

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN THE MATTER OF:

Administrative Order No. 21-AD-062

ATTORNEY KENNETH B. MORGAN
(P34492).

Pursuant to Administrative Order 21-AD-044 and the Order dated July 16, 2021, the undersigned panel convened on September 8, 2021, in Kalamazoo, Michigan, to permit Attorney Kenneth B. Morgan to formally respond to the allegations of the Hon. Phillip J. Green that Mr. Morgan's conduct in connection with *S&S Innovations Corp. v. UUSI, LLC, et al.*, Case No. 1:18-cv-1377-HYJ (the "S&S Case"), warrants suspension or revocation of the privilege of practicing before this Court, or other discipline. The Hon. Hala Y. Jarbou previously held Mr. Morgan in contempt,¹ and Judge Green's allegations in his referral letter to the Hon. Robert J. Jonker raise serious questions about the attorney's continued fitness to practice here.

In advance of the hearing, the panel considered the two Report-Recommendations entered in the S&S Case (ECF Nos. 94 and 134, the "R&Rs"), detailing the allegations that Mr. Morgan violated M.R.P.C. 1.3, 3.2, 3.3(a)(1), 3.4(c), and 8.4(c), as well as Mr. Morgan's Declaration in Compliance with Order of July 16, 2021 (the "Declaration"). The R&Rs and Judge Green's referral letter, largely confirmed in the Declaration, catalogue Mr. Morgan's numerous missed court dates, lapses in meeting discovery and case-related filing deadlines, and general discourtesy and lack of

¹ See Orders dated March 5, 2021 (ECF No. 109) and April 30, 2021 (ECF No. 157, collectively the "Contempt Orders"), entered in the S&S Case.

professionalism as defense counsel in the S&S Case. The misbehavior resulted in two contempt citations, substantial monetary sanctions payable to the court and counsel, and a court-ordered obligation to pursue continuing legal education (CLE) with a focus on ethics.

There is no dispute that Mr. Morgan suffered a criminal conviction for operating a motor vehicle while intoxicated, in violation of M.C.L. § 257.625, which he admittedly failed to report to this Court, contrary to LGenR 2.3(c) (W.D. Mich.). Even as of the hearing, he has failed to comply with that rule because, despite his conviction (and the panel's reminding him of his obligations under the rule in its prior order), he has not provided the Clerk with a complete copy of the criminal record.

In his Declaration, accepting full responsibility, he appears to concede that a "reprimand" would be appropriate under the circumstances.

Mr. Morgan appeared before the panel, took an oath to testify truthfully, and again acknowledged culpability for the misconduct detailed in the R&Rs. By way of explanation rather than exculpation, Mr. Morgan credibly testified that during the period embracing the events described in the R&Rs he was laboring under the quadruple hardships of (i) an acrimonious divorce, (ii) a severe spinal injury, (iii) occasional computer malfunctions, and (iv) workplace disruptions associated with the COVID-19 public health emergency affecting or limiting his support staff.

Mr. Morgan's unprofessional behavior and criminal conviction prompted the panel to inquire about substance abuse, but his responses during the hearing assuaged concerns on this score: his alcohol-related conviction appears to be an aberrational episode rather than the product of a self-destructive lifestyle. Moreover, the unprofessional conduct appears confined to the S&S Case and apparently related to the four hardships noted above.

Nothing in the preceding paragraphs, however, should be read as condoning or even minimizing Mr. Morgan's misbehavior, just endeavoring to understand it. Under the Court's rules, "[a]ny attorney practicing before the court is subject to discipline by the court upon a showing that the attorney is . . . convicted of a crime; or guilty of unprofessional conduct." LGenR 2.3(a) (W.D. Mich.). Here, the criminal conviction, the admitted misconduct that prompted the R&Rs, and the two contempt citations in the S&S Case all merit disciplinary measures from the panel, as Mr. Morgan himself conceded in his Declaration and during the September 8 hearing. The question is not whether to discipline Mr. Morgan, but how.

Having carefully considered the record, including Mr. Morgan's statements and demeanor during the hearing, yet giving due regard for the Court's interest in protecting the public and administering justice in cases pending in our District, the panel will formally reprimand Mr. Morgan, and will also impose several conditions which he must satisfy in the coming months before the panel will regard the disciplinary referral from Judge Green to Chief Judge Jonker as resolved. Mr. Morgan's failure to timely and completely meet the conditions may result in suspension or disbarment.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. Kenneth B. Morgan is REPRIMANDED for the misconduct described in the R&Rs and Judge Green's referral letter;
2. Mr. Morgan shall timely and fully complete the CLE obligations imposed in connection with the Contempt Orders of the Hon. Hala Y. Jarbou and described in the Declaration;
3. Mr. Morgan shall comply with LGenR 2.3(c) (W.D. Mich.), including by supplying the applicable criminal records to the Clerk of this Court within 21 days after the date of this Order;

4. No contempt proceeding, whether criminal or civil, and no professional disciplinary proceeding by any licensing authority or tribunal, state or federal, shall have been commenced or remain pending (other than this referral) during the period between the date of this Order and June 1, 2022; and

5. No later than June 15, 2022, Mr. Morgan shall file with the court a written statement, in the form of an affidavit or solemn declaration under 28 U.S.C. § 1746, certifying that the conditions imposed herein have been satisfied.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order upon Kenneth B. Morgan, Esq., the Hon. Phillip J. Green, the Hon. Hala Y. Jarbou, and the Hon. Robert J. Jonker in accordance with the Court's usual procedure.

Date: 9/13/21 Paul L. Maloney
Paul L. Maloney, United States District Judge

Date: 9/13/21 Ray S. Kent / by Paul L. Maloney w/ permission
Ray S. Kent, United States Magistrate Judge

Date: 9/13/21 Scott W. Dales / by Paul L. Maloney w/ permission
Scott W. Dales, United States Bankruptcy Judge