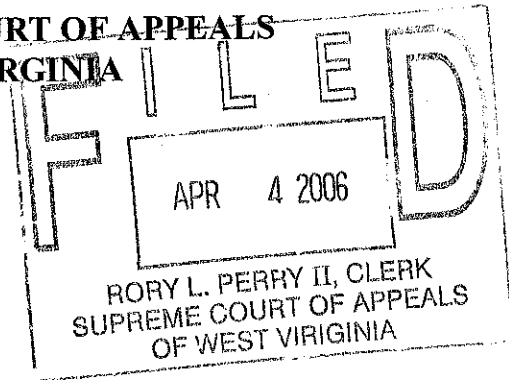


**BEFORE THE SUPREME COURT OF APPEALS
STATE OF WEST VIRGINIA**



LAWYER DISCIPLINARY BOARD,

Complainant,

vs.

No. 32554

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

Respondent.

REPLY BRIEF OF THE LAWYER DISCIPLINARY BOARD

Lawrence J. Lewis [Bar No. 2199]
Chief Lawyer Disciplinary Counsel
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ARGUMENT

Respondent concedes that he altered the copy of the Suggestion in his possession and caused it to be served upon Mid-State Pre-Owned Autos. His justification for this act is that, subsequent to his judgment and request for the suggestion, he learned that the judgment debtor was conducting business through a corporation that had its charter revoked by the Secretary of State for nonpayment of taxes.

Respondent obtained his judgment against Jamie Woods, Individually, and Woods Construction Company on or about March 26, 2002. Thereafter, on or about June 26, 2002, AJM Corporation had its corporate charter revoked for failure to pay corporate license tax and failure to file an annual return. (ODC Ex. 1, p. 0037) Finally, on April 4, 2003, Respondent obtained the Suggestion from the Circuit Clerk which he subsequently altered. He states he learned of the charter revocation after he obtained the Suggestion and that he added dba AJM Corporation merely as an alias and to further identify his judgment debtor.

While this newly learned information may well have served as a basis for Respondent to move the Court to reform the name of his judgment debtor or to seek some other similar relief from the Court,¹ it does not justify the unilateral altering of official court process. Such act, without the authority, permission or knowledge of the Court clearly involves dishonesty, fraud, deceit or misrepresentation, as contemplated by Rule 8.4(c) of the Rules of Professional Conduct and it is prejudicial to the administration of justice as set forth in Rule 8.4(d).

¹ See, for instance, Kerner v. Affordable Living, Inc., 212 W.Va. 312, 570 S.E.2d 571 (2002), wherein Plaintiff moved to reform his judgment order to include a successor corporation.

Respondent's remaining arguments regarding the Hearing Panel Subcommittee's findings are likewise without merit. It is disingenuous to argue that Respondent did not alter the original Suggestion, but that only the copy that was served upon a third party was altered. The fact remains that Respondent altered official Court process, representing it to be the Court's action when, in fact, it was only his.

Furthermore, the Hearing Panel Subcommittee, contrary to Respondent's argument, did not make any legal determination as to the legal status of AJM Corporation, nor was it within the Panel's jurisdiction to do so. It merely noted that the person upon whom the Suggestion was served testified that AJM Corporation was working for Mid-State Pre-Owned Auto, LLC, and that Mid-State owed AJM Corporation money. (See, "Report of Hearing Panel Subcommittee," paras. 9, 10, 11)

The Hearing Panel Subcommittee did not make a finding that AJM Corporation's charter had been "suspended". In this regard, Respondent himself testified before the Hearing Panel that he had determined AJM Corporation's corporate charter had been "suspended" by the Secretary of State. (tr. 63). The Panel noted this in paragraph 5 of its findings and in footnote 1 noted that the West Virginia State Tax Department *revoked* AJM's charter for failure to pay corporate taxes and file a corporate annual return. Under the applicable statute in effect at the time (11-12C-8, ODC Ex. 2), the corporation would be reinstated to its former rights upon payment of all delinquent taxes, interest and penalties. At the hearing on April 28, 2003, to quash Respondent's Suggestion, AJM Corporation's attorney advised the Court that the corporation had been reinstated and was in good standing.

This was not disputed by the Respondent. (ODC Ex. 1, p. 0045-0046). In any event, no matter what the legal status of AJM Corporation may have been during the course of these matters, that status did not justify Respondent altering a court document and serving the same upon a third party. The Hearing Panel Subcommittee's recommendation in this matter is not based upon the legal standing of AJM Corporation, but rather is based upon Respondent's inappropriate conduct.

Finally, Respondent argues that he had an affirmative duty to alter the Court's Suggestion based upon his subsequently acquired knowledge and that failure to do so would violate Rule 4.1 of the Rules of Professional Conduct. The Office of Disciplinary Counsel suggests that Respondent had a duty to be forthright with the Court, that he had a duty to bring his newly acquired information to the Court, to take appropriate action to amend or reform his judgment, and that he request the Court to issue its Suggestion in accordance with such amendment as the Court may grant. The Rules of Professional Conduct do not command or dictate that Respondent unilaterally change or alter a court document without the court's knowledge or permission.

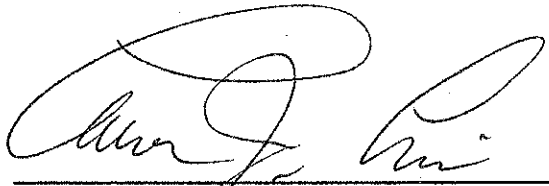
CONCLUSION

Respondent's actions were serious, intentional, and self serving. They constituted an assault upon the integrity of the legal system. This Court stated in Lawyer Disciplinary Board v. Ansell, 210 W.Va. 139, 556 S.E.2d 106, n.5 (2001), that "[t]he accuracy of documents and instruments utilized before a tribunal in proceeding is of utmost importance to the administration of justice." *Citing Matter of Siegel*, 708 N.E.2d 869, 872 (Ind. 1999).

The Hearing Panel Subcommittee has properly considered this matter and its recommendations should be accepted.

Office of Disciplinary Counsel

By counsel


A handwritten signature in black ink, appearing to read "Lawrence J. Lewis", written over a horizontal line.

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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 4th day of April, 2006, served a true copy of the foregoing "**REPLY BRIEF OF THE LAWYER DISCIPLINARY BOARD**" upon Robert P. Martin, Esquire, counsel for Respondent, Larry E. Losch, Esquire, by mailing the same, United States Mail with sufficient postage, to the following address:

Robert P. Martin, Esquire
Post Office Box 3710
Charleston, West Virginia 25337-3710



Lawrence J. Lewis