

STATE OF MICHIGAN

Attorney Discipline Board

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ATTORNEY DISCIPLINE BOARD
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GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner,

v

Case No. 09-48-GA

WILSON A. COPELAND, II, P 23837,

Respondent.

REPORT OF TRI-COUNTY HEARING PANEL #2

PRESENT: James E. Wynne, Chairperson
Maria Zagorski, Member
Philip Green, Member

APPEARANCES: Kimberly L. Uhuru, Associate Counsel,
for the Attorney Grievance Commission

David W. Christensen,
for the Respondent

I. EXHIBITS

Please see the Exhibit Indices on pages 188-190 of the January 6, 2010 hearing transcript; page 147 of the January 7, 2010 hearing transcript; and page 125 of the January 11, 2010 hearing transcript.

II. WITNESSES

Wilson A. Copeland, II, Respondent
Ellen Ha
William Mitchell, III
Kwame Kenyatta
Morley Witus
Kenneth Lee Lewis

III. PANEL PROCEEDINGS

The formal complaint in this matter alleges: that respondent was engaged as an attorney to represent the City of Detroit in the civil suit brought by Gary Brown and Harold Nelthrope against the City of Detroit and Mayor Kwame Kilpatrick, Wayne County Circuit Court Case No. 03-317557-NZ; that respondent performed the engagement through trial and was involved as an attorney for the City in the making of a settlement of the lawsuit; and that respondent knew of the existence of two documents executed on November 1, 2007, that together represented the entirety of the settlement terms reached, being the "Settlement Agreement and General Release" which recited an \$8,000,000.00 consideration for the settlement, and the "Confidentiality Agreement," which bound the parties to non-disclosure of text messages among the Mayor and other City officials.

The Grievance Administrator charges that when the Detroit City Council approved the settlement of the Brown and Nelthrope lawsuit, which approval was necessary to fund payment by the City of the \$8,000,000.00 consideration, the City Council was not aware of the existence of the "Confidentiality Agreement" that was part of the settlement. Finally, the Grievance Administrator charges that by not bringing the terms of the "Confidentiality Agreement" to the attention of the Detroit City Council before the City Council agreed to the economic terms set forth in the "Settlement Agreement and General Release," the respondent prejudiced the proper administration of justice [MCR 9.104(A)(1) and MRPC 8.4(c)], exposed the legal profession to obloquy, contempt, censure or reproach [MCR 9.104(A)(2)], engaged in conduct contrary to justice, ethics, honesty or good morals [MCR 9.104(A)(3)], violated standards or rules of professional responsibility by failing to keep his client reasonably informed of the status of his engagement [MRPC 1.4(a)], failed to explain matters to his client to permit the client to make informed decisions [MRPC 1.4(b)], assisted another in unlawfully concealing a document having potential evidentiary value [MRPC 3.4(a)] and attempted to violate these rules, or knowingly assisted another to do so, or did so through the acts of another.

Hearings were held on August 20, 2009; January 6, 2010; January 7, 2010; and January 11, 2010, at which the respondent testified twice, once as on cross-examination in the Grievance Administrator's case in chief, and once in his own defense case in chief. Also testifying were attorney William Mitchell, attorney Ellen Ha, attorney Morley Whitus, the Hon. Kwame Kenyatta, a sitting Detroit City Councilman, and attorney Kenneth Lewis, in the nature of an expert witness.

IV. FINDINGS AND CONCLUSIONS REGARDING MISCONDUCT

At the hearing it was proven that respondent was engaged as "special counsel" "to assist the City of Detroit Law Department by providing legal representation to the City of Detroit" in the Brown and Nelthrope lawsuit. It was established that respondent was engaged to strengthen the legal team for the City of Detroit as it was established that respondent brought much "first chair" civil jury trial experience to the team, having successfully completed many civil jury trials in the past where damage claims had been very significant. The hearing record shows that at the time of this engagement as special counsel the City of Detroit was already being represented in the lawsuit by an attorney on staff at the City Law Department, Ms. Valerie Colbert-Osamuede, who continued in that role through and after the trial. Subsequently, after respondent's trial work was completed, Ms. Colbert-Osamuede and her superior, Mr. John Johnson, the City's Corporation Counsel, were

as involved if not more involved than respondent in negotiating the terms of the settlement which came to be represented in both the "Settlement Agreement and General Release" and the "Confidentiality Agreement," according to the record before this Panel. It was established that under the Detroit City Charter a settlement of a lawsuit against the City as made in the Brown and Nelthrope lawsuit had to be approved by the Detroit City Council in order to be funded. It was also established that when the Detroit City Council approved the settlement of the Brown and Nelthrope lawsuit involving a payment by the City of Detroit for \$8,000,000.00, the Detroit City Council was not aware of the terms of the "Confidentiality Agreement" or its existence. It was further established that though respondent had represented the City of Detroit in previous litigations that had been settled, he was never involved in seeking City Council approval for such settlements, such approvals always being handled by the Corporation Counsel or his or her staff. It was further established that, consistent with past experience, respondent played no role in seeking City Council approval of the settlement made in the Brown and Nelthrope lawsuit. It was established that the session where the Detroit City Council approved an \$8,000,000.00 settlement for the Brown and Nelthrope lawsuit was handled by Ms. Colbert-Osamuede from the Detroit City Law Department, respondent's co-counsel for the City in the lawsuit. It was not established that respondent ever agreed to, or even knew of, any plans to withhold from the Detroit City Council the existence of, or the terms of, the "Confidentiality Agreement" that was part of the settlement. It was established that it was routine for City Council approval of settlements to be handled exclusively by Corporation Counsel or deputies in the City Law Department, such as Ms. Colbert-Osamuede, and rare for engaged outside counsel, such as respondent, to be involved in the process. It was further established that if outside "special counsel" was invited to City Council sessions where approval was sought for a settlement, it was only to answer questions that might arise.

It is the unanimous opinion of Tri-County Hearing Panel #2 that respondent is not guilty of misconduct as charged in the formal complaint. His engagement was a special one limited to in-court proceedings and their resolution if possible, and did not extend to securing Detroit City Council's approval of any settlement made in the lawsuit. The Detroit City Council was entitled to know of the existence and terms of the "Confidentiality Agreement" before being asked to approve a settlement payment of \$8,000,000.00 but past practice and routine indicate that the duty to disclose that information rested not with special trial counsel but with those routinely tasked with going to Council to secure the approval of settlement, Ms. Colbert-Osamuede and Mr. John Johnson. The record does not support a finding that respondent's engagement extended to securing City Council approval for a settlement of the lawsuit he'd be special counsel in. The record shows without dispute that the attorneys routinely in charge of securing City Council approval for lawsuit settlements, Ms. Colbert-Osamuede and John Johnson, were both fully knowledgeable about all aspects of the settlement including the "Confidentiality Agreement." They were the attorneys who had a duty to speak and be forthcoming before City Council when the opportunity for settlement approval was at hand. When the opportunity was at hand respondent was not present, as he had not been invited before Council. When the opportunity was at hand Ms. Colbert-Osamuede, respondent's co-counsel through the trial and settlement, was present before City Council and should have informed Council of the "Confidentiality Agreement" and its terms when seeking the settlement's approval.

While it seems clear to us that Ms. Colbert-Osamuede and Mr. John Johnson breached their duties of disclosure toward the City of Detroit when approval for the settlement was sought from City Council, we can not say that respondent did so or attempted to do so, or knowingly assisted Ms. Colbert-Osamuede or Mr. Johnson in doing so, or did so through their acts or the acts

of anyone else, as charged in the formal complaint. Nor was testimony presented by the Grievance Administrator about the interval between Council approval and Council's discovery of the Confidentiality Agreement terms, and what respondent's knowledge was before or during that interval about what was planned to be told to City Council to secure its approval, or what it was told. There was no testimony presented at all from Ms. Colbert-Osamuede and Mr. John Johnson, and respondent was not questioned about assisting Ms. Colbert-Osamuede or Mr. John Johnson before City Council, or about trying to do through them what respondent wanted to do himself. There was simply no evidence of any of that.

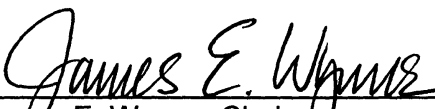
We unanimously find the Grievance Administrator has failed to prove, by a preponderance of the evidence, that respondent is guilty of any of the misconduct charged in the formal complaint. Accordingly, the panel will issue an order dismissing Formal Complaint 09-48-GA.

V. ITEMIZATION OF COSTS

Attorney Grievance Commission: (See Itemized Statement filed 04/27/10)	\$ 708.39
Attorney Discipline Board:	
Hearing held 07/01/09 (Conference call)	\$ 10.17
Hearing held 08/20/09	\$ 140.00
Hearing held 01/06/10	\$ 870.00
Hearing held 01/07/10	\$ 684.50
Hearing held 01/11/10	\$ 605.00
Administrative Fee [MCR 9.128(B)(1)]	<u>\$1,500.00</u>
TOTAL:	\$4,518.06 [Not Assessed]

ATTORNEY DISCIPLINE BOARD
Tri-County Hearing Panel #2

By:


James E. Wynne, Chairperson

DATED: April 29, 2010