

STATE OF MICHIGAN

Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner,

v

Case No. 13-46-GA

MARIA C. SALUD, P 53140,

Respondent.

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**ORDER AFFIRMING HEARING PANEL ORDER OF
SUSPENSION BUT MODIFYING CONDITIONS**

Issued by the Attorney Discipline Board
211 W. Fort St., Ste. 1410, Detroit, MI

Respondent, Maria C. Salud, petitioned the Attorney Discipline Board for review of the order entered by Tri-County Hearing panel #77 on May 7, 2014, suspending respondent's license to practice law in Michigan for a period of 60 days and imposing conditions that required respondent's attendance at the next Tips and Tools for a Successful Practice seminar; participation in a State Bar mentoring program for at least two years; and, to undergo psychological evaluations. The discipline ordered by the hearing panel was automatically stayed pursuant to MCR 9.115(K) upon the filing of respondent's petition for review and petition for stay.

The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118, including review of the evidentiary record before the panel and consideration of the briefs and arguments presented by the parties at a review hearing conducted on July 16, 2014.

In its report on misconduct, the hearing panel found that respondent neglected an immigration removal proceeding by filing a late notice of appeal, and then, despite receiving two extensions, she failed to file a brief on appeal or respond to a motion filed by the Department of Homeland Security. As a result of respondent's neglect and failure to adequately communicate with her client, Josephine Ewell, her appeal was dismissed and she was ordered deported. This conduct was found to be in violation of MRPC 1.1(c); 1.2(a); 1.3; 1.4(a) and (b); 8.4(a) and (c); and MCR 9.104(1)-(4).

In reviewing a hearing panel's findings and conclusions, the Board must determine whether the panel's findings have proper evidentiary support in the whole record. *Grievance Administrator v August*, 438 Mich 296; 304 NW2d 256 (1991); *In re Grimes*, 414 Mich 438, 326 NW2d 380 (1982). Applying that standard to the hearing panel's extensive report on misconduct (Appendix A), we conclude that there is ample support for the hearing panel's findings and conclusions as to the charges of misconduct in this matter. The Board has also considered the rationale of the hearing panel in its report on discipline and we conclude that the hearing panel's decision to

impose a 60-day suspension is consistent with the guidelines set forth in the American Bar Association (ABA) Standards for Imposing Lawyer Sanctions and is appropriate given the facts and circumstances of this matter. However, we further address the following two issues with regard to the hearing panel's report on discipline and raised by respondent on review.

First, as an aggravating factor, the Grievance Administrator's counsel referenced respondent's two prior admonishments and copies of the admonishment letters were admitted as exhibits at the sanction hearing. Respondent argued on review that those letters should not have been admitted because the conduct they reference did not precede the conduct involved in the instant matter. The formal complaint, although filed in April 2013, references conduct that occurred in 2005 and 2006. The admonishment letters admitted at the sanction hearing were issued in April 2007 and June of 2008, respectively. Therefore, it could not be said that the letters served as a "warning" that respondent failed to heed when she undertook Mrs. Ewell's representation, as was argued by the Grievance Administrator's counsel and noted by the hearing panel in its report. (5/7/14 Report p. 3.) They could, however, be considered evidence of a continuing pattern of neglectful conduct that began with Mrs. Ewell's matter. Under MCR 9.115(J)(3) and ABA Standard 9.22(a), the admonishment letters were admissible, and could be considered as an aggravating factor. We therefore find no reversible error in the hearing panel's decision to admit and consider this evidence at the hearing on discipline.

Second, the hearing panel imposed additional conditions in its report on discipline. The only condition requested by the Grievance Administrator's counsel at hearing was the requirement that respondent attend the next scheduled Tips and Tools for a Successful Practice seminar offered by the State Bar of Michigan, and respondent's counsel acknowledged that she was willing to attend the seminar. However, when the hearing panel's report on discipline was issued, it contained three additional conditions, two of which required respondent to undergo psychological evaluations.

The Board generally defers to a panel's resolution of credibility questions, because a hearing panel has the opportunity to observe the witnesses during their testimony and so to judge their demeanor. *Grievance Administrator v Neil C. Szabo*, 96-228-GA (ADB 1998), citing *Grievance Administrator v Deborah C. Lynch*, 96-96-GA (ADB 1997), and *In Re McWhorter*, 449 Mich 130, 136 n 7 (1995). However, this deference must be weighed against the Board's responsibilities on review with regard to the sanction imposed. In those instances, the Board possesses a greater degree of discretion with regard to the ultimate result. *Grievance Administrator v August*, 438 Mich 296, 304; 475 NW2d 256 (1991); *In re Daggs*, 411 Mich 304, 318-319; 307 NW2d 66 (1981).

Pursuant to MCR 9.106(2), misconduct is grounds for suspension of not less than 30 days, which may be subject to such additional conditions relevant to the established misconduct. While the condition that respondent undergo psychological testing could be relevant to the established misconduct, our review of the record does not persuade us that the psychological evaluations referenced in the hearing panel's order are necessary for the protection of the public or the legal system.

The condition that respondent attend the next scheduled Tips and Tools for a Successful Practice seminar offered by the State Bar of Michigan is modified to the requirement that respondent instead obtain an evaluation from the State Bar of Michigan's Practice Management

Resource Center (PMRC) that emphasizes reviewing respondent's organizational skills. This will provide a more targeted assessment of any aspects of respondent's practice which need improvement and may include a recommendation that respondent attend a class or classes (including the Tips and Tools seminar) or obtain other assistance, such as a mentor agreeable to both parties to review certain aspects of respondent's practice, if necessary. These conditions, as modified by the Board, are relevant to the established misconduct, as contemplated in MCR 9.106(2).

NOW THEREFORE,

IT IS ORDERED that the hearing panel's order of suspension with conditions issued May 7, 2014, is **AFFIRMED**, as to the imposition of a 60-day suspension of respondent's license to practice law in Michigan.

IT IS FURTHER ORDERED that respondent's license to practice law in Michigan is **SUSPENDED FOR 60 DAYS, EFFECTIVE JANUARY 3, 2015**, and until the respondent's filing of an affidavit of compliance with the Supreme Court, the Attorney Discipline Board and the Attorney Grievance Commission in accordance with MCR 9.123(A).

IT IS FURTHER ORDERED that the conditions are **MODIFIED**; instead of those imposed in the May 7, 2014 order, respondent shall obtain an evaluation from the State Bar of Michigan's PMRC, within six months of the effective date of this order, that emphasizes reviewing respondent's organizational skills and making any other recommendations for assistance, if necessary.

IT IS FURTHER ORDERED that from the effective date of this order and until reinstatement in accordance with the applicable provisions of MCR 9.123, respondent is forbidden from practicing law in any form; appearing as an attorney before any court, judge, justice, board, commission or other public authority; or holding herself out as an attorney by any means.

IT IS FURTHER ORDERED that, in accordance with MCR 9.119(A), respondent shall, within seven days after the effective date of this order, notify all of her active clients, in writing, by registered or certified mail, return receipt requested, of the following:

1. the nature and duration of the discipline imposed;
2. the effective date of such discipline;
3. respondent's inability to act as an attorney after the effective date of such discipline;
4. the location and identity of the custodian of the clients' files and records which will be made available to them or to substitute counsel;
5. that the clients may wish to seek legal advice and counsel elsewhere; provided that, if respondent was a member of a law firm, the firm may continue to represent each client with the client's express written consent;
6. the address to which all correspondence to respondent may be addressed.

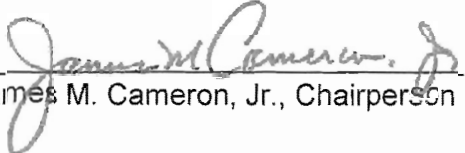
IT IS FURTHER ORDERED that in accordance with MCR 9.119(B), respondent must, on or before the effective date of this order, in every matter in which respondent is representing a client in litigation, file with the tribunal and all parties a notice of respondent's disqualification from the practice of law.

IT IS FURTHER ORDERED that, respondent shall, within 14 days after the effective date of this order, file with the Grievance Administrator and the Attorney Discipline Board an affidavit of compliance as required by MCR 9.119(C).

IT IS FURTHER ORDERED that respondent's conduct after the entry of this order but prior to its effective date, shall be subject to the restrictions set forth in MCR 9.119(D); and respondent's compensation for legal services shall be subject to the restrictions described in MCR 9.119(F).

IT IS FURTHER ORDERED that respondent shall, on or before **January 3, 2015**, pay costs in the amount of **\$2,895.96**, which represents costs assessed by the hearing panel in the amount of \$2,729.96 and court reporting costs incurred by the Attorney Discipline Board in the amount of \$166.00 for the review proceedings conducted on July 16, 2014. Check or money order shall be made payable to the Attorney Discipline System and submitted to the Attorney Discipline Board [211 West Fort St., Ste. 1410, Detroit, MI 48226] for proper crediting. (See attached instruction sheet).

ATTORNEY DISCIPLINE BOARD

By: 
James M. Cameron, Jr., Chairperson

DATED: December 5, 2014

Board members Craig H. Lubben, Sylvia P. Whitmer, Ph.D., Rosalind E. Griffin, M.D., Carl E. Ver Beek, Lawrence G. Campbell, Dulce M. Fuller, Louann Van Der Wiele, and Michael Murray concur in this decision.

Board Chairperson James M. Cameron, Jr., was absent and did not participate.

STATE OF MICHIGAN

Attorney Discipline Board

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GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

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v

Case No. 13-46-GA

MARIA C. SALUD, P 53140,

Respondent.
_____ /

MISCONDUCT REPORT OF TRI-COUNTY HEARING PANEL #77

PRESENT: Edward H. Pappas, Chairperson
Kurt E. Schnelz, Member
Susan E. Paletz, Member

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

Romeo C. Lagonoy,
for the Respondent

I. EXHIBITS

<u>Petitioner's</u>	<u>Description</u>
Exhibit 1	Copy of \$1,000.00 check to respondent dated 7/12/05 and Respondent's Statement of Professional Services.
Exhibit 2	Immigration "Motion to Reopen Removal Proceedings and Emergency Request for Stay of Deportation."
Exhibit 3	Immigration "Decision of the Immigration Judge."
Exhibit 4	Immigration "Notice of Appeal from a Decision of an Immigration Judge."
Exhibit 5	Immigration - "Notice - Briefing Schedule."
Exhibit 6	Immigration "Motion for Extension of Time to File Brief."
Exhibit 7	Immigration "Notice - Briefing Extension Request Granted."
Exhibit 8	Immigration Appeal.
Exhibit 9	Immigration Appeal - "Notice - Briefing Schedule."
Exhibit 10	"Decision of the Board of Immigration Appeals."
Exhibit 11	Receipt Notice.
Exhibit 12	Correspondence from Romeo C. Lagonoy to the Attorney Grievance Commission, constituting respondent's answer to the Grievance Administrator's formal complaint.

I. EXHIBITS (continued)

<u>Respondent's</u>	<u>Description</u>
Exhibit A	Immigration "Notice of Appearance as Attorney or Representative Before the Board of Immigration Appeals Executive Office for Immigration Review."

II. WITNESSES

1. Edward Ewell;
2. Jessica Liboon; and
3. Maria Salud, Respondent.

III. PANEL PROCEEDINGS

Formal Complaint 13-46-GA, filed April 17, 2013, alleged that respondent, Maria C. Salud, neglected an immigration matter involving an individual named Josephine Ewell (Kapunan), and that Ms. Salud failed to keep Ms. Ewell reasonably informed concerning the status of the immigration matter at issue. Ms. Salud, through counsel, filed an answer to the formal complaint, wherein she basically denied the Grievance Administrator's allegations, and Ms. Salud provided certain explanations concerning the above-referenced immigration matter.

The matter was assigned to Tri-County Hearing Panel # 77 which convened on June 12, 2013, in order to conduct a hearing as to "whether [the] misconduct charged in the formal complaint has been established by a preponderance of the evidence..." (June 12, 2013 Hearing Transcript, p 4).¹ During that hearing, evidence was presented concerning statements contained in the formal complaint, which alleged the following misconduct:

- a) neglect of a legal matter, in violation of MRPC 1.2(c);
- b) failure to seek the lawful objectives of a client, in violation of MRPC 1.2(a);
- c) failure to act with reasonable diligence and promptness, in violation of MRPC 1.3;
- d) failure to keep a client reasonably informed of the status of the matter, in violation of MRPC 1.4(a);
- e) failure to explain a matter to a client to the extent necessary to permit the client to make informed decisions regarding the representation, in violation of MRPC 1.4(b);
- f) conduct that is a violation of the Michigan Rules of Professional Conduct, in violation of MRPC 8.4(a) and MCR 9.104(4);

¹ Hereinafter cited as "Tr, p ___" or "*Id.*"

- g) conduct that is prejudicial to the administration of justice, in violation of MRPC 8.4(c) and MCR 9.104(1);
- h) conduct that exposes the legal profession or courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2); and, conduct that is contrary to justice, in violation of MCR 9.104(3) [Formal Complaint 13-46-GA, pp 4-5.]

By way of general background, Ms. Ewell came to the United States from the Philippines in 1997 (Tr, p 13). While here, Ms. Ewell worked as an accountant. (*Id.*) But, unfortunately, in 2002, Ms. Ewell "had two strokes" that left her significantly debilitated. (*Id.*) Nevertheless, in 2004, she married an individual named Edward Ewell, who currently takes care of Ms. Ewell. (*Id.*)

In any event, around 2005, certain circumstances apparently arose concerning Ms. Ewell's presence in the United States. As such, Ms. Ewell (with the aid of her spouse and her sister Jessica Liboon), entered into an agreement with respondent in order to have respondent "file what's called an I-130 petition, which is a petition for an immigrant to have a green card based on relation to a U.S. Citizen, in this case her spouse." (*Id.*, p 6.) In addition, respondent evidently "found out about the order of deportation and realized that she also needed to file a motion to reopen that case to allow the order of deportation to be reversed." (*Id.*)

Allegedly, respondent "took on the representation to do those two filings and she was paid a \$1,000 retainer. There was a flat fee agreement. There wasn't a written agreement, but there was a verbal agreement for \$1,000 retainer to handle that, which was paid in July of 2005 at the time [respondent] was retained." (*Id.*, pp 6-7.) (Ms. Ewell's sister, Ms. Liboon, testified that she paid respondent "more than one check." (*Id.*, p 48.)

Regardless, the following events allegedly occurred, as characterized in the formal complaint:

- 6. On or about August 2, 2005, Respondent filed an I-130 petition (a petition which allows an immediate relative of a United States citizen to immigrate to the U.S.) for Ms. Ewell. Ms. Ewell sought to immigrate based on her marriage to Edward Ewell, a U.S. citizen.
- 7. On August 15, 2005, Respondent filed a motion to reopen Ms. Ewell's removal proceedings and stay deportation.
- 8. On September 6, 2005, the Immigration Court issued a decision denying the motion.
- 9. Ms. Ewell had 30 days to appeal the denial, making her appeal due on October 6, 2005.
- 10. Respondent filed the appeal on October 7, 2005, one day past the deadline.
- 11. On October 14, 2005, the Board of Immigration Appeals (BIA) issued a briefing schedule for the appeal. Under the briefing schedule, respondent's brief was due on November 4, 2005.

12. On November 3, 2005, Respondent filed a request for an extension of the briefing deadline, citing her workload and a recent office move.
13. On November 9, 2005, the BIA extended Respondent's briefing deadline to November 25, 2005.
14. Respondent did not file a brief on or before November 25, 2005.
15. On November 25, the Department of Homeland Security (DHS) filed a motion for summary affirmance of the Immigration Court's September 6, 2005 denial of the motion to reopen. DHS noted that Respondent had failed to file an appeal brief.
16. Respondent did not file a reply to the DHS motion.
17. On February 10, 2006, the BIA extended respondent's briefing deadline to March 3, 2006.
18. Respondent did not file a brief.
19. On May 19, 2006, the BIA issued an order dismissing the appeal as untimely.
20. Respondent did not inform Ms. Ewell of the order of dismissal.
21. In approximately September of 2007, Ms. Ewell's husband Edward saw respondent in the post office.
22. Mr. Ewell asked respondent about the status of the case. Respondent told him that the motion to reopen had been denied.
23. Respondent did not tell Mr. Ewell that the appeal had been filed late and had been dismissed as untimely. [Formal Complaint 13-46-GA, pp 2-3.]

As a result of certain circumstances quoted above, Ms. Ewell was about to be arrested and deported at a point in time, but, due to the condition of her health, that did not occur; regarding this situation, Mr. Ewell stated, "They had handcuffs and ready to arrest her. Hadn't seen her condition of being blind and barely able to move. They had compassion on her to say we'll, put you on an order of supervision." (*Id*, p 44.)

Facts and circumstances associated with the formal complaint were addressed during the June 12, 2013 hearing.

- A. Respondent testified that she did mail at least one document to Ms. Ewell, but no related proof, such as a "cover letter" was produced. (*Id*, pp 71-72.)
- B. Otherwise, there was minimal contact between respondent and those associated with Ms. Ewell. In fact, Ms. Ewell's sister testified that she tried to call respondent "Several times" (*Id*, p 51), "every two months or three months" (*Id*, p 50), and she was able to speak with respondent "Only one

time." (*Id*, p 51.) Ms. Liboon further testified that she left messages, but none of those calls were returned. (*Id*, p 53.)

- C. Moreover, Mr. Ewell's contact with respondent at the post office was apparently by happenstance. (*Id*, p 22.)
- D. With respect to the appeal that was filed a day late, respondent claimed that appealing the decision from the lower tribunal was "another transaction" and some of her clients "go to other lawyers for appeal." (*Id*, p 73.)
- E. Nevertheless, respondent, through her testimony and underlying conduct, admitted that she was responsible for filing the above-referenced appeal.
- F. Concerning the late appeal, as alleged above, respondent testified as follows:

Q. All right. Following receiving that denial, you did, in fact, file a notice of appeal on this case, right?

A. Yes, yes.

Q. And it was received October 7th; is that right?

A. Yes, it is.

Q. It was due on October 6?

A. That's right.

Q. So it was late?

A. Yes, that's right.

...

Q. Now, Ms. Salud, in filing this one day late, am I right in saying that the late filing can be a basis for denial of an appeal?

A. Of course. Very important.

Q. And you knew that at the time you filed it?

A. I knew that.

Q. Yet it was not filed before the October 6 deadline?

A. Yes.

Q. Why was it not filed on time?

A. I was retained to do a motion to reopen and to file an I-130. So when that was denied and they knew it was denied, that is another transaction. They know it was denied. So I told them it needs to be appealed. Some of my clients would go to other lawyers for appeal. They don't want you anymore. That's another transaction. So I let it go.

A few days before this is due, I called them. I said, did you hire another lawyer? You need to file an appeal, if you did not. So Josephine can not come to my office. Her sister came. And you see the date, 2005 - - October 5, she took the paper, because you need the signature of Josephine. She took it. Brought it back to me. I don't know if she brought it at night or the next day of 2006 (sic). I overnight it. I know it was late. But there's nothing I could do, if they don't cooperate with you or your clients want to come on the last day.

- Q. You said you called a few days before?
A. Yes, I did.
Q. When was that? Do you recall what date it was that you called?
A. I cannot, but I know that - -
Q. You don't recall the date?
A. I don't recall the date, but it's just there, October 5, 2005. [*Id.*, pp 72-74.]
- G. As stated, respondent's position was: she could not file the appeal without Josephine Ewell's signature, but further testimony revealed that this was not true. (See *Id.*, pp 75-76.)
- H. In any event, the governmental entity that received the late appeal nonetheless served a briefing schedule on respondent; the due date for the brief was "October 4, 2005." (*Id.*, p 77.)
- I. After receiving the briefing schedule, respondent requested an extension of time to file the brief in the applicable immigration matter:

Q. And you requested that [extension] in part because you were moving [your] office?
A. That's very true. [*Id.*]
- J. An extension was granted, relative to the above-referenced briefing schedule. (*Id.*, p 78.)
- K. Respondent testified that she may not have received notice of extensions to the above-referenced briefing schedule, and respondent also testified that she did not ever file a brief on behalf of Ms. Ewell:

Q. Did you inquire with DHS?
A. No, I did not. I was - -
Q. Why not?
A. At the time I was so busy working in our office and -
Q. Did you wonder whether your brief was due or whether you had more time?
A. No. I might have wondered, but everybody wonder, yeah. But - -
Q. But you did not follow-up with DHS?
A. I did not. Yes, you are right. I did not.
Q. Did you file a brief?
A. No, I did not file a brief. [*Id.*, p 80.]
- L. Respondent also testified that she did not receive a motion that was filed in connection with Ms. Ewell's immigration matter, and that no response to the motion was filed. (*Id.*)
- M. Concerning these circumstances, respondent testified that she was "actually very concerned" that mail was not being delivered to her new office; however, she did not make inquiry as to whether documents had been sent regarding Ms. Ewell:

Q. Okay. But you did not - - you still did not contact INS to try to find out what your due date was even though you knew you were having mailing problems at the time?

A. I did not. [*Id*, p 81.]

N. Despite the alleged mail problems, respondent admitted that "the board may summarily dismiss [the] appeal" if there is a failure "to file a brief," which is what occurred in Ms. Ewell's matter. (*Id*, pp 82-83.) Respondent admitted that she received the denial of the appeal. (*Id*, p 83.) The appeal was dismissed because it was "untimely." (*Id*, p 93.) (Note: Respondent testified that even if she had filed a brief on time, the entire appeal may have still been denied because of the late-filed appeal in October of 2005. (*Id*, p 94.)

O. Although respondent claims to have verbally informed Ms. Ewell's husband concerning the denial of the appeal (at the post office), the document evidencing the denial was not transmitted to Ms. Ewell. (*Id*, p 84.)

P. Further testimony concerning the denial of the appeal is as follows:

Q. Do you have any idea the legal effect of this denial of this appeal, this dismissal of the appeal?

A. Well, it will be deportation for Josie. She will be deported.

Q. Are [sic] there any legal consequence that is beneficial to Josephine Kapunan?

A. They could always go to another lawyer and just did what they did now. And they could file a motion to open for ineffective assistance of counsel. So it always a win-win situation for her for me not doing the briefing. And now she could go and say ineffective assistance of counsel, they will open her case. And if I was disapproved, they'll give her her green card. [*Id*, p 94.]

* * *

Q. Are you telling the panel today that the reason you didn't file a brief is because you didn't receive the notice of extension?

A. I believe that I might have not - - I did not file a brief, first, for many reasons. They are small reasons. They're not big reasons. It's because I move. Everything is confusion in my office. I'm confused. And I did not see these briefing schedules at least, you know, to trigger my memory that you have these to do. And I did not get them.

Q. Is it fair to say that you didn't file a brief in this matter because you were preoccupied with maybe other things that were going on in your office such as the move?

A. Yes.

Q. Is it fair to say that perhaps this case just slipped through the cracks in your calendar?

A. Maybe. Could be. [*Id*, p 96.]

* * *

MR. SCHNELZ: Okay. And whose responsibility was it to handle the appeal, yours or the client's?

MS. SALUD: Mine.

MR. SCHNELZ: Did they not come to you and ask you for your help to handle this in a manner consistent with your ethical obligations and duties imposed upon you by law?

MS. SALUD: Yes.

MR. SCHNELZ: Do you feel that you lived up to your ethical obligation to these clients? Did you give this file the attention that it deserved?

MS. SALUD: Well, it shows I did not.

MR. SCHNELZ: Okay. Then why - - if you feel you did not give this file the attention it deserved, why do you feel it was necessary to take the position that the appeal was late because they got the signature back to you late, and because of that, then the whole house of cards fell? Would that be fair to say that that's your theory on this case?

MS. SALUD: Yes. [*Id*, pp 99-100.]

Q. After respondent denied that she violated ethical rules referenced in the formal complaint, the following exchange occurred:

MR. SCHNELZ: So in other words, you did nothing wrong. Would that be a good summation of your testimony?

MS. SALUD: My opinion is that I did not willfully do or neglect my duty. I did not.

MR. SCHNELZ: You understand this is not like a specific intent crime. Do you believe you acted with the highest standards of our profession in handling this case for these people?

MS. SALUD: Probably not. [*Id*, p 103.]

IV. FINDINGS AND CONCLUSIONS REGARDING MISCONDUCT

The panel members find the following with regard to the allegations set forth in the formal complaint:

a) Neglect of a legal matter, in violation of MRPC 1.2(c).

The panel members conclude that respondent did in fact neglect the matter entrusted to her, relative to Josephine Ewell. To begin with, respondent admitted that it was her responsibility - not the responsibility of Ms. Ewell - to file an appeal in the immigration matter referenced above. Nevertheless, respondent filed the appeal a day late. Moreover, in spite of respondent's protestations to the contrary, the lateness of the appeal was due entirely to respondent's neglect of the matter. In particular, by her own admission, respondent waited until the day before the appeal was due to contact Ms. Ewell's sister regarding the imminent need to file a related document. Furthermore, respondent initially testified that she could not file the appeal at issue without Ms. Ewell's signature on the appeal form - but that testimony was ultimately proved false, in view of the fact that there was no signature line on the appeal form for the appellants.

Even so, the governmental entity hearing the appeal sent respondent a briefing schedule - which would tend to indicate that it was willing to hear the appeal, despite its being filed a day late. Unquestionably, respondent should have been relieved to have received a briefing schedule (instead of a dismissal), and equally without question respondent should have exercised the utmost diligence in order to make sure that nothing else in the matter was filed in an untimely manner. But she didn't. Instead, respondent testified that she requested an extension to file a brief on Ms. Ewell's behalf, but when subsequent extensions were granted, respondent still did not file a brief. As such, it appears that Ms. Ewell is in a position to be deported (and, but for her medical status, she may have already been arrested and removed from the country).

Based on these factors alone, it is conclusive that respondent neglected Ms. Ewell's immigration matter.

b) Failure to seek the lawful objectives of a client, in violation of MRPC 1.2(a).

For the reasons stated above, it is undeniable that respondent failed to seek the lawful objectives of her client - which she should have, and could have, done if she had devoted time and effort to Ms. Ewell's case, instead of allegedly being preoccupied with moving her office. (The panel members note that Ms. Ewell's appeal spanned several months, and arguably it could not have taken respondent that long to relocate and organize her business files.)

c) Failure to act with reasonable diligence and promptness, in violation of MRPC 1.3.

Again for the reasons stated above, it is conclusive that respondent did not act with reasonable diligence and promptness in connection with Ms. Ewell's immigration matter. Correspondingly, it bears re-emphasizing that the governmental entity hearing Ms. Ewell's appeal was more than munificent with respect to providing respondent with additional time to file an appeal brief on Ms. Ewell's behalf (especially considering the appeal was filed late) - but respondent did not act diligently - even when she was provided with significant additional time to fulfill her ethical obligation to Ms. Ewell.

d) Failure to keep a client reasonably informed of the status of the matter, in violation of MRPC 1.4(a).

As discussed above, testimony was presented that respondent did not communicate reasonably with Ms. Ewell or her family members. Indeed, it bears noting that Ms. Ewell's sister called respondent on several occasions, yet she did not receive return calls. Further, if it wasn't for what appears to be a chance encounter between Ms. Ewell's husband and respondent at a post office branch, it is likely that Ms. Ewell would have had no information concerning the status of her case. Thus, it is conclusive that respondent's conduct was not in accordance with MRPC 1.4(a).

e) Failure to explain a matter to a client to the extent necessary to permit the client to make informed decisions regarding the representation, in violation of MRPC 1.4(b).

For the reasons stated directly above, respondent did not reasonably communicate with Ms. Ewell, or her family members, and, as such, she did not explain pertinent matters to her client. Additionally, it appears that respondent's statement that Ms. Ewell needed to appeal was not accompanied by an appropriate explanation concerning the overall ramifications of Ms. Ewell's

immigration situation. Along this line, it appeared to the panel members that Mr. Ewell seemed surprised when Ms. Ewell was about to be arrested (with handcuffs); hence, it may be concluded that respondent did not provide relevant individuals with information concerning the potential gravity of Ms. Ewell's immigration circumstances.

f) Conduct that is a violation of the Michigan Rules of Professional Conduct, in violation of MRPC 8.4(a) and MCR 9.104(4).

Here, based on the foregoing facts, respondent has "violate[ed] or attempt[ed] to violate the Rules of Professional Conduct..." in violation of MRPC 8.4(a), and she has engaged in "conduct that violates the standards and rules of professional conduct adopted by the Supreme Court," relative to MCR 9.104(4).

g) Conduct that is prejudicial to the administration of justice, in violation of MRPC 8.4(c) and MCR 9.104(1).

Also based on the foregoing facts, respondent has "engage[d] in conduct that is prejudicial to the administration of justice," in violation of MRPC 8.4(c), she is likewise in violation of MCR 9.104(1), which addresses "conduct prejudicial to the proper administration of justice."

h) Conduct that exposes the legal profession or courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2); and, conduct that is contrary to justice, in violation of MCR 9.104(3).

The evidence presented in this matter unequivocally demonstrates that respondent conducted herself in a manner that does not cast the legal profession in the best light. In addition, respondent's conduct was contrary to justice being served because Ms. Ewell has been placed in a precarious immigration situation as a result of respondent's neglect of the related matter. Hence, these rules have been violated.

Determination of Misconduct

Long ago, the Michigan Supreme Court recognized a definition of 'preponderance of evidence:

Preponderance of evidence is properly defined as:

Such evidence as, when weighed with that which is offered to oppose it, has more convincing power in the minds of the jury. It is not a technical term at all, but means simply that evidence which outweighs that which is offered to oppose it. It does not necessarily mean that a greater number of witnesses shall be produced on the one side or the other, but that, upon the whole evidence, the jury believe the greater probability of the truth to be upon the side of the party having the affirmative of the issue.' * * * If the evidence of the plaintiff is more probable than that of the defendant, it certainly outweighs it, and, if it outweighs it, the preponderance is with the plaintiff. [*Jones v Eastern Michigan Motorbuses*, 287 Mich 619, 623; 283 NW2d 710 (1939).]

See also: *People v Cross*, 281 Mich App 737, 740; 760 NW2d 314 (2008), wherein the court stated succinctly that "'[p]reponderance of the evidence' means such evidence as, when weighed with that opposed to it, has more convincing force and greater probability of truth."

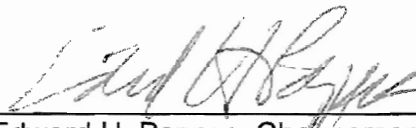
In the present matter, the panel members properly concluded that respondent violated the above-referenced court rules and rules of professional conduct because the evidence presented in support of the Grievance Administrator's allegations far outweighs the defenses that respondent attempted to argue on her behalf. By way of example, it is significant that respondent's primary alleged reason for filing Ms. Ewell's appeal a day late was the need for Ms. Ewell's signature on the appeal form but it was proven during the above-referenced hearing that the form in question did not in fact require the signature of the appellant. Further, it is also significant that respondent essentially blamed the United States mail system for her failure to file an appeal brief on Ms. Ewell's behalf, but the Grievance Administrator aptly pointed out that respondent knew that an appeal - requiring a brief - was pending, yet she neglected to call or otherwise contact the governmental entity that was presiding over the applicable appellate process.

Accordingly, for these reasons, and in relation to other factors stated herein, and those recorded in the transcript of the June 12, 2013 hearing, the panel finds, under the preponderance of evidence standard, that respondent committed misconduct in the above-captioned matter.

Pursuant to these findings, a hearing shall be scheduled for the sanction phase of this matter.

ATTORNEY DISCIPLINE BOARD
Tri-County Hearing Panel #77

By:



Edward H. Pappas, Chairperson

DATED: November 15, 2013