

Attorney Discipline Board

2019 SEP 30 PM 2:45

Grievance Administrator,

Petitioner/Appellant,

v

S. Garrett Beck, P 27668,

Respondent/Appellee,

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

Decided: September 30, 2019

Appearances

Jordan D. Pattera, for Grievance Administrator, Petitioner/Appellant
Donald D. Campbell and Trent B. Collier, for Respondent/Appellee

BOARD OPINION

On December 3, 2018, the Grievance Administrator filed a notice of filing of reciprocal discipline with this Board, and requested a hearing to determine the appropriate Michigan sanction for the sanction the Little Traverse Bay Bands of Edawa Indians Tribal Court imposed in a December 29, 2014 Opinion and Order Granting LTBB's Request for Relief on S. Garrett Beck's Citation for Contempt. This order revoked respondent's right to practice law before the Little Traverse Bay Bands of Edawa Indians Tribal Court because of respondent's "disregard for candor, forthrightness or integrity in communications and advocacy[.]" and "because his underlying contempt charges involved the use of shell corporations to disguise this behavior, any current or future affiliates of Mr. Beck should also be denied the privilege to practice law in the LTBB Court." A formal complaint was also filed by the Grievance Administrator, charging respondent in Count One with failing to report the tribal court's order of discipline.¹ The reciprocal discipline action, 18-133-RD, and

¹ Count Two alleges respondent engaged in frivolous litigation and abuse of process by attempting to garnish the tribe's appointed attorney in an unrelated proceeding, in an attempt to conflict him out of representing the tribe in the civil contempt proceedings against respondent. Count Two was not at issue in either of respondent's motions for

Formal Complaint 18-134-GA, were consolidated and assigned to Emmet County Hearing Panel #1 for proceedings in accordance with MCR 9.115.

On January 7, 2019, respondent filed a motion for summary disposition of the reciprocal discipline, arguing that the revocation of his license to practice law before a tribal court is not a ground for the imposition of reciprocal discipline under MCR 9.120(C). Respondent also filed a motion for partial summary disposition regarding Count One of the Formal Complaint, asserting that he was under no obligation to notify the Grievance Administrator and the Attorney Discipline Board of the revocation of his license to practice law in the Tribal Court.

On March 12, 2019, the hearing panel granted respondent's motions, determining that, under MCR 9.120, a tribal court is neither a court of record nor a body authorized by law or by court rule to conduct disciplinary proceedings against Michigan attorneys. As such, the hearing panel concluded that it has no legal basis to impose reciprocal discipline. The panel also determined Count One of the Formal Complaint, regarding respondent's failure to notify the Grievance Administrator and the Attorney Discipline Board about the tribal court order of discipline, should be dismissed for the same reasons. (The panel's order is attached hereto.)

On March 29, 2019, the Grievance Administrator filed a brief in support of an interlocutory review, requesting that the Board accept the interlocutory review and reverse the hearing panel's order.² The hearing panel proceedings were stayed pending the Board's decision regarding the interlocutory review.

The Attorney Discipline Board has conducted interlocutory review proceedings in accordance with MCR 9.118(A), including a careful review of the record before the panel and consideration of the briefs and arguments presented by the parties at a review hearing conducted June 19, 2019. Because we find interlocutory review appropriate and conclude that MCR 9.120 does not provide a legal basis to impose reciprocal discipline in this case, we grant review and affirm the order of the

summary disposition, and thus is currently still pending before the hearing panel.

² Michigan Court Rule 9.118(A) provides that this Board "may grant review of a nonfinal order and decide such interlocutory matters without a hearing." See also MCR 9.110(E)(5) (providing that the Board has the power and duty to review a nonfinal order of a hearing panel). After conducting a hearing in accordance with MCR 9.118(C), the Board may "affirm, amend, reverse, or nullify the order of the hearing panel in whole or in part or order other discipline." MCR 9.118(D). Cf. MCR 7.105(E) (in an application for leave to appeal to circuit court, the court may grant or deny leave to appeal "or grant other relief."); MCR 7.205(E)(2) ("The court [of appeals] may grant or deny the application; enter a final decision; grant other relief . . .").

hearing panel in its entirety, with the modification, or clarification, that the dismissal herein is without prejudice with respect to the filing of a formal complaint arising from the circumstances giving rise to the tribal court order.

On review, the Grievance Administrator argues that reciprocal discipline should be imposed based upon the tribal court order of discipline, because Michigan Court Rule 2.615 provides that judgments of tribal courts are recognized and have the same effect as judgments from any court of record in Michigan. However, pursuant to MCR 9.115(A), “[e]xcept as otherwise provided in these rules, the rules governing practice and procedure in a nonjury civil action apply to a proceeding before a hearing panel.” (Emphasis added.) Reciprocal discipline for Michigan attorneys is clearly governed exclusively by MCR 9.120(C)(1) which provides, in pertinent part:

(C) Reciprocal Discipline.

(1) A certified copy of a final adjudication by any court of record or any body authorized by law or by rule of court to conduct disciplinary proceedings against attorneys by any state or territory of the United States or of the District of Columbia, a United States court, or a federal administrative agency, determining that an attorney, whether or not admitted in that jurisdiction, has committed misconduct or has been transferred to disability inactive status, shall establish conclusively the misconduct or the disability for purposes of a proceeding under subchapter 9.100 of these rules and comparable discipline or transfer shall be imposed in the Michigan proceeding unless the respondent was not afforded due process of law in the course of the original proceedings, the imposition of comparable discipline or transfer in Michigan would be clearly inappropriate, or the reason for the original transfer to disability inactive status no longer exists.

A tribal court is neither a court of record nor a body authorized by law or by court rule to conduct disciplinary proceedings against Michigan attorneys. The application of MCR 2.165 does not change this result. The language of MCR 9.120(C)(1) is quite plain and unambiguous as to when a tribunal’s order may serve as a basis for reciprocal discipline. However, petitioner argues that “MCR 1.103 further supports that MCR 2.615 and MCR 9.120(C) do not exist in isolation from one another.” MCR 1.103 provides:

The Michigan Court Rules govern practice and procedure in all courts established by the constitution and laws of the State of Michigan. Rules stated to be applicable only in a specific court or only to a specific type of proceeding apply only to that court or to that type of proceeding and control over general rules.

We agree. If the Supreme Court were to revisit MCR 9.120(C) and its list of orders to which reciprocal discipline can be applied, it could choose to include orders issued by tribal courts. Such an amendment might advance the purposes of MCRE 2.615. Under the current language of MCR 9.120(C), however, a disciplinary order of a tribal court cannot give rise to reciprocal discipline.

In addition, petitioner's reliance on MCR 9.104(5) simply bolsters the panel's decision and analysis. MCR 9.104 sets forth the types of conduct, along with that specified in the Rules of Professional Conduct, to which MCR 9.104 refers, that may subject a Michigan attorney to discipline. Such conduct must be charged in a formal complaint. Reciprocal discipline proceedings do not involve such a pleading. Rather, they are based on conduct adjudicated in another jurisdiction specified in MCR 9.120. There is no question that the violation of tribal law constitutes misconduct; this does not, however, make reciprocal discipline appropriate or authorized.

For the foregoing reasons, we conclude that the hearing panel properly granted summary disposition to respondent in the reciprocal discipline case (18-133-RD). For the same reasons, we affirm the hearing panel's decision to dismiss Count One of Formal Complaint 18-134-GA.

Board members Rev. Michael Murray, Jonathan E. Lauderbach, Barbara Williams Forney, James A. Fink, Karen D. O'Donoghue, Michael B. Rizik, Jr., Linda S. Hotchkiss, M.D., and Anna Frushour concur in this decision.

Board member John W. Inhulsen was absent and did not participate.

STATE OF MICHIGAN

Attorney Discipline Board

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ATTORNEY DISCIPLINE BOARD

2019 MAR 12 PM 12: 58

GRIEVANCE ADMINISTRATOR,
Attorney Grievance Commission,

Petitioner,

v

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

S. GARRETT BECK, P 27668,

Respondent.

**ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY
DISPOSITION ON REQUEST FOR RECIPROCAL DISCIPLINE AND
MOTION FOR PARTIAL SUMMARY DISPOSITION**

Issued by the Attorney Discipline Board
Emmet County Hearing Panel #1

The tribal court of the Little Traverse Bay Band of Odawa Indians ("LTBB") revoked respondent's license to practice law before that tribal court by an order dated December 29, 2014 (the "tribal court order"). Petitioner filed Case No. 18-133-RD, in which petitioner asks the Attorney Discipline Board to impose reciprocal discipline upon respondent based on the tribal court order. In addition, petitioner filed a two-count formal complaint against respondent, Case No. 18-134-GA, alleging violations of the Michigan Court Rules and the Michigan Rules of Professional Conduct.

Respondent filed a Motion for Summary Disposition in the reciprocal discipline case (18-133-RD) contending that the revocation of his license to practice law before a tribal court is not a ground for the imposition of reciprocal discipline under MCR 9.120(C).

Respondent has also filed a Motion for Summary Disposition of Count One of the Formal Complaint (Case No. 18-134-GA). Count One is based on respondent's alleged failure to notify the Grievance Administrator and the Attorney Discipline Board of the tribal court order.

As the questions presented in respondent's motions are questions of law, and there is no factual dispute presented by these motions, the panel has determined that no oral argument is necessary for the disposition of these two motions.

The panel will first address respondent's Motion for Summary Disposition on petitioner's request that reciprocal discipline be ordered against respondent. Respondent contends that petitioner has no legal basis to impose reciprocal discipline based on the tribal court's order under MCR 9.120(C)(1) because the tribal court is not a "court of record" or a "body authorized by law or rule of court by any state or territory of the United States or of the District of Columbia, a United States court, or a federal administrative agency to conduct disciplinary proceedings against attorneys." It is uncontested that a tribal court, under Michigan law, is not a court of record as that court is not included in the definitions of that term in the Michigan Constitution of 1963, Article VI, Section 19 and its statutory enactment, MCL 600.1416.

Petitioner's Brief in opposition (page 3) raises the comity provisions of MCR 2.615(A) and (C) along with MCR 9.104(5), contending that these court rules, when read in conjunction with MCR 9.120(C)(1), require that reciprocal discipline be imposed, because the tribal court has authority under its tribal law to impose discipline on attorneys practicing in its courts, and as a *body authorized by law or by rule of court* to impose discipline, its order is entitled to reciprocal discipline under MCR 9.120(C).

Petitioner's argument fails on careful examination. The comity provisions of MCR 2.615(A) and (C) and MCR 9.104(5), do not control because reciprocal discipline for Michigan attorneys is governed exclusively by MCR 9.120(C)(1). This rule contains a limiting provision that reciprocal discipline can be imposed only if discipline is imposed by *any body authorized by law or by rule of court to conduct disciplinary proceedings against attorneys by any state or territory of the United States or of the District of Columbia, a United States court, or a federal administrative agency*. While a tribal court of the Little Traverse Bay Band of Odawa Indians ("LTBB") may be authorized to impose discipline on attorneys appearing before it, there has been no showing by petitioner that LTBB has been authorized by the State of Michigan to conduct disciplinary proceedings against Michigan attorneys, or to show that LTBB has been authorized by any other state, or territory of the United States or of the District of Columbia, a United States court, or a federal administrative agency to conduct disciplinary proceedings against Michigan attorneys. Because petitioner has failed to make such a showing, the panel is of the opinion that respondent's motion to reject reciprocal discipline must be granted.

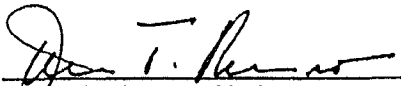
Respondent's Motion for Partial Summary Disposition of Count One of the Formal Complaint addresses whether respondent had an obligation to report the revocation of his license to practice law in the LTBB tribal court; however, the argument that respondent had a duty to report is based on MCR 9.120(A)(2) which contains the same language as MCR 9.120(C)(1). Because there has been no showing by petitioner that LTBB has been authorized by the State of Michigan to conduct disciplinary proceedings against Michigan attorneys, or to show that LTBB has been authorized by any other state, or territory of the United States or of the District of Columbia, a United States court, or a federal administrative agency to conduct disciplinary proceedings against Michigan attorneys, the panel finds that the result is the same and the panel is of the opinion that this motion must also be granted as a matter of law.

NOW THEREFORE,

IT IS ORDERED that respondent's Motion for Summary Disposition in Case No. 18-133-RD and his Motion for Partial Summary Disposition of Count One of the Formal Complaint in Case No. 18-134-GA are hereby **GRANTED**.

ATTORNEY DISCIPLINE BOARD
Emmet County Hearing Panel #1

By:


James T. Ramer, Chairperson

Dated: March 12, 2019