

**State of Michigan
Attorney Discipline Board**

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ATTORNEY DISCIPLINE BOARD
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Grievance Administrator,
Michigan Attorney Grievance Commission,

Petitioner,

Case No. 17-7-GA

v

David M. Kipley, P27376,

Respondent.

Formal Complaint

Parties and Jurisdiction

1. Petitioner Grievance Administrator is authorized by MCR 9.109(B)(6) to prosecute this Formal Complaint by the Attorney Grievance Commission, which is the prosecution arm of the Michigan Supreme Court for the discharge of its constitutional responsibility to supervise and discipline Michigan attorneys.

2. As a licensed Michigan attorney, Respondent David M. Kipley, P27376, is subject to the jurisdiction of the Supreme Court and the Attorney Discipline Board as set forth in MCR 9.104.

3. Michigan attorneys have a duty to conduct themselves personally and professionally at all times in conformity with the standards imposed on members of the bar as a condition of the privilege to practice law.

4. Respondent is a Michigan attorney who was licensed in 1977 and who resides or has his place of business in the County of Kalkaska.

COUNT ONE

Factual Allegations

5. In or about March 2001, Respondent prepared the Last Will and Testament (Will) of Catherine Patterson.

6. The Will provides: "should [Respondent] qualify to serve as the Personal Representative of my estate, then in that event I give, devise and bequeath to [Respondent] the sum of Forty Thousand and No/100 (\$40,000.00) Dollars."

7. Respondent is not related to Mrs. Patterson.

8. On or about October 3, 2012, Respondent petitioned the Grand Traverse County Probate Court to have himself appointed conservator of the estate of Catherine Louise Patterson.

9. Respondent was appointed conservator of the estate of Mrs. Patterson by way of Letters of Conservatorship dated October 23, 2012, in Case No. 12-32,096-CA (Grand Traverse County Probate Court).

10. The Letters of Conservatorship contained restrictions on Respondent's authority, including the following provision: "No debts, liabilities, contracts or expenditures shall be incurred on behalf of the ward in excess of \$200 excepting mortgage or rental payments, utility payments, home health care aides, hospital and nursing home payments, income tax, real or personal property tax or medical insurance coverage payments, unless authorized expressly by order of this Court."

11. The Letters of Conservatorship also provide that "[a]dherence to these restrictions is the responsibility of the conservator."

12. On or about December 29, 2012, Respondent, as conservator of Mrs. Patterson's estate, caused to be made a \$100,000 donation to Mount Holiday, Inc. from conservatorship assets.

13. Respondent did not seek or obtain approval from the court to make the \$100,000 donation to Mount Holiday, Inc.

14. Respondent did not inform Mrs. Patterson about the donation, and Mount Holiday was not one of the beneficiaries of her Last Will and Testament.

15. At the time he made the donation, Respondent was a member of the Board of Directors of Mount Holiday, Inc.

16. Respondent violated the terms and conditions of the Letters of Conservatorship when he made or effectuated the donation to Mount Holiday, Inc.

17. Mrs. Patterson died on March 9, 2013.

18. Respondent was appointed personal representative of Mrs. Patterson's estate and served in that capacity until he was removed by Court Order, dated August 20, 2014.

19. Huntington National Bank (Huntington) was appointed as successor personal representative of Mrs. Patterson's estate in the August 20, 2014 Order.

20. In the August 20, 2014 Order, Respondent was required to file the proposed final account of the conservatorship estate on or before August 29, 2014.

21. Respondent filed the First and Final Account of Fiduciary on August 29, 2014.

22. The First and Final Account of Fiduciary was the first notice to the court that Respondent had made the \$100,000 donation from conservatorship assets.

23. Huntington filed an Objection to the First and Final Account of Fiduciary on or about November 14, 2014.

24. After a hearing on Huntington's objections, the court entered an Order Resolving Objections to First and Final Account of Fiduciary and for Other Relief, dated May 27, 2015, and amended on June 2, 2015 (Order Resolving Objections), which held that Respondent violated the terms and conditions of the Letters of Conservatorship when he made the donation to Mount Holiday.

25. In the Order Resolving Objections, the court ordered Respondent to repay \$100,000 to the estate by June 1, 2015.

26. Respondent did not repay the money to the estate by the date required.

27. Respondent also charged the conservatorship estate \$15,550.90 for fees during the period that he served as conservator.

28. In the Order Resolving Objections, the court also determined that Respondent charged excessive and otherwise inappropriate fees to the estate.

29. Specifically, the court held that Respondent charged \$200 per hour for conservatorship services; the court determined that \$20 per hour was an appropriate fee.

30. The court also determined that fees incurred before Respondent was appointed conservator were inappropriately charged to the estate, and the court disallowed the fees.

31. Of \$15,550.90 in fees charged by Respondent and taken from the estate, the court disallowed \$14,230.90 and ordered Respondent to repay the disapproved amount to the estate, also by June 1, 2015.

32. Respondent did not repay the fees to the estate by the date ordered.

Grounds for Discipline

33. By reason of the conduct described above in this Formal Complaint, Respondent has committed the following misconduct and is subject to discipline under MCR 9.104 as follows:

- a) collected a clearly excessive fee, in violation of MRPC 1.5(a);
- b) represented a client when the representation was materially limited by the lawyer's own interests, in violation of MRPC 1.7(b);
- c) prepared an instrument giving the lawyer a substantial gift from a client, including a testamentary gift, in violation of MRPC 1.8(c);
- d) knowingly disobeyed an obligation under the rules of a tribunal, in violation of MRPC 3.4(c);
- e) breached his fiduciary duties under the Estate and Protected Individuals Code, in violation of MCL 700.7803 (breach of fiduciary duty); 700.1502 (prudent investor rule); 700.1506 (invest and manage fiduciary assets solely in interest of beneficiaries); 700.5416 (applying fiduciary duty and standard of care applicable to trustee to conservator); 700.5421 (conflict of interest of conservator); and MCR 9.104(2);

- f) violated or attempted to violate the Rules of Professional Conduct, in violation of MRPC 8.4(a);
- g) engaged in conduct prejudicial to the administration of justice, in violation of MCR 9.104(1) and MRPC 8.4(c);
- h) engaged in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2); and,
- i) engaged in conduct contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3).

COUNT TWO

Factual Allegations

34. Petitioner incorporates paragraphs 1 through 33 as though fully restated here.

35. In connection with the investigation into this matter, counsel for Petitioner sent a letter to Respondent on or about August 10, 2015, and requested, inter alia, that Respondent produce a copy of his file for serving as conservator for Mrs. Patterson.

36. Respondent replied on or about September 11, 2015, stating that he would produce the file under separate cover.

37. Respondent did not produce the file.

38. Counsel for Petitioner wrote to Respondent on November 6, 2015, again requesting that he produce a copy of his file.

39. Having not received any response, counsel for Petitioner wrote to Respondent on January 25, 2016, and April 21, 2016, requesting in each letter that Respondent produce a copy of his file.

40. On or about May 26, 2016, Respondent responded to some questions posed in the prior correspondence, but he still did not produce a copy of his file.

41. On or about October 3, 2016, Petitioner sent by regular and certified mail a subpoena for Respondent's appearance for a sworn statement on October 25, 2016, at the office of the Attorney Grievance Commission.

42. The subpoena commanded Respondent to produce his file as well as invoices or other proof of services rendered as conservator.

43. Respondent did not appear in response to the subpoena, nor did he produce any documents.

44. To date, Respondent has not produced his file for serving as conservator.

Grounds for Discipline

45. By reason of the conduct described above in this Formal Complaint, Respondent has committed the following misconduct and is subject to discipline under MCR 9.104 as follows:

- a) knowingly failed to respond to a lawful demand for information, in violation of MRPC 8.1(a)(2);
- b) failed to appear and give evidence pursuant to a subpoena issued by the commission, in violation of MCR 9.112(D)(2);

- c) violated or attempted to violate the Rules of Professional Conduct, in violation of MRPC 8.4(a);
- d) engaged in conduct prejudicial to the administration of justice, in violation of MCR 9.104(1) and MRPC 8.4(c);
- e) engaged in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2); and,
- f) engaged in conduct contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3).

Wherefore, Respondent should be subjected to such discipline as may be warranted by the facts and circumstances of such misconduct, including payment of restitution.

Dated: January 30, 2017



Alan M. Gershel (P29652)
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