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

LAWYER DISCIPLINARY BOARD,

Complainant,

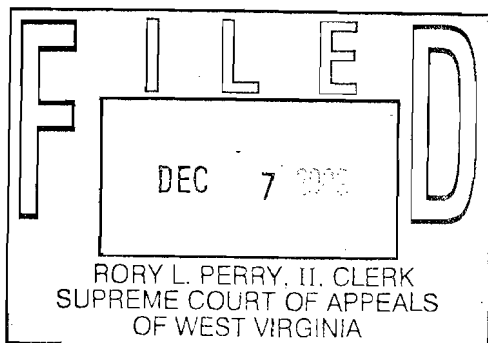
v.

No. 34734

WILLIAM C. MARTIN,

Respondent.

BRIEF OF THE LAWYER DISCIPLINARY BOARD



Renée N. Frymyer [Bar No. 9253]
Lawyer Disciplinary Counsel
Office of Disciplinary Counsel
2008 Kanawha Boulevard, East
Charleston, West Virginia 25311
(304) 558-7999
(304) 558-4015 – facsimile

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
I. NATURE OF PROCEEDINGS AND RECOMMENDED DECISION OF THE HEARING PANEL SUBCOMMITTEE	1
II. STANDARD OF REVIEW	3
III. FINDINGS OF FACT	4
IV. CONCLUSIONS OF LAW	7
V. DISCUSSION	9
A. Respondent violated duties to his client, to the public, to the legal system, and the legal profession.	10
B. Respondent acted negligently	14
C. The amount of potential and real injury is great.	14
D. The existence of any aggravating or mitigating factors.	15
VI. SANCTION	17
VII. CONCLUSION	20

Cases:

Black v. Black
 171 W.Va. 307, 298 S.E.2d 843 (1982) 12, 13

Committee on Legal Ethics v. Blair
 174 W.Va. 494, 327 S.E.2d 671 (1984) 4

Committee on Legal Ethics v. Hess
 186 W.Va. 514, 413 S.E. 2d 169 (1991) 16

Committee on Legal Ethics v. Karl
 192 W.Va. 23, 449 S.E.2d 277 (1994) 4

Committee on Legal Ethics v. McCorkle
 192 W.Va. 286, 452 S.E.2d 377 (1994) 3

Committee on Legal Ethics v. Morton
 186 W.Va. 43, 410 S.E.2d 279, 281 (1991) 18

Committee on Legal Ethics v. Mullins
 159 W.Va. 647, 226 S.E. 2d 427 (1976) 19

Committee on Legal Ethics v. Roark
 181 W.Va. 260, 382 S.E.2d 313 (1989) 17

Committee on Legal Ethics v. Tatterson
 173 W.Va. 613, 319 S.E.2d 381 (1984) 13, 18

Committee on Legal Ethics v. Walker
 178 W.Va. 150, 358 S.E.2d 234 (1987) 17

Committee on Legal Ethics v. White
 189 W.Va. 135, 428 S.E.2d 556 (1993) 17

Daily Gazette v. Committee on Legal Ethics
 174 W.Va. 359, 326 S.E.2d 705 (1984) 17

<u>Estate of Lapinsky v. Sparacino</u>	
148 W.Va. 38, 132 S.E. 2d 765 (1963)	12, 13
<u>In re Dameron</u>	
131 W.Va. 66, 45 S.E. 2d 741 (1947)	19
<u>Lawyer Disciplinary Board v. Ball</u>	
219 W.Va. 296, 633 S.E. 2d 241 (2006)	12, 19
<u>Lawyer Disciplinary Board v. Battistelli</u>	
206 W.Va. 197, 523 S.E. 2d 257 (1999)	16
<u>Lawyer Disciplinary Board v. Cunningham</u>	
195 W.Va. 27, 464 S.E.2d 181 (1995)	3
<u>Lawyer Disciplinary Board v. Friend</u>	
200 W.Va. 368, 489 S.E.2d 750 (1997)	17
<u>Lawyer Disciplinary Board v. Hardison</u>	
205 W.Va. 344, 518 S.E.2d 101 (1999)	17
<u>Lawyer Disciplinary Board v. Keenan</u>	
208 W.Va. 645, 542 S.E.2d 466 (2000)	17
<u>Lawyer Disciplinary Board v. Kupec (Kupec I)</u>	
202 W.Va. 556, 505 S.E.2d 619 (1998)	
<i>remanded with directions</i>	16
<u>Lawyer Disciplinary Board v. Kupec (Kupec II)</u>	
204 W.Va. 643, 515 S.E.2d 600 (1999)	16
<u>Lawyer Disciplinary Board v. McGraw</u>	
194 W.Va. 788, 461 S.E.2d 850 (1995)	3
<u>Lawyer Disciplinary Board v. Scott</u>	
213 W.Va. 209, 579 S.E. 2d 550 (2003)	15
<u>Lawyer Disciplinary Board v. Taylor</u>	
192 W.Va. 139, 451 S.E.2d 440 (1994)	9

<u>Lawyer Disciplinary Board v. Wheaton</u>	
216 W.Va. 673, 610 S.E. 2d 8 (2004)	16
<u>Office of Disciplinary Counsel v. Jordan</u>	
204 W.Va. 495, 513 S.E.2d. 722 (1998)	9
<u>Roark v. Lawyer Disciplinary Board</u>	
207 W.Va. 181, 495 S.E.2d 552 (1997)	3
<u>Tyler v. Reynolds</u>	
120 W.Va. 232, 197 S.E.2d 735 (1938)	13

West Virginia Statutes and Rules:

R. Law Disc. Proc.	Rule 3.7	3
R. Law Disc. Proc.	Rule 3.15	2
R. Law Disc. Proc.	Rule 3.16	9, 15
R. Professional Conduct	Rule 1.3	1, 7
R. Professional Conduct	Rule 1.5(a)	11, 12, 19
R. Professional Conduct	Rule 1.15(a)	1, 7
R. Professional Conduct	Rule 1.15(b)	1, 7
R. Professional Conduct	Rule 1.16(d)	1, 8
R. Professional Conduct	Rule 3.4(c)	1, 8
R. Professional Conduct	Rule 8.4(c)	1, 8, 9
R. Professional Conduct	Rule 8.4(d)	1, 8, 9

Other:

ABA Model Standards for Imposing Lawyer Sanctions, § 4.42 18

ABA Model Standards for Imposing Lawyer Sanctions, § 9.21 15

I. NATURE OF PROCEEDINGS AND RECOMMENDED DECISION OF THE HEARING PANEL SUBCOMMITTEE

This is a disciplinary proceeding against Respondent William C. Martin, Esquire, (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 February 20, 2009. The Clerk of the Supreme Court of Appeals served upon him by certified mail on or about February 24, 2009. Respondent filed his answer to the Statement of Charges on or about March 24, 2009.

This matter proceeded to hearing in Charleston, West Virginia, on June 10, 2009. The Hearing Panel Subcommittee was comprised of David A. Jividen, Esquire, Chairperson, Debra A. Kilgore, Esquire, and Dr. Robert J. Rufus, layperson. Renée N. Frymyer, Disciplinary Counsel, and Andrea J. Hinerman, Senior Disciplinary Counsel, appeared on behalf of the Office of Disciplinary Counsel; and Respondent appeared *pro se*. The Hearing Panel Subcommittee heard testimony from Timothy LaFon, Esquire, Complainant Barbara J. Warder, and Respondent. In addition, ODC Exhibits 1-10, 12-16, and "Stipulations" marked as Joint Exhibit 1 were admitted into evidence.

On September 28, 2009, 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, 1.15(a), 1.15(b), 1.16(d), 3.4(c), 8.4(c) and 8.4(d) of the Rules of Professional Conduct.

The Hearing Panel Subcommittee issued the following recommendation as the appropriate sanction:

1. That Respondent be suspended from the practice of law for a period of six (6) months;
2. That, upon reinstatement, Respondent's practice be supervised for a period of one (1) year;
3. That Respondent complete twelve (12) hours of CLE in ethics in addition to such ethics hours he is otherwise required to complete to maintain his active license to practice, said additional twelve (12) hours to be completed before he is reinstated;
4. That Respondent fully comply with the orders of the Circuit Court of Harrison County regarding damages awarded to Complainant in Civil Action No. 05-C-628-1; and
5. That Respondent be ordered to reimburse the Lawyer Disciplinary Board the costs of these proceedings pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.

On October 28, 2009, Respondent filed an objection to the recommendations of the Hearing Panel Subcommittee and a briefing schedule was set by the Supreme Court.

II. STANDARD OF REVIEW

In lawyer disciplinary matters, 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.

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. McCorkle, Id.; 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, 192 W. Va. at 290, 452 S.E.2d at 381.

The 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).

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

III. FINDINGS OF FACT

1. Respondent is a lawyer practicing in Sutton, Braxton County, West Virginia, and, as such, is subject to the disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and its properly constituted Lawyer Disciplinary Board. Respondent was admitted to the West Virginia State Bar on December 19, 1978.
2. Respondent prepared a document titled "Last Will & Testament of Anna Lee Davis Hornor," which was executed by Ms. Hornor on or about November 24, 1999.
3. Ms. Hornor passed away on April 2, 2002.
4. Respondent was appointed as Executor of the Estate of Anna Lee Davis Hornor on or about April 8, 2002, by the Harrison County Commission and was charged with the duties of administering the Estate of Ms. Hornor.
5. At this time, Respondent maintained an account with City National Bank, Number 600014250. The account carried the notation "William C. Martin, Office Account."
6. On or about April 17, 2002, nine (9) days after Respondent was appointed Executor to Ms. Hornor's estate, Respondent wrote himself a check from Anna Lee Hornor's

- City National Bank checking account for \$5,000.00 and deposited the same into his Office Account. "Executor fee" was handwritten in the memo line of the check.
7. On or about July 12, 2004, Respondent deposited a second check written to himself from Ms. Hornor's checking account in the amount of \$3,000.00 into his Office Account. "Fees" was handwritten in the memo line of this check.
 8. On or about September 20, 2004, Respondent deposited a third check written to himself from Ms. Hornor's checking account in the amount of \$3,000.00 into his Office Account. There was not a notation on the memo line of the check.
 9. In early 2005, Complainant Barbara Warder, a beneficiary under Ms. Hornor's Estate, filed a Motion to Remove Executor before the Harrison County Commission.
 10. On or about April 28, 2005, the Harrison County Commission found Respondent did not properly administer the Estate and ordered he be removed from his position as Executor. The Commission also ordered Respondent to refund all fees previously taken from the Estate, turn over the file, and provide an accounting of all of his activity in the Estate to the Estate's beneficiaries and the Harrison County Commission.
 11. On or about June 9, 2005, the Harrison County Commission appointed Barbara Warder as Administratrix of the Estate of Anna Lee Hornor.
 12. On or about December 12, 2005, Complainant, by and through counsel, filed a lawsuit with the Harrison County Circuit Court (05-C-628) alleging that Respondent had

breached his fiduciary duty with regard to Ms. Hornor's Estate, had misappropriated funds from the Estate by paying cash to himself and others, and had refused to refund money and provide an accounting of the Estate to its beneficiaries, despite the order from the Harrison County Commission to do so.

13. Shortly thereafter, on January 23, 2006, Complainant also filed a verified ethics complaint against Respondent with the Office of Disciplinary Counsel and alleged that Respondent neglected Ms. Hornor's Estate, misappropriated funds, and refused to comply with the Harrison County Commission order.
14. On or about February 12, 2006, Respondent issued a check from his Office Account to the Estate of Anna Lee Davis Hornor in the amount of \$11,000.00.
15. Respondent filed a response to the complaint and denied he misappropriated funds from the Estate and claimed he had complied with the order of the Harrison County Commission. Respondent asserted the fees he took from the Estate were funds he believed he was entitled to for services performed. Respondent also stated he was unable to provide records of the time he kept in the case due to a fire destroying the contents of his office that occurred in or about March of 2006.
16. On or about February 23, 2007, the Circuit Court of Harrison County granted Complainant default judgment as to liability resulting from Respondent's misfeasance in handling the Estate and set the matter for a Writ of Inquiry hearing to determine damages.

17. A Final Order was issued by the Harrison County Circuit Court on December 23, 2008, ordering Respondent to pay Complainant \$13,831.40 in compensatory damages, consequential damages and attorney's fees, in addition to court costs.

IV. CONCLUSIONS OF LAW

18. Because Respondent failed to diligently represent the interests of the Estate of Anna Lee Davis Hornor, Respondent has violated Rule 1.3 of the Rules of Professional Conduct with provides as follows:

Rule 1.3. Diligence.

A lawyer shall act with reasonable diligence and promptness in representing a client.

19. Because Respondent failed to promptly disburse monies from Ms. Hornor's Estate to the beneficiaries and failed to provide an accurate accounting to the Harrison County Commission and the beneficiaries of the Estate, Respondent has violated Rules 1.15(a) and Rule 1.15(b) of the Rules of Professional Conduct which provide as follows:

Rule 1.15. Safekeeping property.

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. [...] Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after the termination of the representation.

(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall

promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person shall promptly render a full accounting regarding such property.

20. Because Respondent failed to tender Ms. Hornor's client file upon request of the Estate upon his termination as Executor of the Estate, Respondent has violated Rule 1.16(d) of the Rules of Professional Conduct which provides as follows:

Rule 1.16. Declining or terminating representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as [...] surrendering papers and property to which the client is entitled [.]

21. Because Respondent failed to fully comply with the provisions of the Order of the Harrison County Commission, Respondent has violated Rule 3.4(c) of the Rules of Professional Conduct which provides as follows:

Rule 3.4. Fairness to opposing party and counsel

A lawyer shall not:

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

22. Because Respondent wrongfully commingled, misappropriated and converted funds belonging to the Estate of Anna Lee Davis Hornor for his own personal use, he engaged in conduct that was dishonest, fraudulent, and deceitful and violated Rule 8.4(c) and Rule 8.4(d) of the Rules of Professional Conduct, which provides as follows:

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

V. DISCUSSION

The Supreme Court of Appeals of West Virginia has long recognized that attorney disciplinary proceedings are not designed solely to punish the attorney, but also to protect the public, to reassure the public as to the reliability and integrity of attorneys, and to safeguard its interests in the administration of justice. Lawyer Disciplinary Board v. Taylor, 192 W.Va. 139, 451 S.E.2d 440 (1994).

Factors to be considered in imposing appropriate sanctions are found in Rule 3.16 of the Rules of Lawyer Disciplinary Procedure. These factors 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*, Syllabus Pt. 4, Office of Disciplinary Counsel v. Jordan, 204 W.Va. 495, 513 S.E.2d 722 (1998). A review of the record in this matter clearly indicates that Respondent has transgressed all four factors set forth in Rule 3.16 and Jordan.

A. Respondent violated duties to his client, to the public, to the legal system and to the legal profession.

The evidence clearly establishes that Respondent did not diligently administer the Estate of Anna Lee Davis Hornor and did not act as a reasonably prudent executor and attorney when he failed to marshal the assets of the Estate. The Hearing Panel Subcommittee believed that while the Respondent had the right to take an advance on the Estate as the Executor of the Estate, he was required to perform the work of the Executor. However, the Hearing Panel Subcommittee found that Respondent was unable to prove his contention that he performed any work to advance the probating of the Estate.

Respondent never produced work he performed on behalf of the Estate even when first challenged by the beneficiaries. As a result, Complainant was forced to initiate legal action to remove Respondent from the Estate. When Respondent was removed as Executor of the Estate by the Harrison County Commission in May of 2005, he was also ordered to provide Complainant with the Estate file, refund certain funds, and provide a full accounting. Respondent did not comply with this directive for over eight (8) months.

According to Complainant's testimony, when Complainant finally received the file from Respondent, she was forced to spend a significant amount of time organizing it and determining what work, if any, had been performed on the Estate. Hearing Transcript at 59. It was evident to the Hearing Panel Subcommittee that Respondent had severely neglected the Estate for quite some time, resulting in damages suffered to the Estate.

The Hearing Panel Subcommittee found that Complainant had to contact several banks to request reprinting of voided dividend checks which Respondent had not deposited into the Estate account. The Hearing Panel Subcommittee also found that Complainant had to hire a Certified Public Accountant to prepare and file numerous overdue tax returns, was unable to recoup tax refunds due to the Estate because of Respondent's failure to file tax returns, and as a result, additional interest and penalties were charged to the Estate by the various taxing agencies. Finally, the Hearing Panel Subcommittee determined that the Estate also suffered additional bonding costs, bank fees, legal expenses and attorney fees resulting from Complainant's attempts to rectify the actions of Respondent so that the Estate may be finally closed.

Respondent testified that his estate practice was extremely limited. He testified that, other than for one family member, he had never been an Executor of an estate. Rather than taking full responsibility for his misconduct, Respondent relied principally on the fact that he was not acting in the capacity of a lawyer when he took over as Executor of Ms. Hornor's Estate, and indicated that because he was only acting as Executor and not charging a legal fee, he was not subject to the Rules of Professional Conduct in his actions involving the Estate of Ms. Hornor.

This defense is patently without merit. Rule 1.5(a) of the Rules of Professional Conduct provides in pertinent part: "A lawyer's fee shall be reasonable." It does not restrict or define "legal services" to be only those services which can be performed by a lawyer.

Indeed, such a restrictive definition would exclude fees for a myriad of other services related to or arising out of a lawyer's practice of law, many of which can be provided by nonlawyers.

The fact that a nonlawyer can also provide such services but and is not subject to the Rules of Professional Conduct does not release the lawyer from his ethical obligations under the Rules. The fees advanced to himself by Respondent are directly related to and arise out of his practice as a lawyer. This is not a circumstance in which the Respondent is earning money in an industry totally unrelated to his law practice. On the contrary, the executor fees in this matter arise solely as a result of his engagement in the practice of law. As such, they are subject to Rule 1.5(a). *See, e.g., Lawyer Disciplinary Board v. Ball*, 219 W.Va. 296, 633 S.E.2d 241 (2006).

The Investigative Panel Subcommittee correctly found Respondent's argument that he was not acting in the capacity as an attorney in this matter to be disingenuous. It was their opinion that when Ms. Horner changed her Will and made Respondent the Executor of her Estate, it was with the full knowledge that Respondent was a practicing attorney and it was with this knowledge that she intended for him to execute her Last Will and Testament.

Furthermore, this Court has long recognized that an executor of an estate is not entitled to receive a higher rate of compensation than he would be entitled to receive if he were not a lawyer, and that this is true notwithstanding the fact that the estate derives the benefit of his legal knowledge. *Estate of Lapinsky v. Sparacino*, 148 W.Va. 38, 132 S.E.2d 765 (1963); *Black v. Black*, 171 W.Va. 307, 298 S.E.2d 843 (1982). A lawyer who is an

executor has an option of charging either a legal fee or an executor's fee, but not both. It is because of this intertwining of the services in the practice of law that only one fee is allowed, not because there is a great distinction between the fees.

The evidence establishes by clear and convincing proof that Respondent violated his duties under the Rules of Professional Conduct by failing to act diligently in his representation of the Estate of Ms. Hornor. As a result, Complainant was forced to initiate legal action to have Respondent removed from the Estate, compel Respondent to turn over his file, and order Respondent to return all fees that were improperly removed from the Estate.

Furthermore, the evidence is clear that Respondent advanced himself monies from the Estate for work he was unable to prove he had performed. While it is recognized that an executor of an Estate is entitled to a reasonable fee, the burden of proof is on the attorney, not the Office of Disciplinary Counsel, to prove reasonableness of a fee. Committee on Legal Ethics v. Tatterson, 177 W.Va. 556, 352 S.E.2d 107 (1986). As a general rule of thumb, five percent is a limit for an executor fee.¹

¹West Virginia Code §44-4-12 (1997) simply states an executor is entitled to "reasonable compensation." The Court decisions under this section (and its predecessor) hold there is no narrow or rigid basis for determining what is reasonable compensation in all cases. Tyler v. Reynolds, 120 W.Va. 232, 197 S.E. 735 (1938). A rule of thumb of five percent of gross receipts has been recognized for a number of years. However, it may be reduced or increased under peculiar circumstances. Estate of Lapinsky v. Sparacino, 148 W.Va. 38, 32 S.E.2d 765 (1963); Black v. Black, 171 W.Va. 307, 298 S.E.2d 843 (1982).

Although Respondent advanced himself an amount less than five percent of Ms. Hornor's Estate, Respondent was unable to provide any evidence of any work he performed on behalf of the Estate. Therefore, Respondent violated his duties to his client, the legal system, legal profession and public when he misappropriated the funds he had been entrusted to properly manage.

B. Respondent acted negligently.

The Hearing Panel Subcommittee found that the evidence established that Respondent failed to take any action whatsoever to properly administer Ms. Hornor's Estate, and as such, Respondent exhibited gross negligence in this matter.² The Hearing Panel Subcommittee was not of the opinion, however, that Respondent intended to misappropriate monies from the Estate.

C. The amount of potential and real injury is great.

As a result of Respondent's actions, Ms. Hornor's Estate suffered immediate and actual damage. Beneficiaries of the Estate have been denied access to funds for over seven (7) years, and the Estate has been significantly depleted due to additional costs, fees, legal expenses and attorney fees resulting from Complainant's attempts to rectify the misfeasance

²"Negligence" as defined by the American Bar Association is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation.

and/or malfeasance of Respondent. In addition, Respondent's conduct has brought the legal system and legal profession into disrepute.

D. The existence of any aggravating or mitigating factors.

Aggravating factors are considerations enumerated under Rule 3.16 of the Rules of Lawyer Disciplinary Procedure for the Court to examine when considering the imposition of sanctions. Elaborating on this rule, the Scott Court held "that aggravating factors in a lawyer disciplinary proceeding 'are any considerations, or factors that may justify an increase 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) *quoting* ABA Model Standards for Imposing Lawyer Sanctions, 9.21 (1992).

The Hearing Panel Subcommittee found no evidence of mitigating factors in this case. However, the Hearing Panel Subcommittee determined that Respondent's lack of remorse to be an aggravating factor. The Hearing Panel Subcommittee found it very disconcerting that Respondent showed no remorse throughout the course of the disciplinary proceedings. In fact, the Hearing Panel Subcommittee noted that during the Respondent's questioning, he showed very little concern about his actions. The Hearing Panel Subcommittee also noted that Respondent testified that when he was asked to be removed as Executor, he fought his removal even though he admitted he had not acted in a reasonable manner in his handling of the Estate. Respondent testified that significant time had lapsed before he complied with the order of the Harrison County Commission requiring him to provide his file to the

Complainant and a refund to the Estate. The Hearing Panel Subcommittee also stated that Respondent did not have an awareness of the severity of this situation during the hearing of the matter.

While Respondent ultimately complied with the order of the Harrison County Commission and paid restitution to the Estate in the amount of Estate Eleven Thousand Dollars (\$11,000.00), this act should not mitigate any sanction. The return of the unearned fees does not negate the conduct and is not a defense. *See* Syl. Pt. 8, Lawyer Disciplinary Board v. Gery M. Battistelli, 206 W.Va. 197, 523 S.E.2d 257 (1999); Syl. Pt. 4, Committee on Legal Ethics v. Hess, 186 W.Va. 514, 413 S.E.2d 169 (1991); and Lawyer Disciplinary Board v. Kupec (Kupec I), 202 W.Va. 556, 569-570, 505 S.E.2d 619, 632-633 (1998), remanded with directions, *see* Lawyer Disciplinary Board v. Kupec (Kupec II), 204 W.Va. 643, 515 S.E.2d 600 (1999).

Furthermore, in Lawyer Disciplinary Board v. Wheaton, 216 W.Va. 673, 610 S.E.2d 8 (2004), the Court made clear that restitution to be accepted as a mitigating factor must be made promptly. In this case, after years of inaction by Respondent, Complainant petitioned the Harrison County Commission to order the return of unearned fees. Over eight (8) months lapsed before Respondent finally complied. Notably, payment was finally submitted shortly after a separate civil action and an ethics complaint were filed by Complainant.

Kupec I provides that:

Where restitution has been made after the commencement of disciplinary proceedings, or when made as a matter of expediency under the pressure of the threat of disciplinary proceedings, some courts have refused to consider it a mitigating factor.

[citations omitted]

In view of Respondent's delay of over eight(8) months in repaying the Estate and then doing so only after an ethics complaint was filed against him, such restitution cannot be mitigating.

VI. SANCTION

The principle purpose of attorney disciplinary proceedings is to safeguard the public's interest in the administration of justice. Syl. Pt. 3, Daily Gazette v. Committee on Legal Ethics, 174 W.Va. 359, 326 S.E.2d 705 (1984); and Syl. Pt. 2, Lawyer Disciplinary Board v. Hardison, 205 W.Va. 344, 518 S.E.2d 101 (1999).

A sanction is to not only punish the attorney, but should also be designed to reassure the public confidence in the integrity of the legal profession and deter other lawyers from similar conduct. Syl. Pt 2, Committee on Legal Ethics v. White, 189 W.Va. 135, 428 S.E.2d 556 (1993);. Syl. Pt 3, Committee on Legal Ethics v. Walker, 178 W.Va. 150, 358 S.E.2d 234 (1987); Syl. Pt. 5, Committee on Legal Ethics v. Roark, 181 W.Va. 260, 382 S.E.2d 313 (1989); Syl. Pt. 3, Lawyer Disciplinary Board v. Friend, 200 W.Va. 368, 489 S.E.2d 750 (1997); and Syl Pt. 3, Lawyer Disciplinary Board v. Keenan, 208 W.Va. 645, 542 S.E.2d 466 (2000). For the public to have confidence in our disciplinary and legal systems, lawyers such

as Respondent must be removed from the practice of law for a period of time. A severe sanction is also necessary to deter lawyers who may be considering or who are engaging in similar conduct.

The Rules of Professional Conduct state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. Syl. 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, 410 S.E.2d 279, 281 (1991). Respondent, a lawyer with substantial experience, has demonstrated conduct which has fallen below the minimum standard for attorneys, and discipline must be imposed.

Rule 3.15 of the Rules of Lawyer Disciplinary Procedure provides that the following sanctions may be imposed in a disciplinary proceeding: (1) probation; (2) restitution; (3) limitation on the nature or extent of future practice; (4) supervised practice; (5) community service; (6) admonishment; (7) reprimand; (8) suspension; or (9) annulment.

Section 4.42 of the ABA Standards for Imposing Lawyer Sanctions provides that absent aggravating or mitigating circumstances, suspension is generally appropriate when (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

Additionally, in Mullins this Court stated that “[m]isconduct or malpractice consisting of negligence or inattention, in order to justify a suspension or annulment, must be such as

to show the attorney to be unworthy of public confidence and an unfit or unsafe person to be entrusted with the duties of a member of the legal profession or to exercise its privileges.” Committee on Legal Ethics v. Mullins, 159 W.Va. 647, 652, 226, S.E.2d 427, 430 (1976), *quoting* Syl. Pt. 1, In Re Damron, 131 W.Va. 66, 45 S.E.2d 741 (1947).

Respondent’s actions in this case clearly rise to such a level to justify suspension. Not only did Respondent fail to diligently finalize the Estate of Ms. Hornor, he advanced himself funds for work that he did not perform. Furthermore, although Respondent has failed to acknowledge his neglect in the matter, the evidence clearly demonstrates that Respondent knowingly failed to perform services and engaged in a pattern of neglect which resulted in damaging the assets of the Estate of Ms. Hornor.

Respondent’s single argument that he was not acting as an attorney, but as an executor, and therefore not subject to the Rules of Professional Conduct, is clearly erroneous. Respondent cannot evade his ethical obligations under the Rules of Professional Conduct because he asserts he merely charged an executor’s fee. To permit such evasion renders Rule 1.5(a) meaningless and unenforceable in estate practice. Furthermore, this Court has expressly held that lawyers have a duty to know the Rules of Professional Conduct and to act in conformity therewith. Lawyer Disciplinary Board v. Ball, 219 W.Va. 296, 305, 633 S.E.2d 241, 250 (2006).

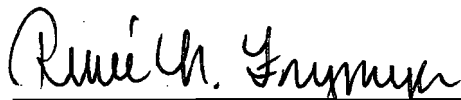
A license to practice law is a revokable privilege and when such privilege is abused, the privilege should be suspended or revoked. Such sanction is also necessary to deter other

lawyers from engaging in similar conduct and to restore the faith of the victim in this case and of the general public in the integrity of the legal profession.

VII. CONCLUSION

A review of the record clearly indicates that the Hearing Panel Subcommittee properly considered the evidence and made an appropriate recommendation to this Court. Furthermore, the Hearing Panel Subcommittee considered what little evidence Respondent offered in mitigation. Accordingly, the sanctions recommended by the Hearing Panel Subcommittee should be upheld.

Respectfully submitted,
The Lawyer Disciplinary Board
By Counsel




Renée N. Frymyer [WVSB No. 9253]
Lawyer Disciplinary Counsel
Office of Disciplinary Counsel
2008 Kanawha Boulevard, East
Charleston, West Virginia 25311
(304) 558-7999
(304) 558-4015 facsimile

CERTIFICATE OF SERVICE

This is to certify that I, Renée N. Frymyer, Lawyer Disciplinary Counsel for the Office of Disciplinary Counsel, have this day, the 7th day of December, 2009, served a true copy of the foregoing "**Brief of the Lawyer Disciplinary Board**" upon Respondent William C. Martin, Esquire, by mailing the same via United States Mail, both certified and regular, with sufficient postage, to the following address:

William C. Martin, Esquire
Post Office Box 72
Sutton, West Virginia 26601



Renée N. Frymyer