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STATE OF MICHIGAN

Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner/Appellee,

v

Case No. 16-64-GA

TONYA MYERS PHILLIPS, P 63475,

Respondent/Appellee.

ORDER AFFIRMING HEARING PANEL ORDER OF REPRIMAND

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

The Attorney Discipline Board has considered a petition for review filed by the complainant, Melvin Mosley, on the grounds that the stipulation for consent order of reprimand approved by the Attorney Grievance Commission and accepted by the hearing panel resulted in insufficient discipline. The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118, including review of the record before the hearing panel and consideration of the briefs and arguments of the parties at a hearing conducted before the Board on October 19, 2016.

On June 27, 2016, the Grievance Administrator filed a formal complaint against respondent that involved her representation of Mr. Mosley in a civil matter in which it was alleged that the defendants had defrauded Mr. Mosley out of \$175,000. Respondent's retainer agreement with Mr. Mosley indicated that respondent's hourly rate for the representation was \$150. After a judgment was entered against the defendants in Mr. Mosley's favor, a criminal action for the same conduct was initiated by the Wayne County Prosecutor's office against the same defendants. They ultimately pleaded guilty to the charges.

The formal complaint alleged that shortly thereafter, Mr. Mosley told respondent that he wanted to submit her bill for legal fees as an attachment to the restitution award being considered in the criminal case, but he wanted her to increase her hourly rate on the bill by \$50. Respondent subsequently provided Mr. Mosley with a new bill that indicated that her hourly rate had been \$200, but this bill was never presented to the prosecutor's office or the court. Respondent was charged with failing to take remedial measures after learning that her client intended to engage in criminal or fraudulent conduct relative to an adjudicative proceeding involving the client, in violation of MRPC 3.3(b) and (e) and MCR 9.104(2) and (3).

Contemporaneously with the filing of the formal complaint, the parties submitted a stipulation for consent order of discipline pursuant to MCR 9.115(F)(5). The stipulation indicated that respondent was admitting all of the factual allegations and allegations of professional

misconduct set forth in the formal complaint. The stipulation further indicated that the parties had agreed that respondent be reprimanded, effective August 1, 2016, consistent with Standard 6.13 of the ABA Standards for Imposing Lawyer Sanctions and after consideration of the applicable mitigating factors found in ABA Standard 9.22(a) (absence of a prior disciplinary record), 9.22(e) (full and free disclosure to disciplinary board and cooperative attitude toward proceedings), and 9.22(l) (remorse).

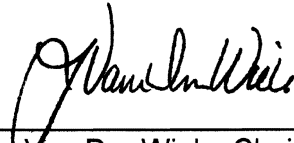
The matter was assigned to Tri-County Hearing Panel #22 to consider whether to accept the stipulation for consent order of discipline submitted by the parties. The panel's order and accompanying report noted that the panel carefully considered the stipulation and concluded that the disposition accepted by the Attorney Grievance Commission and recommended by the Grievance Administrator was appropriate under the particular facts and circumstances involved and that the stipulation should be accepted. The Board is satisfied that the panel made an informed decision to accept the stipulation for consent order of reprimand in this matter.

With regard to Mr. Mosley's request that the Board "leave all the current charges but also bring other charges" against respondent, we have previously and consistently held, that this Board will not review the inherently prosecutorial decisions of the Attorney Grievance Commission. The authority to investigate allegations of misconduct, make recommendations to the Commission, and ultimately determine the charges to bring is inherent in the Commission as the "prosecution arm of the Supreme Court." *In the Matter of William E. Bufalino, II*, No. 36580-A (ADB 1981). See also *Grievance Administrator v Richard Durant*, 208-88 (ADB 1990); *Grievance Administrator v Kurt A. O'Keefe*, 90-13-GA (ADB 1992); and *Grievance Administrator v Mark L. Brown*, 95-68-GA (ADB 1996).

NOW THEREFORE,

IT IS ORDERED that the order of reprimand (by consent) issued by Tri-County Hearing Panel #22 on July 28, 2016 is **AFFIRMED**.

ATTORNEY DISCIPLINE BOARD

By: 

Louann Van Der Wiele, Chairperson

Dated: January 19, 2017

Board members Louann Van Der Wiele, Rev. Michael Murray, Dulce M. Fuller, James A. Fink, John W. Inhulsen, Jonathan E. Lauderbach, Barbara Williams Forney, Karen O'Donoghue, and Michael B. Rizik, Jr. concur in this decision.