

STATE OF MICHIGAN

Attorney Discipline Board

FILED
ATTORNEY DISCIPLINE BOARD

2023-Sep-11

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner/Appellee,

v

Case No. 22-82-GA

REBECCA S. TIEPPO, P 62311,

Respondent/Appellant.

**ORDER GRANTING PETITION FOR INTERLOCUTORY REVIEW, VACATING HEARING
PANEL ORDERS STRIKING RESPONDENT'S ANSWER AND ENTERING DEFAULT,
AND DENYING RESPONDENT'S MOTIONS TO SET ASIDE DEFAULT AND FOR
RECONSIDERATION, ACCEPTING RESPONDENT'S AMENDED ANSWER,
AND REMANDING TO HEARING PANEL FOR HEARING**

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

On March 21, 2023, Tri-County Hearing Panel #8 entered an order striking respondent's answer to the formal complaint and entering her default. On April 21, 2023, the panel entered an order denying respondent's motion to set aside the default, for dismissal of the formal complaint, for reconsideration and reversal of the March 21, 2023 order, to reinstate her amended answer, to recuse and remove the Administrator's counsel, and to cancel a sanction hearing scheduled for May 2, 2023. On May 19, 2023, the panel issued an order memorializing decisions made on the record at the May 2, 2023 hearing. That order, in part, granted respondent's motion to adjourn the May 2, 2023 sanction hearing and rescheduled it to June 20, 2023.

In between the issuance of the April 21 and May 19, 2023 orders, respondent filed a petition for interlocutory review of the panel's April 21, 2023 order and requested a stay of the proceedings before the hearing panel. On June 14, 2023, the Board entered an order that granted respondent's motion to stay the proceedings before the hearing panel pending a decision regarding respondent's petition for interlocutory review. The order also adjourned the June 20, 2023 sanction hearing.

The Grievance Administrator filed a two-count formal complaint against respondent on November 10, 2022.¹ On January 4, 2023, respondent filed her answer to the formal complaint. Of the 64 paragraphs of the complaint, respondent admitted the allegations in five of the paragraphs, and either answered "Respondent denies the allegation in this paragraph" or "Respondent neither admits nor denies the allegation in this paragraph" for the remainder of the paragraphs. On January 5, 2023, the Grievance Administrator filed a motion to correct the pleadings, and asked the hearing panel to issue an order requiring respondent to file a more definite statement answering the formal complaint. Respondent requested an additional 14 days to revise and resubmit her answer. The hearing panel granted these requests, and an order was entered on January 23, 2023, granting the Grievance Administrator's motion for a more definite statement, and requiring respondent to file an amended answer on or before February 7, 2023.

On February 7, 2023, respondent inexplicably filed the same answer to the formal complaint that was filed on January 4, 2023. Therefore, on February 8, 2023, the Grievance Administrator filed a second motion to strike respondent's answer.

¹ The complaint was filed on November 10, 2022, and served on respondent on November 16, 2022. However, because of an error confirmed by the State Bar, respondent's current address of record, changed in May of 2022, was not reflected in the address certificate sent to the Attorney Grievance Commission. As a result, the Grievance Administrator re-served the formal complaint to the correct address on December 14, 2022.

A pre-hearing conference was held before the panel via Zoom video-conferencing on February 20, 2023. Respondent appeared and explained that she had prepared an amended answer, but inadvertently filed the wrong answer on February 7, 2023. The hearing panel determined on the record that it would allow respondent to file the correct amended answer by 4:00 p.m. that same day. Respondent filed a detailed amended answer at 4:56 p.m., with a note explaining that she had technical difficulties resulting in the late filing. The hearing panel indicated that the Grievance Administrator had until Friday, February 24, 2023 to file any objection to acceptance of the amended answer, and indicated that if no objection was filed, the answer would be accepted and the issue of the adequacy of previously submitted answers would be considered resolved.

The Grievance Administrator filed objections, asserting that he was objecting to acceptance of the amended answer because it was untimely and because the amended answer stated that respondent had dropped off files at the Attorney Grievance Commission, which did not occur until February 14, 2023; thus, "this showed Respondent drafted or edited her amended answer after the February 7, 2023 deadline, contrary to the hearing panel's instructions at the prehearing conference."

On March 21, 2023, the hearing panel entered an order striking respondent's answer, entering a default, and scheduling a sanction hearing for May 2, 2023. The hearing panel struck respondent's answers of January 4, 2023, February 7, 2023, and February 20, 2023, and entered a default "because of Respondent's failure to file a timely answer to the Formal Complaint and her failure to file an Answer that had been prepared by February 7, 2023, in conformity with the Panel's verbal orders from the February 20, 2023 prehearing conference"

On April 11, 2023, respondent filed a motion to set aside the default, a motion for reconsideration and reversal of the hearing panel's March 21, 2023 order, a motion to dismiss the formal complaint, a motion to reinstate her February 20, 2023 amended answer, a motion to immediately recuse and remove counsel for the Grievance Administrator, a motion to cancel the May 2, 2023 sanction hearing, and a motion to schedule a new hearing date. Respondent explained that she had technical difficulties while attempting to file the amended answer, which is why it was untimely. Respondent also explained that she changed the date of the amended answer "to better identify the actual date of submission and to prevent any confusion among the various filings she submitted" Respondent also admitted that she modified her answer to paragraph 47 of the formal complaint, to properly reflect the facts as of the date it was filed.

Counsel for the Grievance Administrator filed a response, and asked that all of respondent's motions be denied. As indicated earlier, the hearing panel entered an order on April 21, 2023, denying all of respondent's motions, and ordering the May 2, 2023 hearing to proceed as scheduled. Respondent did not appear for the hearing, but counsel for the Grievance Administrator advised the panel that she had sought his stipulation to an adjournment on April 27, and May 1, 2023, for approximately six weeks because she was talking to potential counsel for representation at the sanction hearing, and that she had several court obligations that conflicted with the May 2, 2023 hearing. The panel also discussed and denied respondent's request for an in-person hearing, and the Administrator's counsel's request that respondent be suspended on an interim basis, pursuant to MCR 9.115(H)(1), for her failure to appear for the May 2, 2023 hearing despite having actual notice of the proceeding. The panel took that request under advisement.

On May 14, 2023, respondent filed the petition for interlocutory review currently pending before this Board. On May 19, 2023, the panel issued an order memorializing decisions made on the record at the May 2, 2023 hearing, namely that the hearing was adjourned, the motion for an interim suspension was denied, the motion for an in-person hearing was denied, the sanction hearing was scheduled for June 20, 2023, and deadlines for prehearing statements were set. As referenced earlier, this Board adjourned the June 20, 2023 hearing and granted respondent's request for a stay of the proceedings before the panel pending a decision on respondent's petition for interlocutory review.

MCR 9.110(E)(5) grants the Board the power to review, on leave granted by the Board, a non-final order of a hearing panel. "This Board has consistently entertained petitions for interlocutory review, and has granted such review when it appears that a decision by the Board prior to entry of a final order by the panel would likely be useful and consistent with MCR 1.105 and MCR 9.102(A)." MCR 1.105 provides that the Michigan Court Rules "are to be construed, administered, and employed by the parties and the court to secure the just, speedy, and economical determination of every action" Likewise, MCR 9.102(A) provides that "[p]rocedures must be as expeditious as possible."

The amended answer respondent filed on February 20, 2023, albeit untimely filed by 56 minutes, is in substantial compliance with the court rules. Contrary to the Grievance Administrator's assertion, the hearing panel never told respondent she could not alter the amended answer that she had prepared for filing. Respondent readily admitted that she changed the date and the answer to paragraph 47 of the formal complaint, in order to make the amended answer more accurate as of the date it was filed, February 20, 2023. Furthermore, the amended answer provides enough information to give the Administrator sufficient notice of respondent's defense to allow him to adequately prepare his case, and there is no evidence respondent acted in bad faith. A fair and just examination on the merits is the goal of disciplinary proceedings. Given that respondent has had a nearly 20 year career with no prior discipline, and in light of the seriousness of the allegations made by the Grievance Administrator, the most prudent course of action is to decide this matter on the merits.

The Attorney Discipline Board has the authority under MCR 9.118(A)(1) to grant review of a non-final hearing panel order and to decide such interlocutory matters without a hearing. The Board has concluded that interlocutory review is appropriate in this case and the Board is otherwise fully advised;

NOW THEREFORE,

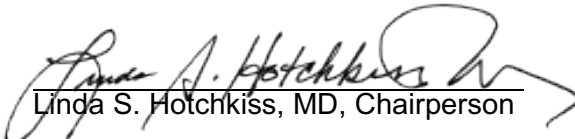
IT IS ORDERED that respondent's petition for interlocutory review of the hearing panel's orders of March 21 and April 21, 2023, is **GRANTED**.

IT IS FURTHER ORDERED that the hearing panel's decisions striking respondent's answer, entering her default, and denying her motions to set aside the default and for reconsideration, as reflected in the hearing panel's orders of March 21, and April 21, 2023, are **VACATED**.

IT IS FURTHER ORDERED that respondent's February 20, 2023 amended answer is **ACCEPTED** as timely filed.

IT IS FURTHER ORDERED that the stay granted by the Board on June 14, 2023, is **VACATED** and this matter is **REMANDED** to Tri-County Hearing Panel #8 for further proceedings, including an evidentiary hearing on the charges set forth in the formal complaint, which shall be scheduled forthwith.

ATTORNEY DISCIPLINE BOARD

By: 
Linda S. Hotchkiss, MD, Chairperson

DATED: September 11, 2023

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