

STATE OF MICHIGAN
ATTORNEY DISCIPLINE BOARD

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner,

v.

Case NO. 09-49-GA

JOHN E. JOHNSON, JR., P29742

Respondent.

FILED
ATTORNEY DISCIPLINE BOARD
10 JUN 16 AM 11:31

**REPORT OF TRI-COUNTY HEARING PANEL NO. 8
ON APPROPRIATE DISCIPLINE**

Present: Chester E. Kasiborski, Jr.
Kenneth R. Chadwell
Margaret A. Costello

Following its finding of professional misconduct, pursuant to MCR 9.115(J)(2), the Panel conducted a separate hearing on May 27, 2010 to determine the appropriate discipline in this matter. In accordance with the Supreme Court's directive in *Grievance Administrator v Lopatin*, 462 Mich 235 (2000), the Panel has employed the ABA Standards for Imposing Lawyer Sanctions ("ABA Standards") in arriving at its conclusion of appropriate discipline.

In applying the ABA Standards, the Panel must first determine the specific ethical duty that Respondent violated. The Panel concludes that Respondent violated a duty owed to the legal system and the legal profession. The ABA Standards assume that the

most important ethical duties are those obligations which a lawyer owes to clients, but here the Panel does not find that Respondent violated any duties owed to a client.

Second, the Panel is to consider the lawyer's mental state, i.e., did the lawyer act intentionally, knowingly, or negligently? Here, as evidenced by the Panel's Report on Charges of Misconduct ("Prior Report"), the essence of the Panel's finding was that Respondent acted negligently. The Panel did not find that Respondent acted intentionally or knowingly. As the Panel noted in its Prior Report: "The Panel's findings regarding the allegations in Count Two are essentially that Mr. Johnson was negligent..." (p. 29).

Third, the Panel is to consider the extent of the actual or potential injury caused by the lawyer's misconduct. Here, the injury to the legal system and the legal profession caused by Respondent is intangible and cannot be measured in dollars or cents. During the hearing on misconduct, Petitioner presented evidence regarding the dollar amount of legal fees incurred by the Free Press for which the City of Detroit is responsible as a result of the Freedom of Information Act litigation that is discussed in the Panel's Prior Report. Then, Petitioner tried to argue that the magnitude of those fees should cause the Panel to conclude that a serious injury was caused by Respondent. However, in making that argument, Petitioner has assumed a contradictory position because, at the outset of closing remarks, counsel for Petitioner stated that the duty violated here by Respondent was a duty owed to the legal profession, not to a client, i.e., the City of Detroit.

Further, there are additional reasons why the Panel concludes it is inappropriate to attempt to use the Free Press legal fees, which the City of Detroit is obligated to pay,

as a proxy for the extent of injury caused by Respondent. First, a substantial percentage of those legal fees were incurred after Respondent left his position as Corporation Counsel and were due to legal activity made necessary by the decisions of Respondent's successors. Second, all of those legal fees were caused primarily by the actions of others, namely Valerie Colbert-Osamuede, Kwame Kilpatrick, and outside counsel for the City of Detroit, and not by Respondent. Therefore, it is virtually impossible to quantify – or to even attempt to quantify – the portion of the Free Press legal fees that the City of Detroit must pay that are attributable to Respondent's negligence. Third, Petitioner admitted that it was not asking for restitution as a sanction in this matter.¹

Finally, the Panel must consider whether there are any aggravating or mitigating circumstances. Petitioner argues that Respondent engaged in a pattern of misconduct and committed multiple offenses, which are aggravating factors. The Panel disagrees. Rather, the Panel believes that because there is some overlap in Michigan Court Rules and the Rules of Professional Conduct, a single circumstance – Respondent's failure to properly supervise Valerie Colbert-Osamuede – resulted in Respondent violating more than one rule addressing professional conduct. Therefore, the Panel rejects the argument that Respondent engaged in a pattern of misconduct or committed multiple offenses.

Petitioner also argued that Respondent's substantial experience as a lawyer should be considered an aggravating factor. However, the Panel finds that the fact that Respondent worked for many years in a supervisory capacity, yet has no history of prior

¹ For all of these reasons, the Panel would not have ordered the payment of restitution by Respondent in this matter in any amount even if Petitioner had requested that sanction. Additionally, the Panel notes that Respondent has been unemployed since September, 2008 and thus already has suffered a substantial financial penalty.

discipline, is more properly considered here to be a mitigating factor. The essence of Respondent's wrongdoing in this matter was his failure to properly supervise a subordinate; yet, he had many years of prior experience in doing so without any prior discipline for failure to make reasonable efforts to ensure that his subordinate lawyers conformed to the Rules of Professional Conduct which the Panel finds is in reality a mitigating factor.

The Panel also finds that here there were several other mitigating factors proven by Respondent. Besides the fact that the Respondent has no prior offenses, here he had no dishonest motive. He was careless, but did not profit from his omissions. Additionally, as far as the record discloses, Respondent made a full disclosure of all pertinent facts to the Grievance Administrator and fully cooperated in these proceedings.

Further, to the extent there was evidence presented regarding Respondent's character and reputation, it was all positive. The three witnesses who testified were all supportive of Respondent's character and reputation. The Panel admitted into the record, over Petitioner's objection, a number of letters appended to Respondent's Discipline Hearing Memorandum. In reaching its conclusions here on appropriate discipline, the Panel has relied on none of those letters except the letter written by Deierdre Weir, Exhibit 4 to that Memorandum. Ms. Weir was one of the live witnesses and, therefore, Petitioner did not object to the admission of her letter.

Finally, the Respondent indicated that, in retrospect, he would have acted differently. This can be considered another mitigating factor.

To summarize, the Panel finds that there are no aggravating circumstances. Conversely, the Panel finds that there are a number of mitigating circumstances.

As stated in the Panel's Prior Report, the Rule of Professional Conduct that was most specifically related to the Panel's findings was MRPC 5.1(b). Counsel for Petitioner conceded during closing remarks that there are few reported decisions on discipline involving violations of MRPC 5.1(b) in Michigan or elsewhere. The Panel finds that the cases cited by Petitioner's counsel are distinguishable on their facts and, therefore, are not pertinent to its decision on discipline.

Petitioner's counsel conceded during closing remarks that ABA Standard 7.3 is the standard most germane when negligent professional misconduct is involved. It provides as follows:

Reprimand is generally appropriate when a lawyer negligently engaged in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

Here, as stated above, the Panel found in its Prior Report that Respondent acted negligently, not knowingly or intentionally. Therefore, ABA Standard 7.2, which provides that suspension is generally appropriate when a lawyer knowingly engages in professional misconduct, is not applicable. Further, the mitigating factors found to exist here by the Panel also make a suspension inappropriate. Pursuant to the ABA Standards as discussed above, and in accordance with MCR 9.106(3), the Panel unanimously concludes that Respondent should be reprimanded, without conditions.

MCR 9.105 provides in part:

Discipline for misconduct is not intended as punishment for wrongdoing, but for the protection of the public, the courts, and the legal profession.

Here, the Panel unanimously finds and concludes that the public, the courts and the legal profession are sufficiently protected by a reprimand of Respondent, without conditions. A reprimand also serves to remind Respondent how he must act if and when he is confronted with similar circumstances in the future.

Further, the Panel finds and concludes that a suspension is not required to protect the public, the courts, or the legal profession. The Panel has good reason to believe that Respondent may be trusted to continue the uninterrupted practice of law without the likelihood of committing future acts of professional misconduct.

The Panel's Chairperson will execute an Order of Discipline in accordance with this Report.

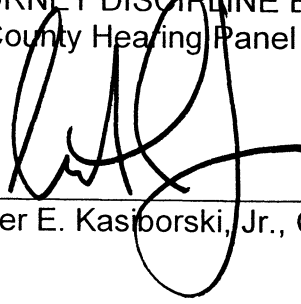
SUMMARY OF PRIOR MISCONDUCT

None

ITEMIZATION OF COSTS

Attorney Grievance Commission:	\$ 916.26
(See Itemized Statement filed 06/14/10)	
Attorney Discipline Board:	
Hearing held 09/24/09	\$ 131.00
Conference Call held 11/19/09	\$ 6.14
Hearing held 01/14/10	\$1,371.00
Hearing held 01/15/10	\$1,040.00
Hearing held 01/19/10	\$ 941.00
Hearing held 01/21/10	\$1,235.00
Hearing held 05/27/10	\$ 483.00
Administrative Fee [MCR 9.128(B)(1)]	\$1,500.00
TOTAL:	\$7,623.40

ATTORNEY DISCIPLINE BOARD
Tri-County Hearing Panel #8



Chester E. Kasiborski, Jr., Chairperson

Dated: June 16, 2010

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