third persons in connection with a representation separate from the respondent's own property, in violation of MRPC 1.15(d).

Finally, the panel found that the respondent had violated MRPC 8.4(a) and MCR 9.104(2) and (4).

The hearing panel ordered that the respondent's license to practice law in Michigan be suspended for one year, and assessed costs in the amount of \$1,978.77.

Mark R. VanderMolen, P29959, Grand Rapids, by the Attorney Discipline Board, Kent County Hearing Panel #2, for three years, effective February 26, 2016.¹

The respondent pleaded no contest to aggravated stalking, a felony, in the Kent County Circuit Court. In accordance with MCR 9.120(B)(1), the respondent's license to practice law in Michigan was automatically suspended on August 21, 2015, the date of his felony conviction.

The respondent did not appear at the show cause hearing and, based on the respondent's conviction and the exhibits presented at the show cause hearing, the panel found that the respondent violated a criminal law of a state or of the United States, 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 \$1,857.75.

1. The respondent has been continuously suspended from the practice of law in Michigan since August 21, 2015. Please see Notice of Automatic Interim Suspension issued August 28, 2015.

Suspension and Restitution (With Conditions)

Carolyn J. Jackson, P53018, Berkley, by the Attorney Discipline Board, Tri-County Hearing Panel #57, for 60 days, effective February 24, 2016.

Based on the respondent's default, the hearing panel found that she neglected a legal matter, in violation of MRPC 1.1(C); failed to seek the lawful objectives of her 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 her client reasonably informed about the status of her matter, in violation of MRPC 1.4(a); failed to explain a matter to a client to the extent necessary to permit the client to make informed decisions regarding the

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The deadline for new applicants is **May 31, 2016**. Applications will first be screened by a panel composed of attorneys representing various bar associations in the Southern and Northern Divisions, and then by the U.S. District Court. Sixth Circuit Rules require that an attorney appointed at trial continue through appeal.

54 Orders of Discipline and Disability

representation, in violation of MRPC 1.4(b); and failed to refund an advance fee that had not been earned, in violation of MRPC 1.16(d). The panel further found that the respondent violated MRPC 8.4(a) and (c) and MCR 9.104(2)–(4).

The panel ordered that the respondent be reprimanded with conditions relevant to the established misconduct. The panel further ordered that the respondent complete the conditions within a specific time period. If the respondent failed to complete the conditions within the required time frame, the panel would increase the respondent's sanction to a 60-day suspension. The respondent did not complete the conditions within the required time frame, and the panel increased the sanction from a reprimand to a 60-day suspension with conditions.

The respondent filed a petition for review and requested a stay of discipline. The Board granted the stay and, upon review, affirmed the hearing panel's order of suspension and restitution with conditions. The respondent's motion for reconsideration was also denied by the Board. On November 24, 2015, the respondent filed an application for leave to appeal with the Michigan Supreme Court, which was denied on February 2, 2016. Total costs were assessed in the amount of \$2,327.60.

Suspension and Restitution With Conditions (By Consent)

Kevin Kevelighan, P59357, Bloomfield Hills, by the Attorney Discipline Board, Tri-County Hearing Panel #53, for 179 days, effective May 16, 2016.

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 stipulation, the panel found that the respondent neglected his clients' legal matters, in violation of MRPC 1.1(C); failed to act with reasonable diligence and promptness, in violation of MRPC 1.3; failed to keep his clients reasonably informed about the status of their matters, in violation of MRPC 1.4(a); held funds other than client or third-person funds in an IOLTA, in violation of MRPC

1.15(a)(3); failed to hold property of clients or third persons in connection with a representation separate from his own property, in violation of MRPC 1.15(d); deposited his own funds into an IOLTA in an amount more than reasonably necessary to pay financial institution charges or fees, in violation of MRPC 1.15(f); upon termination of representation, failed to refund any advance payment of fee that had not been earned and failed to surrender papers and property to which the client was entitled, in violation of MRPC 1.16(d); knowingly failed to respond to a lawful demand for information from a disciplinary authority, in violation of MRPC 8.1(a)(2); engaged in conduct which involved dishonesty, fraud, deceit, or misrepresentation where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, in violation of MRPC 8.4(b); and failed to timely answer one request for investigation and failed to answer a separate request for investigation, in violation of MCR 9.104(7), MCR 9.113(A) and (B)(2). The panel also found that the respondent violated MRPC 8.4(a) and (c) and MCR 9.104(1)–(4).

In accordance with the stipulation of the parties, the hearing panel ordered that the respondent be suspended from the practice of law in Michigan for 179 days, effective May 16, 2016, as stipulated by the parties. The respondent was also ordered to pay restitution in the aggregate amount of \$2,500 and be subject to conditions relevant to the admitted misconduct. Costs were assessed in the amount of \$981.72.

Suspension (By Consent)

Bernard M. Cohen, P12013, Royal Oak, by the Attorney Discipline Board, Tri-County Hearing Panel #63, for 179 days, effective March 9, 2016.

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 stipulation, the panel found that the respondent neglected a legal matter, in violation of MRPC 1.1(c); failed to seek the lawful objectives of a 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, in violation of MRPC 1.4(a); failed to explain a matter to a client to the extent reasonably necessary to permit the client to make informed decisions regarding the representation, in violation of MRPC 1.4(b); held funds other than client or third-person funds in an IOLTA, in violation of MRPC 1.15(a)(3); deposited his own funds into an IOLTA in an amount more than reasonably necessary to pay financial institution charges or fees, in violation of MRPC 1.15(f); failed to release a client file upon termination of representation, in violation of MRPC 1.16(d); failed to make reasonable efforts to expedite litigation consistent with the interests of a client, in violation of MRPC 3.2; failed to timely answer requests for investigation issued by the grievance administrator, in violation of MRPC 1.15A(f) and MCR 9.104(A)(7); and failed to fully and fairly disclose the facts and circumstances pertaining to the alleged misconduct, in violation of MCR 9.113(A). The hearing panel also found that the respondent violated MRPC 8.4(a) and (c), and MCR 9.104(1)–(3).

The panel further acknowledged paragraph eight of the stipulation, which stated:

8. The parties further agree that during the period in question, no client trust check was dishonored, nor were any funds received on behalf of a client ever withheld.

In accordance with the stipulation of the parties, the hearing panel ordered that the respondent be suspended from the practice of law in Michigan for 179 days. Costs were assessed in the amount of \$898.23.

Automatic Suspension for Nonpayment of Costs

Joseph Edward Ernst, P69274, Holt, effective January 21, 2016.

The respondent was reprimanded and ordered to pay costs in *Grievance Administrator v Joseph Edward Ernst*, Case No. 14-116-GA. The grievance administrator filed a petition for review, which is pending before the Board, and the respondent filed a motion for a payment plan regarding payment of costs. The Board granted the respondent's motion for a payment plan on

October 20, 2015, but the respondent has failed to pay the costs as agreed.

In accordance with MCR 9.128(D), the respondent's license to practice law in Michigan was automatically suspended on January 21, 2016, and, pursuant to MCR 9.128, that suspension will remain in effect until the costs have been paid and the respondent has complied with MCR 9.119 and 9.123(A).

Interim Suspension

Cynthia Young, P75849, Lathrup Village, by the Attorney Discipline Board, Tri-County Hearing Panel #65, effective January 11, 2016.

After a public hearing held on January 6, 2016, Tri-County Hearing Panel #65 determined that the respondent's license to practice law in Michigan be immediately suspended pending the issuance of the panel's report and order of discipline.

Suspensions With Conditions (By Consent)

Bart R. Frith, P39541, Vermontville, by the Attorney Discipline Board, Ingham County Hearing Panel #3, for 30 days, effective March 12, 2016.

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, the panel found that he neglected his client's legal matter, in violation of MRPC 1.1(c); failed to consult with his client upon knowing that he expected assistance "not permitted by the Rules of Professional Conduct or other law," in violation of MRPC 1.2(d); failed to act with reasonable diligence and promptness in the representation of his client, in violation of MRPC 1.3; failed to keep his client reasonably informed about the status of his matter and to comply promptly with his reasonable requests for information, in violation of MRPC 1.4(a); failed to explain a matter to the extent reasonably necessary to permit his client to make informed decisions regarding the representations, in violation of MRPC 1.4(b); failed to timely seek the

court's permission to withdraw from the representation of his client when the respondent had determined that he did not have a good faith basis for filing an application for leave to appeal and doing so would be in violation of the Michigan Rules of Professional Conduct, contrary to MRPC 1.16(a)(3); failed to timely seek the court's permission to withdraw before October 2014, on the basis that the respondent had a good cause for doing so and to allow his client a more timely option of obtaining new counsel, in violation of MRPC 1.16(b)(6); and failed to take reasonable steps to protect his client's interests, such as giving reasonable notice to his client that he had (1) concluded that he would not file an application for leave to appeal; and/or (2) had stopped actively representing him notwithstanding the court's order appointing the respondent to serve as his client's appellate counsel, so as to allow time for the appointment or employment of other counsel, or for self-representation, in violation of MRPC 1.16(d). Additionally, the panel found that the respondent violated MCR 9.104(2) and (3) based on his plea of no contest.

In accordance with the stipulation, the hearing panel ordered that the respondent's license to practice law in Michigan be suspended for 30 days, effective March 12, 2016, as stipulated by the parties. The respondent shall also be subject to a condition relevant to the admitted misconduct. Costs were assessed in the amount of \$757.89.

R. Vincent Green, P34862, Lansing, by the Attorney Discipline Board, Ingham Hearing Panel #1, for 120 days, effective March 1, 2016.

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, the hearing panel found that he held funds other than client or third-person funds in an IOLTA, in violation of MRPC 1.15(a)(3); failed to hold property of his clients or third persons separate from his own property, in violation of MRPC 1.15(d); deposited his own funds into an IOLTA in an amount more than reasonably necessary

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to pay financial institution charges or fees, in violation of MRPC 1.15(f); and failed to deposit legal fees paid in advance of services rendered into a client trust account, in violation of MRPC 1.15(g). The panel also found that the respondent had violated MRPC 8.4(a) and MCR 9.104(2) and (3).

In accordance with the stipulation of the parties, the hearing panel ordered that the respondent's license to practice law be suspended effective March 1, 2016, as stipulated by the parties. The parties further agreed that the respondent shall be subject to a condition relevant to the admitted misconduct. Costs were assessed in the amount of \$764.34.

James R. Lancaster Jr., P38567, Lansing, by the Attorney Discipline Board, Ingham County Hearing Panel #7, for 179 days, effective June 10, 2015.¹

The respondent pleaded guilty to operating while intoxicated, 3rd offense, in violation of MCL 257.6251-A, a felony, in the Clinton County Circuit Court. In accordance with MCR 9.120(B)(1), the respondent's license to practice law in Michigan was automatically suspended on June 10, 2015, the date he pleaded guilty.

On December 17, 2015, the parties filed a stipulation for a consent order of discipline, which contained the respondent's admission that he was convicted of operating while intoxicated, 3rd offense, in violation of MCL 257.5251-A, a felony, in the matter titled *People v James Robert Lancaster Jr.*, 29th Circuit Court Case No. 15-0090401-FH. The panel found that the respondent's conduct violated a criminal law of a state or of the United States, contrary to MCR 9.104(5).

Based on the stipulation of the parties, the hearing panel ordered that the respondent's license to practice law in Michigan be suspended for 179 days, retroactive to June 10, 2015, as stipulated by the parties. Additionally, the panel ordered that the respondent shall be subject to conditions relevant to the established misconduct. Costs were assessed in the amount of \$859.24.

1. The respondent has been continuously suspended from the practice of law in Michigan since June 10, 2015. Please see Notice of Automatic Interim Suspension issued June 23, 2015.

Paige L. Timmer, P77842, Grand Rapids, by the Attorney Discipline Board, Kent County Hearing Panel #5, for 179 days, effective September 28, 2015.¹

The respondent pleaded guilty to operating while intoxicated causing serious bodily injury, a felony, in the Kalamazoo County Circuit Court. In accordance with MCR 9.120(B)(1), the respondent's license to practice law in Michigan was automatically suspended on August 7, 2015, the date of her conviction.

On January 25, 2016, the parties filed a stipulation for a consent order of discipline, which contained the respondent's admission that she was convicted of operating while intoxicated causing serious injury, a felony, in violation of MCL 750.625(5). Based on the respondent's conviction and her admission in the stipulation, the panel found that the respondent's conduct violated a criminal law of a state or of the United States, contrary to MCR 9.104(5).

Based on the stipulation of the parties, the hearing panel ordered that the respondent's license to practice law in Michigan be suspended for 179 days, retroactive to September 28, 2015, as stipulated by the parties. Additionally, the panel ordered that the respondent shall be subject to conditions relevant to the established misconduct. Costs were assessed in the amount of \$870.82.

1. The respondent has been suspended from the practice of law in Michigan since August 7, 2015. Please see Notice of Automatic Interim Suspension issued August 28, 2015.

Transfer to Inactive Status Pursuant to MCR 9.121 and Restitution

Terance P. Sheehan, P20320, Grand Blanc, by the Attorney Discipline Board, Genesee County Hearing Panel #4, effective March 3, 2016.

This matter was assigned to Genesee County Hearing Panel #4, and, on March 3, 2016, the panel issued an order transferring the respondent's license to practice law to inactive status, effective immediately, and until reinstated in accordance with MCR 9.121(E). The respondent was also ordered to pay restitution in the aggregate amount of \$30,000.