STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,

Petitioner/Appellee,

v

Stephanie A. Carson, P 57096,

Respondent/Appellant,

Case No. 22-24-GA

Decided: May 8, 2024

Appearances

Sarah C. Lindsey, for the Grievance Administrator, Petitioner/Appellee
Marvin D. Wilder, for Respondent/Appellant

BOARD OPINION

Tri-County Hearing Panel #2 issued an order of suspension on September 19, 2023, suspending respondent's license to practice law in Michigan for 180 days with a condition, effective October 11, 2023. Respondent filed a petition for review seeking a decrease in the length of the suspension imposed by the panel. Respondent also filed a petition for a stay of the hearing panel's order of suspension with condition, pursuant to MCR 9.115(K). The Grievance Administrator objected to respondent's petition for stay, but did not object to a "delay of 30 days in the effective date of the order of discipline." On October 11, 2023, an order granting an interim stay of the order of discipline was entered to provide

the Board time to consider respondent's petition for stay. On October 31, 2023, an order granting respondent's petition for stay was entered by the Board staying the hearing panel's order of suspension with condition pending completion of review proceedings. On December 13, 2023, the Attorney Discipline Board conducted review proceedings in accordance with MCR 9.118, which included a review of the evidentiary record before the panel and consideration of the briefs and arguments presented by the parties. For the reasons discussed below, we modify the suspension imposed by the hearing panel and decrease it from a 180 day suspension to a 60 day suspension and affirm the condition imposed by the panel that respondent attend the State Bar of Michigan's seminar titled "Tips and Tools for a Successful Practice."

I. Panel Proceedings/Background

On May 2, 2022, the Grievance Administrator filed a two-count formal complaint against respondent which alleged, in Count One, that respondent communicated with a former client about the subject of a representation when she knew that the former client was represented by an attorney. Count Two alleged that respondent engaged in the practice of law while her license was suspended.[1]

The allegations of misconduct set forth in Count One the formal complaint arose from respondent's representation of Paris Javon Smith in a criminal case titled *People v Smith*, Wayne County Circuit Court No. 15-0084696-01-FC. Mr. Smith was convicted by jury of first-degree murder; assault with intent to commit murder;

[1] The panel concluded that the Grievance Administrator failed to sustain his burden of proof regarding the allegations of misconduct in Count Two of the formal complaint and dismissed that count in its entirety. The panel's finding in that regard has not been appealed by the Grievance Administrator.

felon-in-possession of a firearm; and felony-firearm. Mr. Smith was sentenced to life in prison without parole for the first-degree murder conviction, 15 to 30 years for the assault conviction, 5 to 15 years for the felon-in-possession conviction, and a consecutive 5 year prison term for the felony-firearm conviction.

On October 28, 2018, Mr. Smith, through different counsel, filed a malpractice action against respondent with regard to her representation of him in the criminal matter - *Smith v Carson*, Wayne County Circuit Court Case No. 18-014033-NM. Respondent represented herself in that matter.

Mr. Smith subsequently appealed his convictions, again through different counsel, Katherine Marcuz,[2] raising a number of claims of error. On May 16, 2019, the Michigan Court of Appeals issued an unpublished opinion in which they remanded the matter to the trial court for an evidentiary hearing, pursuant to *People v Ginther*, 390 Mich 436 (1973), limited to the sole issue of whether Mr. Smith was deprived the effective assistance of counsel based on respondent's failure to investigate and present expert testimony at his trial. All of Mr. Smith's other claims of error were rejected. (Petitioner's Exhibit 1.)

The evidentiary hearing was scheduled for July 19, 2019 and respondent was subpoenaed to testify at the hearing. Respondent spoke to Attorney Marcuz the day before the hearing and told her that if she testified about why she did not consult a crime scene reconstruction expert, she would have to be honest and that would not be good for Mr. Smith. (FC ¶ 18.) When Attorney Marcuz called

[2] Attorney Marcuz, from the State Appellate Defender Office (SADO), was appointed as Mr. Smith's substitute appellate counsel on June 8, 2018. At that time, a brief on appeal had already been filed on Mr. Smith's behalf as well as a motion to remand which had been denied. Attorney Marcuz submitted a renewed motion to remand on November 12, 2018. That motion was denied without prejudice to a case call panel determining that remand was necessary. A second renewed motion to remand was subsequently filed by Attorney Marcuz. (Respondent's Exhibit I.)

respondent to confirm that they would be calling her to testify to explain why she had not consulted with a crime scene reconstruction expert, respondent gave more details about the testimony she would give if called to testify.[3] Attorney Marcuz then met with Mr. Smith, advised him of her conversations with respondent, and he agreed to drop the ineffective assistance of counsel premised on the failure to consult with a crime scene reconstruction expert, due to the potentially adverse nature of respondent's testimony, and proceed only with the claim regarding failure to enhance the surveillance video. (FC ¶¶ 20-23.)

On the morning of the July 19, 2019 evidentiary hearing, and without Mr. Smith or his attorneys' permission, respondent visited Mr. Smith while he was being held in the holding cell/bullpen of the courtroom of Hon. Shannon Walker, who was to preside over the evidentiary hearing later that day. Respondent entered the lockup area and spoke with Mr. Smith about the upcoming evidentiary hearing and the civil lawsuit. Respondent specifically told Mr. Smith "You are coming after my livelihood." (FC ¶¶ 24-26.) When Attorney Marcuz telephoned respondent later that morning to advise that she would only question respondent about her investigation concerning the surveillance video, respondent did not tell Attorney Marcuz that she had spoken to Mr. Smith in the lockup earlier that morning.

Shortly after speaking with respondent on July 19, 2019, Attorney Marcuz met with Mr. Smith and he told her that respondent had met with him earlier that morning and that respondent had agreed to testify truthfully if Mr. Smith dropped the malpractice lawsuit. By that time, and based on her conversations with respondent and Mr. Smith on July 18, 2019, Attorney Marcuz had already told the

[3] Attorney Marcuz's affidavit, which is attached as exhibit 1 to Respondent's Exhibit I, states that respondent told her that Mr. Smith told her that he met up with the victims not intending to do them any harm, but that he saw a fake gun in the car, got scared, and shot both victims.

crime scene reconstruction expert that his testimony would not be needed, and she had notified the prosecutor that Mr. Smith would be waiving the first of the two ineffective assistance of counsel claims. The evidentiary hearing proceeded on the afternoon of July 19, 2019, only with the ineffective assistance of counsel claim premised on the failure to enhance the surveillance video. (FC ¶¶ 30-32.) Count One of the formal complaint charged respondent with violating MRPC 4.2(a), 8.4(a) and (c); and MCR 9.104(1)-(3). (FC ¶ 33(a)-(e).)

On May 31, 2023, respondent filed an answer to the formal complaint in which she admitted, in relevant part, that Mr. Smith had sued her for malpractice and that she represented herself in that matter; that she was subpoenaed to testify at the July 19, 2019 evidentiary hearing; that she told Attorney Marcuz that if she were to testify about why she did not consult a crime scene reconstruction expert, she would have to be honest, gave more detail about her testimony and said it would not be good for Mr. Smith; that she visited Mr. Smith while he was being held in the courtroom lockup on the morning of July 19, 2019; that with regard to the malpractice action, she told Mr. Smith "you are coming after my livelihood;" that she did not have permission from Attorney Marcuz or Mr. Smith's civil counsel to speak with Mr. Smith; and that when she later spoke with Attorney Marcuz on July 19, 2019, she did not tell Attorney Marcuz that she had spoken to Mr. Smith earlier that morning in the courtroom lockup. (Answer ¶¶ 10, 11, 17, 18, 21, 24, 25, 28, and 29.)

A misconduct hearing was held on September 29, 2022. At the hearing, respondent testified that she had not sought the permission of Mr. Smith's attorneys before speaking with Mr. Smith because she had gone to the lockup to speak with him as a witness, not as an attorney. (Tr 9/29/22, pp 50-51.) Respondent stated that she wanted Mr. Smith to know that if she was called to testify at the evidentiary hearing she would be required to tell the truth, which could include testifying

that Mr. Smith had previously confessed privately to her that he had indeed committed the murder of which he was convicted of in the criminal case. (Tr 9/29/22, pp 61-83, 66, 80.)

Mr. Smith also testified at the hearing and denied telling respondent that he had committed the murder. (Tr 9/29/22, pp 17-18.) He testified that respondent had "come by" the lockup on July 19, 2019 and began talking to him about his pending malpractice suit against her. According to Mr. Smith, respondent said that he was "coming after her livelihood," was going to get her disbarred, and that he should have come to her before he filed the civil suit against her. (Tr 9/29/22, pp 18-19.) Mr. Smith further testified that respondent told him that if he dropped the lawsuit, she would testify truthfully at the evidentiary hearing. (Tr 9/29/22, p 19.) Respondent testified that when she told Mr. Smith that he was "coming after her livelihood" she did not mean that statement as a threat but rather as a way to let him know that she was not his enemy and was not trying to hurt him. (Tr 9/29/22, pp 49-51.) She felt "uplifted" after their conversation and testified that Mr. Smith had spontaneously offered to dismiss the lawsuit. (Tr 9/29/22, p 80.)

However, Mr. Smith testified that after respondent left the lockup, he discussed what had just occurred with Attorney Marcuz and decided to go forward with the evidentiary hearing that day, although the claim of error would now be limited to respondent's failure to present testimony from an expert in video forensic analysis at his criminal trial. (Tr 9/29/22, pp 18-20.) After the completion of the hearing, the trial court found that Mr. Smith had failed to meet his burden of proof for the ineffective assistance of counsel claim. On appeal, the Court of Appeals affirmed this finding, as well as Mr. Smith's convictions and sentences. (Tr 9/29/22, pp 20-21; Respondent's Exhibit K.)

The hearing panel's misconduct report was issued on February 22, 2023.

Again, the panel found misconduct as charged in Count One and dismissed Count Two of the formal complaint. The panel specifically found that while "respondent maintained throughout the misconduct hearing that when she spoke with Mr. Smith she was not acting as an attorney, the facts adduced at the hearing mandate a different conclusion." (Misconduct Report, 2/22/23, p 5.) The panel further found that:

> In initiating a conversation with Mr. Smith, Respondent acted to protect her own professional interests as a lawyer; a lawyer who expressed concern to her former client that he was coming after her and trying to get her disbarred. MRPC 4.2 does not require this panel to determine whether Respondent's statements to Mr. Smith on July 19, 2019 were intended as a threat to harm him legally or an assurance that she was not his enemy. The panel notes, however, that the testimony at the misconduct hearing demonstrates why MRPC 4.2 exists and why it must be applied rigorously. [Misconduct Report 2/22/23, p 6.]

The parties next appeared before the hearing panel for a sanction hearing on June 13, 2023. Respondent again testified that her purpose in going to see Mr. Smith in the lockup was "simply to let him know that I had no intention on trying to hurt him with my testimony. . ." (Tr 6/13/23, pp. 8-9.) Respondent also denied that she ever asked Mr. Smith to dismiss the malpractice suit he had filed against her. (Tr 6/13/23, p 9.) Respondent further explained:

> A. . . . in hindsight, I realize I acted out of fear instead of logic. I shouldn't have went back there. I mean I didn't mean to in any way harm him. But – I mean, I don't think I harmed him. But that was never my intention in any way.
>
> What I didn't want to do as an attorney is admit on the

> record that my client admitted to a murder. I mean, that's just not something I wanted to make part of a record. [Tr 6/13/23, p 11.]

The Grievance Administrator's counsel argued that ABA Standard 6.3 (Improper Communications with Individuals in the Legal System) was the most applicable standard to apply to respondent's conduct, and that respondent's conduct in meeting with and speaking to Mr. Smith without his attorneys' knowledge or prior permission was knowing, thus Standard 6.32,[4] calling for suspension, applied. (Tr 6/13/23, pp 14-16, 23-24.) As for aggravating factors, as set forth in Standard 9.22, counsel argued that 9.22(a) prior disciplinary offenses; 9.22(b) dishonest or selfish motive; 9.22(h) vulnerability of victim; and, 9.22(I) substantial experience in the practice of law all applied. (Tr 6/13/23, p 17-18.) The Administrator's counsel made no mention of any applicable mitigating factors under Standard 9.32. Finally, counsel simply argued that "the appropriate discipline is a suspension under 6.32." (Tr 6/13/23, p 18.)

Respondent's counsel reiterated that respondent has always admitted that she violated MRPC 4.2(a) by meeting and speaking with Mr. Smith without his attorneys' knowledge or consent, however, he insisted that respondent was not concerned about the malpractice action, which he argued had been stayed at that point, was frivolous, and was later dismissed. (Tr 6/13/23 pp. 19-21; Respondent's Exhibit H.) Counsel did not reference the ABA Standards or any aggravating or mitigating factors, but argued that respondent's conduct warranted an

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[4] ABA Standard 6.32 states:

> Suspension is generally appropriate when a lawyer engages in communication with an individual in the legal system when the lawyer knows that such communication is improper and causes injury or potential injury to a party or causes interference or potential interference with the outcome of the legal proceeding.

admonishment.[5] (Tr 6/13/23, p 22.)

[5] As noted by the Administrator's counsel at the hearing, the panel could not admonish respondent as admonishments can only be issued by the Attorney Grievance Commission under MCR 9.114(B). (Tr 6/13/23, p 23.) Once this was pointed out however, respondent's counsel offered no other alternative sanction.

On September 19, 2023, the hearing panel's sanction report was issued. The report indicated that the panel found ABA Standards 6.32 and 7.2,[6] both calling for suspension, applicable. As for aggravating factors, the panel agreed with the Administrator that respondent's prior disciplinary record (9.22(a)), respondent's alleged selfish motive (9.22(b)), the vulnerability of the victim (9.22(h)), and respondent's substantial experience in the practice of law (9.22(I)), all applied. As for mitigating factors, the panel noted that respondent testified that her motive was other than dishonest or selfish (9.32(b)). (Sanction Report 9/19/23, pp. 3-5.) The panel concluded that:

> We believe Respondent knew her communication was improper and it caused injury or potential injury to a party and interfered with the outcome of a legal proceeding. We also believe Respondent knew her communication was a violation of a duty owed as a professional and caused injury or potential injury to a client, the public, and the legal system.
>
> Accordingly, it is the conclusion of this panel that Respondent be suspended from the practice of law in Michigan for 180 days, with the condition that she attend the "Tips and Tools for a Successful Practice" Seminar offered by the State Bar of Michigan, and submit proof of such attendance prior to filing a petition for reinstatement. [Sanction Report 9/19/23, p 5.]

An order to that effect was also entered on September 19, 2023, suspending

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[6] Standard 7.2 states:

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

respondent's license to practice law in Michigan for 180 days, effective October 11, 2023.

II. Discussion

Respondent argues on review that the 180-day suspension imposed by the panel is excessive given the facts and circumstances of this matter. Although respondent states that the Board is authorized to review the hearing panel's decision *de novo*, that is not the correct standard of review to apply here.[7] Rather, in exercising its overview function to determine the appropriate sanction, the Board possesses "a greater degree of discretion with regard to the ultimate result." *Grievance Administrator v Alexander H. Benson*, 08-52-GA (ADB 2010), *citing Grievance Administrator v Eric S. Handy*, 95-51-GA; 95-89-GA (ADB 1996). See also *Grievance Administrator v Irving A. August*, 438 Mich 296; 475 NW2d 256 (1991). This greater discretion to review and, if necessary, modify a hearing panel's decision as to the level of discipline, is based upon a recognition of the Board's overview function and its responsibility to ensure a level of uniformity and continuity. *Grievance Administrator v Brent S. Hunt*, 12-10-GA (ADB 2012), citing *Matter of Daggs*, 411 Mich 304; 307 NW2d 66 (1981). The Board also does not traditionally disturb a panel's assessment of the proper level of discipline to impose unless it is clearly contrary to fairly uniform precedent for very similar

[7] "It is not the Board's function to substitute its own judgment for that of the panels' or to offer a *de novo* analysis of the evidence." *Grievance Administrator v Carrie L. P. Gray*, 93-250-GA (ADB 1996), lv den 453 Mich 1216 (1996). The Board does not conduct a de novo review of the factual findings; nor does the Board substitute its own judgment for the judgment and credibility determinations of the panel. *Grievance Administrator v Chad M. Lucia*, 13-56-GA (ADB 2014). However, the Board reviews questions of law *de novo*. *Grievance Administrator v Eugene A. Goreta*, 14-13-GA (ADB 2015), citing *Grievance Administrator v Jay A. Bielfield*, 87-88-GA (ADB 1996); and, *Grievance Administrator v Geoffrey N. Fieger*, 94-186-GA (ADB 2002).

conduct or is clearly outside of the well established range of sanctions imposed for the type of violation at issue. *Grievance Administrator v Jeffrey R. Sharp*, 19-80-GA (ADB 2020).

Respondent argues that the "analysis of Standard 6.32" required the Grievance Administrator to demonstrate that she communicated with Mr. Smith with the intent to persuade him to "modify the proceedings," suggesting that the panel had to find that she intended to cause harm or to interfere with the outcome of the proceeding in order to impose a lengthy suspension. The Administrator correctly notes that any analysis of respondent's mental state, as referenced in Standard 6.32, is whether respondent knew her communication was improper, not whether she intended to cause harm or to interfere with the proceeding. It is a "knowing" mental state that triggers the suspension level sanction referenced in Standard 6.32,[8] not the harm or interference or potential harm or interference. Respondent knew that meeting with, and speaking to, Mr. Smith without his attorneys' prior consent, was improper and she acknowledged that at the sanction hearing. (Tr 6/13/23, p 11.) Furthermore, respondent does not dispute on review that a suspension is warranted for her conduct.

[8] For comparison, Standard 6.13 provides that a reprimand is generally appropriate when a lawyer is *negligent* in determining whether it is proper to engage in communication with an individual in the legal system. (Emphasis added.)

At the sanction hearing, the Administrator's counsel argued that "the appropriate discipline is a suspension under 6.32." (Tr 6/13/23, p 18.) She did not request a specific time period for the suspension. Although the panel's sanction report does not provide a specific explanation as to why the panel believed that a 180-day suspension was appropriate, we presume it had to do, at least in part, with their observation that the lockups behind the courtrooms of the Frank Murphy Hall of Justice are only accessible to lawyers who need to confer with custodial clients, not witnesses or other visitors to the courthouse.[9] (Misconduct Report, 2/22/23, p 6.)

Respondent argues that a 180-day suspension is excessive for a couple of reasons. First, respondent argues that the panel did not take into consideration certain mitigating factors which, had they done so, should have warranted a shorter suspension. Specifically, respondent points out that she has been cooperative throughout the process, she admitted that she met with, and spoke to, Mr. Smith without his attorneys' knowledge or consent from the very beginning when she answered Mr. Smith's RI, and continued to do so when she answered the formal complaint, and testified at the hearing. Respondent further argues that Mr. Smith suffered no harm as a result of their conversation as the decision not to call the crime scene reconstruction expert was made the day before respondent spoke with him in the lockup, the evidentiary hearing still took place and he was able to present his argument as to ineffective assistance of counsel based on respondent's failure to have the surveillance video enhanced. Finally, she argues that there has been an "extensive passing of time"[10] since the incident occurred

[9] Respondent was not questioned about how she was able to access the lock up, whether she was asked to identify herself as an attorney, or whether she was asked or told anyone that she wanted access to the lockup so she could meet with a client.

[10] The meeting between respondent and Mr. Smith occurred on July 19, 2019, Mr. Smith filed

thus the discipline imposed is far removed from when the conduct occurred.

The panel only referenced that respondent testified that her motive was other than dishonest or selfish, a mitigating factor referenced in Standard 9.32(b). (Sanction Report 9/19/23, p 4.) They likely should have considered Standard 9.32(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings, and Standard 9.32(j) delay in disciplinary proceedings, but respondent's extensive prior disciplinary history (Standard 9.22(a)), and her substantial experience in the practice of law (Standard 9.22(i)), presumably outweighed any mitigation in the panel's eyes.

The Administrator argues that as long as the discipline imposed is consistent with the level of discipline generally contemplated by the ABA Standards and is not at odds with prior precedent, the Board should defer to the panel's determination as to the appropriate sanction to impose. However, the Administrator admits that "there is little precedent for the misconduct here," and that many of the prior cases involving violations of MRPC 4.2(a) in which a lengthy suspension was imposed, also include additional misconduct. This appears to be correct.

In *Grievance Administrator v Nathan S. French*, 11-38-GA, Respondent French was suspended for 180-days, in part because he violated MRPC 4.2(a), but also because he violated a number of other rules of professional conduct, most notably MRPC 1.15(b)(1) and (3). Additionally, in *Grievance Administrator v Gregory A. Mikat*, 09-56-GA (ADB 2010), the 179-day suspension imposed by the hearing panel was increased by the Board on review to a 3 year suspension for a violation of MRPC 4.2(a), as well as MRPC 1.7(b); 1.16(d); and, 8.4(c).

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a request for investigation against respondent on October 18, 2019 (Respondent's Exhibit L), and the formal complaint was filed on May 2, 2022.

Prior cases that only involve a violation of MRPC 4.2(a), have consistently resulted in consent reprimands - *Grievance Administrator v Jonathan Wells Tappan*, 13-45-GA; *Grievance Administrator v Marc E. Curtis*, 15-91-GA; *Grievance Administrator v Lyle Dickson*, 12-9-GA; and, *Grievance Administrator v Michael J. Pelot*, 17-31-GA - and one panel order of reprimand with conditions affirmed by the Board on review - *Grievance Administrator v George Ashford*, 92-175-GA (ADB 1995). Thus, it could be argued that the historic range of discipline imposed for misconduct of a similar nature here would be a reprimand.

Respondent does have an extensive prior disciplinary history, which leads to her second reason why she believes the panel's 180-day suspension is excessive - the panel did not apply the appropriate progressive discipline. Respondent notes that her lengthiest prior discipline was a 90-day suspension (by consent) imposed in April 2020, in *Grievance Administrator v Stephanie A. Carson*, 19-91-GA. Respondent's other priors in chronological order include an admonishment in January 2000; a reprimand (by consent) in February 2004; a 30-day suspension (by consent) in March 2007; an admonishment in September 2011; and a 45-day suspension (by consent) in August 2015.[11] Respondent argues that discipline is "generally progressive" and therefore, the panel should have considered imposing either another 90-day suspension or a 120-day suspension.

We have previously endorsed the concept of progressive discipline under the appropriate circumstances. *Grievance Administrator v Carolyn J. Jackson*, 18-58-GA (ADB 2019) citing *Matter of Leonard R. Eston*, DP 24/87 (ADB 1988). Furthermore, we have found that "repeated misconduct may evidence the need for

[11] AGC File No. 0380/99; *Grievance Administrator v Stephanie A. Carson,* 03-152-GA; *Grievance Administrator v Stephanie A. Carson,* 06-19-GA; AGC File No. 1433-10; *Grievance Administrator v Stephanie A. Carson,* 14-93-GA. (Petitioner's Exhibits 7-13.) None of these prior matters involved a violation of MRPC 4.2.

more severe discipline." *Matter of O. Lee Molette*, 35391-A (ADB 1981). Likewise, misconduct may be aggravated by a respondent's recidivism and conscious disregard for the discipline system. *Matter of Ross John Fazio*, DP 36/82 (ADB 1983).

The Administrator argues that respondent has been "repeatedly warned" as demonstrated by her prior disciplinary history, that her conduct does not conform with the Rules of Professional Conduct and that despite these warnings, she continues to commit misconduct. Because respondent has not been suspended for 180-days before, the Administrator further argues that the 180-day suspension imposed here was appropriate. We do not believe it is that simple.

There is no fixed formula that must be applied to impose progressive discipline and any progression or enhancement from the historic range of discipline for a certain offense should not be arbitrary. However, enhancement can be acceptable if the facts warrant it. Here, respondent's prior disciplinary history is a significant aggravating factor that arguably could place a 180-day suspension within the realm of reasonableness despite the historic range of discipline for a violation of MRPC 4.2, as referenced earlier. That being said, however, we cannot help but take into consideration the length of time that has passed since the underlying event occurred in this matter, including the fact that a suspension of respondent's license for any length of time will take place nearly five years after the conduct occurred. More important is the unexplained delay that occurred between the filing of Mr. Smith's request for investigation in October 2019 and the filing of the formal complaint in May 2022, especially in light of respondent's admissions throughout. We find this to be a factor significant enough to justify a reduction in the suspension imposed by the hearing panel.

III. Conclusion

For the reasons discussed above, we conclude that a 60-day suspension of respondent's license is the appropriate sanction to impose in this matter. We will therefore enter an order modifying the hearing panel's order of suspension by decreasing the suspension from a 180-day suspension to a 60-day suspension, and affirming the condition imposed by the panel that respondent attend the State Bar of Michigan's seminar titled "Tips and Tools for a Successful Practice."

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

Board member Kamilia Landrum was absent and did not participate.

Board member Alan Gershel concurs with the decision to decrease the suspension, but dissents from the decision to impose a 60-day suspension, and states:

I concur with the majority's decision to decrease the suspension for violating Rule 4.2 and to affirm the condition imposed by the hearing panel, but I dissent as to the majority's decision to impose a 60-day suspension. I would impose a suspension of 120-days.

Rule 4.2 has several important functions including protecting the represented person against the potential disclosure of confidential information and interference with the attorney-client relationship. There is no doubt that respondent knowingly violated this rule when she met with her former client. She admitted doing so.

Respondent has an extensive discipline history including previous suspensions for 30 days, 45 days and 90 days. The imposition of a 60-day suspension for this violation is inadequate. The Board has recognized that the imposition of progressive discipline is warranted under certain circumstances. *Grievance*

Administrator v. Carolyn Jackson, 18-58-GA (ADB 2019) citing *Matter of Leonard R. Eston*, DP 2487 (ADB 1988). In *Matter of O. Lee Molette*, 35391-A (ADB 1981) the Board stated that "repeated misconduct may evidence the need for more severe discipline." Respondent's discipline history demonstrates a disregard for the discipline system. *Matter of Ross John Fazio*, DP 36/82 (ADB 1983).

Under these circumstances the imposition of a 60-day suspension is inconsistent with progressive discipline. Significantly, respondent said the hearing panel should have considered imposing either a suspension of 90 days or 120 days rather than 180 days. A suspension of 60 days insufficiently addresses the seriousness of the violation as well as respondent's substantial discipline history.

The majority opinion refers to the Grievance Administrator's delay in the filing of the formal complaint as a mitigating factor in support of its decision to impose a 60-day suspension. While I don't disagree that the delay in this case warrants a reduction in discipline for the reasons discussed by the majority, I would nonetheless impose a 120-day suspension after balancing the delay against the aggravating factors here. Also, with regard to the factor of delay, generally, it is important to note that there may be a myriad of circumstances where a delay in the filing of a formal complaint might be justified. For example, there may be investigative delays outside the control of the Grievance Administrator such as difficulties in obtaining records, locating and interviewing witnesses, complex investigations, etc. Delays may also occur through the actions of the respondent for valid reasons.