

GRIEVANCE ADMINISTRATOR,  
Petitioner/Appellee,  
v  
RONALD R. KUBIK, P-26557,  
Respondent/Appellant.

File No. DP 186/84

Argued: December 17, 1986

Decided: February 2, 1987

OPINION OF THE BOARD

The Board's review in this matter is limited to the issue of the Hearing Panel's dismissal of a Formal Complaint on the grounds that the Panel's failure to hold a hearing within fifty-six days from the date of the filing of the Complaint as required by MCR 9.111(B)(1) constituted a jurisdictional defect. It is the Board's ruling that the Panel erred and that its Order Granting Respondent's Motion to Dismiss should be vacated.

The Grievance Administrator filed a Formal Complaint with the Attorney Discipline Board on March 20, 1985 which alleged that the Respondent appeared in court on behalf of a client without adequate preparation and in a condition visibly impaired by alcohol or drugs. On March 28, 1985, the Secretary/Clerk of the Attorney Discipline Board mailed a Notice of Hearing to all parties setting the matter for hearing before Wayne County Hearing Panel #2 on May 23, 1985. That scheduled hearing date was sixty-four days after the date the Complaint was filed.

The Board's Scheduling Clerk was then apparently notified by one of the Hearing Panel members that he was not available on that date and on April 2, 1985 a second Notice of Hearing was sent rescheduling the hearing for June 10, 1985. On June 7, 1985, counsel for the Grievance Administrator requested an adjournment which was not opposed by Respondent's counsel. The parties agree that there were ongoing discussions regarding the possible resolution of the matter and that when those discussions failed to produce an agreement, the matter was scheduled for hearing.

On the day of the hearing, October 8, 1986, Respondent's counsel presented, for the first time, an Oral Motion to Dismiss the Formal Complaint and called the Panel's attention to MCR 9.111(B). That Court Rule describes the powers and duties of a hearing panel and directs that a panel "shall do the following:

- 1) hold a public hearing on a Complaint or Reinstatement Petition assigned to it within fifty-six days after the date the Complaint is filed with the Board or the date that Notice of the Reinstatement Petition is published. The hearing must be concluded within ninety-one days after it has begun, unless the Board grants an extension for good cause."

The Panel, consisting of a quorum of two members, ruled unanimously that the rule was jurisdictional and entered an Order Granting Respondent's Motion to Dismiss the Complaint.

As noted above, the first hearing scheduled by the staff of the Attorney Discipline Board was sixty-four days after the date the Complaint was filed. According to the Panel's ruling, this case was subject to dismissal prior to the first scheduled hearing date and the adjournments requested by a Panel member or by the Grievance Administrator are, therefore, irrelevant to our consideration of the Panel's ruling.

The Panel agreed with Respondent's argument that the word "shall" which appears in MCR 9.111(B) is absolute and that the staff of the Discipline Board abused its discretion by failing to schedule the hearing within fifty-six days. We rule, however, that such an interpretation is not consistent with prior rulings of the Board and the Supreme Court, or with other rules governing these discipline proceedings.

In describing the powers and duties of a hearing panel, MCR 9.111(B) directs that a hearing panel "shall" observe several time limits. In addition to the requirement that a public hearing be held fifty-six days after a Complaint is filed, the rule requires that a hearing be concluded within ninety-one days after it has begun unless an extension is granted [MCR 9.111(B)(1)] and that it report its actions to the Board within twenty-eight days after the conclusion of a hearing [MCR 9.111(B)(4)]. We are guided, therefore, by our Supreme Court's prior interpretation of the word "shall" recited in former Supreme Court Rule 16.3(d), the predecessor of the present Rule. In State Bar Grievance Administrator v Poler, 393 Mich 38 (1974), the appellant argued that the hearing panel's report was filed seventy-seven days after the conclusion of the hearing and that the panel's failure to submit a report within the then existing thirty day period constituted a jurisdictional defect. That jurisdictional argument was specifically rejected by the Court which said:

"This must be read in conjunction with Rule 16.33 [MCR 9.102(A)] which requires the procedures shall be as expeditious as possible. The 30 day period . . . should be regarded as a goal and not jurisdictional. We are not faced with a protracted hearing process . . . We are concerned with the time needed to reach a decision after the facts are gathered. It would be unreasonable and unfair to both sides to impose a rigid rather than a reasonable time limitation on such process. (Id. 40-41). Cf. State Bar Grievance Administrator v Donigan, 403 Mich 172 (1978)."

The Rule in question should also be read in conjunction with MCR 9.107 which directs that "an investigation or proceeding may not be held invalid because of a nonprejudicial irregularity or an error not resulting in a miscarriage of justice." We note that the Hearing Panel in this case based its ruling exclusively on the passage of fifty-six days from the date of the filing of the Formal Complaint.

It is also significant that MCR 9.115(G) provides that "if the hearing panel fails to convene or complete its hearing within a reasonable time, the Board may reassign the Complaint to another

panel." (emphasis added) Since we must assume that fifty-six days from the filing of the Complaint to the first hearing is a "reasonable time," this Rule provides the procedure which must be followed when a panel fails to convene within that period, i.e. reassignment to another panel and not automatic dismissal of the Complaint.

All proceedings before hearing panels and the Board are, of course, subject to the Court's direction that "procedures must be as expeditious as possible," MCR 9.102(A). That Rule also provides, however, that the Rules governing these discipline matters are "to be liberally construed for the protection of the public, the courts and the legal profession." Automatic dismissal of a Complaint brought in good faith and without a hearing on the merits because a hearing has not commenced within fifty-six days or because a hearing panel report is not submitted with twenty-eight days would simply not be consistent with the goals of these proceedings.

The Hearing Panel Order Granting Respondent's Motion to Dismiss is therefore vacated and this matter is remanded to a hearing panel for hearing.

Martin M. Doctoroff, Remona A. Green, Hanley M. Gurwin, Odessa Komer and Patrick J. Keating all concurred.