

STATE OF MICHIGAN

Attorney Discipline Board

FILED
ATTORNEY DISCIPLINE BOARD

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GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner,
v

Case No. 07-125-GA

DOYLE O'CONNOR, P 32141,

Respondent
_____ /

ORDER AFFIRMING HEARING PANEL ORDER DENYING SANCTIONS

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

Respondent has filed a petition seeking review of the hearing panel's order denying sanctions pursuant to MCR 2.114. Petitioner has also filed a petition for review requesting "a ruling from the Board that it does not have the authority to sanction counsel by the imposition of attorney fees pursuant to MCR 2.11[4](E) or MCR 2.625(A)(2)." The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118.

With respect to the respondent's petition for review of the panel's January 9, 2009 order denying his motion for sanctions, we cannot conclude that the decision of the panel is clearly erroneous. *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002).

The Administrator's petition for review seeks a general ruling as to the applicability of MCR 2.114 in discipline proceedings notwithstanding the fact that the Administrator prevailed below. No violation of that rule was found by the panel and no sanctions were imposed. An examination of the Board's records gives us no basis to disagree with the Administrator's assertion that sanctions have never been imposed in discipline proceedings in Michigan. In fact, we have found fewer than 10 requests for sanctions by a party, two of which were by the Attorney Grievance Commission.¹ Though the Administrator asserts that a ruling is needed, we are not persuaded that this is so, or that we should decide this question when it is not necessary to the disposition of a case. This Board is a judicially-created agency without the power to grant declaratory or injunctive relief.

¹ See *Grievance Administrator v Leonard R. Eston*, DP 7/84, April 7, 1987 Brief in support of Motion for Sanctions, p 1: "MCR 9.115(A) makes applicable to these proceedings 'the rules governing practice and procedure in a nonjury civil action.' Accordingly, Petitioner seeks sanctions, including costs and attorney fees, from Respondent and/or his counsel pursuant to MCR 2.114(E)." See also, *Grievance Administrator v James J. Rostash*, 02-108-GA, February 16, 1995 brief, at p 5: "MCR 9.115(A) is a court rule which states that, except as otherwise provided, the rules governing practice and procedure in a nonjury civil action apply to proceedings before a hearing panel. . . . MCR 2.114(E), MCR 2.114(F) and MCR 2.625(A)(2) and MCL 600.2591 are provisions of law that permit a hearing panel to impose sanctions for frivolous claims and defenses."

Grievance Administrator v James A. Tucker, 94-12-GA (ADB 1995), lv den 449 Mich 1206 (1995). Moreover, our affirmance of the panel's order denying sanctions renders the Administrator's petition for review moot. *Commercial Union Ins Co v Liberty Mut Ins Co*, 426 Mich 127, 139; 393 NW2d 161 (1986).

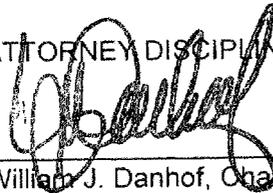
NOW THEREFORE,

IT IS ORDERED that the hearing panel's order denying sanctions is **AFFIRMED**.

IT IS FURTHER ORDERED that the Administrator's petition for review is **DENIED** for the reasons set forth above.

ATTORNEY DISCIPLINE BOARD

By:



William J. Danhof, Chairperson

Dated: November 13, 2009

Board members William J. Danhof, Thomas G. Kienbaum, Andrea L. Solak, Carl E. Ver Beek, Craig H. Lubben, Rosalind E. Griffin, M.D., and James M. Cameron, Jr., concur in this decision.

Board Member William L. Matthews, C.P.A., and Sylvia P. Whitmer, Ph. D, did not participate.