

STATE OF MICHIGAN

FILED
ATTORNEY DISCIPLINE BOARD

2026-Sep-30

Attorney Discipline Board

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner/Appellee,

v

Case No. 25-2-GA

ROBERT A. PASIONEK, P 33173,

Respondent/Appellant.

_____ /

ORDER AFFIRMING HEARING PANEL ORDER OF DISBARMENT

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

Ingham County Hearing Panel #3 of the Attorney Discipline Board issued an Order of Disbarment on March 20, 2026, disbarring respondent from the practice of law in Michigan, effective April 11, 2026.¹ Respondent filed a petition for review, challenging the panel's order of discipline on the ground that he was wrongfully denied the opportunity to participate remotely in the sanction hearing because of his medical circumstances. Respondent argues that his exclusion from the sanction hearing constituted structural error requiring automatic reversal and, alternatively, that the alleged violation of his rights under the Americans with Disabilities Act (ADA) requires that the order of disbarment be vacated and a new sanction hearing be conducted. The Grievance Administrator requests that the Board affirm the hearing panel's order of discipline.

The Attorney Discipline Board has conducted review proceedings in accordance with MCR 9.118, including review of the evidentiary record before the panel and consideration of the briefs and arguments presented by the parties at a virtual review hearing conducted on July 8, 2026. For the reasons discussed below, we affirm the decision of the hearing panel.

This matter commenced with the filing of the formal complaint on January 7, 2025. Respondent filed an answer and a revised answer, both containing extensive legal argument and numerous exhibits. Based on respondent's admissions to the substantive allegations, the Grievance Administrator moved for summary disposition under MCR 2.116(C)(10), which the panel granted.

¹ Respondent has been continuously suspended from the practice of law in Michigan since March 12, 2026, when an order of interim suspension was entered pursuant to MCR 9.115(H)(2). (See Notice of Interim Suspension issued March 23, 2026.)

The panel initially scheduled an in-person sanction hearing for January 22, 2026, but adjourned the hearing at respondent's request after he reported that he needed to undergo an emergency medical procedure. The hearing was rescheduled for March 12 and 19, 2026, as an in-person hearing, consistent with respondent's request to appear in person.

Beginning March 4, 2026, respondent filed several motions, including motions to strike the Administrator's witness and exhibit lists and to adjourn the sanction hearing. On March 9, respondent filed a notice of intent to appear remotely, citing his location in Arizona, ongoing medical issues, an upcoming procedure, travel difficulties, and financial hardship. Notably, respondent did not seek leave to appear remotely; he simply notified the panel of his intention to do so. Although respondent asserted on March 10 that air travel was medically prohibited, he provided no supporting medical documentation other than his own affidavit stating that air travel was "problematic." On March 11, the panel denied respondent's motions and specifically ordered him to appear in person, denying his requests to be excused from doing so. Later that day, less than 24 hours before the hearing, respondent submitted, for the first time, a physician's note stating that he was restricted from traveling.

Respondent failed to appear in person at the March 12 hearing. Although he attempted to obtain access to the hearing remotely, the panel declined to permit participation by videoconference or telephone, and the sanction hearing proceeded in his absence.

The Board recognizes that respondent had a substantial interest in being present and heard when the panel determined the appropriate sanction. The panel, therefore, should have exercised considerable care in evaluating respondent's request to participate remotely, particularly where the requested accommodation would have permitted respondent to participate in the sanction hearing without requiring his physical presence. The record reflects that respondent did not submit medical documentation in support of his request until the eve of the scheduled hearing, which presented the panel with a difficult circumstance. Nevertheless, given the nature of the proceeding, the panel should have more thoughtfully considered whether remote participation could reasonably have accommodated respondent's circumstances while preserving the orderly conduct of the hearing. The Board does not condone unnecessarily restricting a respondent's meaningful opportunity to participate in a disciplinary proceeding.

That conclusion, however, does not resolve the separate question of the remedy. Respondent's argument conflates three distinct inquiries: whether he had a right to participate in the sanction hearing, whether denial of that opportunity constituted structural error, and whether the error, if any, requires reversal of the panel's order. The existence of a right to participate does not, standing alone, establish that its denial constitutes structural error or that automatic reversal is required.

Respondent relies principally on *Arizona v Fulminante*, 499 US 279 (1991), but that decision does not support automatic reversal. *Fulminante* distinguishes structural constitutional errors, which affect the framework within which a proceeding is conducted and requires automatic reversal, from trial errors that can be evaluated for their effect on the proceeding. *Id.* at 306-10. It did not establish a rule that every error affecting a party's participation in an adjudicative proceeding is structural. Indeed, the United States Supreme Court has recognized that an alleged violation of the right to be present must be considered in the context of the particular proceeding and generally is subject to harmless error analysis unless the deprivation is of a nature that cannot, by its nature, be harmless. *Rushen v Spain*, 464 US 114, 117-20 & n 2 (1983).

Moreover, the structural error doctrine identified in *Fulminante* arose in the context of a criminal trial. Respondent has identified no authority establishing that the criminal structural error doctrine applies to attorney disciplinary proceedings in the manner he proposes. Although attorney disciplinary proceedings are quasi-criminal in nature, the Michigan Supreme Court has cautioned against mechanically importing the procedures governing criminal trials into disciplinary proceedings. See *State Bar Grievance Administrator v Jaques*, 401 Mich 516, 528-29; 258 NW2d 443 (1977), vacated on other grounds, 436 US 952 (1978). In *Jaques*, the Court explained that disciplinary proceedings are governed by their own rules and that an attorney is entitled to a full and fair hearing, but not to application of the law of criminal trials “at every turn.” *Id.* at 528-29. Among other distinctions, professional misconduct is established by a preponderance of the evidence, disciplinary matters are heard by panels of lawyers rather than judges, and hearings are conducted in the same fashion as civil trials in nonjury cases. *Id.* See also MCR 9.115(A).

Nor does respondent’s characterization of the sanction hearing as a “critical stage” establish structural error. A proceeding may be sufficiently important that a respondent has a right to participate without every violation of that right necessarily constituting a structural defect. The nature of the proceeding and the effect of the alleged error must still be considered in determining the appropriate remedy.

The same is true of respondent’s reliance on the ADA. Even assuming, without deciding, that the panel’s denial of respondent’s request for remote participation violated the ADA, respondent has identified no authority establishing that an ADA violation in an attorney disciplinary proceeding constitutes structural error requiring automatic reversal. The ADA does not itself establish such a remedy. The existence of a statutory right to an accommodation and the question of whether a violation of that right requires a particular remedy are separate inquiries.

Furthermore, the rules governing disciplinary proceedings confirm that reversal is not warranted here. Michigan Court Rule 9.107(A) provides that a disciplinary proceeding “may not be held invalid because of a nonprejudicial irregularity or an error not resulting in a miscarriage of justice.” Thus, even assuming that the panel abused its discretion in denying respondent’s request to participate remotely, that error does not warrant invalidation of the proceeding absent a showing of prejudice or a miscarriage of justice. Respondent has not made such a showing.

Here, respondent participated throughout the misconduct phase of the proceedings, contested the allegations, and ultimately admitted to the misconduct. His absence was limited to the subsequent sanction hearing. By that point, the panel had already determined the factual basis for discipline and the only remaining issue was the appropriate sanction.

More importantly, respondent was afforded a meaningful opportunity to present his position concerning mitigation and sanction. He submitted a 30-page written memorandum addressing the appropriate discipline and setting forth his mitigation arguments. The memorandum included substantial discussion of the report of respondent’s proposed neuropsychological expert, which the panel considered over the Grievance Administrator’s objection. The panel therefore had before it respondent’s substantive arguments concerning his circumstances, mitigation, and what he considered to be the appropriate sanction under the ABA Standards.

Respondent has not identified any material evidence, mitigation, factual argument, or legal argument that he was prevented from presenting because he could not appear remotely. Nor has he identified anything that he would have said at the sanction hearing that was not already

presented in his written submission. Any claim of prejudice, therefore, rests on the possibility that his personal appearance – rather than any additional information or argument – might have caused the panel to impose a different sanction. On this record, that possibility is insufficient to establish the prejudice or miscarriage of justice contemplated in MCR 9.107(A).

The nature of the underlying misconduct is also significant. Respondent admitted to creating and using fabricated evidence in civil litigation involving his brother. The panel found that respondent deliberately created detailed fabricated correspondence for use in litigation and that he later authenticated those documents under oath during his deposition. The panel also properly rejected respondent's contention that the misconduct was not serious because the fabricated letters were never admitted into evidence. As stated by the panel, the misconduct was complete when respondent created the false documents and presented them as genuine. Whether the documents ultimately influenced the litigation is beside the point. Respondent's conduct demonstrated a deliberate intent to deceive and struck at the core values of honesty and integrity upon which the legal system depends. The knowing creation and presentation of false evidence is fundamentally incompatible with the obligations of a lawyer and constitutes some of the most egregious professional misconduct, regardless of whether the deception ultimately succeeded. The panel also found multiple aggravating circumstances, including dishonest or selfish motive [9.22(b)], multiple offenses [9.22(d)], bad faith obstruction of the disciplinary process [9.22(e)], submission of false evidence, false statements, or other deceptive practices during the disciplinary process [9.22(f)]; refusal to acknowledge wrongdoing [9.22(g)], and substantial experience in the practice of law [9.22(i)]. The panel identified only limited applicable mitigating factors: the absence of a prior disciplinary record [9.32(a)] and respondent's physical disability [9.32(h)].

It is important to note that we do not rely on the seriousness of the misconduct as a substitute for the prejudice inquiry. However, the nature of the misconduct and the record developed before the sanction hearing are relevant to whether respondent has demonstrated that his inability to appear remotely affected the sanction determination. Here, the panel had already considered respondent's extensive written presentation, including his arguments concerning his state of mind, the materiality and harm associated with his misconduct, his personal circumstances, his asserted acceptance of responsibility and mitigation, applicable Michigan and Board precedent, and his position regarding the appropriate sanction.

Under these circumstances, respondent has not demonstrated a reasonable probability that his appearance at the sanction hearing, whether in person or remotely, would have resulted in a different outcome. The record does not establish that his absence deprived the panel of information necessary to make its sanction determination or prevented respondent from meaningfully presenting his position. Accordingly, we conclude that respondent has not established prejudice or a miscarriage of justice under MCR 9.107(A).

Upon careful consideration of the entire record, the Board is not persuaded that a structural error warranting automatic reversal occurred or that the sanction hearing must be invalidated because of an error resulting in prejudice or a miscarriage of justice.

NOW THEREFORE,

IT IS ORDERED that the hearing panel's Order of Disbarment entered in this matter on March 20, 2026, is **AFFIRMED**.

IT IS FURTHER ORDERED that respondent shall pay court reporting costs incurred by the Board for the review hearing conducted on July 8, 2026, in the amount of \$332.00 on or before **October 29, 2026**. This amount is in addition to the costs previously assessed in the hearing panel order of March 20, 2026. Total costs assessed and owed are **\$3,023.31**. Please refer to the provided cost payment instruction sheet for method and forms of payment accepted.

ATTORNEY DISCIPLINE BOARD

By: /s/ Alan M. Gershel, Chairperson

DATED: September 30, 2026

Board Members Alan Gershel, Peter A. Smit, Linda M. Orlans, Jason Turkish, Katie M. Stanley, Tish Vincent, and Kamilia Landrum concur in this decision.

Board Member Rev. Dr. Louis J. Prues would vacate the order of disbarment and remand the matter to the hearing panel to conduct a new sanction hearing.

Board Member Andreas Sidiropoulos, MD was absent and did not participate in this decision.