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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. 17-31-GA

Petitioner,

v

Michael J. Pelot, P42362,

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 June 1989 and resides or has his place of business in Wayne County.

Count One

(Factual Allegations)

5. Respondent is a staff attorney for the Michigan Department of Civil Rights (the "Department").
6. In or around August 2016, Respondent was assigned to provide counsel to Department investigators working on a case of alleged discrimination filed by Sara Martin against her former employer.
7. At all relevant times, Respondent's client was the Department and Respondent represented the Department's interests.
8. Ms. Martin was represented by attorney Joey Niskar.
9. A conciliation meeting to resolve Ms. Martin's claim of discrimination against her employer was scheduled for September 9, 2016, at 10 a.m.
10. At conciliation meetings, Department staff attorneys represent the Department and its interests in a mediation-like setting. The Department's interest is in resolving the claim of discrimination. The Department's interests do not always align with the former employee's interests. During conciliation, Department staff attorneys act as the go-between between former employees and former employers to resolve claims of discrimination. Department staff attorneys oftentimes convey settlement offers from employers to unrepresented employees. Department staff attorneys are prohibited from contacting represented employees during conciliation, unless the Department staff attorney obtains consent from the employee and her attorney.
11. On or around September 6, 2016, Mr. Niskar emailed Respondent.
12. In the email, Mr. Niskar stated that he had just received the notice of conciliation, that he

was not consulted about his availability, and that he could not make the conciliation on three days' notice.

13. On or around September 7, 2016, Respondent responded to Mr. Niskar, informing him that he did not have to be at the conciliation and that Mr. Niskar could be available by phone.

14. Mr. Niskar gave his personal office line and personal cell phone numbers to Respondent.

15. Mr. Niskar never consented to Respondent contacting Ms. Martin directly.

16. Ms. Martin never consented to Respondent contacting her directly.

17. On September 9, 2016, the conciliation started at 9:30 a.m.

18. The former employer made an initial offer of \$2,000.

19. Around 10:29 a.m., Respondent called Mr. Niskar, could not get ahold of him, and then relayed the offer on Mr. Niskar's voicemail.

20. At or around 10:33 a.m., Respondent sent Mr. Niskar an email about the offer.

21. At or around 10:33 a.m., Respondent telephoned Ms. Martin, and left her a voicemail about the offer.

22. In that message, Respondent stated that he could draft a settlement for Ms. Martin and that he could get a check to her within 14 to 30 days.

23. Respondent also asked for Ms. Martin to call him back.

24. Respondent knew or should have known that Ms. Martin was represented by an attorney and that he was prohibited from contacting Ms. Martin directly.

25. Respondent knew or should have known that he was attempting to influence a party who had an attorney, without that attorney's consent.

26. At or around 10:50 a.m., Mr. Niskar called Respondent and left a voicemail with a

counteroffer.

27. The former employer then made another offer, for \$7,000.

28. At or around 10:57 a.m., Respondent telephoned Mr. Niskar and relayed the \$7,000 offer.

29. Mr. Niskar stated that he needed to think about the offer.

30. Respondent did not hear from Mr. Niskar for four days.

31. On September 13, 2016, Respondent contacted Ms. Martin and left another voicemail.

32. In this voicemail, Respondent stated the \$7,000 offer and stated that the offer was "extremely fair."

33. Respondent knew or should have known that Ms. Martin was represented by an attorney and that he was prohibited from contacting Ms. Martin directly.

34. Respondent knew or should have known that he was attempting to influence a party who had an attorney, without that attorney's consent.

(Grounds for Discipline)

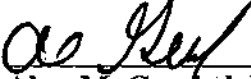
35. By reason of the conduct described above in Count One of this Formal Complaint, Respondent has committed the following misconduct and is subject to discipline under MCR 9.104 as follows:

- a. Respondent contacted Ms. Martin, who was represented by Mr. Niskar, in violation of MRPC 4.2;
- 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).

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

Dated: 3/30, 2017



Alan M. Gershel, P29652
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