STATE OF MICHIGAN

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ATTORNEY DISCIPLINE BOARD
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# Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner,

v Case No. 09-80-GA

ROCHELLE J. THOMPSON P 65997,

Respondent.
_____/

## ORDER AFFIRMING HEARING PANEL ORDER OF SUSPENSION AND RESTITUTION

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

Genesee County Hearing Panel #4 of the Attorney Discipline Board issued an order on July 13, 2011, suspending respondent's license to practice law in Michigan for a period of 35 months. The discipline ordered by the hearing panel was temporarily stayed by the Board during its consideration of respondent's petition for stay pending review pursuant to MCR 9.115(K). The Board thereafter denied the petition for stay of discipline and terminated the interim stay of discipline effective September 14, 2011. The order for payment of costs remained stayed until the completion of these review proceedings. On October 31, 2011, the hearing panel issued a supplemental order granting the Grievance Administrator's request for modification of the order of discipline to require the payment of restitution to respondent's former clients, Paul and Tonya Hart, in the sum of $5,000.00, the fee paid to respondent. Upon the motion of respondent, the panel order requiring payment of restitution was stayed until further order of the Board. Respondent has petitioned for review, arguing that various findings of misconduct were without support in the record and that the discipline imposed was too severe.

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 November 9, 2011.

In its report on misconduct, the hearing panel found that respondent failed to provide competent representation or communicate adequately with her clients, and, in fact, neglected the adoption proceeding she was retained by the Harts to pursue, resulting in the state's almost forcible removal of the child from the Hart's custody after they raised the child from birth to the age of two years and nine months. This conduct was found to be in violation of MRPC 1.1, 1.1(a) and (c), and 1.4(a) and (b). The panel also found that respondent misrepresented the status of the proceedings to her clients, in violation of MRPC 8.4(b) and MCR 9.104(A)(3), and counseled them on how to regain the child by illegally offering money to the birth parents in exchange for their consent to adoption, in violation of MRPC 1.2(c). The panel's October 12, 2010 report on misconduct (opinion) is attached as Appendix A.

A hearing panel's factual findings are reviewed for "proper evidentiary support on the whole record." *Grievance Administrator v Lopatin*, 462 Mich 235, 247-248 n 12; 612 NW2d 120 (2000); *Grievance Administrator v T. Patrick Freydl*, 96-193-GA (ADB 1998). Respondent has made generalized claims that the panel's findings of misconduct are erroneous and unsupported. The Board concludes that there is ample support for the hearing panel's findings and conclusions as to the charges of misconduct.

The Board is also not persuaded by respondent's claims that the 35-month suspension imposed by the panel was too harsh, and the Board certainly does not consider the reprimand requested by respondent to be appropriate. Reprimands have been imposed in Michigan for failure to render competent representation and adequately communicate with clients in adoption proceedings. See, e.g., *Grievance Administrator v Rochelle J. Thompson*, 06-83-GA (HP 11/22/2006 by consent); *Grievance Administrator v Evette E. Dukes*, 04-84-GA (HP 1/10/2005 by consent). However, discipline imposed for lack of competence and/or serious neglect coupled with misrepresentation to the client in adoption proceedings has ranged from the minimum period required to trigger reinstatement proceedings under MCR 9.124 up to disbarment, depending on the circumstances. See, e.g., *Grievance Administrator v Mitchell G. Howard*, 70-84 -GA (HP 9/4/1984) (121 days); *Grievance Administrator v Ronald R. Ward*, ADB 127-89 (HP 3/19/1990) (180 days); *Grievance Administrator v Ben D. Tubergen*, 92-235-GA (ADB 1993) (120 days); *Grievance Administrator v Timothy A. Wright*, 90-132-GA (HP 11/1/1990) (multiple instances of neglect; alcoholism), aff'd (ADB, 10/2/1991); *Grievance Administrator v Frederick Althaus*, DP-124/80 (HP 1/26/1981) (revocation). Add to that the serious misconduct of counseling her clients regarding unlawful conduct, MRPC 1.2(c), and we cannot say that the panel's order of discipline was inappropriate. Indeed, the Administrator briefed the applicability of Standards 4.4, 4.5, 5.1 and 6.1 of the American Bar Association's Standards for Imposing Lawyer Sanctions before the panel, and the Administrator states on review that the panel appears to have considered disbarment to be the presumptive sanction.

We note that the panel grappled with the extensive and sharply conflicting testimony in mitigation and in aggravation, and other factors under ABA Standard 9.0, and crafted an eloquent report thoroughly considering the factors pertinent to discipline in this matter (see the panel's July 13, 2011 sanction report attached as Appendix B). We, like the Administrator, find that the panel's decision on sanctions is consistent with the American Bar Association's Standards for Imposing Lawyer Sanctions and decisional law. However, in addition to respondent's misrepresentations to her clients about the status of the botched adoption proceedings, and advising the clients in their desperate and illegal planning as to monetary payments to the birth parents after custody was returned to them, respondent's problem appears to involve an inclination to overcommit herself, both in terms of time and competence which here resulted in disastrous consequences. We saw no recognition of this problem in respondent's presentation to the Board, and urge any panel that may be evaluating a petition for reinstatement to probe whether respondent has become appropriately self aware, and perhaps taken steps to address these issues.

**NOW THEREFORE,**

**IT IS ORDERED** that the hearing panel's order of suspension issued July 13, 2011, is **AFFIRMED**, and that that respondent's license to practice law in Michigan is **SUSPENDED FOR 35 MONTHS, EFFECTIVE SEPTEMBER 14, 2011**, and until further order of the Supreme Court, the Attorney Discipline Board or a hearing panel, and until respondent complies with the requirements of MCR 9.123(B) and MCR 9.124.

**IT IS FURTHER ORDERED** that the hearing panel's supplemental order of restitution issued October 31, 2011, is **AFFIRMED**. Respondent shall, on or before February 15, 2012, pay restitution in the amount of **$5,000.00** to Paul and Tonya Hart. Respondent shall file written proof of payment with the Attorney Grievance Commission and the Attorney Discipline Board within 10 days of the payment of restitution.

**IT IS FURTHER ORDERED** that respondent shall not be eligible for reinstatement in accordance with MCR 9.123(B) unless respondent has fully complied with the restitution provisions of this order.

**IT IS FURTHER ORDERED** that respondent shall, on or before March 15, 2012, pay costs in the amount of **$12,746.43**, consisting of costs assessed by the hearing panel in the amount of $12,658.09 and court reporting costs incurred by the Attorney Discipline Board in the amount of $88.34 for the review proceedings conducted on November 9, 2011. Check or money order shall be made payable to the State Bar of Michigan, but 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: _____
Thomas G. Kienbaum, Chairperson

DATED: January 17, 2012

Board members Thomas G. Kienbaum, James M. Cameron, Jr., Rosalind E. Griffin, M.D., Andrea L. Solak, Carl E. Ver Beek, Craig H. Lubben, Sylvia P. Whitmer, Ph.D, Lawrence G. Campbell, and Dulce M. Fuller concur in this decision.

APPENDIX A



**STATE OF MICHIGAN**
**ATTORNEY DISCIPLINE BOARD**

**GRIEVANCE ADMINISTRATOR,**
**ATTORNEY GRIEVANCE COMMISSION,**

**PETITIONER,**

**CASE NO 09-80-GA**

**V**

**ROCHELLE J. THOMPSON, P65997**

**RESPONDENT.**

_____/

**FRANCIS A. ROSINSKI**
**ATTORNEY FOR PETITIONER**
**243 W. CONGRESS ST.**
**STE 256**
**DETROIT MI 48226**

**JOHN L. COTE'**
**ATTORNEY FOR RESPONDENT**
**2541 LAKEFRONT DRIVE**
**HOLLAND MI 49424**

**OPINION**

**PANEL MEMBERS:**
**RANDOLPH P. PIPER, CHAIRPERSON**
**STEVEN F. SPENDER**
**JOHN R.TUCKER**

**SEPTEMBER 29, 2010**

Opinion Re: Rochelle Thompson

SUMMARY

On April 14, 2005, a baby boy was born in Genesee County Michigan to a 12th grader at Davison High School. The mother who gave birth was living with her mother and stepfather at the time. The father was a twenty two year old graduate of Davison High School who was living with his father.

At the same time, a married couple who had been advised by their doctor that they could never have children, became aware of the baby being born to a Davison High School senior who was going to have a baby and wanted it put up for adoption.

On the day after the baby was born, the birth parents signed a General Durable Power of Attorney, purportedly good for a year, subject to renewal and the potential adoptive parents took the baby home.

On January 16, 2008, almost three years later, the biological parents, a case worker and four or five police officers arrived at the adoptive parents home. The case worker told the adoptive mother that she could hand the now almost 3 year old child to the birth mother or "she'll rip him out of my arms". The now screaming child was turned over to the birth parents.

That, in a nutshell, summarizes a story that began as the culmination of a five year dream for the adoptive parents, a story that over the next 34 months would devolve into a nightmare for them and perhaps a triumph of justice for the biological parents.

This panel has, over the last five months, heard this story played out in testimony in excruciating detail. We have listened to the father of the child, the mother of the child, the proposed adoptive mother and father who raised the child from birth until age two years and ten months, various court personnel, an expert attorney, and the Respondent.

In our opinion, the drama of this thirty four month period is a tragedy, but unlike in a civil court proceeding, it is not the assignment of this panel to right wrongs or to assess damages. Our job as we see it is to analytically examine the testimony, weigh the credibility of the witnesses and then, juxtapose what we heard to the Complaint of the Grievance Administrator and the Answer of the Respondent Attorney.

That is precisely what we have done in our lengthy hearings and post hearing deliberations. We have decided the best way to start this process is to examine the allegations made by the Grievance Administrator, the Answer of the Respondent and balance them against what we heard.

This matter involves an adoption that went wrong. This panel has spent many hours viewing witnesses, listening to their testimony and weighing their credibility. As we have personally heard all the testimony and the various arguments of counsel, we have, based on the testimony and the credibility of the witnesses arrived at the following conclusions of fact:

## CONCLUSIONS OF FACT

Adoption practice is a specialized area of the law.

The Respondent, Rochelle J. Thompson is an attorney who has been admitted to the practice of law in the State of Michigan since 2003.

Marsha Crawford became pregnant during her senior year in Davison High School and determined along with the father , Ryan Perry, that the baby would be put up for adoption due to the fact that at the time they had no place to keep or raise a baby.

On April 8, 2005 Respondent was retained by Paul and Tonya Hart, a married couple, who wanted to adopt the child of Marsha Crawford and Ryan Perry.

The Harts agreed to pay a flat fee to Attorney Thompson in the amount of $5,000.00 which was paid.

On April 14, 2005 Marsha Crawford gave birth to a boy.

On April 15, 2005 the Respondent prepared a power of attorney, which stated that the Harts had the power to act in a parental capacity and to make medical decisions concerning the baby boy. The child would reside at 3814 Trim St. in Flint MI.

The General Durable Power of Attorney (Petitioner's Exhibit 9) recited that it was the intent of the parties that it not expire and "must be renewed each year, until the adoption of the baby was complete".

The power of attorney (which, under the statute is only valid for six months. MCL 700.5103) was never renewed.

On April 15, 2005 the Harts took custody of the child.

All parties knew that further proceedings were necessary to complete the adoption.

The biological parents did not actively intend to retake custody of the baby until the Probate Court and Child Protective Services became involved and noticed that the papers were incomplete and expired. The biological mother did contact the office of the Respondent in early 2007 and did say she was having second thoughts about the adoption. The other statements made indicating a prior date for the manifestation of these intentions which were given during the hearing, by the biological parents were not credible to the panel for the reason that a simple straight forward phone call to the office of the Respondent attorney flatly explaining their change of position was never made. Further there was no testimony given that the biological parents initiated any contact with police, the Probate Court, or any

other governmental entity to attempt to get the child back even though they knew the power of attorney had long since expired. No such actions were taken even after the biological parents, the adoptive parents and the child had a chance meeting at the Genesee County Fair. To the contrary, the biological parents sent a greeting card to the adoptive parents requesting them to send the biological parents pictures of the child.

The biological parents failed to cooperate with the Harts.

The Harts failed to cooperate with the biological parents in completing the adoption.

The paperwork associated with a direct placement adoption was not be completed within the framework of the existing power of attorney.

Despite the fact that the Respondent attorney made some attempts to resolve the failure of cooperation between the parties, the Respondent attorney failed to have a forthright conversation with Tonya and Paul Hart about the fact that the adoption was not proceeding correctly, that the biological mother was having second thoughts, and that the matter had to be resolved in the best interest of the child, the clients and the biological parents. There was no simple communication that informed the Harts of the dire consequences of not resolving the matter and that they did not have a legal right of custody of the child. As of October 15, 2005 the power of attorney had expired under the law, yet there was no explicit recognition of that date as being significant to custody of the child and no Petition for adoption had been filed. During the period between the transfer of custody and December of 2005, the Respondent did not adequately communicate with the birth mother regarding the necessity that she was required to sign papers other than the power of attorney in furtherance of the adoption process. Expert testimony rendered during the hearing established that immediate action by the adoption petitioner is necessary to insure that the adoption process is swiftly completed. The panel concludes from the evidence submitted that the Respondent failed to act swiftly.

The Respondent attorney failed to have a forthright communication with the Harts even after custody of the child was removed from the Harts. The adoptive parents proposed paying for return of custody and while the Respondent may have said it was illegal to buy or sell children in the adoption process the Respondent failed to emphasize the illegality of such a process when she advised them about the process of negotiating for adoption of a child in return for money.

On January 16, 2008, after two years and nine months of caring for and bonding with the baby boy, the Respondent attorney advised her client to go to the residence and meet with a caseworker. Respondent attorney failed to advise the Harts that child protective services were investigating and when they arrived, the caseworker and police were present. The Harts were ordered to surrender the baby to the birth mother who left with the baby screaming.

The Respondent attorney failed to ever successfully file the appropriate papers for adoption in the Probate Court. Documents that were filed with the Probate Court were both unreasonably tardy and substantively deficient.

## CONCLUSIONS

This panel, after consideration of all the facts presented by the testimony and by observing the demeanor and credibility of the various witnesses makes the following conclusions. In making these conclusions the panel placed great emphasis on the demeanor and credibility of the witnesses in this factually contested case. In coming to these conclusions, we are following the initial order of the allegations (in bold face print) set forth in the Petitioner's Complaint.

a. Has **She prejudiced the proper administration of justice, as proscribed by MCR 9.104(A)(1)?:**

The panel concludes that there was no evidence of prejudice (as we understand that term) to the proper administration of justice due to the conduct of the Respondent. The Respondent attempted to invoke, however unsuccessfully, the proper Probate Court Procedures and did not try to circumvent those procedures. The discussion about paying for return of the child was close, but it was obvious to this panel from the testimony presented that the Respondent did not think the approach of paying was a good idea.

b. Has **She exposed the legal profession or the courts to obloquy, contempt, censure or reproach as proscribed by MCR 9.104(A)(2)?:**

The panel concludes that there was no testimony that could be regarded as to anyone's belief that the courts or the profession had been exposed to obloquy, contempt, censure or reproach by the conduct of the Respondent.

c. Has **She engaged in conduct that is contrary to justice, ethics, honesty or good morals, as proscribed by MCR 9.104(A)(3)?:**

The panel concludes the Respondent did engage in conduct that was contrary to ethics and honesty when she failed to notify her clients of several important developments in the handling of this adoption, namely her failure to tell her clients that she had been unsuccessful in even filing a proper Petition, that the biological mother was having second thoughts and finally when she participated in a discussion with her clients about how to negotiate with the biological parents for the exchange of money for return of custody. Even though we believe the Respondent knew and advised her clients that such a monetary negotiation was wrong, she nevertheless, perhaps out of compassion for her client's loss, participated in a discussion of how negotiations could proceed. She should have flatly told her clients that the process was over and that the adoption had failed outright.

d. Has **She violated the standards or rules of professional responsibility adopted by the Supreme Court as proscribed by MCR 9.104(A)(4), namely: i. MRPC 1.1, by failing to provide competent representation to her clients?:**

The panel concludes the Respondent did fail to represent her clients competently by failing to ever file the appropriate, acceptable adoption papers with the court and by failing to prepare a power of attorney that was consistent with the law.

ii. Did Respondent violate **MRPC 1.1(a) by handling a legal matter which she knew or should have known that she was not competent to handle without associating with a lawyer who was competent to handle it?:**

The panel concludes the Respondent was not competent to handle this adoption matter and that should have become apparent to her at the outset when her attempts at filing proper documents with the court were being rejected or not allowed and further there was no referral to another attorney until long after the process was started and by then the baby had been removed by police action.

iii. Did Respondent violate **MRPC 1.1(c) by neglecting a matter entrusted to her?:**

The panel concludes the Respondent did neglect the matter for long periods of time which inevitably resulted in the final disastrous result of the child being forcibly turned over to the biological parents.

iv. Did Respondent violate **MRPC 1.2(c) by counseling her clients to engage in conduct the lawyer knows is fraudulent or illegal?:**

The panel concludes the Respondent did engage in conduct that was fraudulent or illegal when she counseled them that it was illegal to exchange money for a child, but then counseled the clients about the best way to negotiate a deal.

v. Did Respondent violate **MRPC1.4(a) by failing to keep her clients reasonably informed about the status of their matter and complying promptly with reasonable requests for information?:**

The panel concludes the Respondent did fail to keep her clients informed about the status of the adoption matter, because the clients did not know that a petition had never been successfully filed until nearly the end of the matter. Also, the Respondent failed to communicate with the biological parents between April 15, 2005 (the date of change in custody) and December 8, 2005 to get their consent to certain necessary adoption papers beyond the power of attorney form that they had previously signed.

vi. Did Respondent violate **MRPC 1.4(b) by failing to explain a matter to the extent reasonably necessary to permit her clients to make informed decisions regarding the representation?:**

The panel concludes the Respondent did fail to explain to her clients about the status of the adoption matter, because the clients did not know that a petition had never been successfully filed until nearly the end of the matter and she never flatly explained the dire circumstances of the clients situation with regard to the custody of the child which had no legal basis after the power of attorney had lapsed without being renewed.

**vii.** Did Respondent violate **MRPC 1.7(a) by representing a client which representation was directly adverse to another client?;**

The panel concludes that the Petitioner did not prove that the representation offered was directly adverse to another client.

**viii.** Did Respondent violate **MRPC 1.7(b) by representing a client whose interest may be materially limited by the lawyer's representation to another client?;**

The panel concludes that the Petitioner did not prove that the representation offered was materially limited by the lawyer's representation to another client.

**ix.** Did Respondent violate **MRPC 1.16(d) by failing to refund the advance payment of fee that has not been earned?;**

The entire rule cited reads as follows: **"Upon termination of representation, a lawyer shall take reasonable steps to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by law."**

The panel concludes that the evidence presented in this hearing does not involve itself with the attorney fee paid, other than the fact that it was paid in advance and in installments. Except for the fact that the adoption did not go through, the record does show that the Respondent did spend some time consulting with her clients, attempting (however unsuccessfully) to consult with the biological parents, and attempting to assemble the correct papers for the Court. There was nothing in the record that showed a compilation of the number of hours Respondent did or did not expend in the matters that were attempted. For this panel to conclude that a fee has not been earned requires at least some evidence connecting a lack of activity with the amount paid but not expended. The panel does not question the fact that the Respondent was retained to effectuate an adoption and finally and spectacularly failed in that endeavor. But, this matter was not taken on a contingency basis, where there would be no fee if the lawyer failed to obtain the desired result. The panel has determined that there was no co-operation between the biological parents and the clients of the Respondent. Further, the Administrator of the Court and the expert witness, independent of each other, both described the Court as being "picky" in its application of procedural rules of adoption. (TR p 272 line 24 and TR p 343 line 14) The factors of a complete breakdown of communication between the four "parents" and the court being very "picky" over procedural rules may have contributed to the Respondent having spent more time rather than less on this adoption gone wrong. This could justify the fee even though the end results were not desired by the Respondent or her clients. For the panel to conclude that there was a "fee that has not been earned" requires the panel to speculate on facts not presented through testimony and that is something this panel declines to do. Nothing in this finding should be construed to limit the panel's ability to order restitution as part of any discipline that may be imposed.

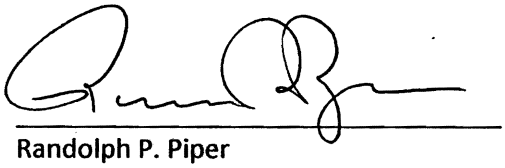
**x.** Did Respondent violate **MRPC 8.4(a), by violating or attempting to violate the Rules of Professional Conduct?;**

The panel concludes as set forth above, that there were violations of Professional Conduct.

**xi.** Did Respondent violate **MRPC 8.4(b), by engaging in conduct involving dishonesty, fraud, deceit and misrepresentation?**

The panel concludes as set forth above, that there were violations of Professional Conduct as alleged in this regard.

Respectfully Submitted,



Randolph P. Piper
Panel Chairman

DATED: October 12, 2010

APPENDIX B

STATE OF MICHIGAN



# Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner,

v Case No. 09-80-GA

ROCHELLE J. THOMPSON, P 65997,

Respondent.
_____/

## SANCTION REPORT OF GENESEE COUNTY HEARING PANEL #4

**PRESENT:** Randolph P. Piper, Chairperson
Steven F. Spender, Member
John R. Tucker, Member

**APPEARANCES:** Frances A. Rosinski, Associate Counsel
for the Attorney Grievance Commission

John L. Cote',
for the Respondent

## I. EXHIBITS

Please see Index of Exhibits on page 2 of the January 21, 2010 hearing transcript; page 259 of the February 18, 2010 hearing transcript; page 597 of the May 27, 2010 hearing transcript; and page 3 of the January 27, 2011 hearing transcript.

## II. WITNESSES

January 21, 2010 Hearing
Rochelle J. Thompson, Respondent
Tonya F. Hart
Paul L. Hart

April 14, 2010 Hearing
Rochelle J. Thompson, Respondent

February 18, 2010 Hearing
James N. Bauer
Marc T. Dedenbach
Marsha L. Crawford
Ryan D. Perry

May 27, 2010 Hearing
Erwin F. Meiers, III
Pamela View
Diane Tower
Patti Dill
Rochelle J. Thompson, Respondent

April 13, 2011 Hearing
Hon. Jennie E. Barkey

January 27, 2011 Hearing
Hon. John A. Gadola
Hon. David Newblatt
Hon. Michael J. Theile
Leslie Tolliver Broadnax
Tonya Hart
Hon. Duncan M. Beagle
George R. Hamo
Hon. Archie L. Hayman
Justin Henry
Rochelle J. Thompson, Respondent
Ruby C. Gust-Allen
David Hanson
Michael B. Rizik
Melissa Scanlon
Paul Watson
Lynne A. Taft
Hon. Joseph J. Farah
Tabitha Marsh
Teresa Haruska

## III. FINDINGS AND CONCLUSIONS REGARDING SANCTIONS

This panel, after consideration of all the facts presented by the testimony in the sanction phase of this matter, and by observing the demeanor and credibility of the various witnesses, makes the following conclusions. In making these conclusions, the panel placed great emphasis on the demeanor and credibility of the witnesses in this case. Both petitioner and respondent presented testimony in order to assist this panel in determining the appropriate discipline.

In considering the appropriate discipline we are mindful of our conclusion that respondent did not have the co-operation of the biological parents in this adoption gone wrong. Yet we are also mindful of our unavoidable conclusion that, even though respondent did not have that necessary co-operation of the biological parents, there was conduct that does warrant discipline, particularly in consideration of the record of respondent's prior disciplinary history.

The hearing panel has reviewed the American Bar Association's (ABA) Standards for Imposing Lawyer Sanctions, specifically Standard 9.22 and the supplied worksheet, for guidance in our findings. The following conclusions are prompted, in part, by the worksheet with which this panel has been provided:

- There are prior disciplinary offenses.
- There was some dishonesty in that the respondent lied to the adoptive parents about the status of the adoption proceedings.
- The respondent has been co-operative with the disciplinary process and there has been no intentional failure to comply with rules or orders of the Attorney Discipline Board.
- There has been no submission of false statements or evidence and there has been no deception practiced on this panel.
- Respondent has acknowledged the wrongful nature of her conduct and told the panel she would never engage in another adoption procedure.

Standard 9.22 directs this panel to consider the vulnerability of the victim. This is an interesting directive as it relates to this case, because usually the victim is the client who requests the investigation. In this case, it was the court that requested the review by the Grievance Administrator, not the client, not a guardian for the baby, and not the natural parents.

We believe that respondent's clients, the adoptive parents, are the real victims here because they were continually lied to about the status of the case. In fact, the adoptive parents were led to believe that progress was being made on their case. We are also mindful of the mental anguish inflicted on the adoptive parents as a result of the termination of their familial relationship with the baby, a relationship which existed for over three critical years in his development. The horrific circumstances surrounding the actual termination of that relationship only served to add salt to an already open and festering wound.

We balance our outrage over this apparent injustice with our finding that we could not determine that respondent's misconduct was a proximate cause of the failure of the adoption. However, the converse is not necessarily true. That is, we also could not determine that respondent's misconduct had no effect on the failure of the adoption. We recognize that our inability to reach a conclusion on this issue largely results from respondent's own misconduct. Had respondent timely and professionally processed the adoption paperwork, this panel would not have to guess whether the biological parents would have cooperated with the adoption process early on. Rather, the excessive delay in processing the adoption paperwork effectively removed this panel's ability to determine what would have happened had the adoption had been properly processed.

We understand that the biological parents have testified that they would not have signed the adoption paperwork had it been timely presented to them. Frankly, we did not believe their testimony in this regard as we have already determined that testimony to be flavored by the passage of time, changes in circumstances during that time, and a subconscious need by the biological parents to ratify their validity as parents to a child, who at one point in time, they had agreed to give up for adoption. This panel found it very significant that after a chance meeting at the Genesee County Fair when the two sets of parents and the child met, the natural parents did not fly into a rage or even call the respondent or the adoptive parents to get their child back, but instead asked for pictures of the baby.

We can't find that the natural parents, who were not clients, were the real victims because they were uncooperative with the process and really only made their wishes to have the baby returned to them known when an officer from the state called them and asked them whether they wanted their child back.

We also believe the baby to be a victim, because after all was said and done, the baby was literally ripped from its protective environment and placed into a new environment because of respondent's ineffective conduct. We are mindful of Judge Barkey's testimony that, in her experience, circumstances such as those present in this case surrounding the termination of the three-year long relationship between the baby and the adoptive parents often give rise to "Reactive Attachment Disorder" in the affected child which, in turn, gives rise to some of the most difficult cases Judge Barkey has seen on the probate court bench. We recognize that Judge Barkey is not a psychiatrist and that no psychiatrist has made any such diagnosis with respect to the baby. However, we believe that the mere increase in the probability that any psychological disorder could result because of the unreasonable passage of time is a significant aggravating factor with respect

to the level of discipline to be imposed in this case. We also recognize that both sets of parents had a hand in creating this potential risk. While we have some sympathy for both sets of parents, had they all been more honest in their treatment of the situation in which they found themselves, certainly a more timely and less dramatic resolution of custody could have been arranged.

But the final victim here is the failure of the administration of justice. Time after time, respondent was unable to effectuate the processes of this adoption. This panel has asked itself as a whole and as individuals why, when it became apparent that something was seriously wrong, did the respondent not bring this problem forthrightly to the attention of the court, either by motion or even by personal request to the judge. We understand that hindsight is 20-20, but was it not clear that something was disastrously wrong here? It should have been, and because nothing was done, the administration of justice suffered and that was the attorney's fault.

Had respondent acted timely and professionally, we would know with certainty whether the biological parents were willing to proceed with the adoption early on. If not, the adoptive parents would still have had to suffer mental anguish over the loss of the baby as the result of a failed adoption - an admittedly painful loss - but they would have faced that painful reality early on, not after having bonded with the child for over three years. It is also possible that, had respondent acted timely and professionally, the biological parents would have proceeded with the adoption consistent with their actions and circumstances at the hospital when the baby was born. If so, a different, and far more positive outcome, was possible for all concerned. Respondent's misconduct prevents us from determining which of these widely disparate outcomes (and an infinite number of immediate outcomes) would have occurred in the absence of her misconduct. This is an unacceptable failure in the administration of justice.

In light of the foregoing discussion, one could reasonably conclude that our determination on the appropriate level of discipline in this matter should be relatively easy and straight-forward. Nothing could be further from the truth. Respondent provided character testimony from numerous witnesses, many of which are currently seated on the Genesee County Circuit Court bench. Many of the remaining witnesses are long-time, well-respected members of the Genesee County Bar. All of these witnesses provided glowing testimony as to respondent's character. The testimony was of such a decidedly good nature that the panel believes that any practitioner in Genesee County, Michigan would be envious of the perception of respondent's character by both the bench and the Bar. So the decision on the level of discipline to be imposed in this case is a difficult one. One which we do not undertake lightly.

In the disciplinary phase of this matter, attorneys and judges were presented as witnesses as to both the good and bad character of respondent. The attorney and judicial witnesses presented by respondent all painted a testimonial picture of respondent that was persuasively good.

But of more interest to the panel was the testimony of two judges. One of these judicial witnesses was brought by respondent and the other was brought by petitioner. First, we consider the judicial witness brought by respondent. Genesee County Family Court/Circuit Judge John A. Gadola testified that he has utilized the services of respondent in his courtroom as Managing Attorney for neglect and abuse cases. Judge Gadola stated the he saw respondent in court and that was why he decided on appointing her as his Manager. He said his decision was not made lightly. He said that respondent is competent, diligent and honest in her duties. She had the ability

to go above and beyond what was required. He said she has a very good reputation, is very busy and earns the confidence of her clients, especially in neglect proceedings. He also said there are times when she will initiate a guardianship without cost to her clients in his court. He told the panel that he had the authority to pick anyone as his managing attorney and he picked quickly because he thought respondent might get selected first by other judges. On the question of character, Judge Gadola testified that he had no concerns about her future character as an attorney and said that she is, in fact, above and beyond a good advocate. He said that often she is a better advocate for the child than even the parents.

The Judge was asked:

> Q (by Mr. Cote): Based upon your knowledge, would the absence of Rochelle Thompson in the legal community in Genesee County work a hardship?
>
> A: I believe that it would. I can tell you in my courtroom specifically, it would lead to, you know, just from the most basic follow-up of reassigning cases, but to the level of representation. And I have a very good panel . . . But if I were to lose Rochelle's representation of individuals, not only would the advocacy be an issue for the individuals who need representation, the timeliness of the attorneys arriving for that representation, and the willingness to go above and beyond the call of duty for . . . those neglect cases. I quite frankly wouldn't expect other attorneys who, although they do exactly the same responsibilities that she, Attorney Thompson, does in my courtroom, there are attorneys that I don't have a single expectation that they'll do anything once they walk out of the courtroom.
>
> They're good advocates and they're on my panel for that reason. But if I asked them to draft a complaint for custody or a motion for custody, I think they'd smirk at me and walk out of the courtroom and say, sure, okay, I'll do more work for free. It would hurt in that respect because I don't know who I'd turn to when an extra thing needs to be done.
>
> And quite frankly, whether it's on somebody she's represented or not, I would lose that. And that's something that in a community such as Genesee County and a courtroom that sits right in the City of Flint with the financial hardship that exists for litigants that need good representation, I don't believe right at this moment that I could tell you there's another attorney - I'm sure there are. And maybe I shouldn't say that . . .

> I would struggle to get that same quality of representation and the extra things . .
>
> So it would cause a hardship in my court room, absolutely. [Tr 01/27/11, pp 19-22.]

This is powerful testimony in a financially ravaged city such as Flint, Michigan and this panel cannot ignore the testimony of a Circuit Court Judge.

Second, on the other hand, the panel heard testimony of another judge. Genesee County Probate Judge Jennie Barkey testified as the judge who was the successor to the late Judge Robert Weiss who basically directed his court administrator to file a Request for Investigation in this matter. It is her court that handles adoptions. She testified that she knows respondent because she was in her court once or twice. But, based on conversations with her staff relating to the facts which resulted in this grievance being filed, she does not have a good opinion of Ms. Thompson. She said she has difficulty believing what respondent tells her and she is disgusted when something like this happens.

The panel is also directed by ABA Standard 9.22(a) to consider prior discipline. Respondent has received **three prior admonishments** and **one prior reprimand**. Most disturbing of these prior disciplines is the fact that all occurred at some point in time during her representation of the Harts in this adoption matter. It is significant that of these complaints, one was an adoption matter involving another child, known as the Clark adoption. In that case respondent stipulated that she had neglected and failed to communicate with her adoption clients. A reprimand was issued on December 14, 2006. Respondent's representation of the Harts commenced in April 2005. But most significantly, respondent had been served with the Clarks' Request for Investigation in January 2005, some three months before her representation of the Harts began. The panel logically concludes from this that respondent must have been aware of the importance of paying attention to an adoption and communicating with the client and not misleading them to believe the adoption was progressing.

But, also of significance in determining discipline is the fact that none of the prior misconduct has resulted in a suspension from the practice of law or disbarment.

The panel is cognizant of the fact that all of respondent's prior disciplinary matters occurred during a particularly difficult time in respondent's life. Respondent's husband had been killed by a drunk driver. In addition, one of respondents personal friends, also a lawyer, was experiencing great difficulty as a result of the friend's alcohol addiction. An intervention for the friend was staged at the instigation of another Genesee County Circuit Court Judge and respondent was voluntarily assuming many of the professional duties and responsibilities of the friend in addition to assisting her friend with the mental and emotional issues often associated with alcohol addiction. While the personal trauma in respondent's life at the time of the events giving rise to the prior misconduct does not excuse that misconduct, it does, to some degree, mitigate the aggravating nature of those instances of prior misconduct.

Accordingly the panel has determined that the appropriate discipline in this matter is a suspension of respondent's license to practice of law for 35 months.

## IV. SUMMARY OF PRIOR MISCONDUCT

| AGC File No. | Discipline | Effective Date |
|---|---|---|
| 3482/06 | Admonishment | 08/29/07 |
| 0047/07 | Admonishment | 08/29/07 |
| 2864/07 | Admonishment | 07/28/09 |
| **ADB Case No.** | **Discipline** | **Effective Date** |
| 06-83-GA | Reprimand w/Condition (By Consent) | 12/14/06 |

## V. ITEMIZATION OF COSTS

| | |
|---|---|
| Attorney Grievance Commission: | |
| (See Itemized Statement filed 05/18/11) | $ 6,019.44 |
| Attorney Discipline Board: | |
| Hearing held 01/21/10 | $ 1,349.00 |
| Hearing held 02/18/10 | $ 1,237.50 |
| Hearing held 04/14/10 | $ 383.00 |
| Hearing held 05/27/10 | $ 538.60 |
| Hearing held 01/27/11 | $ 1,388.50 |
| Teleconference charges 01/27/11 | $ 45.05 |
| Hearing held 04/13/11 | $ 197.00 |
| Administrative Fee [MCR 9.128(B)(1)] | $ 1,500.00 |
| **TOTAL:** | **$12,658.09** |

**ATTORNEY DISCIPLINE BOARD**
Genesee County Hearing Panel #4

By: _____
Randolph P. Piper, Chairperson

**Dated: July 13, 2011**