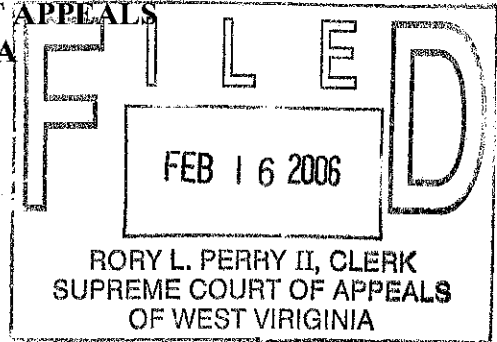


**BEFORE THE SUPREME COURT OF APPEALS
STATE OF WEST VIRGINIA**



LAWYER DISCIPLINARY BOARD,

Complainant,

vs.

No. 32554

**LARRY E. LOSCH, a member of
The West Virginia State Bar,**

Respondent.

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 held pursuant to the Rules of Lawyer Disciplinary Procedure. Formal charges were filed against Respondent on or about March 7, 2005, alleging violations of Rules 8.4(c) and (d) of the Rules of Professional Conduct. A Hearing Panel Subcommittee of the Lawyer Disciplinary Board held an evidentiary hearing at the Nicholas County Courthouse in Summersville, West Virginia, on July 11, 2005. Respondent appeared in person at the hearing and by his counsel. The Hearing Panel concluded that Respondent had violated Rules 8.4(c) and 8.4(d) and recommended the following sanctions:

1. Suspension of Respondent's license to practice law for thirty (30) days;
2. Completion of twelve (12) additional hours of CLE in the area of ethics beyond that already required for Respondent's next reporting period;
3. Supervised practice for a period of one (1) year after reinstatement; and
4. Payment of costs of these proceedings in the amount of \$692.07.

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.

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). 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." *Lawyer Disciplinary Board v. Cunningham*, 195 W.Va. 27, 464 S.E.2d 181, at 189 (1995); *McCorkle*, 452 S.E.2d at 381.

III. STATEMENT OF FACTS

The facts of this matter are generally undisputed. Respondent, on or about June 21, 2001, instituted a civil action in the Circuit Court of Nicholas County on behalf of his client against "JAMIE WOODS, individually, and JAMIE WOODS d/b/a WOODS CONSTRUCTION COMPANY, Defendants" (ODC Ex. 1, p.0005). Mr. Woods did not respond to the complaint and on March 26, 2002, Respondent obtained a default judgment against him in the amount of Eight Thousand Two Hundred Ninety-Five Dollars and Thirty-One Cents (\$8,295.31), plus costs. (ODC Ex. 1, p. 0013).

Approximately one year later, on or about April 3, 2003, Respondent requested that the Clerk of the Circuit Court of Nicholas County issue a Suggestion on Midstate Pre-Owned Autos, LLC, and Gregory A. Tucker, Esquire of Summersville, West Virginia. The Suggestion, as issued by the Clerk, was consistent with the judgment order and reflected that Respondent's client had recovered judgment against "Jamie Woods, individually, and Woods Construction Company." (ODC Ex. 1, p. 0017).

After receiving the Suggestion from the Circuit Clerk's office, Respondent directed his secretary to alter it to reflect that judgment had been recovered against Jamie Woods, individually, and Woods Construction Company and dba AJM Corporation. (tr. 64). He then caused the altered

Suggestion to be served upon Midstate Pre-Owned Autos. Respondent explained that after receiving the Suggestion from the Clerk's Office, he learned that the defendant was operating as AJM Corporation, but that he determined that AJM's corporate charter had been "suspended" by the Secretary of State on or about October 1, 2002. (tr. 63). He further testified that the sole incorporator of AJM was James O. Wood, Jr., whom he knew as Jamie Woods. (tr. 65).¹

Respondent admitted that AJM Corporation was not a party to the civil action filed on his client's behalf (tr. 61-62) and that he had done nothing to amend his complaint to include AJM Corporation or to change the style of his case to allege "Jamie Woods dba AJM Corporation." (tr. 67-95). Furthermore, no motion was filed by Respondent to amend the judgment order to include "Jamie Woods dba AJM Corporation" nor did he obtain any order from the court authorizing a Suggestion upon the receipts of AJM Corporation. (tr. 21). The Circuit Clerk testified that her office does not have authority to deviate from a judgment order or to amend a judgment order. (tr. 12).

The altered Suggestion was served upon Greg Tucker, Esquire, President of Midstate Pre-Owned Autos. He filed an Answer on Midstate's behalf to the Suggestion and titled his answer as "THOMAS BAILES CONTRACTING COMPANY, INC. v. JAMIE WOODS, individually, WOODS CONSTRUCTION COMPANY and dba AJM CORPORATION." He said he styled his answer this way upon reliance of the Suggestion served by Respondent. (tr. 43) (ODC Ex. 1, p. 0028). Moreover, at the time of his Answer, Midstate was indebted to AJM Corporation in the amount of Five Thousand Dollars (\$5,000.00). (ODC Ex. 1, p. 0028, para 3).

¹ Respondent's Exhibit R1 indicates the West Virginia Tax Department revoked AJM's charter effective October 1, 2002, for failure to pay corporate taxes and file a corporation annual return. The applicable statute in effect at the time, WV Code §11-12V-8(c) (ODC Exhibit 2), provided that any corporation whose certificate of incorporation had been revoked due to nonpayment of its corporate license taxes shall be reinstated to its former rights as if it had not been delinquent upon payment of all delinquent taxes, interest and penalties. As of an April 28, 2003, court hearing in the underlying matter, AJM Corporation had been reinstated and was in good standing. (ODC Ex. 1, pp 0045-0046).

Thereafter, attorney Harley E. Stollings filed a motion on behalf of AJM Corporation to quash the Suggestion. (ODC Ex. 1, p. 0025). The matter came on for hearing on or about April 28, 2003, before Judge Geary L. Johnson, who quashed the Suggestion for the reason that it had been altered after the same had been issued by the Circuit Clerk. (ODC Ex. 1, p. 0047) (ODC Ex. 1, p. 0143-0144). Respondent acknowledged that the Suggestion issued by the Circuit Clerk's office was legal process authorized by the Court (tr. 73) and knew that the Suggestion would stop any payment of funds to AJM Corporation until there was a determination whether it was owed on the judgment. (tr. 75-76).

IV. ARGUMENT

A. Respondent's Conduct Violated Rules 8.4(c) and 8.4(d).

The Respondent's altering of a court document without notice to and/or permission of the Court clearly constitutes a violation of Rules 8.4(c) and 8.4(d) of the Rules of Professional Conduct.² The conduct in this case is similar to that in *Lawyer Disciplinary Board v. Ansell*, 210 W.Va. 139, 556 S.E.2d 106 (2001). Ansell attempted to obtain payment due him from the Public Defender Services for work he performed by the use of altered orders. Ansell was legitimately due the money he was seeking. However, rather than properly obtaining appropriate orders approving his payment from the Court, he altered certified copies of existing orders he had obtained in another case, preserving the judge's signature. He then submitted the altered orders to the Public Defender Services, which returned them to him unpaid. The Court concluded that Ansell's conduct of altering

² **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.

court orders violated Rule 8.4(c), and that by attempting to circumvent correct procedures, he engaged in conduct prejudicial to the administration of justice. *Ansell*, p. 109.

Respondent's conduct here likewise involves altering a court document which was an integral part of legal process authorized by the court. Furthermore, he then served the altered document upon a third party, leading it to believe that his judgment was against "Jamie Woods, individually, and Woods Construction Company and dba AJM Corporation." That admittedly was not the case.

There was no effort by Respondent to properly amend his judgment. He filed no motion with the Court to amend the same, nor obtained any order authorizing a Suggestion upon any funds due AJM Corporation. He made no request for the Court Clerk to reissue the Suggestion with AJM Corporation added as a party.

In *Office of Disciplinary Counsel v. Galford*, 202 W.Va. 587, 505 S.E.2d 650 (1998), Galford mistakenly omitted an heir from a will he had prepared for a testator. When this was discovered after the testator's death, Galford altered the will to remedy the mistake and then attempted to pass the will through the probate system. In suspending Galford, the Court noted that honesty is one of the cornerstones of the legal profession. Respondent here has likewise altered a document of legal consequence and attempted to pass it through the court system.

B. The Hearing Panel Subcommittee's Recommendation of Sanctions is Appropriate.

This Court 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). In addition, discipline must serve as both instruction on the standards for ethical conduct and as a deterrence against similar

misconduct to other attorneys. In Syllabus Point 3 of *Committee on Legal Ethics v. Walker*, 178 W.Va. 150, 358 S.E.2d 234 (1987), the Court 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 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.

Factors to be considered in imposing such 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.

The Hearing Panel Subcommittee recognized that Respondent's offense is serious and that accuracy of documents and instruments utilized before a tribunal is of utmost importance to the administration of justice. See *Ansell, supra*. FN 5, citing *Matter of Siegal*, 708 N.E.2d 869, 872 (Ind. 1999). Respondent's conduct discredits the accuracy of documents in the Circuit Court of Nicholas County and undermines its authority. He violated a duty owed the legal system and the profession, he acted intentionally and knowingly, and the actual or potential injury to the legal system was significant. Moreover, the Hearing Panel Subcommittee took note of the American Bar Association Standards for Imposing Lawyer Sanctions, Section 6.12³ in making its recommendations as well as

³ Section 6.12 provides that: "Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or

the sanctions imposed in *Ansell* (60 days) and *Galford* (one year). It is submitted that the recommended sanctions meet the criteria of Rule 3.16, are consistent with the ABA Standards, and are appropriate in light of *Ansell* and *Galford*.

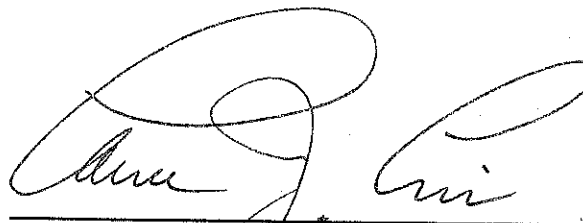
V. CONCLUSION

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



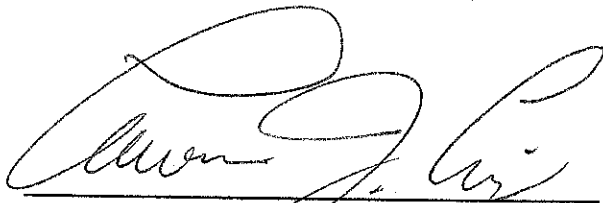
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potentially adverse effect on the legal proceeding.”

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 16th day of February, 2006, served a true copy of the foregoing "**BRIEF OF THE LAWYER DISCIPLINARY BOARD**" upon Robert P. Martin, Counsel for Respondent, Larry E. Losch, by mailing the same, United States Mail with sufficient postage, to the following address:

Robert P. Martin, Esquire
Post Office Box 2393
Charleston, West Virginia 25328



Lawrence J. Lewis