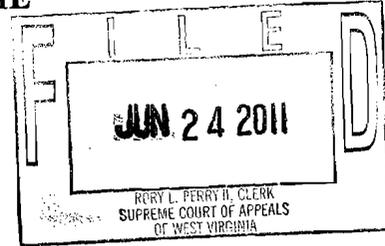


**BEFORE THE SUPREME COURT OF APPEALS OF THE
STATE OF WEST VIRGINIA**



LAWYER DISCIPLINARY BOARD,

Complainant,

v.

No. 35513

DENNIE S. MORGAN, JR.,

Respondent.

REPLY BRIEF OF THE LAWYER DISCIPLINARY BOARD

Jessica H. Donahue [Bar No. 9453]
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RESPONDENT'S CONDUCT

This matter is before the Court pursuant to the "Report of the Hearing Panel Subcommittee" issued on January 20, 2011, wherein 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. Respondent admitted and stipulated that he failed to communicate, failed to be diligent, failed to provide legal services after receiving retainers, failed to refund unearned fees, failed to separate retainers from personal property, and failed to respond to the Office of Disciplinary Counsel [hereinafter "ODC"]. While Respondent does not dispute any findings of the Hearing Panel Subcommittee, this Court has previously stated that "[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." Lawyer Disciplinary Board v. Cunningham, 195 W.Va. 27, 34, 464 S.E.2d 181, 189 (1995); Committee on Legal Ethics v. McCorkle, 192 W. Va. 286, 290, 452 S.E.2d 377, 381 (1994).

The Rules of Professional Conduct state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. Committee on Legal Ethics v. Keenan, 189 W.Va.37, 40, 427 S.E.2d 471, 473 (1993) (*per curiam*); quoting Syl. Pt. 3, in part, Committee on Legal Ethics v. Tatterson, 173 W.Va. 613, 319 S.E.2d 381 (1984). Furthermore, the Preamble to the Rules of Professional Conduct provides that "[i]n all professional functions a lawyer should be competent, prompt and diligent." It cannot be said

that Respondent's conduct in this case conforms to the expectations of the profession as stated in the Rules of Professional Conduct.

The evidence establishes that Respondent acted in a manner wherein a reasonable attorney failed to heed a substantial risk and deviated from the standard of care. Additionally, Respondent has expressed remorse at various stages of these proceedings for his misconduct and is working to follow the recommendations of the Hearing Panel Subcommittee to improve his law practice even without an Order from this Court.

SANCTION

The principle purpose of attorney disciplinary proceedings is to safeguard the public's interest in the administration of justice. Respondent is a young attorney and has expressed remorse for his misconduct. The sanction proposed by the Hearing Panel Subcommittee is not an easy sanction nor an inexpensive one, but Respondent has agreed to every part of the sanction and stipulated to such at his hearing in this matter. Respondent's problems with his law practice are addressed in the sanctions and without such sanctions which aim to improve Respondent's law practice, Respondent will probably not have a future in the legal profession in West Virginia. The purpose of the sanctions is to educate Respondent about the problems in his law practice and provide guidelines and assistance to help him deter any future problems.

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 3/9/05): lawyer reprimanded for violations of Rules 1.3, 1.4 and 8.1(b) (Unreported Case); Lawyer Disciplinary Board v. Lee F. Benford, No. 31795 (WV 1/19/05): 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 8.1(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, 1.4 and 8.1(b) (Unreported Case)

CONCLUSION

Therefore, a review of the record clearly indicates that the Hearing Panel Subcommittee properly considered this matter and made a proper recommendation to the Court. Wherefore, based upon the forgoing, the Office of Disciplinary Counsel respectfully requests that this Court accept and uphold the following recommended sanctions of the Hearing Panel Subcommittee:

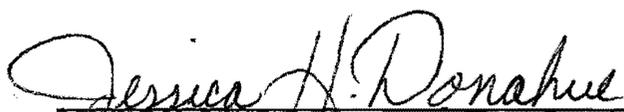
- A. Respondent shall be reprimanded;
- B. Respondent shall refund the unearned fee referenced in Count I to Claude E. Weatherly, Jr. in the amount of Four Thousand Dollars (\$4,000.00); in Count II to Trampes E. Morgan in the amount of Six Hundred Sixty-Five Dollars and

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 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;
- 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;

- F. Respondent shall have his trust account audited for two (2) years and shall provide such audit to ODC;
- G. Respondent shall provide certification of his IOLTA to ODC;
- H. Pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure, Respondent shall pay costs of this disciplinary proceeding.

Respectfully submitted,
The Lawyer Disciplinary Board
By Counsel



Jessica H. Donahue [Bar No. 9453]

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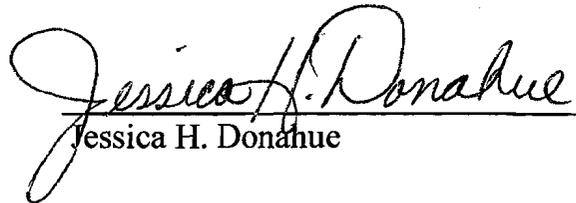
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CERTIFICATE OF SERVICE

This is to certify that I, Jessica H. Donahue, Lawyer Disciplinary Counsel for the Office of Disciplinary Counsel, have this day, the 24th day of June, 2011, served a true copy of the foregoing "**Reply Brief of the Lawyer Disciplinary Board**" upon Respondent Dennie S. Morgan, Jr., by mailing the same via United States Mail, both certified and regular, with sufficient postage, to the following address:

Dennie S. Morgan, Jr., Esquire
Post Office Box 502
Oceana, West Virginia 24870



Jessica H. Donahue