

STATE OF MICHIGAN

Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,  
Attorney Grievance Commission,

Petitioner,

v

Case No. 21-9-GA

DIANE L. MARION, P 33403,

Respondent.

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**REPORT OF TRI-COUNTY HEARING PANEL #4**

**PRESENT:** Suzanne P. Bartos, Chairperson  
Sean M. Cowley, Member  
Rasul M. Raheem, Member

**APPEARANCES:** Sarah C. Lindsey, Senior Associate Counsel  
for the Attorney Grievance Commission

Diane L. Marion , Respondent  
did not appear

**I. EXHIBITS**

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|------------------------|---|
| Petitioner's Exhibit 1 | Certificate of respondent's certified address with the State Bar of Michigan (47101 N. Shore Dr., Belleville, MI 48111-2228), dated January 24, 2020.   |
| Petitioner's Exhibit 2 | Proof of Service of Cover Letter, Formal Complaint and Discovery Demand, Parties of Record, Notice of Hearing and Instruction Sheet upon respondent at her registered address via regular mail and certified mail; Certified mail receipt and unsigned Domestic Return Receipt, dated February 8, 2021. |
| Petitioner's Exhibit 3 | Proof of Service of Default and Affidavit by regular and certified mail upon respondent at her registered address, dated March 3, 2021; returned signed Domestic Return Receipt, dated March 6, 2021.   |

- Petitioner's Exhibit 4 August 3, 2010 Sentencing Hearing transcript, *United States of America v Bruce Wendel*; U.S. District Court Eastern District of Michigan Case No. 07-20400.
- Petitioner's Exhibit 5 August 19, 2010 Sentencing Hearing transcript, *United States of America v Bruce Wendel*; U.S. District Court Eastern District of Michigan Case No. 07-20400.
- Petitioner's Exhibit 6 April 12, 2011 Motion Hearing transcript, *United States of America v Bruce Wendel*; U.S. District Court Eastern District of Michigan Case No. 07-20400.
- Petitioner's Exhibit 7 Order (regarding presentence investigation report), *United States of America v Bruce Wendel*; U.S. District Court Eastern District of Michigan Case No. 07-20400.

## **II. WITNESSES**

None.

## **III. PANEL PROCEEDINGS**

On February 2, 2021, the Grievance Administrator filed a formal complaint which alleged that respondent committed professional misconduct while employed as an Assistant U.S. Attorney for the Eastern District of Michigan, when she misrepresented information and facts to the Court regarding a case.

The matter was assigned to Tri-County Hearing Panel #4 and scheduled for hearing in accordance with MCR 9.115(G). The complaint and notice of hearing were served on respondent by regular and certified mail at her address registered with the State Bar of Michigan (Petitioner's Exhibit 1) on February 8, 2021. (Petitioner's Exhibit 2.) Respondent did not file an answer to the complaint and her default was entered by the Grievance Administrator on March 3, 2021. (Petitioner's Exhibit 4.)

The public hearing convened on May 18, 2021. Respondent did not appear, either in person or by a representative and the panel was presented with no evidence that respondent had attempted to communicate with the Attorney Grievance Commission or the Attorney Discipline Board regarding the reasons for her absence.

During the hearing, counsel for the Administrator offered seven exhibits, which included certification of respondent's address registered with the State Bar of Michigan; proofs of service

showing that respondent was served with the formal complaint and the default at her address on file with the State Bar of Michigan; and documents related to the allegations contained in the formal complaint.

Counsel then requested that the panel make a finding of misconduct based on respondent's default. Based on the exhibits admitted into evidence, the hearing panel concluded that respondent had been served with the formal complaint in accordance with the court rules. The panel unanimously found that the default was properly entered and all of the allegations contained in the formal complaint were deemed admitted.

#### **IV. FINDINGS AND CONCLUSIONS REGARDING MISCONDUCT**

Based on respondent's default, the hearing panel unanimously finds that respondent knowingly made a false statement of material fact to a tribunal, in violation of MRPC 3.3(a)(1); engaged in conduct that was prejudicial to the administration of justice, in violation of MRPC 8.4(c), and MCR 9.104(1); and, engaged in conduct that exposed the legal profession to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(3).

#### **V. REPORT ON DISCIPLINE**

Having found misconduct, the panel then immediately proceeded to conduct a sanction hearing in accordance with MCR 9.115(J)(2). In *Grievance Administrator v Albert Lopatin*, 462 Mich 235 (2000), the Michigan Supreme Court instructed the Board and its panels to apply the American Bar Association Standards for Imposing Lawyer Sanctions (ABA Standards) to determine the proper discipline to impose. The theoretical framework of the ABA Standards involves a three-step process. *Id.* First, the panel considers: (a) the ethical duties violated; (b) the lawyer's mental state; and (c) the extent of the actual or potential injury. *Id.* Second, the panel determines the recommended sanction for the type of misconduct at issue by consulting ABA Standards 4.0 through 8.0. *Id.* Third, the panel considers the relevant aggravating and mitigating factors with reference to ABA Standard 9.0. *Id.*

The panel finds that ABA Standard 6.12 is applicable in this matter as a result of the respondent's knowingly false statements of material fact to a tribunal, in violation of MRPC 3.3(a)(1). Standard 6.12 states as follows:

Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

Likewise, a government attorney who engages in conduct that is prejudicial to the administration of justice, in violation of MRPC 8.4(c) is properly adjudicated under ABA Standard 5.22, which states as follows:

Suspension is generally appropriate when a lawyer in an official or governmental position knowingly fails to follow proper procedures or rules, and causes injury or potential injury to a party or to the integrity of the legal process.

Finally, respondent engaged in conduct that exposes the legal profession to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(3), which implicates ABA Standard 7.2, which states as follows:

Suspension is generally appropriate when a lawyer knowingly engages in conduct that is violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

Under all of these applicable ABA Standards, the appropriate discipline is suspension.

In this matter, the panel finds respondent's failure to participate in this matter or contest the allegations in the complaint to be an aggravating factor. No mitigating factors, as referenced in ABA Standard 9.32, were offered and the panel finds that none apply here. The panel finds *Grievance Administrator v Deborah A. Carson*, 00-175-GA, 00-199-FA (ADB 2001) instructive and applicable to this situation where a respondent has failed to respond to the complaint filed by the Grievance Administrator or to appear for the proceedings before the hearing panel. In *Carson*, a 180-day suspension, which would require reinstatement pursuant to MCR 9.123(B) and MCR 9.123(C), was determined by the Board to be an appropriate minimum suspension to impose. *Carson* discussed another case, *Grievance Administrator v Peter H. Moray*, DP 143/86; 157/86 (ADB 1987), which explained that the rationale behind such suspensions is not based on a desire to punish the respondent attorney, but rather primarily to protect the public. *Moray* elaborated by discussing how failing to enact such discipline "sends a message to the public and to the profession that we are willing to gamble that an attorney's repeated failure to comply with the rules is not the result of a physical or mental problem which jeopardizes the rights of the attorney's clients or the administration of justice. We are not willing to take that chance." *Moray* at 4-5.

Though the respondent here did respond to the Grievance Administrator's request for investigation, she did not respond to the formal complaint or participate in these proceedings whatsoever. That conduct, coupled with the seriousness of the uncontested allegations set forth in the formal complaint, which this panel now takes as true, makes the 180-day minimum suspension described in *Carson* and *Moray* insufficient.

Therefore, based on the record in this matter and the authorities cited by the Grievance Administrator and referenced herein, the panel will order that the respondent's license to practice law in Michigan be suspended for a period of one year.

## **VI. SUMMARY OF PRIOR MISCONDUCT**

None.

