

Attorney Discipline Board

2021-Jun-02

GRIEVANCE ADMINISTRATOR,  
Attorney Grievance Commission,

Petitioner/Appellant,

v

Case Nos. 18-133-RD; 18-134-GA

S. GARRETT BECK, P 27668,

Respondent/Appellee.

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**ORDER VACATING ORDER OF DISMISSAL, REVERSING ORDER GRANTING  
RESPONDENT'S MOTION FOR RELIEF, AND REMANDING TO  
HEARING PANEL FOR HEARING ON MISCONDUCT**

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

The Grievance Administrator petitioned for review of the Order Granting Respondent's Motion for Relief entered in this matter by Emmet County Hearing Panel #1 on August 31, 2020, and the Order of Dismissal entered on October 30, 2020. The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118, which included review of the whole record and consideration of the briefs and arguments presented by the parties at a review hearing conducted via Zoom on February 17, 2021.

In the Order Granting Respondent's Motion for Relief, the hearing panel *sua sponte* determined that, the issue of whether or not the Formal Complaint and First Amended Complaint were authorized by the Michigan Attorney Grievance Commission as required by MCR 9.109(B)(6), is fundamental to these proceedings. The hearing panel determined that an inference could be drawn from the Grievance Administrator's pleadings that the original complaint, and as it was amended, had not been authorized by the Commission. As such, the hearing panel ordered the Grievance Administrator to produce written evidence or other documentation within 14 days, showing that the Commission had authorized the filing and prosecution of the Formal Complaint and the First Amended Formal Complaint.

The hearing panel erroneously concluded that the Grievance Administrator was required to produce written evidence or other documentation showing that the Commission had received authorization to file the complaint. These documents are not within the scope of MCR 9.115(F)(4), which provides for the disclosure of documentary evidence "that is to be introduced at the hearing by the opposing party." There is no indication the Grievance Administrator intends on introducing the requested documents as evidence. Therefore, disclosure of these documents is not required under MCR 9.115(F)(4).

The Order of Dismissal issued by the hearing panel incorporated the panel's prior Order Denying Motion for Reconsideration, in which the panel determined that the Grievance Administrator had the burden of proving that it had the authority to prosecute the complaint against respondent. The hearing panel issued the Order of Dismissal after the Grievance Administrator failed to produce documentary evidence showing approval for filing the Formal Complaint.

Under MCR 9.109(B)(6) and 9.114, the Grievance Administrator is required to obtain authorization from the Commission prior to filing a formal complaint. Michigan Court Rule 9.109(B) provides that “[t]he administrator has the power and duty to . . . (6) prosecute complaints the commission authorizes.” MCR 9.114 provides that “[u]pon completion of the investigation, the grievance administrator shall refer the matter to the commission for its review. The commission may direct that a complaint be filed, that the file be closed, that the respondent be admonished[,] or placed on contractual probation with the respondent’s consent . . . .”

However, when a formal complaint is filed, there is a presumption that it has been authorized by the Commission. Specifically, the Commission is entitled to a “presumption of regularity” concerning its internal conduct. Michigan courts have held that “a presumption of regularity exists with respect to official acts of public officers and, absent any evidence to the contrary, the court presumes that their official duties have been discharged properly.” *People v Alexander*, 234 Mich App 665, 673 (1999) (quoting *People v White*, 208 Mich App 126, (1994)).

Here, when the Grievance Administrator signed the Formal Complaint, he was entitled to a presumption that the Commission had approved the filing. Respondent has not put forth any evidence to rebut this presumption, and the hearing panel erred in finding otherwise. Respondent asserts that he does have evidence, and relies on a May 24, 2016 letter that indicated “the Commission determined that the evidence reviewed does not warrant further action” and that the Commission “has directed that this Request for Investigation be closed.” (Respondent’s Attachment B.)

Respondent’s reliance on the May 24, 2016 letter is misplaced. On August 15, 2017, the complainant filed a complaint for superintending control with the Michigan Supreme Court. On September 21, 2017, the complainant and counsel for the Grievance Administrator entered into a stipulation to dismiss the complaint for superintending control, in which the Grievance Administrator agreed to reopen the file and resubmit the matter to the Attorney Grievance Commission after further review and analysis. (Petitioner’s Appendix A, p 50.) Respondent was served with the stipulation on the same day. (Petitioner’s Appendix A, p 51.) Therefore, contrary to his claim on review, respondent was aware that the investigation was being reopened. Given these circumstances, there is no difference between this case and any other case where an investigation results in the filing of a formal complaint.

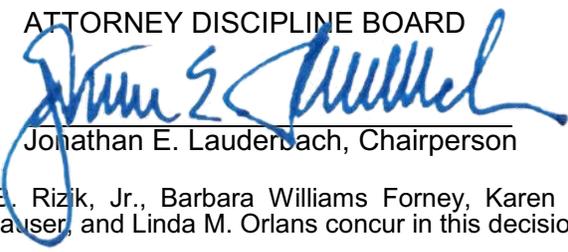
**NOW THEREFORE,**

**IT IS ORDERED** that the Order Granting Respondent’s Motion for Relief entered on August 31, 2020, is **VACATED**.

**IT IS FURTHER ORDERED** that the hearing panel’s Order of Dismissal entered on October 30, 2020, is **VACATED**.

**IT IS FURTHER ORDERED** that this matter is **REMANDED** to Emmet County Hearing Panel #1 for further proceedings, including an evidentiary hearing on the charges in the formal complaint and/or a separate hearing on discipline in accordance with MCR 9.115(J)(2). A hearing before the panel will be scheduled pursuant to MCR 9.115(G).

ATTORNEY DISCIPLINE BOARD

By:   
Jonathan E. Lauderbach, Chairperson

Dated: June 2, 2021

Board members Jonathan E. Lauderbach, Michael E. Rizik, Jr., Barbara Williams Forney, Karen D. O’Donoghue, Linda S. Hotchkiss, M.D., Michael S. Hohauser, and Linda M. Orlans concur in this decision.

Board member Peter A. Smit was absent and did not participate.

Board member Alan Gershel was recused and did not participate.