

Attorney Discipline Board

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ATTORNEY DISCIPLINE BOARD

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In The Matter of the Reinstatement
Petition of LAUREN M. UNDERWOOD, P45415,

Case No. 11-12-RP

Petitioner.

**ORDER ESTABLISHING EFFECTIVE DATE OF
HEARING PANEL ORDER DENYING PETITION FOR REINSTATEMENT**

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

Petitioner, Lauren M. Underwood filed a petition for review seeking modification of the effective date of the hearing panel order denying petition for reinstatement issued by Tri-County Hearing Panel #64 on May 18, 2011. Petitioner seeks a ruling that the panel's decision to deny reinstatement in this case was effective on April 20, 2011, the date of the hearing at which the panel's decision was announced from the bench. In response, the Grievance Administrator argues that the effective date of the panel's order should be considered to be June 8, 2011, 21 days after the issuance of the hearing panel's order.

This appears to be a case of first impression. Neither the hearing panel's order itself nor MCR 9.124(D), the rule governing the issuance of a hearing panel's order in a reinstatement proceeding, directly address the question of when that order is deemed to be "effective." Counsel for both parties are commended for the arguments presented in favor of their respective positions.

Upon review, and for the reasons stated below, we hold that, unless specifically stated otherwise in the panel's order, a hearing panel order granting or denying reinstatement is "effective" the date it is issued and mailed to the parties.

We acknowledge that the Attorney Discipline Board's cover letter which accompanied the mailing of the hearing panel's order on May 18, 2011, included this instruction:

1. **Effective Date of Panel Order.** The order of the hearing panel becomes effective 21 days after the date of mailing of this notice **unless** a petition for review is filed by a party pursuant to MCR 9.118(A). [Emphasis in original.]

This statement in the Board's form letter is not dispositive. It is not clear when this language was included nor does it appear to have been challenged in earlier cases. The instruction does not include a citation to an applicable provision in the Michigan Court Rules nor does it appear that such a policy has previously been considered or adopted by the Board.

With respect to petitioner's request that the effective date should relate back to the panel's ruling at the hearing on April 20, 2011, we are not persuaded that the Attorney Discipline Board or its hearing panel should deviate in this case from the long accepted principle that a tribunal speaks through its written orders and judgments, not through its oral pronouncements. See, for example, *In Re Contempt of Henry*, 282 MichApp 656, 678; 765 NW2d 44 (2009), citing *Hall v Fortino*, 158 MichApp 663, 667; 405 NW2d 106 (1986). In the instant case, the hearing panel was expeditious in the issuance of its written order and there can be no claim of undue delay in light of the issuance of the panel's report on May 18, 2011, 28 days after the hearing.

As the Grievance Administrator points out, the rule governing a hearing on a petition for reinstatement, MCR 9.124(D), instructs that "the proceeding on a petition for reinstatement must conform as nearly as practicable to a hearing on a complaint." It is also true that MCR 9.115(J)(3) directs that if a hearing panel finds that the charge of a misconduct in a formal complaint is established by a preponderance of the evidence, it must enter an order of discipline and, that subrule continues,

. . . the order shall take effect 21 days after it is served on the respondent unless the panel finds good cause for the order to take effect on a different date, in which event the panel's decision must explain the reason for ordering a different effective date.

However, this 21 day period is mandated **only** when a hearing panel issues an order imposing discipline. Language concerning an effective date 21 days after service of the order is conspicuously absent from MCR 9.115(J)(4) which states,

(4) If the hearing panel finds that the charge of misconduct is not established by a preponderance of the evidence, it must enter an order dismissing the complaint.

Considered in light of MCR 9.119 which outlines the steps that a suspended or disbarred lawyer must take to provide notice of his or her changed status to clients, opposing parties and tribunals, it is clear why a 21 day period is necessary between the entry of an order of discipline and its effective date. No such actions are required when charges of misconduct have been dismissed. Similarly, there are no practical reasons why there should be a 21 day period between the issuance of a hearing panel order and its effective date in a reinstatement proceeding.

In the case of a lawyer suspended for 179 days or less, reinstatement is automatic, without any waiting period, when the term of suspension has elapsed and the lawyer has complied with MCR 9.123(A) by filing an affidavit of compliance with the clerk of the Supreme Court, the Grievance Administrator and the Attorney Discipline Board. When a lawyer whose license has been suspended for 180 days or more has satisfactorily completed all the requirements of MCR 9.123(B) and MCR 9.124 and the hearing panel has entered a written order granting the petition and attesting to the petitioner's eligibility for reinstatement, there is no apparent reason why that petitioner should wait an additional three weeks for the panel's order to become "effective" and that has not been the usual practice of hearing panels or this Board.

Nor is the Board persuaded that there is a need, or a requirement in the rules, for a 21 day period before a panel's order denying reinstatement is effective. Under the filing limitations of MCR 9.123(D)(4), a suspended or disbarred lawyer who has been denied reinstatement may not file a new petition for reinstatement for a specified period of time, measured "from the **effective date** of the most recent hearing panel order granting or denying reinstatement." (Emphasis added.) In petitioner's case, and for other lawyers denied reinstatement prior to September 1, 2011, this waiting period is a minimum of 180 days. By an amendment adopted by the Supreme Court effective September 1, 2011, a lawyer who has been denied reinstatement may not file a new petition until at least one year from the effective date of the most recent hearing panel order granting or denying reinstatement. Whether that waiting period is six months, as in petitioner's case, or one year in future cases, the Board is unable to conclude that adding an additional 21 days to the filing limitation already established by the Supreme Court in MCR 9.123(D)(4) is necessary or that the Michigan Court Rules require that result.

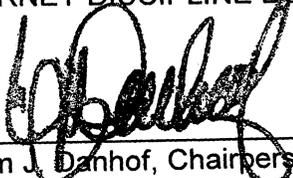
Finally, the Board has considered the arguments of both parties with reference to MCR 2.614 and is not persuaded that that rule is applicable to a hearing panel order granting or denying reinstatement under MCR 9.124(D).

NOW THEREFORE,

IT IS ORDERED that the order denying petition for reinstatement issued by Tri-County Hearing Panel #64 in this matter on May 18, 2011, is deemed to have become effective on that date.

ATTORNEY DISCIPLINE BOARD

By:



William J. Danhof, Chairperson

DATED: September 29, 2011

Board members William J. Danhof, Thomas G. Kienbaum, William L. Matthews, C.P.A., Andrea L. Solak, Rosalind E. Griffin, M.D., Carl E. Ver Beek, Craig H. Lubben, and Sylvia P. Whitmer, Ph.D, concur in this decision.

Board member James M. Cameron, Jr. was absent and did not participate.