

STATE OF MICHIGAN

Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner/Appellee,

v

Case No. 25-65-GA

RICHARD G. KESSLER, P 34755

Respondent/Appellant.

**ORDER GRANTING PETITION FOR INTERLOCUTORY REVIEW, AND
AFFIRMING HEARING PANEL ORDER DENYING RESPONDENT'S
MOTION FOR PARTIAL SUMMARY DISPOSITION**

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

The Grievance Administrator filed a formal complaint against respondent on July 30, 2025. The formal complaint contains multiple allegations of misconduct including neglect, lack of diligence, and failing to adequately communicate with his client, and several other violations stemming from respondent's representation of Araceli Alcazar-Martinez in an immigration matter to obtain lawful permanent resident status through her son, a United States Citizen.

On September 2, 2025, in lieu of filing an answer to the formal complaint, respondent filed a motion for summary disposition pursuant to MCR 2.116(C)(8), arguing that the Grievance Administrator failed to state a claim on which relief can be granted because respondent's representation of Ms. Alcazar-Martinez concerned matters pending under the jurisdiction of the Department of Human Services/U.S. Citizenship and Immigration Services (USCIS) and the Executive Office for Immigration Review (EOIR), thus, MRPC 8.5(b) required the Grievance Administrator to apply only the professional standards for conduct before those tribunals, as set forth in 8 CFR § 292.3 (DHS) and 8 CFR § 1003.102 (EOIR). This original formal complaint filed on July 30, 2025 did not allege any violations of the CFR.

On September 16, 2025, the Grievance Administrator filed a response to respondent's motion for summary disposition, opposing respondent's position, and arguing that respondent is still subject to the Michigan Rules of Professional Conduct despite the fact that his representation involved matters pending before the USCIS and EOIR. On the same date, the Grievance Administrator also filed an amended formal complaint that contains the original alleged violations of the Michigan Rules of Professional Conduct, but also adds new allegations that respondent violated certain rules of the CFR, which apply specifically to attorneys practicing before the USCIS. On September 30, 2025, respondent filed a motion for partial summary disposition as to the amended formal complaint, again arguing that the alleged violations of the Michigan Rules of Professional Conduct did not apply to respondent's conduct, and seeking dismissal of those charges pursuant to MCR 2.116(C)(8).

On October 30, 2025, oral argument on respondent's motion was held in front of Kent County Hearing Panel #2 via Zoom. Counsel for the Grievance Administrator and respondent appeared and argued their respective positions. On November 13, 2025, the panel issued an order denying respondent's motion.¹

On December 1, 2025, respondent filed a petition for interlocutory review of the panel's order denying his motion for partial summary disposition. On December 12, 2025, the parties filed a stipulation adjourning pending scheduling order dates until respondent's petition for interlocutory review was decided, and the panel accepted the stipulation. On December 22, 2025, the Grievance Administrator filed a response to respondent's petition for interlocutory review, requesting that it be denied by the Board.

The Attorney Discipline Board does have the authority under MCR 9.110(E)(5) and 9.118(A)(1) to grant leave to review a non-final order of a hearing panel and to decide such interlocutory matters without a hearing. The Board has held that "Interlocutory review is often denied, but it occasionally makes sense, and we hold that the rules do not preclude the Board from granting it." *Grievance Administrator v Fieger*, 97-83-GA (ADB 1999). That said, the decision to grant a petition for interlocutory review is the exception, not the rule, as both parties to a matter brought by the Grievance Administrator are afforded appellate review of all final orders of a hearing panel by right, and seldom does an issue arise that warrants review before such time. Further, "[The] Board has traditionally required a demonstration that the appellant would suffer substantial harm by awaiting final judgment before taking an appeal." *Grievance Administrator v Timothy A. Stoepker*, 13-32-GA (ADB 2014) citing *Grievance Administrator v Sue E. Radulovich*, 06-50-GA (ADB Order, 9/29/2006).

Respondent's motion for partial summary disposition sought dismissal of the allegations of misconduct charged as violations of the Michigan Rules of Professional Conduct under MCR 2.116(C)(8). Dismissal is appropriate under MCR 2.116(C)(8) when an "opposing party has failed to state a claim on which relief can be granted." A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999).

Respondent argues herein that, assuming all properly pled facts in the amended formal complaint are true, the Grievance Administrator has still failed to state a claim under which relief can be granted as to the conduct charged under the Michigan Rules of Professional Conduct because those rules do not apply to respondent's practice in front of the USCIS/EOIR. Respondent's challenge under MRPC 8.5(b) to the applicability of the Michigan Rules of Professional Conduct to a Michigan lawyer's conduct in a matter before the USCIS is an issue of first impression in Michigan. Further, if, as respondent argues, MRPC 8.5(b)(1) prohibits the panel from considering any alleged violations of the Michigan Rules of Professional Conduct and the Board did not intervene at this time, respondent could arguably suffer substantial prejudice in that he could be sanctioned for violations of rules that do not apply to his conduct. Under these extraordinary circumstances, the Board finds that interlocutory review is appropriate in this case. Accordingly, respondent's petition for interlocutory review is granted. However, because we find that the panel properly found that respondent was not entitled to partial summary disposition, we affirm their order denying respondent's motion.

¹ An amended order was issued the same day correcting the year in the original order from 2025 to 2026.

Whether a hearing panel erroneously decided a motion for summary disposition is a question of law. The Board reviews questions of law de novo. *Grievance Administrator v Jay A. Bielfield*, 87-88-GA (ADB 1996); *Grievance Administrator v Geoffrey Fieger*, 94-186-GA (ADB 2002). In their amended order denying respondent's motion for partial summary disposition, the panel concluded that "without the development of a full record, the panel is unable to determine what allegations, if any, are improperly alleged pursuant to MRPC 8.5(b)(2), and because certain allegations regarding respondent's conduct occurred after the closure of the immigration matter." (11/13/25 Amended Order, p 1.) To begin, we conclude that the panel erred in their reasoning.

A motion for summary disposition brought under MCR 2.116(C)(8) tests the legal sufficiency of the pleadings alone to determine whether a party has stated a valid claim. What is discovered by way of the "development of a full record" is irrelevant to the question of whether the allegations of professional misconduct charged as a violation of the Michigan Rules of Professional Conduct apply to respondent's conduct, as a matter of law.

However, notwithstanding the in artful language of the order, we affirm the panel's order because, simply put, we find that the Michigan Rules of Professional Conduct apply to respondent's conduct in this case. MRPC 8.5 states:

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise;

(2) for any other conduct, the rules of the jurisdiction in which the conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct; a lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

Both parties, and the panel, imply directly or indirectly, that the question of whether the Michigan Rules of Professional Conduct apply to respondent's conduct depend, in some fashion, on whether the conduct in question was conduct "in connection with a matter pending before a tribunal" as denoted in MRPC 8.5(b)(1), or "any other conduct" not in connection with a matter

before a tribunal, as denoted in MRPC 8.5(b)(2). However, for purposes of respondent's conduct in this case, the distinction between these two categories of conduct is irrelevant to determining whether the Michigan Rules of Professional Conduct apply, as they clearly do regardless of how respondent's conduct is labeled.

First, conduct in connection with a matter pending before a tribunal, as set forth in MRPC 8.5(b)(1), requires a panel to apply "the rules of the jurisdiction in which the tribunal sits." To "sit," is defined in layman's terms as "to occupy a place as a member of an official body" or "to hold a session: be in session for official business." *(*Marriam-Websters Dictionary*, 3d edition, 1961.) To "sit," as applied as to a legal proceeding, is "to hold a session, as of a court, grand jury, legislative body, etc: To be formally organized and proceeding with the transaction of business." (*Black's Law Dictionary* 2d Edition, 2010). By any definition, a USCIS immigration court in Michigan "sits" in Michigan. Thus, in this case, respondent was, and is, subject to the Michigan Rules of Professional Conduct, which are the rules of the jurisdiction in which the tribunal sits, "for conduct in connection with a matter pending" before it under MRPC 8.5(b)(1).

Second, for any other conduct for which respondent engaged in while representing Ms. Alcazar-Martinez, and not necessarily connected with a matter pending before a tribunal, such as negotiation and formation of the contract for legal services and actions respondent engaged in after the termination of his representation, MRPC 8.5(b)(2) requires a panel to apply "the rules of the jurisdiction in which the conduct occurred." To interpret this requirement, one must only look to MRPC 8.1(a), which holds that "a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless where the lawyer's conduct occurs."

Respondent is admitted to practice law in Michigan. As such, for any and all conduct in which respondent may engage in that is not "in connection with a matter pending before a tribunal" under MRPC 8.5(b)(2), respondent is subject to the Michigan Rules of Professional Conduct regardless of where the conduct occurs.

Additionally, nothing in MRPC 8.5 implies that the Michigan Rules of Professional Conduct and the rules applicable in the CFR to lawyers practicing before the USCIS cannot both apply to respondent's conduct. In fact, the CFR rules cited by respondent set forth that they are not the exclusive rules under which an immigration practitioner can be disciplined. Both 8 CFR § 1003.102, and 8 CFR § 292.3 state, in relevant part, that "these categories do not constitute the exclusive grounds for which disciplinary sanctions may be imposed in the public interest." Accordingly, nothing in this order should be read to imply that the hearing panel assigned to this matter is bound to *only* consider the Michigan Rules of Professional Conduct. We have not endeavored to consider the specific facts and allegations of misconduct alleged against respondent, or determined if any allegations of professional misconduct arising from violations of the CFR have been appropriately plead by the Grievance Administrator in this case. Rather, we have considered that there is no language contained in either the Michigan Rules of Professional Conduct or the CFR indicating that the panel is prohibited from finding violations of both sets of rules.

The allegations of misconduct in the amended formal complaint that charge respondent with violating the Michigan Rules of Professional Conduct are neither preempted nor rendered inapplicable under MRPC 8.1(b). As such, the Grievance Administrator has stated a claim on which relief can be granted as to those allegations in the formal complaint.

NOW THEREFORE,

IT IS ORDERED that respondent's petition for interlocutory review of the hearing panel's November 13, 2025 amended order denying his motion for partial summary disposition is **GRANTED**.

IT IS FURTHER ORDERED that the hearing panel's November 13, 2025 amended order denying respondents' motion for partial summary disposition is **AFFIRMED**.

IT IS FURTHER ORDERED that this matter is **REMANDED** to Kent-County Hearing Panel #2 for further proceedings, including a misconduct hearing on the charges set forth in the amended formal complaint.

IT IS FURTHER ORDERED respondent shall file and serve an answer to the amended formal complaint within 21 days from the date of this order.

ATTORNEY DISCIPLINE BOARD

By: /s/ Alan Gershel
Chairperson

DATED: March 11, 2026

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

Board member Jason Turkish was absent and did not participate in this decision.