

STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES
Before the Director of Insurance and Financial Services

In the Matter of:

Ada R. Montgomery,

Case No.: 12-896-L

Petitioner,

Docket No. 12-001761-OFIR

v

Office of Financial and Insurance Regulation,

Respondent.

Issued and entered
this 20th day of March 2013
by Randall S. Gregg
Special Deputy Director

FINAL DECISION

I. BACKGROUND

This case concerns the application of Ada Montgomery (Petitioner) for a resident insurance producer license filed with the Office of Financial and Insurance Regulation¹. The license was denied because the Petitioner had been disciplined in 2009 by the Michigan Attorney Discipline Board.

Petitioner challenged the license denial. An Order Referring Petition for Hearing and Order to Respond was issued October 25, 2012. The hearing was held November 27, 2012. A Proposal for Decision (PFD) was issued January 4, 2013, recommending that the Petitioner's insurance producer license application be denied. Neither party filed exceptions. The PFD is attached. The findings and recommendation in the PFD are adopted.

II. FINDINGS OF FACT

In June 2009, the Michigan Attorney Discipline Board (Board) suspended the Petitioner's license to practice law for two years. The Board found that the Petitioner misused client funds, made false statements to the client about the funds, failed to undertake collection of a judgment in her client's favor, and failed for nine years to pursue a criminal motion for which she had been retained. In addition to the suspension of Petitioner's license to practice law, the

¹ Pursuant to Executive Order 2013-1, the Office of Financial and Insurance Regulation is now known as the Department of Insurance and Financial Services.

Board ordered Petitioner to pay \$17,500.00 in restitution to the client. Petitioner did not pay the restitution.

III. CONCLUSIONS OF LAW

Section 1239(1)(h) of the Michigan Insurance Code (Code), MCL 500.1239(1)(h), provides:

(1) In addition to any other powers under this act, the commissioner...shall refuse to issue a license under section 1205 or 1206a, for any 1 or more of the following causes:

* * *

(h) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

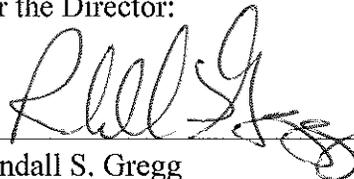
The Director² finds that the Petitioner used fraudulent and dishonest practices and demonstrated untrustworthiness and financial irresponsibility when acting as a licensed Michigan attorney. The Director concludes that the Petitioner does not meet the standards required to be a licensed insurance producer in this state.

IV. ORDER

The Proposal for Decision is adopted and made a part of this final decision. The refusal to issue an insurance producer license to Ada Montgomery is upheld.

R. Kevin Clinton
Director

For the Director:



Randall S. Gregg
Special Deputy Director

² During the pendency of this case all authority, powers, duties, functions, and responsibilities of the Commissioner of the Office of Financial and Insurance Regulation were transferred to the Director of the Department of Insurance and Financial Services. See Executive Order 2013-1, effective March 18, 2013.

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OFIR/OGC

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:	Docket No.:	12-001761-OFIR
Ada R. Montgomery, Petitioner	Case No.:	12-896-L
v	Agency:	Office of Financial & Insurance Regulation
Office of Financial and Insurance Regulation, Respondent	Case Type:	OFIR/OFIS-Insurance
_____ /	Filing Type:	Appeal

Issued and entered
this 14th day of January, 2013
by:
C. David Jones
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

On May 9, 2012 Petitioner applied for a resident insurance producer license. On July 18, 2012 Respondent denied Petitioner's application. On August 30, 2012 Petitioner filed a Petition for Contested Case Hearing. Respondent filed a Response to the Petition. On October 25, 2012 the Chief Deputy Commissioner issued an Order Referring Petition for Hearing and Order to Respond.

On October 31, 2012 this office issued a Notice of Hearing scheduling the hearing for November 27, 2012 at 9:00 a.m. at 611 W. Ottawa, Lansing, Michigan.

The hearing was held November 27, 2012 as scheduled. Janet Napp, attorney, represented Petitioner. Scott Basel and William Kim, attorneys, represented Respondent.

The following witnesses testified:

Ada R. Montgomery, Petitioner, for Petitioner;
Jean Boven, Deputy Commissioner, for Respondent.

The following exhibits were admitted into evidence:

Joint Exhibit 1: Uniform Application Form;

- Joint Exhibit 2: Petitioner's Application;
 - Joint Exhibit 3: May 11, 2012 Letter from Petitioner;
 - Joint Exhibit 4: June 19, 2012 Letter from Petitioner;
 - Joint Exhibit 5: Undated Letter from Petitioner;
 - Joint Exhibit 6: Documents concerning discipline by the Michigan Attorney Discipline Board;
 - Joint Exhibit 7: July 18, 2012 Notice of License, Denial from Respondent;
 - Joint Exhibit 8: October 29, 2008 Formal Complaint, Attorney Discipline Board;
- Respondent Exhibit A: April 12, 1999 Letter from Petitioner.

ISSUES AND APPLICABLE LAW

The applicable law in this case is the Insurance Code of 1956, 1956 PA 218, as amended; MCL 500.100 *et seq.*

The issues are as follows:

Did Respondent properly deny Petitioner's application for a resident insurance producer license because she used dishonest practices, and demonstrated incompetence and financial irresponsibility in the conduct of business, contrary to MCL 500.1205(1)(b) and MCL 500.1239(1)(h)?

FINDINGS OF FACT

1. Petitioner was an attorney. However, the Michigan Attorney Discipline Board, on July 10, 2009, found that she had violated many Rules of Professional Conduct, ordered her license to practice law be suspended for 24 months effective July 1, 2009, ordered that she pay restitution to a client in the amount of \$17,500.00 within 24 months and assessed her costs of \$3,599.42. Petitioner had defaulted, which the Board construed as an admission to the charges of misconduct in the complaint.

2. Petitioner's actions which led to her misconduct were as follows: Petitioner represented a person ("D.S.") incarcerated for first degree murder in a lawsuit against the State (for being beaten and raped by a guard) and settled it for \$125,000. A default judgment against the prison guard in the amount of \$250,000 was entered. On or about April 12, 1999 Petitioner took possession of D.S.'s \$125,000.00 settlement. On April 12, 1999, Petitioner sent D.S. a letter explaining disbursement of the funds. The letter indicated that after various disbursements, \$5,666.67 was left. It is unclear what happened to the \$5,666.67. However, the listed disbursements were as follows:

Costs	\$17,500.00
Attorney Fees	35,833.33
Personal	3,500.00
Appellate Attorney	30,000.00
A.M.* Appeal Work	15,000.00
A.M. State Action	10,000.00
A.M. Media Representation	<u>7,500.00</u>
	\$119,333.33

*A.M. stands for Ada Montgomery

3. The Discipline Board found Petitioner had violated the Rules of Professional Conduct in relation to three of the disbursements: A.M. Appeal Work, A.M. State Action, and A.M. Media Representation.

4. In reference to the A.M. Media Representation disbursement, D.S. never entered into any fee arrangement with Petitioner regarding media representation, and Petitioner never rendered any services that were separately identifiable as media representation.

5. In reference to the disbursement for A.M. State Action, this concerned a lawsuit filed on March 31, 1999 by the State Treasurer against D.S. and Petitioner seeking to recover 90% of the \$125,000 settlement to pay for the costs of D.S.'s incarceration. Petitioner kept \$10,000.00 to pay for her legal services in the case. However, Petitioner and D.S. had not entered a written fee agreement for the case, D.S. did not agree to pay Petitioner \$10,000.00, and Petitioner never issued any invoice to D.S. for her services. Petitioner did represent D.S. in the case, and settled the case for a \$2,831.50 payment by D.S. to the State Treasurer.

6. In reference to the AM Appeal work, Petitioner kept \$15,000.00 to pay for her services in D.S.'s appeal of her conviction (MCR 6.500 Motion). As of April 12, 1999, D.S. had not retained Petitioner to do the appeal, but had retained attorney Elizabeth Jacobs to do the appeal (and Petitioner testified the \$30,000.00 for Appellate Attorney was paid to Ms. Jacobs).

7. However, in about September 1999, D.S. retained Petitioner to handle her criminal appeal for \$15,000.00 (apparently the \$15,000.00 Petitioner had kept April 12, 1999).

8. From September 1999 through January 2008, Petitioner did not prepare or file in court the MCR 6.500 Motion for the criminal appeal, or present any drafts of a motion to D.S.

9. On September 23, 1999 Petitioner sent a letter to D.S. stating she had started working on the appeal.

10. On April 7, 2002 Petitioner sent a letter to D.S. claiming she would file the motion in 30 days.

11. From September 1999 to May 2007, Petitioner did not truthfully communicate with D.S. regarding the status of her motion or her strategy. From April 2002 through May 2007 D.S. made numerous attempts to communicate with Petitioner regarding the status of the motion, but Petitioner did not respond to them.

12. Petitioner testified that in 2008 D.S. told her not to file the motion. However, on February 19, 2009, Petitioner brought to a hearing before the Attorney Discipline Hearing Panel a draft of an appeal brief which she had not filed. She said she would not want to give it to D.S. if she had to reimburse her funds.

13. In addition, on some date unclear on record, D.S. agreed with Petitioner that Petitioner would pursue collection of the \$250,000.00 default judgment against the guard. However, Petitioner did not undertake any efforts to collect the default judgment.

14. Petitioner did not refund any monies to D.S.

15. On May 31, 2001 and July 1, 2005 the State Bar had privately admonished Petitioner.

16. In its June 18, 2009 Report, the Attorney Discipline Board concluded as follows:

. . . that respondent neglected a legal matter entrusted to her; failed to keep her client reasonably informed about the status of her matter; failed to promptly comply with reasonable requests for information; failed to communicate with her client to the extent reasonably necessary for the client to make informed decisions regarding the representation; failed to act with reasonable diligence and promptness in representing her client; charged and collected an excessive or illegal fee; failed to communicate with her client regarding the basis or rate of her fees; failed to return an advance payment of a fee that had not been earned; misappropriated client funds.; knowingly failed to respond to a lawful demand for information from a disciplinary authority; failed to preserve complete records of client funds for a period of five years after termination of the representation;

engaged in conduct prejudicial to the administration of justice; engaged in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach; engaged in conduct contrary to justice, ethics, honesty, or good morals; and violated or attempted to violate the Rules of Professional Conduct, . . .

17. Petitioner had been an attorney for about 20 years before her suspension. Petitioner testified she had also been licensed as a real estate agent, and physician's assistant, but was no longer.

18. Petitioner testified that from 1999 onward she was under great stress. She claimed to the following problems: in 1999, her daughter had problems, Petitioner had to begin caring for four grandchildren and she was always tired; in 2000, her husband divorced her; on May 5, 2005 her 33 year old son (who had graduated from law school and was thinking about going into practice with her) died unexpectedly, and she was unable to write long things and she got therapy; at some point, she lost her office building; and by February 19, 2009 she was about to lose her house to foreclosure.

19. Petitioner has not paid the restitution or costs assessed by the Discipline Board, and her license to practice law has not been reinstated. Petitioner testified that since the suspension of her law license, she has had extreme financial problems, and can not afford to pay the restitution and costs. She stated she still has two minor children living with her, and her only income is from social security and occasional substitute teaching.

CONCLUSIONS OF LAW

The relevant law is as follows:

Sec. 1205. (1) A person applying for a resident insurance producer license shall file with the commissioner the uniform application required by the commissioner and shall declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. An application for a resident insurer producer license shall not be approved unless the commissioner finds that the individual meets all of the following: . . .

(b) Has not committed any act listed in section 1239(1).

MCL 500.1205

Sec. 1239. (1) In addition to any other powers under this act, the commissioner may place on probation, suspend, or revoke an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions, and the commissioner shall refuse to issue a license under section 1205 or 1206a, for any 1 or more of the following causes: . . .

(h) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

MCL 500.1239(1)(h)

Petitioner has applied for a resident insurance producer license. Under MCL 500.1205(1)(b), that application shall not be approved unless the Commissioner finds Petitioner has not committed any act listed in MCL 500.1239(1).

Respondent has accused Petitioner of committing an act listed in MCL 500.1239(1). In particular, Respondent has accused Petitioner of violating MCL 500.1239(1)(h), quoted above. Furthermore, in its Notice of License Denial (Joint Exhibit 7, page 2), Respondent accused Petitioner of violating the following portions of MCL 500.1239(1)(h): "Applicant has demonstrated the use of dishonest practices or demonstrated incompetence and financial irresponsibility in the conduct of business."

Evidence on record establishes that Petitioner has committed an act listed in MCL 500.1239(1)(h). Therefore, under MCL 500.1205(1) and MCL 500.1239(1), the Commissioner is required to refuse to issue her the license.

As found by the Michigan Attorney Discipline Board, Petitioner did use dishonest practices, consisting of at least the following. Petitioner kept \$7,500.00 for "Media Representation" out of her client's settlement, but did not have a fee arrangement with the client for this and never rendered any services separately identifiable as media representation (see Finding of Fact 4). Petitioner kept \$10,000.00 of the settlement for representation in the State Treasurer's lawsuit before the client agreed to pay her \$10,000.00 and entered into a written fee agreement (although Petitioner did actually represent the client in the case) (Finding of Fact 5). Petitioner kept \$15,000.00 of the settlement to pay for the criminal appeal of the client, although the client had not yet retained Petitioner for the criminal appeal, but had retained another attorney (See Finding of Fact 6). Later the client retained Petitioner to do the appeal, but Petitioner did nothing for many years (Findings of Fact 7 and 8). On September 23, 1999 and April 7, 2002 Petitioner sent the client letters claiming progress on the appeal, when there was no progress (Findings of Fact 9 and 10). Petitioner agreed to pursue collection action of a \$250,000 judgment, but did nothing (Finding of Fact 13).

As found by the Michigan Attorney Discipline Board, Petitioner did demonstrate incompetence and financial irresponsibility in the conduct of business, consisting of at least the following. Petitioner charged her client \$7,500 for media representation, although she had no fee agreement with the client for media representation and she never rendered any services separately identifiable as media representation. (See Finding of Fact 4). In reference to the State Treasurer's lawsuit, Petitioner kept \$10,000 of the settlement to pay for her services, although she had no written fee agreement with the client, and the client did not agree to pay her \$10,000.00 (Finding of Fact 5). In reference to the criminal appeal, Petitioner performed many wrongs, including keeping \$15,000.00 from the settlement before she was retained, not doing any discernible work on the motion for about nine years, five months (when she presented a draft of an appeal brief to the Attorney Discipline Hearing Panel), misleading her client to think she was working on the motion, and not responding to her client's requests for information. In reference to collection on the \$250,000.00 default judgment, Petitioner agreed to pursue collection but did nothing. Nor did Petitioner refund the fees she received (See Finding of Fact 4 to 14).

Petitioner's most egregious wrong was her failure to pursue the criminal motion (as she had been hired to do) for about nine years, five months. During this long delay, her client was incarcerated and receiving false or no information from Petitioner about her attempt to get out of prison.

Petitioner's defense is the great stress she was under due to her misfortunes making it difficult for her to do legal work. These misfortunes do not change the facts that she used dishonest practices and demonstrated incompetence and financial irresponsibility in the conduct of business. Nor are these misfortunes a defense. If Petitioner were unable to work, she should have informed her client and refunded the legal fees so the client could get other counsel.

Despite the clear language of MCL 500.1205(1) and MCL 500.1239(1), Petitioner's attorney insisted the Commissioner has discretion on whether to deny or approve the application. Petitioner's attorney cited the following for her position:

Sec. 205. Orders, decisions, findings, rulings, determinations, opinions, actions, and inactions of the commissioner in this act shall be made or reached in the reasonable exercise of discretion.

MCL 500.205

All the above section really says is that where the commissioner has discretion, the commissioner shall exercise it reasonably. The commissioner has no discretion here.

Even if the commissioner had discretion, I believe the reasonable exercise of it would be to deny the application. Petitioner's misconduct was repetitive, long lasting, and harmed her client.

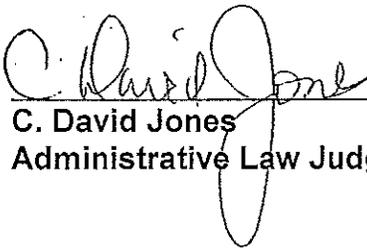
PROPOSED DECISION

Based on the above Findings of Fact and Conclusions of Law, I recommend the following decision:

Respondent correctly denied Petitioner licensure per MCL 500.1205(1)(b) and MCL 500.1239(1)(h).

EXCEPTIONS

Any Exceptions to this Proposal for Decision should be filed in writing with The Office of Financial and Insurance Regulation, Division of Insurance, Attention: Dawn Kobus, P. O. Box 30220, Lansing, Michigan 48909, within twenty (20) days of the issuance of this Proposal for Decision. An opposing party may file a response within ten (10) days after Exceptions are filed.

A handwritten signature in black ink, appearing to read "C. David Jones", is written over a horizontal line. The signature is cursive and somewhat stylized.

C. David Jones
Administrative Law Judge