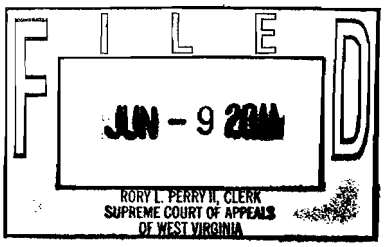
**BEFORE THE SUPREME COURT OF APPEALS OF THE**

**STATE OF WEST VIRGINIA**




**LAWYER DISCIPLINARY BOARD,**

**Complainant,**

**v.** **No. 35513**

**DENNIE S. MORGAN, JR.,**

**Respondent.**

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**BRIEF OF RESPONDENT DENNIE S. MORGAN, JR.**

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## I. PROCEDURAL HISTORY OF THE PROCEEDINGS

What follows is the procedural history of Respondent Dennie S. Morgan, Jr., (hereinafter "Respondent") arising as the result of a Statement of Charges issued against him and filed with the Supreme Court of Appeals of West Virginia on or about March 12, 2010. The Respondent received the Statement of Charges by certified mail on or about March 16, 2010. On May 7, 2010, Disciplinary Counsel filed "Disciplinary Counsel's Motion to Deem Admitted the Factual Allegations in the Statement of Charges" and "Motion to Exclude Testimony of Witnesses and Documentary Evidence or Testimony of Mitigating Factors". Respondent filed his answer to the Statement of Charges on or about May 19; 2010. Disciplinary Counsel's motions were denied by the Hearing Panel Subcommittee at the prehearing held on June 9, 2010.

Prior to the scheduled hearing in Beckley, West Virginia, the Respondent and Jessica Donahue formulated an agreement based upon the Respondent stipulating to certain findings by the Hearing Panel Subcommittee. This agreement was formulated after the Respondent had made prior phone calls apologizing to the complainants in this case and stating that he wanted to take responsibility for his misdeeds. After doing this, the Respondent contacts the Office of Disciplinary Counsel. It is Respondent's belief that before the Stipulations were entered the Office of Disciplinary Counsel contacted each complainant and explained the agreed to discipline. It is Respondent's understanding that each complainant was fine with what was being proposed in the stipulations. As a result of these conversations, that agreement was reduced to writing and was fully adopted by the Hearing Panel Subcommittee after hearing all of the evidence and concluding that the agreed to recommendations and sanctions were warranted and adequate.

Even so, this matter proceeded to hearing in Beckley, West Virginia on September 22, 2010 because that is what West Virginia law required. The Hearing Panel Subcommittee comprised of J. Miles Morgan, Esquire, Chairperson; Debra A. Kilgore, Esquire; and Mr. Larry A. Sticker, layperson, presided over this matter. Jessica H. Donahue, Lawyer Disciplinary Counsel, appeared on behalf of the Office of Disciplinary Counsel. The Respondent did appear pro se. The Hearing Panel Subcommittee heard testimony from Keith D. Weather, Claude E. Weatherly, Jr., Treasa J. Neace, Naomi R. Staton, Timothy Paul Lupardus, and Respondent. Trampes Morgan's deposition was taken by the Office of Disciplinary Counsel and Respondent prior to the heating and submitted as Exhibit35. In addition, ODC Exhibits 1-71, Respondent's Exhibits Rl-R2, and Joint Exhibit 1 were admitted into evidence. Also entered into on that date were stipulations between ODC and Respondent wherein Respondent stipulated to all the violations of misconduct set forth in the Statement of Charges. As stated above, the Respondent's made an agreement that if he stipulated the Office of Disciplinary Counsel would recommend certain sanctions to be imposed upon Respondent. These recommendations were adopted by the Hearing Panel Subcommittee. Lastly, on or about November 15, 2010, ODC filed its Proposed Findings of Fact Conclusions of Law and Recommended Sanctions.

On or about January 20 ,2011,the Hearing Panel Subcommittee issued its decision in this matter and filed with the Supreme Court of Appeals of West Virginia its "Report of the Hearing Panel Subcommittee" (hereinafter "Report'). The Hearing Panel Subcommittee properly found that the evidence established that Respondent violated Rules 1.3, 1.4(a), 1.4(b), 1.5, 1.15(a), 1.16(d), 3.2,8.1(b),8.4(c) and 8.4(d) of the Rules of Professional Conduct. Lastly, the Hearing Panel Subcommittee followed the recommended sanctions as listed in the stipulations entered into by ODC and Respondent.

The Hearing Panel Subcommittee issued the following recommendation as to the appropriate sanctions:

A. Respondent shall be reprimanded;

B. Respondent shall refund the unearned fee referenced in Count I to Claude E. Weatherly, Jr. in the amount of Four Thousand Dollars ($4,000.00); in Count II to Trampes E. Morgan in the amount of Six Hundred Sixty-Five Dollars and Fifteen Cents ($665.15); in Count III to Treasa Neace in amount of Two Thousand Dollars ($2,000.00), and in Count IV to Naomi Staton in the amount of One Thousand Dollars ($1,000.00);

C. Respondent's practice shall be supervised for a period of two (2) years by an attorney agreed upon between the Office of Disciplinary Counsel and Respondent. Respondent shall meet with his supervising attorney every two (2) weeks. The office practice plan shall be based upon the Report of Barron K. Henley, Esquire, and include the implementation of those proposed changes to Respondent's office management as suggest by Baron K. Henley's report. Respondent shall have Barron K. Henley review and evaluate his office practices as soon as practicable. The goal of the supervised practice will be to improve the quality and effectiveness of Respondent's law practice to the extent that Respondent's sanctioned behavior is not likely to recur;

D. Respondent shall arrange for Barron K. Henley, Esquire to phone Respondent for an after care phone call three {3} months after the commencement of his supervised practice and prepare a written report to be submitted to ODC to ascertain the degree of progress of the changes to his law office management; Respondent shall arrange for Barron K. Henley, Esquire to phone Respondent for an after care phone call six {6) months after the commencement of his supervised practice and prepare a second written report to be submitted to ODC to ascertain the

degree of progress of the changes to his law office management to ensure that any additional issues from the three (3) months report are adequately addressed;

E. Respondent shall have his trust account audited for two (2) years and shall provide such audit to ODC;

F. Respondent shall provide certification of his IOLTA to ODC Pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure;

G. Respondent shall pay costs of this disciplinary proceeding.

## II. STANDARD OF REVIEW BY THIS COURT

West Virginia law requires, in disciplinary proceedings against attorneys, that any charges against an attorney must be proven by clear and convincing evidence pursuant to Rule 3.7 of the Rules of Lawyer Disciplinary Procedure. See, Syl. Pt. 1, Lawyer Disciplinary Board v. McGraw, 194 W. Va. 788, 461 S.E.2d 850 (1995). Additionally, a de novo standard of review applies to questions of law, questions of application of the law to the facts, and questions of appropriate sanction to be imposed. Roark v. Lawyer Disciplinary Board, 207 W. Va. 181, 495 S.E.2d 552 (1997); Committee on Legal Ethics v. McCorkle, 192 W. Va. 286, 452 S.E.2d 377 (1994). The Supreme Court of Appeals gives respectful consideration to the Lawyer Disciplinary Board's recommendations as to questions of law and the appropriate sanction, while ultimately exercising its own independent judgment. McCorkle, 192 W. Va., at 290, 452 S.E.2d at 381.

Very importantly, our Supreme Court has ruled that substantial deference is to be given to the Lawyer Disciplinary Board's findings of fact unless the findings are not supported by reliable, probative, and substantial evidence on the whole record. Lawyer Disciplinary Board v. Cunningham, 195 W.Va. 27, 464 S.E.2d 181 (1995). At the Supreme Court level, "'[t]he burden is on the attorney at law to show that the factual findings are not supported by reliable, probative, and substantial evidence on the whole adjudicatory record made before the Board." Cunningham, 464 S.E.2d at 189; McCorkle, 192W. Va. at290, 452 S.E.2d at 381.

The Respondent realizes that the Supreme Court of Appeals is the final arbiter of formal legal ethic charges and must make the ultimate decisions about public reprimands, suspensions or annulments of attorneys' licenses to practice law. Syl. Pt. 3, Commission, Legal Ethics v.

Blair, 174 W.Va. 494, 327 S.E.2d 671 (1984); Syl. pr. 7, Committee on Legal Ethics v. Karl, 192 W.Va .23, 449 S.E.2d 277 (1994).

As to stipulations, the Supreme Court has found that "[s]tipulations or agreements made in open court by the parties in the trial of a case and acted upon are binding and a judgment founded thereon will not be reversed." Syl. Pt. 3, Lawyer Disciplinary Board v. Cavendish, 226 W .Va. 327, 700 S.E.2d 779 (2010).

## III. DISCUSSION

In West Virginia the following factors are to be considered in imposing appropriate sanctions. These factors are found in Rule 3.16 of the Rules of Lawyer Disciplinary Procedure and consist of: (1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system' or to the profession; (2) whether the lawyer acted intentionally, knowingly, or negligently; (3) the amount of the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of any aggravating or mitigating factors. See also, Syl. Pt.4, Office of Disciplinary Counsel v. Jordan, 204 W.Va. 495,513 S.E.2d 722 (1998).

### *A. The Respondent Admits and has Stipulated to Violating Duties Owed to his Clients.*

Prior to the hearing before the Hearing Panel Subcommittee the Respondent entered into a stipulated agreement with the Office of Disciplinary Counsel. This agreement and its recommendations were adopted by that panel as a result of the evidence produced at the hearing on September 22, 2010. As a result of the Respondent signing the stipulations there is an admission that Respondent violated duties owed to his clients.

### *B. Respondent Morgan Acted in a Negligent Manner.*

The Respondent was found by the Hearing Panel Subcommittee to have acted negligently in these matters. Rule 3.16 provides that there are three levels of culpability that would warrant imposing sanctions. These three levels are as follows:

i. Whether the attorney acted intentionally;

ii. Whether the attorney acted knowingly;

iii. Whether the attorney acted negligently.

In this case, the Hearing Panel Subcommittee, which heard the evidence produced at trial, and made specific findings in regard to the above-stated three levels. There was absolutely no findings that Respondent Morgan acted intentionally. This is very important because substantial deference is to be given to the Lawyer Disciplinary Board's findings of fact. Lawyer Disciplinary Board v. Cunningham, 195 W.Va. 27, 464 S.E.2d 181 (1995). Furthermore, at the Supreme Court level, "'[t]he burden is on the attorney at law to show that the factual findings are not supported by reliable, probative, and substantial evidence on the whole adjudicatory record made before the Board." Cunningham, 464 S.E.2d at 189; McCorkle, 192 W. Va. at 290, 452 S.E.2d at 381. In this instance, neither the Respondent, for obvious reasons, nor the Office of Disciplinary Counsel is asserting that Respondent Morgan acted in an intentional manner. Along the same lines, neither party is attempting to show that the factual findings are not supported by the evidence.

Acting in an intentional manner is the most serious level and in the past has warranted the more severe sanctions handed down by this Honorable Court. However, as stated above, there was no finding that the Respondent acted in an intentional manner. Furthermore, the Office of Disciplinary Counsel, the legal entity whose purpose it is to investigate and prosecute allegations of misconduct agreed to stipulate to the finding that Respondent Morgan did not act intentionally.

The Second level of review to be conducted by this Court is whether the Respondent acted knowingly. There was extensive evidence produced at the September 22, 2010 hearing. Each of the complainants testified before the Hearing Panel Subcommittee. Yet, even after hearing this evidence, the Panel adopted the stipulations and made **no** findings that Respondent Morgan acted knowingly.

An attorney "knowingly" violating the Rules of Professional Conduct is the second level of review and this Court in the past has sanctioned attorneys who have knowingly violated the Rules of Professional Conduct. However, the Hearing Panel Subcommittee, whose findings are given "substantial deference" did not make any findings that Respondent Morgan acted knowingly. Again, the Office of disciplinary Counsel agreed to sign a stipulation by which there would be no finding that Respondent Morgan acted "knowingly". This is a position that the Office of Disciplinary Counsel still maintains in their brief to this Honorable Court.

The lowest level of review to be performed by this Court is to determine whether Respondent Morgan acted negligently. Respondent Morgan has stipulated that his actions were negligent. However, it should be noted that neither the Office of Disciplinary Counsel nor the Hearing Panel Subcommittee has argued that Respondent's actions were grossly negligent ( a term this Court has used in the past). It is very important to note that there was no finding that Respondent Morgan knowingly or intentionally comingled any moneys. The evidence produced at trial does state that there was only one bank account issued to the Respondent's law office. However, the evidence also showed that Respondent Morgan had requested of the bank that he could open an account similar to the other attorneys in Wyoming County. The checking account that was issued was even listed as an "attorney account". Respondent Morgan has realized throughout these proceedings that this account was entirely inadequate as an IOLTA account.

Respondent Morgan has expressed his remorse in the past and continues to do so. Respondent Morgan contacted victims in this case prior to any stipulations and apologized and admitted he had acted in a manner that was not acceptable. Respondent Morgan then apologized and admitted his negligence to the Office of Disciplinary Counsel. Again, Respondent Morgan admitted, by stipulation and under oath while testifying on September 22, 2010, that he was wrong and had acted negligently. Lastly, Respondent Morgan apologizes to this Honorable Court for acting in such a manner. The recommended sanctions, that were drafted and agreed to by the Office of Disciplinary Counsel adopted by the Hearing Panel Subcommittee, are consistent with the sanctions that have been handed down by this Court in the past and should be adopted by this Court.

*C. The Amount of Actual and Potential Injury*

Respondent Morgan does recognize that his actions caused injuries to the Complainants. Respondent Morgan wishes to take responsibility for these actions. Respondent believes the sanctions adopted by the Hearing Panel Subcommittee will satisfy this.

Furthermore, the Office of Disciplinary Counsel was the party responsible for drafting the agreed stipulations and the primary entity in developing what would be appropriate sanctions. Respondent Morgan agreed these were appropriate sanctions. The Hearing Panel Subcommittee heard the evidence and also agreed these sanctions were appropriate.

It is the recollection of the Respondent that the Complainants were made aware of the sanctions the date of the hearing. Petitioners dispute this recollection. In fact, the Stipulations were not entered onto the record until the date of the hearing, September 22, 2010, when all complainants (sans Morgan) were present and testifying. Yet the Complainants did not voice

any concerns, in any way, to the severity of sanctions recommended by the Office of Disciplinary Counsel.

***D. There are Several Mitigating Factors.***

The Respondent is very aware, and very remorseful, of the aggravating factors that are present and have been outlined in this case. However, there are also several mitigating factors which the Respondent hopes can somewhat rehabilitate himself with this Court and help justify the sanctions that were drafted by the Office of Disciplinary Counsel and adopted by the Hearing Panel Subcommittee after hearing all of the evidence in this case.

The Scott Court adopted mitigating factors in a lawyer disciplinary proceeding and stated that mitigating factors "are any considerations or factors that may justify a reduction in the degree of discipline to be imposed." Lawyer Disciplinary Board v. Scott, 213 W.Va.209, 216, 579 S.E.2d 550, 557 (2003).

The following mitigating factors are present and were found to exist by the Hearing Panel Subcommittee beyond clear and convincing evidence:

i. Absence of a selfish or dishonest motive and remorse;

ii. Respondent has been licensed to practice law in West Virginia since October 10, 2001, and has no prior discipline from the West Virginia Supreme Court of Appeals;

iii. The evidence does not suggest that Respondent had selfish or dishonest motive in these matters.

iv. Respondent has also expressed remorse for his misconduct.

There are also other mitigating factors which the Respondent testified to during the hearing that took place on September 22, 2010. Specifically, Respondent Morgan testified that during the years in question he was recovering from a financially nasty split with former law partners and pursuing litigation to rectify his claims against his former partners. During this same time frame, Mr. Morgan was also emotionally recovering from a divorce with his now ex-wife. These matters were testified to in the hearing and reflect Mr. Morgan's mindset over the years in dealing with these two major life changes simultaneously occurring.

Mr. Morgan has rebounded from these events, and more importantly, learned from the events complained of in this case. Point in case, Respondent Morgan has not had any complaints filed with the Office of Disciplinary Counsel in over eighteen months. This time frame is equal to the last fifteen percent of Respondent Morgan's entire legal career. Admittedly, that is a small milestone, but it is proof that Respondent Morgan has learned, and hopes to continue learning, from these mistakes. Even so, Respondent Morgan knows the sanctions recommended to this Court are necessary given his negligent behavior in this case. This is true not only for himself but also for this Court and, most importantly, the Complainants who were harmed.

## IV. RECOMMENDED SANCTIONS SHOULD BE ADOPTED AS RESPONDENT HAS ALREADY COMPLIED WITH, OR ATTEMPTED TO COMPLY WITH, RECOMENDATIONS

The line of cases dealing with disciplinary proceedings, have carved out a line of analysis that must take place in every case of this type. For instance, the Rules of Professional Conduct specifically provide that there is a minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. Syllabus Pt. 3, in part, Committee on Legal Ethics v. Tatterson, 173 W.Va. 613, 319 S.E.2d 381 (1984), cited in Committee on Legal Ethics v. Morton, 186 W.Va.43, 410 S.E.2d 279,28t (1991). Additionally, discipline must serve two purposes. The discipline should serve as both instruction on the standards for ethical conduct and as a deterrent against similar misconduct to other attorneys. In Syllabus Point 3 of Committee on Legal Ethics v. Walker, 178 W.Va. 150, 358 SE.2d 234 (1987), the Court further stated:

"In deciding on the appropriate disciplinary action for ethical violations, this Court must consider not only what steps would appropriately punish the respondent attorney, but also whether the discipline imposed is adequate to serve be an effective Deterrent to other members of the Bar and at the same time restore public confidence in the ethical standards of the legal profession."

Lastly, disciplinary proceedings are to safeguard the public's interest in the administration of justice. Daily Gazette v. Committee on Legal Ethics, 174 W.Va. 359, 326 S.E.2d 705 (1984); Lawyer Disciplinary Board,v. Hardison, 205 W.Va. 344, 518 S.E.2d 101 (1999).

Very importantly, Standard 4.43 of the *ABA Standards for Imposing Lawyer Sanctions* states that a reprimand is generally appropriate when a lawyer is ***negligent*** and does not act with reasonable diligence in representing a client and causes injury or potential injury to a client.

In addition, Standard 7.3 of the *ABA Standards for Imposing Lawyer Sanctions* states that a reprimand is appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed a professional and causes injury or potential injury to a client, the public, or to the legal system.

All parties assert that the Stipulated Discipline appropriately addresses these concerns in this action against Respondent Morgan. The Supreme Court of Appeals of West Virginia has held that "failure to respond to written and oral requests from the state bar for information concerning disciplinary complaint warrants a public reprimand." Committee on Legal Ethics v. Joseph R. Martin, 187 W.Va. 340, 419 S.E.2d 4 (1992).

A public reprimand was also issued for conduct involving lack of diligence, lack of communication and failure to respond to disciplinary counsel in Lawyer Disciplinary Board v. Geraldine Roberts, 217 W.Va. 189, 617 S.E.2d 539 (2005) See also; Lawyer Disciplinary Board v. Reggie R. Bailey, No, 31799 (WV 3/9105): lawyer reprimanded for violations of Rules 1.3. 1.4 and 8.l(b) (Unreported Case); Lawyer Disciplinary Board v, Lee F. Benford, No. 31795 (WV l/19/05): Lawyer reprimanded for violations of Rules 1.3, 1.4 and 8.1(b) (Unreported Case); Lawyer Disciplinary Board v. Michael V. Marlow, No. 31617 (WV 6/10/04): lawyer reprimanded for violations of Rules 1.3, 1.4 and 8.l(b) (Unreported Case). *But see*, Lawyer Disciplinary Board v. Joan A. Mooney, No. 33595 (WV 5/22/08): lawyer admonished for violations of 1,3, l-4 and 8.1(b) (Unreported Case).

Rule 4 of the *West Virginia Rules of Lawyer Disciplinary Proceedings* states, "[t]he Supreme Court of Appeals does hereby establish an Office of Disciplinary Counsel to prosecute violations of the Code of Judicial Conduct and the Rules of Professional Conduct. The Office of Disciplinary Counsel shall consist of separate Lawyer Disciplinary Counsel and Judicial Disciplinary Counsel. Lawyer Disciplinary Counsel shall be primarily responsible for the investigation of complaints of ethical violations by lawyers."

In this case, the Office of Disciplinary Counsel diligently prosecuted this matter. This office was very aware of all of the facts and evidence that were to be presented in this case. Even so, Office of Disciplinary Counsel felt these recommendations and sanctions were appropriate. The Respondent does recognize that this Honorable Court is the final arbiter in regards to these types of cases. However, this Court should take notice that the prosecutorial body which this Honorable Court set up has drafted and agreed to certain recommended sanctions.

Furthermore, a review of the record clearly indicates that the Hearing Panel Subcommittee properly considered all of the evidence in this case. That panel heard this evidence coupled with the mitigating factors and made their findings which are to be given substantial deference. Respondent Morgan reiterates what Office of Disciplinary Counsel has briefed to this Court, the Hearing Panel Subcommittee made appropriate findings and recommended sanctions.

It should be noted that Respondent Morgan has already complied, or attempted to comply, with the recommended sanctions adopted by the Hearing Panel Subcommittee. What

follows are the recommended sanctions and what steps the Respondent has taken to comply with each separate recommended sanction.

A. Respondent shall be reprimanded

The Respondent has accepted responsible for his actions and stipulated to the fact that he should be reprimanded by this Honorable Court.

B. Respondent shall refund the unearned fee referenced in Count I to Claude E. Weatherly, Jr. in the amount of Four Thousand Dollars ($4,000.00); in Count II to Trampes E. Morgan in the amount of Six Hundred Sixty-Five Dollars and Fifteen Cents ($665.15); in Count III to Treasa Neace in amount of Two Thousand Dollars ($2,000.00), and in Count IV to Naomi Staton in the amount of One Thousand Dollars ($1,000.00);

Respondent Morgan has issued a complete refund to Claude Weatherly in the amount of Four Thousand Dollars ($4,000.00). In fact, this payment was completed prior to the hearing on September 22, 2010. Proof of this payment has been made to the Office of Disciplinary Counsel. Respondent Morgan will have the other Complainants paid back by the time Oral Argument is heard on this case.

C. Respondent's practice shall be supervised for a period of two (2) years by an attorney agreed upon between the Office of Disciplinary Counsel and Respondent. Respondent shall meet with his supervising attorney every two (2) weeks. The office practice plan shall be based upon the Report of Barron K. Henley, Esquire, and include the implementation of those proposed changes to Respondent's office management as suggested by Barron K. Henley's report.

Respondent shall have Barron K. Henley review and evaluate his Office practices as soon as practicable. The goal of the supervised practice will be to improve the quality and effectiveness of Respondent's law practice to the extent that Respondent's sanctioned behavior is not likely to recur;

Respondent Morgan has called Ms. Donahue several times to try and set up a supervising attorney. In fact, Respondent Morgan had attorney G. Todd Houck contact Office of Disciplinary Counsel to see what steps would be necessary for him to supervise Respondent Morgan's practice pursuant to these recommendations. Furthermore, on or about July 6, 2010, I contacted Office of Disciplinary Counsel to request any documentation as to how to get an attorney supervising my practice.

On July 6, 2010, Office of Disciplinary Counsel emailed me a form to have a "supervision agreement". However, Mr. Morgan has been informed, by Office of Disciplinary Counsel, that a supervising attorney cannot be overseeing me until this case is resolved through the West Virginia Supreme Court. Accordingly, Respondent Morgan has called Ms. Donahue any time a possible ethical question has arose in his practice. As stated above, Respondent Morgan has not had a complaint filed on him in over eighteen months.

Respondent Morgan has already met with Barron K. Henley at his office in Oceana, West Virginia to have his office practices and his office reviewed. This meeting took place on March 29, 2011. Respondent Morgan paid $4,635.00 in order for this meeting and review to take place. This evaluation took place prior to the West Virginia Supreme Court issuing an Order that this Court would require oral arguments in this case.

Mr. Henley spent the greater part of the day of March 29, 2011 at Respondent Morgan's office. In response to this meeting, Mr. Henley submitted a report on April 24, 2011 relating to the visit he had with Respondent Morgan. In this report Mr. Henley noted his personal impression of Respondent Morgan. It stated:

> *"Not that it is completely relevant to this, but my feeling after meeting Mr. Morgan was that he's a good person and didn't want to violate any rules or upset his clients. However, as you know, his practice and life were being impacted severely by life circumstances beyond his control. Those events coalesced to turn Mr. Morgan's small problems with organization, task management and communication into very big problems. By Mr. Morgan's own admission, "if a client is unhappy, it's usually because of communication issues". He also indicated during our interview that he feels that his biggest weakness is forgetting to do things. This is not an indictment against Mr. Morgan because probably most lawyers struggle with organization, task management and communication to some degree. It's clear that Mr. Morgan is already taking some steps to address these issues; and almost all of the recommendations we have for him are aimed squarely at improving those things."*

Mr. Henley's report is consistent with what Office of Disciplinary Counsel drafted and agreed to and what the Hearing Panel Subcommittee found after hearing all of the evidence in this case. Respondent Morgan did not act with a selfish or dishonest motive and has consistently expressed remorse. Additionally this expert, who has been utilized by the West Virginia State Bar in CLE's on professional conduct, recognizes that Respondent Morgan is already taking steps to address the issues that caused these complaints to be filed.

D. Respondent shall arrange for Barron K, Henley, Esquire, to phone Respondent for an after care phone call three (3) months after the commencement of his supervised practice and prepare a written report to be submitted to ODC to ascertain the degree of progress of the changes to his law office management;

E. Respondent shall arrange for Barron K. Henley, Esquire, to phone Respondent for an after care phone call six (6) months after the commencement of his supervised practice and prepare a second written report to be submitted to ODC to ascertain the degree of progress of the changes to his law office management, and to ensure that any additional issues from the three (3) months report are adequately addressed;

Respondent Morgan has already demonstrated that he will comply with payment of and scheduling meetings with Mr. Henley. In fact, Mr. Henley has followed up with the Respondent since that report was issued. Respondent Morgan once provided a supervising will continue to meet with Mr. Henley as many times as this Court would deem necessary.

F. Respondent shall have his trust account audited for two (2) years and shall provide such audit to ODC;

Respondent Morgan has absolutely no problem with having his IOLTA account audited for two years and has emailed documentation from First Community Bank to Office of Disciplinary Counsel regarding this account.

G. Respondent shall provide certification of his IOLTA to ODC;

Respondent Morgan has already provided IOLTA account information to Office of Disciplinary Counsel. This information was emailed to Jessica Donahue on July 20, 2010 prior to the hearing in Beckley, West Virginia on September 22, 2010 and prior to the Respondent signing any stipulations..

H. Pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure, Respondent shall pay costs of this disciplinary proceeding.

Respondent Morgan has been told by Office of Disciplinary Counsel that final costs of this proceeding will not be ascertainable until after the Supreme Court decides this case. Respondent Morgan has paid a total of $8,635.00 to this date. Respondent Morgan will pay the remaining restitution off prior to oral argument in this case. Likewise, Respondent will absolutely pay any and all costs of this proceeding.

The Hearing Panel Subcommittee considered the evidence, the facts and recommended sanction, the aggravating factors and mitigating factors. As a result of that fact, the Hearing Panel Subcommittee recommended the sanctions that have been laid out in this brief. Additionally, Respondent Morgan has already complied with or substantially complied with all of these recommended sanctions. Most importantly, Respondent Morgan will continue to comply with these sanctions.

The evidence in this case warrants the sanctions recommended by both the Office of Disciplinary Counsel and the Hearing Panel Subcommittee. Accordingly, the Respondent has adopted parts of the brief of the Office of Disciplinary Counsel and has additionally briefed and does hereby respectfully requests that the sanctions, as recommended by the Hearing Panel Subcommittee, should be upheld.

Respectfully submitted,

Respondent Dennie S. Morgan, Jr.

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CERTIFICATE OF SERVICE

This is to certify that I, Dennie S. Morgan, Jr., have this day, the 8th day of June, 2011, served a true copy of the foregoing "**Brief of Respondent Dennie S. Morgan, Jr.**" upon Jessica Donahue, by mailing the same via United States Mail, with sufficient postage, to the following address:

Jessica H. Donahue

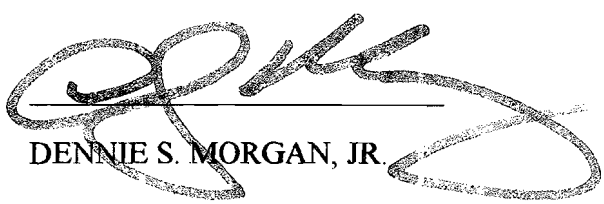
Lawyer Discplinary Counsel

Office of Disciplinary Counsel

City Center, East, Suite 1200 C

4700 McCorkle Avenue SE

Charleston, WV 25304



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