

**State of Michigan
Attorney Discipline Board**

FILED
ATTORNEY DISCIPLINE BOARD
09 MAY 19 AM 10:19

**Grievance Administrator,
Michigan Attorney Grievance Commission,**

Petitioner,

Case No. 09-47-GA

v

Michael L. Stefani, P-20938,

Respondent.

Formal Complaint

(Parties and Jurisdiction)

1. Petitioner, Grievance Administrator, is authorized to prosecute this Formal Complaint by the Michigan Attorney Grievance Commission, which is the prosecution arm of the Michigan Supreme Court for the discharge of its constitutional responsibility to supervise and discipline Michigan attorneys.

2. Michigan attorneys have a duty to conduct themselves at all times in conformity with standards imposed on members of the bar as a condition of the privilege to practice law; this includes, but is not limited to, the rules of professional conduct adopted by the Supreme Court.

3. Respondent, Michael L. Stefani (hereinafter "Stefani") (P-20938), is a Michigan attorney who was licensed in 1969.

4. As a licensed Michigan attorney, Stefani is subject to the jurisdiction of the Michigan Supreme Court and the Attorney Discipline Board.

5. Stefani has a law office in the County of Oakland, State of Michigan.

(Facts of the Alleged Misconduct)

6. Stefani represented plaintiffs Gary A. Brown and Harold C. Nelthrope in their lawsuit against the City of Detroit and its then-mayor, Kwame M. Kilpatrick, which was filed in the Wayne County Circuit Court on June 23, 2003, as Case No. 03-317-557-NZ (the "Brown/Nelthrope lawsuit").

7. Stefani during his pretrial discovery sought production of certain text messages exchanged between Kilpatrick and his then-Chief of Staff Christine Beatty.

8. Stefani sought production of the text messages by means of a subpoena he served dated August 18, 2004, directed to Sky Tel, the network provider for the pagers leased by the City of Detroit and used by Kilpatrick and Beatty. The subpoena was served by certified mail, return receipt requested. (Exhibit A)

9. Stefani's service of the Sky Tel subpoena caused Kilpatrick to file an emergency motion to quash the subpoena and for a protective order on the ground that the text messages were protected from disclosure by the deliberative-process privilege.

10. The Court granted, in part, Kilpatrick's motion and on August 26, 2004, ordered that Sky Tel's production of text messages be made directly to the Court and not, as Stefani's subpoena provided, to Stefani himself. (Exhibit B)

11. On September 17, 2004, Stefani served by certified mail, return receipt requested, a second subpoena on Sky Tel for the text messages. The second subpoena instructed Sky Tel, in accordance with the Court's order, to produce the text messages directly to the Court. (Exhibit C)

12. On September 27, 2004, the Court amended its August 26, 2004 order by deleting, at Stefani's request, the phrase "at the time of trial" from the last paragraph.

The amended order was identical to the original order in all other respects. (Exhibit D)

13. Both the Court's original order and its amended order each provided that the Court would conduct a prior, *in camera*, review of the text messages to determine whether they could appropriately be disclosed to Stefani.

14. A jury trial commenced in the Brown/Nelthrope lawsuit on August 21, 2007.

15. Stefani learned during the trial that the Court did not have the text messages and had not reviewed any of them.

16. Stefani declined the Court's offer to adjourn the trial so that the text messages could be re-subpoenaed.

17. The jury trial concluded on September 11, 2007, with a \$6,500,000 verdict in favor of Stefani's clients against Kilpatrick and the City of Detroit.

18. On September 25, 2007, prior to the entry of judgment and while the Brown/Nelthrope lawsuit was still pending, Stefani faxed a third subpoena to Sky Tel for the text messages. (Exhibit E)

19. On September 28, 2007, prior to the entry of judgment and while the Brown/Nelthrope lawsuit was still pending, Stefani faxed a fourth subpoena to Sky Tel for the text messages. (Exhibit F)

20. Both the third subpoena and the fourth subpoena instructed Sky Tel to produce the text messages directly to Stefani himself, not to the Court.

21. Stefani did not contemporaneously notify opposing counsel that he had faxed a third subpoena and then a fourth subpoena to Sky Tel, nor did he give opposing counsel a copy of those subpoenas until October 17, 2007.

22. On or about October 5, 2007, Sky Tel produced the requested text messages to Stefani.

23. Even though the Court had twice previously ordered that the text messages should not be disclosed to counsel until they were first reviewed by the Court *in camera*, Stefani, and other persons under his supervision, reviewed the text messages themselves.

24. Stefani had no reason to believe when he reviewed the text messages that Kilpatrick had abandoned his claim of privilege against disclosure.

25. On October 9, 2007, Stefani filed a motion and supporting brief in the Brown/Nelthrope lawsuit seeking attorney fees and costs.

26. Stefani's motion for attorney fees and costs was referred by the Court to a facilitator.

27. The facilitation was set for October 17, 2007.

28. Stefani knew from his review of the text messages that they showed "unequivocally" that Kilpatrick had perjured himself during deposition and at trial, and that they were "irrefutable direct evidence" of Kilpatrick's perjury.

29. Stefani knew that Kilpatrick was a licensed Michigan attorney.

30. Instead of informing the Attorney Grievance Commission about Kilpatrick's perjury, Stefani drafted an eighteen-page supplemental brief in support of his motion for attorney fees which incorporated extensive, verbatim references to the text messages.

31. Stefani brought the draft supplemental brief with him to the facilitation.

32. Stefani negotiated the amount of his fees for several hours with opposing counsel without revealing to them that he already had obtained and reviewed the text

messages.

33. When Stefani determined that the facilitation session had reached an impasse, he instructed the facilitator to give an envelope to attorney Samuel E. McCargo, co-counsel for Kilpatrick, in which was enclosed a copy of Stefani's draft supplemental brief.

34. Immediately following McCargo's receipt of the envelope and apparent review of its contents, and Stefani's announced intention to file the supplemental brief the next day, Kilpatrick and the City of Detroit agreed to a global settlement resolving Stefani's attorney fee and the underlying Brown/Nelthrope lawsuit, as well as a second lawsuit Stefani was prosecuting on behalf of plaintiff Walter Harris, all for \$8,400,000.

35. Stefani knew or should have known that the entire \$8,400,000 settlement would be paid by the City of Detroit out of public funds.

36. On October 17, 2007, Stefani signed a Settlement Agreement (the "October Settlement Agreement") and an Escrow Agreement with Kilpatrick and the City of Detroit. (Exhibit G)

37. In the October Settlement Agreement Stefani promised:

- (a) that he would surrender ownership and possession of the Sky Tel text messages to Kilpatrick and the City of Detroit;
- (b) that he would not file his supplemental brief, and that he would destroy all physical copies of the brief and delete it from his computer;
- (c) that he and his employees would refrain, upon penalty

- of liquidated damages, from disclosing to any person the existence of the Sky Tel text messages; and,
- (d) that he would require his three clients to sign a confidentiality agreement not to disclose the terms of the settlement, upon penalty of liquidated damages.

38. After the October Settlement Agreement was signed but not yet fully performed by the parties, attorney McCargo told Stefani that the October Settlement Agreement needed to be redrafted so as not to mention their agreement to keep the text messages confidential.

39. McCargo's proposal to redraft the October Settlement Agreement in this fashion was, according to what McCargo told Stefani, prompted by a Freedom of Information Act request filed with the City of Detroit by the Detroit Free Press seeking copies of the Brown/Nelthrope lawsuit settlement documents.

40. Michigan's Freedom of Information Act entitles all persons to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees.

41. Stefani knew or should have known that McCargo's proposal to redraft the October Settlement Agreement would enable the City of Detroit in its FOIA response to conceal the existence of the text messages and to mislead the Detroit Free Press and the public.

42. As of December 5, 2007, the parties and their counsel in the Brown/Nelthrope and Harris lawsuits had signed a redrafted Settlement Agreement and General Release (collectively, the "November Settlement Agreement"). (Exhibit H)

43. Paragraph 11 in the November Settlement Agreement represents that the document constitutes the “entire agreement and understanding” between the parties even though the document is silent as to the existence and disposition of the text messages.

44. On November 1, 2007, Stefani also signed a separate Confidentiality Agreement. (Exhibit I)

45. In the Confidentiality Agreement, Stefani reiterated the promises he made in the October Settlement Agreement to conceal the existence of the text messages, and thereby conceal Kilpatrick’s perjury.

46. Stefani’s promise to conceal irrefutable evidence of Kilpatrick’s perjury in return for the \$8,400,000 settlement constitutes the misdemeanor offense of compounding or concealing a felony in violation of Section 149 of the Michigan Penal Code, MCL 750.149.

47. Stefani did not inform the Attorney Grievance Commission of Kilpatrick’s perjury until February 13, 2008, after the \$8,400,000 settlement was paid and after the existence of the text messages was already made public.

(Grounds for Discipline)

48. Stefani, by his acts or omissions, individually or in concert with other persons, has committed the following misconduct:

- a. he prejudiced the proper administration of justice, as proscribed by MCR 9.104(A)(1);
- b. he exposed the legal profession or the courts to obloquy,

contempt, censure or reproach, as proscribed by MCR 9.104(A)(2);

c. he engaged in conduct that is contrary to justice, ethics, honesty or good morals, as proscribed by MCR 9.104(A)(3);

d. he violated the standards or rules of professional responsibility adopted by the Supreme Court, as proscribed by MCR 9.104(A)(4), namely:

i. MRPC 3.4(c), in that he knowingly disobeyed an obligation under the rules of a tribunal;

ii. MRPC 8.3, in that he had knowledge that another lawyer had committed a significant violation of the Rules of Professional Conduct that raised a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer, and he failed to inform the Attorney Grievance Commission;

iii. MRPC 8.4(a), in that he violated or attempted to violate the Rules of Professional Conduct;

iv. MRPC 8.4(b), in that he engaged in

conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, such that his conduct reflected adversely on his honesty, trustworthiness or fitness as a lawyer; and,

- e. he engaged in conduct that violated a criminal law, MCL 750.149, as proscribed by MCR 9.104(A)(5).

WHEREFORE, Respondent should be subjected to an order of discipline that is warranted by the facts of his misconduct.

Dated: May 19, 2009

Robert L. Agacinski, P-10065
Grievance Administrator

By: Robert E. Edick
Robert E. Edick, P-25432
Deputy Administrator
Attorney Grievance Commission
243 W. Congress, Suite 256
Detroit, MI 48226
(313) 961-6585

EXHIBIT

A

Approved, SCAO

03-317557-NZ 6/02/2003
JDG: MICHAEL JAMES CALLAHAN
BROWN GARY A
VS
OLIVER JERRY A SR

STATE OF MICHIGAN JUDICIAL DISTRICT 3rd JUDICIAL CIRCUIT COUNTY PROBATE	SUBPOENA Order to Appear and/or Produce
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Court address
Police Report No. (if applicable) Two Woodward Avenue, Detroit, MI 48226
Court telephone no. (313) 224-5510

Plaintiff(s)/Petitioner(s) <input type="checkbox"/> People of the State of Michigan <input checked="" type="checkbox"/> Garv A. Brown and Harold C. Nelthrope	v	Defendant(s)/Respondent(s) Jerry A. Oliver, Sr., Kwame Kilpatrick, City of Detroit and Robert Berg
<input checked="" type="checkbox"/> Civil <input type="checkbox"/> Criminal		Charge
<input type="checkbox"/> Probate In the matter of _____		

In the Name of the People of the State of Michigan. TO:
MCI Subpoena Compliance, c/o Skytel Messaging Pager, Attn: Bill Marsden, 1133 19th Street NW, Washington, D.C. 20036
If you require special accommodations to use the court because of disabilities, please contact the court immediately to make arrangements.

YOU ARE ORDERED:

1. to appear personally at the time and place stated below: You may be required to appear from time to time and day to day until excused.

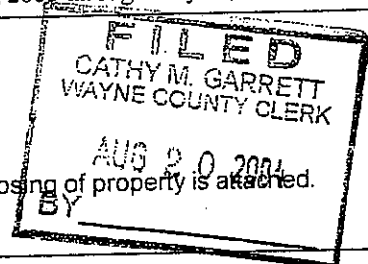
The court address above Other: Luzod Court Reporting, 615 Griswold, Suite 815, Detroit, Michigan 48226

Day Monday	Date 08/30/2004	Time 10:00 a.m.
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2. Testify at trial / examination / hearing.

3. Produce/permit inspection or copying of the following items: Identify the pager numbers of Mayor Kwame Kilpatrick and Christine Beatty, and produce text pager messages received by the Mayor from Christine Beatty or from the Mayor to Christine Beatty for the period of September 1, 2002 through October 31, 2002 and for the period of April 1, 2003 through May 31, 2003.

- 4. Testify as to your assets, and bring with you the items listed in line 3 above.
- 5. Testify at deposition.
- 6. MCL 600.6104(2), 600.6116, or 600.6119 prohibition against transferring or disposing of property is attached.
- 7. Other: _____



8.

Person requesting subpoena Michael L. Stefani (P20938)	Telephone no. (248) 544-3400
Address 512 East Eleven Mile Road	
City Royal Oak	State MI
	Zip 48067



NOTE: If requesting a debtor's examination under MCL 600.6110, or an injunction under item 6, this subpoena must be issued by a judge. For a debtor examination, the affidavit of debtor examination on the other side of this form must also be completed. Debtor's assets can also be discovered through MCR 2.305 without the need for an affidavit of debtor examination or issuance of this subpoena by a judge.

FAILURE TO OBEY THE COMMANDS OF THE SUBPOENA OR APPEAR AT THE STATED TIME AND PLACE MAY SUBJECT YOU TO PENALTY FOR CONTEMPT OF COURT.

08/18/2004 Date Michael L. Stefani Judge/Clerk/Attorney P20938 Bar no.

Court use only	
<input type="checkbox"/> Served	<input type="checkbox"/> Not served

7096 890T E000 DTTC E007

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

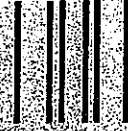
For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$ 4.42	
Sent To	MCI Subpoena Compliance	
Street, Apt. No., or PO Box No.	c/o Skytel Messaging Pager	
City, State, ZIP+4	Attn: Bill Marsden 1133 19 th Street N.W. Washington, D.C. 20036	

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece or on the front if space permits. 	<p>Signature: <i>[Signature]</i></p> <p>Received by (Printed Name): <i>[Signature]</i></p> <p>Date of Delivery: <i>[Signature]</i></p> <p>Is delivery address different from item 4? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>MCI Subpoena Compliance c/o Skytel Messaging Pager Attn: Bill Marsden 1133 19th Street N.W. Washington, D.C.</p>	<p>Service type:</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered Mail <input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> COD</p> <p>Restricted Delivery (Extra Fee) <input type="checkbox"/> Yes</p>
Article Number (Transfer from service label)	7003 3110 0003 1063 3601
PS Form 3811, August 2001	Domestic Return Receipt 102595-02-M-1540

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Stefani & Stefani, Professional Corporation
512 East Eleven Mile Road
Royal Oak, MI 48067-2741

3/5

1999-01-01 11:00:00 AM EST

**STATE OF MICHIGAN
IN THE WAYNE COUNTY CIRCUIT COURT**

Deputy Chief GARY A. BROWN and
Police Officer HAROLD C. NELTHROPE,

Case No. 03-317557-NZ
Hon. Michael J. Callahan

Plaintiffs,

v

**NOTICE OF DEPOSITION FOR
PHOTOCOPYING ONLY**

JERRY A. OLIVER, SR., Chief of Police,
KWAME KILPATRICK, Mayor, City of
Detroit, ROBERT BERG, Media consultant to
the City of Detroit; and the CITY OF DETROIT,
a Municipal corporation; jointly and severally,

Defendants.

Michael L. Stefani (P20938)
Brady G. Stefani (P55740)
STEFANI & STEFANI
Attorneys for Plaintiffs
512 East Eleven Mile Road
Royal Oak, MI 48067-2741
(248) 544-3400

Laurel F. McGiffert (P31667)
PLUNKETT & COONEY, PC
Attorney for Defendant Robert Berg
535 Griswold, Suite 2400
Detroit, MI 48226
(313) 983-4751

Valerie A. Colbert-Osamuede (P42506)
CITY OF DETROIT LAW DEPARTMENT
Attorneys for Defendants
660 Woodward Avenue
1650 First National Building
Detroit, MI 48226-3535
(313) 237-3012

Wilson A. Copeland, II (P23837)
GRIER & COPELAND, PC
Co-Counsel for City of Detroit Only
615 Griswold Street, Suite 400
Detroit, MI 48226
(313) 961-2600

Thomas M.J. Hathaway (P14745)
BRADY, HATHAWAY, BRADY & BRETZ
Co-Counsel for Oliver Only
1330 Buhl Building
535 Griswold Street
Detroit, MI 48226
(313) 965-3700

Samuel E. McCargo (P25298)
LEWIS & MUNDAY, PC
Co-Counsel for Kilpatrick Only
2490 First National Building
660 Woodward Avenue
Detroit, MI 48226
(313) 961-2550
