

**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. 17-32-GA**

v

**Richard K. Gienapp, P32159,**

Respondent.

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**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 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 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 1980 and who resides or has his place of business in the County of Livingston.

**(Factual Allegations)**

5. On or about January 29, 2010, Respondent was convicted of surveilling an unclothed person, a felony, in violation of MCL 750.539j(2)(a)(1) in the Livingston Circuit Court.

6. As a result of the felony conviction, the Attorney Discipline Board issued a Notice of Automatic Interim Suspension involving Respondent, effective January 22, 2010.

7. Following the filing of a judgment of conviction action against Respondent, an Order of Suspension for one year was entered, effective September 28, 2010, in the matter of *Grievance Administrator v Gienapp*, Case Nos. 10-12-AI; 10-78-JC.

8. Commencing in September, 2010, while Respondent was suspended from the practice of law, Respondent was hired by J. Edward Kloian at the rate of \$20 an hour to perform legal and/or legal assistant services.

9. The services referenced in paragraph 8 included, but are not limited to, a September 30, 2010 email providing legal advice to Mr. Kloian about title to real estate and drafting legal documents, such as an answer to a civil complaint and various motions.

10. On or about January 6, 2011, Mr. Kloian retained attorney Alexander Lyzohub to represent Mr. Kloian's entity, Day Living Trust, to evict tenants located at 228 Packard in Ann Arbor.

11. On or about April 4, 2011, Mr. Lyzohub filed a complaint in the Washtenaw Circuit Court in the matter of *Day Living Trust v Kelley*, case no. 11-000376-CH.

12. Respondent, under Mr. Lyzohub's supervision, continued to prepare legal documents on behalf of Mr. Kloian in the *Day Living Trust* matter. Mr. Kloian paid Respondent directly for these services.

13. Mr. Lyzohub's representation of Mr. Kloian's entity ended in September 2011, when the court granted a motion to withdraw as attorney.

14. Respondent continued to perform legal services and was paid directly by Mr. Kloian in other legal matters until April 2012.

15. On or about July 13, 2012, Respondent served a petition for reinstatement in the Supreme Court, the Attorney Discipline Board, and the Attorney Grievance Commission.

16. As part of the petition for reinstatement, Respondent filed a personal history affidavit with the Attorney Grievance Commission, as required by MCR 9.124(B).

17. Respondent did not include the services performed for Mr. Kloian or those under the supervision of Mr. Lyzohub in his employment history in the personal history affidavit, as required by MCR 9.124(B)(1)(b).

18. On or about August 23, 2012, Respondent's interview under oath in the reinstatement proceeding was taken in accordance with MCR 9.124(B)(5).

19. Respondent did not disclose in his testimony on August 23, 2012, that he performed any services for Mr. Kloian or under the supervision of Mr. Lyzohub.

20. On or about October 3, 2012, Respondent served a document entitled "Petitioner's Statement" for the hearing panel's consideration at his reinstatement hearing.

21. Respondent did not include or supplement his statement to inform the hearing panel that he had performed services for Mr. Kloian or under Mr. Lyzohub's supervision during his suspension.

22. On or about October 10, 2012, Respondent appeared at the reinstatement hearing before the hearing panel.

23. At no time during the reinstatement hearing did Respondent inform the hearing panel about the services performed for Mr. Kloian or under Mr. Lyzohub's supervision.

24. On or about November 30, 2012, the hearing panel issued an Order of Eligibility for Reinstatement, conditioned on Respondent's payment of bar dues to the State Bar of Michigan.

25. Following proof of payment of his bar dues, the Attorney Discipline Board issued an Order of Reinstatement, effective December 17, 2012.

**(Grounds for Discipline)**

26. 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) practiced law, had contact with clients, and held himself out as an attorney, in violation of MCR 9.119(E);
- b) practiced law in Michigan in violation of the regulation of the legal profession in Michigan; in violation of MRPC 5.5(a);
- c) engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, in violation of MRPC 8.4(b);

- d) violated or attempted to violate the rules of professional conduct, in violation of MRPC 8.4(a);
- e) engaged in conduct prejudicial to the administration of justice, in violation of MRPC 8.4(c) and MCR 9.104(1);
- f) engaged in conduct that exposes the legal profession to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2); and,
- g) 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 the discipline that is warranted by the facts or circumstances of such misconduct.

Dated: April 6, 2017

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