

Attorney Discipline Board

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GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner,

v

Case No. 10-99-MZ
(Ref. 09-57-GA)

JAMES M. WICKENHEISER, P 45483,

Respondent.
_____ /**ORDER REDUCING SUSPENSION FROM 180 DAYS
TO 179 DAYS AND IMPOSING CONDITIONS**Issued by the Attorney Discipline Board
211 W. Fort St., Ste. 1410, Detroit, MI

The formal complaint filed in this matter in June 2009 was based solely on the charge that respondent failed to answer a request for investigation served on him in January 2008. Respondent, James M. Wickenheiser, was defaulted under MCR 9.115(D)(2) for failing to answer the complaint and he failed to appear before the panel at the scheduled hearing on August 17, 2009. The hearing panel ordered a suspension of 180 days, citing Standard 7.2 of the American Bar Association's Standards for Imposing Lawyer Sanctions and prior opinions of the Attorney Discipline Board, including *Grievance Administrator v John D. Baker*, Case No. 06-66-GA (ADB 2007) and *Grievance Administrator v Deborah A. Carson*, Case Nos. 00-175-FA; 00-199-FA (ADB 2001). That suspension became effective December 29, 2009.

Respondent filed a delayed petition for review under MCR 9.118(A)(3) on March 31, 2010. Respondent's delayed petition was granted and the parties appeared before the Board for a review hearing on November 10, 2010.

By the time the parties appeared before the Board, the period of suspension ordered by the panel had expired. The only issue before the Board is therefore whether or not the suspension of respondent's license in Michigan should remain in effect until he has successfully completed the reinstatement process described in MCR 9.123(B) and MCR 9.124, including an appearance before a hearing panel to establish his fitness as a lawyer. In light of the particular facts in this case, the Board is persuaded that such further scrutiny is not required and the discipline in this case will therefore be reduced to a suspension of 179 days.

We emphasize that we find no fault with the hearing panel's decision. Under the circumstances presented, that is, a respondent who had failed to answer or appear at any stage of the discipline process after the formal complaint was filed, the panel's imposition of a 180 day suspension in order to trigger the reinstatement requirement under MCR 9.123(B) and MCR 9.124 was virtually required under the prior opinions of the Board cited above.

However, the Board has also recognized that an attorney who is disciplined in accordance with that line of Board precedent, but who subsequently appears before the Board and establishes that the failure to participate prior to that point was not the result of a wilful disregard for these proceedings, "may persuade the Board that reinstatement proceedings are not required." *Carson, supra*, p. 4, citing *Grievance Administrator v Sonya J. Branham*, 93-179-GA (ADB 1994) (120 day suspension reduced to 60 days); and *Grievance Administrator v James Harris*, ADB 147-88 (ADB 1989) (one year suspension reduced to reprimand).

Respondent, who no longer resides in the state of Michigan and who is not engaged in the practice of law, has appeared in person before the Board and he has described the circumstances in his personal and professional life when he received the request for investigation. Under all of the circumstances, we do not believe that reinstatement proceedings under MCR 9.123(B) and MCR 9.124 are required for this individual.

Respondent is not, however, relieved of the obligation to file an answer to the request for investigation served by the Grievance Administrator in January 2008. This order reducing discipline to a suspension of 179 days will not become effective until respondent has filed a written proof of service with the Attorney Discipline Board stating that he has submitted an answer to the request for investigation in the matter of *Andrew Humphrey as to James M. Wickenheiser*, AGC File No. 3155/07 with the Grievance Administrator.

NOW THEREFORE,

IT IS ORDERED that the discipline in this case is **REDUCED** to a suspension of 179 days commencing December 29, 2009 and until respondent has fulfilled the conditions described in this order and filed an affidavit of compliance with the Clerk of the Michigan Supreme Court, the Grievance Administrator and the Attorney Discipline Board in accordance with MCR 9.123(A).

IT IS FURTHER ORDERED that respondent shall, on or before **January 19, 2011**, pay costs in the amount of **\$1,781.98**, consisting of costs assessed by the hearing panel in its order of suspension issued December 7, 2009 in ADB Case No. 09-57-GA the amount of \$1,676.73 and court reporting costs incurred by the Attorney Discipline Board in the amount of \$105.25 for the review proceedings conducted on November 10, 2010. Check or money order shall be made payable to the State Bar of Michigan, but submitted to the Attorney Discipline Board [211 West Fort St., Ste. 1410, Detroit, MI 48226] for proper crediting. (See attached instruction sheet).

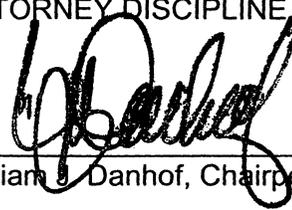
IT IS FURTHER ORDERED that respondent shall not be eligible to file an affidavit for automatic reinstatement under MCR 9.123(A) until he has completed **ALL** of the following conditions:

1. Respondent shall file a verified statement with the Board that he has filed with the Grievance Administrator his answer to the request for investigation in AGC File No. 3155/07.
2. Respondent must submit payment of the assessed costs in the amount of \$1,781.98 to the Attorney Discipline Board;

3. Respondent must submit to the Board written proof from the State Bar of Michigan that he has paid all current and delinquent membership dues and has otherwise met all of the requirements for active membership in the State Bar of Michigan;

ATTORNEY DISCIPLINE BOARD

By:



William J. Danhof, Chairperson

DATED: December 21, 2010

Board members William J. Danhof, Thomas G. Kienbaum, William L. Matthews, C.P.A., Rosalind E. Griffin, M.D., Carl E. Ver Beek, Craig H. Lubben, James M. Cameron, Jr., and Sylvia P. Whitmer, Ph.D, concur in this decision.

Board member Andrea L. Solak would affirm the hearing panel's order.