

GRIEVANCE ADMINISTRATOR,  
Petitioner/Appellant,

v

CARL M. WEIDEMAN, JR., P-22096,  
Respondent/Appellee.

ADB 54-89

Decided: July 10, 1990

MEMORANDUM OPINION

Formal Complaint ADB 54-89 was filed by the Grievance Administrator on April 4, 1989. It charged that the respondent, Carl M. Weideman, Jr., had committed acts of professional misconduct warranting discipline. The matter was assigned by the Attorney Discipline Board to a hearing panel which conducted a hearing in accordance with MCR 9.115 and issued an Order of Dismissal on October 13, 1989 based upon its findings that the misconduct charged in the complaint had not been established.

On November 2, 1989, the Grievance Administrator, by her counsel, filed a petition for review with the Attorney Discipline Board. In accordance with MCR 9.118(B), the Board issued an Order to Show Cause on November 3, 1989 setting the matter for hearing on January 11, 1990. The Order to Show Cause further directed that a party seeking review must file a brief no later than November 27, 1989 and that a responsive brief could be filed no later than December 8, 1989.

On November 20, 1989, the Grievance Administrator's eight-page appellate brief in support of her petition for review was filed with the Board. In response, a ten-page brief was filed on the respondent's behalf on November 30, 1989 by his attorneys, Robert H. Golden and Armand D. Kunz. On the following day, December 1, 1989, the Grievance Administrator filed a "Dismissal of Petition for Review." That pleading was treated by the Board as a motion to dismiss and an order dismissing the petition for review was entered by the Board on December 4, 1989.

The respondent has filed a Motion for the Assessment of Costs, citing as authority the provisions of MCR 2.504(A) which provides, in part:

A. Voluntary Dismissal; Effect.

- (1) By plaintiff, by stipulation. Subject to the provisions of MCR 2.420 and MCR 3.501(E) and action may be dismissed by the plaintiff without an order of the Court and on payment of costs.

a) by filing a Notice of Dismissal before service by the adverse party of an answer or of a motion under MCR 2.116, whichever occurs first.

The motion is accompanied by the affidavit of Robert H. Golden itemizing the services provided by his firm between November 4, 1989 and November 28, 1989. The affidavit sets forth 6.5 hours expended on Mr. Weideman's behalf. A value of \$1072.50 has been placed on those services.

In the responsive pleadings filed on behalf of the Grievance Administrator, it is pointed out that the hearing panel's Order of Dismissal was mailed on October 13, 1989 and that a petition for review would have to be filed by November 3, 1989 in order to be timely. It is argued that the Attorney Grievance Commission must ratify the decisions of the Grievance Administrator and her staff to file petitions for review; that the Commission meets one day per month and that the petition for review in this case was filed "in order to protect the rights of the Attorney Grievance Commission." At its meeting on November 30, 1989, the Attorney Grievance Commission voted to withdraw the appeal and its instructions were carried out the following day.

The respondent urges that:

The Attorney Grievance Commission must so modify their procedures so that it is not necessary that its staff file non-meritorious Petitions for Review, causing a Respondent substantial costs, when the sole purpose of filing the Petition for Review is to keep the matter alive so that the Attorney Grievance Commission can pass upon it. The Attorney Grievance Commission should convene at times appropriate to pass upon whatever case is before it in sufficient time to conform to the rules and procedures of the Michigan Supreme Court. It is not everyone else who must conform to the meeting schedule of the Attorney Grievance Commission.

The respondent's position is not unreasonable and the Board understands and sympathizes with his position. Under the circumstances presented in this case, it would not have been unreasonable for the Grievance Administrator's counsel to notify the opposing party that the petition for review filed on November 2, 1989 was subject to ratification by the Commission and that the possibility existed that it could be withdrawn. In the alternative, the Grievance Administrator or her staff might have been able to seek the Commission's approval by telephone or some other means during the twenty-one day appeal period.

Notwithstanding our sympathy for the respondent's plight, however, the Board is unable to grant the relief requested. The Board has not been presented, nor has it found, authority in the Court Rules for an assessment of attorney fees against the Grievance Administrator as

compensation to a respondent. The Court Rule cited by the respondent, MCR 2.504(A), allows the dismissal of an "action" by a plaintiff in a civil matter upon the payment of "costs". We are unable to conclude that the withdrawal of an appeal in an attorney discipline proceeding is a dismissal of an action within the meaning of that rule nor are we able to conclude that the costs" referred to in that rule include the opposing party's actual attorney fees. The respondent's motion for the assessment of costs will therefore be denied.

Remona A. Green, Chairperson