FILED
ATTORNEY DISCIPLINE BOARD
November 22, 2022

STATE OF MICHIGAN

Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner/Appellee,

v — Case No. 22-1-GA

L. DAVID BUSH, P 51870,

Respondent/Appellant.
______________________________/

ORDER AFFIRMING HEARING PANEL ORDER DENYING RESPONDENT'S MOTION TO SET ASIDE THE DEFAULT AND ORDER OF SUSPENSION

Issued by the Attorney Discipline Board
333 W. Fort St., Ste. 1700, Detroit, MI

After respondent's default was entered by the Grievance Administrator and proceedings were conducted in accordance with MCR 9.115(G), Tri-County Hearing Panel #66 of the Attorney Discipline Board issued an order on June 22, 2022, suspending respondent's license to practice law in Michigan for a period of two years, effective July 14, 2022. Respondent filed a petition for review, arguing that the hearing panel abused its discretion in failing to grant his motion to set aside the default. Respondent requests that the Board set aside the default and remand to the hearing panel for a hearing on the merits.

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 October 19, 2022. For the reasons discussed below, we affirm the decision of the hearing panel in its entirety.

The formal complaint filed by the Grievance Administrator alleged that respondent committed professional misconduct during his representation of two separate clients, practiced law while his license was suspended, and failed to answer four requests for investigation. The formal complaint charged violations of MRPC 1.1(c), 1.3, 1.4(a) and (b), 1.16(d), 3.3(a)(1), 4.1, 5.5(a), 8.1(a)(2), 8.4(a), (b) and (c), as well as violations of MCR 9.104(1)-(4) and (7), 9.113(B)(2), 9.119(A)-(C) and (E)(1)-(4).

The complaint was served by regular and certified mail on respondent at his Rule 2 address, as well as other addresses the Administrator had discovered. Because respondent failed to answer the complaint within 21 days, the Grievance Administrator filed and served a default on respondent. The default was also served by regular and certified mail to the same addresses as the formal complaint.

The matter was assigned to Tri-County Hearing Panel #66 and scheduled for hearing on February 28, 2022. In a letter dated February 7, 2022, respondent informed counsel for the Grievance Administrator that he had received the default, but that he had never received the formal complaint. In that letter, respondent provided a new address to send a copy of the complaint. Counsel for the Grievance Administrator responded in a letter dated February 11, 2022, explaining that respondent had been properly served at his Rule 2 address, and thus the default was properly entered. Counsel also sent a copy of the formal complaint and notice of hearing to respondent at his updated address.

Respondent failed to appear for the February 28, 2022 hearing. The panel found that respondent had been properly served with the formal complaint, and because respondent failed to answer within 21 days, entry of his default was proper. The panel also found that the facts established the misconduct as pleaded because the respondent was in default, and the matter immediately proceeded to a sanction hearing in accordance with MCR 9.115(J)(2).

Counsel for the Administrator argued that respondent be disbarred because he violated duties owed to his clients under ABA Standards 4.4 and 4.6, specifically ABA Standards 4.41 and 4.61, both calling for disbarment; violated his duty to the legal system under ABA Standard 6.1, specifically ABA Standard 6.11, calling for disbarment; and violated his duties to the profession under ABA Standard 7.0, specifically 7.1, calling for disbarment, or 7.2, calling for suspension. Counsel also argued that the following aggravating factors under ABA Standard 9.22 applied: 9.22(a) prior disciplinary offenses; 9.22(c) pattern of misconduct; 9.22(d) multiple offenses; 9.22(e) bad faith obstruction of the disciplinary process; 9.22(h) vulnerability of victim; and 9.22(I) substantial experience in the law. He also indicated that there were no applicable mitigating factors.

After the hearing concluded, the record was closed, and while the hearing panel was preparing the report, respondent filed multiple motions to set aside the default. Respondent claimed that he was not aware of the formal complaint until he received the default letter from the Commission on February 7, 2022, and that he did not receive the copy of the formal complaint until February 19, 2022, and thus did not have adequate time to prepare for the hearing on February 28, 2022. Respondent also asserted that he has a meritorious defense to the allegations in the formal complaint. The hearing panel denied the motions in an order dated May 17, 2022.

The hearing panel subsequently issued a very comprehensive report, indicating that it unanimously found that, based on respondent's default, respondent committed the professional misconduct as alleged in Counts I through IV of the formal complaint, in its entirety. The panel's report further concluded that respondent's license to practice law in Michigan should be suspended for a period of two years. An order of suspension was issued the same date.

On review, respondent asks this Board to set aside the default. To be entitled to set aside a properly-entered default, a respondent must (1) demonstrate that there was good cause for his failure to answer the formal complaint in a timely manner and (2) show a meritorious defense. MCR 2.603(D)(1). Michigan's policy is against setting aside defaults that have been properly entered. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 229; 600 NW2d 638 (1999). Respondent bears the burden of proving that the default should be set aside. *Grievance Administrator v Carol A. Dean*, 142/84 (ADB 1986), p 3. "Good cause" sufficient to set aside an entry of default is (1) a substantial defect or irregularity in proceedings upon which the default was based or (2) a reasonable excuse for failure to comply with the requirements which created the default. See MCR 2.603(D)(1); *Alken-Ziegler*, 461 Mich at 224.

A hearing panel's decision to grant or deny a motion to set aside a default is reviewed by the Board under an abuse of discretion standard. *Id.* at 227; *Grievance Administrator v Gerald C. Simon, et al*, 02-83-GA, 03-40-GA, 03-38-GA (ADB 2003); *Grievance Administrator v R. Reid Krinock*, 12-26-GA (ADB 2013). "[A]n abuse of discretion occurs only when the . . . decision is outside the range of reasonable and principled outcomes." *Saffian v Simmons*, 477 Mich 8, 12; 727 NW2d 132 (2007).

Respondent has neither shown "good cause" for his failure to answer the formal complaint nor a meritorious defense to warrant setting aside his default. There is no dispute that respondent was properly served at his Rule 2 address as required by MCR 9.115. Under this rule, "service is effective at the time of mailing, and nondelivery does not affect the validity of the service." MCR 9.115(C). Respondent admits that it was his responsibility to update his address with the State Bar, and that he failed to do so. Respondent claims he did not receive the formal complaint, even though he admits he received the default, which was sent to the same addresses as the formal complaint. Furthermore, despite having received the default (and subsequently a copy of the formal complaint and notice of hearing at his updated address), respondent did not make any attempt to request an adjournment, did not appear at the hearing, did not file a motion to set aside the default until after the hearings were completed and the record was closed, and did not file an answer until five months after the hearings and after the hearing panel's report and order of suspension were issued. Although respondent states that he suffered a stroke in 2021, he does not make any assertion that any disability or impairment contributed to his inability to update his Rule 2 address or answer the complaint.

Respondent has also failed to demonstrate a meritorious defense. Respondent has stated that the allegations in the formal complaint are "specious and untrue." Blanket denials are not sufficient to satisfy MCR 2.603(D)'s requirement for a statement of a meritorious defense. *Novi Construction v Triangle Excavating Co*, 102 Mich App 586, 590; 302 NW2d 244 (1980). In addition, respondent failed to assert any defense, not even a blanket denial, to Counts III and IV.

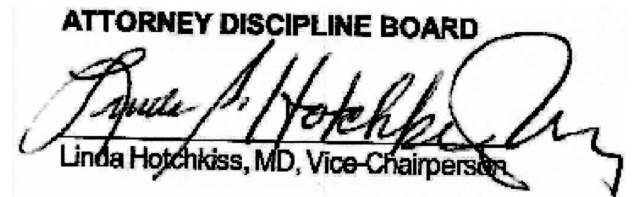
Furthermore, the level of discipline imposed by the hearing panel is appropriate under the circumstances, based on the misconduct established by default. For matters involving neglect and/or abandonment, a lengthy suspension or even disbarment are in line with Board and hearing panel precedent. See *Grievance Administrator v Katherine M. Williams*, 03-144-GA (HP Report 2/20/04) (respondent was disbarred for multiple abandonments of cases, misrepresentations to clients, and failing to answer requests for investigation); *Grievance Administrator v A. Craig Klomparens*, 03-76-GA (HP Report 8/25/03) (respondent was defaulted and suspended for three years for abandonment of a client, failing to return unearned fees, and failing to answer two requests for investigation). Suspensions are also warranted for not answering a request for investigation and for failing to appear at hearings. See *Grievance Administrator v Deborah A. Carson*, 00-175-GA; 00-199-FA (ADB 2001), p 1 ("A suspension of 180 days, coupled with reinstatement proceedings under MCR 9.123(B) and MCR 9.124, is the minimum level of discipline which should be imposed by a hearing panel when the respondent attorney has failed to answer, appear or otherwise communicate with the hearing panel in response to a formal complaint which has been properly served in accordance with MCR 9.115(C).").

For these reasons, and after careful consideration of the whole record, the Board is not persuaded that the hearing panel abused its discretion in declining to set aside the default, or that the hearing panel's decision to order a two-year suspension was inappropriate.

NOW THEREFORE,

IT IS ORDERED that the hearing panel's May 17, 2022 order denying respondent's motion to set aside the default and order of suspension issued June 22, 2022, are **AFFIRMED**.

IT IS FURTHER ORDERED that respondent shall, on or before December 21, 2022, pay costs in the amount of **$2,137.47**, consisting of costs assessed by the hearing panel in the amount of $1,920.97 and court reporting costs incurred by the Attorney Discipline Board in the amount of $216.50 for the review proceedings conducted on October 19, 2022. Please refer to the attached cost payment instruction sheet for method and forms of payment accepted.



Dated: November 22, 2022

Board members Linda S. Hotchkiss, MD, Alan Gershel, Rev. Dr. Louis J. Prues, Peter A. Smit, Jason M. Turkish, Andreas Sidiropoulos, MD, Katie Stanley, and Tish Vincent concur in this decision.

Board member Linda M. Orlans was absent and did not participate.