

STATE OF MICHIGAN
ATTORNEY DISCIPLINE BOARD

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GRIEVANCE ADMINISTRATOR,
STATE OF MICHIGAN,
ATTORNEY GRIEVANCE COMMISSION,

Petitioner-Appellant,

-vs-

#09-047-GA

MICHAEL L. STEFANI,

Respondent-Appellee.

RESPONDENT'S RESPONSE TO PETITIONER'S REPLY TO BRIEF ON REVIEW

In his reply brief, Petitioner asserts that the facts of Grievance Administrator v Conlon, ADB #00-159-GA, "bear[] very little resemblance" to those at bar. In fact, to the extent that they are different, the facts of Conlon are qualitatively more serious than those at bar, and Petitioner's attempt to minimize Conlon's conduct does not withstand scrutiny.

A review of the facts – including those found in the documents attached to Petitioner's reply brief – reveals that

- Conlon admitted that he had violated the court's order (Tr 5/9/97 at 53, 60-61);
- Conlon's wife had signed the subpoena on *his behalf*, with *his approval* (*Id.* at 52);
- While a copy of the *subpoena* was sent to the prosecuting attorney, the

accompanying *cover letter* advised the school to *disregard* the directions of the subpoena:

"Even though the subpoena duces tecum requires your presence in court on Monday, September 23, 1996, if you provide photocopies of the records asked for on or before that date we will not make arrangements for your attendance at court. Please forward this information to the attention of the undersigned."

(*Id.* at 55; emphasis added); and

- In contrast to Petitioner’s claim, the records returned to the court allegedly without having been read were records received in response to a *different* subpoena to a *different* school (Moorsbridge School). As to the records received from Parchment Elementary School, the court, according to Judge Lamb, “obtained these records, the subpoena and the cover letter, we got them from the *school*” (*Id.* at 56; 60-62; emphasis added).

For all of these reasons, Judge Lamb stressed in his opinion imposing sanctions on Conlon

that

[t]he fact that it was not Mr. Conlon who signed the subpoena does not allow him to eschew his responsibility in regard to the subpoena, production of the records and compliance with the court rule.

Opinion at p 10.

It is also significant that –

- While Mr. Stefani’s violation of the court rule and judge’s order regarding the subpoena was his only violation and occurred in the immediate aftermath of a lengthy, exhausting, emotionally draining trial, Conlon’s subpoena violation was one of many violations found by both Judge Lamb and the hearing panel, and no comparable mitigating circumstances were present; and

- Mr. Stefani wholeheartedly accepted responsibility for his error while Conlon repeatedly attempted to pass the buck to his wife.

Petitioner’s severely misleading attempt to compare the facts of the instant case with those

Grievance Administrator v McCargo, ADB #09-050-GA, also warrants comment. Petitioner argues

that

Mr. McCargo and Respondent were both found to have committed misconduct during the *Brown/Nelthrope* lawsuit which presumptively called for a suspension. Each of them was able to point to a long and distinguished legal career with no history of discipline. Mr. McCargo was suspended. Respondent was reprimanded. The Board is now obliged to square these results.

Brief at 3.

Petitioner inexplicably ignores that Mr. Stefani was only found to have engaged in misconduct regarding the subpoena *duces tecum* while Mr. McCargo was found to have engaged in multiple acts of misconduct. Mr. McCargo was found to have violated –

- MRPC 3.4(a) “by participating in an attempted coverup of the settlement agreement and other documents in the *Brown/Nelthrope* case and by his participation in the efforts to keep various aspects of the agreement secret”, Report on Misconduct at 3;

- MRPC 3.3 “by failing to disclose to Judge Callahan the false testimony concerning the reasons why Brown and Nelthrope were removed from their positions”, *Id.*;

- MRPC 1.2(c) “by assisting to cover up false testimony given by Kilpatrick and Beatty”, *Id.*;

- MRPC 8.1(a) “by not responding truthfully to the Request for Investigation as it related to McCargo’s knowledge of the Free Press’ Freedom of Information Act requests (FOIA)”, *Id.*; and

- MRPC 3.3(a)(4) “by failing to disclose to Judge Callahan the false testimony by Kilpatrick and Beatty concerning their relationship”. *Id.*

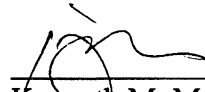
Petitioner also overlooks the fact that Mr. Stefani was found *not* to have engaged in any misconduct regarding the Brown/Nelthrope settlement agreement and was found *not* to have violated MRPC 8.1(a). Tellingly, Petitioner did not appeal either of those determinations.

For all of these reasons, Petitioner's argument that there is a "result" to be "square[d]" by this Board is manifestly wrong.

RELIEF REQUESTED

For all of these reasons, the hearing panel properly determined that a reprimand is the appropriate level of discipline in this case, and that decision should be affirmed.

Respectfully submitted,



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Attorney for Respondent-Appellee

Dated: October 8, 2010

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Respondent.

PROOF OF SERVICE

Kenneth M. Mogill, being first duly sworn, deposes and states that on October 8, 2010, he served a copy of

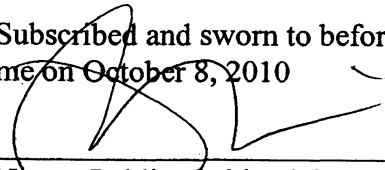
Respondent's Response to Petitioner's Reply Brief on Review

upon Robert E. Edick, Esq., Attorney Grievance Commission, #256, Marquette Building, 243 W. Congress, Detroit, MI 48226 by depositing same in the United States mail, postage fully prepaid thereon.



Kenneth M. Mogill

Subscribed and sworn to before
me on October 8, 2010



Notary Public, Oakland County MI
My Commission expires: 12/26/11