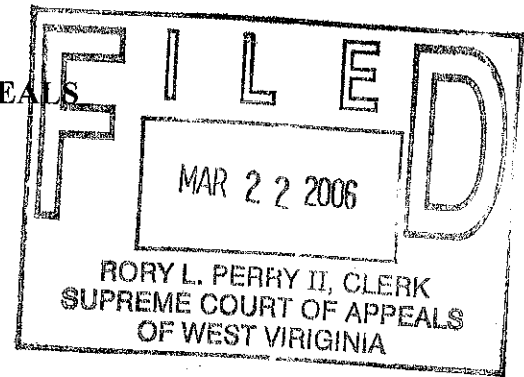


BEFORE THE SUPREME COURT OF APPEALS
STATE OF WEST VIRGINIA



LAWYER DISCIPLINARY BOARD,

Complainant,

vs.

**JOHN PATRICK BALL, a member of
The West Virginia State Bar,**

Respondent.

31794
No. 31784

BRIEF OF THE LAWYER DISCIPLINARY BOARD

Lawrence J. Lewis [Bar No. 2199]
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I. NATURE OF PROCEEDINGS

This is a lawyer disciplinary proceeding instituted against John P. Ball, Esquire (Respondent) by the Office of Disciplinary Counsel (ODC) pursuant to Rule 2.4 of the Rules of Lawyer Disciplinary Procedure. As a result, a six-count Statement of Charges was issued by the Investigative Panel of the Lawyer Disciplinary Board and filed with the Supreme Court on or about July 6, 2004. The Statement of Charges alleged misconduct by Respondent involving conflicts of interest and excessive fees. Specifically, it is alleged that Respondent prepared wills making testamentary gifts to his wife by clients not related to her, provided for excessive executor fees to himself of 7 ½%, appointed himself and his wife to lucrative "overseer" positions over substantial endowments to the West Virginia University Foundation, and assisted in the designation of his children as survivor beneficiaries of a substantial annuity held by an unrelated client.

A proposed "Stipulated Findings of Fact, Stipulated Conclusions of Law and Stipulated Recommended Discipline" was presented to a Hearing Panel Subcommittee at a public hearing on November 10, 2005. Respondent testified on his own behalf and Joint Exhibits 1 through 19 were introduced into evidence as well as Respondent's Exhibits 11 through 30.

Based upon the totality of the record, the Hearing Panel Subcommittee adopted and recommended that the following sanctions be imposed:

1. Mr. Ball, who is presently on voluntary inactive status, shall remain on inactive status and not practice law for a period of not less than five (5) years from the date of the Supreme Court's final order in this matter.
2. After five (5) years, should Mr. Ball desire to seek active status of his law license, he must file an appropriate petition, pursuant to the requirements of Rule 3.33 of the

Rules of Lawyer Disciplinary Procedure, and comply with such terms as imposed by the Supreme Court at that time for reinstatement.

3. Mr. Ball is to reduce his annual oversight fee with the WVU Foundation to a sum of one fourth of one percent (.25%) of the market value of the funds created by the Wills of Vivian Davis Michael and Gladys G. Davis.
4. Mr. Ball is to limit his executor fees in the Elmore Estate to no more than five (5) percent and he is to forego any oversight fee for funds delivered to the WVU Foundation in connection with the Elmore Estate.
5. Upon reinstatement to the active practice of law, Mr. Ball is to contribute to the WVU Foundation the additional sum of \$500,000.00. This is in addition to any moneys realized by the WVU Foundation as a result of the oversight fee reduction. Mr. Ball will be given credit for his monetary contributions to the Foundation since his receipt of fees in these matters.

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*, 452 S.E.2d at 381.

Moreover, 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. *Committee on Legal Ethics v. Blair*, Syl. pt. 3, 174 W.Va. 494, 327 S.E.2d 671 (1984); *Committee on Legal Ethics v. Karl*, Syl. pt. 7, 192 W.Va. 23, 449 S.E.2d 277 (1994).

III. STATEMENT OF FACTS

On or about December 5, 2002, the ODC instituted an investigation in this matter, pursuant to Rule 2.4(a) of the Rules of Lawyer Disciplinary Procedure. No individual or entity filed any verified complaint against Respondent. However, ODC received copies of the probated wills of Vivian Michael and Gladys Davis and, based upon a review thereof, exercised its discretion under the Rule to initiate its investigation.¹

ODC sought and obtained from the Lawyer Disciplinary Board Investigative Panel the underlying Statement of Charges, which was filed with the Court on or about July 6, 2004. Respondent was charged with misconduct involving conflicts of interest and grossly excessive fees in the drafting of wills and in the administering of the Estates of Vivian Michael and Gladys Davis and the Estate of Earle L. Elmore.

On or about November 1996, Respondent prepared the last will and testaments of two sisters, Vivian Michael and Gladys Davis (Joint Ex. 1 & 4). Paragraph V of both wills devised personal property to Respondent's wife should there be no surviving sister. Ms. Michaels' will devised an automobile to Respondent.² Neither Respondent nor his wife were related by blood or marriage to

¹ Rule 2.4(a) of the Rules of Lawyer Disciplinary Procedure provides in relevant part: "The Office of Disciplinary Counsel may initiate investigations on its own."

² Respondent did not accept the automobile from Ms. Michaels' estate. Instead, it was given to a third party.

either Ms. Michael or Ms. Davis. Furthermore, Paragraph XI of each will named each sister executrix of the other's estate and Respondent as substitute executor. Compensation for each sister, and for Respondent, for services rendered as executrix or executor was set at "seven and one-half percent (7 ½%) of my total gross estate." Finally, Paragraph VIII of each will devised the residuary estate to the West Virginia University Foundation, Inc., the income from the corpus of which was to be used to provide scholarships for Pre-Veterinary students in the College of Agriculture and Forestry of West Virginia University. The Foundation was empowered to invade the corpus or principal of the fund for certain purposes "with the advise (sic), consent and approval" of the executor. The executor was directed to be involved in any plans or discussion concerning the use of any part of the corpus or principal, and his approval of such use was to be in writing. He was to be "paid a fee for his services as he may determine from said Fund." Upon his death, incapacity or relinquishment of his charge, the Board of Directors of the Foundation was to make the decisions regarding the fund.

Thereafter, in September 1997, Respondent prepared the last will and testament of Earle L. Elmore. (Joint Ex. 16, pp. 0618-0621). Paragraph X of the will named Respondent as executor of the estate and likewise set the executor fee at "Seven and One-Half Percent (7 ½%) of my total gross estate."

Paragraph IX of Mr. Elmore's will also devised his residuary estate to the West Virginia University Foundation, Inc., for a permanent endowment, the income of which was to be used for scholarships for students in Pre-Veterinary School at the College of Agriculture and Forestry. The scholarships were to be on terms as the testator may have agreed to in writing or as the executor of his estate "may agree and consent." The Foundation was empowered to invade the corpus for certain

purposes "with the advise (sic), consent and approval" of the executor. Moreover, the executor was to "be involved" in any such plans and it was directed "that his approval and consent be in writing." He was to be paid a fee for his services from the endowment which was suggested at "an annual fee of one percent (1%) of the gross assets of the Fund as determined on the anniversary date of the Fund." (Joint Ex. 16, p. 0620).

On or about May 4, 2003, Earle L. Elmore died and Respondent qualified as executor of the estate. (Joint Ex. 16, p. 0623). Mr. Elmore's estate totals approximately One Million Four Hundred Thousand Dollars (\$1,400,000.00). It has not yet been finalized.

On or about January 6, 1998, Vivian Michael died. Her sister, Gladys Davis, declined to act as executrix and Respondent was appointed executor. The estate administration was completed, a waiver of final settlement was executed and the estate was closed in or about July 2000. (Joint Ex. 3, pp. 0019, 0021, 0022).

On or about April 30, 1998, Gladys Davis amended her annuity to name Respondent's two adult children as joint surviving beneficiaries thereof. Her sister, Vivian Michaels, who had died in January 1998, had been the previous surviving beneficiary. Although Respondent did not prepare any documents to effectuate the change, he accompanied and transported Ms. Davis to the bank knowing it was her purpose to so name his children as surviving beneficiaries and he provided their social security numbers for the purpose of the change. (Joint Ex. 13, p. 0215). Value of the annuity on Ms. Davis's death was Four Hundred Eighty-Seven Thousand Seven Hundred Eighty-Three Dollars (\$487,783.00). (Joint Ex. 6, p. 0038). Its value was disbursed to Respondent's adult children after Ms. Davis' death.

On or about January 19, 1999, Gladys Davis executed a codicil to her will which provided that ten percent (10%) of the funds she was devising to the Foundation was to be used by and for the West Virginia University College of Creative Arts and another ten percent (10%) was to be used by and for the College of Law. The remaining eighty percent (80%) of the estate was to be used by and for the College of Agriculture as set forth in her original will. (Joint Ex. 5). In addition, the codicil named Respondent's wife as substitute executrix of Ms. Davis' will, and then two lawyers if she could not act. The substitute executrix/executors were granted the same oversight authority over the funds devised to the Foundation as was Respondent.

Gladys Davis died on January 3, 2001, and Respondent qualified as executor of her estate. Personal property valued at Forty-Four Thousand Three Hundred Dollars (\$44,300.00) was disbursed to Respondent's wife. The estate administration was completed, a waiver of final settlement was executed and the estate was closed in or about December 2002. (Joint Ex. 16, p. 0608). West Virginia University Foundation, Inc., was a signatory to the waiver of final settlement.

Vivian Michael's gross estate totaled approximately Ten Million Dollars (\$10,000,000.00) and Gladys Davis's estate totaled approximately Eleven Million Five Hundred Thousand Dollars (\$11,500,000.00). Respondent received executor fees of seven and one-half percent (7 ½%) of the gross estates, resulting in fees of Seven Hundred Eighty-Five Thousand Nine Hundred Ninety-Six Dollars (\$785,996.00) and Eight Hundred Thirty-Seven Thousand Three Hundred Sixty-Two Dollars (\$837,362.00) respectively.

The record reflects that in or about June 2001, the assets of the Vivian Michael Estate were transferred to the Foundation (Joint Ex. 18). A few months later, in September 2001, the Foundation and Respondent executed oversight agreements whereby the Foundation agreed to pay Respondent

a one percent (1%) fee of the funds annually for his "continuing services." (Joint Ex. 15, pp. 0226-0228 and pp. 0239-0242). The Foundation created two separate funds for the gifts because Gladys Davis had amended her gift to provide a percent for the Creative Arts Center and for the College of Law and had named successor executrix/executors. In or about November 2001, the Foundation and Respondent entered into an additional agreement whereby the Foundation agreed to hold Respondent harmless for any taxes against the Gladys Davis Estate in return for distributing its assets prior to final settlement. (Joint Ex. 16, p. 605). In or about December 2001, the assets of the Gladys Davis Estate were distributed to the Foundation. (Joint Ex. 15, p. 0432).

Pursuant to his agreement with the Foundation, Respondent collected Thirty-Nine Thousand Twenty-One Dollars and Ninety-Three Cents (\$39,021.93) for his services for the final quarter of 2001, One Hundred Forty-Nine Thousand Seven Hundred Sixty-Seven Dollars and Seventeen Cents (\$149,767.17) for his services in 2002, and One Hundred Forty-Eight Thousand One Hundred Dollars and Fifty-One Cents (\$149,100.51) for his services through December 2003 for a total of Three Hundred Thirty-Six Thousand Eight Hundred Eighty-Nine Dollars and Sixty-One Cents (\$336,889.61) through December 2003. (Joint Ex. 15, p. 0224).³

Respondent has stipulated that his conduct in preparing an instrument giving his spouse substantial gifts from a client not related to her violated Rule 1.8(c) of the Rules of Professional Conduct; that his executor fees for the estate of Ms. Michael and Ms. Davis were grossly excessive and violated Rule 1.5(a) of the Rules of Professional Conduct; that his conduct with regard to Ms. Davis's annuity violated Rule 1.7(b) of the Rules of Professional Conduct; and that his oversight

³ The oversight agreements between Respondent and the Foundation were drafted by the Foundation, not the Respondent.

agreement with the West Virginia University Foundation, Inc. violated Rules 1.7(b) and 1.5(a) of the Rules of Professional Conduct.

Based upon the Stipulation, the Hearing Panel Subcommittee adopted and recommended the sanctions hereinbefore set forth.

IV. ARGUMENT

A. Permissible sanctions and factors to consider.

Rule 3.15 of the West Virginia Rules of Lawyer Disciplinary Procedure sets forth the permissible sanctions which may be recommended by a Hearing Panel Subcommittee or imposed by the Supreme Court for an ethics violation, and states in relevant part:

Rule 3.15. Permissible sanctions.

A Hearing Panel Subcommittee may recommend or the Supreme Court of Appeals may impose any one or more of the following sanctions for a violation of the Rules of Professional Conduct or pursuant to Rule 3.14: (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.

Moreover, Lawyer Disciplinary Procedure Rule 3.16 provides that, in imposing a sanction, the following factors be considered:

Rule 3.16. Factors to be considered in imposing sanctions.

In imposing a sanction after a finding of lawyer misconduct, unless otherwise provided in these rules, the Court or Board shall consider the following factors: (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.

In addition, the Court must consider not only what steps would appropriately punish the Respondent attorney, but also whether the discipline imposed is adequate to serve as 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. *Committee on Legal Ethics v. Roark*, 181 W.Va. 260, 382 S.E.2d 313 (1989). Rather than endeavor to establish a uniform standard of disciplinary action, the Court will consider the facts and circumstances in each case. *Roark*, p. supra.

B. The recommended sanction prevents Respondent from seeking to return to active practice for at least five (5) years, and requires that he petition for reinstatement pursuant to the reinstatement procedure following annulment.

This is an unusual case. The Statement of Charges arises as the result of an investigation instituted by ODC, and not from the filing of a complaint by an unhappy client or other third party. Moreover, Respondent has retired from the active practice of law, effective July 1, 2004, and has remained an inactive member of the Bar since that time.⁴ As such, he is not permitted to practice law pursuant to Article III of the West Virginia State Bar Constitution and Article II, § 6 of its By-Laws.⁵

⁴Rule 3.26(f) of the Rules of Lawyer Disciplinary Procedure provides that a member of the State Bar not under suspension who enrolls as an inactive member of the State Bar while an ethics complaint or other disciplinary proceeding is pending shall comply with the client notification requirements of Rule 3.28. Nothing in the Rule, however, prevents a State Bar member from taking an inactive status during a disciplinary proceeding and ODC does not claim the Respondent failed to comply with Rule 3.28.

⁵Constitution Article III. Membership

The membership of the West Virginia State Bar shall consist of all persons lawfully admitted to the practice of the law in the State of West Virginia. No person shall practice law in the State of West Virginia unless he or she is an active member in good standing of the West Virginia State Bar.

The recommended sanction prevents Respondent from seeking to return to the active practice of law for at least five (5) years, the maximum time that can be imposed, even by disbarment. Moreover, Respondent cannot return to active practice after five years unless he first files and successfully pursues an appropriate petition for reinstatement pursuant to the requirements and standards set forth in Lawyer Disciplinary Procedure Rule 3.33 (Reinstatement procedure following annulment). He must remain out of practice for the same minimum time as a disbarred lawyer, comply with all requirements of Rule 3.33(b), and establish what he has done "in satisfaction of requirements as to rehabilitation, restitution, conditions or other acts incident thereto," as well as comply with such terms as the Court should impose on him at the time of reinstatement. In short, Respondent must demonstrate a record of rehabilitation to regain his privilege to practice law and establish that such reinstatement will not have a justifiable and substantial adverse effect on the public confidence in the administration of justice as required by *In re Brown*, 166 W.Va. 226, 273 S.E.2d 567 (1980).

Ordinarily, a lawyer on inactive status may make a written request to the State Bar executive director, and with the payment of fees and compliance with pertinent mandatory continuing legal education rules and other regulations, be immediately transferred from inactive status to active status.⁶ However, because of the restrictions imposed by the Hearing Panel Subcommittee's

By-Laws Article II. Members

§ 6. Privileges of inactive members. An inactive member shall not practice law, vote in any meeting, election or referendum of the state bar, or hold office in the state bar. . .

⁶ **By-Laws Article II. Members.**

§ 5. Transfer from inactive to active membership. Any inactive member not

recommendations, Respondent cannot do this and is restricted to a status wherein he is unable to practice law. This is a proper restriction upon Respondent's license pursuant to Lawyer Disciplinary Procedure Rule 3.15(3) and one that has been imposed previously by the Court in the unreported case of *Lawyer Disciplinary Board v. Sullivan*, Supreme Court No. 22870, November 13, 1996 (Order attached as Appendix A). It adequately protects the public and the bar and, given the requirements for reinstatement, is tantamount to disbarment.

C. The recommended sanction imposes an immediate reduction in Respondent's oversight fee, requires additional payment of funds to the WVU Foundation on reinstatement, and requires such other conditions as the Court should impose on reinstatement.

With regard to the issue of restitution, it has been well settled by this Court that, in addition to other sanctions, it has authority in a disciplinary case to order restitution of excessive fees. *Committee on Legal Ethics v. Gallaher*, 180 W.Va. 332, 376 S.E.2d 346 (1988). Moreover, enforcement of disciplinary orders can be accomplished through an appropriate civil contempt action. *Lawyer Disciplinary Board v. Sigwart*, 216 W.Va. 212, 605 S.E.2d 587 (2004); *Lawyer Disciplinary Board v. Cunningham*, 200 W.Va. 542, 489 S.E.2d 496 (1997). In *Sigwart*, the Court held that suspension of a lawyer's license was the appropriate sanction for the lawyer's contempt of a supervision agreement. In *Cunningham*, the Court also suspended a lawyer's license for failure to keep scheduled meetings with a supervising lawyer. However, such remedies are problematic

under suspension may be enrolled as an active member upon written request to the executive director. Upon the filing of such request, and the payment of any unpaid fees and penalties for prior years and the full annual active membership fee for the current fiscal year, less any membership fee paid by the member as an inactive member for the current fiscal year, and upon a showing that the member is not in compliance with the pertinent mandatory CLE rules and regulations, the member shall be immediately transferred from the inactive roll to the active.

with regard to restitution if a lawyer's license is already suspended, annulled, or the lawyer is retired and on inactive status, without incentive to return to the active practice of law.

Restitution is imposed as a condition for reinstatement or continued active practice. In this regard, the Commentary to the American Bar Association's Model Rules for Lawyer Disciplinary Enforcement, Rule 10. *Sanctions* states, "Restitution when ordered should be made a part of the disciplinary order as a condition of reinstatement. The respondent must present proof of restitution as part of any application for reinstatement. See Rule 25(1). Failure to comply with the order for restitution may itself warrant discipline."

West Virginia Lawyer Disciplinary Rule 3.32 (reinstatement procedures following suspension) and Rule 3.33 (reinstatement procedure following annulment) both provide that restitution is a requirement to be considered in a reinstatement proceeding. Moreover, Rule 3.25 (disbarment by consent) permits a lawyer to consent to disbarment without addressing restitution issues at all. Historically, West Virginia has imposed restitution as a condition of reinstatement or as a condition to continue active practice. *Lawyer Disciplinary Board v. Vieweg*, 194 W.Va. 554, 461 S.E.2d 60 (1995) (lawyer to continue to pay past debts as condition of reinstatement); *Lawyer Disciplinary Board v. Friend*, 200 W.Va. 368, 489 S.E.2d 750 (1997), (permitting lawyer to seek reinstatement at any time within a two year suspension period if he has paid in full all fees and expenses owed an estate); *Lawyer Disciplinary Board v. Simmons*, 202 W.Va. 654, 505 S.E.2d 717 (1998) (reinstatement conditioned on lawyer satisfying judgment against him); *Lawyer Disciplinary Board v. Barber*, 211 W.Va. 245, 566 S.E.2d 245 (2002), (lawyer permitted to seek reinstatement during six month suspension if he makes restitution, later modified to a 60 day suspension when lawyer made restitution shortly before the Court order was entered); and *Lawyer Disciplinary Board*

v. Dues, 218 W.Va. 104, 624 S.E.2d 125 (2005), (restitution a condition of restricted practice). Furthermore, upon considering this issue, the Florida court has stated in a disciplinary matter that "Restitution can be ordered as a condition of resuming the practice of law, but its only effect can be on one's ability to practice law." *The Florida Bar v. Della-Donna*, 583 So.2d 307, 312 (Fla. 1991). The court also stated restitution is symbolic of repentance, honesty and a desire to do the right thing under the circumstances. Colorado has indicated that while it is for the benefit of third persons, one of the reasons for imposing restitution is so that a respondent can demonstrate rehabilitation. *People v. Sullivan*, 802 P.2d 1091, 1096 (Colo. 1990). Finally, restitution is not a substitute for damages which should otherwise be addressed in a civil action, and nothing in the Rules of Professional Conduct or the Rules of Lawyer Disciplinary Procedure grants to the Office of Disciplinary Counsel or the Lawyer Disciplinary Board authority or standing to pursue and enforce civil judgments against a Respondent lawyer on behalf of a third party.

Accordingly, the recommended reduction in the Respondent's annual oversight fee is an appropriate sanction because it is not a condition for reinstatement nor for continued active practice, but rather becomes effective immediately. Respondent has been required to negotiate a revised oversight agreement which results in an immediate savings of approximately One Hundred Eight Thousand Dollars (\$108,000.00) per year to the WVU Foundation. Over Respondent's life expectancy (13.5 years)⁷, this will total approximately One Million Four Hundred Fifty-Eight Thousand Dollars (\$1,458,000.00). Respondent also must forego any oversight fee in the Elmore

⁷"Life Expectancy by Age, 1850%u20132003." Infoplease.
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20 Mar. 2006 <<http://www.infoplease.com/ipa/A0005140.html>>.

matter which will save an additional approximate sum of Ten Thousand Dollars (\$10,000.00) per year (approximately One Hundred Thirty Thousand Dollars (\$130,000.00) total for the Foundation). The Foundation benefits from this adjustment whether or not Respondent seeks to petition for reinstatement in the future, and Respondent cannot avoid the reduction by absenting himself from the State or from the jurisdiction of the Court.

Finally, in addition to the above adjustments, upon successful petition for reinstatement, Respondent must pay to the Foundation an additional sum of Five Hundred Thousand Dollars (\$500,000.00) and he must "comply with such other terms as imposed by" the Court at that time.

V. CONCLUSION

Respondent has practiced law for approximately forty (40) years and has no prior disciplinary record. He has been cooperative in these proceedings and has expressed remorse. Nevertheless, his misconduct is clearly egregious and he has violated duties owed to his clients. The recommended sanctions herein prevent him from engaging in the practice of law for at least five years and require that he meet the highest standard the Rules of Lawyer Disciplinary Procedure impose for reinstatement. Furthermore, he must comply with any other condition the Court should require for reinstatement. Moreover, the stipulated reduction of the oversight fees pertaining to the Michael and Davis Funds applies immediately, and is not conditioned on reinstatement. The Foundation benefits immediately from the reduction and from the forbearance of any fee on the Elmore matter. Upon reinstatement, Respondent must make restitution to the Foundation of Five Hundred Thousand Dollars (\$500,000).

Absent a showing of some mistake of law or arbitrary assessment of the facts, recommendations of the Hearing Panel Subcommittee are to be given substantial consideration.


Committee on Legal Ethics v. Mitchell, 187 W.Va. 287, 418 S.E.2d 733 (1992). The Panel has fairly considered the circumstances and issues herein and its recommendations are appropriate.

Accordingly, a review of the record clearly indicates that the Hearing Panel Subcommittee has properly considered and evaluated the evidence, applied the law, and made the appropriate recommendations to this Court.

Wherefore, based upon the foregoing, the Office of Disciplinary Counsel respectfully requests that the Court accept the recommendations of the Hearing Panel Subcommittee and impose its sanctions.

Office of Disciplinary Counsel

By counsel



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CERTIFICATE OF SERVICE


This is to certify that I, **Lawrence J. Lewis**, Chief Lawyer Disciplinary Counsel for the Office of Disciplinary Counsel, have this day, the 22nd day of March, 2006, served a true copy of the foregoing "**BRIEF OF THE LAWYER DISCIPLINARY BOARD**" upon William C. Brewer, Esquire, Morgan Palmer Griffith, Esquire and Patrick D. Deem, Esquire, counsel for Respondent, John P. Ball, Esquire, and upon Allan N. Karlin, Esquire, by mailing the same, United States Mail with sufficient postage, to the following addresses:

William C. Brewer, Esquire
Post Office Box 4206
Morgantown, West Virginia 26504

Morgan Palmer Griffith, Esquire
Post Office Box 1588
Charleston, West Virginia 25326

Patrick D. Deem, Esquire
Post Office Box 2190
Clarksburg, West Virginia 26302

Allan N. Karlin, Esquire
174 Chancery Row
Morgantown, West Virginia 26505



Lawrence J. Lewis

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 13th day of November, 1996, the following order was made and entered:

**Lawyer Disciplinary Board,
Complainant**

vs.) No. 22870

**Larry N. Sullivan, a suspended member
of The West Virginia State Bar,
Respondent**

On a former day, to-wit, September 9, 1996, came the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by Alan D. Moats, its chairperson, pursuant to Rule 3.10, Rules of Lawyer Disciplinary Procedure, and presented to the Court the stipulation of facts and its written recommended disposition in the above-captioned proceeding, recommending that the respondent, Larry N. Sullivan, a suspended member of The West Virginia State Bar: (1) be placed on inactive status with The West Virginia State Bar; (2) not be permitted to apply for a change in status for five years; (3) be required to petition for reinstatement and be required to demonstrate to the satisfaction of the Lawyer Disciplinary Board that he is able to represent clients diligently, pursuant to Rule 3.32, Rules of Lawyer Disciplinary Procedure; (4) be barred from applying for admission to any other Bar during this five-year period of time; and (5) give notice to The West Virginia State Bar if applying for admission in another jurisdiction, for violating Rules 1.7(a), 1.15(b), 1.4(a), 1.3, 1.16(d) and 8.1(b), Rules of Professional Conduct.

Upon consideration whereof, the Court is of opinion to and doth hereby accept the stipulations of fact and the written recommended disposition. It is therefore

APPENDIX A

ordered that the respondent: (1) is placed on inactive status with The West Virginia State Bar; (2) is not permitted to apply for a change in status for five years; (3) petition for reinstatement and demonstrate to the satisfaction of the Lawyer Disciplinary Board that he is able to represent clients diligently; (4) is barred from applying for admission to any other Bar during this five-year period of time; and (5) shall give notice to The West Virginia State Bar if applying for admission in another jurisdiction.

Service of an attested copy of this order shall constitute sufficient notice of the contents herein.

A True Copy

Attest:


Interim Clerk, Supreme Court of Appeals

