

In The Michigan Supreme Court

Michigan Attorney Grievance Commission

File No. 1064/03

Theodore A. Golden as to Hanley M. Gurwin, Esq.

Theodore A. Golden

Petitioner

V.

Michigan Attorney Grievance Commission

Respondents

Complaint In The Nature Of Mandamus To The Supreme Court Of Michigan

The petitioner, Theodore A. Golden, petitions the Supreme Court of Michigan, for the issuance of a Writ of Mandamus to order the Michigan Attorney Grievance Commission to re-open the above cited file, file no. 1064/03, and to proceed with a full and through investigation and trial concerning the complaints of attorney misconduct against Hanley M. Gurwin, Esq. as brought forth by the petitioner.

I Basis for Jurisdiction

The Michigan Attorney Grievance Commission serves under and is a division of the Supreme Court of Michigan.

II. The Facts Upon Which Petitioner Relies.

1. The Attorney Misconduct Committed by Hanley M. Gurwin, Esq.

Mr. Gurwin was the Court appointed mediator in a divorce case concerning Sandra and Theodore Golden in 2001. (Case No. 00639428 DM, Oakland County Circuit Court)

Mr. Gurwin committed acts of attorney misconduct serving as the Court appointed mediator. His performance as an attorney, especially as a Court appointed mediator, was most unacceptable in many areas. He was unprofessional, unethical, and lacked moral character. Not prepared, incompetent, and lacked expertise in preparing for the job. He was not focused on the work, digressed from the issues in order to promote himself, and wasted a great deal of time.

The complaints of attorney misconduct against Mr. Gurwin are stated in detail in letters to the Attorney Grievance Commission dated April 5, 2003, and July 22, 2003. (Appendices A-1 to 3 & B-1 to 3)

2. Misconduct By The Other Attorneys Involved In The Divorce

Why did Mr. Gurwin write to my attorney, Michael Robbins, Esq., and Randy Glanz, Esq. my ex-wife's attorney, "Unfortunately, contrary to our agreement, you permitted a Judgment of Divorce to be entered prior to the time that I was paid for services rendered or an agreement for payment satisfactory was reached"? (E-2) Why would the two experienced family law attorneys commit attorney misconduct by disobeying a standard court order concerning payment to the Court appointment mediator? Why would Mr. Robbins then pay Mr. Gurwin \$1,000.00 of his own funds? (G-1, H-1)

Did I have the option of seeing the Judge at the time the Judgement of Divorce was signed? Mr. Robbins did not give me the option nor was it discussed. Randy Glanz, Esq. caused me to have unnecessary legal fees by being late for court appearances. I discussed the matter with Mr. Robbins, and wanted the issue taken up in Court in order to try to recoup my expenses from Ms. Glanz. Obviously, I did not get representation on this matter. Mr. Robbins knew my feelings concerning Mr. Gurwin. I would have complained to the Judge about Mr. Gurwin if I had the opportunity. I feel that Mr. Robbins protected his colleges by keeping me from the Judge.

3. The Response of Mr. Gurwin to the Charges

Mr. Gurwin wrote to the Attorney Grievance Commission that he was a former chairman of the Attorney Discipline Board.(C-1) In response to the charge that he was unprepared, incompetent, and lacked expertise in preparing for the first mediation session he replied that, "I was thoroughly prepared, as I always am". (C-5) He felt that his unprofessional behavior was fine. The problem was that I was not tolerant of it. His response did not address several of the complaints against him. Why was his fee stated incorrectly to Mrs. Golden? Why were his billings so tardy? Mr. Robbins admonished him for sending a billing statement in August, 2001, then April, 2002. (G-1)

4. The Response of Stephen P. Vella, Esq.

In a telephone conversation on July 17, 2003, Stephen P. Vella, Esq., associate counsel of the Attorney Grievance Commission, who was assigned the case, stated that it would not be fair to Mr. Gurwin if he was disciplined for the misconduct charges that I filed against him, and therefore he closed the file. He further stated that my charge of Mr. Gurwin being unprepared for mediation was not attorney misconduct, because judges can be unprepared for their cases, and get away with it.

III. The Nature of the Relief Sought

The petitioner would like the Supreme Court of Michigan to issue a Writ of Mandamus to the Attorney Grievance Commission, that would order the Commission to re-open the above cited file, and to proceed with a full and thorough investigation, culminating in a trial before a non-partial panel of three attorneys appointed by the Attorney Discipline Board.

I would like the Supreme Court of Michigan to order the Attorney Grievance Commission to obtain from Mr. Gurwin proof of his continuing education credits concerning mediation for at least the past five years.

I would like the Attorney Grievance Commission to keep me informed. I would like a liaison person at the Michigan Supreme Court to oversee the case, and to have the power to intervene if the Attorney Grievance Commission does not handle the case properly. I would like to have direct access to the liaison person in case the Attorney Grievance Commission does not adequately comply with the Writ of Mandamus.

IV. Arguments

1. Preliminary Matters

In that the petitioner has no knowledge or background in law, petitioner respectfully requests this Court to view this petition in a manner that will most efficiently accomplish petitioner's stated objectives; whether that be mandamus or otherwise.

2. Primary Argument

A. Attorney Grievance Commission Did Not Follow Proper Protocol

1. Proper protocol was not followed by the Attorney Grievance Commission. The Attorney Grievance Commission provided me with detailed information concerning how they are supposed to handle a complaint. (K-1-4) After reviewing my complaints concerning Mr. Gurwin's egregious behavior, Mr. Vella had the option of dismissing my request for investigation, if it was without merit, which was not done. Rather, he served Mr. Gurwin with a request for investigation. An attorney served with a request for investigation has a duty to file an answer in order to refute the charges against him. (K-3)

Mr. Gurwin's response was inadequate and did not refute my complaints against him. Mr. Vella is incorrect in stating that, "Our office feels the attorney has answered your allegations adequately". (I-1) My detailed complaint that he was unprepared and incompetent in preparing for the mediation was answered with, "I was thoroughly prepared". Does this reply exonerate him without supporting evidence? Of course not.

Mr. Gurwin declined to respond about the incorrect fee information that was given to Mrs. Golden, and the lack of timely billing statements.

My request for the Commission to inquire about Mr. Gurwin's continuing education credits was denied.

2. Mr. Vella acted improperly in closing the file because he felt that it would not be fair to Mr. Gurwin if he was disciplined for the misconduct charges that I filed against him. Protocol states that guilt is determined first, and then a hearing to determine disciplinary action. (K-4)

B. Faulty Preparation Standards Used By Attorney Grievance Commission And Mr. Gurwin

Mr. Vella's said that Mr. Gurwin's lack of preparation for the mediation was not attorney misconduct, because judges can be unprepared for their cases, and get away with it. I am unable to search case law to determine if Mr. Vella's philosophy is the current legal standard. Common sense would say that it is not. Does this Court want to set precedent with his philosophy? Besides, Mr. Gurwin was an unprepared court appointed mediator, not a judge.

Mr. Gurwin's written statement "I was thoroughly prepared, as I always am" (C-5) would indicate a low level of performance of long duration. Mr. Gurwin does not comprehend what proper preparation entails, and therefore, in his own mind the above statement is correct. He had the mediation summaries for some time prior to the first mediation session. The first mediation session was scheduled at his convenience. Mr. Gurwin was negligent and incompetent in preparing for the job. This was very obvious by his statements and conduct at the first mediation session. The above statement is not correct concerning his attempt to refute my charge. Yes, he committed a serious act of attorney misconduct in preparing for the mediation, and the charge should not be dismissed.

C. Standards For Professionalism And Ethics

Mr. Gurwin's response to charges that he was unprofessional and unethical concerning statements that he made to me was that I was at fault for not being tolerant of his unsolicited vitriolic remarks concerning local rabbis, and the derogatory remarks that he made about my ex-wife. I mentioned his conduct as described in my complaint to a number of people to test their reaction, and all were appalled. Not appropriate for a court appointed mediator.

After my first complaint was filed my ex-wife told me that Mr. Gurwin made derogatory remarks about me when he held private sessions with her. She did not give me further details. I included this additional charge against Mr. Gurwin in my letter to Ms. Bullington dated July 22, 2003. (B-2) It was ignored.

3. Attorney Education

I requested that the Attorney Grievance Commission obtain from Mr. Gurwin proof that he has yearly continuing education credits concerning mediation. (B-2) That request was denied. Mediators such as Mr. Gurwin are required or should have at least eight hours a year minimum of

continuing education concerning divorce mediation. Has Mr. Gurwin maintained this minimum standard? Is he qualified? I feel that I have the right to know if my Court appointed mediator has maintained the recommended minimal educational standard for mediation work. Some of Mr. Gurwin's acts of attorney misconduct indicate a lack of professional skills and education in the areas of communication, ethics, professionalism, demeanor, case preparation, case presentation, mediation fundamentals, office management, psychology, emotional issues of divorce, and social skills. Credentialing an attorney is important, especially in this case. Why did the Attorney Grievance Commission refuse to get this attorney's current credentials?

4. Mr. Gurwin's Fitness and Character

Is Mr. Gurwin physically, mentally, and emotionally fit to practice law? Why did a bright intelligent knowledgeable man, who has achieved much in his profession act the way he did? Alcohol or drug problems? Are there flaws in character? A man too arrogant to recognize his incompetence and short comings? Why did he continually correct the attorneys' spelling errors in front of their clients? To make them look bad? To put them down? To promote himself? He cannot control himself concerning this bad habit. Why the unsolicited talk about the rabbis? Is the court appointed mediator suppose to inform the client that his rabbi is gay. What would prompt "one of the most respected mediators in southeastern Michigan" (C-3) to say such things? It is interesting to note that in his letter to Mr. Robbins dated February 19, 2003, (E-1-2) he lists my accusations, but does not tell Mr. Robbins that earlier in the day I said to him, "What kind of ass-hole are you, telling me which rabbis are gay". He did not want Mr. Robbins to know of this deviant unprofessional conduct. In the same letter he wrote the two attorneys informing them of a legal problem, "Unfortunately, contrary to our agreement, you permitted a Judgment of Divorce to be entered prior to the time that I was paid for services rendered or an agreement for payment satisfactory was reached". In several ensuing telephone calls to me Mr. Robbins was very concerned and frightened about that statement. He even called me to inquire if Mrs. Golden settled. He wanted it to go away. Why did Mr. Gurwin write that? What was his motive? Something is not right with Mr. Gurwin. This should be investigated.

5. Not Above The Law

In his response Mr. Gurwin goes out of his way to inform the Attorney Grievance Commission that he was a former chairman of the Attorney Discipline Board, and a recent recipient of the Professionalism Award from the Oakland County Bar Association. (C-1, C-3) Why? The information is irrelevant to the issues at hand. Does he want to be treated as being "above the law"? I feel that this is how the Attorney Grievance Commission handled the case.

6. Damages Caused To Petitioner By Mr. Gurwin's Acts Of Attorney Misconduct

Mr. Gurwin's acts of attorney misconduct caused the petitioner to have unnecessary legal fees, prolonged the divorce proceedings, and caused emotional distress. Real unnecessary damages, caused by Mr. Gurwin acting as the court appointed mediator.

7. Integrity Of The Legal System

My first encounter with a Court appointed divorce mediator, Mr. Gurwin, was a dismaying experience. I filed my complaint against Mr. Gurwin in order for others to be spared the grief that Mr. Gurwin's attorney misconduct caused me. A function of the Attorney Grievance Commission is to protect the integrity of the legal system and the public from aberrant attorneys. Police the system. Investigation, trial, judgement, and discipline are the heart of this necessary function. Make the system work properly.

V. Justice

The petitioner hopes that this Court will issue a Writ of Mandamus as requested.

Thank you.

Respectfully submitted,

Theodore A. Golden
1746 Bellwood Court
Bloomfield Hills, MI 48503
(248)626-2252

APPENDICES FOR

Complaint In The Nature Of Mandamus

Michigan Attorney Grievance Commission

File No. 1064/03

Theodore A. Golden as to Hanley M. Gurwin, Esq.

Theodore A. Golden

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Michigan Attorney Grievance Commission

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A-0

STATE OF MICHIGAN
ATTORNEY GRIEVANCE COMMISSION

MARQUETTE BUILDING
243 W. CONGRESS, SUITE 256
DETROIT, MICHIGAN 48226-3259

REQUEST FOR INVESTIGATION OF ATTORNEY:

HANLEY M. GURWIN
(Name of Attorney) (ONE ATTORNEY PER FORM)
38525 Woodward Ave., Suite 2000
(Street and Number)
Bloomfield Hills, MI 48304-2970
(City and State) (Zip Code)
(248) 433-7582
(Area Code) (Telephone Number)

Date attorney was hired/appointed? Appointed May, 2001
Type of case: (divorce, criminal, probate, etc.) Divorce
Have you previously complained to our office about this attorney? No When? _____

STATEMENT OF FACTS

(Please be specific. You may attach additional pages if necessary.)

See Letter To Robert L. Agacinski,
GRIEVANCE ADMINISTRATOR.

I request an investigation by the Attorney Grievance Commission.

<p>Date: <u>April 9, 2003</u></p> <p><i>You must provide two (2) completed copies of this form and two (2) copies of all attachments. We cannot process unsigned complaints.</i></p>	<p><u>Theodore A. Golden, MD.</u> (Signature) <u>Theodore A. Golden, MD.</u> (Name - type or print) <u>1746 Bellwood Court</u> (Street and Number) <u>Bloomfield Hills, MI 48302</u> <u>(248) 626-225</u> (City and State) (Zip Code) (Telephone Number)</p> <div style="text-align: right; margin-top: 20px;"><p>Mr. _____</p><p>Mrs. _____</p><p>Ms. _____</p></div>
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Complaints About Hanley Gurwin To The Michigan Attorney Grievance Commission

Theodore A. Golden, M.D.

1746 Bellwood Court
Bloomfield Hills, MI 48302
(248)626-2252

Appendix A-1

April 5, 2003

Robert L. Agacinski
Attorney Grievance Commission
243 W. Congress, Suite 256
Detroit, MI 48226-3259

Re: Hanley M. Gurwin, Esq.

Dear Mr. Agacinski:

This letter to the Attorney Grievance Commission will state my complaints of attorney misconduct against Mr. Gurwin.

Mr. Gurwin was the Court appointed mediator in a divorce case concerning [...], Oakland County Circuit Court.

The performance of Mr. Gurwin was unacceptable. He was unprofessional, unethical, not prepared or lacked expertise in preparing for the job, incompetent, lacked moral character, was not focused on the work, digressed from the issues in order to promote himself, and wasted a great deal of time.

I mentioned to Mr. Gurwin that I belonged to Congregation [...]. His immediate reply to me was that I had a gay rabbi. That was news to me. He then told me about other gay rabbies in town, and how he was an expert at identifying gays. He was so good that he identified a friend's four year old child as being gay. He then mentioned several rabbies whose divorces he handled. What is he saying about me to his clients and friends? Mr. Gurwin could not keep his mouth shut. I refer to Mr. Gurwin as Mr. Talky.

[My ex-wife told me after this complaint was filed that Mr. Gurwin discussed oral sex with Mrs. Glanz, her attorney, and herself when he met with them privately during mediation.]

Prior to the first mediation both sides gave Mr. Gurwin their list of the marital assets in order for him to prepare for the mediation. He charged for the preparation, which was incompetently done. At the first mediation session he reviewed my ex-wife's list of the marital assets that was prepared by her attorney. The list had several spelling errors. He zeroed in on the spelling errors, and informed everyone of the errors and made corrections. He stated that her list of the assets was better than the list that I presented. His lack of preparation, expertise, or order of priority concerning these matters prevented him from stating that her list contained errors that increased the marital assets by [many] dollars. Mrs. Glanz listed several assets twice. Financial information from my father's trust, which clearly was not part of the marital assets, was included on the list prepared by my ex-wife's attorney. The pension plan was doubled listed. Mr. Gurwin should have pointed out these serious financial discrepancies instead of focusing on the fact that Mrs. Glanz, the attorney, spelled Exxon with only one "x".

Mr. Gurwin made unnecessary, and derogatory comments about my ex-wife. [...]

Mr. Gurwin could not stay focused on the job. He would go off on a tangent telling anecdotal stories about his past cases or add unnecessary information for the purpose of promoting himself or his knowledge, educate or mentor the attorneys, or to be entertaining. He was a "windbag". His lack of preparation, useless, and verbose digressions prolonged the mediation sessions. I felt that he wasted a lot of time that my family was getting charged for at \$775 per hour when all of the attorney's fees were totaled. Five mediation sessions in all with no resolution. I was urged by my attorney to attend a sixth session. "Mr. Gurwin is your only hope to avoid a trial." I declined to see Mr. Gurwin a sixth time. Mr. Robbins knows my feelings about Mr. Gurwin.

Mr. Gurwin was not paid for the last two mediation sessions, \$2,850 according to Mr. Gurwin. He threatened to sue me in February, 2003, if he was not paid. I talked to Mr. Gurwin on February 19, 2003, about why I would not pay him. Mr. Gurwin wrote to Mr. Robbins the same day and talked to Mr. Robbins. The issue of the fees that I did not pay to Mr. Gurwin has been resolved. Mr. Gurwin reduced my 50% share from 1,425 to 1,000. Mr. Robbins paid the \$1,000 out of his own pocket. Mr. Robbins told me that he did not want to be involved or get caught in the middle.

Mr. Gurwin's letter of February 19, 2003, to Mr. Robbins and Randi P. Glanz stated that they violated the Court order that appointed him to be the mediator. The Judgement of Divorce was entered prior to Mr. Gurwin being paid or an agreement payment for satisfactory was reached. Why would three experienced family law attorneys, Mr. Gurwin, and the other two allow Judge Patrick Brennan to sign the Judgment of Divorce on November 1, 2001, while they were in violation of his order concerning the mediator's unpaid fees?

My ex-wife wanted to pay the balance of Mr. Gurwin's fee from our joint funds. She called Mr. Gurwin's office in October, 2001, and was told that our account had a zero balance, and no payment was made. On February 19, 2003, Mr. Gurwin's secretary confirmed to me that she did talk to my ex-wife about the account having a zero balance. Why was the account manipulated?

On November 1, 2001, my ex-wife and I signed the Judgement of Divorce at the Court, and Judge Brennan signed it. We did not see the Judge. I was prevented from voicing my complaints to the Judge about Mr. Gurwin. Mr. Gurwin was protected.

I am filing this complaint because Mr. Gurwin's attorney misconduct caused me to have to pay excessive legal fees to Mr. Robbins, prolonged the divorce proceedings, and caused emotional stress.

I hope that the Attorney Grievance Commission will review Mr. Gurwin's files and thoroughly investigate all of the issues that I have brought before you. It should be noted that Mr. Gurwin was appointed by Court order, and should be held to the highest standards. I hope that the Attorney Grievance Commission will concur with my allegations and find Mr. Gurwin guilty of attorney misconduct, and discipline him accordingly.

Thank you.

Sincerely,

Theodore A. Golden, M.D.

Enclosures

Additional complaint against Hanley M. Gurwin in the following letter:

Theodore A. Golden, M.D.
1746 Bellwood Court
Bloomfield Hills, MI 48302
(248)626-2252

July 18, 2004

Robert L. Agacinski
Attorney Grievance Commission
243 W. Congress, Suite 256
Detroit, MI 48226-3259

Re: Hanley M. Gurwin, Esq. AGC File No. 1064/03

Dear Mr. Agacinski:

As you recall I filed a complaint against Hanley M. Gurwin, which is contained in the above file. I also filed a Complaint in the Nature of Mandamus with the Michigan Supreme Court. One of my complaints against Mr. Gurwin was unprofessional behavior. Unfortunately, the file was closed, and the Michigan Supreme Court did not issue a Writ of Mandamus to order you to pursue an investigation of Mr. Gurwin.

I recently spoke to my ex-wife concerning Mr. Gurwin's behavior while he was with her. She stated to me that he discussed "blow-jobs" with Randi P. Glanz, Esq. and herself. His discussion of oral sex with the two females was unprofessional, and a form of sexual harassment. My initial complaint against Mr. Gurwin stated that he could not control himself, and used the mediation sessions for his own personal entertainment. Mr. Gurwin was getting his jollies by verbally masturbating himself in front of the two women.

Mr. Gurwin's behavior was unethical, unprofessional, and detrimental to the mediation process.

Mr. Gurwin has made a name for himself in the legal community, and feels that he can act with impunity. Your lax enforcement of the attorney disciplinary process has enabled Mr. Gurwin to take advantage of the legal system in order to enrich and titillate himself at the expense of people like my ex-wife and myself who were in the process of divorce.

Mr. Gurwin should be disciplined for his acts of attorney misconduct. You have a duty to protect the integrity of the legal system and the people of Michigan from the Hanley Gurwins.

Sincerely,

Theodore A. Golden, M.D.

Return to Home Page of www.tagolden.com

Theodore A. Golden, M.D.
1746 Bellwood Court
Bloomfield Hills, MI 48302
(248)626-2252

B-1

July 22, 2003

Cynthia C. Bullington
Attorney Grievance Commission
243 W. Congress. Suite 256
Detroit, MI 48226-3259

Re: File 1064/03 Theodore A. Golden, M.D. as to Hanley M. Gurwin, Esq.

Dear Ms. Bullington,

I am writing to you to appeal the decision made by Mr. Stephen Vella concerning my complaints of attorney misconduct committed by Hanley M. Gurwin, Esq., your file 1064/03.

In a telephone conversation with Mr. Vella on July 17, 2003, Mr. Vella stated that it would not be fair to Mr. Gurwin if he was disciplined for the misconduct charges that I filed against him, and therefore he closed the file, without a decision being made if Mr. Gurwin was guilty of attorney misconduct. I feel that the Attorney Grievance Commission should make a decision on whether Mr. Gurwin committed attorney misconduct as I have alleged, and then determine what action to take against him.

My complaints about Mr. Gurwin's egregious behavior prompted Mr. Vella to determine that there was attorney misconduct committed by Mr. Gurwin if the facts in my complaint were true, because Mr. Vella served Mr. Gurwin with a request for investigation according to the procedures followed by the Attorney Grievance Commission as described in written materials provided to me by the Commission. An attorney served with a request for investigation has a duty to file an answer in order to refute the charges against him.

Mr. Gurwin's delayed response did not refute my complaints against him. My detailed complaint that he was unprepared and incompetent in preparing for the mediation was answered with "I was thoroughly prepared". He should provide his file on the case in order to prove that he was prepared. In my complaint I specially requested that the Commission obtain the file in order to prove the validity of my charge. His statement that "I was thoroughly prepared" does not refute the charge, and this charge against him should not have been dismissed.

Mr. Gurwin's response to charges that he was unprofessional and unethical concerning statements that he made to me was that I was at fault for not being tolerant of his unsolicited remarks concerning local rabbis, and the derogatory remarks that he made about my ex-wife. I mentioned his conduct as described in my complaint to a number of people to test their reaction, and all were appalled.

Mr. Gurwin had no response to my complaint about his billing practices, and manipulating the Goldens' account. In a letter dated Feb. 19, 2003, to my attorney, Michael Robbins, Esq., Mr. Gurwin rightly states that Mr. Robbins violated the court order that appointed Mr. Gurwin the mediator. Mr. Michael Robbins, in a letter to Mr. Gurwin that is in your file, defended his own attorney misconduct of filing my Judgement of Divorce prior to resolution of the mediator's fees as required by Court order by implying that Mr. Gurwin's billing practices were not proper.

Mr. Gurwin implied that Mr. Robbins was dismayed by my complaints. I complained to Mr. Robbins during the first mediation session that Mr. Gurwin was not prepared. I complained to Mr. Robbins in a letter about Mr. Gurwin. Mr. Robbins was familiar with Mr. Gurwin's shortcomings, and we had several discussions concerning them. Mr. Robbins concurred with my observation that Mr. Gurwin was "over the hill".

Not included in my original complaint was the fact that my ex-wife told me that Mr. Gurwin made derogatory remarks about me when he held private sessions with her. She did not give me further details.

Since I filed my complaint I have learned that divorce mediators are required or should have at least eight hours a year minimum of continuing education concerning mediation. I ask that you obtain from Mr. Gurwin proof that he has yearly continuing education credits. Perhaps, certain required continuing education courses concerning ethics, professionalism, and mediation fundamentals would refresh and improve Mr. Gurwin's mediation skills.

Unfortunately, you cannot teach a man character. Michael Robbins Esq. and Randy Glanz, Esq. had the court appoint their colleague and friend Mr. Gurwin to be the mediator. A good assignment, and a well paying job. Mr. Gurwin commits numerous accounts of attorney misconduct, and is not paid. The Court order concerning Mr. Gurwin's fee is disregarded by the two attorneys so attorney misconduct charges against Mr. Gurwin are not expressed before Judge Patrick Brennan. Mr. Gurwin's letter to the two attorneys dated February 19, 2003, charges them with violating the court order, a serious charge of attorney misconduct, in order to collect the unpaid fee. Mr. Robbins paid Mr. Gurwin \$1,000 in order to make it go away. The blackmail succeeded. Would you treat a professional colleague and friend the way Mr. Gurwin did? What about attorney misconduct in that activity?

In the same letter dated February 19, 2003, Mr. Gurwin writes, "If your clients had expressed dissatisfaction with my services, I am certain that one or both of you would have brought that to my attention." Was Mr. Robbins afraid to offend Mr. Gurwin, by telling Mr. Gurwin the truth. I hope that the Commission is not afraid to tell Mr. Gurwin the truth. "Yes, Mr. Gurwin, you committed attorney misconduct."

Mr. Gurwin's attorney misconduct caused me to have excessive legal fees, a prolonged divorce procedure, and emotional stress. The same type of financial and emotional damages that result from more overt criminal activity.

B-3

Page 3

I ask that you re-open the investigation concerning the above file. I have presented additional information. I also feel that the investigation was incomplete, and had not been objective. I hope that you concur with my charges against Mr. Gurwin, and at least admonish Mr. Gurwin.

Thank you.

Sincerely

Theodore A. Golden, M.D.

Theodore A. Golden, M.D.

June 17, 2003

Hand Delivery

Stephen P. Vella, Associate Counsel
Attorney Grievance Commission
Marquette Building
243 W. Congress
Suite 256
Detroit, MI 48226-3259

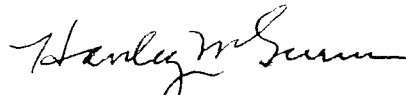
Re: **Re: Theodore A. Golden as to Hanley M. Gurwin**
File No. 1064/03

Dear Mr. Vella:

Your letter dated June 12, 2003 indicates that I failed to respond to a Request for Investigation (RI) served on me on 5/12/03. Please be advised that I have never received that RI and the first I was aware that you sent it was when I received your letter informing me that more than twenty-one days had elapsed since you sent it and that I was in violation of MCR 9.104(A)(7) and 9.113 (B). Perhaps I did not receive it as it may have been sent to an incorrect address. Please note that your June 12, 2003 letter was sent to 38522 Woodward Avenue, not the correct address of 38525. Enclosed is a copy of the envelope which indicates the wrong address. If the first letter was also incorrectly addressed, that may explain why it has never been received.

As a former chairman of the Attorney Discipline Board, I am well aware of the necessity of responding timely to a RI. Enclosed is my response.

Sincerely,



Hanley M. Gurwin

HMG/cdd

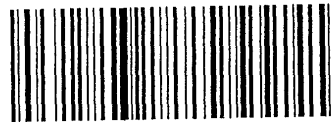
BLOOMFIELD 44557-149 551486

C-2

STATE OF MICHIGAN
ATTORNEY GRIEVANCE COMMISSION
MARQUETTE BUILDING
243 WEST CONGRESS, SUITE 256
DETROIT, MICHIGAN 48226-3259

PERSONAL AND CONFIDENTIAL

CERTIFIED MAIL



7001 0360 0003 0727 4545



Mr. Hanley Gurwin
38522 Woodward Ave., Ste. 2000
Bloomfield Hills, MI 48304

TRY
Box 509

48304-3000 04



C-3

STATE OF MICHIGAN
ATTORNEY GRIEVANCE COMMISSION

03 JUL 10 PM 4:03

RESPONSE TO REQUEST FOR
INVESTIGATION OF ATTORNEY RE:
THEODORE A. GOLDEN AS TO HANLEY M. GURWIN FILE NO. 1064/03

From the time I was appointed to mediate the first divorce case in the Oakland County Circuit Court in 1978, I have been called upon to mediate approximately 1,000 cases. This is the first time to my knowledge that anyone has filed a grievance against me with respect to my services as a neutral mediator. I am proud of my reputation as one of the most respected mediators in southeastern Michigan. Just last week, I was a recipient of the Professionalism Award from the Oakland County Bar Association.

In response to Dr. Golden's letter, I reply as follows:

Of all of the cases I have been called upon to mediate, Golden v Golden was one of the most difficult. Both parties were extremely inflexible in their approach to settlement and were initially reluctant to compromise to any great extent to resolve the contested issues. They were represented by competent counsel who selected me as the mediator because of my experience and because of my track record of being able to settle difficult cases. It is not uncommon for a mediation to take two and sometimes three sessions before a settlement is reached. This case took five sessions before a negotiated settlement was accepted by both parties. On more than one occasion when a settlement was apparently reached, Dr. (Mrs.) Golden would not sign any agreement without thinking about it further and then would refuse to honor what the mediator and Dr. Golden thought was a "done deal". It is understandable that Dr. Golden became frustrated with the process.

As to his specific complaints, I can only reply by saying that this mediation took place on May 23, June 20, July 11, July 25 and August 8, 2001, approximately two years ago. The first time I heard any complaint from Dr. Golden was when I wrote to his attorney, Michael A. Robbins, on January 27, 2003. A copy of that letter was attached to the Request for Investigation (RI). Dr. Golden called me on the telephone, berated me verbally, accused me of the things set forth in his letter to Mr. Agacinski and insisted that I file a motion for my fees in order that he could tell the judge about all of his complaints against me. When I called Mr. Robbins to ask if he would support any of the claims of his client that I was unprofessional, unethical and unprepared, Mr. Robbins denied the validity of any of his client's complaints and expressed dismay that his client had made these accusations.

During the course of mediation, after reviewing the mediation summaries and discussing the issues with all parties together, I separated them into two rooms and engaged in confidential discussions with each side in an attempt to help them arrive at a mutually satisfactory settlement. In many cases, attorneys for the parties refuse to engage in any settlement discussions until such time as the clients have been separated and they can tell the mediator in a confidential private meeting where they are prepared to compromise to reach a settlement. Often I will spend time with one party and his or her counsel in a discussion concerning matters not germane to the mediation. This is often done to promote a relaxed atmosphere, to talk about current events or to pass time while the other side is considering proposed suggestions for settlement. As these meetings are totally confidential, nothing discussed is ever intended to be repeated to the other side or anyone else and by court rule may not be

disclosed to the judge. As this mediation took place two years ago and I have participated in dozens of mediations in the interim, there is no way I can recall any specific topics which were discussed with Dr. Golden and his attorney during our private meetings.

Concerning his reference to his "gay rabbi", the sexual orientation of this individual is well-known in the community and has not detracted from his ability to serve his congregation well. This discussion may have taken place, but no homophobic remarks are ever made by me. The sexual orientation of any individual is of no more significance to me than the color of that person's eyes. If Dr. Golden was disturbed in any way by our discussion, which I do not even remember, he certainly did not say anything to me about it until our phone call in February of this year, about eighteen months later.

His next complaint is that I was not prepared and was incompetent in my understanding of the marital estate. To the contrary, I was thoroughly prepared, as I always am, and any mistakes in the mediation summaries are certainly brought to my attention by counsel. I respectfully object to his characterization of my preparation for mediation. Both of the attorneys in the Golden case have continued to use me as a mediator and have complimented me on being able to deal with difficult clients and my ability to settle cases. At the end of the second or third mediation session, I recall telling the parties that I did not think their case would ever settle as they were too far apart in their respective positions. Both Mr. Robbins and, Ms. Glanz, attorney for the wife, insisted that the mediation process continue and asked me to schedule another session, and then another until the case was eventually settled.


If Dr. Golden was so upset with me, he could have told his lawyer about his concerns and ended the mediation process at any time. At no time during any of the five mediation sessions was I ever aware of any of Dr. Golden's complaints concerning the manner in which I was facilitating settlement discussions. Dr. Golden, a medical doctor, was well aware of the emotional state in which his wife was functioning. If I commented that "she needs a lot of help", this was not a derogatory remark, but an accurate observation which may have helped to explain her reluctance to compromise. The comment "don't worry, she will not be getting married", a remark which he claims I made, makes no sense in the context of mediation and I do not understand his objection. If I believed that she would not be getting remarried, this would imply that any alimony would most likely be paid for the full period provided in the settlement agreement. If this was my observation, why would I say "don't worry"? The interpersonal relationship between the parties was so unsatisfactory that my statement that she needs help could not possibly have caused him anguish.

As to the unpaid fees, after listening to Dr. Golden's vitriolic verbal attack upon me, I called Mr. Robbins to see if any of these complaints would be substantiated by him if we appeared in court on a motion to enforce payment. Mr. Robbins said that he would not be able to support Dr. Golden's position and asked if I would settle the matter by reducing the payment to \$1,000 from the \$2,850 owed. He acknowledged that contrary to our agreement, the Judgment of Divorce had been entered without satisfactory arrangements for the payment to the mediator. I accepted his offer and wrote off the balance of the outstanding account receivable upon receipt of his check. I did not know whether or not Mr. Robbins was going to be reimbursed by his client.

When Dr. (Mrs.) Golden called me shortly thereafter, I agreed to settle her statement for the same amount as it would not be fair to insist that she pay more than her ex-husband. I accepted the reduced payment from her and was glad to get this case behind me.

I am certain that both attorneys of record will acknowledge that my efforts were instrumental in getting the case settled and that I did not commit any professional misconduct. As pointed out in my letter to both attorneys on February 19, 2003, a copy of which was attached to the RI, I was paid for the first three sessions of mediation in full on July 19, 2001, without one word of complaint from either Dr. Golden or anyone else. I believe this addresses the issues raised by Dr. Golden in his letter to Mr. Agacinski. If there is any additional information you would like, please feel free to contact me or the attorneys who represented the Goldenes.

Respectively submitted,



Hanley M. Gurwin

January 27, 2003

Via First Class Mail

Michael A. Robbins, Esq.
100 W. Long Lake Road
Suite 250
Bloomfield Hills, MI 48304

Re: **Golden v Golden**

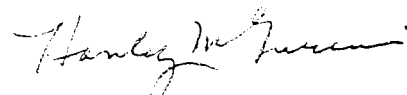
Dear Michael:

Almost a year and one-half has elapsed since a statement dated August 15, 2001 was forwarded to you in connection with mediation services I performed on behalf of your client, Theodore Golden, on July 25 and August 8, 2001. A copy of our statement along with a letter sent to you on April 18, 2002 concerning this unpaid invoice is enclosed.

As payment has not been received, my law firm has informed me that I must begin enforcement proceedings without further delay. Unless payment is received within 15 days, it is my intention to file a petition in the Oakland County Circuit Court requesting that Dr. Golden appear before the court to show cause why he should not be held in contempt and sanctioned for his refusal to pay for mediation services ordered by the court. If that becomes necessary, we will also ask for interest and additional fees necessitated by the collection procedures.

Your cooperation in forwarding this letter to Dr. Golden will be appreciated.

Sincerely,



Hanley M. Gurwin

HMG/cdd
Enclosure

BLOOMFIELD 44557-149 528834

C o u n s e l l o r s A t L a w

DETROIT BLOOMFIELD HILLS LANSING GRAND RAPIDS ANN ARBOR
WASHINGTON, D.C.



E-1
38525 WOODWARD AVE., SUITE 2000
BLOOMFIELD HILLS, MI 48304-2970
TELEPHONE: (248) 433-7200
FACSIMILE: (248) 433-7274
<http://www.dickinsonwright.com>

HANLEY M. GURWIN
HGurwin@dickinsonwright.com
(248) 433-7582

February 19, 2003

Via First Class Mail

Randi P. Glanz, Esq.
255 S. Old Woodward Avenue
Third Floor
Birmingham, MI 48009

Michael A. Robbins, Esq.
100 W. Long Lake Road
Suite 250
Bloomfield Hills, MI 48304

Re: Golden, Sandra v Theodore

Dear Randi and Michael:

This morning I received a telephone call from Dr. Golden who spent several minutes berating me and telling me why neither he nor his ex-wife will be paying my statement for mediation services. Among his complaints and criticisms are the following:

1. My statement of August 15, 2001 which requested payment for services rendered on July 25, 2001 and August 8, 2001 was sent to you and not to them directly. He claims that neither lawyer forwarded the statement until April or later in 2002.
2. He claims that I was unprepared during the first two mediation sessions and that I spent too much time talking about other cases and revealing identities of my clients.
3. He claims that I conducted myself in an unprofessional manner which was acknowledged to them by both of you.
4. He stated that the case never settled as a result of mediation and that eventually he gave up because he did not want to return for a sixth mediation session.
5. When I asked him why he kept returning to continue mediation after the first two sessions, he replied that he was required to do so by court order.

There were several other allegations that he made, including accusing me of bias in favor of his wife, but the ones that I have mentioned are sufficient to put you on notice of his attitude. He said that he would not "go down without a fight" and that I would have to take him to court before either he or his ex-wife would pay my outstanding statement.

I am confident that neither of you would have requested a continuation of mediation, which required more sessions to reach an agreement that any of the

C o u n s e l l o r s A t L a w

DETROIT BLOOMFIELD HILLS LANSING GRAND RAPIDS ANN ARBOR
WASHINGTON, D.C.

E-2

DICKINSON WRIGHT PLLC

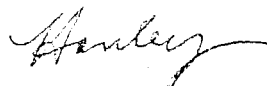
Randi P. Glanz, Esq.
February 19, 2003
Page 2

approximately 1,000 cases I have mediated, if you believed that I was acting unprofessionally, was unprepared or was biased.

→ Unfortunately, contrary to our agreement, you permitted a Judgment of Divorce to be entered prior to the time that I was paid for services rendered or an agreement for payment satisfactory was reached. If your clients had expressed dissatisfaction with my services, I am certain that one or both of you would have brought that to my attention. Dr. Golden's telephone call this morning, more than eighteen months after mediation was concluded, was the first time that I had been informed that the parties were not satisfied with my services and had no intention to pay the outstanding balance of \$2,850. It is interesting to note that notwithstanding their alleged unhappiness with my services as mediator, on July 19, 2001, after three sessions of mediation, I received a check in the amount of \$2,250 as payment in full for services to that date. ←

This letter is to advise you that I will be bringing a motion before Judge Daniel P. O'Brien, successor to Judge Patrick Brennan, to secure an order requiring payment of the outstanding balance. However, if either of you intend to support Dr. Golden's position, I would appreciate knowing if these complaints have been made to you and your responses.

Sincerely,



Hanley M. Gurwin

HMG/cdd

BLOOMFIELD 44557-149 532759

C o u n s e l l o r s A t L a w

DETROIT BLOOMFIELD HILLS LANSING GRAND RAPIDS ANN ARBOR
WASHINGTON, D.C.

LAW OFFICE OF
MICHAEL A. ROBBINS

100 West Long Lake Road
Suite 250
Bloomfield Hills, Michigan 48304
Telephone (248) 646-7980
Facsimile (248) 646-7989

Web: www.michaelarobbins.com
E-mail: MRobbinsLaw@AOL.com

February 6, 2003

Theodore Golden, M.D.
40600 Van Dyke
Sterling Heights, MI 48313

Re: Golden vs Golden

Dear Dr. Golden:

Enclosed herewith please find a copy of the January 27, 2003 letter that I received from Hanley Gurwin. Although the letter is dated January 27, 2003, I did not receive this letter until I returned from my vacation on February 4, 2003. As you may recall, I previously wrote you on April 22, 2002 and October 9, 2002 regarding payment of this bill. Once again, if you have not already paid this bill, please do so immediately.

If you wish to discuss this matter, please feel free to contact me.

Very truly yours,


Michael A. Robbins

MAR/en

Enclosure

LAW OFFICE OF
MICHAEL A. ROBBINS

100 West Long Lake Road
Suite 250
Bloomfield Hills, Michigan 48304

Telephone (248) 646-7980

Facsimile (248) 646-7989

Web: www.michaelarobbins.com

E-mail: MRobbinsLaw@AOL.com

February 21, 2003

Hanley M. Gurwin, Esq.
Dickinson Wright, PLLC
38525 Woodward Avenue
Suite 2000
Bloomfield Hills, MI 48304

Re: Golden, Sandra vs Theodore Mediation

Dear Hanley:


I am in receipt of your letter dated February 19, 2003 and have had an opportunity to discuss the contents with Dr. Golden. Unfortunately, there is a significant difference of opinion as to what took place at mediation. However, I do not believe that those differences necessitate litigation.

This letter will also confirm that after I received your letter, we had a telephone conference at which time I requested that you consider reducing Dr. Golden's portion of the outstanding mediation fee as a way of getting this issue settled. I also apologized for having entered the Judgment prior to confirming with you whether your fees were paid. As I explained, I forwarded your August 15 2001 statement to Dr. Golden and the Judgment was subsequently entered on November 1, 2001. Since I did not hear from either you or Dr. Golden regarding your fee, I assumed that it had been paid. It was only after I got another statement from you in April did that I realize that you had not been paid.

In light of the above, this letter will confirm that you did agree to reduce your fee to \$1,000 and not proceed with a show cause hearing against Dr. Golden. Pursuant to this agreement, I have enclosed my check number 1608 in the amount of \$1,000 as payment in full for Dr. Golden's portion of your outstanding fee.

Thank you for your cooperation and understanding.

Very truly yours



Michael A. Robbins

MAR/en
Enclosure
Copy: Dr. Theodore Golden

H-1

LAW OFFICE OF
MICHAEL A. ROBBINS

100 West Long Lake Road
Suite 250
Bloomfield Hills, Michigan 48304
Telephone (248) 646-7980
Facsimile (248) 646-7989

Web: www.michaelarobbins.com
E-mail: MRobbinsLaw@AOL.com

February 21, 2003

Theodore Golden, M.D.
40600 Van Dyke
Sterling Heights, MI 48313

Re: Golden vs Golden

Dear Dr. Golden:

Enclosed herewith please find the following documents:

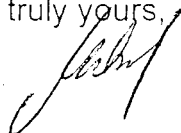
- A. February 19, 2003 letter from Hanley Gurwin;
- B. My February 21, 2003 reply.

This letter will also confirm our telephone conversation of February 20, 2002 when I advised you that I was going to write the enclosed letter to Mr. Gurwin in order to resolve this issue. Despite your displeasure with Mr. Gurwin, you had no objection to this resolution.

> Since this issue has now been resolved, I will leave it up to your discretion whether you wish to reimburse my office any or all of the money I paid to Mr. Gurwin to bring this matter to a conclusion. I will accept whatever decision you make. <

As always, if I can be of any further assistance, please do not hesitate to contact my office.

Very truly yours,



Michael A. Robbins

MAR/en

Enclosure

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ANDREA L. SOLAK
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STATE OF MICHIGAN

ATTORNEY GRIEVANCE COMMISSION

MARQUETTE BUILDING
243 W. CONGRESS, SUITE 256
DETROIT, MICHIGAN 48226-3259
TELEPHONE (313) 961-6585
FAX (313) 961-5819
WWW.AGCMI.COM

I-1

ROBERT L. AGACINSKI
GRIEVANCE ADMINISTRATOR
ROBERT E. EDICK
DEPUTY ADMINISTRATOR
CYNTHIA C. BULLINGTON
ASSISTANT DEPUTY ADMINISTRATOR

ASSOCIATE COUNSEL
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STEPHEN P. VELLA
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FRANCES A. ROSINSKI
EMILY A. RAMSEY
H. LLOYD NEARING
KIMBERLY L. UHURU
NANCY R. ALBERTS
DINA DAJANI

June 27, 2003

PERSONAL AND CONFIDENTIAL

Theodore A. Golden
1746 Bellwood Court
Bloomfield Hills, MI 48302

Re: Theodore A. Golden as to Hanley M. Gurwin
File No. 1064/03

Dear Mr. Golden:

After preliminary investigation by the Commission's staff, it has been determined that the matters raised in your Request for Investigation will not be pursued further by the Commission.

The Commission is authorized to investigate and when necessary prosecute charges of attorney misconduct. We have reviewed your Request for Investigation and conducted other preliminary investigation in this matter. During the course of our inquiry we asked the attorney named in your complaint to provide an Answer to your allegations. I am enclosing a copy of the Answer for your review. Our office feels the attorney has answered your allegations adequately. I am enclosing a copy of the Answer for your review.

The facts as you have stated in your Request for Investigation do not constitute professional misconduct. Mr. Gurwin has adequately addressed your allegations and we are satisfied with his response. If you seek relief from the mediation, we suggest that you consult with an attorney regarding your legal options in the trial or appellate courts, if any. After careful review of the materials presented in this file, we see no evidence that this attorney has engaged in conduct actionable by this office. We will take no further action.

Very truly yours,



Stephen P. Vella
Associate Counsel

SPV/ma
Enclosure
cc: Hanley M. Gurwin

CARLE E. VER BEEK
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ANDREA L. SOLAK
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STATE OF MICHIGAN

ATTORNEY GRIEVANCE COMMISSION

MARQUETTE BUILDING
243 W. CONGRESS, SUITE 256
DETROIT, MICHIGAN 48226-3259
TELEPHONE (313) 961-6585
FAX (313) 961-5819
WWW.AGCMI.COM

J-1
ROBERT L. AGACINSKI
GRIEVANCE ADMINISTRATOR
ROBERT E. EDICK
DEPUTY ADMINISTRATOR
CYNTHIA C. BULLINGTON
ASSISTANT DEPUTY ADMINISTRATOR

ASSOCIATE COUNSEL
WENDY A. NEELEY
RUTHANN STEVENS
STEPHEN P. VELLA
PATRICK K. McGLINN
FRANCES A. ROSINSKI
EMILY A. RAMSEY
H. LLOYD NEARING
KIMBERLY L. UHURU
NANCY R. ALBERTS
DINA DAJANI

August 13, 2003

PERSONAL AND CONFIDENTIAL

Theodore A. Golden
1746 Bellwood Court
Bloomfield Hills, MI 48302

Re: Theodore A. Golden as to Hanley M. Gurwin
File No. 1064/03

Dear Mr. Golden:


You have sought reconsideration of the dismissal of the file in your July 22, 2003 correspondence. The file has been reviewed, however, your request for reconsideration is denied.

I do not see a basis on which to have this file reopened. Your present correspondence does not add any new evidence which would cause this office to change its initial determination. The file will remain closed, and no further action will be taken.

A decision by this office to close a file without taking action against an attorney is subject to review by the Michigan Supreme Court on a complaint for mandamus. An instruction sheet explaining that procedure is enclosed. If you remain dissatisfied with our decision, you may pay the filing fee and seek relief from the Supreme Court.

Thank you.

Very truly yours,


Cynthia C. Bullington
Assistant Deputy Administrator

CCB/ma
Enclosure

STATE OF MICHIGAN
ATTORNEY GRIEVANCE COMMISSION

The Michigan Attorney Grievance Commission is described in the MCR 9.108 as the "prosecution arm of the Supreme Court for discharge of its constitutional responsibility to supervise and discipline Michigan Attorneys." The Commission has authority to investigate, and when necessary, prosecute charges of attorney misconduct.

The Commission's full time staff consists of fourteen attorneys including the grievance administrator and twenty support personnel. In addition to full time staff, the Commission maintains a roster of 180 volunteer attorneys throughout the state whose services are utilized as the need arises.

While the numbers of Requests for Investigations being filed annually have been on the increase in recent years, the vast majority of these files, approximately 85%, are closed annually by the Commission without any action being taken against the respondent lawyers. This high rate of closure results from the fact that the allegations in most files are unsubstantiated i.e., the lawyer has done nothing wrong. Another important factor contributing to the high rate of dismissal is the fact that most attorneys take seriously, and comply with, their ethical obligation to provide a complete and timely answer to a Request for Investigation. Lawyers who comply with their ethical obligation in this regard enable the Commission and its staff to focus the investigation and ensure a speedy resolution.

Pursuant to MCR 9.112 (B), a request for investigation must be reduced to written form, describe the alleged misconduct, be signed by the complainant and be filed with the grievance administrator. Anyone, including clients, judges, opposing counsel and even the opposing party, can file a request for investigation with the Attorney Grievance Commission. Approximately 25% of the 4,000 complaints received by the Commission annually are filed by someone other than the attorney's client.

There is no "Statute of Limitations" to file a complaint. It is not unusual for a complaint to be filed against an attorney years after the impropriety allegedly occurred. While the Commission may face many practical obstacles in the investigation and/or prosecution of such cases, such as faded memories of witnesses, or the inability to produce evidence, if an investigation establishes misconduct, a formal complaint against the attorney can be filed. The court rules governing the Commission, and the Judicial Tenure Commission, (our state's judicial oversight agency), clearly indicate the Supreme Court's intention to avoid implementation of a "statute of limitations" concerning allegations of attorney or judicial misconduct.

STATE OF MICHIGAN
ATTORNEY GRIEVANCE COMMISSION

The grievance administrator, who is appointed by the Michigan Supreme Court, is charged with the duty to review the request for investigation upon receipt. Following initial review, the administrator has authority to dismiss the complaint if it is "inadequate, incomplete or insufficient to warrant" further proceedings. See MCR 9.112 (C) (1) (a). In reviewing a request for investigation, the administrator applies the test utilized by attorney oversight commissions in all 50 states: The administrator determines whether, assuming all facts in the request for investigation are true, there is evidence of attorney misconduct. The respondent and the complainant are notified by the administrator if the request for investigation is dismissed at this stage. Also, the respondent is furnished with a copy of the request for investigation.

Pursuant to MCR 9.113, an attorney served with a request for investigation has a duty to file an answer with the administrator. MCR 9.104 (7) states that the failure to answer a request for investigation is, in itself, misconduct. See also, Michigan Rule of Professional Conduct 8.1 (b). Additionally, relevant decisions of the Attorney Discipline Board establish that the failure to answer a request for investigation is substantive misconduct. A formal complaint is always filed against a respondent who fails to answer a request for investigation. This occurs without regard to the merit or lack of merit of the allegations contained in the request for investigation. A respondent attorney can expect to receive a 30 day suspension for the practice of law for the failure to answer a request for investigation, absent exceptional circumstances.

MCR 9.113 (B) (1) specifically provides that certain constitutional privileges, such as the right to remain silent in response to allegations contained in a request for investigation, can be asserted in appropriate situations. It is important to stress however, that the assertion of a privilege does not obviate the need to file an answer. Any privilege the respondent attorney wishes to assert must be raised in the answer and all allegations to which the privilege does not extend, must be answered. If the Commission believes the a constitutional right has been improperly asserted, charges can be brought against the respondent attorney pursuant to MCR 9.113 (B) (3).

The attorney/client privilege is automatically waived pursuant to MCR 9.113 (C). However, the rule indicates that the waiver applies only for purposes of the Commission's investigation. It is important to recognize that this waiver does not permit a respondent attorney to breach client confidences outside of written responses to the Attorney Grievance Commission.

Respondent attorneys may retain counsel to assist in responding to a request for investigation at their discretion. In approximately 85-90% of cases, respondent attorneys do not retain counsel to assist in the preparation and submission of an answer to a request for investigation.

An attorney is obligated to file an answer to the request for investigation within 21 days of being served i.e. within 21 days of mailing. See MCR 9.113 (A). However, the administrator does have the authority to grant extensions of time for filing an answer. Extensions are routinely granted, provided there is reasonable justification.

The administrator reviews respondents answers to determine whether it is adequate and whether it refutes the allegations of misconduct. See MCR 9.113 (A). If the administrator believes the respondent has sufficiently responded and refuted the allegations, the administrator has the authority to dismiss the complaint and close the file. Approximately 40-45% of all grievances received annually are closed at this stage. If the administrator determined that an answer is inadequate or that it does not refute all of the allegation, the file is referred to staff counsel for full investigation.

In the vast majority of cases, the answer is provide to the complainant. However, pursuant to MCR 9.113 (A), if the administrator determines that there is "cause" not to disclose the answer to the complainant, it may be withheld.

The Commission has the authority to subpoena witnesses and to compel the production of documents for review and/or nondestructive physical testing. See MCR 9.112 (D) as amended.

The Commission has five options. If it believes that an investigation is incomplete, it can refer a file back to staff counsel for further investigation. Second, the Commission can dismiss a complaint and close a file. Third, the Commission can admonish a respondent attorney for his/her conduct pursuant to MCR 9.106 (6). Admonitions are confidential and are issued in a letter sent only to the respondent and complainant. They do not constitute discipline. If a respondent objects to an admonition, it must be vacated. The Commission must then decide if the file should be closed or whether formal proceedings should be instituted. Effective September 1, 1995, the Commission has authority to place a respondent lawyer who has engaged in less serious misconduct substantially related to an alcohol/substance abuse problem on contractual probation. See MCR 9.114 and 9.115 (J) (3) as amended. As a final option, the Commission has authority to authorize the issuance of formal proceedings against a respondent attorney. Formal complaints are currently authorized in approximately 20-25% of matters per month.

After a formal complaint is filed by the administrator the proceedings become a matter of public record. The administrator must prove the allegations by a preponderance of the evidence and the Michigan Rules of Evidence apply to the proceedings. Disciplinary matters are tried before a panel of three attorneys appointed by the Attorney Discipline Board, the "adjudicative arm" of the Michigan Supreme Court. See MCR 9.110.

STATE OF MICHIGAN
ATTORNEY GRIEVANCE COMMISSION

If a panel finds that the administrator has failed to prove charges by a preponderance of the evidence, the charges are dismissed. If the panel finds that the charges have been established, a finding of misconduct is entered. A separate hearing to establish the appropriate discipline must then be held. Based on mitigating facts, the panel may issue a reprimand, enter a suspension, or revoke a respondent's license. If suspension is entered in excess of 179 days, or revocation is ordered, the respondent must petition for reinstatement to the practice of law. Probation may also be utilized in certain cases.

The administrator, a respondent attorney and the complainant can appeal the panel's findings by right (within a certain time period) to the Attorney Discipline Board. The Board's decision can be appealed by leave to the Michigan Supreme Court.

The most common complaint that the Commission receives from clients relate to their attorney's failure to communicate and fee disputes. In the majority of instances, at the point a client resorts to a request for investigation he/she is frustrated by the attorney's failure to communicate. Michigan Rule of Professional Conduct, 1.4 specifically requires that lawyers keep a client reasonably informed concerning the status of the client's matters. Neglect of a client's matter generally goes hand-in-hand with failure to communicate. Rules 1.3 and 3.2 of the Michigan Rule of Professional Conduct require prompt and competent processing of client matters. A lawyer who cannot meet these responsibilities should decline the work. Fee disputes generally result because the client and the attorney did not thoroughly discuss fees.

Another common complaint is professionalism. The majority of these types of complaints are filed by lawyers and judges. Complaints alleging lack of professionalism are on the rise. It is uncertain whether un-professionalism is on the rise or whether the willingness to report such conduct has increased. The courts, The Attorney Discipline Board and the Attorney Grievance Commission will not tolerate a lack of civility among the profession. Racial remarks, ethnic slurs, remarks indicating gender bias, abusive language and even physical assaults are being reported in increasing numbers to the Commission. However, it should be stressed that overall the numbers of complaints involving professionalism comprise only a small percentage of the 4,000 complaints received by the Commission annually.

Memorandum

L-1

SUGGESTIONS FOR PREPARING COMPLAINT IN THE NATURE OF MANDAMUS AGAINST THE ATTORNEY GRIEVANCE COMMISSION

Supreme Court review of a decision by the Attorney Grievance Commission not to initiate disciplinary proceedings may be sought by filing a "Complaint in the Nature of Mandamus".

1. You should prepare an original and ten copies of your "Complaint in the Nature of Mandamus." The original and seven copies are to be mailed to this Court. One copy is to be mailed to the Grievance Administrator and one copy is to be mailed to the attorney against whom you complained to the Commission. One copy you will want to retain.

2. Your Complaint should set forth your reasons for believing that the action of the Commission was incorrect. If possible, you should support your argument with citations of legal authority.

3. Attach a notarized affidavit to the original set of your papers, stating that you have mailed a complete true copy of your papers to the Grievance Administrator and to the attorney against whom you have complained. Your papers will not be filed or presented to the Court if they are not accompanied by such an affidavit.

4. Attach the entry fee provided by Court Rule (checks should be payable to the State of Michigan). The fee is \$250. If you cannot pay the fee, attach to your papers a notarized affidavit showing your assets, debts and income.

Our mailing address is: Supreme Court Clerk
P O Box 30052
Lansing, MI 48909