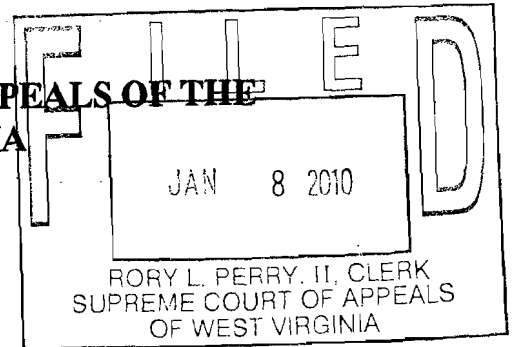


**BEFORE THE SUPREME COURT OF APPEALS OF THE
STATE OF WEST VIRGINIA**



LAWYER DISCIPLINARY BOARD,

Complainant,

v.

No. 34734

WILLIAM C. MARTIN,

Respondent.

RESPONDENT'S BRIEF

William C. Martin
Attorney at Law
WB Bar #2345
PO Box 72
Sutton, WV 26601
voice: 304-765-7327
fax: 1-888-590-3841
e-mail: wcmartin.lawyer@verizon.net

TABLE OF CONTENTS

I.	NATURE OF PROCEEDINGS AND RECOMMENDED DECISION OF THE HEARING PANEL SUBCOMMITTEE	1
II.	STANDARD OF REVIEW	3
III.	FINDINGS OF FACT	3
IV.	CONCLUSIONS OF LAW	7
V.	DISCUSSION	8
VI.	SANCTION	10
VII.	CONCLUSION	10

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 found that the evidence established that Respondent violated Rules 1.3, 1.15(a), 1.15(b), 1.16(d), 3.4(c), and 8.4(d) of the Rules of Professional Conduct. Contrary to what is asserted in the brief filed by the Office of Disciplinary counsel, the Hearing Panel Subcommittee found the Respondent **did not** violate Rule 8.4(c).

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-C628-1; 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.

The respondent objects to the disposition recommended by the hearing panel subcommittee insofar as the same recommends:

1. The respondent be suspended from the practice of law for a period of six months; and
2. That, upon reinstatement, Respondent's practice be supervised for a period of one (1) year.

The respondent submits that the other possible sanctions of probation, limitation on

the nature or extent of future practice, community service, admonishment or reprimand would be appropriate punishment.

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).

III. PROPOSED FINDINGS OF FACT

The respondent contends the evidence supports the following findings of fact.

1. William C. Martin (hereinafter "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 Homor," which was executed by Ms. Hornor on or about November 24, 1999.
3. Ms. Homor passed away on April 2, 2002.
4. Respondent was appointed as Executor of the Estate of Anna Lee Davis Homor on or about April 8, 2002, by the Harrison County Commission and was charged with the duties of administering the Estate of Ms. Homor.

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 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.
12. 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.
13. 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.
14. 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 March 2006.
15. On or about February 23, 2007, the Circuit Court of Harrison County granted Complainant judgment as to liability because the respondent failed to appear at a pre-trial conference and set the matter for a Writ of Inquiry hearing to determine damages.

16. The court afforded the respondent the opportunity to challenge the granting of the judgement but he did not do so, telling the panel that he accepted responsibility for his actions.
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, which includes: \$3,650.00 for denied income tax refunds, \$4,085.17 for interest and penalties on income taxes, \$2,289.10 for attorney fees in the removal proceeding, \$1,389.13 in lost interest, \$1800.00 in additional bonding costs, \$190.00 for bank fees, \$428.00 in costs for appointment of the replacement executor.
18. The respondent has paid said judgment.
19. The respondent contends the fees he paid himself from the estate were justified by the work he had done and would have made the estate not have taxable income.
20. The respondent did perform services for the estate including closing the decedent's apartment, inventorying the estate and transferring stocks and bonds to the beneficiaries.
21. The Circuit Court did not find the respondent had commingled, misappropriated or converted funds belonging to the estate or that his conduct was otherwise dishonest, fraudulent or deceitful.
22. The respondent will receive no compensation for services rendered under the provisions of West Virginia Code §44-4-7 because he failed to make timely accountings. This could have been as much as 5 % of a nearly one million dollar estate according the findings of the Circuit Court of Harrison County.

23. This is the only time the respondent has been named as the executor of an estate for other than family members and he does not hold himself out to the public as a probate or estate attorney.
24. In over thirty years of practicing law this is the first complaint issued against the respondent by the Office of Disciplinary Counsel.

IV. CONCLUSIONS OF LAW

The Respondent has admitted to the Panel and the Circuit Court of Harrison County that he failed to diligently represent the interests of the Estate of Anna Lee Davis Hornor and has violated Rule 1.3 of the Rules of Professional Conduct.

The Respondent denies that he 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, thereby violating Rules 1.15(a) and Rule 1.15(b) of the Rules of Professional Conduct.

The Respondent admits that he failed to tender Ms. Hornor's file immediately upon request of the Estate upon his termination as Executor of the Estate, and may have violated Rule 1.16(d) of the Rules of Professional Conduct.

The Respondent denies that failed to fully comply with the provisions of the Order of the Harrison County Commission, Respondent, thereby violating Rule 3.4(c) of the Rules of Professional Conduct.

The Respondent denies and neither the hearing panel, nor the Circuit Court of Harrison County found that he wrongfully commingled, misappropriated or converted

funds belonging to the Estate of Anna Lee Davis Hornor for his own personal use, thereby violating Rule 8.4(c) and Rule 8.4(d) of the Rules of Professional Conduct.

V. DISCUSSION

Anna Lee Hornor had no children and devised her estate unto her nieces and nephews. Only one of those beneficiaries lived in the state and would have been in a position to serve as her personal representative. Because she did not desire to appoint that person to serve she asked the respondent to serve. Believing it would be a simple matter he agreed to do so.

After Ms. Hornor's death he did perform services as executor by making several trips to Harrison County to inventory her household goods and furnishings and see to its disposal. Ms. Hornor was a resident of an assisted living facility known as Maplewood where she had entered into a contract to purchase an apartment. The contract provided the apartment could only be sold by Maplewood and she did not get a refund of her purchase until they secured a new tenant. Maplewood never did secure a new tenant entitling Ms. Hornor's estate to a refund under the contract. Because of this the estate was never in a position to be settled while the respondent served as Executor.(Tr.73-74)

Ms. Hornor's estate plan basically provided that all of her telephone company stock went to a niece by the name of Dina Braddy, other specific stocks and savings bonds and the residue of the estate went to the nephews and the other niece, who is the complainant in this case. The respondent did deliver the stocks and savings bonds to the

beneficiaries.

While this may sound like a simple task it was not for the reason that Ms. Hornor had not kept up with the numerous divestitures and consolidations which took place in the telephone industry in the 1990's. What the Respondent thought initially was a few hundred shares of AT&T stock turned out to be many more shares of AT&T due to stock splits that had never been documented by Ms. Hornor and shares in several other "Baby Bell" companies. The respondent spent many hours figuring all this out and did perform services for the estate. (Tr. 95, 97) Ms. Braddy, who was the primary beneficiary of this work did not join in the complaints against the respondent. The complainant in this case acknowledged that the savings bonds, stock certificates and other property had been delivered. (Tr. 72-73)

For all of the foregoing the Respondent asserts that it was error for the hearing panel to find there was no evidence the respondent did any work.

The Hearing Panel raised the issue of whether the Respondent should be subject to disciplinary action in two different forums. (Tr. 139-140) The respondent then took that ball and ran with it in his written arguments to the panel. When those arguments were rejected it appears the panel, and certainly the Office of Disciplinary counsel is punishing the respondent for making the argument, by finding he has no remorse.

Furthermore, it appears the Hearing panel and the Office of Disciplinary Counsel wants to punish the respondent for exercising his right to a hearing on the petition for his

removal as executor before the County Commission and for a hearing as to damages before the Circuit Court of Harrison County. The Respondent asserts that he could have settled this estate promptly if he had been allowed to remain as Executor because he was familiar with the file. The Respondent offered to meet with the complainant to explain things to her but, through counsel, she refused. The Respondent also asserts he offered to settle the civil litigation for an amount in excess of that awarded by the court and that was also refused.

The Respondent prays that consideration be given to more than thirty years of otherwise honorable service to the profession.

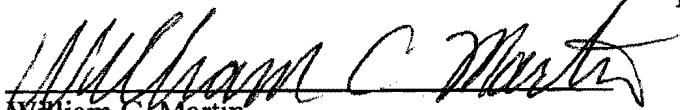
VI. SANCTION

The respondent proposes that rather than suspension of his license and supervision of his practice that he be reprimanded and ordered not to engage in providing services as an Executor for the public.

VII. CONCLUSION

For the reasons stated the recommendations of the Hearing Panel should be modified.

Respectfully submitted,



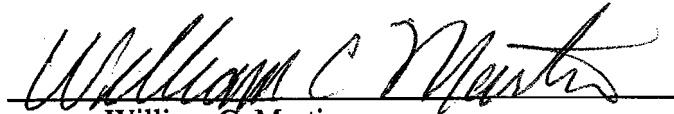
William C. Martin

Attorney at Law
WB Bar #2345
PO Box 72
Sutton, WV 26601
voice: 304-765-7327
fax: 1-888-590-3841

CERTIFICATE OF SERVICE

I, **WILLIAM C. MARTIN**, do hereby certify that I have served a true and exact copy of the foregoing **RESPONDENT'S BRIEF** by depositing the same in the United States Mail, postage pre-paid, on the 6th day of January 2010, addressed as follows:

Renee N. Frymyer
Lawyer Disciplinary Counsel
Office of Disciplinary Counsel
2008 Kanawha Boulevard East
Charleston, WV 25311



William C. Martin
Attorney at Law
WB Bar #2345
PO Box 72
Sutton, WV 26601
voice: 304-765-7327
fax: 1-888-590-3841
e-mail: wcmartin.lawyer@verizon.net