

Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner,

v

KELLY L. PAGE, P 24787, Case No. 16-120-GA
GARY A. STEWART, JR., P 49442, Case No. 16-121-GA
PAUL E. HAMRE, P 32636, Case No. 16-122-GA

Respondents.

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ORDER AFFIRMING HEARING PANEL ORDERS OF REPRIMANDS

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 complainants, Donald R. Visser and Robert Baker, on the grounds that the stipulations for consent orders of reprimands approved by the Attorney Grievance Commission and accepted by the hearing panel in each of these matters were procedurally deficient and 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 June 21, 2017.

On October 26, 2016, the Grievance Administrator filed a consolidated formal complaint against all three respondents. The complaint alleged that while the parties were involved in civil litigation in a matter titled *HLV, LLC v ELC Corporation, et al.*, Van Buren County Circuit Court Case No. 11-61-558-CH, they participated in a status conference on May 10, 2013. Complainants attended the conference via telephone. Respondents Page, Stewart, and Hamre attended the conference in person.¹ At the conclusion of the conference, respondents Page, Stewart and Hamre made discourteous and disrespectful comments, that included profanity, about complainants that were recorded and partially overheard by complainants. All three respondents were subsequently charged with engaging in conduct prejudicial to the administration of justice, in violation of MCR 9.104(1) and MRPC 8.4(c); engaging in conduct that exposed the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2); and failing to treat with

¹ At the time, respondent Hamre was a Van Buren County Circuit Court judge and was presiding over the underlying case. The conference took place in then-Judge Hamre's chambers.

courtesy and respect all persons involved in the legal process, in violation of MRPC 6.5(a).

Contemporaneously with the filing of the formal complaint, in each matter, the parties submitted separate stipulations for consent orders of discipline pursuant to MCR 9.115(F)(5). The stipulations in each matter indicated that respondents pleaded no contest to the jurisdictional and factual statements and to the allegations of professional misconduct, set forth in the consolidated formal complaint. The stipulations further indicated that the parties agreed that each respondent be reprimanded consistent with Standards 5.23 (Respondent Hamre only), 6.23, 6.33, and 7.3, (all calling for reprimand), of the ABA Standards for Imposing Lawyer Sanctions. The parties further agreed in each matter, that, pursuant to ABA Standard 9.22, the relevant aggravating factors were Standard 9.22(i) (substantial experience in the practice of law) and pursuant to ABA Standard 9.32, the relevant mitigating factors were Standard 9.32(g) (character or reputation); and Standard 9.32(l) (remorse). In Respondent Page's matter, the added aggravating factor of Standard 9.22(a)(prior disciplinary offenses) also applied and in Respondent Stewart's and Hamre's matters, the added mitigating factor of Standard 9.32(a) (absence of a prior disciplinary matter), also applied.

The consolidated matter was assigned to Kent County Hearing Panel #4 to consider whether to accept the stipulations for consent orders of discipline submitted by the parties. Pursuant to the requirement of MCR 9.115(F)(5), copies of the stipulations were also provided to complainants. On November 14, 2016, Complainant Visser filed an objection to the stipulations in which he argued that the formal complaint "errs in failing to state many pertinent facts," that the inappropriate ex-parte statements were only the "tip of the iceberg," and alleged that respondents also engaged in other misconduct which included "lying to the court; lying to the AGC; securing a false affidavit; propagating a known false pleading; and other ex-parte communications between respondents." Finally, he urged the panel to "consider all the misconduct of respondents together in their totality," and disbar all three respondents.

On February 21, 2017, the panel reports in all three matters were issued. In each report, the panel noted that their role as panel members was to make an informed decision as to whether or not the sanction agreed upon by the parties was appropriate for the misconduct for which respondents' pleas of no contest were tendered. Each report further noted that any new facts or allegations raised by Complainant Visser in his written objection was not considered by the panel in assessing whether the parties' agreement that respondents be reprimanded for the acknowledged misconduct was appropriate. The panel concluded in each matter that the stipulations for consent orders of discipline, accepted by the Attorney Grievance Commission and recommended by the Grievance Administrator, were reasonable and consistent with the goals of the discipline system and all three were accepted. Orders of reprimand (by consent) were also issued in each matter, effective March 15, 2017.

The Board's role in a review proceeding initiated by a complainant's petition following the entry of an order of discipline by consent pursuant to MCR 9.115(F)(5), is quite limited. Ordinarily, the Board has fairly broad authority to "review and, if necessary, modify a hearing panel's decision as to the level of discipline" in light of our "responsibility to ensure a level of uniformity and continuity" in disciplinary matters. *Grievance Administrator v Brent S. Hunt*, 12-10-GA (ADB 2012), p 7, citing *Grievance Administrator v August*, 438 Mich 296,304; 475 NW2d 256 (1991); MCR 9.110(E)(4). However, when a complainant seeks review of an order of discipline agreed to by the Attorney Grievance Commission and a respondent that has been approved by a hearing panel, we do not consider allegations not admitted, nor do we adjust the level of discipline imposed by the panel based upon a stipulation of the parties.

The Board's function in these cases is to assess whether the discipline agreed to and imposed is appropriate for the misconduct admitted to. If we conclude that it is not appropriate, our options are, again, restricted by the fact that the discipline imposed below was based on the consent of the parties. Thus, the Board may either refer the matter to another hearing panel for hearing, or, if appropriate, remand the matter to the panel that approved the stipulation for consent discipline for further consideration. *Grievance Administrator v Barry Bess*, 14-16-GA (ADB 2015).

Our review of the record below reveals that the panel was correct in its assessment of its role and the importance of what information they could consider:

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. 36508-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); *Grievance Administrator v Mark L. Brown*, 95-68-GA (ADB 1996); and, *Grievance Administrator v Tonya Myers Phillips*, 16-64-GA (ADB 2017).

As a result of such discretion, we are limited to reviewing the allegations contained within the four-corners of the formal complaint, as they relate to respondent's [sic] conduct, in assessing the discipline being imposed. Any new facts or allegations raised by the complainant in his written objection were not considered by the panel in assessing whether the parties' agreement that respondents be reprimanded for the acknowledged misconduct is appropriate. [Reports 2/21/17, p 2.]

Complainants' reliance on this Board's holdings in *Grievance Administrator v Craig Tank*, 06-116-GA (ADB 2007); and *Bess*, supra, are misplaced. In *Tank*, we remanded the matter to the panel to consider additional information provided by the complainant that related specifically to the charged misconduct contained in the formal complaint and admitted to by the respondent in the parties' subsequent stipulation for consent order of discipline.

In *Bess*, the hearing panel denied the complainant's objections to the stipulation for consent order of discipline, in part, on the basis that the complainant had no standing to object and the panel lacked jurisdiction to consider the objections. We dispelled those notions and reaffirmed that the critical question on review was whether the discipline imposed through the consent order of discipline approved by the hearing panel was appropriate given the nature of the uncontested misconduct. Neither case held that the Board could either consider additional allegations of misconduct not charged or order the Attorney Grievance Commission to investigate and/or prosecute allegations of misconduct raised by a complainant but not charged in a formal complaint.

Finally, despite complainants' claims to the contrary, no procedural errors occurred, in violation of MCR 9.111(C) (scheduling a hearing, receiving evidence, and making written findings of fact), and MCR 9.115(J)(2) (holding a separate hearing to determine the appropriate discipline). MCR 9.115(F)(5), specifically indicates that upon the filing of a stipulation for consent order of discipline, it is to be submitted to the panel (with a copy served on the complainant(s)), and if the

panel approves the stipulation, "it shall enter a final order of discipline." That is exactly what occurred; the hearing panel accepted the stipulations, thus it was not necessary, or required, that a hearing be held.

The Board is satisfied that the panel made an informed decision in each matter, to accept the stipulations for consent orders of reprimands. The Board is further satisfied that the discipline imposed is within the acceptable range of the ABA Standards and prior Board precedent.

NOW THEREFORE,

IT IS ORDERED that the orders of reprimand (by consent) issued by Kent County Hearing Panel #4 on February 21, 2017 are **AFFIRMED**.

ATTORNEY DISCIPLINE BOARD

By: 

Louann Van Der Wiele, Chairperson

Dated: July 13, 2017

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

Board members John W. Inhulsen and Jonathan E. Lauderbach were absent and did not participate.