

STATE OF MICHIGAN  
ATTORNEY DISCIPLINE BOARD

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ATTORNEY DISCIPLINE BOARD  
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Grievance Administrator,  
Michigan Attorney Grievance Commission,

Petitioner

vs

Case No. 09-48-GA

WILSON A. COPELAND II, P-23837

Respondent.

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**RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR REVIEW**

**STATEMENT OF APPEAL**

The factual findings of the review panel are supported by considerable evidence. Given those factual findings, the conclusions of law reached by the review panel support the dismissal of the formal complaint against the respondent. The brief of Petitioner in Support of the Petition for Review fails to provide any basis upon which to overturn that result.

**STANDARD OF REVIEW**

Respondent agrees with the standard of review set forth by Petitioner in its Brief in Support of Petition for Review, that under *Grievance Administrator v August*, 438 Mich 296; 475 NW2d 256 (1991), that on review, this Board must determine whether a hearing panel's factual findings have proper evidentiary support on the whole record.

## INTRODUCTION

By Report and Order dated April 27, 2010, Tri-County Hearing Panel #2, James E. Wynne, Chairperson, and Maria Zagorski and Philip Green, Members, found that professional misconduct on the part of Respondent Wilson Copeland II was not established, and ordered that the Formal Complaint against him be dismissed. The Grievance Administrator now brings the instant Petition for Review.

Every factual statement contained within the Panel's Report is supported by evidence on the record. The conclusion the Panel reached is appropriate and sound, given those facts. At all times during his representation of the City of Detroit in the Brown/Nelthrope litigation, Mr. Copeland did not have the knowledge such as would have alerted and enabled him to go to City Council or anyone else regarding the text messages. Equally importantly, at all times during his representation of the City of Detroit in the Brown/Nelthrope litigation, Mr. Copeland was not assigned the role of reporter to City Council, to Ellen Ha, or to anyone else regarding the text messages.

For these reasons, as more fully discussed within, Respondent asks that the Board affirm the decision of the Hearing Panel.

## STATEMENT OF FACTS

Respondent Wilson Copeland, a prominent attorney in Detroit, "was engaged as 'special counsel' 'to assist the City of Detroit Law Department by providing legal representation to the City of Detroit' in the Brown and Nelthrope lawsuit." (Report at 2). (Ex 1, Contract; Tr 1/6/10 p 49-50). His retention was designed "to strengthen the legal team for the City of Detroit as it was established that respondent brought

much 'first chair' civil jury trial experience to the team, having successfully completed many civil jury trials in the past where damage claims had been very significant." (Report at 2). (Tr 1/6/10 p 51). He was brought in as co-counsel with the attorney on the staff at the City Law Department who was already working on the matter, Ms Valerie Colbert-Osamuede." (Report at 2) (Tr 1/6/10 p 54; Tr 1/7/10 p 70). The case went to trial, and at that trial, the jury returned a verdict against Mayor Kilpatrick and the City of Detroit, in the amount of \$6.5 million. (Tr 1/6/10 p 69).

Following the trial, the Court ordered facilitation regarding a claim of legal fees in the amount of \$1,000,000 asserted by Plaintiffs' counsel, Michael Stefani. The facilitator was former Genesee County Judge Valdemar Washington. (Tr 1/6/10 p 70-71) The City of Detroit was represented by Valerie Colbert-Osamuede, a Corporation Counsel employee, and Wilson A. Copeland. Kwame Kilpatrick was represented by Samuel McCargo. (Tr 1/6/10 p 72).

There came a time during the facilitation when Mr. Washington asked to speak to Mr. McCargo separately from the attorneys representing the City. Mr. Washington presented to Mr. McCargo a document with instructions that the material was to be viewed only by Mr. McCargo. (Tr 1/6/10 p 85). After a number of minutes, Mr. Copeland found Mr. McCargo in the parking lot where the facilitation was being held, and asked what was going on. Mr. McCargo informed Mr. Copeland that he had received what purported to be a draft of a pleading prepared by Mr. Stefani and that the pleading was for Mr. McCargo's eyes only. (Tr 1/6/10 p

73-74). He then indicated to Mr. Copeland that Mr. Stefani "says he has the text messages" which had been part of pre-trial discovery motions and that Mr. Stefani was interested in a global settlement to resolve the Brown and Nelthrope matter and an additional matter known as Harris. (Tr. 1/6/10 p 76-77). Mr. Copeland respected Judge Washington's instructions - he did not read the document in Mr. McCargo's possession nor was he informed of the contents of the writing. (Tr 1/6/10 p 85-86).

Shortly thereafter, co-counsel Valerie Colbert-Osamuede joined the two, and when Mr. McCargo informed her of the same thing he had just told Mr. Copeland, she summoned her supervisor, Corporation Counsel John Johnson. (Tr 1/6/10 p 82-83). Upon his arrival, negotiations resumed, but with a wider scope - to settle the claims of Brown and Nelthrope, as well as a third claim - that of another Stefani client, Harris, against Kilpatrick and the City of Detroit. (Tr 1/6/10 p 86-89). At the facilitation site, the parties arrived at a mutually agreed upon amount of money to settle the cases. (Tr 1/6/10 p 94-95). When the facilitator Val Washington was advised that the parties had arrived at a dollar settlement, he instructed them to prepare a memorandum of agreement respecting the settled case. (Tr 1/6/10 p 95) Because the facilitation offices were no longer available beyond 5:00 p.m., the parties agreed to meet at the offices of Plaintiffs' lawyers Mr. Stefani later the same evening. (Tr 1/6/10 p 95-96).

During the meeting at Mr. Stefani's office, the parties identified items that were considered to be confidential to the various parties. Included in the confidential items were:

- (1) Medical records suggestive of substance abuse history of Plaintiff Nelthrope
- (2) Documents suggesting inappropriate investigatory techniques by Brown;
- (3) Documents respecting a mortgage application by Christine Beatty; and
- (4) The text messages that Mr. Stefani claimed to have obtained.

These matters were understood to be personal to the parties and steps were taken to keep these matters private. (Tr 1/7/10 p 94-95).

From the standpoint of Mr. Copeland, the confidentiality aspect of the settlement was secondary to the necessity of settling the matter. Perhaps most significantly, he did not believe there were any significant errors of law upon which an appellate reversal could be based. (Tr 1/7/10 p 82). Second, the case had already gone up, on interlocutory appeal, all the way to the Supreme Court on all the purely legal issues pertinent to the litigation, and those had been resolved in a manner detrimental to the City. (Tr 1/11/10 p 10). This was also the opinion of appellate specialist Morley Witus, who believed that any appeal would be a longshot at best – not only for the reason that the legal issues had been previously disposed of, but also because the remaining issues were discretionary evidentiary issues which have a poor track record of resulting in appellate reversals (Tr 1/11/10 p 12-13). Finally, the feedback from City decision makers and from community leaders was overwhelmingly in favor of settling the matter and moving on. (Ex 3-6; Tr

1/7/10 p 83-86; Tr 1/11/10 p 11-12). All of these strong factors influenced Mr. Copeland's "gut feeling" that this was a case that could not get any better – it was one that had to be settled.

So the settlement was agreed to. As the Hearing Panel found, "Subsequently, after respondent's trial work was completed, Ms Colbert-Osamuede and her superior, Mr. John Johnson, the City's Corporation Counsel, were as involved if not more involved than respondent in negotiating the terms of the settlement which came to be represented in both the 'Settlement Agreement and General Release' and the 'Confidentiality Agreement according to the record before the Panel.'" (Report pp 2-3) (Tr 1/6/10 p 94 [the settlement could not have been reached without Johnson's participation with authority]; Tr 1/7/10 p 60-61 [there were established levels of authority and protocol regarding interactions between outside counsel and corporate counsel regarding settlements that outside counsel were not to circumvent]; Tr 1/7/10 p 93 [Copeland was only peripherally involved in the final settlement negotiations])

Under the Detroit City Charter the settlement of this lawsuit had to be approved by the Detroit City Council in order to be funded. (Report at 3). (Ex 6, City Charter; Tr 1/6/10 p 101; Lewis Tr 1/11/10 p 30). Although respondent represented the City of Detroit in previous litigations that had been settled, he was never involved in seeking City Council approval for such settlements, such approvals being handled by the Corporation Counsel or his or her staff. (Report at 3) (Tr 1/7/10 at 63-65) The settlement of the Brown/Nelthorpe litigation followed the same track,

in that "Respondent played no role in seeking City Council approval of the settlement made in the Brown and Nelthorpe lawsuit." (Report at 3) (Tr 1/7/10 p 96), as the preparation of the report and the presentation of the matter to City Council was handled by Ms. Colbert-Osamuede from the Detroit City Law Department, respondent's co-counsel for the City in the lawsuit. (Report at 3). (Tr 1/7/10 p 95-96).

The Detroit Free Press thereafter filed a FOIA action to obtain the text messages. The City of Detroit was represented by Corporation Counsel Ellen Ha. Mr. Copeland was not involved in the preparation of the City's response to the Free Press FOIA's lawsuit. Mr. Copeland did not enter an appearance nor was he consulted with respect to any documents which were the subject matter in the Free Press claim. (Tr 1/6/10 p 126-127).

Mr. Copeland's only active role in the FOIA litigation was to assist in preparing Ellen Ha for the taking of Mr. Stefani's deposition. (Tr 1/6/10 p 131). It was during a meeting to prepare Ellen Ha for this deposition when Mr. Copeland first learned that there was a point of inquiry regarding the confidentiality agreement that had been prepared to keep the text messages and other matters private and personal to the litigants. At this meeting, when he first learned that there was an interest in the confidentiality agreement, Mr. Copeland took the position that the document should be turned over to Judge Colombo for an in-camera inspection and determination as to whether or not the document was subject to the FOIA subpoena. (Tr 1/6/10 p 138-139).

Of course, the text messages were made public, setting off a series of political firestorms which have barely subsided even to this day. The formal charges filed against Mr. Copeland before this Board are only a small part of the repercussions caused by the string of revelations about the former Mayor. The Hearing Panel heard three days of testimony and received various exhibits on the issue of whether Mr. Copeland had committed professional misconduct, as set forth in Petitioner's Formal Complaint, in his representation of the City of Detroit in the Brown Nelthorpe litigation. After the hearing, by written Order and Report, the Panel correctly ruled that Mr. Copeland committed no professional misconduct, and, based on the record, its Order and Report should be affirmed by this Board.

**THE HOLDING OF THE HEARING PANEL IS AMPLY SUPPORTED BY THE EVIDENCE PRESENTED, AND THE PETITIONER FAILED TO PRESENT EVIDENCE SUFFICIENT TO ESTABLISH PROFESSIONAL MISCONDUCT ON THE PART OF RESPONDENT WILSON COPELAND.**

The penultimate paragraph of the Panel's Report builds upon the above findings, and reaches legal conclusions:

While it seems clear to us that Ms. Colbert-Osamuede and Mr. John Johnson breached their duties of disclosure toward the City of Detroit when approval for the settlement was sought from City Council, we can not say that respondent did so or attempted to do so, or knowingly assisted Ms. Colbert-Osamuede or Mr. Johnson in doing so, or did so through their acts or the acts of anyone else, as charged in the formal complaint. Nor was testimony presented by the Grievance Administrator about the interval between Council approval and Council's discovery of the Confidentiality Agreement terms, and what respondent's knowledge was before or during that interval about what was planned to be told to City Council to secure its approval, or what it was told. There was no testimony presented at all from Ms. Colbert-

Osamuède and Mr. John Johnson and respondent was not questioned about assisting Ms. Colbert-Osamuède or Mr. John Johnson before City Council, or about trying to do through them what respondent wanted to do himself. There was simply no evidence of any of that. (Report at 3-4)

This paragraph recognizes the two significant limitations on Mr. Wilson Copeland during the interval in question. Unquestionably, Mr. Copeland was limited in his knowledge and was limited in his role. The support for the limited role he played once the settlement was reached is set forth several times above. Equally important is the fact of his limited knowledge. In preparation for the Brown/Nelthorpe trial, Mr. Copeland directly questioned Mayor Kilpatrick about the possibility of an affair between himself and Ms. Beatty, and received an emphatic and plausible denial, which he believed. (Tr 1/7/10 p 77-78). He was explicitly not permitted to see the content of the text messages, and so he remained unaware of any grounds upon which to question the Mayor's denial. (Tr 1/6/10 p 80-81; 85). He in fact remained secure in his belief that the contents thereof, although potentially embarrassing, were within the ambit of a variety of matters that were appropriately deemed private between all the parties to the settlement agreement. (Tr 1/6/10 p 77-78; Tr 1/7/10 p 94-95). The only role and concern that Mr. Copeland had during the entire settlement process was to get his client, the City of Detroit, the best possible resolution to the unfortunate litigation, which concern was echoed by those on City Council. (Exs 3-5; Tr 1/7/10 p 83-86)

The Petitioner's case thus boils down to the notion that Mr. Copeland could have stepped out of his role, and that he could have been more suspicious of the contents of the text messages than he was. Then Petitioner inflates this notion to the point that somehow these "could have beens" rise to the level of ethical duties to have done so, and even further, that Mr. Copeland breached ethical duties by not doing so. Neither the ethical duties nor any breach thereof are borne out by the language of the rules cited in the formal complaint, and neither are supported by the factual record presented to the hearing panel. The Formal Complaint was therefore properly dismissed, insofar as it relates to the presentation of the settlement for City Council approval.

The above reasoning applies with even greater force to the charges related to the FOIA matter, which remain of such small import that they were not even cited in the hearing panel's Order and Report. Mr. Copeland had even less knowledge and less of a role in the FOIA proceedings than he did in presenting the Brown/Nelthorpe settlement for approval by City Council. He was not retained as outside counsel in the FOIA matter; He simply attended three meetings with other attorneys and with Ms. Ellen Ha, the City's corporation counsel in the FOIA case. (Tr 1/6/10 p 126-127). The third meeting is the only one in which he participated, and his participation was limited to helping Ms. Ha prepare for a coming deposition. (Tr 1/6/10 p 131). His only advice at the third meeting pertaining to the substance of the matters the Free Press sought to be disclosed was that any such material should

simply be provided to the judge for *in camera* review. (Tr 1/6/10 p 138-139). From the standpoint of Ms. Ha, her primary dealings were with Mr. Johnson and Ms. Colbert-Osamuede. (Tr 1/6/10 p 154; 161). She didn't even remember whether Mr. Copeland spoke at all at the first two meetings. (Tr 1/6/10 p 163; 166). Further, the first two meetings dealt only with the City's legal response to a subpoenaed record by the Free Press to SkyTel. It was the City's position that SkyTel, as a private company, was not subject to a FOIA subpoena. (Tr 1/6/10 p 162-163). She confirmed that the purpose of the third meeting was to prepare her for the upcoming deposition. (Tr 1/6/10 p 170). At that third meeting, Mr. Mitchell, rather than Mr. McCargo, was present to represent the mayor's interests, and all present at the meeting sought to persuade him to divulge the material to the judge in camera, which persuasion proved unsuccessful. (Tr 1/6/10 p 170-172; 182-184). There is no support in the record for the proposition that Mr. Copeland was under any ethical duties to do more than he did, nor is there support for the proposition that he breached any such duties.

Therefore, this panel can make use of the undisputed record, in which each and every factual finding is amply supported by record testimony and/or received exhibits, to uphold the Panel's Order and Report, by extending the same reasoning applied to the issue of the presentation of the settlement to City Council to the FOIA issue. Mr. Copeland's limited role did not involve him going to a city lawyer, Ms. Ha. She was dealing with other city lawyers, including Ms. Colbert-Osamuede and

Mr. Johnson, who were vastly more knowledgeable than him on the subject of the Confidentiality Agreement and the settlement. No testimony was presented by Petitioner that would support the imposition of discipline for any misconduct during his limited activity in the FOIA proceedings.

### CONCLUSION

Therefore, for the reasons set out above, this Board should affirm the findings and conclusions of Tri-County Hearing Panel #2 in the above captioned action.

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