

NOTICE OF REPRIMAND AND RESTITUTION

Case No. 91-69-GA

Philip H. Weaver, P22062, Fenton, Michigan, by the Attorney Discipline Board vacating a hearing panel order of dismissal.

- 1) Reprimand;
- 2) Effective March 18, 1992.

On behalf of his client, the respondent received a check in the amount of \$206.00 bearing the notation that it was for temporary child support. This check was deposited into the respondent's regular business account. On the same date, the respondent dictated a letter to his client advising her that the funds had been received and had been applied to the respondent's claim for legal fees. It was undisputed that no statement for services had been sent to the client at that time.

A hearing panel of the Attorney Discipline Board dismissed the formal complaint on the grounds that any violation of the Michigan Rules of Conduct was an isolated instance of ordinary negligence which did not warrant disciplinary action.

Upon consideration of the petition for review filed by Grievance Administrator, the Attorney Discipline Board reversed the hearing panel's decision, and ruled that the respondent improperly deposited client funds into his general account and improperly applied those funds to his claim for legal fees without prior notice to the client. The Board ruled that "On the day the respondent received a check on behalf of his client for temporary child support, MRPC 1.15 allowed only two courses of action. He could either: 1) distribute the funds to his client; or 2) maintain the funds in his trust account until he had permission from the client to apply the funds to he fees. That Rule does not allow an attorney to take the funds first and then ask permission."

Respondent's conduct was found to be in violation MCR 9.104 (1-5); and the Michigan Rules of Professional Conduct 1.15(a) and 8.4(a-c). Upon review of the mitigating factors in the record, the Board concluded that an order of reprimand was appropriate. Respondent was directed to make restitution in the amount of \$206.00. Costs were assessed in the amount of \$522.05.