Order

Michigan Supreme Court
Lansing, Michigan

October 2, 2018

Stephen J. Markman,
Chief Justice

157797

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Kurtis T. Wilder
Elizabeth T. Clement,
Justices

GRIEVANCE ADMINISTRATOR,
Petitioner-Appellee,

v

STEVEN G. COHEN,
Respondent-Appellant. /

SC: 157797
ADB: 15-000028-GA

On order of the Court, the application for leave to appeal is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

[SEAL] I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 2, 2018 /s/ Larry S. Royster
Clerk

App. 2

STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,

Petitioner/Appellee/Cross-Appellant,

v.

Steven G. Cohen, P 48895,

Respondent/Appellant/Cross-Appellee,

Case No. 15-28-GA

Decided: April 20, 2018

Appearances:

Robert E. Edick, for the Grievance Administrator, Petitioner/Appellee/Cross-Appellant

Steven G. Cohen, Respondent/Appellant/Cross-Appellee, In Pro Per

BOARD OPINION

Tri-County Hearing Panel #1 issued an order on May 4, 2017, suspending respondent Steven G. Cohen's license to practice law in Michigan for 180 days. Respondent filed a petition for review seeking to have the hearing panel's findings of misconduct vacated, or if affirmed, seeking a reduction in the discipline imposed. The Grievance Administrator filed a cross-petition seeking an increase in the discipline imposed. The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118, including review of the record before the hearing panel and consideration of the briefs and arguments presented to the

Board at a public review hearing. For the reasons discussed below, we affirm the hearing panel's findings of misconduct, decline to increase the discipline imposed by the hearing panel, and instead, reduce the discipline imposed from a 180-day suspension to a reprimand.

I. Hearing Panel Proceedings

On March 24, 2015, the Grievance Administrator filed a two-count formal complaint against respondent that involved his representation of interested parties in two separate probate cases relating to the Don H. Barden Trust (Count One) and the Rosa Parks Trust (Count Two). Both counts alleged that respondent filed vexatious pleadings that contained uncorroborated allegations and defamatory statements about the judges assigned to each probate matter. Count Two further alleged that after his motion to set aside a judgment for administrative costs that was entered against his clients was denied, respondent deliberately filed a pleading titled "Petition Concerning Conspiracy and Breach of Duty," (conspiracy petition) to force the disqualification of Wayne County Probate Court Judge Freddie G. Burton, Jr., who was assigned to that matter. In fact, shortly thereafter, respondent filed a motion to disqualify Judge Burton which contained, as the predominate reason for disqualification, the fact that Judge Burton could not act as the presiding judge in a matter in which he was named as a party.

The formal complaint further alleged that despite being notified that the conspiracy petition was being held in abeyance pending a decision on the motion to disqualify Judge Burton, respondent attempted to file a proposed default judgment, a subpoena for the deposition of Judge Burton and interrogatories related to the conspiracy petition. Judge Burton ultimately denied the motion to disqualify and dismissed the conspiracy petition. Together with two other orders, respondent appealed the order dismissing the conspiracy petition to the Michigan Court of Appeals. The matters were consolidated by the Court of Appeals. On February 20, 2014, the Court of Appeals issued an opinion that affirmed Judge Burton's rulings in all three orders, and specifically determined that respondent's appeals were vexatious. The formal complaint noted that pursuant to MCL 600.2106,[1] the February 20, 2014 opinion was *prima facie* evidence of all facts recited therein. (¶ 43.)

The substance of the pleadings in question, as referenced in both counts, was fully set forth in the factual paragraphs of the formal complaint, (¶¶ 9, 13, 15, 16, 19, 28-31), and complete copies of the referenced pleadings and orders were also attached to the

[1] Sec. 2106. A copy of any order, judgment or decree, of any court of record in this state, duly authenticated by the certificate of the judge, clerk or register of such court, under the seal thereof, shall be admissible in evidence in any court in this state, and shall be prima facie evidence of the jurisdiction of said court over the parties to such proceedings and of all facts recited therein, and of the regularity of all proceedings prior to, and including the making of such order, judgment or decree.

complaint. Both counts charged violations of MRPC 3.1; 3.2; 3.5(d); 8.4(c); and, MCR 2.114(D)(3); 5.114(A)(1); and 9.104(1), (2) and (4).

Respondent filed a timely answer to the formal complaint in which he denied the allegations of misconduct. The matter was assigned to Tri-County Hearing Panel #1 for hearing. Respondent subsequently filed three pre-trial motions: a motion for summary disposition (filed January 19, 2016); a motion to preserve certain Barden estate planning documents (filed February 22, 2016); and a pre-trial motion (filed February 22, 2016). The Grievance Administrator also made a request for summary disposition pursuant to MCR 2.116(I)(2), as set forth in the Administrator's response to respondent's motion for summary disposition. The hearing panel heard oral argument on all of these motions and on March 16, 2016, issued an order that denied all three of respondent's motions, as well as the Administrator's request for summary disposition.

Respondent then filed a petition for interlocutory review and for a stay of the proceedings. In an order dated March 24, 2016, this Board denied respondent's petition and request for a stay. The parties appeared for a hearing before the panel on March 28, 2016. At the outset, respondent renewed his motion for summary disposition, which was taken under advisement, and the Administrator's counsel presented his case in chief as to misconduct. At the conclusion of that hearing, the panel made rulings, later confirmed in an order dated April 1, 2016, that granted respondent's

request for summary disposition as to the allegation that respondent did not make reasonable efforts to expedite the litigation consistent with the interests of his clients, in violation of MRPC 3.2; dismissed the allegations contained in Count One (Barden Estate) of the formal complaint in its entirety, as that count was deemed abandoned by the Administrator; denied respondent's request that the remaining allegations be dismissed; and, ordered respondent to file an amended witness list, and gave the Administrator an opportunity to object.

Respondent filed a motion requesting that the hearing panel correct the April 1, 2016 order to properly memorialize the hearing panel's verbal rulings made at the March 28, 2016 hearing. In an order dated April 22, 2016, respondent's request was denied and the panel ruled that its April 1, 2016 order would stand as issued. Respondent then filed a second petition for interlocutory review of the hearing panel's orders of April 1 and April 22, 2016, and renewed his request for a stay of the proceedings. On May 12, 2016, this Board issued an order denying respondent's second petition for interlocutory review and for a stay.

Respondent presented his defense at five separate misconduct hearings held on May 13, May 16, June 6, June 24, and August 12, 2016. On January 19, 2017, the hearing panel's report on misconduct was issued. The report emphasized the narrow scope of the conduct the panel believed they were to review in determining whether respondent committed the misconduct as charged in Count Two of the formal complaint.

> At the heart of the matter is respondent's filing of two documents; a petition alleging conspiracy and a breach of duty by the Wayne County Probate Court which has been referenced as the "conspiracy petition," and a petition seeking to disqualify the judge. The allegations of misconduct that are under consideration by the panel stem from the filing of those documents and the actions taken by respondent subsequent to doing so.
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> * * *
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> Ultimately, it was acknowledged by respondent that he chose to file the surcharge and disqualification petitions. Respondent acknowledged that by doing so, disqualification would be compelled. Respondent anticipated a visiting judge and stated that he wanted that outcome: a new jurist. Respondent named Judge Burton as a party to require his disqualification. [Report 1/19/17, p 3]

Based on those findings of fact, the hearing panel found violations of MCR 2.114(D)(3), 5.114(A)(1), 9.104(1), (2) and (4), and MRPC 3.5(d), and 8.4(c).[2] The

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[2] MCR 9.104(1), (2), and (4) and MRPC 8.4(c), the "general" or "catch-all" rules, relate to conduct that is prejudicial to the proper administration of justice, that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, and that violates the standards or rules of professional conduct adopted by the Supreme Court.

MCR 2.114(D)(3) provides, as follows:

> The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that: . . . (3) the

panel found no violations of MRPC 3.1 (meritorious claims and contentions), and 3.2 (expediting litigation).

The parties then filed sanction briefs, as requested by the panel. The Administrator argued for disbarment under ABA Standard 6.21 and relevant case law from this Board and the Court.[3] The Administrator's brief recommended that, if the panel was unwilling to impose disbarment, respondent be suspended for at least three years with conditions that required him to undergo a psychological exam by a medical doctor selected by the hearing panel assigned to his petition for reinstatement, required him to draft a letter of apology to Judge Burton, John M. Chase, Jr., and Melvin D. Jefferson, Jr., and, upon approval of the draft by the hearing panel assigned to his petition for reinstatement, required him to publish the letter, at his own expense, in the Michigan State Bar Journal. Respondent argued that ABA Standard 6.2 did not apply, cited to

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> document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

MCR 5.114(A)(1) provides that:

> The provisions of MCR 2.114 regarding the signing of papers apply in probate proceedings except as provided in this subrule.

MRPC 3.5(d) provides that:

> A lawyer shall not: (d) engage in undignified or discourteous conduct toward the tribunal.

[3] In support of disbarment, the Grievance Administrator cited to *In re Mains*, 121 Mich 603 (1899); and, *Grievance Administrator v Cornelius*, 91-201-GA; 91-253-FA (HP Report 12/7/92).

two prior decisions,[4] and requested that the panel issue an order imposing no discipline.

The parties appeared before the panel on February 13, 2017, for a hearing on sanctions. The Administrator again argued for the imposition of disbarment, or at the very least a three-year suspension, requiring not only reinstatement, but recertification. Respondent renewed his request for an order imposing no discipline.

On May 4, 2017, the hearing panel's report on sanctions was issued. Applying the theoretical framework of the ABA Standards, the panel found that the duty respondent violated was owed to all concerned: clients, the forums before which they appear, colleagues, and the public; the panel accepted respondent's admissions that he consciously undertook the action at issue, knew exactly what he was doing, and did it with intent; the panel did not address whether there was potential or actual injury caused because they found that what occurred was more "a violation of philosophical and inherent foundations to the practice of law, i.e., the public display of disrespect toward the forum one addresses." (Sanction Report 5/4/17, p 3.) Of the five aggravating factors the Grievance Administrator argued applied, the panel found two applicable: ABA Standard 9.22(g) (refusal to acknowledge the wrongful nature of the misconduct), and ABA

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[4] *Grievance Administrator v Fieger*, 01-55-GA (reprimand, by consent); and, *In re Nathan S. French*, 08-93-RD (45 day suspension, by consent).

Standard 9.22(i) (substantial experience in the practice of law). The panel further found one applicable mitigating factor: ABA Standard 9.32(a) (absence of prior disciplinary record.) Ultimately, the panel found that ABA Standard 6.22, calling for suspension, applied and imposed a 180-day suspension. The panel further found that the conditions requested by the Administrator were unnecessary.

On May 8, 2017, respondent filed a timely petition for review and a petition for stay. Shortly thereafter the Administrator filed a cross-petition for review. Respondent's request for a stay was granted on May 23, 2017.

II. Discussion

Respondent raises two issues on review: that there was a "gross violation" of his due process rights, and that the panel improperly refused to consider the truthfulness of the pleadings in question. Specifically, respondent asks this Board to determine: (1) that a formal complaint bereft of factual allegations in support of misconduct does not meet constitutional due process requirements; and, (2) that factually true expression contained in non-frivolous pleadings can never provide a basis for attorney misconduct. (Respondent's Brief in Support, p viii.)

First, we do not find that the formal complaint was "bereft of factual allegations." To the contrary, the complaint contains nineteen separate paragraphs, including thirty-six subparagraphs, of factual statements

pertaining to the underlying litigation and the specific pleadings drafted and filed by respondent. The complaint also attached complete copies of the referenced pleadings. MCR 9.115(B), requires that a formal complaint set forth the "facts of the alleged misconduct." Likewise, MCR 2.111(B)(1) requires that a complaint "contain a statement of facts . . . on which the pleader relies in stating the cause of action, with the specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called to defend." The purpose of a complaint and the primary function of all pleadings is to give notice of the nature of a claim sufficient to permit the opposite party to take a responsive position, and accordingly, no pleading is insufficient, so far as facts are concerned, which serves such function. *Auburn v Brown*, 60 Mich App 258, 263 (1975). A pleading is sufficient if it reasonably informs defendant of the nature of the case he is called upon to defend. *Major v Schmidt Trucking Co.*, 15 Mich App 75, 79 (1968). The formal complaint clearly provided the required notice to respondent of the conduct in question, the charges alleged against him, and the nature of claims against which he was called on to defend. Thus we find no violation of respondent's due process rights in that regard.

Second, we find that it was not necessary for the hearing panel to consider the truthfulness of respondent's statements in order to make findings regarding the specific charges set forth in the formal complaint. The complaint charged that respondent's conspiracy petition prejudiced the administration of justice

because of how it was used: to force the probate judge's disqualification. (Formal Complaint ¶41(d).) The panel's report on misconduct repeatedly made note of this distinction:

> Throughout the proceedings, it was emphasized that the panel was not charged with, and would not entertain, conducting a trial on the underlying case or whether any alleged conspiracy occurred in the Wayne County Probate Court. Rather, **the issue for the panel is whether respondent's actions in that matter constituted misconduct.** In response to petitioner's claim that misconduct occurred, respondent has repeatedly asserted that he had "overwhelmingly good cause" in filing the surcharge petition. However, this panel is unwilling to substitute its opinion for those rendered by the Wayne County Probate Court, the Michigan Court of Appeals and the Michigan Supreme Court, all of which have reviewed the matter. **The panel's scope is narrowly tailored and limited to the actions of respondent.** It does not sit as forum of review for any other tribunal. [Misconduct Report 1/19/17, p 3. (Emphasis added.)]

As noted, the conduct at issue arises out of respondent's *actions* after his clients did not receive their requested relief to have the January 13, 2010 order providing for a prior lien judgment for $120,075.85 set aside. After Judge Burton denied that motion, respondent did not file a claim of appeal. Rather, he filed the conspiracy petition which asserted, among other things, that: Judge Burton replaced the nominated

trustees with "long-time probate court cronies [Chase and Jefferson];" raised the issue of a conspiracy between Chase and Jefferson and Judge Burton to deplete the estate of its assets and "unjustly and unlawfully direct these and other assets to the possession, control and ownership of Chase and Jefferson;" and, referred to the "exorbitant" fees charged by Chase and Jefferson.

Respondent then relied upon the filing of the conspiracy petition as the main reason to disqualify Judge Burton in the motion to disqualify that he filed shortly thereafter. That motion alleged, in part, that Judge Burton entered a series of "erroneous and abusive rulings" and that it was Judge Burton's "abuse of office" that caused respondent to file the conspiracy petition. However, and as noted by the Court of Appeals, other than insinuations, no support was ever provided to show that there was in fact some sort of conspiracy, conflict of interest, or inappropriate conduct. Rather, the record simply showed that Judge Burton rendered decisions that were adverse to respondent's clients. Adverse rulings against a party, even if later determined to be erroneous, do not constitute a sufficient basis to require disqualification. *In re Contempt of Henry*, 282 Mich App 656, 680 (2009). Just as ordinary citizens cannot turn to vigilante justice when unsatisfied with the outcome of a criminal investigation or lack of prosecution, so too an attorney cannot simply bypass established procedural rules and create a process to serve his/her client's interests.

The panel's report on misconduct characterizes the language contained in the conspiracy petition as "incendiary" which formed the basis for the panel's finding that respondent engaged in undignified and discourteous conduct toward a tribunal, in violation of MRPC 3.5(d). We agree. As the panel stated: "respondent effectively accused a judge of criminal conduct." (Misconduct Report 1/19/17, p 5.) The Court of Appeals found that these allegations were baseless. Such unsupported charges serve to weaken and erode the public's confidence in an impartial adjudicatory process.

It also cannot be forgotten that respondent admitted that he chose to file the conspiracy and disqualification petitions, and that by doing so, disqualification would be compelled, that he wanted a new jurist, and that he named Judge Burton as a party to require his disqualification. (Tr 3/28/16, pp 190-191; Tr 8/12/16, pp 20, 78, 154-161, 166-167, 238-239; Tr 2/13/17, pp 77-78, 85; Tr 3/6/17, pp 29, 44-45, 50.) These admissions provide the basis for the panel's finding that respondent engaged in forum shopping, conduct long condemned as prejudicial to the administration of justice.[5] They further provide sufficient evidentiary support for the

[5] See *Grievance Administrator v Harold S. Fried, et al* 456 Mich 234 (1997); *In re Geoffrey N Fieger, et al.*, US District Court, Eastern District of Michigan Southern Division, Case No. 96-X-74698; and *Grievance Administrator v Nathan S. French*, 08-93-RD, referencing *In the Matter of Nathan S. French*, US District Court Eastern District of Michigan Southern Division, Case No. 07-X-50315.

panel's findings that respondent violated MCR 9.104(1) and (2); and MRPC 8.4(c).

Respondent next argues that the panel committed error in finding a violation of MCR 2.114 and 5.114, once they determined that respondent's pleadings were not frivolous, in violation of MRPC 3.1. However, this argument again focuses on the content of the pleadings rather than how, or the purpose for which, the pleadings were filed and/or used. The hearing panel specifically found that respondent violated MCR 2.114(D)(3) and 5.114(A)(1) because respondent's pleadings were "drafted and filed to force the recusal of a judge." (Misconduct Report 1/19/17, p 5.) Again, we agree. Respondent's conspiracy petition was deliberately interposed in the probate proceedings for no other reason than to force the recusal of Judge Burton through a process that can only be characterized as improper. We find that there is proper evidentiary support in the record for the panel's findings in that regard.

Finally, both parties take issue with the discipline imposed by the hearing panel. Respondent argues that the 180-day suspension imposed by the hearing panel is excessive and that the ABA Standards support the imposition of no more than an admonishment and/or an order imposing no discipline. The Administrator argues that the suspension imposed by the hearing panel is insufficient given the injury and potential injury caused by respondent's conduct.

The Board's review of sanctions imposed by a hearing panel is not limited to the question of whether there is proper evidentiary support for the panel's findings, rather, the Board possesses "a greater degree of discretion with regard to the ultimate result." *Grievance Administrator v Benson*, 06-52-GA (ADB 2009), citing *Grievance Administrator v Handy*, 95-51-GA (ADB 1996). See also *Grievance Administrator v August*, 438 Mich 296, 304; 304 NW2d 256 (1991). This greater discretion to review and, if necessary, modify a hearing panel's decision as to the level of discipline, is based, in part, upon a recognition of the Board's overview function and its responsibility to ensure a level of uniformity and continuity. *Grievance Administrator v Brent S. Hunt*, 12-10-GA (ADB 2012), citing *Matter of Daggs*, 411 Mich 304; 307 NW2d 66 (1981).

Respondent argues that the hearing panel inappropriately applied Standard 6.22, because that standard is only applicable if respondent was found to have actually caused harm. However, Standard 6.22 states:

> Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or *potential* injury to a client or a party, or causes interference or *potential* interference with a legal proceeding. [Emphasis added.]

The hearing panel specifically indicated that it did not address the question of "potential" or "actual" injury caused, instead indicating that:

> What occurred in this matter was a violation of more philosophical and inherent foundations to the practice of law, i.e., the public display of disrespect toward the forum one addresses. While no person lost something per se, the justice system, as a whole, loses when an attorney charged with upholding the proper administration of justice fails to perform that task. [Sanction Report 5/4/17, p 3.]

In a footnote in its decision in *Grievance Administrator v Albert Lopatin*, 462 Mich 235 (2000), the Court cautioned that "our directive to follow the ABA Standards is not an instruction to abdicate their [the ADB and hearing panels] responsibility to exercise independent judgment." *Id* at 248 n 13 (2000). While the panel may not have specifically addressed the question of injury, they appear to have exercised some independent judgment, in conjunction with the theoretical framework of the Standards, in determining that harm to the justice system occurred.

Respondent's request that the Board reduce discipline to an admonishment cannot be granted. Hearing panels and the Board do not have the power to issue admonishments. *Grievance Administrator v Gregory S. Thompson*, 97-68-GA (ADB 1998). The power to admonish is reserved exclusively for the Attorney Grievance Commission under MCR 9.114(B). A hearing panel which finds that a charge of misconduct has been established by a preponderance of the evidence must enter an order of discipline. MCR 9.115(J)(3).

Respondent also asks that we enter an order finding misconduct and imposing no discipline. Such an order will rarely be entered. *Grievance Administrator v Bowman*, 462 Mich 582, 589 (2000), citing *Grievance Administrator v McFadden*, 95-200-GA (ADB 1998), lv den 459 Mich 1232 (1998). For an order finding misconduct but imposing no discipline to be appropriate, the misconduct would have to be so highly technical, the mitigation so overwhelming, or the presence of other special circumstances so compelling that the imposition of a reprimand would be practically unfair. *Grievance Administrator v Ralph E. Musilli*, 98-216-GA (ADB 2000). None of those elements, which would make such an order appropriate, apply to the conduct found by the hearing panel in this matter.

The Administrator also takes issue with the panel's determination, or lack thereof, of the injury or potential injury, albeit for different reasons than respondent does. The Administrator's cross-petition argues that the 180-day suspension imposed by the hearing panel is insufficient given the injury and potential injury caused by respondent's conduct. However, and as noted by respondent in his response, beyond stating that "time and energy" of the cofiduciaries and the judge were "wasted," because they had to respond and rule on the pleadings filed by respondent, no actual evidence of harm in this regard was offered by the Administrator.[6] According to the

[6] In fact, respondent notes that no responsive pleadings were filed in response to respondent's pleadings and no court

Administrator, taking this "injury" into account should require that the suspension imposed by the panel be increased to a one-year suspension. However, no specific authority is cited to support this contention.

As indicated earlier in this opinion, there is no doubt that conduct that constitutes judge and/or forum shopping is misconduct subject to discipline:

> It is unethical conduct for a lawyer to tamper with the court system or to arrange disqualifications, selling the lawyer's family relationship rather than professional services. A lawyer who joins a case as co-counsel, and whose principal activity on the case is to provide the recusal, is certainly subject to discipline. [*Grievance Administrator v Fried, et al.*, 456 Mich 234, 245 (1997).]

However, the level of discipline imposed for such a violation has varied. *Grievance Administrator v Nathan S. French*, 08-93-RD (HP Report 11/4/08) (45-day suspension, by consent, for attempting to circumvent E.D. Mich. Local Rule 83.11(a) [judge shopping]); *Grievance Administrator v James J. Rostash*, 93-117-GA (HP Report 10/27/98) (90-day suspension, by consent, (after remand) for pleading no contest to allegations of attempting to improperly affect the judicial assignment in a criminal case and attempting to take advantage of the perpetual disqualification of a certain judge with a reputation of imposing more lenient

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proceedings were conducted, Judge Burton simply issued an opinion and order regarding both petitions.

sentences); *Grievance Administrator v Charles J. Golden*, 93-119-GA (HP Report 9/22/00) (reprimand, by consent, (after remand) for pleading no contest to participating in a scheme instituted for the purpose of affecting a judicial assignment).

The hearing panel determined that respondent's actions in filing the pleadings in question, and using the "incendiary" language that he did, warranted a suspension of sufficient length to require reinstatement proceedings under MCR 9.123(B). However, we view respondent's actions differently.

Respondent's vociferous representation of his clients and dedication to their cause is evident and was evident during respondent's presentation to this Board at oral argument. But what is also evident to us is that respondent's actions in filing the subject pleadings, resulted from overzealous advocacy, rather than a selfish or dishonest motive, an aggravating factor the Administrator's counsel argued applied, but the panel specifically found inapplicable. For those reasons, and given the fact that respondent has no prior disciplinary history in twenty-four years of practice, we find that the level of discipline imposed should be decreased to a reprimand.

III. Conclusion

For the reasons discussed above, we conclude that the hearing panel's findings of misconduct have proper evidentiary support and, therefore, should be affirmed. With regard to level of discipline, we find that a

decrease in the level of discipline imposed by the hearing panel is warranted. Therefore, we will enter an order vacating the hearing panel's order of suspension and will enter an order of reprimand.

Board members Louann Van Der Wiele, Rev. Michael Murray, Dulce M. Fuller, James A. Fink, John W. Inhulsen, Jonathan E. Lauderbach, Barbara Williams Forney, Karen O'Donoghue, and Michael B. Rizik, Jr. concur in this decision.

STATE OF MICHIGAN

Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner,

v Case No. 15-28-GA

STEVEN G. COHEN,
P 48895,

Respondent. /

SANCTION REPORT OF
TRI-COUNTY HEARING PANEL #1

PRESENT: Maria Zagorski, Chairperson
John D. Dakmak, Member
John A. Cothorn, Member

APPEARANCES: Robert E. Edick, Deputy Administrator for the Attorney Grievance Commission

Steven G. Cohen, Respondent In Pro Per

I. EXHIBITS

Respondent's Exhibit VVVV March 7, 2012 and March 8, 2012 email chain between respondent and Alan Gershel.

II. WITNESSES

February 13, 2017 Hearing

Steven G. Cohen, Respondent
John M. Chase, Jr.
Melvin D. Jefferson, Jr.

III. PANEL PROCEEDINGS

On January 19, 2017, Tri-County Hearing Panel #1 issued its misconduct report determining that respondent committed professional misconduct in violation of MRPC 3.5(d) and MRPC 8.4(c); and MCR 2.114(D)(3); MCR 5.114(A)(1); MCR 9.104(1), (2) and (4). Sanction hearings were held on February 13 and March 6, 2017. The panel has considered the underlying record in its entirety including all pleadings, testimony, exhibits, and argument; and similarly, all pleadings, testimony, argument, and applicable rules and cases presented during the sanction phase.

As the parties are aware, the American Bar Association (ABA) developed a model approach to determine sanctions which is as follows:

(a) the duty violated;

(b) the lawyer's mental state;

(c) the potential or actual injury caused by the lawyer's misconduct; and

(d) the existence of aggravating or mitigating factors. [ABA Standards for Imposing Lawyer Sanctions Standard 3.0.]

Petitioner asserts that respondent's conduct was calculated as evidenced by his pleading (the "Conspiracy Petition") which contains almost 300 paragraphs of a sustained attack which could have only one purpose: to create a controversy to ultimately force the recusal of Judge Burton. Petitioner further asserts that respondent abused his power, i.e., that power granted to attorneys and reflected in their ability to issue subpoenas, compel answers to discovery, etc. Petitioner requests the imposition of disbarment or at least a three-year suspension of respondent's license to practice law so that he is required to seek re-certification under ABA Standard 6.21. Additionally, petitioner requests that the panel impose conditions that include requiring respondent to undergo a psychological exam by a medical doctor and that he be required to draft letters of apology to Judge Burton, John M. Chase, Jr., and Melvin D. Jefferson, Jr. Finally, petition [sic] requests that respondent's apology letter to be published at respondent's expense in the Michigan State Bar Journal.

Relying primarily upon *Grievance Administrator v Fieger*, 01-55-GA (ADB 2004), respondent argues that the First Amendment and the truth of his claims against Judge Burton are of paramount importance in this case and that no discipline should be imposed. Respondent asserts that he worked very hard for his client and that asking for a judge to be removed from a case does not constitute misconduct. Rather, according to respondent, Judge Burton did commit conspiracy in the legal sense of the word ("gross misconduct") and his allegations against the jurist are true. Respondent

argues that truth is a complete defense to his actions, characterizing his quest as that of a "Whistleblower." Respondent acknowledges that his mental state when filing the pleadings at issue was that of consciousness, that he acted knowingly and had the intent to file allegations about Judge Burton which he continues to maintain are true. Respondent argues that because he was vindicated by an appellate court on a legal argument, his conduct is justified. Respondent asserts that there was no "damage" and that petitioner's argument to the contrary is "weak tea." Finally, respondent requests that the panel issue an order imposing no discipline.

IV. FINDINGS AND CONCLUSIONS REGARDING SANCTIONS

The panel shall address its findings on each factor in turn.

A. The Duty Violated

As the panel determined in its misconduct report, respondent engaged in conduct prejudicial to the proper administration of justice, in violation of MCR 9.104(1), and exposed the profession to obloquy, contempt, censure or reproach, in violation of MCR 9.104(2). The panel is of the opinion that acting in a manner to assure the proper administration of justice is a fundamental duty a lawyer owes to all concerned: clients, the forums before which they appear,

colleagues, and the public. Therefore, the duty violated is significant.

B. The Lawyer's Mental State

The panel has considered respondent's mental state in the context of the following:

> The most culpable mental state is that of intent, when the lawyer acts with the conscious objective or purpose to accomplish a particular result. The next most culpable mental state is that of knowledge, when the lawyer acts with conscious awareness of the nature or attendant circumstances of his or her conduct both without the conscious objective or purpose to accomplish a particular result. The least culpable mental state is negligence, when a lawyer fails to be aware of a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. (*See,* Standards for Imposing Lawyer Sanctions as Approved, February 1986 and as amended, February 1992.)

Respondent has acknowledged repeatedly that he undertook the action at issue in this matter consciously – he has stated unequivocally that he knew exactly what he was doing and did it with intent.

C. The Potential or Actual Injury Caused by the Lawyer's Misconduct

The panel does not address the question of "potential" or "actual" injury caused. What occurred in this matter was a violation of more philosophical and inherent foundations to the practice of law, i.e., the public display of disrespect toward the forum one addresses. While no person lost something per se, the justice system, as a whole, loses when an attorney charged with upholding the proper administration of justice fails to perform that task.

D. The Existence of Aggravating or Mitigating Factors

"In determining the discipline to be imposed, any and all relevant evidence of aggravation or mitigation shall be admissible, including, but not limited to, records of the board, previous admonitions and orders of discipline, and the previous placement of the respondent on contractual probation." MCR 9.115(J)(3).

The panel specifically finds that the following aggravating and mitigating factors are applicable in this matter:

Aggravating Factors:

Standard 9.22(g)	refusal to acknowledge the wrongful nature of the misconduct; and
Standard 9.22(i)	substantial experience in the practice of law.

Mitigating Factor:

Standard 9.32(a) absence of prior disciplinary record.

The panel is not persuaded by respondent's argument that his speech is protected by the First Amendment and that the First Amendment "trumps" the courtesy rule, the obloquy rule, or otherwise gives attorneys the ability to state publicly anything that comes to mind regarding a jurist in front of whom he or she has a pending matter. Indeed, throughout these proceedings, respondent has been very explicit regarding his disagreement with the panel's factual determinations, analyses, application of the rules and the manner in which it conducted the proceedings and has stated as much. He has every right to do so. However, respondent further asserts that if what he claimed about Judge Burton is true, he "cannot have" judge-shopped. That argument is fundamentally flawed.

The matter of *In re Estes*, 355 Mich 411 (1959) is on point. Indeed, "[t]he fact that a lawyer deeply believes a trial judge has made a serious error in deciding an important case is hardly proper ground for his charging in an official court record that the judge had violated his oath of office and illegally and unlawfully collaborated with the prevailing party." *Id.*, at 422. Respondent correctly argues that, at the end of the day, this panel must exercise its independent judgment regarding the facts of this case. When it does so, the panel is cognizant of the fact that respondent absolutely refuses to acknowledge his own wrongdoing,

even after a finding of the same. Respondent argues that the "mitigating circumstances" are that Judge Burton is a well-known problem in Wayne County Probate Court and that there were hundreds of instances where respondent did not make inflammatory, disparaging, or self-serving statements designed to force the Judge's recusal. The panel does not find these arguments persuasive or mitigating.

E. Conclusion

Respondent cites *Grievance Administrator v Nathan S. French*, 08-93-RD (2008) (a 45-day suspension), along with *Grievance Administrator v Geoffrey N. Fieger*, 01-55-GA (2007) (Order of Reprimand (By Consent)). The Grievance Administrator cites five suspension cases (*Grievance Administrator v William A. Ortman*, 93-135-GA (ADB 1995) – three-year suspension; *Attorney General v Nelson*, 263 Mich 686; 249 NW2d 439 (1933) – one-year suspension; *In re Estes,* 355 Mich 411, 94 N.W.2d 916 (1959) – one-year suspension; *Grievance Administrator v David H. Raaflaub*, 01-94-GA (ADB 2003) – one-year suspension; and *Grievance Administrator v James A. Lepley*, 21-87 (ADB 1990) – 120-day suspension), as well as two revocation cases (*In re Mains*, 121 Mich 603 (1889) and *Grievance Administrator v E. Frank Cornelius*, 91-201-GA; 91-253-FA (ADB 1992)) and seeks disbarment or at least a three-year suspension of respondent's license to practice law with conditions, as referenced earlier.

In *Grievance Administrator v Albert Lopatin*, 462 Mich 235, 238; 612 NW2d 120, 123 (2000), the Michigan Supreme Court instructed the Board and its panels to apply the American Bar Association (ABA) Standards for Imposing Lawyer Sanctions, as well as relevant precedent, when determining the appropriate sanction for professional misconduct. The Standards require panels to consider: (a) the duty violated; (b) the lawyer's mental state (whether the attorney acted intentionally, knowingly or negligently); (c) the actual or potential injury caused by the misconduct; and (d) the existence of aggravating or mitigating factors, which the panel has detailed above.

The panel finds that ABA Standard 6.22[1] is most helpful in assessing the generally appropriate discipline for the conduct here. For all of the above-stated reasons, the panel is of the opinion that a suspension of 180-days is appropriate. The panel does not believe that the conditions, as requested by the Administrator, are necessary.

V. SUMMARY OF PRIOR MISCONDUCT

None.

[1] ABA Standard 6.22 states "Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding."

VI. ITEMIZATION OF COSTS

Attorney Grievance Commission:	
(See Itemized Statement filed 3/29/17)	$ 13.55
Attorney Discipline Board:	
Pre-Trial Hearing held 2/11/16	$ 146.50
Hearing held 3/7/16	$ 272.50
Hearing held 3/28/16	$1,177.00
Hearing held 5/13/16	$1,031.00
Hearing held 5/16/16	$ 984.00
Hearing held 6/6/16	$1,042.00
Hearing held 6/24/16	$1,150.00
Hearing held 8/12/16	$1,178.00
Hearing held 2/13/17	$ 588.50
Hearing held 3/6/17	$ 430.00
Administrative Fee	$1,500.00
TOTAL:	**$9,513.05**

ATTORNEY DISCIPLINE BOARD
Tri-County Hearing Panel #1

By: /s/ Maria Zagorski
Maria Zagorski, Chairperson
[w/permission A. Plourde]

Dated: May 4, 2017

STATE OF MICHIGAN

Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner,

v Case No. 15-28-GA

STEVEN G. COHEN,
P 48895,

Respondent. /

MISCONDUCT REPORT OF
TRI-COUNTY HEARING PANEL #1

PRESENT: Maria Zagorski, Chairperson
John D. Dakmak, Member
John A. Cothorn, Member

APPEARANCES: Robert E. Edick, Deputy Administrator for the Attorney Grievance Commission

Steven G. Cohen, Respondent In Pro Per

I. EXHIBITS

Hearing Dates

March 28, 2016	Petitioner's Exhibits 1-4 admitted, see page two of the transcript.
May 13, 2016	Respondent's Exhibits A-Z and AA-ZZ conditionally admitted.

May 16, 2016	Respondent's Exhibits AAA-ZZZ and AAAA-BBBB conditionally admitted.
June 6, 2016	Respondent's Exhibits A-Z, AA-UU, and AAA-ZZZ admitted.
June 24, 2016	Respondent's Exhibits AAAA-PPPP admitted.
August 12, 2016	Petitioner's Exhibit 5 and Respondent's Exhibits QQQQ-TTTT admitted.

II. WITNESSES

Hearing Dates

March 28, 2016	Steven G. Cohen, Respondent
May 13, 2016	April Maycock Hon. Freddie G. Burton, Jr.
May 16, 2016	April Maycock Hon. Freddie G. Burton, Jr.
June 6, 2016	Jerome Frank Gavin Fleming John Chase, Jr. Hon. Freddie G. Burton, Jr.
June 24, 2016	John M. Chase, Jr.
August 12, 2016	Steven G. Cohen, Respondent

III. PANEL PROCEEDINGS

Procedural History

Tri-County Hearing Panel #1 was assigned to this matter upon the filing of the formal complaint on March 24, 2015. The complaint alleged that respondent, an attorney licensed to practice law in Michigan in 1993, engaged in professional misconduct while acting in his professional capacity as counsel for interested parties in two estates: the Don H. Barden Trust (Wayne County Probate Case No. 2011-768249-TV) and the Rosa Parks Trust (Wayne County Probate Case No. 2006-707697-TV).

MCR 9.103(A) provides as follows: "The license to practice law in Michigan is, among other things, a continuing proclamation by the Supreme Court that the holder is fit to be entrusted with professional and judicial matters and to aid in the administration of justice as an attorney and counselor and as an officer of the court. It is the duty of every attorney to conduct himself or herself at all times in conformity with standards imposed on members of the bar as a condition of the privilege to practice law." The hearing panel's authority derives from the Michigan Supreme Court, which retains superintending control of such proceedings. MCR 9.111(C); 9.110(A); and 9.107(A).

Early in the proceedings the panel entertained argument pursuant to respondent's motion for summary disposition. In an order issued April 1, 2016, the panel granted respondent's request for summary disposition as to the allegation that respondent did not make

reasonable efforts to expedite the underlying litigation [MRPC 3.2]. Also in that order, and pursuant to events that developed on the record, the panel dismissed the allegations as to the Barden Estate. As a result, the hearing focused upon whether the petitioner carried its burden of proof with respect to the allegations surrounding respondent's representation of interested parties in the Parks Estate.

Pending Motion

Preliminarily, the issue of respondent's Motion to Strike Petitioner's Rebuttal Closing Argument remains pending. The panel has considered the motion and the arguments contained therein. The panel is not persuaded by those arguments and respondent's motion is denied.

The Rosa Parks Trust

At the heart of the matter is respondent's filing of two documents: a petition alleging conspiracy and a breach of duty by the Wayne County Probate Court which has been referenced as the "conspiracy petition," and a petition seeking to disqualify the judge. The allegations of misconduct that are under consideration by the panel stem from the filing of those documents and the actions taken by respondent subsequent to doing so.

The panel reviewed dozens of exhibits and considered the testimony of all of the witnesses. Despite

respondent's request, the panel declined to recuse itself; two interlocutory appeals were filed by respondent and denied by the Attorney Discipline Board. Throughout the proceedings, it was emphasized that the panel was not charged with, and would not entertain, conducting a trial on the underlying case or whether any alleged conspiracy occurred in the Wayne County Probate Court. Rather, the issue for the panel is whether respondent's actions in that matter constituted misconduct. In response to petitioner's claim that misconduct occurred, respondent has repeatedly asserted that he had "overwhelmingly good cause" in filing the surcharge petition. However, this panel is unwilling to substitute its opinion for those rendered by the Wayne County Probate Court, the Michigan Court of Appeals and the Michigan Supreme Court, all of which have reviewed the matter. The panel's scope is narrowly tailored and limited to the actions of respondent. It does not sit as forum of review for any other tribunal.

Judge Burton's testimony spanned several days. He testified that he has probably conducted 170,000 hearings in his 29 years on the bench, having been appointed in 1987. (Tr 5/13/16, pp 31, 35.) Mr. Chase told the panel that he has been a licensed attorney for 59 years and had extensive experience serving as a guardian ad litem. (Tr 6/6/16, p 59.) Both Judge Burton and Mr. Chase testified regarding procedure. That is, they both testified regarding the roles of counsel and parties in probate matters; civil procedure and chapters 2

and 5 of the Michigan Court Rules; and the legal and factual histories of the Parks Estate.

Ms. Maycock testified as the Probate Register and IT Director for the Wayne County Probate Court. Ms. Maycock brought five bankers boxes and stated that she used three additional employees to compile and assemble the file from several locations at which Probate records are kept. (Tr 5/16/16, pp 11-13.) Mr. Frank was called by respondent with the intent that he testify as an expert; the panel declined to recognize him as such. In an offer of proof, respondent advised that the purpose of Mr. Frank's testimony would be to show that the underlying court (the Wayne County Probate Court) violated "virtually all of the Rules of Civil Procedure" (Tr 6/6/16, p 25) and demonstrated bias toward respondent. Similarly, Mr. Fleming was called to testify that there was a "gross violation" of the rules of civil procedure and violations of federal and state constitutional due process. (Tr 6/6/16, pp 52-53.) The panel declined to accept either of the proposed experts' testimony pursuant to MRE 702.

Ultimately, it was acknowledged by respondent that he chose to file the surcharge and disqualification petitions. Respondent acknowledged that by doing so, disqualification would be compelled. Respondent anticipated a visiting judge and stated that he wanted that outcome: a new jurist. Respondent named Judge Burton as a party to require his disqualification.

IV. FINDINGS AND CONCLUSIONS REGARDING MISCONDUCT

The panel finds that the evidence established the following with respect to each specific allegation:

A. Violation of MCR 9.104(1)

The panel finds that respondent engaged in conduct prejudicial to the proper administration of justice. The basis for this determination is that the evidence shows that respondent's filing of the conspiracy petition and the subsequent motion for disqualification were done for the specific purpose of creating a controversy to force the disqualification of Judge Burton. The panel finds that such conduct amounts to forum shopping. (*See*, Tr 8/12/16, p 78.) Respondent also acknowledged that his conduct was his choice. (Tr 8/12/16, pp 154-161; 166-167.) Although respondent has never acknowledged that such conduct is improper, he admits that he created a condition in which a jurist would have a conflict and be required to recuse him/herself. (Tr 8/12/16, p 166.) "Elementary principles of fairness have led to the adoption of a blind draw system for assigning cases in this states [sic]. MCR 8.111(B). Those same principles dictate that the process for assigning cases should not be interfered with absent good reason." *Grievance Administrator v James J. Rostash, et al*, 456 Mich 234, 242; 570 NW2d 262 (1997), Respondent's actions therefore constitute misconduct.

B. Violation of MCR 9.104(2)

The panel finds that respondent, while a vociferous advocate, did expose the legal profession or the courts to obloquy, contempt, censure or reproach. The petition, a public document, and respondent's radio appearance, constitute conduct that did expose the profession and the Wayne County Probate Court to obloquy. It is one thing to engage in harsh criticism, and indeed, such speech is protected. It is quite another to allege publicly that a judge is a "crook."

Further, given that respondent has acknowledged forum shopping, he has engaged in conduct exposing "the courts and the legal system to obloquy, contempt, censure or reproach." *Grievance Administrator v Harold Fried, et al*, 456 Mich 234, 242; 570 NW2d 262 (1997). "[A]n advocate may not use the client's cause as an excuse to attack the judge." JI-44, November 1, 1991.

The panel recognizes respondent's right to speak. However, the instant matter is distinguishable because his speech does not address a ruling with which he disagrees. Rather, it is made prior to any ruling and with the objective of affecting an outcome. The matters were pending and thus not appropriate or ripe for comment.

C. Violation of MCR 9.104(4), with specificity as follows:

1. Violation of MRPC 3.1

The panel finds that respondent did not violate MRPC 3.1 because he did not bring a proceeding, or assert or controvert an issue therein, without a basis for doing so that was frivolous.

2. Violation of MRPC 3.2

The panel finds that there was no violation of MRPC 3.2.

3. Violation of MRPC 3.5(d)

The panel finds that respondent's incendiary language as contained in the conspiracy petition constitutes undignified and discourteous conduct toward a tribunal, in violation of MRPC 3.5(d). Respondent effectively accused a judge of criminal conduct.

4. Violation of MRPC 8.4(c)

The panel finds that because respondent engaged in forum shopping, he engaged in conduct prejudicial to the administration of justice, in violation of MRPC 8.4(c).

D. Violation of MCR 2.114(D)(3) and MCR 5.114(A)(1)

The panel finds that respondent's "conspiracy" petition is a pleading interposed in the probate proceeding for an improper purpose because it was drafted and filed to force the recusal of a judge.

E. Conclusion

In conclusion, then, the panel finds that petitioner met the required burden of proof and established by a preponderance of the evidence that respondent committed professional misconduct in violation of MRPC 3.5(d) and 8.4(c); and MCR 2.114(D)(3); 5.114(A)(1); 9.104(1), (2) and (4). Pursuant to these findings, a hearing shall be scheduled for the sanction phase of this matter.

ATTORNEY DISCIPLINE BOARD
Tri-County Hearing Panel #1

By: /s/ Maria Zagorski
Maria Zagorski, Chairperson

Dated: January 19, 2017

RELEVANT CONSTITUTIONAL PROVISIONS, COURT RULES AND RULES OF PROFESSIONAL CONDUCT

1st Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

5th Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

14th Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce

any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

MCR 2.114(D)

Effect of Signature. The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that

(1) he or she has read the document;

(2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and

(3) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

MCR 5.114(A)

Signing of Papers.

(1) The provisions of MCR 2.114 regarding the signing of papers apply in probate proceedings except as provided in this subrule.

(2) When a person is represented by an attorney, the signature of the attorney is required on any paper filed

in a form approved by the State Court Administrator only if the form includes a place for a signature.

(3) An application, petition, or other paper may be signed by the attorney for the petitioner, except that an inventory, account, acceptance of appointment, and sworn closing statement must be signed by the fiduciary or trustee. A receipt for assets must be signed by the person entitled to the assets.

MCR 9.104(1), (2) and (4)

The following acts or omissions by an attorney, individually or in concert with another person, are misconduct and grounds for discipline, whether or not occurring in the course of an attorney-client relationship:

(1) conduct prejudicial to the proper administration of justice;

(2) conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach;

(4) conduct that violates the standards or rules of professional conduct adopted by the Supreme Court.

MRPC 3.1

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous. A lawyer may offer a good-faith argument for an extension, modification, or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in

a proceeding that could result in incarceration, may so defend the proceeding as to require that every element of the case be established.

MRPC 3.2

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

MRPC 3.5(d)

A lawyer shall not: (d) engage in undignified or discourteous conduct toward the tribunal.

MRPC 8.2(a)

A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, or of a candidate for election or appointment to judicial or legal office.

MRPC 8.4(c)

It is professional misconduct for a lawyer to: (c) engage in conduct that is prejudicial to the administration of justice.

Order

Michigan Supreme Court
Lansing, Michigan

January 27, 2012

Robert P. Young, Jr.,
Chief Justice

143419-22 & (103)

Michael F. Cavanagh
Marilyn Kelly
Stephen J. Markman
Diane M. Hathaway
Mary Beth Kelly
Brian K. Zahra,
Justices

JOHN M. CHASE, JR. and MELVIN D. JEFFERSON as Personal Representatives for the Estate of ROSA LOUISE PARKS,
Petitioners-Appellees,

v

RAYMOND AND ROSA PARKS INSTITUTE FOR SELF-DEVELOPMENT and ELAINE STEELE,
Respondents-Appellants,

and

SYLVESTER JAMES MCCAULEY, DEBORAH ANN ROSS, ASHEBER MACHIRIA, ROBERT DUANE MCCAULEY, MARY YVONNE TRUSEI, ROSALIND ELAINE BRIDGEFORTH, RHEA DARCELLE MCCAULEY, SUSAN DIANE MCCAULEY,

SC: 143419-22
COA: 293897;
293899;
296294;
296295
Wayne PC:
2005-698046-DE;
2006-707697-TV

SHIRLEY MCCAULEY JENKINS, SHEILA GAYE KEYS, RICHARD MCCAULEY, WILLIAM MCCAULEY, CHERYL MARGUARITE MCCAULEY, SYLVESTER MCCAULEY III, LONNIE MCCAULEY, and URANA MCCAULEY,
Respondents-Appellees. /

By order of December 29, 2011, the Wayne County Probate Court was instructed to implement Paragraph 1 of the Settlement Agreement within thirty days of the date of the order, or report to this Court within that time why it was not "practicable" to do so. By letter dated January 13, 2012, the probate court responded, stating that the reinstatement of Elaine Steele and Adam Shakoor as co-personal representatives and co-trustees of the will and trust, respectively, was not practicable. The court based its conclusion on past disagreements between the court and Elaine Steele, the Rosa Parks Institute, and their counsel; the decision in *In re Estate of Rosa Louise Parks*, unpublished opinion per curiam of the Court of Appeals, issued March 19, 2009 (Docket Nos. 281203, 281438, 281204, 281437), which affirmed the 2007 reappointment of the fiduciaries selected by the court to replace Elaine Steele and Adam Shakoor; and certain issues concerning the propriety of the conduct of counsel for Elaine Steele and the Institute and his dealings with clients and in reporting to the court.

Despite the concerns of the probate court, that court's prior rulings resolving past disagreements between the court and Elaine Steele, the Institute, and their counsel, are undisturbed by this Court's December 29, 2011 Order, except insofar as they are inconsistent with this Court's Order, and thus pose no obstacle to implementing Paragraph 1 of the Settlement Agreement. The prior decision of the Court of Appeals affirming the court's 2007 decision to overrule the objections of Elaine Steele and the Institute to the fee requests of the fiduciaries then serving, and the renewal of their letters of authority, likewise poses no obstacle to implementation of this Court's Order. Finally, this Court's Order in no way hinders the probate court's ability to address, on its own motion or the motion of any party, as appropriate, any matters other than those specifically addressed and disposed of in that Order, including those cited by the court in its letter.

Therefore, on order of the Court, we DIRECT the Wayne County Probate Court to proceed within 28 days of the date of this order with implementing Paragraph 1 of the Settlement Agreement, as directed in this Court's December 29, 2011 Order, by reinstating Elaine Steele and Adam Shakoor as co-personal representatives and co-trustees of the Will and Trust, respectively.

We further ORDER that the motion for reconsideration of this Court's December 29, 2011 Order is DENIED, because it does not appear that the order was entered erroneously.

MARILYN KELLY, J., would grant reconsideration.

[SEAL] I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 27, 2012 /s/ Corbin R. Davis
Clerk

THE PROBATE COURT
COUNTY OF WAYNE [SEAL] STATE OF MICHIGAN

January 13, 2012

Mr. Corbin R. Davis, Clerk
Michigan Supreme Court
Michigan Hall of Justice
P.O. Box 30052
Lansing, MI 48909

Re: Matter of Rosa Parks
SC:143419-22
COA: 293897; 293899; 296294; 296295
Wayne PC: 2005-698046-DE; 2006-707697-TV

Dear Mr. Davis:

This letter is submitted for clarification and instructions pursuant to the December 29, 2011, Order of the Michigan Supreme Court (the Court), wherein the Wayne County Probate Court (Probate Court) was instructed to "implement Paragraph 1 of the Settlement Agreement within thirty days of the date of this order, or report to this Court within that time why it does not deem it "practicable" to do so."

The Settlement Agreement, Paragraph 1 states the following:

> All parties agree that the Will, Trust and Assignment are validated and affirmed. All objections to the Will, Trust and Assignment are withdrawn. The parties agree that Elaine Steele and Adam Shakoor are to be reinstated as co-personal representatives and co-Trustees of the Will and/or the Trust as soon as the Court deems practicable.

Mrs. Rosa Parks died on October 24, 2005. On November 10, 2005, and November 11, 2005, Petitions for Probate were filed by the heirs and Mr. Shakoor, respectively. These petitions signaled the beginning of intense litigation. In fact, Mr. Shakoor while acting as Special Co-Personal Representative became convinced it was unlikely the parties would reach a settlement. The Probate Court ultimately granted his request to withdraw on June 21, 2006, before any settlement was reached.

The parties without Mr. Shakoor continued to fight over control of the Estate and Trust of Mrs. Parks. On the eve of a scheduled trial to determine the validity of her Last Will and Testament, the parties reached the aforementioned Settlement Agreement on February 16, 2007. Subsequently, the Probate Court ultimately entered the Order of Settlement on March 12, 2007. Little did I know that buyer's remorse would show that the intense litigation preceding settlement would pale in comparison to what would follow.

Since entry of the Order of Settlement the parties have filed over 100 pleadings, petitions and motions. The only time frames during this period that did not generate additional litigation can be attributed to the fact that this case was pending before the Michigan Supreme Court or the Court of Appeals.

It is certainly my intent to comply with the Order of the Court. However, I seek guidance regarding my ability to do so in light of my earlier denial of the request by Mrs. Steele and Mr. Shakoor to be reinstated. This Order was entered on September 19, 2007 by Probate Court. It was appealed and affirmed by the Court of Appeals, but no appeal of this decision was taken to the Michigan Supreme Court. The December 29, 2011 Order of the Supreme Court seems to require the Probate Court to disregard the decision of the Court of Appeals. How am I to vitiate an unappealed ruling of the Court of Appeals? I would be grateful for specific instructions.

Upon receiving these instructions I will implement immediately. However, should the instructions include the reappointment of Mrs. Steele I submit it is not practicable to do so. This position is based upon the following concerns with four basic issues: 1) Marketing Agreement 2) Inventory of Assets 3) Accounting of Assets 4) Attorney representing Mrs. Steele has become Marketing Agent.

Throughout these proceedings, Mrs. Steele has regularly ignored the Orders of the Court. Rather than comply with the Order Approving the Marketing

Agreement Mrs. Steele elected to file an untimely Motion for Arbitration. Later she would file a Motion for Reconsideration. Each Motion was denied. The Court of Appeals upheld the Court's decision regarding the Marketing Agreement and reiterated that the request for arbitration was untimely.

The original Inventory of Assets was filed with the Court on September 5, 2006 listing only bank accounts. Clearly, there were many other items that had not been inventoried. Consequently, the Successor Co-Fiduciaries John Chase, Jr. and Melvin D. Jefferson, Jr. brought in Guernsey's, a New York auction house, to get control of all of the assets so they could be readied for cataloging. On August 30, 2007, the Successor Co-Fiduciaries filed an Amended Inventory with a 69 page list of cataloged items. In a March 19, 2009 Opinion affirming the Probate Court, the Court of Appeals noted the efforts of Guernsey's increased the value of the estate ten fold.

Accounting of Assets beyond the Inventory and Amended Inventory has remained very difficult, especially where the Court has ordered Mrs. Steele to account for funds she and the Institute received from CMG, an Indiana firm acting as the original licensing agent. The accountings were incomplete and didn't reflect funds turned over to Mrs. Steele and the Institute. It was necessary to issue Orders to Show Cause, a citation for contempt, even on one occasion the Court found it necessary to issue a bench warrant for Mrs. Steele.

The successor licensing agent to CMG is now Attorney Stephen Cohen, who as you are well aware, represents Mrs. Steele and the Institute. This development was not openly shared with the Probate Court, Successor Co-Fiduciaries or the heirs. When this relationship was discovered accountings were ordered. Mrs. Steele and her attorney simply filed accounts that showed no money received. Subsequently, the Probate Court would learn through amended accounts that some funds had been received. This matter raises the question of conflict of interest under MRPC 1.8(a) as it impacts the heirs. While the heirs are not clients to Atty. Cohen, they are affected by his role as licensing agent. Further, it has been revealed that Atty. Cohen receives 30% of the proceeds from the licensing agent contract. This provision may also violate MRPC 1.5 as to the amount of fees received by a lawyer from the Estate and/or Trust. In the overall context of Estate and Trust administration it is questionable such an arrangement is anything more than fees for legal services. If so, the fees would need to be determined as reasonable, necessary and beneficial for administration of the Estate and Trust.

I trust the aforementioned reasons provide this Court with an adequate explanation for my conclusion that it is not practicable to reappoint Mrs. Steele at this time. If more detail is required than has been offered in this summary, please advise me as to what further information is necessary.

Lastly, I humbly request this Honorable Court consider the information in this report and provide

guidance as to how you wish the Probate Court to proceed. In conjunction with the Court's Order to implement Paragraph 1 of the Settlement Agreement within thirty days, I have scheduled a hearing for January 25, 2012, to do as instructed. It would be helpful if the Court could share with the Probate Court if it wishes to modify the original timetable for implementation, given this report.

Thank you in advance for your time and consideration and for the opportunity to offer this report. If you have any further questions or concerns, please feel free to contact me.

Sincerely,

/s/ Freddie G. Burton, Jr.
Freddie G. Burton, Jr.
Judge of Probate

Order

Michigan Supreme Court
Lansing, Michigan

December 29, 2011

Robert P. Young, Jr.,
Chief Justice

143419-22 & (97)(98)

Michael F. Cavanagh
Marilyn Kelly
Stephen J. Markman
Diane M. Hathaway
Mary Beth Kelly
Brian K. Zahra,
Justices

JOHN M. CHASE, JR. and MELVIN D. JEFFERSON as Personal Representatives for the Estate of ROSA LOUISE PARKS,
Petitioners-Appellees,

v

RAYMOND AND ROSA PARKS INSTITUTE FOR SELF-DEVELOPMENT and ELAINE STEELE,
Respondents-Appellants,

and

SYLVESTER JAMES MCCAULEY, DEBORAH ANN ROSS, ASHEBER MACHIRIA, ROBERT DUANE MCCAULEY, MARY YVONNE TRUSEI, ROSALIND ELAINE BRIDGEFORTH, RHEA DARCELLE MCCAULEY, SUSAN DIANE MCCAULEY,

SC: 143419-22
COA: 293897;
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SHIRLEY MCCAULEY
JENKINS, SHEILA GAYE
KEYS, RICHARD
MCCAULEY, WILLIAM
MCCAULEY, CHERYL
MARGUARITE MCCAULEY,
SYLVESTER MCCAULEY III,
LONNIE MCCAULEY, and
URANA MCCAULEY,
Respondents-Appellees. /

On order of the Court, the motion for miscellaneous relief is GRANTED. The application for leave to appeal the April 19, 2011 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals. The reference by counsel for the Raymond and Rosa Parks Institute for Self-Development and Elaine Steele, during the course of oral argument in the Court of Appeals, to the respective percentages of the fees charged by the court-appointed fiduciaries for which he believed the parties to the appeal would be liable, without referring to the terms of the Settlement Agreement, did not constitute a breach of the Settlement Agreement's confidentiality provision, and the finding below that it did is clearly erroneous. The Settlement Agreement contains no provision allocating litigation costs between the parties.

We REMAND this case to the Wayne County Probate Court for further proceedings not inconsistent with this order. We FURTHER INSTRUCT the court to implement Paragraph 1 of the Settlement Agreement

within thirty days of the date of this order, or report to this Court within that time why it does not deem it "practicable" to do so.

The motion to dismiss is DENIED.

We do not retain jurisdiction.

MARILYN KELLY, J., would grant leave to appeal.

[SEAL] I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 29, 2011 /s/ Corbin R. Davis
Clerk