

STATE OF MICHIGAN

Attorney Discipline Board

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ATTORNEY DISCIPLINE BOARD
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GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner,

Case Nos. 08-143-JC

v

MARK H. CANADY, P 39352,

Respondent.

**ORDER INCREASING DISCIPLINE FROM A 60 DAY SUSPENSION TO
A 120 DAY SUSPENSION AND MODIFYING CONDITIONS**

Issued by the Attorney Discipline Board
211 W. Fort St., Ste. 1410, Detroit, MI

Respondent was convicted of operating a motor vehicle while visibly impaired in violation of MCL 257.2653-A. He was placed on probation by the district court, but he violated probation by testing positive for alcohol, failing to document attendance at meetings required by court order, and, ultimately, falsifying attendance sheets for Alcoholics Anonymous meetings. Ingham County Hearing Panel #4 entered an order of discipline imposing a 60-day suspension with various conditions to remain in place for one year, stating:

The panel finds that Mr. Canady made knowingly false statements with respect to his attendance at AA meetings but that such statements were not made with the intent to deceive as contemplated in ABA Standard 6.11. The panel found that the mitigating factors in ABA Standard 9.32(a) (absence of a prior disciplinary record) and, more importantly, Standard 9.32(i) (chemical dependency including alcoholism) in arriving at its decision to impose a 60 day suspension.

Respondent and the Grievance Administrator have both filed petitions for review. Respondent seeks a reprimand and the Administrator seeks a suspension of one year and extension of the conditions to a period of two years. At the hearing, respondent candidly acknowledged that he had been in denial as to the severity of his problems with alcohol, had relapsed since the filing of his petition for review, and had received inpatient treatment and intensive outpatient treatment in the early part of 2010. He now agrees that the conditions imposed by the panel should remain in effect for a period of two years instead of the one year ordered by the panel.

We have carefully considered the Administrator's request for a suspension of one year and citation to *Grievance Administrator v Keith J. Mitan*, 06-74-GA (ADB 2008), in support of this level of discipline. However, *Mitan* may be distinguished from this case by the lack of any claim of impairment in that case. We have also considered respondent's plea to avoid a suspension of any length in light of the impact upon his practice and his seemingly quite significant steps toward recovery. While we commend him for these steps and wish to encourage further progress, and we recognize his candor and his reputation as a capable attorney with no record of prior misconduct, we do not consider a reprimand with conditions to be sufficient discipline in light of the misrepresentations made by respondent. Under these circumstances, we find no reason to impose a suspension of sufficient length to trigger reinstatement proceedings under MCR 9.123 and 9.124. However, we do conclude that a suspension of 120 days (without any credit for the time during which respondent was suspended under MCR 9.115(H)) is appropriate.

NOW THEREFORE,

IT IS ORDERED that the 60 day suspension ordered in this case is increased and respondent's license to practice law in Michigan is **SUSPENDED FOR A PERIOD OF 120 DAYS COMMENCING SEPTEMBER 9, 2010**, and until respondent's compliance with the affidavit requirements of MCR 9.123(A).

IT IS FURTHER ORDERED that the respondent shall comply with all applicable provisions of MCR 9.119 within the time prescribed by MCR 9.118(D).

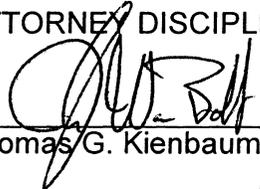
IT IS FURTHER ORDERED that, until January 30, 2012, respondent shall:

1. Abstain from the use of alcohol and other nonprescribed mind or mood altering substances;
2. Participate in a monitoring agreement with the State Bar of Michigan's Lawyers and Judges Assistance Program (LJAP), which shall require treatment, conditions such as random screening for substances, reporting to the Attorney Grievance Commission (and this Board upon request) as to compliance, and other such terms deemed appropriate by LJAP;
3. Sign all waivers necessary to allow LJAP and relevant treatment providers to provide to the Attorney Grievance Commission progress reports and other information necessary to ascertain respondent's compliance with this order and the LJAP monitoring agreement.

IT IS FURTHER ORDERED that respondent shall, on or before September 9, 2010, reimburse the Attorney Discipline Board for the court reporting and transcript costs in the amount of **\$102.50** incurred at the review hearing conducted on May 12, 2010. Such costs are in addition to the costs of **\$2,133.59** assessed by the hearing panel in its order of November 3, 2010, together with interest pursuant to MCR 9.128. Check or money order shall be made payable to the State Bar of Michigan but submitted to the Attorney Discipline Board [211 W. Fort St., Ste. 1410, Detroit, MI 48226] for proper crediting. (See enclosed instruction sheet.)

ATTORNEY DISCIPLINE BOARD

By:


Thomas G. Kienbaum, Vice-Chairperson
(w/permission)

Dated: August 11, 2010

Board members Thomas G. Kienbaum, William L. Matthews, C.P.A., Andrea L. Solak, Rosalind E. Griffin, M.D., Carl E. Ver Beek, Craig H. Lubben, James M. Cameron, Jr., and Sylvia P. Whitmer, Ph.D., concur in this decision.

Board Chairperson William J. Danhof was absent and did not participate.