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ATTORNEY DISCIPLINE BOARD
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State of Michigan
Attorney Discipline Board

Grievance Administrator,
Michigan Attorney
Grievance Commission,

Case No. 17-62-GA

Petitioner,

v

Joseph H. McKoan, P55642,

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, the prosecutorial arm of the Michigan Supreme Court for the discharge of the Court's 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 1996 and resides or has his place of business in Saint Clair County.

Count One (Conflict of Interest)

(Factual Allegations)

5. Petitioner incorporates the above-paragraphs as if fully restated herein.
6. On or around August 15, 2008, Respondent drafted a will for Mr. Donald Schafer.
7. The will listed Mr. Donald R. Schafer's nephew, Steve K. Schafer, as the estate's personal representative.
8. The will provided that, should Steve K. Schafer "die, resign or fail to act" as personal representative, then Respondent was to be the estate's personal representative.
9. Steve K. Schafer passed away before Mr. Donald Schafer passed away.
10. Mr. Donald Schafer passed away on April 5, 2014.
11. Respondent intended to become the personal representative of the estate and intended to assume all the duties of probating the estate on the estate's behalf.
12. Mr. Floyd Schafer, Mr. Donald Schafer's brother, was Mr. Donald Schafer's heir and the estate's sole beneficiary.
13. On or around April 10, 2014, Respondent met with Mr. Floyd Schafer.
14. On or around April 10, 2014, Respondent offered his services to probate the estate for Mr. Floyd Schafer, for \$5,000.
15. On or around April 10, 2014, Mr. Floyd Schafer hired Respondent as his attorney and paid Respondent \$5,000 in cash to probate Mr. Donald Schafer's estate.
16. As Mr. Floyd Schafer's attorney, Respondent owed Mr. Floyd Schafer a duty to act in Mr. Floyd Schafer's best interests.
17. On May 6, 2014, Respondent filed the application for appointment of personal

representative with the St. Clair County Probate Court.

18. On or around May 9, 2014, the St. Clair County Probate Court appointed Respondent as the personal representative of the estate.

19. As the estate's personal representative, Respondent had a duty to the estate.

20. Respondent told Mr. Floyd Schafer and Mrs. McCabe that he had to act estate's best interests.

21. Despite Mr. Floyd Schafer engaging Respondent as his attorney, Respondent did not recognize his duty to Mr. Floyd Schafer, and did not act in the best interests of Mr. Floyd Schafer.

(Grounds for Discipline)

22. 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 was the personal representative for the estate and hired himself out to the beneficiary of the estate, creating a conflict of interest in violation of MRPC 1.7(a) or 1.7(b);
- b. Respondent failed to receive Mr. Floyd Schafer's consent, in writing, to be the estate's personal representative and Mr. Floyd Schafer's attorney, in violation of MRPC 1.7(a) or 14.7(b);
- c. Respondent violated or attempted to violate the Rules of Professional Conduct, in violation of MRPC 8.4(a);
- d. Respondent engaged in conduct that is prejudicial to the administration of justice,

in violation of MCR 9.104(1) and MRPC 8.4(c);

- e. 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
- f. Respondent engaged in conduct that is contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3).

Count Two (Violation of MCL 700.3719)

(Factual Allegations)

23. Petitioner incorporates the above-paragraphs as if fully restated herein.

24. MCL 700.3719(2) provides: "If an attorney serves as personal representative, the attorney shall maintain time records that state the identity of the person performing personal representative services, the date the services are performed, the amount of time expended in performing the services, and a brief description of the services. Upon request of an interested person affected by payment of personal representative fees, the attorney shall send the time records to the interested person."

25. Respondent did not maintain time records in accordance with MCL 700.3719(2).

26. As the estate's attorney, Respondent failed to separate the time he spent performing personal representative duties from the time he spent performing attorney duties while he was an attorney active and in good standing, that is, not suspended from the practice of the law.

(Grounds for Discipline)

27. 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 violated MCL 700.3719;
- b. Respondent violated or attempted to violate the Rules of Professional Conduct, in violation of MRPC 8.4(a);
- c. Respondent engaged in conduct that is prejudicial to the administration of justice, in violation of MCR 9.104(1) and MRPC 8.4(c);
- d. 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
- e. Respondent engaged in conduct that is contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3).

Count Three (Violation of MCR 9.119(A))

(Factual Allegations)

28. Petitioner incorporates the above-paragraphs as if fully restated herein.
29. Respondent was suspended from the practice of law for 179 days, effective July 1, 2014. See *Grievance Administrator v Joseph H. McKoan IV*, 14-20-JC.
30. The estate's probating had not been finalized as of July 1, 2014.
31. Respondent did not notify Mr. Floyd Schafer within 7 days of the effective date of the order of discipline, in writing, by registered or certified mail, return receipt requested as MCR 9.119(A)(1)-(6) requires.

(Grounds for Discipline)

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

- a. Respondent violated MCR 9.119(A);
- b. Respondent violated or attempted to violate the Rules of Professional Conduct, in violation of MRPC 8.4(a);
- c. Respondent engaged in conduct that is prejudicial to the administration of justice, in violation of MCR 9.104(1) and MRPC 8.4(c);
- d. 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
- e. Respondent engaged in conduct that is contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3).

Count Four (Violation of MCR 9.119(B))

(Factual Allegations)

33. Petitioner incorporates the above-paragraphs as if fully restated herein.
34. Respondent did not notify the St. Clair County Probate Court of his suspension or otherwise comply with MCR 9.119(B).

(Grounds for Discipline)

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

- a. Respondent violated MCR 9.119(B);
- b. Respondent violated or attempted to violate the Rules of Professional Conduct, in violation of MRPC 8.4(a);
- c. Respondent engaged in conduct that is prejudicial to the administration of justice,

in violation of MCR 9.104(1) and MRPC 8.4(c);

- d. 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
- e. Respondent engaged in conduct that is contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3).

Count Five (Violation of MCR 9.119(C))

Factual Allegations

- 36. Petitioner incorporates the above-paragraphs as if fully restated herein.
- 37. As MCR 9.119(C) requires, Respondent was to provide an affidavit of compliance that he complied with MCR 9.119(A) and (B).
- 38. Respondent provided an affidavit.
- 39. In the affidavit, Respondent stated that he complied with the notification requirements.
- 40. Respondent specifically stated that he notified all clients and tribunals.
- 41. Respondent, in fact, had not notified Mr. Floyd Schafer as MCR 9.119(A) requires and had not notified the St. Clair County Probate Court as MCR 9.119(B) requires.
- 42. Respondent therefore made a material misstatement in his affidavit.

(Grounds for Discipline)

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

- a. Respondent violated MCR 9.119(C);
- b. Respondent violated MRPC 8.1(a)(1);

- c. Respondent violated or attempted to violate the Rules of Professional Conduct, in violation of MRPC 8.4(a);
- d. Respondent engaged in conduct that is prejudicial to the administration of justice, in violation of MCR 9.104(1) and MRPC 8.4(c);
- e. 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
- f. Respondent engaged in conduct that is contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3).

WHEREFORE, Petitioner respectfully requests that Respondent be subjected to such discipline as may be warranted by the facts and circumstances of such misconduct, including restitution.

Dated: May 26, 2017

Alan M. Gershel/nee
Alan M. Gershel, P29652
Grievance Administrator
Attorney Grievance Commission
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