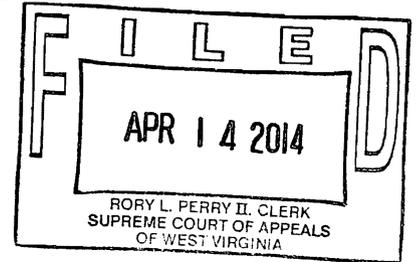


ARGUMENT
DOCKET

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

LAWYER DISCIPLINARY BOARD,

Complainant,



V.

CASE NO. 13-1 0065

CHARLES C. AMOS,

Respondent.

RESPONDENT'S BRIEF

FILED BY:

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2. *Legal Ethics v. McCorkle*
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4. *Lawyer Disciplinary Board v. Artimez*
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2. Rule 4.2 of the Rules of Professional Conduct p. 2
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West Virginia Rules of Lawyer Disciplinary Procedure

1. Rule 3.15 of the Rules of Lawyer Disciplinary Procedure p. 2
2. Rule 3.16 of the Rules of Lawyer Disciplinary Procedure p. 4

STATEMENT OF CASE

The Respondent accepts as accurate the statement of the case as set forth by Office of Disciplinary Counsel "ODC." However, ODC make representations regarding its contact with and its attempt to secure Ms. C.'s attendance at the hearing of the Hearing Panel Subcommittee "HPS."

The Respondent, Charles C. Amos, is unaware of what ODC did in regard to communication with Ms. C and securing her presence at the hearing in front of the HPS. Respondent acknowledges that he was informed that Ms. C would appear at the hearing and at times during the hearing Counsel for ODC asked for a brief recess to see if Ms. C had arrived. When ODC asked for additional time to find Ms. C, Respondent objected to the request. Further, when ODC filed a motion to reopen the record Respondent objected. The motion was properly denied.

Respondent also accepts the HPS' Findings of Fact, Conclusions of Law and Recommended Sanctions.

SUMMARY OF ARGUMENT

The Respondent asks this Court to adopt the findings and recommendations of the HPS. Respondent has stipulated to violations of Rules 1.7(b), 4.2, and 8.4(d) of the Rules of Professional Conduct. The Respondent further maintains that the recommended sanctions of the HPS are the appropriate remedy for this matter and asks this Court implement those sanctions; specifically being that the Respondent be publically reprimanded; the Respondent pay the costs of the proceedings pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure; Respondent continue with counseling with his mental health care provider for a period of at least one (1) year and to provide proof of the same to the Office of Disciplinary Counsel; and that the Respondent be prohibited from engaging in Abuse and Neglect Proceedings in any capacity other than as Guardian Ad Litem for a period of at least one (1) year.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

This Court entered an Order on March 7, 2014 setting this matter for oral argument for May 7, 2014.

ARGUMENT

I. STANDARD OF REVIEW

A de novo standard applies to a review of the adjudicatory record made before the West Virginia Lawyer Disciplinary Board as to questions of law, questions of application of the law to the facts, and questions of appropriate sanctions. *Roark v. Lawyer Disciplinary Board*, 201 W.Va. 181, 495 S.E.2d 552 (1997). The Supreme Court is to give respectful consideration to the Lawyer Disciplinary Board's recommendations as to questions of law and the appropriate sanctions, while also ultimately exercising its own independent judgment. *Legal Ethics v. McCorkle*, 192 W.Va. 286, 290 S.E.2d 377, 381 (1994). "The 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." *The Disciplinary Board v. Cunningham*, 195 W.Va. 27, 464 S.E.2d 181, 189 (1995). In this matter however, the Respondent accepts the HSP's Findings of Fact and Conclusions of Law as accurate and based on reliable, probative and substantial evidence. The recommended sanctions made by the HSP are an appropriate remedy in this matter.

II. DISCUSSION OF LAW

Respondent accepts as accurate the Findings of Fact and Conclusions of Law of the HSP. Respondent previously stipulated to Finding of Fact and the Conclusions of Law with ODC. The violations of the Rules of Professional Conduct that the Respondent admittedly violated are the same violation the HSP found. Based on the stipulation of ODC as to the facts and violations of the Rules of Professional Conduct, it appears the issue remaining is the appropriate sanction to be imposed, unless this Court does not accept the findings and conclusions of HSP. Rule 3.16 of the Rules of Lawyer Disciplinary Procedure provides that when imposing a sanction after a finding of lawyer

misconduct the court shall consider 1) whether the lawyers violated the duty owed to the 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 actual or potential injury caused by the lawyer's misconduct; and 4) the existence of any aggravating or mitigating factors.

Respondent has admitted and continues to acknowledge that 1) he violated the duty owed to the client, to the public, to the legal system, and to the profession; 2) he acted intentionally, knowingly; 3) the amount of injury was great and the potential injury was limited by the Respondent's self reporting and removal of himself as the Assistant Prosecutor in the underlying case before any further hearings were conducted and his resignation as Assistant Prosecutor; and 4) there were both aggravating or mitigating factors present. The Respondent accepts the conclusions of the HPS relative to both the aggravating and mitigating factors.

The HPS found that

[i]n weighing the mitigating factors against the aggravating factors, the HPS specifically finds that the mitigating factors in this case outweigh the aggravating factors inasmuch as Respondent self-reported to his supervisor, immediately removed himself from the case, and resigned as assistant prosecutor, all before then self-reporting to the Office of Disciplinary Counsel.

(Hearing Panel Subcommittee's Findings of Fact, Conclusions of Law and Recommended Discipline page 9.)

The mitigating factors in the present case which were agreed to in the Joint Stipulation as submitted to and adopted by the HPS are 1) absence of a prior disciplinary record; 2) cooperative attitude toward Disciplinary Counsel; 3) Respondent had a good faith reputation at the time of the offenses; 4) Respondent volunteered extensive amounts of time for a local adult special care center, including acting as a board member and he was a two term president of the board; 5) Respondent

made a timely good faith effort to rectify the consequences of his misconduct by reporting the misconduct to the judge and the prosecuting attorney; 6) he removed himself from the case prior to any further hearing in the abuse and neglect case involving Ms. C; 7) Respondent sought counseling after the incident; 8) Respondent resigned his job as Assistant Prosecutor after seventeen (17) years; and 9) Respondent expressed remorse for his conduct.

The HPS in making its recommendation to this court stated that it was hesitant to recommend a greater or lesser sanction than to which the parties agreed. The Board went on to say “because the mitigating factors outweigh the aggravating factors in this case the HSP was compelled to do so in this instance given the overall performance and commitment of Respondent and his career as an Assistant Prosecuting Attorney in abuse and neglect matters.”

As ODC points out in its brief, the sanctions that have been recommended in this case is not inconsistent with the sanction in *Lawyer Disciplinary Board v. Artimez*, 208 W.Va. 288 540 S.E.2nd 156 (2000) and *Lawyer Disciplinary Board v. Chittum*, 225 W.Va. 83, 689 S.E.2nd 811 (2010). ODC has recommended that this Honorable Court adopt the recommendations of the HPS.

IV. CONCLUSION

Based on the foregoing, Respondent requests that this Honorable Court adopt the Findings of Fact and Conclusions of Law as well as the recommended sanctions of the HPS.

CHARLES AMOS
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CERTIFICATE OF SERVICE

I, Paul E. Biser, counsel for Respondent, do hereby certify that I served a true and exact copy of the foregoing "Respondent's Brief" upon the following via facsimile and by depositing the same in the regular course of the United States mail, postage pre-paid, this 14 day of April, 2014.

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