

13/06/2017 11:05:41

FILED  
ATTORNEY DISCIPLINE BOARD  
17 MAR -1 PM 3:31

State of Michigan  
Attorney Discipline Board

Grievance Administrator,  
Michigan Attorney Grievance Commission,

Petitioner,

Case No. 17-17-GA

v

Earl E. Erland, P41917,

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 prosecutorial 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 is subject to the jurisdiction of the Michigan 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 November 1988, in Montcalm County, and who resides or has his place of business in Montcalm County.

2/25/2017 15:45:00

**Count One (Lee VanPoperling)**

**(Factual Allegations)**

5. Between 2013 and 2016, Lee VanPoperling (“VanPoperling”), as an officer of two corporate entities, was involved in a commercial litigation appeal against a former subcontractor, Windrush, Inc. (“Windrush”).

6. On September 22, 2014, Windrush filed an application for leave to appeal with the Michigan Supreme Court (the “Court”).

7. On September 29, 2014, Respondent, who had been VanPoperling’s attorney for the Windrush appeal, sent a letter to VanPoperling. Respondent explained the Windrush case’s status and explained that he received Windrush’s application for leave to appeal on September 27, 2014. Respondent explained the nature of an application for leave to appeal. Respondent also told VanPoperling that the response to the application for leave to appeal would require a substantial amount of work. Respondent also informed VanPoperling that the response was due on October 14, 2014.

8. On or around October 3, 2014, VanPoperling paid Respondent \$2,000 to file a response to an application for leave to appeal to the Court.

9. VanPoperling drafted a check for \$2,000 to Jack Holwerda (“Holwerda”), a mutual friend of VanPoperling and Respondent’s, and Respondent. The check is dated October 3, 2014.

10. VanPoperling entrusted the check to Holwerda to give to Respondent.

11. Holwerda gave the check to Respondent.

12. On October 13, 2014, Respondent filed a motion to extend the time to file a response with the Court.

3/28/2017 10:45:50 AM

13. On October 21, 2014, the Court granted the motion and set the new due date for the response as October 31, 2014.

14. On October 30, 2014, Respondent filed a second motion to extend the time to file a response with the Court.

15. On November 4, 2014, the Court granted the motion and set the new due date for the response as November 10, 2014.

16. On November 10, 2014, Respondent filed a third motion to extend the time to file a response with the Court.

17. On November 19, 2014, the Court denied the third request.

18. Respondent did not file a response within the due date.

19. Respondent never filed a response brief to Windrush's application for leave to appeal.

20. Around mid-June 2015, VanPoperling asked for a copy of the response brief that Respondent was to have filed.

21. Respondent did not respond.

22. On July 2, 2105, the Court, on its own initiative and without addressing Windrush's application, vacated the Court of Appeals' order and remanded the Windrush case for the Court of Appeals to reconsider the case in light of *BC Tile & Marble Co, Inc v Multi Building Co, Inc*, 288 Mich App 576; 794 NW2d 76 (2010), a case that dealt with personal liability of a company's principal.

23. As of September 1, 2015, VanPoperling still had not heard from Respondent.

24. On September 10, 2015, the Court of Appeals issued its order after remand, finding that VanPoperling was personally liable for the amounts his corporate entities owed Windrush.

25. On October 1, 2015, Respondent, upon his own initiative and without VanPoperling's consent, filed a motion for reconsideration of the September 10, 2015 Court of Appeals opinion.
26. On October 15, 2015, Windrush responded.
27. On October 29, 2015, the Court of Appeals denied Respondent's motion for reconsideration.
28. On November 18, 2015, Respondent sent a letter to VanPoperling.
29. In this letter, Respondent told VanPoperling that the Court of Appeals upheld the holding that VanPoperling was personally liable for the Windrush amounts owed.
30. Respondent also informed VanPoperling that that he had the option to file an application for leave to appeal to the Court.
31. Respondent requested that VanPoperling inform him by November 25, 2015, if VanPoperling wanted to pursue the application for leave to appeal.
32. No application for leave to appeal was filed on VanPoperling's behalf.
33. On December 10, 2015, Windrush filed an application for leave to appeal the Court of Appeals' order after remand.
34. Respondent sent correspondence to VanPoperling on January 6, 2016, asking VanPoperling whether he wished Respondent to file a response to the application for leave to appeal.
35. In the January 6, 2016 correspondence, Respondent stated that, if VanPoperling wanted to file a response, Respondent would have to file a motion to extend the time to file a response with the Court.

2016/01/06 10:00 AM

36. Also in the January 6, 2016 correspondence, Respondent stated that, if VanPoperling wanted Respondent to file the motion and response, VanPoperling would have to drop a check off for \$300, no later than 10 a.m., on January 7, 2016.

37. Respondent stated that, “[f]ailure” to drop the check off “will result in a waiver of your right to file a response.”

38. After receiving the January 6, 2016 correspondence, VanPoperling wrote on the letter “[a]s of 1 Jan 2016 your [services] are no longer [needed]. . . our association is terminated” and sent the letter back to Respondent.

39. VanPoperling secured new counsel, and they recommended that he not respond to the application for leave to appeal.

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

- a. Respondent neglected a legal matter entrusted to him, in violation of MRPC 1.1(c);
- b. Respondent failed to seek the lawful objectives of a client, by filing a motion for reconsideration on October 1, 2015 without client consent, in violation of MRPC 1.2(a);
- c. Respondent failed to conduct himself with reasonable diligence and promptness in representing a client, in violation of MRPC 1.3;
- d. Respondent failed to keep his client reasonably informed about the status of a matter and comply promptly with reasonable requests for information, and/or failed to explain a matter to the extent reasonably necessary to

12/05/2017 15:40:52

- permit his client to make informed decisions regarding the representation, in violation of MRPC 1.4;
- e. Respondent violated MRPC 1.16(d) when he failed to return the unearned fee of \$2,000, for which VanPoperling paid Respondent to draft and file a response to the application for leave to appeal—and Respondent never filed that response;
  - f. Respondent violated or attempted to violate the Rules of Professional Conduct, in violation of MRPC 8.4(a);
  - g. Respondent engaged in conduct that is prejudicial to the administration of justice, in violation of MRCP 9.104(1);
  - h. Respondent engaged in conduct that exposes the legal profession or the court to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2); and
  - i. Respondent engaged in conduct that is contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3).

**Count II (Failure to Answer a Request for Investigation)**  
**(Factual Allegations)**

- 41. On or about September 11, 2015, a Request for Investigation, filed by VanPoperling, AGC File No. 1602-15, was served on Respondent pursuant to MCR 9.112(C)(1)(b).
- 42. Respondent did not answer the Request for Investigation within 21 days of service, as required by MCR 9.113(A) and MRPC 8.1(a)(2).
- 43. On or about October 9, 2016, a Final Notice, with a copy of the Request for Investigation enclosed, was served on Respondent at his address of record with the State Bar of Michigan and an additional address, both by certified mail, return receipt requested,

advising him that a failure to answer the Final Notice by October 19, 2015 would subject him to formal charges of misconduct.

44. Respondent received and signed for the Final Notice at the additional address on October 22, 2015.

45. Respondent failed to answer the Request for Investigation.

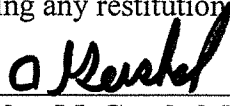
**(Grounds for Discipline)**

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

- a. Respondent failed to answer the Request for Investigation, in violation of MCR 9.104(7), MCR 9.113(A), and (B)(2), and MRPC 8.1(a)(2);
- b. Respondent engaged in conduct prejudicial to the proper administration of justice, in violation of MRPC 8.4(c) and MCR 9.104(1);
- c. Respondent 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
- d. Respondent engaged in conduct that is contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3).

Respondent therefore should be subjected to such discipline as may be warranted by the facts or circumstances of such misconduct, including any restitution owed.

Dated: 3/1/17

  
Alan M. Gershel (P29652)  
Grievance Administrator  
Attorney Grievance Commission  
535 Griswold St, Suite 1700  
Detroit, MI 48226  
(313) 961-6585